

**ACT XXXIII OF 1995  
ON THE PROTECTION OF INVENTIONS BY PATENTS**

In order to promote technical progress in the Hungarian national economy, to implement up-to-date technology, to encourage inventors both morally and financially; and in conformity with the international obligations of Hungary concerning the protection of intellectual property, the Parliament enacts the following Act:

**PART I**

**INVENTIONS AND PATENTS**

*Chapter I*

**SUBJECT MATTER OF PATENT PROTECTION**

*Patentable inventions*

**Article 1**

(1) Patents shall be granted for any inventions in any field of technology that are new, involve an inventive step and are susceptible of industrial application.

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

- (a) discoveries, scientific theories and mathematical methods,
- (b) aesthetic creations,
- (c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers,
- (d) presentations of information.

(3) Patentability of the subject matters referred to in paragraph (2) shall be excluded only to the extent to which a patent application or the patent relates to such subject matter as such.

*Novelty*

**Article 2**

(1) An invention shall be considered new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written communication or oral description, by use, or in any other way, before the date of priority.

(3) The content of any national patent application or utility model application having an earlier date of priority shall also be considered as comprised in the state of the art, provided that it was published or announced in the course of the patent granting procedure at a date following the date of priority. The content of such a European patent application [Article 84/B(2)] and international patent application [Article 84/P(1)] shall only be considered as comprised in the state of the art on special conditions laid down in this Act [Articles 84/D(2) and 84/T(2)]. For the purposes of these provisions, the abstract shall not be considered as comprised in the content of the application.

(4) The provisions of paragraphs (2) and (3) shall not exclude the patentability of any substance (compound) or composition, comprised in the state of the art, for use in methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body [Article 6(10)], provided that use for such methods is not comprised in the state of the art.

(5) Similarly, the provisions of paragraphs (2) and (3) shall not exclude the patentability of any substance (compound) or composition, comprised in the state of the art, for use in methods for treatment of

the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body [Article 6(10)], provided that such use is not comprised in the state of the art.

### **Article 3**

For the purposes of Article 2, a disclosure of the invention that occurred no earlier than six months preceding the date of priority shall not be taken into consideration as part of the state of the art if

- (a) it was due to an abuse of the rights of the applicant or his predecessors in title or
- (b) it was due to the fact that the applicant or his predecessors in title have displayed the invention at an exhibition specified in an announcement by the President of the Hungarian Intellectual Property Office published in the Hungarian Official Gazette.

### *Inventive activity*

### **Article 4**

(1) An invention shall be considered to involve an inventive activity if, in regard to the state of the art, it is not obvious to a person skilled in the art.

(2) In deciding whether there has been an inventive activity, the part of the state of the art referred to in Article 2(3) shall not be taken into consideration.

### *Industrial application*

### **Article 5**

(1) An invention shall be considered susceptible of industrial application if it can be made or used in any sector of industry or agriculture.

(2) *[repealed]*

### *Patentable biotechnological inventions*

### **Article 5/A**

(1) Inventions meeting the requirements of Article 1 to 5 shall be patentable even if they concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used. Biological material means any material containing genetic information which is capable of reproducing itself or being reproduced in a biological system.

(2) Biological material which is isolated from its natural environment or produced by means of a technical process may be the subject of an invention even if it previously occurred in nature.

(3) The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions.

(4) An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element.

### *Patentability*

### **Article 6**

(1) Patent protection shall be granted for an invention if

(a) it satisfies the requirements of Articles 1 to 5/A and is not excluded from patent protection under the terms of paragraphs (2) to (4) and (10), and

(b) the relevant application complies with the requirements laid down in this Act.

(2) No patent protection may be granted for an invention if the exploitation thereof within the framework of economic activity would be contrary to public policy or morality; such exploitation may not be regarded as contrary to public policy merely because it is prohibited by law or regulation.

(3) On the basis of paragraph (2), the following, in particular, shall not be granted patent protection:

(a) processes for cloning human beings;

(b) processes for modifying the germ line genetic identity of human beings;

(c) uses of human embryos for industrial or commercial purposes;

(d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal; and

(e) animals resulting from processes referred to in subparagraph (d).

(4) The following shall not be patentable:

(a) plant varieties [Article 105(a)] and animal breeds;

(b) essentially biological processes for the production of plants or animals.

(5) Inventions which concern plants or animals shall be patentable if the technical feasibility of the invention is not confined to a particular plant variety or animal breed.

(6) Plant varieties may be granted plant variety protection under the provisions of Chapter XIII.

(7) A process for the production of plants or animals is essentially biological if it consists entirely of crossing, selection or other natural phenomena.

(8) The provisions of paragraph (4)(b) shall be without prejudice to the patentability of inventions which concern a microbiological or other technical process or a product obtained by means of such process.

(9) Microbiological process means any process involving or performed upon or resulting in microbiological material.

(10) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body shall not be granted patent protection. This provision shall not apply to products, in particular substances (compounds) and compositions, for use in such methods.

## ***Chapter II***

### ***RIGHTS AND OBLIGATIONS CONFERRED BY AN INVENTION AND BY A PATENT***

#### *Moral rights of the inventor and his rights concerning the disclosure of the invention*

#### ***Article 7***

(1) The person who has created an invention shall be deemed to be the inventor.

(2) Unless a final court decision rules to the contrary, the person originally mentioned as such in the patent application or the person entered as such after the modification under Article 55(2a) of the relevant entry in the Patent Register shall be deemed to be the inventor.

(3) If two or more persons have made an invention jointly, their shares of authorship shall be regarded as equal in the absence of an indication originally mentioned in the patent application stating the contrary.

(4) Unless a final court decision rules to the contrary, the shares of authorship originally stated in the patent application, those determined under paragraph (3) or those entered after the modification under Article 55(2a) of the relevant entry in the Patent Register shall be deemed applicable.

(5) The inventor shall have the right to be mentioned as such in the patent documents. Published patent documents shall not mention the inventor if he so requests in writing.

(6) *[repealed]*

(7) Prior to the publication of the patent application, an invention may only be disclosed with the consent of the inventor or his successor in title.

#### *Right to a patent*

#### ***Article 8***

(1) The right to a patent shall belong to the inventor or his successor in title.

(2) Unless a final court decision or other official decision rules to the contrary, the right to a patent shall belong to the person who filed the application with the earliest date of priority.

(3) If two or more persons have created an invention jointly, the right to the patent shall belong to them or their successors in title jointly. Where two or more persons are entitled to the right, it shall be deemed to belong to them equally unless otherwise provided.

(4) If two or more persons have created an invention independently of each other, the right to the patent shall belong to the inventor, or his successor in title, who filed the application with the earliest date of priority, provided that this first application is published or its subject matter is granted patent protection.

#### *Service inventions and employee inventions*

### **Article 9**

(1) A service invention is an invention made by a person who, by reason of his employment, is under the obligation to develop solutions in the field of the invention.

(2) An employee invention is an invention made by a person who, without being under an obligation by reason of his employment, makes an invention, the exploitation of which falls within the field of business of his employer.

### **Article 10**

(1) The right to a patent for a service invention shall belong to the employer as successor in title to the inventor.

(2) The right to a patent for an employee invention shall belong to the inventor, but the employer shall be entitled to exploit the invention. The employer's right of exploitation shall be non-exclusive; the employer may not grant a license to exploit the invention. If the employer ceases to exist or if any of his organizational units are separated, the right of exploitation shall be transferred to his successor in title; it may not be assigned or transferred in any other way.

### **Article 11**

(1) The inventor shall notify his employer of any service or employee invention immediately following its creation.

(2) Within ninety days from receipt of such notification the employer shall make a declaration to the effect that he does or does not claim title to the service invention, or state his intentions concerning the exploitation of the employee invention.

(3) The employer may only exploit an employee invention subject to the right of the inventor to disclose his invention [Article 7(7)].

(4) The inventor may exercise the right in relation to a service invention if the employer gives his consent thereto or fails to make the declaration under paragraph (2).

(5) The right to a patent for an employee invention shall belong to the inventor and shall not be subject to the employer's right of exploitation if the employer gives his consent thereto or fails to make the statement under paragraph (2).

### **Article 12**

(1) The employer shall file a patent application within a reasonable time following the receipt of the notification of a service invention; he shall furthermore proceed with all due diligence to obtain a patent.

(2) Provided that the patentability of the invention at the date of receipt of the notification has been acknowledged by the employer and the invention is kept secret and exploited within the trade as such, the employer may forego the filing of a patent application or may withdraw the application. The employer shall notify the inventor of such decision.

(3) In the event of a dispute, the burden of proving that the invention was not patentable at the date of receipt of the notification shall be on the employer.

(4) Except for the case under paragraph (2), prior to any act – including surrender of provisional patent protection – or any intentional omission liable to prevent the obtaining of a patent with regard to a service invention, the employer shall be required to offer to assign to the inventor the right to a patent free of charge, with or without the right of exploitation applicable to employee inventions. If the employer surrenders provisional protection, the surrender shall be effective even without the consent of the inventor.

(5) The provisions of paragraph (4) shall not apply where the inventor has already received fair remuneration having regard to the provisions of this Act.

#### *Remuneration for service inventions*

### **Article 13**

(1) Where a service invention is utilized, the inventor shall be entitled to remuneration:

(a) if the invention is protected by a patent or if the subject matter of the invention is granted supplementary protection (Article 22/A), from the beginning of its utilization up to the expiration of the definitive patent protection or the supplementary protection;

(b) if the definitive patent protection or – if the subject matter of the invention is granted supplementary protection (Article 22/A) – the supplementary protection terminates due to surrender or failing to pay the maintenance fee by the employer, from the beginning of the utilization up to the date on which the patent or the supplementary protection would have terminated because of expiration;

(c) if the invention is kept secret from the beginning of the utilization up to the disclosure of the invention or up to 20 years from the date on which the employer is notified of the invention, whichever expires later.

