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15 December 2011 [shall come into force on 1 January 2012];  
3 July 2014 [shall come into force from 1 January 2015];  
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19 November 2015 [shall come into force from 1 January 2016].

If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*<sup>1</sup> has adopted and  
the President has proclaimed the following law:

## Patent Law

### Chapter I General Provisions

#### Section 1. Terms Used in this Law

The following terms are used in this Law:

- 1) **national patent application** - a patent application which has been filed to the Patent Office of the Republic of Latvia (hereinafter - Patent Office) in accordance with the requirements of this Law;
- 2) **national patent** - a Latvian patent granted on the basis of a national patent application;
- 3) **Paris Convention** - Paris Convention for the Protection of Industrial Property of 20 March 1883 (as revised at Stockholm on 14 July 1967 and as amended on 28 September 1979);
- 4) **Paris Union** - Union of the Countries Members of the Paris Convention;
- 5) **priority** - the date of priority granted to the patent application in accordance with the Paris Convention;
- 6) **Patent Cooperation Treaty** - the Treaty concluded on 19 June 1970 (as amended on 2 October 1979 and as modified on 3 February 1984);
- 7) **international application** - an application filed in accordance with the Patent Cooperation Treaty in any of its Contracting States;
- 8) **European Patent Convention** - the Convention to which the Republic of Latvia has acceded by the Law on the Convention On the Grant of European Patents of 5 October 1973 (European Patent Convention), Agreement On the Application of Article 65 of the Convention On the Grant of European Patents of 17 October 2000 and the Act Revising the Convention On the Grant of European Patents of 5 October 1973 (29 November 2000) (European Patent Convention);
- 9) **European patent application** - a patent application filed in accordance with the European Patent Convention;
- 10) **European patent** - a patent granted by the European Patent Office in accordance with the European Patent Convention on the basis of a European patent application;
- 11) **biological material** - a material containing genetic information and capable of reproducing itself or which may be reproduced in a biological system;
- 12) **biotechnological invention** - an invention pertaining to the products consisting of biological material or containing biological material or to the methods by which biological material is obtained, processed or used;

13) **microbiological method** - a method in which microbiological material is involved or as a result of which it originates or which has been carried out by a biological material; and

14) **biological method** - a method for acquisition of plants or animals consisting entirely of natural phenomena, such as crossing or selection.

*[19 November 2015]*

## **Section 2. Purpose of this Law**

The purpose of this Law is to promote the activity of inventors and the industrial development of the State by ensuring the protection of the rights of the inventor and the owner of the patent.

## **Section 3. Regulation of Legal Relations in the Field of Patents**

(1) The provisions of the Law regarding patents shall also apply to the filing of international applications and European patent applications of inventions, as well as to the rights related to European patents, the validity, utilisation and protection thereof, insofar as the provisions of the European Patent Convention and the Patent Cooperation Treaty or the special provisions of Chapters XI and XII of this Law regarding the filing of international patent applications, a European patent application and a European patent do not provide for otherwise.

(2) A person is entitled to patent, utilise and protect inventions in other states in accordance with the regulatory enactments of these states and international agreements.

(3) *[19 November 2015]*

(4) Additional regulation of legal relations for the procedures of the Patent Office in respect of granting of patents, operation of the Industrial Property Board of Appeal, representation of persons in the Patent Office, and activity of professional patent attorneys shall be determined by the Law on Industrial Property Institutions and Procedures.

*[19 November 2015]*

# **Chapter II**

## **Preconditions for Patent Protection**

### **Section 4. Patentability of an Invention**

An invention shall be protected with a patent in any field of technology if the invention is new, it has an inventive step and it is susceptible of industrial application.

### **Section 5. Novelty**

(1) An invention shall be considered as new if it is not a part of the state of the art.

(2) The state of the art shall include any knowledge which is publicly available in writing or orally, is used publicly or made public in any other way prior to the filing date of a patent in accordance with Section 28, Paragraph two of this Law or prior to the date of priority in accordance with Section 29 of this Law.

(3) As a part of the state of the art shall be considered also the national patent applications whose filing date in accordance with Section 29 of this Law is earlier than the date referred to in Paragraph two of this Section and which have been published on this date or following this date. This condition shall also be applied to the European patent applications with an earlier priority.

(4) The conditions of Paragraphs two and three of this Section shall not prohibit patentability to substances or the compositions thereof, known from the state of the art if the substances or the compositions thereof:

1) are intended to be used by utilising the methods referred to in Section 9, Paragraph five of this Law and this use is not a part of the state of the art;

2) are intended for a specific use of the methods referred to in Clause 1 of this Paragraph in the cases when the specific use is not a part of the state of the art.

*[19 November 2015]*

### **Section 6. Information Made Public which does not Cause Harm to Novelty**

(1) The conditions of Section 5 of this Law shall not be applied if an invention has been made public not sooner than six months prior to the filing date of a patent and if the communication to the public thereof is:

1) a fraudulent action against the applicant of the patent (hereinafter - applicant) or against the legal predecessor thereof; or

2) demonstration of the invention of the applicant or the legal predecessor thereof has taken place in an official international exhibition or an international exhibition equivalent to it organised in accordance with the Convention Relating to International Exhibitions signed at Paris on 22 November 1928 and as amended on 30 November 1972.

(2) The conditions of Paragraph one, Clause 2 of this Section shall be applied only if the applicant, when filing the patent application, declares that the invention has been demonstrated in such an exhibition and files a document certifying this fact within a time limit of four months from the filing date.

### **Section 7. Inventive Step**

(1) An invention shall be considered as conforming with the inventive step if, taking into consideration the state of the art, the invention is not obvious to a person skilled in the relevant field of art.

(2) If the state of the art is formed by the patent applications referred to in Section 5, Paragraph three of this Law, they shall not be taken into consideration when evaluating the inventive step.

### **Section 8. Industrial Application**

(1) An invention shall be considered for industrial application if the subject thereof may be manufactured or used in any kind of industry, agriculture or other economic sector.

(2) [19 November 2015]

[19 November 2015]

### **Section 9. Subject of an Invention and Non-patentable Subjects**

(1) The subject of an invention may be a device, method, substance, composition of substances or biological material.

(2) Within the meaning of this Law, the following shall not be considered as inventions:

1) discoveries, scientific theories and mathematic methods;

2) aesthetic creations;

3) schemes, intellectual activities, rules and methods for commercial activities and games, as well as computer programs; and

4) methods for presentation of information.

(3) The patenting of the subjects referred to in Paragraph two of this Section is not possible if only the patent protection for these subjects as such is sought.

(4) A patent shall not be granted to the inventions whose utilisation is in conflict with public order or the principles of morality accepted in society, however, the decision not to grant a patent shall not be taken only on the basis of the fact that such a utilization is prohibited by a regulatory or administrative enactment.

(5) A patent shall not be granted to therapeutic or surgical treatment methods used in relation to human or animal body. This provision shall not apply to the devices and substances or the compositions thereof utilised when employing these methods.

[19 November 2015]

### **Section 10. Biotechnological Inventions**

(1) A patent shall be granted to biotechnological inventions:

1) containing biological material isolated from its natural environment or acquired with the help of a technical method, even if it has been previously met in nature;

2) pertaining to plants or animals if the technical nature of the invention does not confine itself to some specific plant or animal variety; and

3) pertaining to microbiological or other technical method or a product acquired with such a method if it is not a plant or animal variety.

(2) A patent shall not be granted to plant or animal varieties or to the basically biological methods for the acquisition of plant or animal varieties.

(3) In accordance with Section 9, Paragraph four of this Law, a patent shall not be granted to biotechnological inventions pertaining to:

1) human cloning;

2) modification of the genetic identity of human beings in germ cells;

3) utilisation of human embryos for industrial or commercial purposes; and

4) methods for modifying the genetic identity of animals likely to cause them suffering without any substantial medical benefit to people or animals, as well as animals resulting from such methods.

(4) A human body in different stages of formation and development and a simple discovery of one of its elements, including the sequence or partial sequence of a gene, may not be a patented invention.

(5) An element which has been isolated from the human body or acquired otherwise with a technical method, including the sequence or partial sequence of a gene, may be a patented invention, even if the structure of this element is identical to the natural element.

(6) The industrial application of the sequence or partial sequence of a gene shall be disclosed in the patent application.

### **Section 11. Inventions Affecting the Interests of the State Defence**

(1) If an invention affects the interests of the State defence, the Ministry of Defence may allocate the status of the secret invention thereto.

(2) If an invention is recognised as secret, the Patent Office shall take a decision on the granting of a patent in accordance with the procedure specified in this Law. The provisions of Sections 35 and 38 of this Law regarding the making the patent application and the granted patent public shall not be applicable to the procedure for granting the patent, nor shall the requirement to pay a fee for making the patent public be applicable. The patent application and the patent shall be made public following the revocation of the secret status and following the payment of the fee for the making the patent public.

