

No. 16(I)/98



REPUBLIC OF CYPRUS

THE PATENTS LAW OF 1998

*(English translation prepared
by the Law Commissioner's Office)*

No. 16(I)/98

PATENTS LAW

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No. 16(I) of 1998

PATENTS LAW

The House of Representatives enacts as follows:

1. This law may be cited as the Patents Law of 1998.

Short title.

PART I — DEFINITIONS

2. In this Law, unless the context requires otherwise—

Interpretation.

"Court" means the Supreme Court of Cyprus;

"prescribed" means prescribed by this Law or the rules made thereunder;

"register" means the register of patents kept under this Law and includes the register kept under the Patents Law repealed by this Law;

"Registrar" means the Registrar and Official Receiver and includes any other person appointed to exercise all or any of the powers and perform all or any of the duties of the Registrar;

PART II — ADMINISTRATION

3.—(1) There shall continue to be a register kept at the Office of the Registrar and known as the register of patents in which patents granted shall be recorded, numbered in the order of their granting.

Register.

(2) The register shall include such matters constituting or relating to the patent as are prescribed and entries of all corrections, amendments, assignments, transmissions or other matters that the Registrar is empowered or required by this Law to record.

(3) The register shall be prima facie evidence of all matters directed or authorized by or under this Law to be entered therein.

4.—(1) The Register shall be open to public inspection, subject to such rules as may be prescribed under section 78 of this Law.

Inspection of Register and Granting of Certified Copies.

(2) Certified copies of any entry in the register shall be given by the Registrar to any person requiring the same on payment of the prescribed fee and a copy so certified shall be admissible in evidence in all courts and proceedings without further proof or production of the original.

PART III — PATENTABILITY

5.—(1) An invention shall not be patentable unless it is novel, involves an inventive step and is industrially applicable.

Patentable Inventions.

(2) The following, in particular, shall not be regarded as inventions within the meaning of subsection (1):

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers, and

(d) presentation of information.

(3) A patent shall not be granted in respect of an invention exploitation of which would be contrary to public order or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by Law or Regulations.

- Novelty. 6.—(1) An invention shall be considered novel if it does not form part of the prior art.
- (2) The prior art shall consist of everything which, before the filing date or, where priority is claimed, the priority date of the application claiming the invention, has been made available to the public in a written or other graphic form, by an oral description, by use or in any other way anywhere in the world.
- (3) The prior art shall also include the content of any patent application as filed in, or with effect for, Cyprus to the extent that such application or the patent granted thereon is published subsequently by or for the Office of the Registrar, provided that the filing date or, where priority is claimed, the priority date of such application is earlier than the date referred to in subsection (2) of this section.
- Inventive Step. 7. An invention shall be considered to involve an inventive step if, having regard to the prior art as defined in Section 6(2), a specialist considers the invention as not obviously derived from the existing art.
- Industrial Applicability. 8.—(1) An invention shall be considered industrially applicable if it can be made or used in any kind of industry.
- (2) "Industry" shall be understood in its broadest sense and shall cover, in particular, handicraft, agriculture, fishery and services.

PART IV RIGHT TO APPLY FOR AND OBTAIN A PATENT AND BE MENTIONED AS INVENTOR

- Entitlement to file an application. 9. Any natural person or legal entity may file an application for a patent either alone or jointly with another
- Right to a patent. 10.—(1) The right to a patent shall belong to the inventor or his successor in title. Joint inventors shall, unless they agree otherwise, have equal rights.
- (2) Where two or more applications have been filed by different persons in respect of the same invention and the inventors concerned made the invention independently of each other, the right to a patent for that invention shall belong to the applicant whose application has the earliest filing date or, where priority is claimed, the earliest priority date, as long as his application is not withdrawn or abandoned, or rejected.
- Inventions made in execution of commission or by employees. 11.—(1) Notwithstanding Section 10, when an invention is made in execution of a commission or an employment contract, the right to the patent for that invention shall belong, in the absence of contractual provisions to the contrary, to the person having commissioned the work or to the employer.
- (2) The employee shall have a right to equitable remuneration taking into account his salary, the economic value of the invention and any benefit derived from the invention by the employer. In the absence of agreement between the parties, the remuneration shall be fixed by the Court.
- Mention of the inventor. 12. The inventor will be mentioned as inventor on the Patent unless with special written statement to the Registrar he mentions that he does not wish to be named.

PART V — APPLICATIONS

- Requirements of application. 13.—(1) An application for a patent shall be made in the prescribed form and shall be filed at the Office of the Registrar and shall contain—
- (a) a request for the grant of a patent;
 - (b) a part which, on the face of it, appears to be a description of the invention for which a patent is applied for;