(2) The following shall be considered utilization of a service invention:

(a) the exploitation of the invention (Article 19), including failing to exploit in order to create or to maintain an advantageous market position;

(b) the grant of an exploitation license to third parties;

(c) the total or partial assignment of the right to a patent or of the patent.

(3) The inventor shall be entitled to separate remuneration for exploitation, for each exploitation license and for each assignment, even if the license is granted or the assignment is made without consideration. The entitlement to remuneration shall not be affected should one or more elements of the patent claim be replaced in the product or in the process by improved elements made available by the inventor.

(4) Remuneration shall be paid by the employer or, in the case of a joint patent and in the absence of an agreement of the joint patentees to the contrary, by the patentee exploiting the invention. In the case of an exploitation license or assignment, the acquirer of the rights may assume the obligation to pay remuneration.

(5) Remuneration shall also be due where utilization is based on a foreign patent or other legal title of protection having the same effect; however, no remuneration for the exploitation shall be due if the inventor is entitled to remuneration on the basis of a national patent.

(6) Remuneration for the inventor shall be governed by a contract concluded with the employer, with the exploiting patentee or the person acquiring the rights (contract of remuneration for service inventions).

(7) Remuneration for the exploitation of the invention shall be commensurate with the royalty the employer or the exploiting patentee would have to pay on the basis of a patent license agreement, taking into account the licensing conditions in the technical field of the subject matter of the invention.

(8) In the case of an exploitation license or of an assignment of the patent, the remuneration shall be commensurate with the value of the license or the assignment or with the benefit deriving from a license or an assignment without consideration.

(9) In assessing remuneration, the commensuration under paragraphs (7) and (8) shall be determined taking into account the employer's contribution to the invention concerned and the duties of the inventor arising from his employment. Where an invention is kept secret, the disadvantages caused to the inventor by failing to obtain protection shall also be considered.

#### *Remuneration for the exploitation of an employee invention*

### **Article 14**

(1) Remuneration for the right to exploit an employee invention shall be paid by the employer or, in the case of more than one employer and in the absence of an agreement to the contrary, by the employer exploiting the invention.

(2) The remuneration of the inventor shall be governed by a contract concluded with the employer.

(3) The amount of the remuneration for the right to exploit an employee invention shall be equal to that which would be payable by the employer for a license, on the basis of a patent license agreement, taking into account the licensing conditions in the technical field of the subject matter of the invention.

#### *Common provisions governing service and employee inventions*

#### **Article 15**

(1) The contract of remuneration of service inventions, the contract governing remuneration due in the case of the exploitation of an employee invention, as well as any disclosure, statement, notification or information relating to service and employee inventions as prescribed by this Act shall be made in writing.

(2) The parties may derogate by mutual consent from the provisions relating to the contract of remuneration of service inventions, in particular from those laid down in Article 13(7)–(9). A contract of remuneration may also be concluded in which a remuneration of a fixed amount is stipulated with respect to the inventions of the inventor to be created or exploited in the future (contract of remuneration of service inventions aiming at risk sharing).

(3) *[repealed]*

#### **Article 16**

(1) All disputes concerning the service or employee character of an invention, the patentability of an invention kept secret or the remuneration due to the inventor of a service or employee invention shall be dealt with by the courts.

(2) The Body of Experts on Industrial Property (Article 115/T) at the Hungarian Intellectual Property Office shall give an expert opinion also on matters concerning the patentability of an invention kept secret and remuneration due to the inventor of a service or employee invention.

(3) *[repealed]*

#### **Article 17**

The provisions of Articles 9 to 16 shall apply *mutatis mutandis* to inventions created by persons employed in a government service, public service or public employee legal relationship, law enforcement administration service legal relationship, national defence employee legal relationship or service relationship, or by members of a co-operative employed within the framework of a legal relationship of an employment relationship nature.

#### *Establishment of patent protection*

#### **Article 18**

(1) Patent protection shall begin with the publication of the patent application. The protection shall be effective retroactively from the date of the application.

(2) Protection resulting from publication shall be provisional. It shall become definitive if a patent for the invention is granted to the applicant.

#### *Rights conferred by the patent*

#### **Article 19**

(1) Patent protection shall afford the holder of the patent (patentee) the exclusive right to exploit the invention.

(2) On the basis of the exclusive right of exploitation, the patentee shall be entitled to prevent any person not having his consent

(a) from making, using, putting on the market or offering for sale a product which is the subject matter of the invention, or stocking or importing the product for such purposes;

(b) from using a process which is the subject matter of the invention or, where such other person knows, or it is obvious from the circumstances, that the process cannot be used without the consent of the patentee, from offering the process for use;

(c) from making, using, putting on the market, offering for sale or stocking or importing for such purposes a product obtained directly by a process which is the subject matter of the invention.

(3) On the basis of the exclusive right of exploitation, the patentee shall also be entitled to prevent any person not having his consent from supplying or offering to supply a person, other than a person entitled to exploit the invention, with means (instruments, appliances) relating to an essential element of the invention, for carrying out the invention, when such person knows, or it is obvious from the circumstances, that those means are suitable and intended for carrying out the invention.

(4) The provisions of paragraph (3) shall not apply when the supplied or offered means are staple commercial products, except when the supplier or offerer deliberately induces his client to commit the acts referred to in paragraph (2).

(5) For the purposes of paragraph (3), persons performing acts not falling under the exclusive right of exploitation, as referred to in paragraph (6), shall not be considered persons entitled to exploit the invention.

(6) The exclusive right of exploitation shall not extend to:

(a) acts done privately or not involved in an economic activity;

(b) acts done for experimental purposes relating to the subject matter of the invention, including experiments and tests necessary for the marketing authorisation of the product constituting the subject matter of the invention or the product obtained through the process constituting the subject matter of the invention;

(c) preparation for individual cases, in a pharmacy, of a medicine in accordance with a medical prescription, or acts concerning the medicine so prepared.

(7) In the absence of proof to the contrary, a product shall be deemed to have been obtained by a patented process if the product is new and a substantial likelihood exists that the product was made by the patented process and the patentee has been unable, despite reasonable efforts, to determine the process actually used. A substantial likelihood that the product was made by the patented process shall exist, in particular, when the patented process is the only known process.

*Exhaustion of the exclusive right of exploitation conferred by patent protection*

**Article 20**

The exclusive right of exploitation conferred by patent protection shall not extend to acts concerning a product put on the market in the territory of the European Economic Area by the patentee or with his express consent, except where the patentee has legitimate interests in opposing the further marketing of the product.

*Provisions concerning rights conferred by patent protection of biotechnological inventions and the exhaustion of such rights*

**Article 20/A**

(1) Where the subject matter of the invention is a biological material [Article 5/A(1)] possessing specific characteristics as a result of the invention, the exclusive right of exploitation (Article 19) shall extend to any biological material derived from that biotechnological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

(2) Where the subject matter of the invention is a process that enables a biological material [Article 5/A(1)] to be produced possessing specific characteristics as a result of the invention, the exclusive right of exploitation (Article 19) shall extend to any biological material directly obtained through that process and to any other biological material derived from the directly obtained biotechnological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

(3) Where the subject matter of the invention is a product containing or consisting of genetic information, the exclusive right of exploitation (Article 19) shall extend to all material, save as provided in Article 5/A(3), in which

- (a) the product is incorporated, and
- (b) the genetic information is contained and performs its function.

(4) The exclusive right of exploitation conferred by patent protection referred to in paragraphs (1) to (3) shall not extend to biological material obtained from the propagation or multiplication of biological material put on the market in the territory of the European Economic Area by the patentee or with his express consent, where the propagation or multiplication necessarily results from the application for which the biological material was marketed, provided that the material obtained is not subsequently used for other propagation or multiplication.

(5) By way of derogation from paragraphs (1) to (3), the sale or other form of commercialisation of plant propagating material to a farmer by the patentee or with his express consent implies authorisation for the farmer to use the product of his harvest for propagation or multiplication by him on his own farm.

(6) The extent and conditions of derogation to which the farmer is entitled under paragraph (5) shall be governed by the provisions laid down in Article 14 of Council Regulation (EC) No 2100/94 on Community plant variety rights.

(7) By way of derogation from paragraphs (1) to (3), the sale or other form of commercialisation of breeding stock or other animal reproductive material to a farmer by the patentee or with his express consent implies authorisation for the farmer to use the patented livestock for agricultural purpose. This includes the use of the animal or other animal reproductive material for the purposes of pursuing his activity but it shall not extend to sale within the framework or for the purpose of a commercial reproduction activity. The extent and conditions of derogation to which the farmer is entitled shall be governed by the provisions of specific legislation.

#### *Limitations of patent protection*

#### **Article 21**

(1) A right of prior use shall belong to any person who, in good faith, before the date of priority, in the territory of the country and within the framework of his economic activities, had begun to make or use the subject matter of the invention or had made serious preparations for that purpose.

(2) A prior user shall be considered a *bona fide* user until it is proved that the prior use was based on the inventive activity that led to the patented product.

(3) Patent protection shall have no effect against a prior user in relation to the extent of making, using or preparation existing at the priority date. The right of prior use may only be transferred together with an entitled economic organization [Civil Code, Article 685(c)] or with that part of the economic organization in which such making, using or preparation has taken place.

(4) A right of continued use shall belong to any person who, in the period between a declaration of termination of patent protection and restoration thereof, in the territory of the country and within the framework of his economic activities, has started to make or use the subject matter of the invention or has made serious preparations for that purpose. The provisions of paragraph (3) shall apply *mutatis mutandis* to the right of continued use.

(5) Subject to reciprocity, patent protection shall have no effect with respect to means of communication and transport which are in transit in the territory of the country or to foreign goods which are not intended to be put on the market in the country. The President of the Hungarian Intellectual Property Office shall be competent to give a ruling on matters of reciprocity.

#### *Term of patent protection*

#### **Article 22**

Definitive patent protection shall have a term of 20 years beginning on the filing date of the application.