(3) The scope of the ownership right of the owner of the patent to the secret invention shall be determined by an agreement with the Ministry of Defence. The patent ownership right to such an invention may be inherited. If the owner of a patent and the Ministry of Defence are unable to agree on the amount of compensation for utilization of the invention, the amount thereof shall be determined by court in accordance with the procedure specified in the Civil Procedure Law.

*[14 October 2010; 19 November 2015]*

## **Chapter III Persons Having the Right to a Patent**

### **Section 12. Right Holders**

(1) An inventor or his or her successor in title has the right to the patent.

(2) If several persons have jointly created an invention, they have equal right to the patent.

(3) If several persons have created an invention independently from each other, the right to the patent shall belong to the person whose filing date of the patent application is earlier if this earlier application has been published.

### **Section 13. Recognition of the Right**

(1) If a patent application has been filed by a person who did not have such a right or if a patent has already been granted to such a person, then the person, who in accordance with Section 12 of this Law has the right to the patent and also has the relevant evidence, may bring a claim to a court to recognise and transfer to it the right to the patent application or the patent.

(2) If a person in accordance with Section 12, Paragraph two of this Law has a joint right to a patent together with another person and such a right has not been observed, the referred to person may in accordance with the procedure specified in Paragraph one of this Section request to be recognised as the applicant or owner of the patent together with the other person.

(3) The right provided for by Paragraphs one and two of this Section shall be utilized not later than within a period of two years from the day when the notification regarding the grant of a patent was published in the Official Gazette of the

Patent Office. The restriction of the time limit shall not be applied if the person having no right to the patent has acted in bad faith during the time when the patent application was filed or the ownership right to the patent were transferred to him or her.

(4) A person who has brought an action to a court regarding recognition of the right to a patent application or a patent shall, without delay, inform the Patent Office thereof. If the action has been brought prior to the publication of the patent application in the Official Gazette of the Patent Office or the patent application has been revealed otherwise to society, the Patent Office, the court and the participants of the case shall observe the necessary confidentiality in relation to the essence of the patent application.

(5) The person for whose benefit a court judgment is made shall file the copy thereof to the Patent Office which shall take into consideration the amendments to the ownership right and other amendments arising from the judgement in force when examining the patent application or, if the application has been already published, shall enter in the Patent Register and publish the relevant notification in the Official Gazette of the Patent Office.

#### **Section 14. Moral Right of an Inventor**

The inventor, irrespective of the fact who is the applicant or the owner of a patent, has inalienable moral right to the following:

1) inventorship - the right to be recognised as the inventor;

2) name - the right to be indicated as the inventor in the patent application and in all documents and publications related to the patenting of the invention, or also to waive this right, requesting in writing to the Patent Office that the name thereof would not be indicated.

#### **Section 15. Inventions Created within the Framework of Employment Legal Relations**

(1) The employer has the right to a patent if the invention in relation to which the patent application has been filed has been created by the employee whose work duties include:

1) activity of an inventor; and

2) research, designing and construction or preparation of technological development.

(2) If the duties of the employee do not comprise the conditions of Paragraph one of this Section but are related to the field of activity of the employer, then the right to the patent shall belong to the inventor. The employer in this case has the right to utilise the invention as under a non-exclusive licence without the right to grant the licence to other persons. If the undertaking of the employer is transferred in the ownership of another person, the right to utilise the invention shall be transferred together with the undertaking to the legal successor of the employer rights. The transfer of this right shall not be permitted in any other way.

(3) The employee who has created the invention in accordance with the conditions of Paragraph one of this Section, has the duty to inform immediately in writing thereof the employer and to file the documents allowing to assess the invention.

(4) If the employer waives the right to the invention or within a time limit of three months does not inform the employee regarding the intention thereof to utilise this right, the right to the invention shall be transferred to the employee.

(5) Prior to the filing of the patent application to the Patent Office, the employer and the employee shall refrain from any disclosure of the essence of the invention to third persons.

(6) The legal relations of the employer and the employee due to additional remuneration for the creation and utilization of the inventions referred to in Paragraph one of this Section shall be determined in the contract of employment or collective agreement.

(7) A contract may be concluded regarding the right to the patent whose conditions differ from the conditions of Paragraph one or two of this Section.

## **Chapter IV Rights Resulting from the Patent and Patent Application**

#### **Section 16. Exclusive Rights**

(1) A patent shall ensure the exclusive rights to the owner thereof. It is prohibited to third persons without the permission of the owner of the patent:

1) to produce, to offer for sale, to distribute in another way on the market, to use, as well as to import, to export

and to store for the referred to intentions the patented product;

2) to use the patented method;

3) to offer for sale, to distribute on the market in another way, to use, as well as to import, to export and to store for the referred to intentions a product directly acquired with the patented method; and

4) to supply or offer for supply essential elements of the patented product if third persons knew or they should have known in the relevant circumstances that such elements are suitable and intended for the implementation of the invention.

(2) The conditions of Paragraph one, Clause 4 of this Section shall not be applied if the essential elements for the implementation of the invention are staple commercial products, except for the case when third person with such a supply motivates to carry out the activities referred to in Paragraph one of this Section.

### **Section 17. Scope of the Exclusive Rights**

(1) The scope of the exclusive rights resulting from the patent shall be determined by the claims of the patent. The description and drawings of the invention may be utilised for the explanation thereof.

(2) When assessing the scope of the exclusive rights resulting from the patent in the case of an infringement of the patent, the equivalents of the features which are elements of the subject to be analysed referred to in the claims shall be also observed. The element of the subject to be analysed shall be considered as equivalent to the feature referred to in the claims if during the infringement of the patent it fulfils the same function in the same way and creates the same result as the feature referred to in the claims and if it is evident to a person skilled in the art that it is possible to attain the same result when using the equivalent element of the subject to be analysed.

(3) The description and drawings of the invention shall not be utilised for an extended explanation of the claims of the patent.

### **Section 18. Time Limits of the Exclusive Rights**

(1) The exclusive rights shall entirely come into force on the day when the notification regarding the grant of a patent is published, and shall expire not later than following 20 years from the filing date of the patent.

(2) Provisional legal protection shall be conferred to the invention for the time limit from the day when the patent application was made public according to the procedure specified in Section 35 of this Law until the day of the grant of the patent. If during this time limit the third persons have utilized the invention to be patented without the consent of the applicant, the owner of the patent is entitled to request a compensation.

(3) When determining a compensation, the good faith of the utiliser of the invention shall be taken into account.

*[19 November 2015]*

### **Section 19. Scope of the Exclusive Rights Resulting from Biotechnological Inventions**

(1) The protection conferred by a patent to a biological material, which as a result of the invention has acquired special characteristics, shall apply to biological material directly obtained from the initial biological material through multiplication in an identical or divergent form and possessing the same characteristics.

(2) The protection, conferred by a patent to a method by which biological material is processed that as a result of the invention has acquired special characteristics, shall apply also to the biological material directly obtained by this method and to any other biological material obtained from the directly obtained biological material in an identical or divergent multiplication way and possessing the same characteristics.

(3) The protection, conferred by a patent to a product containing genetic information or consisting of genetic information, shall apply also to the whole material, except the human body or the element thereof in which the product has been included and which contains genetic information, and performs its function. (Section 10, Paragraph four).

(4) If the owner of the patent or somebody else with his or her consent sells or markets otherwise a plant multiplication material to a farmer for agricultural purposes implying also a permission for the farmer to utilise the produced products for multiplication in the holding thereof, Paragraphs one, two and three of this Section shall not be applied to such a scope and on such conditions which conform with what is specified in Article 14 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights or Section 24 of the Plant Varieties Protection Law.

(5) Paragraphs one, two and three of this Section shall not be applied if the owner of the patent or somebody else with his or her consent sells or markets otherwise breeding animals or reproductive material of the animals to a farmer implying also a permission for the farmer to utilise the domestic animals protected by the patent for agricultural purposes. This permission shall include the offering of an animal or other reproductive material of animals for the performance of agricultural activities but not selling for commercial multiplication or to the purposes thereof.

## **Section 20. Limitations of the Exclusive Rights Resulting from a Patent**

The exclusive rights resulting from a patent shall not be implemented in relation to:

- 1) activities performed for personal needs and non-commercial purposes;
- 2) experimental or investigative activities;
- 3) examination of the subject of a patented invention, as well as the research of medicinal products or plant protection products patented or protected with a supplementary protection certificate carried out in order to obtain a permission for distribution on the market thereof;
- 4) single preparation of medicinal products by a doctor's prescription in a pharmacy, as well as the actions with medicinal products prepared in such a way; and
- 5) utilisation of the invention in the construction or exploitation of such a foreign vehicle which temporarily or accidentally is located in the territory of Latvia if the invention is utilized only for the vehicle.