- (c) a part which, on the face of it, appears to be a claim or claims;
 - (d) any drawings referred to in the description or the claims;
 - (e) an abstract.
- (2) The application shall name the inventor or, where there are several inventors, all of them.
- (3) The application shall be accompanied by the prescribed filing fee.
- 14.**—(1) The filing date of an application shall be the date of receipt by the Office of the Registrar of an application that contains— Date of filing.
- (a) an express or implicit indication that the granting of a patent is sought;
 - (b) indications allowing the identity of the applicant to be established ;
 - (c) a part which, on the face of it, appears to be a description of the invention for which a patent is applied for.
- (2)(a) If the Office of the Registrar finds that, at the time of receipt of an application, the requirements referred to in subsection (1) have not been fulfilled, it shall invite the applicant to comply by furnishing the missing requirements.
- (b) If the applicant complies with the invitation referred to in paragraph (a), the filing date of the application shall be the date of receipt of all missing requirements. If the applicant fails to comply with such an invitation, the application shall be treated as if it had not been filed.
- (c) Where the description refers to drawings which are not included in the application, the Office of the Registrar shall request the applicant to furnish the missing drawings. If the applicant complies with the said request, the filing date of the application shall be the date of receipt of the missing drawings. If the applicant fails to comply with the invitation, the filing date shall be the date of receipt of the application and any reference to the drawings shall be treated as non-existent.
- 15.** The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art. Description.
- 16.**—(1) The Claims shall define the invention for which patent protection is sought. Claims.
- (2) The claims shall be clear and concise.
 - (3) The claims shall be supported by the description.
 - (4) The claims shall be presented in the prescribed manner.
- 17.** The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the claims. Abstract.
- 18.**—(1) An application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept. Unity of invention.
- (2) Failure to comply with the requirement of unity of invention shall not be a ground for invalidation or revocation of a patent.
- 19.**—(1) The applicant may amend the application, provided that the amendment shall not go beyond the disclosure in the initial application. Amendment and division of application.
- (2)(a) The applicant may divide the application into two or more applications ("divisional applications"), provided that each divisional application shall not go beyond the disclosure in the initial application.
- (b) Each divisional application shall be entitled to the filing date or, where priority is claimed, the priority date of the initial application.

(c) Priority documents and any required translations thereof that are submitted to the Office of the Registrar in respect of the initial application shall be considered as having been submitted in respect of all divisional applications.

Right
of priority.

20.—(1) The application may contain a declaration claiming the priority, pursuant to the Paris Convention for the Protection of Industrial Property, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to the said Convention.

(2) Where the application contains a declaration under subsection (1), the Office of the Registrar may require that the applicant furnish, within the prescribed time limit, a copy of the earlier application, certified as correct by the Office with which it was filed or, where the earlier application is an international application filed under the Patent Cooperation Treaty, by the International Bureau of the World Intellectual Property Organization.

(3) The effect of the declaration referred to in subsection (1) of this section shall be as provided in the Convention referred to in that subsection.

(4) If the Office of the Registrar finds that the requirements under this Section and the Regulations pertaining thereto have not been fulfilled, it shall invite the applicant to file the required correction. If the applicant does not comply with the said invitation, the declaration referred to in subsection (1) of this section shall be considered not to have been made.

PART VI — EXAMINATION AND GRANT OR REFUSAL

Examination
of applications.

21.—(1) Where an application for a patent has a date of filing and is not withdrawn, the Registrar shall refer the application to an examiner to determine whether the application complies with those requirements of this Law and the Regulations and the latter shall then submit a relevant report to the Registrar.

(2) If it is reported to the Registrar that not all the formal requirements of this Law are complied with, the applicant shall be given an opportunity to make observations on the report and to amend the application within a prescribed period so as to comply with these requirements of this Law, and if the applicant fails to do so the Registrar may refuse the application.

(3) If it is reported to the Registrar that the application, whether as originally filed or as amended pursuant to subsection (2), complies with all the formal requirements at any time before the end of the prescribed period referred to in subsection (2) of this section, the Registrar shall notify the applicant of that fact.

Submission of
search report.

22. Where the applicant has been notified pursuant to Section 21(3) of this Law that his application complies with all the formal requirements, he shall, within the prescribed period, submit to the Office of the Registrar a search report drawn up by a prescribed authority quoting those elements of the state of the art that may be taken into consideration to assess, within the meaning of Sections 6 and 7, the patentability of the invention. If the applicant fails to do so within the prescribed period, the Registrar may refuse the application.

Withdrawal
of application.

23. The applicant may withdraw the application at any time during its pendency.

Grant.

24.—(1) Where the applicant has been notified pursuant to Section 21(3) of this Law that his application complies with all the formal requirements and he submits a search report in accordance with Section 22 of this Law, the Registrar shall, on payment of the prescribed fee, grant a patent on the application.

(2) After the decision to grant a patent, the Registrar shall publish in the Official Gazette of the Republic a notification that the patent has been granted and shall publish the patent in the prescribed manner, together with the search report submitted in accordance with Section 22 of this Law.

25.—(1)(a) Subject to paragraphs (b) and (c) of this subsection, the Office of the Registrar shall, within the time limits provided for in subsection (2) of this section and in the prescribed manner, publish all applications filed with it. Publication of applications or patents.

(b) No application shall be published if it is withdrawn or abandoned or, is considered withdrawn or abandoned, or is rejected before the expiration of 17 months from the filing date or, where priority is claimed, the priority date of the application

(c) If, by the time an application should be published according to subsection (2) of this section, a patent has been granted on that application, the Office of the Registrar may not publish the application but shall publish the patent in the prescribed manner, together with the search report submitted in accordance with Section 22 of this Law, and shall allow any interested person to inspect the application.

(2) The office of the Registrar shall publish each application filed with it promptly after the expiration of 18 months from the filing date or, where priority is claimed, from the priority date of the application. However, where, before the expiration of the said period of 18 months, the applicant presents a written request to the Office of the Registrar that his application be published, the Office of the Registrar shall publish the application promptly after the receipt of the request.