*Supplementary protection*

**Article 22/A**

(1) In the cases, under the conditions and for the period laid down in Regulations of the European Community, the subject matter of the invention shall be granted supplementary protection following the termination of patent protection by reason of expiration.

(2) The detailed rules concerning the implementation of Community Regulations referred to in paragraph (1) shall be laid down by specific legislation.

(3) In the absence of a provision of Community Regulations referred to in paragraph (1) or of the specific legislation referred to in paragraph (2) to the contrary, the provisions of this Act shall apply *mutatis mutandis* to matters concerning supplementary protection certificates.

(4) Annual renewal fees shall be paid for the term of supplementary protection certificates. Payment of the annual fee is due in advance on the same calendar day each year as the filing of the application for the basic patent took place. The annual fee due prior to granting the certificate may also be paid within a six-month grace period after the granting decision becomes final, while all other annual fees may be paid within a six-month grace period after the due date of payment.

*Maintenance of patent protection*

**Article 23**

(1) Annual patent fees, specified by the law on fees for administrative services in industrial property procedures, shall be paid during the term of patent protection. The fee for the first year shall be due on the filing date and the fees for the subsequent years shall be paid in advance on the anniversaries of the filing date.

(2) The annual fees which become due prior to the publication of the patent application may also be paid within a grace period of six months from the date of publication, the annual fees which become due prior to the grant of a patent granted on the basis of an application treated as classified data may also be paid within a grace period of six months from the date on which the granting decision becomes final, while all other annual fees may also be paid within a grace period of six months from the due date.

*Scope of patent protection*

**Article 24**

(1) The scope of protection conferred by a patent shall be determined by the claims. The claims shall be interpreted on the basis of the description and the drawings.

(2) Patent protection shall cover any product or process in which all the characteristics of the claim are embodied.

(3) The terms of the claims shall not be confined to their strict literal wording; neither shall the claims be considered mere guidelines for a person skilled in the art to determine the claimed invention.

(4) For the purpose of determining whether the patent protection extends to a product or process, due account shall be taken of any characteristics of the product or process which is equivalent to those specified in the claims.

*Succession in title*

**Article 25**

(1) Rights deriving from an invention and from patent protection, with the exception of moral rights, may be transferred, assigned and pledged.

(2) A right of pledge shall only be constituted if the mortgage contract is made in writing and the right of pledge is entered in the Patent Register.

*Joint right to a patent and joint patent*

### Article 26

(1) Where there are two or more patentees for the same patent, each of the joint patentees may exercise the right over his own share. Where one joint patentee wishes to dispose of his share, the other joint patentees shall enjoy a right of pre-emption with respect to third parties.

(2) The invention may be exploited by any one of the joint patentees alone; however, he shall be obliged to pay appropriate remuneration to the other joint patentees, in proportion to their shares.

(3) An exploitation license may only be granted to a third party jointly by the joint patentees. Collective consent may be replaced by a court decision under the general provisions of civil law.

(4) In the event of doubt, the shares of all joint patentees shall be deemed equal. If one of the joint patentees surrenders his patent protection, the rights of the other joint patentees shall extend to his share, in proportion to their own shares.

(5) Any one of the joint patentees may also act individually to maintain and protect patent rights. His legal acts – settlement, admission of claims and waiver of rights excepted – shall be binding on any other joint patentee who has failed to observe a time limit or to perform a required act, provided that such other joint patentee has not subsequently remedied his omission.

(6) Where the acts of the joint patentees are divergent, a decision shall be taken having regard to all other relevant facts in the procedure.

(7) Costs relating to the patent are to be borne by the joint patentees in proportion to their shares. If, despite being notified, a joint patentee does not pay the costs for which he is liable, the joint patentee who has paid those costs may claim assignment to him of the share belonging to the joint patentee not having met his obligations.

(8) The provisions concerning joint patents shall apply *mutatis mutandis* to joint patent applications.

## Chapter III

### EXPLOITATION CONTRACTS

#### Conclusion of exploitation contracts

### Article 27

(1) Under a contract of exploitation (patent license contract) the patentee licenses the right to exploit an invention and the person exploiting the invention (licensee) is required to pay royalties.

(2)–(3) [repealed]

#### Rights and obligations of the parties

### Article 28

(1) The patentee shall be liable, for the whole duration of the exploitation contract, that no third parties hold rights in the patent preventing or limiting exercise the right of exploitation. Provisions of the Civil Code governing warranty of title shall apply *mutatis mutandis* to this liability, except that the licensee may, instead of withdrawal, terminate the contract with immediate effect.

(2) The patentee shall also be liable for the technical feasibility of the invention. Provisions of the Civil Code governing liability for defects shall apply *mutatis mutandis* to this liability, except that the licensee may, instead of withdrawal, terminate the contract with immediate effect. The licensee may also claim damages deriving from the technical unfeasibility under the rules of liability for breach of contract.

(3) The exploitation contract shall cover all patent claims and every form of exploitation, to any extent whatsoever, without limitation in time or as to territory.

(4) A right of exploitation shall be exclusive only if expressly stipulated by contract. In the case of an exclusive exploitation license, the patentee may also exploit the invention in addition to the licensee who has acquired the right of exploitation, unless expressly excluded by contract. The patentee may terminate the

exclusivity of a license, subject to a proportional reduction in the royalty, if the licensee does not begin exploitation within a reasonable period of time under the given circumstances.

(5) The patentee shall inform the licensee of any third party rights in relation to the patent and of any other important circumstances. However, he shall be obliged to transfer economic, technical and organizational know-how only if this has been expressly agreed.

(6) The licensee may transfer the license or grant sub-licences to third parties only with the express consent of the patentee.

(7) The patentee shall maintain the patent.

#### *Termination of the exploitation contract*

##### **Article 29**

The exploitation contract shall terminate *ex nunc* when the contractual period expires or when certain specified circumstances occur or when the patent expires.

#### *Effect of provisions relating to exploitation contracts*

##### **Article 30**

(1) The parties may derogate by mutual consent from the provisions relating to exploitation contracts where not prohibited by law.

(2) *[repealed]*

#### **Chapter IV**

### **COMPULSORY LICENSES**

#### *Compulsory licenses for lack of exploitation*

##### **Article 31**

If within four years from the date of filing of the patent application or within three years from the grant of the patent, whichever period expires last, the patentee has not exploited the invention in the territory of the country to satisfy the domestic demand or if he has not undertaken serious preparations or has not granted a license for such purpose, a compulsory license shall be granted to the applicant for the license, unless the patentee justifies the lack of exploitation.

#### *Compulsory licenses in respect of dependent patents*

##### **Article 32**

(1) If the patented invention cannot be exploited without infringing another patent (hereinafter referred to as “the dominant patent”), a compulsory license shall be granted, on request and to the extent necessary for the exploitation of the dominant patent, to the holder of the dependent patent, provided that the invention claimed in the dependent patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the dominant patent.

(2) Where a compulsory license has been granted under paragraph (1) with respect to a dominant patent, the holder of such a patent shall be entitled on reasonable terms to a license to exploit the invention claimed in the dependent patent according to the common provisions on compulsory licenses.

(3) The provisions of Article 33(1) and (2) shall also apply *mutatis mutandis* if the subject matter of a plant variety protection provided for in Chapter XIII cannot be exploited without infringing a patent.

*Common provisions governing compulsory licenses granted for lack of exploitation and in respect of dependent patents*

**Article 33**

(1) An applicant for a compulsory license shall be required to prove that the requirements for a compulsory license have been complied with, and further that

(a) the patentee was unwilling to grant a voluntary license to exploit the patent under appropriate conditions and within a reasonable period of time;

(b) he is able to exploit the invention to the required extent.

(2) A compulsory license may only be granted for exploitation necessary to satisfy predominantly the domestic demand; the compulsory license shall not afford an exclusive right of exploitation. The scope and duration of a compulsory license shall be established by the court, taking into account the purpose of the exploitation authorised by the compulsory license; a compulsory license may be granted with or without limitation. Unless relinquished or cancelled, a compulsory license shall have effect until expiration of the term of validity fixed by the court or until the termination of patent protection. Compulsory licenses shall be recorded in the Patent Register.

(3) The patentee shall receive adequate compensation for the compulsory license, which shall be fixed, failing agreement between the parties, by the court. The compensation shall take into adequate account the economic value of the compulsory license. In particular, it shall be commensurate with the royalty the holder of the compulsory license would have paid on the basis of an exploitation contract concluded with the patentee, taking into account the licensing conditions in the technical field of the invention.

(4) The holder of a compulsory license shall have the same rights as the patentee in regard to the maintenance of the patent and the exercise of the rights deriving from protection.

(5) If the holder of a compulsory license ceases to exist or if any of its organizational units are separated, the compulsory license shall be transferred to the successor in title. A compulsory license granted with respect to a dominant patent may only be assigned together with the dependent patent. However, a compulsory license may not be assigned or transferred to any other person. The holder of a compulsory license may not grant a license of exploitation.

(6) The holder of a compulsory license may relinquish his compulsory license at any time. If the holder does not begin exploitation within one year from the definitive grant of the compulsory license, the patentee may claim modification or cancellation of the compulsory license.

(7) The patentee may request modification or cancellation of a compulsory license if the circumstances on which it was based cease to exist and are unlikely to occur again. Modification or cancellation shall take a form that does not prejudice the legitimate interests of the holder of the compulsory license.

*Compulsory licences falling within the scope of Regulation (EC) No 816/2006*

**Article 33/A**

(1) The Hungarian Intellectual Property Office shall grant a compulsory license for the exploitation of an invention in the cases and on the terms laid down in Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2007 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems (hereinafter referred to as "Regulation 816/2006/EC").

(2) The licensee may not grant a license of exploitation on the basis of the compulsory license under paragraph (1).

(3) The licensee may relinquish his compulsory license under paragraph (1) at any time. Unless relinquished or cancelled, a compulsory license under paragraph (1) shall have effect until expiration of the term of validity fixed by the Hungarian Intellectual Property Office or until the termination of patent protection.