## **Section 21. Exhaustion of the Rights**

(1) The rights resulting from the patent shall not apply to the activities which have been carried out with the patented product in the European Economic Area if this product is included in the economic circulation in the European Economic Area by the owner of the patent himself or herself or another person with his or her consent, unless the owner of the patent has a legal basis to object to the further economic circulation of the product.

(2) The protection, referred to in Section 19, Paragraphs one, two and three of this Law, shall not apply to the biological material obtained by multiplying such biological material which has been included in the economic circulation in the European Economic Area by the owner of the patent himself or herself or by another person with his or her consent if the multiplication arises directly from the utilisation thereof for the purposes of which the biological material was sold provided that the obtained material shall not be utilised afterwards for another multiplication.

## **Section 22. Right of Prior Use**

(1) A person, who has utilised in good faith the invention for commercial purposes or carried out the necessary preparatory works for such a utilisation in the territory of Latvia prior to the filing date or the priority date of the patented invention, is entitled to utilise this invention further on for commercial purposes to the extent planned during the period of preparatory works without any hindrance and without paying a remuneration to the owner of the patent.

(2) The right of prior use may be transferred to another person only together with the undertaking or a part of the undertaking in which the invention has been utilised within the meaning of Paragraph one of this Section.

# **Chapter V Patent Office**

[19 November 2015]

## **Section 23. Basic Tasks of the Patent Office**

[19 November 2015]

## **Section 23.<sup>1</sup> Financial Allocations by International Organisations for the Patent Office Activities**

[19 November 2015]

## **Section 24. Duties and Limitations of the Employees of the Patent Office** [19 November 2015]

## **Section 25. Board of Appeal of the Patent Office**

[19 November 2015]

## **Section 26. Representational Activities**

[19 November 2015]

# **Chapter VI Procedure for the Grant of a Patent**

## **Section 27. Patent Application**

(1) The patent application shall include:

- 1) a request to grant a patent;
- 2) a description of an invention;
- 3) one or several claims;
- 4) drawings if there are references to them in the description or claims; and
- 5) an abstract.

(2) The Cabinet shall determine the standard and the content of the patent application.

## **Section 28. Filing of the Patent Application and the Filing Date**

(1) A person who wishes to obtain a patent to an invention shall file a patent application to the Patent Office.

(2) The date on which the Patent Office has received at least the following shall be considered as the date of filing of the patent application (hereinafter - the filing date):

- 1) a request to grant a patent;
- 2) information permitting to identify the applicant and the contact information; and
- 3) a part which on the face of it appears to be a description or a reference to an earlier application.

(3) The information referred to in Paragraph two, Clauses 1 and 2 of this Section shall be filed in Latvian but the part of the application for the determination of the filing date referred to in Clause 3 may be filed in another language.

(4) In the reference to a previously filed patent application referred to in Paragraph two, Clause 3 of this Section, the date of the previous application, the number and the state where it has been filed, shall be indicated.

(5) The patent application shall be filed in Latvian. If for the determination of the filing date the application has been filed in another language, the applicant shall file it in Latvian within a time limit of three months. If the translation has not been filed within the specified time limit, the application shall be considered as withdrawn. All further processing and correspondence related to the application shall be in Latvian.

(6) The application fee shall be paid within one month of the date of filing the patent application. If this time limit has been exceeded, it shall be considered that the application has not been filed.

(6<sup>1</sup>) A claim fee (additional fee) shall be paid for each claim, starting from the eleventh, for an application which upon filing thereof contains more than 10 claims. The claim fee shall be paid within one month of the date of filing the application. If the claim fee has not been paid within the specified time limit, it may be still paid within one month following the sending of the notification regarding the failure to observe the time limits. If the claim fee is not paid within this time limit, the relevant claims are considered as not filed.

(7) If the invention provides for the utilization of such biological material which is not publicly available and cannot be described in the application, so that it might be implemented by a person skilled in the relevant field, a statement regarding the deposition of the biological material in an internationally recognised depository shall be filed together with the application in accordance with the Budapest Treaty On the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977. If the biological material, having been deposited, is no longer available at the internationally recognised depository, it shall be permitted to deposit the material once again on the same conditions that have been included in the Treaty referred to in this Paragraph. The procedure according to which the biological material is available shall be determined by the Cabinet.

*[19 November 2015]*

## **Section 29. Priority Right**

(1) A person or his or her successor in title, who according to the determined procedure has filed a patent application or an application of the utility model in any country member of the Paris Union, any member state of the World Trade Organisation or any other state or union with which Latvia has entered into an agreement regarding the recognition of the priority right, has the priority right within a time limit of 12 months from the first filing date, when filing a patent application in relation to the same invention in Latvia.

(2) When determining a priority, the next patent application to the same invention to which the previous first application related to, shall be considered as the first application if on the day of the filing of the next application the previous application has been withdrawn, abandoned or rejected, has not been made public, no right were retained to it



or it has not yet been the basis for claiming the priority right. From this moment the previous application cannot be the basis for claiming the priority right.

(3) The applicant, who wishes to utilise the priority right, shall file a request for a priority concurrently with the patent application by indicating the filing date for the requested priority application and the state in which it has been filed, as well as the application number. The request for priority may be filed or changed within a time limit of 16 months following the earlier priority date. This request may not be filed or changed if the applicant has filed a request in accordance with Section 35, Paragraph four of this Law. A copy of the previous application whose conformity with the original has been attested by the institution which received this application shall be a document attesting the priority right. The document shall be filed to the Patent Office within a time limit of 16 months following the earlier priority date.

(4) The applicant may request the right to several priorities in the patent application. If several priorities have been requested, the time limits starting on the priority date shall start from the earlier first priority date.

(5) If one or several priorities are requested for a patent application, the priority right shall apply only to those features of an invention which are indicated in the patent application or applications and whose priority is requested.

(6) If certain features of an invention to which a priority is requested have not been mentioned in the claims of an earlier application, the priority right may still be granted if the documents of the earlier application in general clearly indicate these features.

(7) If the earlier patent application has not been filed in Latvian and it has significance in the dispute regarding the patentability of the invention filed later, the conditions of Section 28, Paragraph five of this Law shall be applied.

*[19 November 2015]*

### **Section 30. Description, Claims and Abstract of the Invention**

(1) The description of the invention shall be clear and complete so that a person skilled in the art would be able to implement this invention.

(1<sup>1</sup>) The invention shall not be in conflict with the scientifically attested laws of nature.

(2) The claims shall determine the subject to which the patent protection is requested and the scope of protection of the invention by utilising the technical features of the invention. The claims shall be clear and concise and supported by the description.

(3) *[19 November 2015]*

(4) The abstract shall include only technical information which shall not be taken into account for other purposes (for example, for the determination of the scope of protection of the invention).

*[19 November 2015]*

### **Section 31. Unity of an Invention**

(1) Only one patent per one invention or a group of inventions united by a single concept may be requested in one patent application.

(2) The condition of the unity of an invention shall be considered fulfilled if protection is requested to a group of such inventions which are united by a technical link including one or several one and the same or conforming special technical features that, when viewing the group of inventions in general, determine the difference of each invention included therein from the existing state of the art.

(3) The group of inventions shall be united by a single concept independently from the fact whether each invention is formulated in a separate claim or as an alternative in one joint claim.

### **Section 32. Authorisation of Representation**

*[19 November 2015]*

### **Section 33. Determination of the Filing Date of a Patent Application**

(1) The Patent Office shall examine whether the filed documents conform with the conditions of Section 28 of this Law. If the filed documents conform with the requirements of Section 28, Paragraphs two, three and four of this Law, the Patent Office shall determine the filing date and notify the applicant thereof.

(2) If the application does not conform or partially conforms with the requirements of Section 28, Paragraphs two, three and four of this Law, the Patent Office shall notify the applicant thereof by explaining the non-conformity and determine a time limit of two months for the elimination of the indicated deficiencies.

(3) If the Patent Office, when examining the filed documents, concludes that the parts of the description of the invention and drawings are not present in the patent application to which the references in the description or claims apply to, it shall send a notification to the applicant where it is requested to send the missing parts of the description or drawings within a time limit of two months.

(4) If the missing parts of the description or drawings are filed following the filing date but not later than within a time limit of two months following the filing date or following the sending of the notification referred to in Paragraph three of this Section, the Patent Office shall determine the date when the missing parts of the description or drawings are received as the filing date, unless they are withdrawn within one month following the filing.

(5) If the missing parts of the description or drawings are filed within a time limit referred to in Paragraph four of this Section and the priority right of an earlier application is requested in the patent application, then the date when the requirements of Section 28, Paragraph one of this Law were fulfilled shall be kept as the filing date (assuming that the lacking parts of the description or drawings have been included completely in the earlier application) if only the applicant expresses such a request and files a copy of the earlier application. If the copy is not in Latvian, then a translation attested according to the determined procedure shall be filed within a time limit referred to in Section 28, Paragraph five of this Law.