PART VII

EFFECTS OF A PATENT APPLICATION

26.—(1) Subject to subsection (2) and sections 30-48 the duration of a patent shall be 20 years as from the date of filing of the application. Term of patent.

(2) The term of a patent granted on a divisional application shall be 20 years as from the date of filing of the application from which the divisional application is derived.

(3) The duration of a patent being in force is subject to the payment of the prescribed renewal fees.

27.—(1) Where the patent concerns a product, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, the following acts: Rights conferred by a patent.

(i) The making of a product incorporating the protected invention.

(ii) The offering or the putting on the market of a product incorporating the protected invention, the using of such a product, or the importing or stocking of such a product for such offering or putting on the market or for such use.

(iii) The inducing of third parties to perform any of the above acts.

(2) Where the patent concerns a process, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, the following acts:

(i) The using of a process which is the subject matter of the patent.

(ii) In respect of any product directly resulting from the use of the process, any of the acts referred to in paragraph (1)(ii) of this section, even where a patent cannot be obtained for the said product.

(iii) Inducing third parties to perform any of the above acts.

(3) Notwithstanding paragraphs (1) and (2) of this section, the owner of a patent shall have no right to prevent third parties from performing, without his authorization, the acts referred to in subsections (1) and (2) of this section in the following circumstances:

- (i) Where the act concerns a product which has been put on the market by the owner of the patent, or with his express consent, insofar as such an act is performed after that product has been so put on the market in Cyprus.
- (ii) Where the act is done privately and on a non-commercial scale, provided that it does not significantly prejudice the economic interests of the proprietor of the patent.
- (iii) Where the act consists of making or using for purely experimental purposes or for scientific research.
- (iv) Where the act consists of the extemporaneous preparation for individual cases, in a pharmacy or by a medical doctor, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

(4)(a) Subject to paragraph (b) of this subsection, a patent shall also confer on its owner the right to prevent third parties from supplying or offering to supply a person, other than a party entitled to exploit the patented invention, with means, relating to an element of that invention, exclusively for carrying out the invention, when the third party knows, or under the circumstances it is obvious, that those means are suitable and intended to be used for carrying out that invention.

This provision shall not apply when the means are commercial products and the circumstances of the supply of such products do not constitute inducement to infringe the patent.

(b) Persons performing the acts referred to in subsection (3), (ii), (iii) and (iv) of this section shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph (a) of this subsection.

Rights
conferred
by a patent
application
after publication.

28.—(1) A patent application shall, where published under Section 25 of this Law, provisionally confer upon the applicant from the date of such publication the same rights in respect of the subject-matter of the application as are conferred by Section 27 of this Law in respect of the subject-matter of a patent.

(2) The Court may decide to stay any proceedings brought before it in respect of unauthorized acts performed in relation to an invention that is the subject of a published application until a final decision has been made by the Registrar to grant or refuse a patent on the application.

(3) A patent application shall be deemed never to have had the effects set out in subsection (1) of this section if it is withdrawn, deemed to be withdrawn or finally refused.

Extent
of protection.

29.—(1) The extent of protection conferred by a patent or a patent application shall be determined by the claims, with due regard to the description and drawings.

(2) For the period up to granting of the patent, the extent of the protection conferred by a patent application shall be determined by the latest filed claims contained in the publication under section 25. However, the patent as granted or as amended in revocation proceedings shall determine retroactively the protection conferred by the patent application, in so far as such protection is not thereby extended.

PART VIII — SUPPLEMENTARY PROTECTION CERTIFICATE
FOR MEDICINAL PRODUCTS

- 30.** For the purpose of Articles 31–48: Definitions.
- (a) "medicinal product" means any substance or combination of substances presented for treating or preventing disease in human beings or animals and any substance or combination of substances which may be administered to human beings or animals with a view to making a medicinal diagnosis or to restoring, correcting or modifying physiological functions in humans or in animals;
 - (b) "product" means the active ingredient or combination of active ingredients of a medicinal product;
 - (c) "basic patent" means a patent which protects a product as defined in (b) as such, a process to obtain a product or an application of a product, and which is designated by its holder for the purpose of the procedure for grant of a certificate;
 - (d) "certificate" means the supplementary protection certificate.
- 31.** Any product protected by a patent in Cyprus and subject, prior to being placed on the market as a medicinal product, to an administrative authorization procedure in Cyprus, may under the terms and conditions provided for in this Law, be the subject of a certificate. Scope.
- 32.** A certificate shall be granted if, at the date of that application— Conditions for obtaining a certificate.
- (a) The product is protected in Cyprus by a basic patent in force;
 - (b) a valid authorization to place the product on the market as a medicinal product has been granted;
 - (c) the product has not already been the subject of a certificate;
 - (d) the authorization referred to in (b) is the first authorization to place the product on the market as a medicinal product.
- 33.** Within the limits of the protection conferred by the basic patent, the protection conferred by a certificate shall extend only to the product covered by the authorization to place the corresponding medicinal product on the market and for any use of the product as a medicinal product that has been authorized before the expiry of the certificate. Subject-matter of protection.
- 34.** Subject to the provisions of section 33, the certificate shall confer the same rights as conferred by the basic patent and shall be subject to the same limitations and the same obligations. Effects of the certificate.
- 35.** The certificate shall be granted to the holder of the basic patent or his successor in title. Entitlement to the certificate.
- 36.—**(1) The application for a certificate shall be filed within six months of the date on which the authorization referred to in section 32 (b) to place the product on the market as a medicinal product was granted. Application for a certificate.
- (2) Notwithstanding subsection (1) of this section, where the authorization to place the product on the market is granted before the basic patent is granted, the application for a certificate shall be filed within six months of the date on which the patent is granted.
- 37.—**(1) The application for a certificate shall contain— Contents of the application for a certificate.
- (a) A request for the grant of a certificate, stating in particular—
 - (i) the name and address of the applicant;