*Public health compulsory licences*

**Article 33/B**

(1) With a view to satisfying the needs arising in Hungary in connection with the health crisis as defined by section 228(2) of Act CLIV of 1997 on healthcare, and/or with a view to exploitation for export in connection with compulsory licences for the treatment of a public health problem arising in another country (hereinafter “foreign compulsory licence”), the Hungarian Intellectual Property Office shall grant a public health compulsory licence (hereinafter “public health compulsory licence”) for the exploitation of

a) a medicinal product, an active substance or an investigational medicinal product under patent or supplementary protection, or a medical device under patent protection (hereinafter jointly “healthcare product”); or

b) a process, equipment or tool under patent protection that is required for the production of a healthcare product.

(2) A public health compulsory licence for exploitation for export shall only be granted if

a) the applicant has a foreign compulsory licence for exploitation in the country of destination, except if the healthcare product in question or the process, equipment or tool required for the production of the healthcare product is not under patent protection or supplementary protection in the country of destination;

b) based on a certificate issued by the pharmaceutical state administration organ the exploitation for export does not jeopardise the management of the health crisis; and

c) the exploitation for export does not exceed the extent specified in the foreign compulsory licence.

(3) The public health compulsory licence shall not confer an exclusive right of exploitation; under the public health compulsory licence, the public health compulsory licence holder may not grant any licence for exploitation.

**Article 33/C**

(1) The HIPO shall determine the duration of a public health compulsory licence

a) in the case of exploitation in Hungary, based on a certificate issued by the pharmaceutical state administration organ and having regard to the needs of the management of the health crisis, as a period of at least six months;

b) in the case of exploitation for export, the duration of the compulsory licence shall be identical with the temporal scope of the foreign compulsory licence.

(2) The pharmaceutical state administration organ shall issue the certificate regarding the supply need under section 33/B(2)(b) and section 33/C(1)(a) at its own discretion, based on the analysis of information on the quantity of supplies available and the assessment of risks. To obtain additional data necessary for issuing the certificate, the pharmaceutical state administration organ may request data also from the administrator of the National Healthcare Reserve or the Ministry headed by the Minister responsible for healthcare.

(3) For a public health compulsory licence, the patent holder shall be entitled to adequate remuneration. The remuneration shall be determined by the HIPO. The remuneration shall reflect the economic value of the public health compulsory licence and, in particular, it shall be commensurate with the royalty that the public health compulsory licence holder would have to pay under a licensing contract concluded with the patent holder, having regard to the licensing conditions that are common in the technological field of the subject matter of the invention.

(4) When determining the remuneration under paragraph (3), the HIPO shall take into account, in particular,

a) the typical rate of remuneration for exploitation and net sales in the industrial sector concerned, and

b) to what extent the use of the patent under public health compulsory licence contributes to the economic advantage brought about by the healthcare product, or the process, equipment or tool under patent protection that is required for the production of a healthcare product (patent contribution rate).

(5) The public health compulsory licence holder may surrender the public health compulsory licence at any time, by means of a declaration addressed to the HIPO. If a public health compulsory licence covers both exploitation in Hungary and exploitation for export, the public health compulsory licence holder may declare a partial surrender concerning either exploitation in Hungary or exploitation for export. The HIPO shall notify the patent holder and the pharmaceutical state administration organ of the surrender.

(6) The public health compulsory licence shall terminate upon surrender, upon expiry of the fixed duration under paragraph (1) or upon the termination of patent or supplementary protection. Regarding exploitation for export, the public health compulsory licence shall cease to have effect upon termination of the foreign compulsory licence. Within eight days from the termination of the foreign compulsory licence the public health compulsory licence holder shall notify the HIPO of the fact of termination.

(7) If the public health compulsory licence is terminated due to surrender or the expiry of the fixed duration under paragraph (1), the pharmaceutical state administration organ shall order, by way of a decision, the destruction of the healthcare product, or the equipment or tool required for the production of a healthcare product, that has not been lawfully placed on the market by the public health compulsory licence holder, or the discontinuance of the exploitation of the process required for the production of the healthcare product.

(8) Paragraph (7) shall not apply if, before the expiry of the fixed duration under paragraph (1), the public health compulsory licence holder obtains a new public health compulsory licence with the same material scope as that of the public health compulsory licence serving as a basis for the production of the healthcare products.

(9) If placing on the market of a healthcare product produced under a public health compulsory licence is subject, by virtue of an Act, to an authorisation by an authority, the authorising authority – when deciding on an application in the course of its authorisation procedure – shall consider the content of the public health compulsory licence as having been proven.

(10) Healthcare products produced under a public health compulsory licence shall be distinguished by unique marking from the products produced by the patent holder. The fact that a healthcare product has been produced under a public health compulsory licence granted by the HIPO for the sole purpose of placing it on the market in Hungary or for export to be put on the market of the country specified in section 83/J(2)(b) shall be clearly indicated on the packaging and in any related documents.

(11) The pharmaceutical state administration organ shall oblige public health compulsory licence holders who fail to fulfil their obligation under paragraph (10) to repackage the healthcare products in compliance with paragraph (10) and/or section 83/J(2)(d).

## ***Chapter V***

### ***INFRINGEMENT OF INVENTIONS AND PATENTS***

#### ***Infringement of inventions***

#### ***Article 34***

Where the subject matter of a patent application or a patent has been taken unlawfully from the invention of another person, the injured party or his successor in title may claim a statement to the effect that he is entitled wholly or partly to the patent and may claim damages under the rules of civil liability.

#### ***Infringement of patents***

### **Article 35**

(1) Any person who unlawfully exploits a patented invention commits patent infringement.

(2) The patentee may, according to the circumstances of the case, have recourse to the following civil remedies:

(a) he may request that the fact of infringement be declared by the court;

(b) he may request an injunction that the infringer cease his infringement or any acts directly threatening with it;

(c) he may demand that the infringer give information on the identity of persons involved in the production and distribution of the infringing goods or the provision of infringing services and of their channels of distribution;

(d) he may demand satisfaction from the infringer by way of a declaration or by other appropriate means; if necessary, the declaration shall be made public by the infringer or at his expense;

(e) he may require surrender of the enrichment obtained by the infringement of the patent;

(f) he may request the seizure, the transfer to a specific person, the recall and the definitive removal from the channels of commerce, or destruction, of the infringing products, as well as of the means and materials exclusively or principally used for infringement.

(3) Where a patent is infringed, the patentee may also claim damages under the rules of civil liability. Where the translation of the text beyond the claims of the European patent has not been supplied by the patentee under Article 84/H, and the infringer is resident, or has a seat, in the territory of Hungary, he shall not be held liable for the infringement until the patentee complies with Article 84/G(2) or until the Hungarian Intellectual Property Office gives information to the public under Article 84/H(10) on the filing of the translation under Article 84/H(10a), except where the patentee proves that the infringer may have understood the text beyond the claims of the European patent without the translation thereof.

(4) The patentee may submit the claim referred to in paragraph (2)(b) also against any person whose services were used in the infringing activities.

(5) The patentee may submit the claim referred to in paragraph (2)(c) also against any person who

(a) was found in possession of the infringing goods on a commercial scale;

(b) was found to be using the infringing services on a commercial scale;

(c) was found to be providing on a commercial scale services used in infringing activities;

(d) was indicated by the person referred to in points (a) to (c) as being involved in the production or distribution of the infringing goods or the provision of the infringing services.

(6) For the purposes of paragraph (5)(a) to (c), the acts are carried out on a commercial scale if it is obvious from the nature and quantity of the infringing goods or services that these acts are carried out for direct or indirect economic or commercial advantage. In the absence of proof to the contrary, acts carried out by consumers in good faith shall not be regarded as acts carried out on a commercial scale.

(7) On the basis of paragraph (2)(c) and paragraph (5), the infringer or the person referred to in paragraph (5) may be required to provide, in particular, the following information:

(a) the names and addresses of the producers, distributors, suppliers and holders of the infringing goods or services, as well as the intended or involved wholesalers and retailers;

(b) the quantities produced, delivered, received or ordered of the infringing goods or services, as well as the prices obtained or given for the goods or services in question.

(8) At the request of the patentee, the court may rule that the infringing nature of the means, materials and goods seized, recalled or definitively removed from the channels of commerce be removed or, where this is not possible, that they be destroyed. In justified cases, the court may order, in place of destruction, that the means and materials seized be auctioned according to the procedure of judicial enforcement; in such cases, the court shall decide how the sum obtained is to be used.

(9) Seizure of the means and materials used in infringing activities and of the infringing goods shall be admissible even if they are not in the possession of the infringer, but the holder knew or had reasonable grounds to know about the infringement.

(10) The court shall order the measures referred to in paragraph (2)(f) and paragraph (8) at the expense of the infringer, except when derogation therefrom is justified by the circumstances of the particular case. In ordering the recall and the definitive removal from the channels of commerce, or destruction, the court shall decide by taking into account the interests of third parties and by ensuring the proportionality of the measures to the seriousness of the infringement.

(11) At the request of the patentee, the court may order that its decision be made public at the expense of the infringer. The court shall decide on the manner of the publicity. Publicity shall mean, in particular, publication in a national daily newspaper or on the Internet.

*Customs action against patent infringement*

**Article 35/A**

Where a patent is infringed, the patentee may, according to the provisions of specific legislation, request for action by the customs authorities to prevent the infringing goods be put on the market.

*Rights of the applicant and the licensee in the case of patent infringement*

**Article 36**

(1) An applicant whose invention enjoys provisional protection may also institute proceedings for patent infringement; however, the proceeding shall be suspended until the decision to grant the patent has become final.

(2) In the case of patent infringement, the holder of a contractual license may invite the patentee to take appropriate action in order to stop the infringement. If the patentee fails to take action within thirty days from the invitation, the licensee recorded in the Patent Register may institute proceedings for patent infringement in his own name.