(6) If the applicant does not file the missing parts of the description or drawings within the specified time limit, then any references to these parts of the description or drawings shall be considered as non-existent.

*[19 November 2015]*

### **Section 34. Formal Examination of a Patent Application**

(1) When a date has been determined to a patent application, the Patent Office shall examine whether the filed application conforms with the requirements of Section 6, Paragraph two, Section 28, Paragraphs five, six, and seven, Section 29, Paragraph three of this Law. The examination shall be carried out within three months from the day when the application is filed to the Patent Office. Within this time period, the Patent Office shall prepare an abstract for publication.

(2) If a patent application conforms with the specified requirements, the Patent Office shall inform the applicant regarding the completion of formal examination and the date of publication of the application.

(3) If a patent application does not conform or conforms partly with the specified requirements, the Patent Office shall notify the applicant thereof by explaining the non-conformity and determine a time limit of three months for elimination of the deficiencies and expression of their considerations.

(4) If the applicant has not eliminated the deficiencies specified by the Patent Office, the Patent Office shall take the decision regarding the rejection of the application. The applicant shall be notified in writing thereof.

*[19 November 2015]*

### **Section 35. Making Public of a Patent Application**

(1) If the application is not withdrawn, the Patent Office shall make the patent application public as soon as possible following 18 months from the filing date or - if a priority has been requested - from the first earlier priority date of the application.

(2) The making public shall include:

1) publication of the notification regarding the patent applications in the Official Gazette of the Patent Office; and

2) the right for every person to get acquainted with the materials of the patent application in the Patent Office, as well as to receive a copy of the materials of the relevant invention application by effecting the payment specified by the Cabinet.

(3) The publication shall include:

1) information regarding the inventor (if he or she has not waived the right to be mentioned), applicant and representative (if there is such);

2) title of the invention;

3) indices of the international patent classification;

4) number and date of the patent application, date of the patent publication and the publication number;

5) information regarding the priority; and

6) an abstract of the application.

(4) Upon the request of the applicant, the patent application may be made public prior to the time limit of 18 months but only following it has been notified about the completion of the formal examination.

*[19 November 2015]*

### **Section 36. Amendments to a Patent Application and the Division thereof**

(1) Until the date when the notification of the Patent Office regarding the grant of a patent is published, the applicant has the right to make amendments in the patent application once, upon its own initiative, if they do not change the essence of the invention and do not go beyond the scope of the claims. Such amendments may also be made upon the request of the Patent Office. The time limit for the examination of the patent application shall be extended accordingly in both cases. If the applicant makes amendments upon its own initiative, he or she shall pay the fee for making the amendments. The Cabinet shall determine the procedure for filing of the amendments to the patent application.

(2) Until the date when the notification of the Patent Office regarding the grant of a patent is published, the applicant, in accordance with Section 38, Paragraph one of this Law, without extending beyond the content of the patent application, may divide it in two or more applications by maintaining the date and priority of the initial application for each of them. The requirements of this Section, Section 27, Section 28, Paragraphs one, five, and six, Sections 30 and 31 shall be applied to each divisional application. If within three month following the day when the Patent Office has received a request on division of the application the applicant has not filed the determined documents and materials relating to the divisional patent application or has not paid the determined fee, the divisional application shall be considered withdrawn.

*[19 November 2015]*

### **Section 37. Substantive Examination of a Patent Application**

(1) The Patent Office shall examine whether the patent application conforms with the requirements of Sections 8, 9, and 10, Section 30, Paragraphs one, 1.<sup>1</sup>, and two, and Sections 31 and 36 of this Law. During the examination of the application the Patent Office shall not carry out examination of the patentability of the invention in conformity with the requirements of Sections 5 and 7 of this Law.

(2) If the applicant has not fulfilled the requirements of Section 31 of this Law regarding the unity of invention, the further processing related to the patent application shall be maintained only in relation to the first claim of the application, unless the applicant, when responding to the notification of the Patent Office regarding the non-observance of the requirements of the referred to Section, has not informed the Patent Office regarding the division of the application or has not requested to examine only the claims relating to the invention or a group of inventions and conforming with the requirements regarding the unity of invention. The procedure for the filing of the divisional patent application shall be determined by the Cabinet.

(3) If the patent application does not conform or partially conforms with the requirements of this Section, the Patent Office shall notify the applicant thereof by explaining the non-conformity and determine a time limit of three months for elimination of the specified deficiencies.

(4) If the applicant has not eliminated the deficiencies specified by the Patent Office, the Patent Office shall take the decision regarding the rejection of the application. It shall be notified to the applicant in writing.

*[19 November 2015]*

### **Section 38. Grant, Registration and Publication of a Patent**

(1) If the patent application conforms with the requirements of Section 37, Paragraph one of this Law, the Patent Office shall take the decision regarding the grant of a patent. The decision shall be notified in writing to the applicant, as well as a time limit of three months shall be determined during which the fee for the patent publication and registration in the Patent Register shall be paid. If the fee has been paid, the Patent Office shall publish the notification regarding the grant of a patent in the Official Gazette of the Patent Office in a time period as short as possible. Concurrently, the Patent Office shall prepare a full patent publication including the bibliographic data of the patent, abstract of the invention, description of the invention, claims and, if necessary, drawings.

(2) The notification shall include:

1) information regarding the inventor (unless he or she has waived the right to be mentioned), owner of the patent and the representative (if there is such);

2) title of the invention;

3) indices of the international patent classification;

4) number and date of the patent application, date of making the application public and the patent number

(publication number in accordance with Section 35, Paragraph three, Clause 4 of this Law);

5) information regarding the priority; and

6) patent claims.

(3) The notification regarding the grant of a patent shall be published concurrently with the publication of the patent application if the decision regarding the grant of the patent has been taken prior to the end of the time limit referred to in Section 35, Paragraphs one and four of this Law.

(4) The patent shall be registered in the Patent Register concurrently with the publication of the notification regarding the grant of a patent in the Official Gazette of the Patent Office. The Patent Office shall issue a patent to the owner of the patent whose sample shall be determined by the Cabinet.

(5) The patent shall not be granted if the applicant has not paid the fee for the patent publication and registration in the Patent Register within the specified time limit in accordance with Paragraph one of this Section.

(6) The owner of the patent shall inform the Patent Office without delay on any amendments or mistakes detected in the information relating to the grant of a patent, regarding a change to the given name (name) of the owner or regarding the change of a representative. If the determined fee has been paid, the Patent Office shall include the permissible amendments in the Patent Register, publish the notification regarding the made amendments in the Official Gazette of the Patent Office and send to the owner of the patent. Inclusion of information regarding appointing or removal of a representative, amendments to information on the representative, and also corrections of mistakes made by the Patent Office shall be made free of charge.

*[14 October 2010; 19 November 2015]*

#### **Section 39. Notice of Appeal Against a Decision of the Patent Office**

If the applicant or another addressee of the decision of the Patent Office (owner, former owner, successor of property rights, licensee of the patent) completely or partly disagrees with the decision taken by the Patent Office, he or she is entitled to submit a notice of appeal in accordance with the Law on Industrial Property Institutions and Procedures.

*[19 November 2015]*

#### **Section 40. Progress of an Appeal**

[19 November 2015]

#### **Section 41. Opposition against the Grant of a Patent**

[19 November 2015]

#### **Section 42. Examination of Appeals and Oppositions**

[19 November 2015]

#### **Section 43. Maintaining the Patent in Force**

(1) An annual fee shall be paid for maintaining the patent in force. The fee shall be paid for each year that follows the year in which the notification regarding the granting of the patent has been published in accordance with Section 38, Paragraph one of this Law. The anniversary of the filing date shall be considered the beginning of each year. The fee for maintaining the patent in force shall be considered paid if it has been paid until the end of the month of the current payment year in which the filing date happens to be. If the fee has not been paid within the specified time limit but the owner of the patent pays the fee together with an additional fee in the period of time of the next six months, the patent shall be considered as maintained in force.

(2) The additional fee referred to in Paragraph one of this Section shall be 25% from the fee which has not been paid.

*[19 November 2015]*

#### **Section 44. Extension of Terms**

(1) The Patent Office is entitled to extend the time limits specified in this Law for a time period not exceeding three months, if such a request has been received in the Patent Office prior to the end of the relevant time limit and the fee for the extension of the time limit has been paid.

(2) Paragraph one of this Section shall not apply to the time limits having been determined in Section 6, Paragraph one, Section 28, Paragraphs five and six, Section 29, Paragraphs one and three, Section 39, Section 43, Paragraph

one, Section 45, Paragraph two, Section 46, Paragraph two, Section 71, Paragraphs two and three, Article 7 of the Regulation referred to in Section 76, Paragraph one and Article 7 of the Regulation referred to in Paragraph two.

[19 November 2015]

#### **Section 45. Continued Processing Following the Non-Observance of Terms**

(1) The applicant who has not observed the time limits specified in this Law in relation to the activities in the Patent Office may request a further processing.