- (ii) if he has appointed a representative, the name and address of the representative;
 - (iii) the number of the basic patent and the title of the invention;
 - (iv) the number and date of the first authorization to place the product on the market, as referred to in Article 32 (b) and, if this authorization is not the first authorization for placing the product on the market, the number and date of that authorization;
- (b) a copy of the authorization to place the product on the market, as referred to in Article 32(b), in which the product is identified, containing in particular the number and date of the authorization and the summary of the product's characteristics;
- (c) if the authorization referred to in (b) of this section is not the first authorization for placing the product on the market as a medicinal product in the market, information regarding the identity of the product thus authorized and the legal provision under which the authorization procedure took place.

Loġging of an application for a certificate.

- 38.—**(1) The application for a certificate shall be filed with the Registrar.
- (2) Notification of the application for a certificate shall be published by the Registrar. The notification shall contain at least the following information:
- (a) the name and address of the applicant;
 - (b) the number of the basic patent;
 - (c) the title of the invention;
 - (d) the number and date of authorization to place the product on the market, referred to in section 32(b), and the product identified in that authorization.

Grant of the certificate or rejection of the application.

- 39.—**(1) Where the application for a certificate and the product to which it relates meet the conditions laid down in this Law, the Registrar shall grant the certificate.
- (2) The Registrar shall, subject to subsection (3) of this section, reject the application for a certificate if the application or the product to which it relates does not meet the conditions laid down in this Law.
- (3) Where the application for a certificate does not meet the conditions laid down in section 37, the Registrar shall ask the applicant to rectify the irregularity, or to pay the fee, within a stated time.
- (4) If the irregularity is not rectified or the fee is not paid under subsection (3) within the stated time, the Registrar shall reject the application.

Publication.

- 40.—**(1) Notification of the fact that a certificate has been granted shall be published by the Registrar. The notification shall contain at least the following information:
- (a) the name and address of the person entitled to the certificate;
 - (b) the number of the basic patent;
 - (c) the title of the invention;
 - (d) the number and date of the authorization to place the product on the market referred to in section 32(b) and the product identified in that authorization;
 - (e) the duration of the certificate.
- (2) Notification of the fact that the application for a certificate has been rejected shall be published by the Registrar. The notification shall contain at least the information listed in section 38(2).

- 41.** Keeping the certificate in force is subject to the payment of annual fees. Annual fees.
- 42.—(1)** The certificate shall take effect at the end of the lawful term of the basic patent for a period equal to the period which elapsed between the date on which the application for a basic patent was filed and the date of the first authorization to place the product on the market reduced by a period of five years. Duration of the certificate.
- (2)** Notwithstanding the provisions of subsection (1) of this section, the duration of the certificate may not exceed five years from the date on which it takes effect.
- 43.** The certificate shall lapse— Expiry of the certificate.
- (a) at the end of the period provided for in article 42;
 - (b) if the person entitled to the certificate surrenders it;
 - (c) if the annual fee laid down in accordance with article 41 is not paid on time;
 - (d) if and as long as the product covered by the certificate may no longer be placed on the market following the withdrawal of the appropriate authorization or authorizations to place the product on the market, the Registrar may decide on the lapse of the certificate on his own motion or at the request of a third party.
- 44.—(1)** The certificate shall be invalid if— Invalidity of the certificate.
- (a) it was granted contrary to the provisions of section 32;
 - (b) the basic patent has lapsed before its lawful term expires;
 - (c) the basic patent is revoked or limited to the extent that the product for which the certificate was granted would no longer be protected by the claims of the basic patent or, after the basic patent has expired, grounds for revocation exist which would have justified such revocation or limitation.
- (2)** Any person may submit an application or bring an action for a declaration of invalidity of the certificate before the appropriate Court for the revocation of the corresponding basic patent.
- 45.** If the certificate lapses in accordance with section 43 (b), (c) or (d) or is invalid in accordance with section 44, notification thereof shall be published by the Registrar. Notification of lapse or invalidity.
- 46.** The decisions of the Registrar or of the Court which are referred to in section 44(2) taken under sections 30–48 shall be open to the same appeals as those provided for in the Cyprus law against similar decisions taken in respect of Cyprus patents. Appeals.
- 47.—(1)** The procedural provisions in this Law, corresponding to the basic patent shall also apply to the certificate. Procedure.
- (2)** Notwithstanding the provisions of subsection (1) of this section, filing an opposition to the granting of a certificate shall be excluded.
- 48.—(1)** Any product which, on the date on which this Law enters into force, is protected by a valid basic patent and for which the first authorization to place it on the market as a medicinal product was obtained, may be granted a certificate. Transitional provisions.
- (2)** An application for a certificate as referred to in subsection (1) shall be submitted within six months of the date on which this Law enters into force.

PART IX — NON-VOLUNTARY LICENCES
AND GOVERNMENT USE

Non-voluntary
licences.