*Ruling on lack of infringement*

**Article 37**

(1) Any person believing that proceedings for patent infringement may be instituted against him may, prior to the institution of such proceedings, request a decision ruling that the product or process exploited or to be exploited by him does not infringe a particular patent specified by him.

(2) Where a final ruling declaring the lack of infringement has been given, infringement proceedings may not be instituted on the basis of the specified patent in respect of the same product or process.

**Chapter VI**

**TERMINATION OF PATENT PROTECTION**

*Termination of provisional patent protection*

**Article 38**

Provisional patent protection shall terminate with retroactive effect to the date of the application if:

- (a) the patent application is rejected by a final and binding decision;
- (b) the annual fees have not been paid by the end of the period of grace;
- (c) the applicant has surrendered the protection.

*Termination of definitive patent protection*

**Article 39**

Definitive patent protection shall terminate:

- (a) when the period of protection expires, on the day following the date of expiration;
- (b) if the annual fees have not been paid by the end of the period of grace, on the day following the due date;

- (c) if the patentee surrenders the protection, on the day following receipt of the surrender or at an earlier date specified by the person surrendering protection;
- (d) if the patent is revoked, with retroactive effect to the filing date of the application.

*Restoration of patent protection*

**Article 40**

(1) If patent protection has terminated by reason of failing to pay annual fees, protection shall be restored at the request of the applicant or the patentee.

(2) Restoration of patent protection may be requested within three months following the expiry of the period of grace. A fee determined by the law on fees for administrative services in industrial property procedures shall be paid within that time limit.

*Surrender of patent protection*

**Article 41**

(1) The applicant or the patentee entered in the Patent Register may surrender patent protection by a written declaration addressed to the Hungarian Intellectual Property Office.

(2) If the surrender affects the rights of third parties deriving from legislation, from rulings of an authority, from a license contract or any other contract recorded in the Patent Register, or if a lawsuit is recorded in the Patent Register, it shall take effect only with the consent of the parties concerned, unless otherwise provided by this Act.

(3) It shall also be possible to surrender certain patent claims.

(4) Withdrawal of the surrender of patent protection shall have no legal effect.

*Revocation and limitation of patents*

**Article 42**

(1) The patent shall be revoked with retroactive effect to the date of the application if:

(a) the subject matter of the patent does not satisfy the requirements laid down in Article 6(1)(a);

(b) the description does not disclose the invention in a clear and complete manner as required by this Act [Article 60(1)];

(c) the subject matter of the patent extends beyond the content of the application as filed at the accorded filing date or – in the case of division – beyond the content of the divisional application;

(d) the patent has been granted to a person who is not entitled to it under this Act.

(2) If the grounds for revocation affect the patent in part only, revocation shall be pronounced in the form of a corresponding limitation of the patent.

(3) Should the request for revocation be rejected by a final decision, a new procedure for the revocation of the same patent on the same grounds may not be instituted by any person.

*Reclaiming of royalties*

**Article 43**

If definitive patent protection terminates with retroactive effect to the date of the application, only the portion of the royalties paid to the patentee or the inventor that was not covered by the profits derived from the exploitation of the invention may be reclaimed.

**Chapter VI/A**

**APPLICATION OF THE PROVISIONS OF THE CIVIL CODE**

**Article 43/A**

- (1) Matters relating to
- (a) the transfer, assign, pledge of rights deriving from an invention or from patent protection, as well as the joint right to patent and joint patent protection;
  - (b) the contract of remuneration of service invention;
  - (c) the exploitation contract (licence agreement); and
  - (d) other moral and economic issues concerning patents
- that are not covered by this Act shall be governed by the provisions of the Civil Code.
- (2) The inventor shall be entitled to institute legal proceedings under the Civil Code against any person contesting his authorship or otherwise infringing his moral rights deriving from the invention.

**PART II**

**PROCEDURES BEFORE THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE  
IN PATENT MATTERS**

**Chapter VII**

**GENERAL PROVISIONS GOVERNING PATENT PROCEDURES**

*Competence of the Hungarian Intellectual Property Office*

**Article 44**

- (1) *[repealed]*
- (2) The Hungarian Intellectual Property Office shall have authority in the following patent matters:
- (a) grant of patents;
  - (b) decision on the termination of patent protection and the restoration of patent protection;
  - (c) revocation of patents;
  - (d) decision on lack of infringement;
  - (e) interpretation of patent descriptions;
  - (f) keeping the registers of patent applications and patents, including matters concerning their maintenance;
  - (g) official information on patent matters.
- (3) The Hungarian Intellectual Property Office shall also have authority in matters deriving from the application of provisions relating to European patent applications and European patents (Chapter X/A) and to international patent applications (Chapter X/B).
- (4) The Hungarian Intellectual Property Office shall also proceed in matters relating to supplementary protection certificates provided for in specific legislation.
- (5) The Hungarian Intellectual Property Office shall conduct proceedings relating to compulsory licences (sections 83/A to 83/H) falling within the scope of Regulation 816/2006/EC [section 33/A(1)] and also in proceedings relating to public health compulsory licences [section 33/B(1)] (sections 83/I to 83/K).

*Application of the general rules of administrative authority proceedings and of electronic administration*

**Article 45**

- (1) Subject to the derogations and additions laid down in this Act, the Hungarian Intellectual Property Office shall proceed in patent matters within its material competence in accordance with the provisions of Act

CL of 2016 on the Code of General Administrative Procedure (hereinafter “the Code of General Administrative Procedure”) and Act CCXXII of 2015 on the general rules on electronic administration and trust services.

(2) In patent matters Section 3, Section 5(1), Section 13(8), Section 14(1), Section 21, Section 26, Section 37(2), Section 46(2), Section 48(1) to (4), Section 62(1), Section 74(1), Section 75, Section 76, Section 87, Section 94(2), Section 97, Section 127(2) and Section 130 of the Code of General Administrative Procedure shall not apply.

(2a) *[repealed]*

(3) In patent matters the provisions of the Code of General Administrative Procedure relating to succession in title shall not apply. In patent matters no summary proceedings shall be conducted and applications in patent matters may not be submitted at government windows<sup>1</sup>.

(4) In the absence of a provision of this Act to the contrary, the Hungarian Intellectual Property Office shall proceed on request in patent matters within its competence.

(5) In the absence of a provision of this Act to the contrary, in patent matters within the competence of the Hungarian Intellectual Property Office requests shall contain:

a) the name and address of the natural person requesting party and, in the case of representation, the name and address of the representative,

b) the name and address of the non-natural person requesting party and, in the case of representation, the name and seat of the representative, and

c) in the case of communication by non-electronic means, the signature of the requesting party or of his representative.

(6) If the applicant or his representative has an obligation to communicate by electronic means with the Hungarian Intellectual Property Office in patent matters within the material competence of the Hungarian Intellectual Property Office or if he wishes to do so, the request shall contain, in addition to the data specified in paragraph (5)

(a) the place, date of birth and mother’s name of the natural person requesting party or representative,

(b) the tax number of the non-natural person requesting party or representative.

(7) Communications with the Hungarian Intellectual Property Office in patent matters within its material competence, with the exception of requesting information and granting such requests, inspection of documents and oral hearings, shall be made in writing only, and by electronic means requiring identification; information, however, shall not be requested and such requests shall not be granted by way of short text messages.

(8) International patent applications may be filed with the Hungarian Intellectual Property Office as a receiving Office by electronic means exclusively via the electronic filing and managing system (hereinafter “e-PCT system”) operated by the World Intellectual Property Organisation. The Hungarian Intellectual Property Office as a receiving Office shall keep contact with applicants and their representatives, who filed their international patent application via the ePCT system, in accordance with the rules of the e-PCT system.

### *Decisions of the Hungarian Intellectual Property Office*

#### **Article 46**

(1) *[repealed]*

(2) In revocation proceedings, in proceedings for a declaration of non-infringement, as well as – in the absence of a provision of this Act to the contrary – in proceedings relating to compulsory licences (sections 83/A to 83/H) falling within the scope of Regulation 816/2006/EC[section 33/A(1)] and in proceedings relating to public health compulsory licences [section 33/B(1)] (sections 83/I to 83/K), the Hungarian Intellectual Property Office shall proceed and take its decisions in boards consisting of three members. It shall give an expert opinion on the interpretation of a patent description also in three-member boards. The boards shall take their decisions by majority vote.

(3) Decisions of the Hungarian Intellectual Property Office shall take effect on service unless a review is requested.

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<sup>1</sup> Translator’s note: Integrated customer service offices of the Hungarian Government.

- (4) Decisions of the Hungarian Intellectual Property Office shall be served by a public notice if
- (a) the address or place of business (establishment, branch of establishment) of the party is unknown,
- or
- (b) the mail is returned with a remark that the whereabouts or the address of the party are unknown.
- (5) The public notice shall be published in the official journal and on the website of the Hungarian Intellectual Property Office on the same day. Decisions served by a public notice shall be considered delivered on the fifteenth day after the publication of the notice. In any other matters pertaining to the service of decisions by a public notice the provisions of the Act on the general rules of administrative authority proceedings and services shall apply with the proviso that posting shall mean publication of the public notice.
- (6) Where the provisions of Article 51(1) apply, all decisions shall be delivered to the representative.
- (7) The provisions of the Code of General Administrative Procedure related to the publication of decisions shall not apply in patent matters.

#### *Establishment of facts*

#### **Article 47**

(1) In procedures before it, the Hungarian Intellectual Property Office shall examine the facts of its own motion, with the exception set out in paragraph (2), it shall not be restricted in such examination to the allegations of the parties.

(2) In revocation procedures, in procedures for a decision on lack of infringement and in procedures laid down in Articles 83/E to 83/G, the Hungarian Intellectual Property Office shall examine the facts within the framework of the request, on the basis of the allegations and statements of the parties and data verified by them.

(3) The decisions of the Hungarian Intellectual Property Office may only be based on facts or evidence on which the parties concerned have had an opportunity to present their comments; however, facts or evidence not submitted by the party in due time may be left out of consideration.