(2) The request regarding the further processing shall be filed not later than two months following the notification of the Patent Office regarding the non-observance of the time limits or the notification regarding the loss of the right has been notified, if the activities provided for in the non-observed time limit have been carried out and the fee for the further processing has been paid. If the activities provided for have not been executed or the fee for the further processing has not been paid, the request shall be considered to have been withdrawn.

(3) If the request regarding the further processing is satisfied, the non-observance of the time limit shall not have any legal consequences.

(4) The further processing may not be requested if the time limit referred to in Paragraph two of this Section, the time limit for the filing of an appeal and oppositions, the time limit for the annual payment of the fee, the time limit until which the translation of the European patent claims in Latvian is to be filed have not been observed or if a request regarding the reestablishment of the right or regarding the change or addition of a priority, or regarding the reestablishment of the priority right has been filed.

[19 November 2015]

#### **Section 46. Reinstatement of Rights**

(1) If the applicant or the owner of the patent has not observed the time limits specified in this Law in relation to the activities in the Patent Office and the direct consequences of the non-observance of the time limits is rejection of the patent application or consideration of the patent application to be withdrawn, or revocation of the patent, or loss of other right, the applicant or the owner of the patent may request the reestablishment of the relevant right by filing a request to the Patent Office.

(2) In accordance with Paragraph one of this Section, the request regarding the reestablishment of the right shall be filed within two months following the reason due to which the time limit was not observed is eliminated but not later than within a year following the end of the specified time limit. In accordance with Section 29, Paragraph one of this Law the request regarding the reestablishment of the right shall be filed within two months following the end of the relevant time limit. The request regarding the reestablishment of the right shall be considered as filed as of the moment when the fee regarding the reestablishment of the right has been paid.

(3) If in the case laid down in Paragraph one of this Section the Patent Office establishes that the term has been exceeded in spite of due care required by the circumstances having been taken and the requirements of Paragraph two of this Section have been fulfilled, it shall reinstate the rights of the applicant or owner of the patent to the patent application or patent.

(4) Prior to the full or partial rejection of the request regarding the reestablishment of the right, the Patent Office shall notify the applicant or the owner of the patent in writing on the reasons for the full or partial rejection and invite him or her to file explanations in relation to the reasons of rejection within three months from the day of notifying the notification.

(5) The reestablishment of the right may not be requested if the time limit has not been observed determined:

- 1) for the filing of the request regarding the reestablishment of the right (Paragraph two of this Section);
- 2) for the payment of the fee for the patent application (Section 28, Paragraph six);
- 3) for the filing of the copy of the previous application (Section 29, Paragraph three);
- 4) for the filing of the request regarding the change or addition of a priority (Section 29, Paragraph three);
- 5) [19 November 2015];
- 6) [19 November 2015];
- 7) for the filing of a request regarding the further processing (Section 45, Paragraph two).

(6) A person, who has utilised in good faith the invention for commercial purposes or carried out the necessary preparatory works for such a utilisation in the territory of Latvia following making the patent application public within a time period between the loss of the right in accordance with Paragraph one of this Section and the day when the

notification regarding the reestablishment of the right was published in the Official Gazette of the Patent Office, is entitled to utilise this invention further on for commercial purposes to the extent planned during the period of preparatory works without any hindrance and without paying a remuneration to the applicant or the owner of the patent.

*[19 November 2015]*

#### **Section 47. Patent Register**

(1) The Patent Register shall be maintained in the type of books of the Patent Register. The Patent Register shall be managed by the Patent Office. The entry in the Patent Register shall be publicly reliable.

(2) Three books of the Patent Register shall be included in the Patent Register:

1) the patent applications following the making public thereof and the patents granted on the basis of them shall be registered in the first book;

2) the European patents following the coming into force thereof in the Republic of Latvia shall be registered in the second book; and

3) the applications for supplementary protection certificates following the making public thereof and the supplementary protection certificates granted on the basis of them shall be registered in the third book.

(3) The procedure for the maintenance of the Patent Register in relation to the information to be included in the books of the Patent Register shall be determined by the Cabinet.

#### **Section 48. Public Access to the Information of the Patent Applications and Patent Register**

(1) Prior to the publication of a patent application, the materials thereof shall be available to third persons only upon the written consent of the applicant.

(2) The Patent Office shall allow, for a person providing information regarding the fact that the rights resulting from the grant of a patent may concern the rights or commitments of this person to get acquainted with the documents and materials of the patent application file without the consent of the applicant or owner of the patent. Such information shall also be a proof that the applicant or owner of the patent takes measures in order to utilise his or her rights against the referred to person or that he or she has the right to the patent in accordance with Section 12, Paragraph one, two or three of this Law.

(3) The documents and materials of the file for the grant of a patent shall be available to any person having filed a relevant request following the making the patent public, except for the case referred to in Section 11 of this Law.

(4) Allowing to get acquainted with the application and registration file in accordance with Paragraph one, two or three of this Section, the Patent Office is entitled to deny access to particular information in the licence contracts and documents of the transfer of the right if the applicant or owner of the patent has indicated that such information is a commercial secret. Internal documents, draft decisions and their preparatory materials of the Patent Office included in a case shall be considered restricted access information.

(5) Any person has the right to get acquainted with the books of the Patent Register. Upon filing of a written request any person has the right to receive an extract from the Patent Register. Upon the request of the recipient, the accuracy of an extract shall be certified by the signature and seal of an official of the Patent Office by indicating the date of issue of the extract.

(6) The Patent Office shall issue extracts from the information included in the Register, as well as copies of documents and materials if the fee for receipt of the information has been paid.

*[14 October 2010; 19 November 2015]*

#### **Section 49. State Fees for the Activities in the Patent Office**

*[19 November 2015]*

## **Chapter VII Patent as a Subject of Ownership**

#### **Section 50. Essence of the Ownership Right of a Patent**

(1) The right to an invention based on a patent or the application thereof shall, according to the legal treatment, be regarded as equal to the right to the movable property in the meaning of the Civil Law. The general norms regarding a movable property and property transactions shall be applied to the referred to right, insofar as it is not provided for otherwise by this Law. The property rights associated with the patents and patent applications may be sold, offered as

a gift or otherwise included in the private legal circulation, they may be inherited or obtained according to the procedure of the succession of the right, they may be the subject of a pledge or subordinated otherwise to the property rights and recovery may be directed towards them in accordance with an injunction of a court in the case of insolvency and other cases.

(2) The joint property rights of two or more persons to a patent or to the application thereof shall be determined in the contract mutually entered into by the persons. If the contract has not been entered into, each joint owner may utilise the patent or the application thereof at his or her discretion. The undivided share of all patents or the application thereof, as well as his or her own patent or the application thereof may be alienated or a licence may be conferred in relation to it to another person only by the agreement of all joint owners or by a court judgement.

(3) The transactions related to the patent shall become binding to third persons following the registration thereof in the Patent Office and publication in the Official Gazette of the Patent Office.

(4) The transfer of a patent to another person (Section 51) and the grant of a licence (Section 52) shall not affect the licences that have been granted previously to third persons. If a person has brought a claim to court regarding the recognition of the right to a patent (Section 13), he or she may request that the previously granted licences and other patent encumbrances would be declared invalid from the day when the court judgement regarding the reestablishment of the right to a patent comes into force, insofar as these encumbrances do not apply to the successor of the right or imposes to it unjustified commitments in the relevant circumstances.

(5) A Latvian patent or European patent granted at the Patent Office on the basis of a national patent application in which Latvia is the designated state and regarding which a translation has been published in the Official Gazette of the Patent Office shall be pledged in accordance with the provisions of the Commercial Pledge Law. The interested person shall pay the fee for making an entry of the commercial pledge note in the Patent Register. The Patent Office shall record a commercial pledge note in the Patent Register on the basis of a notification of the holder of the register of commercial pledges. The Patent Office shall notify the information regarding the note made to the owner of the patent and publish it in the official gazette of the Patent Office.

*[3 July 2014; 19 November 2015]*

#### **Section 51. Transfer of a Patent and Patent Application to Other Persons**

(1) The owner of a patent has the right to transfer the patent to another person together with the undertaking or a part thereof utilising such a patent, or independently from it.

(2) Following the receipt of a relevant filing, a document attesting the succession of the right and the specified fee has been paid, the Patent Office shall include the information regarding a change of the owner of the patent in the Patent Register and publish in the Official Gazette of the Patent Office, as well as shall send a notification regarding the entry made in the Patent Register to the owner of the patent.

(3) The person who has been entered into the Patent Register shall be considered the owner of the patent. Until the fixing of the change of the owner of the patent in the Patent Register, the successor of the right may not utilise the right resulting from the acquisition of a patent against third persons.

(4) Prior to the Patent Office has taken the decision to grant a patent, the patent application may be transferred to another person if a relevant request, a document attesting the succession of the right has been received and the specified fee has been paid. The examination of the patent application shall be continued in relation to the new applicant.