49.—(1) At any time after the expiration of four years, or of such other period as may be prescribed, from the date of the granting of a patent, any person may apply to the Registrar on one or more of the grounds specified in subsection (2) below:

- (a) for a non-voluntary licence under the patent,
- (b) where the applicant is a government department, for the grant to any person specified in the application of a licence under the patent.

(2) The grounds for the submission of an application for non-voluntary licence are—

- (a) where the patented invention is capable of being commercially worked in Cyprus but it is not being so worked or is not being so worked to the fullest extent that is reasonably practicable;
- (b) where the patented invention is a product, that a demand for the product in Cyprus—
 - (i) is not being met, or
 - (ii) is not being met on reasonable terms, or
- (c) that by reason of the refusal of the owner of the patent to grant a licence or licences on reasonable terms—
 - (i) a market for the export of any patented product made in Cyprus is not being supplied, or
 - (ii) the use or efficient use in Cyprus of any other patented invention which makes a substantial contribution to the art is prevented or hindered, or
 - (iii) the establishment or development of commercial or industrial activities in Cyprus is unfairly prejudiced;
- (d) that by reason of conditions imposed by the owner of the patent on the grant of licences under the patent, or on the disposal or use of the patented product or on the use of the patented process, the manufacture, use or disposal of materials not protected by the patent, or the establishment or development of commercial or industrial activities in Cyprus is unfairly prejudiced.

(3) Subject to the provisions of subsections (4) to (6) below, if the Registrar is satisfied that any grounds are established, he may —

- (a) where the application is made under subsection (1)(a) above, order the grant of a licence to the applicant on such terms as the Registrar thinks fit;
- (b) where the application is made under subsection (1)(b) above, order the grant of a licence to the person specified in the application on such terms as the Registrar thinks fit.

(4) Where the application is made on the ground that the patented invention is not being commercially worked in Cyprus or is not being so worked to the fullest extent that is reasonably practicable, and it appears to the Registrar that the time which has elapsed since the publication in the Official Gazette of a notice of the grant of the patent has for any reason been insufficient to enable the invention to be so worked, the Registrar may by order suspend the application for such period as will in his opinion give sufficient time for the invention to be so worked.

(5) No entry shall be made in the register under this section on the ground mentioned in subsection (2)(c)(i) above, and any licence granted under this section on that ground shall contain such provisions as appear to the Registrar to be expedient for restricting the countries in which any product concerned may be disposed of or used by the licensee.

(6) No order or entry shall be made under this section in respect of a patent (the patent concerned) on the grounds mentioned in subsection (2)(c)(ii) above unless the Registrar is satisfied that the owner of the patent for the other invention is able and willing to grant to the owner of the patent concerned and his licensees, a licence under the patent for the other invention on reasonable terms.

(7) An application may be made under this section in respect of a patent notwithstanding that the applicant is already the holder of a licence under the patent; and no person shall be prevented or excluded from alleging any of the matters specified in subsection (2) above by reason of any admission made by him, whether in such a licence or otherwise, or by reason of his having accepted such a licence.

50.—(1) Where the Registrar is satisfied, on an application made under section 49 above in respect of a patent, that the manufacture, use or disposal of materials not protected by the patent is unfairly prejudiced by reason of conditions imposed by the owner of the patent on granting of licences under the patent, or on the disposal or use of the patented product or the use of the patented process, he may (subject to the provisions of that section) order the granting of licences under the patent to such customers of the applicant as he thinks fit as well as to the applicant.

Provisions
about licences
under
section 49.

(2) Where an application under section 49 above is made in respect of a patent by a person who holds a licence under the patent, the Registrar—

- (a) may, if he orders the granting of a licence to the applicant, order the existing licence to be cancelled, or
- (b) may, instead of ordering the granting of a licence to the applicant, order the existing licence to be amended.

(3) Where, on an application under section 49 above in respect of a patent, the Registrar orders the granting of a licence, he may direct that the licence shall operate—

- (a) to deprive the owner of the patent of any right he has to work the invention concerned or grant licences under the patent ;
- (b) to revoke all existing licences granted under the patent.

51.—(1) The powers of the Registrar in relation to an application under section 49 above in respect of a patent shall be exercised with a view to securing the following general purposes:

Exercise
of powers on
applications
under
section 49.

- (a) that inventions which can be worked on a commercial scale in Cyprus which should in the public interest be so worked shall be worked there without undue delay and to the fullest extent that is reasonably practicable;
- (b) that the inventor or other person beneficially entitled to a patent shall receive reasonable remuneration having regard to the nature of the invention;
- (c) that the interests of any person for the time being working or developing an invention in Cyprus under the protection of a patent shall not be unfairly prejudiced.

(2) Subject to subsection (1) above, the Registrar shall, in determining whether to make an order or entry in pursuance of such an application, take account of the following matters, that is to say:

- (a) the nature of the invention, the time which has elapsed since the publication in the Official Gazette of the Republic of a notice of the granting of the patent and the measures already taken by the owner of the patent or any licensee to make full use of the invention;
- (b) the ability of any person to whom a licence would be granted under the order concerned to work the invention to the public advantage; and
- (c) the risks to be undertaken by that person in financing capital and working the invention if the application for an order is granted,

but shall not be required to take account of matters subsequent to the making of the application.

Opposition
and arbitration.

52.—(1) The owner of the patent concerned or any other person wishing to oppose an application under sections 49 to 51 above may, in accordance with rules, give to the Registrar notice of opposition; and the Registrar shall consider the opposition in deciding whether to grant the application.