(3a) In revocation procedures, in procedures for a decision on lack of infringement, in procedures laid down in Articles 83/B to 83/D and in procedures laid down in Articles 83/F and 83/G, parties shall file their submissions and attachments thereto in one copy with the Hungarian Intellectual Property Office if they use electronic means of communication, otherwise they shall file a copy for each party with opposing interests in the procedure plus one additional copy. If several parties have a common representative, for this person one copy shall suffice; in the case of a patent granted for a service invention the inventors shall be considered parties with opposing interests when determining the necessary number of copies of the request for revocation. If a party filed the request or its attachments in a lesser number of copies than prescribed, and this irregularity is not rectified in accordance with paragraph (4), the request for revocation, the request for a decision on lack of infringement, the requests under Articles 83/B(2), 83/F(1) and 83/G(1) shall be considered withdrawn and the statement of the patentee shall be considered not to have been submitted.

(4) If the irregularities of a request or of its attachments submitted in patent matters can be rectified, the party shall be invited to rectify the irregularities of the submission or to submit statements, and at the same time be warned of the legal consequences of non-compliance. If, in spite of the rectification or statements, the request does not meet the relevant requirements, and this Act does not make provision for other legal consequences, the request shall be rejected. If the party does not respond to the invitation within the prescribed time limit, the request – if this Act does not make provision for other legal consequences – shall be considered withdrawn. The Hungarian Intellectual Property Office may *ex officio* arrange for the rectification of the irregularities of the abstract or the rewriting thereof in accordance with the requirements.

(5) [repealed]

#### *Time limits*

#### **Article 48**

(1) The time limits prescribed by this Act shall not be extended. Failing to comply with such time limits shall involve legal consequences without notice.

(2) Where this Act does not prescribe any time limit to rectify the irregularities or to submit a statement, a time limit of at least two months, but not more than four months, shall be fixed which may be extended, on request before the expiration of the period, by at least two months, but not more than four months. In particularly justified cases, more extensions of the time limit and an extension of the time limit of more than four months, but not more than six months may also be granted.

(3) In the event of failing to comply with a time limit referred to in paragraph (2), continuation of the procedure may be requested within two months from the date of notification of the decision taken because of the failure.

(4) The omitted act shall be completed simultaneously with the filing of the request for continuation of the procedure.

(5) If the Hungarian Intellectual Property Office admits the request for continuation of the procedures, the acts completed by the party in default shall be considered to have been performed within the time limit not complied with and the decision taken because of the failure shall be revoked in whole or in part or modified as necessary.

(6) Continuation of the procedure may not be requested in revocation procedures, in procedures for a decision on lack of infringement and in procedures provided for in Articles 83/E to 83/G.

(7) The time limits prescribed for administration by the Code of General Administrative Procedure shall not apply to proceedings in patent matters, neither shall apply the provisions of the Code of General Administrative Procedure prescribing time limits for other measures of the proceeding authority.

(8) In patent matters the filing date of documents submitted by post is the date on which the document was delivered to the Hungarian Intellectual Property Office. Documents delivered after the time limit set by the Hungarian Intellectual Property Office shall be deemed submitted in due time if the document was posted by registered mail before the expiration of the time limit, unless the document was delivered later than two months after the expiration of the time limit.

### *Restitutio in integrum*

#### **Article 49**

(1) In patent matters – unless excluded under paragraph (6) or (7) – a request for *restitutio in integrum* may be submitted within two months of the unobserved date or of the last day of the unobserved time limit, if the failure occurred through no fault of the party. The request must render probable the grounds of failing to comply and that the failure occurred without fault.

(2) Where the failure to comply became known to the party subsequently or the cause thereof was removed subsequently, the time limit shall be reckoned from the date on which the failure to comply became known or the cause thereof was removed. The request for *restitutio in integrum* shall only be admissible within twelve months of the date not complied with or the last day of the time limit not complied with.

(3) In the event of failing to comply with the time limit of twelve months fixed by Article 4 of the Paris Convention for the Protection of Industrial Property for filing the application necessary for claiming priority or prescribed for claiming internal priority [Article 61(1)(c)], a request for *restitutio in integrum* shall be admissible within two months of the last day of that time limit.

(4) Where a time limit is not complied with, the omitted act must be carried out simultaneously with the filing of the request for *restitutio in integrum*.

(5) If the Hungarian Intellectual Property Office grants *restitutio in integrum*, the acts carried out by the party in default shall be considered to have been performed within the time limit not complied with; a hearing held on the date not complied with shall be repeated where necessary. The decision taken as a result of the failure shall be revoked in whole or in part, modified or maintained as necessary or depending on the outcome of the new hearing.

(6) *Restitutio in integrum* shall be excluded in the event of failing to comply with the following time limits:

(a) time limits fixed for filing the request for *restitutio in integrum* and the request for continuation of the procedure [paragraphs (1) to (3) and Article 48(3)];

(b) time limits fixed for filing and correcting the declaration of priority [Article 61(2) and (6)].

(7) *Restitutio in integrum* shall not be admissible with respect to time limits the consequences of failing to comply with which may be averted by a request for continuation of the procedure [Article 48(3) to (6)].

*Suspension of the procedure***Article 50**

(1) Where legal proceedings are instituted with respect to the entitlement to file a patent application or the right to a patent, the patent procedure shall be suspended until the court decision becomes final. If deciding on the merits of a patent case depends on a previous consideration of such a matter in which the procedure falls within the competence of another authority, the Hungarian Intellectual Property Office shall suspend the patent procedure.

(2) In the event of the death of a party or the dissolution of a legal entity, the procedure shall be suspended until the successor in title is communicated and his claim justified. If the successor in title is not communicated within a reasonable time according to the circumstances of the case, the Hungarian Intellectual Property Office shall terminate the procedure or shall decide on the basis of the material at its disposal.

(3) The Hungarian Intellectual Property Office shall suspend the patent procedure at the request of the party or *ex officio* if the case cannot be decided on solid grounds without a decision taken in another, closely connected procedure under its own competence.

(4) Proceedings for granting a patent may not be stayed at the request of the applicant, except where the provisions of paragraph (1) or (3) would apply.

(5) The suspension of the procedure shall interrupt all time limits, and the time limits shall recommence from the termination of the suspension.

(6) Even in case of suspension of the procedure, the Hungarian Intellectual Property Office may decide that the suspension shall not affect the ongoing procedural actions and the time limits determined for performing thereof.

*Representation***Article 51**

(1) In the absence of a provision of an international treaty to the contrary, foreign applicants shall be represented by an authorised patent attorney or an attorney-at-law in all patent matters within the competence of the Hungarian Intellectual Property Office.

(2) A power of attorney shall be made in writing. As to the validity of a power of attorney given to a patent attorney, an attorney-at-law, a patent attorneys' office, a patent attorneys' partnership or a law office – either in the country or abroad – the signature by the mandator shall be sufficient for it to be valid. The power of attorney may also be a general authorization, on the basis of which the representative can proceed in all patent cases under the competence of the Hungarian Intellectual Property Office, to which the mandator is a party. A power of attorney given to a law office, a patent attorneys' office or a patent attorneys' partnership shall be deemed to be a power of attorney given to any person who certifies that he/she works within the framework of the office or partnership.

(3) The Hungarian Intellectual Property Office shall appoint a trustee from among the patent attorneys and attorneys-at-law:

(a) for unknown heirs or for a party whose whereabouts are unknown, at the request of the opposing party, or

(b) for a foreign party not having an authorized representative, at the request of the opposing party.

(4) Paragraph 1 and paragraph 3(b) shall not apply if the foreigner is a natural person or a legal entity whose permanent residence or domicile is in the territory of a Member State of the European Economic Area.

(5) Where the provisions of paragraph (3)(b) and paragraph (4) may not be applied and the foreigner does not fulfil the provision of paragraph (1), the Hungarian Intellectual Property Office shall apply the provisions of Article 68 (2)–(4) *mutatis mutandis*, except that it shall decide on the request on the basis of the material at its disposal if the foreigner participating in the procedure as an opposing party does not fulfil the provisions of paragraph (1).

(6) The party who requested the appointment shall be required to advance the costs and the remuneration of the trustee.

(7) For the purposes of the Act on the general rules on electronic administration and trust services and of the provisions of this Act relating to electronic administration, patent attorneys, patent attorney offices as well as patent attorney companies shall qualify as legal representatives in patent matters.

### *Use of languages*

#### **Article 52**

(1) The language of patent procedure shall be Hungarian, the patent description with the claims, any text matter of the drawings and the abstract – in the absence of a provision of this Act to the contrary – shall be in Hungarian.

(2) In patent matters, documents in foreign languages may also be filed; however, the Hungarian Intellectual Property Office may require that a translation into Hungarian be filed. The filing of certified translations or legalised documents may be required only if there is reasonable doubt as to the accuracy of the translation or the veracity of any fact contained in the foreign document.

(3) Filing of the Hungarian translation of the priority document [Article 61(4)] may only be required if the validity of the priority claim can influence the decision on the patentability of the invention. In place of filing the translation of the priority document, the applicant may declare that the patent application is nothing else than the translation of the foreign application. The provisions of Article 61(5) shall also apply to the translation of the priority document.

### *Access to files*

#### **Article 53**

(1) Prior to the publication of the patent application, only the applicant, his representative, the expert, or the body called upon to give an expert opinion, furthermore – if it is necessary for performing their tasks prescribed in an Act – the court, the prosecution service or the investigation authority may inspect the files. The inventor may inspect the files even if he is not the applicant. After publication – subject to the exceptions under paragraph (2) – anyone may inspect the files of the patent application.

(1a) Inspection of files which may be inspected at request shall be ensured by the Hungarian Intellectual Property Office on condition that the person requesting it appears in person.