(5) The Cabinet shall determine the procedure for transfer of a patent and a patent application to another person.

*[19 November 2015]*

#### **Section 52. Licence Contract**

(1) The owner of the patent has the right, by a licence contract, to grant to another person in full or in part the right to utilise the patent. An exclusive licence or non-exclusive licence may be issued in conformity with the licence contract.

(2) A licence shall be recognised an exclusive licence if the licensee (recipient party) acquires exclusive rights to utilise a patent in accordance with the provisions provided for in the licence contract but the licensor retains the right to utilise the patent insofar as this right has not been transferred to the licensee.

(3) A licence shall be recognised as a non-exclusive licence if the licensor (issuing party), when granting to another person the right to utilise a patent, retains the right to utilise such a patent him or herself, as well as the right to issue a non-exclusive licence for the utilisation of the same patent to third persons.

(4) In relation to third persons, the licence contract shall come into force following the registration thereof in the Patent Office. A fee shall be paid for the registration of the licence contract.

[19 November 2015]

### **Section 53. Open Licence**

(1) The owner of the patent is entitled to notify the Patent Office on the readiness to grant the right to utilise the patent to any interested person (open licence). The Patent Office shall publish the notification in the Official Gazette of the Patent Office. Following the publication of the notification, the fee of the current year for the maintaining the patent in force shall be reduced by 50%. If the owner of the patent and the interested person fail to agree regarding the conditions on the open licence contract, they shall be determined by court according to the procedure specified by the Civil Procedure Law.

(2) If, in accordance with Section 51 of this Law, ownership right is transferred fully to another person, the notification regarding the readiness to grant the open licence shall be considered withdrawn on the day when the changes were made in the Patent Register and the notification regarding the grant of the open licence was published in the Official Gazette of the Patent Office.

(3) The notification regarding the open licence may be withdrawn at any time by filing a request to the Patent Office with a condition that the owner of the patent is not informed regarding the wish to utilise the invention. The withdrawal shall come into force on the day when the Patent Office publishes the notification regarding the relevant request in the Official Gazette of the Patent Office. The fee of the current year reduced by 50% shall be paid in full within one month from the date of withdrawal of the licence. If the fee of the current year has not been paid within one month, a time limit of six months shall commence in accordance with Section 43, Paragraph two of this Law.

(4) The notification regarding the readiness to grant the open licence may not be filed if there is an entry regarding the exclusive licence in the Patent Register or the Patent Office has received a request to register an exclusive licence.

[19 November 2015]

### **Section 54. Compulsory Licence**

(1) If within four years following the filing date or within three years following the day when the notification regarding the grant of a patent was published the patented invention has not been utilised or has been utilised to an insufficient extent in the Republic of Latvia, any person may file an application to the administrative court requesting to provide a permit (compulsory licence) to him or her to utilise the patented invention in conformity with this Law and court adjudication. This provision shall not be applied if the owner of the patent proves to the court that there have been justified reasons for the failure to utilise or insufficient utilisation of the invention.

(2) If the owner of the patent of a biotechnological invention is not able to utilise it without violating the prior right to a plant variety, he or she may apply for a compulsory licence for the utilisation of such a plant variety which is protected by the referred to right, and pay a compensation determined by the court to the owner. In the case of a grant of such a licence, the owner of the plant variety is entitled to qualify for a cross-licence with justified conditions for the utilization of the protected invention.

(3) The compulsory licence of the patented invention may be obtained in conformity with Paragraphs one and two of this Section if:

1) the patented subject or the product acquired with a patented method is of vital importance for ensuring the welfare, defence or economic interests of Latvian inhabitants; or

2) an invention of a particular economic significance may not be utilised without the utilisation of another previously patented invention.

(4) The compulsory licence shall be granted by the court if the claimant within a reasonable time period has made an effort to acquire but has not acquired the licence from the owner of the patent on commercially acceptable conditions.

(5) If an emergency situation has been declared in the State, a compulsory licence may be granted by the Cabinet.

(6) In the case provided for in Paragraph three, Clause 1 of this Section the court, when reviewing the facts of the case regarding the grant of a compulsory licence, shall observe additionally the following requirements:

1) the scope of and the time limit for utilisation of the patent may be limited, depending on the purpose for which the compulsory licence has been granted;

2) the compulsory licence shall be regarded as equal to a non-exclusive licence;

3) a compulsory licence may not be transferred to another person, except for the case when it is transferred together with an undertaking directly related to the utilisation of the relevant patent or a part of such an undertaking; and



4) the compulsory licence shall be granted for utilisation in the internal market of Latvia.

(7) In the case provided for in Paragraph three, Clause 2 of this Section, the court, when reviewing the facts of the case regarding the grant of a compulsory licence shall observe additionally the following requirements:

1) the owner of a patent granted earlier (the first) may request a cross-licence on reasonable provisions for the utilisation of an invention of a subsequent owner of the patent; and

2) the licence to the first patent shall not be transferred further unless it is transferred together with the right to the subsequent patent.

(8) The court may decide regarding the termination of the time limit for a compulsory licence if the facts referred to in Paragraph one or Paragraph three, Clause 1 of this Section no longer exist and the repeated commencement thereof is hardly credible.

(9) The holder of a compulsory licence shall pay to the owner of the patent a compensation, the amount of which shall be determined by the court, observing the economic value of the licence, the scope of utilisation of an invention and other circumstances.

## **Chapter VIII Patent Invalidation**

### **Section 55. Early Patent Lapse**

(1) An early patent lapse shall take place if:

- 1) the owner of the patent surrenders a patent by filing a relevant request to the Patent Office;
- 2) the fee for maintaining the patent in force has not been paid in accordance with Section 43 of this Law;
- 3) the patent is not in force in conformity with Section 56 of this Law.

(2) If in accordance with Paragraph one, Clause 1 of this Law the request affects the rights of third persons, the patent lapse may not take place without the consent of the involved persons on the basis of the conditions of other regulatory enactments, the decisions of other institutions, a licence contract or any other contract registered in the Patent Register or if a claim in relation to this patent has been brought to the court.

*[19 November 2015]*

### **Section 56. Grounds for a Patent Invalidation**

A patent invalidation shall take place if:

- 1) the subject of the patent does not conform with the requirements of Sections 4, 5, 7, 8, 9 or 10 of this Law;
- 2) the essence of the invention has not been disclosed in the patent as clearly and entirely that a person skilled in the art would be able to implement such an invention (Section 30, Paragraph one);
- 3) the subject of the patent extends beyond the content of the initially filed patent application (Section 36, Paragraph one) or - if the patent has been granted on the basis of a divisional application - the content of the initial patent application; or
- 4) the patent has been granted to a person having no right to receive it (Section 12).

### **Section 57. Patent Invalidation**

(1) On the basis of the conditions of Section 56 of this Law, a patent may be invalidated by court according to the civil procedures.

(2) The claim statement to the court regarding a patent invalidation may be filed by any person observing the conditions of Section 56, Clauses 1, 2 and 3 of this Law.

(3) A person who has the right to the invention in conformity with Section 12 of this Law may request a patent invalidation in accordance with Section 56, Clause 4 of this Law.

(4) The claim statement to the court regarding a patent invalidation may be filed throughout the whole period of validity of the patent. The patent may be invalidated also if the time limit of the validity of the patent has ended or the patent has been excluded from the Patent Register upon the initiative of the owner thereof at the moment of the filing of the claim statement to the court or during the adjudication of the claim.

## **Section 58. Limitation of a Patent**

(1) The scope of the right granted by a patent may be limited if:

1) the court, when examining the case regarding the patent invalidation in accordance with Section 57 of this Law, invalidates partially the patent. The court shall limit the claims of the patent if the circumstances referred to in Section 56, Clauses 1, 2 and 3 of this Law do not apply to the patent in full; or

2) the owner of the patent files a request regarding the limitation of the scope of the patent by amending the claims thereof, a description or drawings thereof to the Patent Office and if he or she has paid a fee.

(2) The request may not be filed in accordance with Paragraph one, Clause 2 of this Section during the legal proceedings regarding the patent invalidation are taking place.

(3) In accordance with Paragraph one, Clause 1 of this Section an action may be brought to court only by the owner of the patent. If information regarding the grant of a licence has been included in the Patent Register, the owner of the patent may file the application to the court or a request to the Patent Office only if he or she proves that he or she has the consent of the licensee or that he or she has informed the licensee regarding his or her intention to limit the patent at least three months in advance.

(4) If the patent is being limited, the Patent Office shall publish the amended claims in the Official Gazette of the Patent Office in a time period as short as possible.

*[19 November 2015]*

## **Section 59. Consequences Arising from the Patent Invalidation**

(1) If a patent has been invalidated in conformity with Sections 56 and 58 of this Law, it shall be considered that the invention loses the legal protection provided for in this Law by the filing date of the patent to the scope the patent has been invalidated.