(2) Where an application under sections 49 to 51 above is opposed under subsection (1) above, and either—

- (a) the parties consent, or
- (b) the proceedings require a competent examination of documents or any scientific or local investigation which cannot in the opinion of the Registrar conveniently be made before him,

the Registrar may at any time order the whole proceedings, or any question or issue of fact arising in them, to be referred to an arbitrator or specialist agreed upon by the parties, or in default of agreement, appointed by the Registrar.

(3) Where a question or issue of fact is so referred, the arbitrator or specialist shall report his findings to the Registrar and the Registrar shall proceed to issue a decision.

Supplementary
provisions.

53. In any proceedings on an application made in relation to a patent under sections 49 to 51 above, any statement with respect to any activity in relation to the patented invention, or with respect to the granting or refusal of licences under the patent, contained in a report of the Commission for protection against Unfair Competition shall be prima facie evidence of the matters stated.

Special
provisions
where patented
invention is
being worked
in a member
country of the
World Trade
Organisation.

54. The import into Cyprus of any product protected by patent granted by any member country of the World Trade Organisation shall be considered as use in Cyprus.

Exploitation
by government
or by a
third party
authorized by
government.

55. Where the national security or public safety so requires, the Council of Ministers may authorize, even without the agreement of the owner of the patent or the patent application, by notice published in the Official Gazette, a government agency or a person designated in the said notice to make, use or sell an invention to which a patent or an application for a patent relates, subject to payment of equitable remuneration to the owner of the patent or the application for the patent. The decision of the Council of Ministers with regard to remuneration may be the subject of a recourse to the Court.

56. Where according to sections 50, 51 and 55 of the present Law a licence is given for use of the subject matter of a patent without the authorization of the owner, including use by the government or third parties authorized by the government, the following provisions shall be respected:

Provisions
as to non
voluntary
licence.

- (a) authorization of such use shall be considered on its individual merits;
- (b) such use may only be permitted if, prior to such use, the interested user has made efforts to obtain authorization from the owner on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement is waived in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In a situation of national emergency or other circumstances of extreme urgency, the owner shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is being or will be used by or for the government, the right holder shall be informed promptly;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semiconductor technology shall only be for public noncommercial use or to remedy a practice determined after judicial or administrative process to be anticompetitive;
- (d) such use shall be non-exclusive;
- (e) such use be non-assignable to a third party, except with that part of the enterprise or goodwill which enjoys such use;
- (f) any such use shall be authorized predominantly for the supply of the domestic market;
- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The Registrar shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of such use;
- (i) the legal validity of any decision relating to the authorization of such use shall be subject to review by the appropriate Court;
- (j) any decision relating to the remuneration provided in respect of such use shall be subject to review by the Court;
- (k) it is not necessary to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to stop anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. The Registrar shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;
- (l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:
 - (i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

- (ii) the owner of the first patent shall be entitled to a cross-licence or reasonable terms to use the invention claimed in the second patent; and
- (iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

PART X — SURRENDER AND INVALIDATION

Surrender. 57.—(1) The owner of a patent may surrender the patent by written declaration submitted to the Office of the Registrar. The surrender may be limited to one or more claims of the patent.

(2) The Office of the Registrar shall record the surrender and publish notification of it as soon as possible. The surrender shall take effect from the date of receipt of the declaration by the Office of the Registrar.

Invalidation. 58.—(1) The Court may, on the application of any person, invalidate a patent, in whole or in part, on any of the following and no other grounds:

- (i) that the subject-matter of the patent is not patentable within the terms of sections 5 to 8 of this Law;
- (ii) that the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
- (iii) that the right to the patent does not belong to the person to whom the patent was granted.

(2) The Court may require the owner of the patent to submit to it for the purpose of examination publications and other documents showing the prior art which have been referred to either in connection with an application for a patent or other title of protection filed, for the same or essentially the same invention, by the owner of the patent, with any other national or regional industrial property office, or in connection with any proceedings relating to the patent or other title of protection upon such application.

Effects of invalidation. 59.—(1) Any invalidated patent, or claim or part of a claim shall be considered to be null and void from the date of the grant of the patent.

(2) When a decision of the Court to invalidate a patent, in whole or in part, becomes final, the Registrar of the Court shall notify the Office of the Registrar of the decision, which shall record the decision and publish it as soon as possible.

PART XI — INFRINGEMENT

Acts of infringement. 60.—(1) Subject to this Law, the performance of any act referred to in section 27(1), (2) and (4) of this Law in Cyprus by a person other than the owner of the patent, and without the consent of the latter, in relation to a product or process falling within the scope of protection of the patent shall constitute an infringement of the patent.

(2) Subject to this Law, the performance of any act referred to in section 27(1), (2) and (4) of this Law in Cyprus by a person other than the applicant, and without the consent of the applicant, in relation to a product or process falling within the scope of provisional protection conferred on a published patent application shall constitute an infringement of that provisional protection.

Infringement proceedings. 61.—(1) The owner of a patent and an applicant shall have cause of action against any person who has infringed or is infringing the patent or the provisional protection conferred on a published patent application. The owner of the patent and the applicant shall have the same rights against any person who

has performed acts or is performing acts which make it likely that such infringement will occur ("imminent infringement"). The proceedings may not be instituted after five years from the act of infringement.