(2) The following shall also be excluded from inspection even after publication:

(a) documents used for the preparation of decisions and expert opinions that were not communicated to the parties;

(b) documents indicating the identity of the inventor if the inventor has requested that his name not be made available to the public;

(c) personal data not indicated in the Patent Register and not communicated in giving official information, unless the person concerned explicitly approved the inspection thereof or a third person is allowed access to documents containing personal data pursuant to the provisions of the Code of General Administrative Procedure.

(3) The Hungarian Intellectual Property Office shall issue copies of documents that may be inspected for payment of a fee, if they were not requested by the court, prosecution service or investigation authority.

(4) Procedures in patent matters shall be public only if there is an opposing party participating.

(5) If national defence or national security so require, the President of the Hungarian Intellectual Property Office may classify a patent application in a procedure under specific legislation and on the proposal of the minister competent under the provisions of the specific legislation.

(6) On the basis of obligations arising from international treaties, the President of the Hungarian Intellectual Property Office shall classify the patent application without following the procedure mentioned in paragraph (5).

(7) If the patent application has been classified, the applicant and the inventor remain entitled to access their patent application even in the absence of an authorisation for use or acquaintance of its content.

(8) If the patent application has been classified, no information may be given to the public thereof under Article 56 and Chapters X/A–X/B.

(9) If the patent application has been classified, the minister proposing the classification – with the exception in paragraph (10) – shall conclude an exploitation contract with the applicant ensuring exclusive rights of exploitation in favour of the ministry headed by him, or in favour of the ministry headed by the minister responsible for the organisation of public administration in case of a minister without portfolio, within a reasonable period of time following the grant of the patent. The exploitation contract expires when the patent protection terminates or, if it is earlier, when the patent is no longer classified. The licensee shall be responsible for the maintenance of the patent protection. The fee payable for the exploitation licence shall be commensurate with the royalties that are common under the licensing conditions in the technical field of the subject matter of the invention. It shall be stipulated in the contract that this commensurate amount also shall be paid even if the licensee does not begin exploitation within a reasonable period of time under the given circumstances. The patentee is also entitled to the fee for the period of time between the filing date of the application and the date of grant of the patent.

(10) In the case of patent applications classified under paragraph (6), the provisions of paragraph (9) shall not apply.

(11) Where an international agreement allows it explicitly, prior to the classification of patent applications under paragraph (6), the President of the Hungarian Intellectual Property Office shall invite the applicant to waive his rights to claim compensation deriving from the classification of the application in a written declaration. If the applicant does not waive his rights, or does not reply to the invitation within the prescribed time limit, the patent application shall be considered withdrawn.

(12) The Hungarian State shall only compensate applicants for the classification of patent applications under paragraph (6) if the classification was initiated by the Hungarian State including the case when it requested the prolongation of the classification or when it hindered the filing of the application outside the European Atomic Energy Community.

(13) If the classified patent application is rejected by the Hungarian Intellectual Property Office, the President of the Hungarian Intellectual Property Office shall notify the competent minister thereof without delay, and at the same time he shall request the competent minister to make a proposal either for the annulment of the classification of the invention described in the rejected application or for the maintenance of the classification. The President of the Hungarian Intellectual Property Office shall, on the basis of the competent minister's proposal, make a decision on the annulment or the maintenance of the classification. In case of the maintenance of the classification, the Hungarian State shall compensate the applicant for the classification of the invention.

### *Legal remedies*

#### *Article 53/A*

(1) Appeals, administrative court actions, supervisory procedures, or interventions or actions by the prosecutor under the Act on the prosecution service shall not be admissible with regard to the decisions of the Hungarian Intellectual Property Office.

(2) The decisions of the Hungarian Intellectual Property Office in patent matters shall be reviewed by the court in non-contentious civil procedure laid down in Chapter XI.

(3) In the absence of a provision of this Act to the contrary, the Hungarian Intellectual Property Office may withdraw or modify its decisions – terminating the procedure – taken in the following matters only if a request for review is made and only until such request is transmitted to the court:

- (a) grant of patents;
- (b) decision on the termination of patent protection and the restoration of patent protection;
- (c) revocation of patents;
- (d) decision on lack of infringement;
- (e) grant, modification and review of compulsory licenses to which Regulation 816/2006/EC [Article 33/A(1)] applies, as well as access to books and records kept by the licensee (Articles 83/A to 83/G);
- (f) grant of public health compulsory licences;
- (g) publication of the translation of the claims of the published European patent application, filing of the translation of the text beyond the claims of a European patent and correction of the translation.

(4) In the absence of a provision of this Act to the contrary, the Hungarian Intellectual Property Office may withdraw or modify its decision – terminating the procedure – taken in the matters referred to in paragraph

(3)(c) to (e) on the basis of a request for review only if it establishes that its decision infringes the law or if the parties request unanimously the modification or withdrawal of the decision.

(5) In cases where no opposing parties are involved, the Hungarian Intellectual Property Office may – according to the request for review – withdraw or modify the decisions defined in Article 85(1)(b) to (e) if the decision does not infringe the law, however the Hungarian Intellectual Property Office agrees with the content of the request for review.

(6) Decision based on a request for review shall be communicated to the requester and to whom the decision concerned by the request for review was communicated.

(7) The same legal remedy shall apply against the modifying decision as against the modified decision.

#### *Judicial enforcement*

##### **Article 53/B**

(1) The provisions of the Code of General Administrative Procedure relating to enforcement shall apply to orders of the Hungarian Intellectual Property Office imposing a procedural fine.

(2) Decisions of the Hungarian Intellectual Property Office on the apportionment of costs shall be enforced by applying the provisions of Act LIII of 1994 on judicial enforcement.

#### *Costs and fees*

##### **Article 53/C**

(1) Exemption from the payment of costs and fees may not be accorded in patent matters.

(2) Apart from the obligation to pay fees laid down by this Act, fees for administrative services shall also be paid in patent matters – the amount of which is defined by the law on fees for administrative services in industrial property procedures and which shall be paid pursuant to detailed rules laid down in the law on fees for administrative services in industrial property procedures – for filing the following requests:

(a) requests for amendment, extension of time limits, and requests for *restitutio in integrum* or continuation of the procedure;

(b) requests for recording succession in title, and exploitation licence, requests for constitution of right of pledge.

(3) In justified cases, the Hungarian Intellectual Property Office may reduce the amount of the fee of the professional representative to be borne by the losing party if it is not commensurate with the actual representation performed. In this case, the Hungarian Intellectual Property Office shall proceed by applying the provisions on the fees and expenses of attorneys at law and patent attorneys applicable in court proceedings *mutatis mutandis*.

#### *Electronic administration and official services*

##### **Article 53/D**

(1) In patent matters the Hungarian Intellectual Property Office shall provide electronic administration services in accordance with the Act on the general rules on electronic administration and trust services and with the provisions of this Act.

(2) In patent matters the economic organisation and the legal representative of a party shall not be obliged to ensure electronic administration.

#### *Application of the Patent Law Treaty*

##### **Article 53/E**

(1) In case of conflict between the Patent Law Treaty and Part II of this Act, the provisions more favourable to the applicant and the patentee shall apply, except where otherwise provided by the Patent Law Treaty.

(2) If the document filed in a patent matter satisfies the requirements prescribed by the Patent Law Treaty, the requirements – of the same subject-matter – laid down in this Act or pursuant to this Act shall be considered to have been met, except for the requirements prescribed by this Act or by other legislation pursuant to this Act in accordance with the authorization under the Patent Law Treaty.

### ***Chapter VIII***

## ***PATENT REGISTER, INFORMATION TO THE PUBLIC***

### ***Patent Register***

#### ***Article 54***

(1) The Hungarian Intellectual Property Office shall keep a Patent Register of published patent applications and patents in which all facts and circumstances concerning patent rights shall be recorded in accordance with Article 55. European patents (Chapter X/A) shall be entered in a separate part of the Patent Register.

(2) The Patent Register shall contain, in particular, the following entries:

(a) registration number of the patent;

(b) reference number;

(c) title of the invention;

(d) name (official designation) and address (place of business) of the patentee;

(e) name and place of business of the representative;

(f) name and address of the inventor;

(g) filing date of the application;

(h) priority data;

(i) date of the decision on the grant of the patent;

(j) amount of the annual fees paid and date of payment;

(k) legal ground and date of the termination of protection and limitation of the patent;

(l) exploitation and compulsory licenses;

(m) the fact that the right to a patent or the rights conferred by a patent belong to assets existing upon trust management.

(3) The Patent Register authentically attests the existence of the rights and facts recorded therein. In the absence of proof to the contrary, the rights and facts recorded in the Patent Register shall be presumed to be existent. The burden of proof against the data recorded in the Patent Register shall be on the person who disputes their correctness or authenticity.

(4) Any right relating to patent protection may be invoked against a third party who acquired his right in good faith and for a consideration if it is recorded in the Patent Register.

(5) Any person may have access to the Patent Register; the Hungarian Intellectual Property Office shall provide electronic access thereto on its website. Any person may ask for a certified copy of the data recorded in the Patent Register on payment of a fee.

### ***Entries in the Patent Register***

#### ***Article 55***

(1) The Hungarian Intellectual Property Office shall make entries in the Patent Register on the basis of its own decisions, the decisions of other authorities or court decisions; it also shall record in the Patent Register. With respect to the entries made on the basis of the decisions listed in Article 85(1) the Patent Register shall contain the date when such decisions have become final. If a request for review was submitted against any decision listed in Article 85(1), this fact, as well as that such decision is not final, shall also be recorded.

(2) The Hungarian Intellectual Property Office shall decide on taking note of and recording rights and facts relating to patent protection – except for the facts occurred in patent procedures – on the basis of a request

submitted in writing; notifications of changes in the data of the party received from other authorities shall not qualify as requests submitted in writing. An official document or a private document providing sufficient evidence shall be attached to such request. Where requests are submitted to the same case in a way that their fulfilment would exclude each other, the requests shall be dealt with in the order of their date of receipt.