(2) The patent invalidation shall not have the effect on the following:

1) the court judgement regarding the infringement of the patent which has already been completed prior to the adjudication regarding the patent invalidation was taken; and

2) the contract entered into prior to the adjudication regarding the patent invalidation was taken and has been fulfilled prior to the taking such an adjudication. The court may decide upon the repayment of the already paid amount provided for in the contract, insofar as it conforms with the principle of equity in the relevant circumstances.

# **Chapter IX Protection of the Rights Related to Patents**

## **Section 60. Protection of an Inventor's Right**

If the inventorship of the inventor has been infringed or the right of an inventor has been otherwise violated (Section 14), the inventor is entitled to apply to court in accordance with the norms of the Civil Law regarding personal injuries.

## **Section 61. Warning regarding Exclusive Rights**

(1) The owner of the patent and the licensee by his or her consent, has the right to label products in which the invention has been implemented or included by a warning designation, indicating the patent number, or by a text warning on the existence of the patent application. The name (title) of the owner of the patent and the date of the grant of the patent or the filing date shall be indicated on the warning mark.

(2) The warning mark may not be placed on products to which the protection of a patent does not apply. A false warning shall be considered as an expression of an unfair competition.

(3) If the owner of the patent has reasons to consider that some person is violating his or her exclusive rights, he or she may warn him or her regarding the possible infringement.

## **Section 62. Illegal Utilisation of an Invention (Infringement of a Patent)**

(1) An illegal utilisation of the invention- utilisation of a patent without the consent of the owner within the meaning of Section 16 of this Law if it has taken place during the period of validity of the patent shall be considered as the infringement of the exclusive rights of the owner of the patent.

(2) The owner of the patent may bring a claim to court regarding an illegal utilisation of a patent according to the civil procedures. The licensee is entitled to bring a claim to court regarding an illegal utilisation of a patent by the

consent of the owner of the patent. The consent of the owner of the patent shall not be necessary if he or she does not bring the claim to the court, even though the exclusive licensee has invited him or her in writing to do it.

(3) The owner of the patent has the right to intervene in the action if the claim regarding an illegal utilisation of the patent is brought to court by the licensee in accordance with Paragraph two of this Section.

(4) Any licensee is entitled to intervene in the action and request compensation for damages resulted from an illegal utilisation of the licensed patent.

### **Section 63. Responsibility for Illegal Utilisation of a Patent**

(1) The responsibility for illegal utilisation of a patent shall arise if, in conformity with Section 62 of this Law, the fact of an infringement of the patent is proved. The proving of the fact of infringement is the duty of the claimant (the owner of the patent or licensee).

(2) If the subject of the patent is a method for acquisition of a new product, it shall be considered that an equivalent product has been acquired with the patented method without the consent of the owner of the patent. In such case, the proof of the non-existence of an infringement of the patent shall be the duty of the defendant. During the judicial proceedings, the legal right of the defendant to the protection of the commercial secret shall be taken into account.

(3) A person against whom the claim is brought to court in relation to an illegal utilization of the patent may not object against the claim, based only on the fact that the patent is not utilized or the activity thereof has to be discontinued due to other reasons. The defendant may bring a counter-claim to court regarding the invalidation of the patent in conformity with Section 56, Clauses 1, 2 and 3 of this Law. In such case, an infringement of the patent may be determined insofar as the patent is validated.

(4) When determining the responsibility for an illegal utilisation of a patent and the scope of this responsibility, the fact of the receipt of a warning referred to in Section 61, Paragraph three of this Law may be taken into account.

### **Section 64. Procedures for Determining the Compensation for Losses and Compensation for Moral Damage**

(1) If unlawful use of a patent has occurred due to the fault of a person, the owner of the patent or a licensee are entitled to request compensation for losses and compensation for moral damage caused as a result of the violation.

(2) Upon requesting compensation for losses, the owner of the patent or a licensee may request one of the following types of compensation for losses for each violation:

1) compensation for damages;

2) licence fee - the amount which the owner of the patent may receive in respect of granting the right to use the patent to a licensee;

3) income gained, as a result of the violation, by the person who illegally used the patent.

(3) The amount of compensation for moral damage shall be determined by a court at its own discretion.

*[19 November 2015]*

## **Chapter X Examination of Disputes in Court**

### **Section 65. Jurisdiction of Courts**

(1) The disputes regarding the exclusive rights and other rights based on a patent or this Law shall be examined by the court according to the same procedure by which the disputes in respect of which civil liability is provided for in accordance with the norms of the Civil Law regarding movable property are examined, if this Law or other regulatory enactments do not provide for otherwise.

(2) The Vidzeme Suburb Court of Riga City as the Court of First Instance shall examine the following cases related to the legal protection of inventions according to the civil procedures:

1) regarding the reestablishment of the right to a patent;

2) regarding the patent invalidation;

3) regarding the right of prior use;

4) regarding the illegal utilization of a patent (an infringement of a patent);

- 5) regarding the determination of the fact of the non-existence of an infringement of the patent;
  - 6) regarding the grant of a licence, the provisions of a licence contract or the performance thereof; and
  - 7) regarding the right to a compensation due to the impossibility to utilise the invention openly.
- (3) Jurisdiction of other disputes shall be determined in accordance with the Civil Procedure Law.

*[11 December 2014]*

#### **Section 66. Opinions about Patent Cases**

The Patent Office shall provide information or opinions to court if they are necessary for taking a decision regarding the conformity of an invention with the requirements of Sections 5 and 7 of this Law, in the cases related to patents and limitation of the scope of a patent in accordance with Section 58, Paragraph one of this Law.

#### **Section 67. Time Limits for the Filing of Claims**

(1) In disputes regarding patents, the time limit for the filing of a claim to a court shall be three years from the moment when the aggrieved party found out or was supposed to find out the fact that his or her rights have been violated.

(2) A claim in relation to a dispute regarding the invalidation of a granted patent (Section 57), the grant of a licence or provisions of a licence contract may be filed to a court throughout the whole period of validity of the patent.

## **Chapter XI**

### **International Applications in Accordance with the Patent Cooperation Treaty**

#### **Section 68. International Applications**

(1) The Patent Office shall act as a Receiving Office within the framework of the Patent Cooperation Treaty.

(2) The Patent Office shall accept an international application if it is filed by a citizen or a permanent resident of Latvia or a legal person registered in Latvia.

(3) The international application shall be filed in Latvian, English, French, Russian or German. If the application has been filed in Latvian, the translation thereof in English, French, Russian or German, depending on the International Searching Authority and the International Preliminary Examining Authority chosen by the applicant, shall be filed to the Patent Office within the time limit specified by the Patent Cooperation Treaty, the Regulations of the Patent Cooperation Treaty and the Administrative Instructions of the Patent Cooperation Treaty.

(4) A payment for the transmittal of an application shall be effected to the Patent Office for the filing of an international application. The time limits for payments shall be determined by the Patent Cooperation Treaty.

(5) The international search and international preliminary examination shall be carried out to the international applications filed to the Patent Office by the authorities specified in the Patent Cooperation Treaty, depending on the choice of the applicant.

(6) The designation or election of Latvia in the international application in accordance with Article 2 (viii) of the Patent Cooperation Treaty shall be considered as a wish to acquire the European patent which operates in Latvia in accordance with the European Patent Convention.

## **Chapter XII**

### **European Patent Application and European Patent**

#### **Section 69. European Patent Application**

(1) The European patent application may be filed to the Patent Office, except for the divisional application. The application may be filed in any language referred to in Article 14, Paragraphs one and two of the European Patent Convention.

(2) The conditions of Section 11 of this Law shall be applied to the European patent applications in relation to the inventions affecting the interests of the State defence.

#### **Section 70. Legal Effect of the European Patent Application in Latvia**

(1) The European patent application to which the European Patent Office has granted a filing date, as well as a priority date (if a priority has been requested), shall be comparable to the patent application filed to the Patent Office

and completed in accordance with this Law.

(2) When the European patent application has been published in accordance with Article 67 of the European Patent Convention, a provisional legal protection shall be granted to the invention in conformity with Section 18, Paragraph two of this Law, starting from the day when the applicant communicates it to the person utilising the invention in Latvia by sending a Latvian translation of the claims of the published European patent application to this person, or when, upon the request of the applicant, it is published in the Official Gazette of the Patent Office. The European patent application shall not have the consequences referred to in this Section if it is withdrawn or considered to be withdrawn.

(3) The Patent Office shall publish the claims of the European patent application in Latvian in accordance with Paragraph two of this Section if the applicant pays for the publication of the claims.

*[19 November 2015]*

#### **Section 71. Legal Effect of the European Patent**

(1) A European patent, in which Latvia is the designated state, shall grant the same rights as the national patent starting from the day when the notification of the European Patent Office regarding the grant of a patent has been published.