(2)(a) If the owner of the patent proves that an infringement has been committed or is being committed, the Court shall award damages and shall grant an injunction to prevent further infringement and any other remedy provided in the Law.

(b) If the owner of the patent proves imminent infringement, the Court shall grant an injunction to prevent infringement and any other remedy provided in the Law.

(3) The defendant in any proceedings referred to in this Section may request in the same proceedings the invalidation of the patent. In that case, the provisions of section 58 of this Law shall apply.

(4)(a) Unless the licence contract provides otherwise, any licensee may request the proprietor of the patent to institute Court proceedings for any infringement indicated by the licensee, who must specify the relief desired.

(b) Such licensee may, if he proves that the proprietor of the patent received the request but refuses or fails to institute the proceedings within three months from the receipt of the request, institute the proceedings in his own name, after notifying the proprietor of the patent of his intention. The proprietor shall have the right to join in the proceedings.

(c) Even before the end of the three-month period referred to in subsection (4) paragraph (b) of this section, the Court shall, on the request of the licensee, grant an appropriate injunction to prevent infringement or to prohibit its continuation, if the licensee proves that immediate action is necessary to avoid substantial damage.

62.—(1) Subject to subsection (4) of this section, any interested person shall have the right to request, by instituting proceedings against the owner of the patent, that the Court declare that the performance of a specific act does not constitute an infringement of the patent.

Declaration of non-infringement.

(2) If the person making the request proves that the act in question does not constitute an infringement of the patent, the Court shall grant the declaration of non-infringement.

(3) The owner of the patent shall have the obligation to notify any licensees of the proceedings. The licensees shall have the right to join in the proceedings in the absence of any provision to the contrary in the licence contract.

(4) If the act in question is already the subject of infringement proceedings, the defendant in the infringement proceedings may not institute proceedings for a declaration of non-infringement.

(5) Proceedings for a declaration of non-infringement may be instituted together with proceedings to invalidate the patent, except where invalidation of the patent "is requested under section 43(c) of this Law.

PART XII — APPLICATIONS PURSUANT TO THE EUROPEAN PATENT CONVENTION

63.—(1) The European Patent Convention of 5 October 1973 (hereinafter referred to as "EPC") shall be given full effect and shall apply in accordance with the provisions of this Law.

Application pursuant to the European Patent Convention.

(2) In the case of conflict between the provisions of EPC and the provisions of this Law, the former shall prevail.

Filing of the European patent application. **64.** Any European patent application may be filed at the Office of the Registrar.

Rights conferred by a European patent after publication. **65.** The rights specified in Section 27, subsection (1) shall only be effective as from the date on which a translation of the claims in any of the official languages of the Republic, submitted by the applicant, has been published by the Office of the Registrar in the prescribed manner or has been notified to the alleged infringer.

Translation of the European patent. **66.—**(1) When the European Patent Office grants a European patent designating Cyprus, the owner of the patent shall file with the Office of the Registrar a translation into any of the official languages, of the patent and, where applicable, of the patent as amended in opposition proceedings.

(2) The translation referred to in subsection (1) of this section shall be filed and the prescribed fee shall be paid before the end of the prescribed period. The translation shall be published by the Office of the Registrar in the prescribed manner.

(3) Where the translation is not filed or the fee is not paid in accordance with the provisions of subsection (2), the patent shall be deemed to be void ab initio.

Authentic text of the European patent application and the European patent. **67.—**(1) Where a translation into any of the official languages has been made in accordance with section 65 or section 66 of this Law, such translation shall be regarded as authentic if the European patent application or the European patent in its translated text does not confer more protection than that conferred by the application or patent in the language of the proceedings.

(2) However, a corrected translation may be filed at any time by the applicant for (or proprietor of) the patent. Such translation shall not have legal effect, however, until the requirements of section 65 or of section 66 have been satisfied.

(3) Any person who in good faith is using or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.

(4) Notwithstanding the provisions of subsections (1) to (3), of this section the language of the proceedings shall be authentic in revocation proceedings.

Effect of entry in the Register of European patents. **68.** Entry in the Register of European Patents of acts transmitting or amending the rights deriving from a European patent application or a European patent shall give such acts the effect specified in subsection (3) of section 3 of this Law.

Register of the grant of a European patent at the Registrar. **69.** As soon as the grant of the European patent designating Cyprus has been mentioned in the European Patent Bulletin, the Office of the Registrar shall enter it in the Register referred to in section 3 of this Law.

Conversion of a European patent application into a national patent application. **70.—**(1) A European patent application may be converted into a national patent application in the circumstances set out in section 135(1)(a) of EPC. It may also be converted into a national patent application in the case provided for by section 90(3) of EPC insofar as it refers to section 14(3) of EPC.

(2) From the date on which the office of the Registrar receives the request for conversion, the European patent application shall be considered a national patent application.

(3) Where a search report has been drawn up prior to conversion of the application, such report shall take the place of the search report required to be submitted under section 22 of this Law.

(4) The patent application shall be refused if, within the prescribed period, the applicant fails to provide evidence of payment of the filing fee referred to in section 13(3) and to provide a translation into the official languages of the Republic of the original text of the European patent application, as well as, where appropriate, of the text as amended in the course of proceedings before the European Patent Office which the applicant wishes to use as a basis for the granting procedure before the Office of the Registrar.

(5) If an applicant does not have his ordinary residence or principal place of business in Cyprus, he must, within the prescribed period, authorize in the prescribed manner an agent in Cyprus to represent him.

71.—(1) Where a national patent relates to an invention for which a European Patent has been granted to the same inventor or his successor in title, with the same date of filing or priority, the National Patent shall be ineffective from either the date on which the period for filing an opposition to the European Patent has expired, without any opposition being filed, or the date on which the opposition proceedings are concluded with a decision to maintain the European Patent.

Prohibition of simultaneous protection.

(2) Where a national patent is granted at a date later than either of the dates referred to in subsection (1) of this section, such patent shall take no effect.

(3) The subsequent lapse or revocation of the European patent shall not affect the provisions of subsections (1) and (2) of this section.

72.—(1) Section 28, subsection (2) shall apply mutatis mutandis to European patent applications. It shall also apply to European patents until the period for filing an opposition has expired without any opposition being filed or until a final decision has been made on an opposition already filed.

Stay of proceedings.

(2)(a) The court hearing proceedings for the infringement of a national patent which covers the same invention as a European patent applied for by the same inventor or granted to him or his successor in title with the same date of filing or priority may stay proceedings until the date on which the national patent ceases to have effect in accordance with Section 71 of this Law or until the date on which the European patent application is refused, withdrawn or deemed to have been withdrawn, or the European patent is revoked.

(b) Where the infringement proceedings are based solely on the national patent, the plaintiff may pursue the proceedings, on resumption thereof, by replacing the national patent by the European patent for the acts subsequent to the date on which the national patent ceases to have effect and for those parts which are common.

73.—(1) Section 79, subsection (2) shall not apply to the filing of European Patent applications.

Representation.

(2) Notwithstanding the provisions of section 79, subsection (2), the applicant for or the proprietor of a European patent or his authorised representative before the EPO may, in accordance with the rules, file the translation required under sections 66, 67 or 68 of this law.

PART XIII — INTERNATIONAL APPLICATIONS PURSUANT TO THE PATENT COOPERATION TREATY

74.—(1) The Patent Cooperation Treaty of 19 June 1970 (hereinafter referred to as the "PCT") shall be given full effect and shall apply in accordance with the provisions of this Law.

Application of the Patent Cooperation Treaty.

(2) In the case of conflict between the provisions of the PCT and the provisions of this Law, the former shall prevail.

(3) Where reference is made in this Law to the PCT, such reference shall include the Regulations under the PCT.

International applications designating Cyprus.

75. Where an international application filed under the PCT contains the designation of Cyprus, it shall have the effect of an indication of the wish to obtain a European patent under the European Patent Convention.

International applications filed with the Office of the Registrar as Receiving Office and transmittal fee.

76.—(1) International applications under the PCT may be filed with the office of the Registrar as receiving Office within the meaning of section 2(xv) of the PCT if the applicant is a national or resident of Cyprus.

(2) The transmittal fee provided for in Rule 14 of the Regulations under the PCT shall be payable to the Office of the Registrar as prescribed.

Competent International Searching Authority and International Preliminary Examining Authority.

77.—(1) The European Patent Office shall be competent to carry out international searches for International applications filed with the Office of the Registrar.

(2) The European Patent Office shall be competent to carry out the international preliminary examination under Chapter II of the PCT of International applications referred to in subsection (1) of this section.

PART XIV — MISCELLANEOUS

Regulations by the Council of Ministers.

78. The Council of Ministers may from time to time make regulations in accordance with this Law, prescribing all matters which by this Law are required or permitted to be prescribed, or which are necessary or desirable to be prescribed for carrying out or giving effect to this Law, or for the conduct of any business relating to the Office of the Registrar.

Authorized agent.

79.—(1) Where by this Law any act has to be done by or to any person in connection with any proceedings or matter under this Law, the act may under and in accordance with the Regulations be done by or to an agent of that person duly authorized in the prescribed manner.

(2) If an applicant does not have his ordinary residence or principal place of business in Cyprus, he shall authorize in the prescribed manner an agent in Cyprus to represent him.

Repeal and transitional provisions. Cap. 266.

80.—(1) The Patents Law (hereinafter in this section called "the repealed Law") is hereby repealed. Notwithstanding its repeal, the repealed Law shall apply to and in relation to applications for the registration of patents made before this Law comes into force, and to and in relation to the registration of patents based on those applications, but this Law applies to and in relation to patents so granted or registered.

(2) Any patent registered before this Law comes into force under the repealed Law shall be deemed to be granted under the corresponding provision of this Law.

(3) Any regulation, order, requirement, certificate, notice, decision, direction, authorization, consent, application, request or act made, issued, given or done under the repealed Law shall, if in force when this Law comes into force, insofar as they could have been made, issued, given or done under this Law, continue to be in force and have effect as if made, issued, given or done under the corresponding enactment of this Law.

It is understood that the time limit to file an application for the registration of a patent which is already registered in the United Kingdom and it could have been registered in Cyprus under the repealed Law until the entry into force of the present Law, expires when the time limit would have expired according to the repealed Law, irrespective of any other provision in the present Law.

(4) When the applicant in an application for a U.K. Patent or a European Patent designating the U.K. or a PCT patent designating the U.K. either directly or through a European application and the application is pending on the day of the entry into force of the present Law the applicant may within 18 months from the acceptance of application and the issue of the patent, apply to the Registrar in Cyprus for his patent to be registered as a Cyprus Patent.

81. The present Law comes into force on the 1st April 1998.

Coming into
force on the
1st April 1998.