(2) Within three months following the notification of the European Patent Office regarding the grant of a patent has been published in the Official Gazette of the European Patent Office in accordance with Article 64 of the European Patent Convention, the owner of the patent shall file a translation of the European patent claims in Latvian to the Patent Office and pay a fee for the publication. The procedure for filing of the translations shall be determined by the Cabinet.

(3) If, following the examination of the opposition to the grant of a patent filed to the European Patent Office, the European patent is maintained in force with amended claims, the owner of the patent shall file the translation of the amended claims in Latvian to the Patent Office and shall pay a fee for the publication within three months following the decision regarding the maintaining of the European patent in force has been published.

(3<sup>1</sup>) If, following the examination of the request to limit the patent or to invalidate it filed to the European Patent Office the European patent is maintained in force with amended claims, the owner of the patent shall file the translation of the amended claims in Latvian to the Patent Office and shall pay a fee for the publication within three months following the decision regarding the limitation of the European patent has been published.

(4) *[14 October 2010]*

(5) The Patent Office shall publish the translation having been filed in conformity with Paragraph two, three or 3.<sup>1</sup> of this Section in the Official Gazette of the Patent Office as soon as possible.

(6) If the translation referred to in Paragraph two, three or 3.<sup>1</sup> of this Section has not been filed or the fee for the publication has not been paid within the time limit referred to in Paragraph two of this Section, the European patent shall be considered invalid in Latvia from the filing date of the patent application.

(7) The European patent shall not have the legal effect provided for in this Chapter in Latvia from the filing date of the application if the European Patent Office, having examined the received opposition to the grant of a patent, invalidates the patent.

*[14 October 2010; 19 November 2015]*

#### **Section 72. Authentic Text of the European Patent Application or European Patent**

(1) The text of the European patent application or European patent prepared in the language which is the procedure language of the European Patent Office, shall be an authentic text during any stage of the examination thereof at the Patent Office or court in Latvia.

(2) In conformity with Section 71, Paragraphs two, three and 3.<sup>1</sup> of this Law, the filed translation shall be considered authentic, except for the case when in a court case related to the invalidation of a European patent (Section 56) the translation of the European patent application or claims of a European patent assigns a narrower protection in comparison with the European patent application or European patent in the language which is the procedural language of the European Patent Office.

(3) The applicant or owner of the European patent may file a corrected translation of the claims throughout the whole period of validity of the European patent. The corrected translation shall come into force following the publication thereof in the Official Gazette of the Patent Office or following the applicant or owner of the European patent notifies it to the person utilising the invention in Latvia.

(4) The person who in the territory of Latvia prior to the date of publication of the corrected translation, without violating the scope of the granted protection of the initially published patent application and patent translation, in good

faith utilised the invention in his or her undertaking or for the needs of his or her undertaking or carried out preparatory works necessary for such a utilisation, is entitled to utilise the relevant invention further on in his or her undertaking or for the needs of his or her undertaking without hindrance and without paying remuneration to the owner of the patent if the scope of utilisation of the invention is not expanded.

*[19 November 2015]*

### **Section 73. Payment for Maintaining the European Patent in Force**

(1) The owner of the patent shall pay for maintaining the patent in force to the Patent Office for each year following the year in which the notification of the European Patent Office regarding the grant of the European patent has been published. The payments shall be effected according to the same procedure by which the fee for the national patents is to be paid in accordance with Section 43 of this Law.

(2) If the payment shall be effected within three months following the notification regarding the grant of the European patent has been published in the Official Gazette of the European Patent Office, it shall be considered that the payment effected during this period has been effected within the specified time limit. The additional fee provided for in Section 43 of this Law shall not be paid in the referred to case.

(3) In conformity with Article 39 of the European Patent Convention, a part of the annual payment for maintaining the patent in force shall be paid back by the Patent Office to the European Patent Organisation according to the procedure specified by the European Patent Convention.

*[19 November 2015]*

### **Section 74. Conversion of the European Patent Application in the National Patent Application**

(1) The European patent application, in which protection is requested in Latvia, may be converted in the national application if the European patent application is considered to be withdrawn in accordance with Article 77, Paragraph three of the European Patent Convention or if the translation of the application, observing Article 14, Paragraph two of the European Patent Convention, has not been filed within the specified time limit in accordance with Article 90, Paragraph three of the European Patent Convention.

(2) The applicant shall pay the fee for the conversion of the patent application within three months and file a translation of the application in Latvian to the Patent Office.

*[14 October 2010; 19 November 2015]*

### **Section 75. Impossibility of Concurrent Protection**

If the European patent or national patent has been granted for one and the same invention with the same filing date to one and the same person or successor in title thereof, or - if a priority has been requested - with the same priority date, in such a case, if the European Patent Office has not received the opposition to the grant of a patent referred to in Article 99, Paragraph one of the European Patent Convention, the operation of the national patent shall be discontinued from the day when the time limit for the filing of oppositions has ended but, if oppositions have been received - from the day when the examination of the relevant opposition has been completed and a final decision regarding the maintaining the European patent in force has been taken.

## **Chapter XIII Supplementary Protection Certificate**

### **Section 76. Provisions for the Grant of a Supplementary Protection Certificate**

(1) If a patent protects a medicinal product, a supplementary protection certificate shall be granted in accordance with Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products.

(2) If a patent protects a plant protection product, a supplementary protection certificate shall be granted in accordance with Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.

(3) A person, who wishes to obtain a supplementary protection certificate, shall file a relevant application to the Patent Office. The applicant shall pay the fee for the application. The conditions of Section 13, Paragraphs four and five of this Law shall be applied to the application.

(4) An annual fee shall be paid for maintaining the supplementary protection certificate in force. In such case the conditions of Section 43 of this Law shall be applied. If the last year of the operation of the supplementary protection certificate is not full, the fee for it shall be paid for the whole year.

[19 November 2015]

## Transitional Provisions

1. With the coming into force of this Law, the Patent Law of 30 March 1995 (*Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 1995, No 10) is repealed.

2. The provisions of Chapter XII of this Law shall be applied to the European patent applications having been filed to the European Patent Office starting from 1 July 2005 when the Convention on the Grant of European Patents of 5 October 1973 came into force in Latvia. The provisions of Chapter V of the Patent Law of 30 March 1995 shall be applied to the European patent applications having been filed within the time period from 1 May 1995 until 30 June 2005.

3. The procedure for the grant of a patent in force on the day when the patent application was filed, shall be applied to the patent applications filed to the Patent Office prior to the coming into force of this Law.

4. The patents granted in accordance with the Patent Law of 30 March 1995 and in force shall be utilized and protected in conformity with the provisions of this Law from the day of the coming into force of this Law. The scope of legal protection of patents and the rights resulting therefrom, the exclusive rights as well, shall be equated with the scope and the rights of the patent protection specified by this Law.

5. The registration of the European patents whose applications have been filed to the European Patent Office until 1 May 1995 shall be continued in Latvia if:

1) the owner of the patent has filed a relevant request to the Patent Office not later than within one year following the issue of the European patent;

2) an officially approved copy of the description of a patent and invention, formula of the invention, the translation in Latvian of the abstract of the invention and text attached to the drawing are attached to the request;

3) the relevant fee has been paid; and

4) the invention is patentable.

6. The registered European patent shall have the same legal force and the same provisions of the Law shall be applied thereto which are applied to the national patent with the following exceptions:

1) exclusive rights granted by a patent shall come into force on the day when the Patent Office publishes the notification regarding the registration of a European patent and shall end not later than following 20 years from the day when the Patent Office has received a request to register the European patent;

2) the provisions of Section 22 of this Law in relation to the registered European patent shall be applied if prior to the receipt of the request to register a European patent in Latvia at the Patent Office, a utilization of the invention has commenced or the preparatory works necessary for such a utilisation has been carried out in good faith; and

3) The invalidation of a European patent or an early discontinuance of validity in another Contracting State of the European Patent Convention shall not be considered the basis for invalidation of the registered patent in Latvia.

7. Until the day of the coming into force of new Cabinet Regulation but not longer than until 1 September 2007, Cabinet Regulation No 309 of 18 August 1998 Regulation Regarding the State Fee for Protection of Industrial Property shall be applied, insofar as it is not in contradiction with this Law.

8. Until the day of the coming into force of new Cabinet Regulation but not longer than until 30 April 2011, Cabinet Regulation No 602 of 4 September 2007, Regulation Regarding the Content of the Register of Professional Patent Attorneys, the Procedure for the Maintenance of the Register and the Procedure for the Qualification Examination of the Patent Attorneys, shall be in force.

[14 October 2010]

## Informative Reference to European Union Directives

This Law contains legal norms arising from:

1) Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions;

2) Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use; and

3) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

This Law shall come into force on 1 March 2007.

This Law has been adopted by the *Saeima* on 15 February 2007.

President V. Vīķe-Freiberga

Rīga, 27 February 2007

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<sup>1</sup> The Parliament of the Republic of Latvia

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