(2a) The Hungarian Intellectual Property Office shall – on request – modify the entry in the Patent Register relating to the inventor or the shares of authorship on the basis of a unanimous declaration of all of the inventors recorded in the Patent Register and all of the persons making the request, or on the basis of the final court decision attached to the request.

(2b) Paragraph (2a) shall apply before the publication of the patent application, with the exception that instead of modifying the entry in the Patent Register the modification shall be transferred to the files of the patent application by the Hungarian Intellectual Property Office.

(3) A request shall be inadmissible if it is based on a document which is invalid due to formal irregularities or which lacks an official authentication required by law, or if it is clear from the contents of the document that the legal statement included therein is invalid.

(3a) A request for recording succession in title shall be inadmissible where the right to a patent or the rights conferred by a patent have been transferred under a trust management contract, which has not been signed with a trust management company, and the certificate of registration provided by the law on trust management companies and their activities has not been annexed to the request.

(4) [*repealed*]

#### *Information to the public*

#### **Article 56**

The official journal of the Hungarian Intellectual Property Office is the Gazette of Patents and Trademarks, which shall contain, in particular, the following data and facts relating to patent applications and patents:

(a) [*repealed*]

(b) on publication of the patent application, the name and address of the applicant and the representative, the reference number of the application, the filing date and the date of priority where the latter is different, the number of the international publication in the case of international applications and the title of the invention, the name of the inventor, the international classification code of the invention, the abstract with the characteristic figure, as well as a statement whether publication is to take place after the preparation of the search report;

(c) after the grant of patent, the registration number, the name (official designation) and address (place of business) of the patentee, name and place of business of the representative, the reference number, the filing date of the application, the date of priority, the title of the invention, the international classification code of the patent, the name and address of the inventor and the date of the decision on granting the patent;

(d) legal ground and date of the termination of patent protection, limitation of the patent, and the restoration of patent protection.

#### **Article 56/A**

Official information on European patent applications and European patents as well as on international patent applications provided for in Chapters X/A and X/B shall also be published in the Gazette of Patents and Trademarks.

### **Chapter IX**

#### **PATENT GRANTING PROCEDURE**

##### *Filing of a patent application and its requirements*

#### **Article 57**

(1) The procedure for the grant of a patent shall begin with the filing of a patent application with the Hungarian Intellectual Property Office.

(2) A patent application shall contain a request for the grant of a patent, a description of the invention with one or more claims, an abstract, as well as, where necessary, drawings and other relevant documents.

(3) In addition to the data specified in Article 45(5) and (6), the request for the grant of a patent shall contain the name and address of the inventor, or an indication that the inventor requests that his name and address not be indicated in the patent documents, and the inventor gives his name and address on a separate sheet.

(3a) In all other respects, patent applications shall be filed in compliance with the detailed requirements laid down in the law on the detailed formal requirements of patent applications and the law on the electronic filing of industrial property applications.

(4) A patent application shall be subject to the payment of a filing fee and a search fee determined by the law on fees for administrative services in industrial property procedures; the fees shall be paid within two months after the date of filing.

(5) Where the attachments to the patent application have been prepared in a foreign language other than English, the patent description with the claims, the abstract and the drawings shall be filed in Hungarian within four months after the date of filing. If the attachments to the application have been drawn up in the English language, the patent description with the claims, the abstract and the drawings shall be filed in the Hungarian language

(a) within twelve months from the date of filing of the application, or

(b) within sixteen months from the date of the earliest priority date,

whichever expires earlier.

(6) The applicant may withdraw the patent application until its publication, in compliance with the provisions of Article 41.

#### **Article 57/A**

[repealed]

#### **Date of filing**

#### **Article 58**

(1) The filing date of an application shall be the date on which the application filed with the Hungarian Intellectual Property Office contains at least:

(a) an indication that a patent is sought,

(b) the name of the applicant, his address or seat or secure delivery service address, in the case of representation the name of the representative, his address or seat or secure delivery service address, or any other data making it possible to contact the applicant, and

(c) a description or a document that can be regarded as a description, even though it does not comply with other requirements, or instead a reference to an earlier application.

(2) The indications referred to in paragraph (1)(a) and (b) shall also be given in Hungarian for according a date of filing.

(3) For according a date of filing, the reference to an earlier application shall also be indicated in Hungarian, the number of the earlier application shall be given and the industrial property authority to which it was filed shall be identified. It shall appear from the reference that it replaces the filing of the description and the drawings for the purposes of according a date of filing.

(4) If in place of the description a reference is made to an earlier application for according a date of filing, a copy of the earlier application shall be filed within two months from receipt of the application containing this reference and – if it was made in a foreign language – the Hungarian translation thereof. The provisions of Article 61(5) shall also apply *mutatis mutandis* to this copy and translation.

#### **Unity of invention**

### **Article 59**

A patent application may seek patent protection for one invention only or for a group of inventions so linked as to form a single general inventive concept.

#### *Disclosure of the invention, the claims and the abstract*

### **Article 60**

(1) A patent application shall disclose the invention in a manner sufficiently clear and detailed for it to be carried out by a person skilled in the art on the basis of the description and the drawings. The industrial applicability of a sequence or a partial sequence of a gene shall be disclosed in the patent application.

(2) If an invention involves the use of or concerns biological material which is not available to the public and which cannot be disclosed as required by paragraph (1), the invention shall be considered disclosed in a sufficient and detailed manner prescribed by this Act, provided that

(a) the biological material has been deposited in compliance with the provisions of Article 63;

(b) the application as filed contains such relevant information as is available to the applicant on the characteristics of the biological material deposited;

(c) the patent application states the name of the depositary institution and the accession number.

(3) The claims shall define clearly the scope of the protection sought, in accordance with the description.

(4) The abstract shall merely serve for use as technical information and may not be taken into account either for the purpose of interpreting the scope of the protection sought or for the purpose of defining the state of the art under Article 2(3).

#### *Priority*

### **Article 61**

(1) The date establishing priority shall be

(a) generally, the date of filing of the patent application (application priority);

(b) in the cases defined by the Paris Convention for the Protection of Industrial Property, the date of filing of the foreign application (convention priority);

(c) the date of filing of a previously filed, pending and not yet published patent application for the same subject matter, which is not earlier than 12 months prior to the current filing, provided that it has not served as a basis for claiming a right of priority (internal priority).

(2) Convention priority shall be claimed within sixteen months from the date of the earliest priority claimed by making a declaration to this effect. Correction of the declaration of priority may also be requested within this time limit. Where the correction would affect the earliest priority date claimed, the sixteen-month time limit for correction shall be reckoned from the corrected date of the earliest priority claimed provided that it expires first. Correction of the declaration of priority may be requested in any case within four months from the date of filing of the application.

(3) Paragraph (2) shall not apply after the applicant's having requested publication of the patent application at an earlier date [Article 70(2)], except where this request is withdrawn subsequently still before the technical preparations for publishing the patent application are completed.

(4) The document establishing convention priority (priority document) shall be filed within sixteen months from the date of the earliest priority claimed.

(5) The priority document – the copy of the foreign application – shall be deemed to be filed if it is available to the Hungarian Intellectual Property Office in any other way and if it is considered as an annex of the patent application, without filing it separately, on the basis of an international treaty or a decision of the President of the Hungarian Intellectual Property Office taken with regard to the international cooperation and published in the official journal of the Hungarian Intellectual Property Office.

(6) Internal priority shall be claimed within four months after the filing of the application. If internal priority is claimed, the previous patent application shall be considered withdrawn.

(7) Where appropriate, in a patent application multiple priorities may be claimed for any of the claims.

(8) If one or more priorities are claimed with respect to a patent application, the right of priority shall cover only those elements that are disclosed by the application establishing the given priority in accordance with Article 60(1) and (2).

(9) Convention priority may also be claimed, under the conditions defined by the Paris Convention, if the foreign application has been filed in a Member of the World Trade Organization which is not party to the Paris Convention or, subject to reciprocity, in any other State. In the matter of reciprocity, the opinion of the President of the Hungarian Intellectual Property Office shall be decisive.

*Derivation from utility model application*

**Article 62**

(1) Where the applicant has already filed a utility model application at an earlier date, he may, in his declaration of priority filed within two months after the date of filing of a patent application for the same subject matter, claim the filing date of the utility model application and the right of priority relating to such application (derivation).

(2) Derivation of a patent application shall be admissible within three months from the date when the decision on the grant of utility model protection becomes final, but not later than 20 years from the filing date of the utility model application.

(3) Derivation shall not be admissible if the utility model application has been derived from a European patent application or a European patent.

*Deposit of and access to a biological material*

**Article 63**

(1) If an invention involving the use of or concerning biological material which is not available to the public cannot be disclosed in the patent application as required in Article 60(1), it must be proved that the biological material has been deposited no later than the date of filing of the patent application under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

(2) [*repealed*]

(3) The proof referred to in paragraph (1) shall be submitted within a period of sixteen months after the date of the earliest priority.

(4) Access to the deposited biological material shall be provided through the supply of a sample:

(a) up to the publication of the patent application, to those persons who are authorised to inspect the files under the provisions of Article 53(1);

(b) between the publication of the application and the granting of the patent, to anyone requesting it or, if the applicant so requests, only to an independent expert;

(c) after the patent has been granted, and notwithstanding revocation or cancellation thereof, to anyone requesting it.

(5) The person to whom a sample has been supplied may not make the sample or any material derived from it available to third parties before the termination of the patent granting procedure or before the termination of definitive patent protection and, with the exception of a holder of a compulsory license, he may use the sample or any material derived from it only for experimental purposes, unless the applicant or the patentee expressly waives the prescription of such obligation. A material is deemed to be derived if it has those characteristics of the deposited biological material, which are essential to carry out the invention.

(6) At the applicant's request, where an application is refused, withdrawn or considered withdrawn, access to the deposited material shall be limited to an independent expert for 20 years from the date of filing of the patent application. In that case, the provisions of paragraph (5) shall apply.

(7) The applicant's requests referred to in paragraph (4)(b) and in paragraph (6) may only be submitted up to the date on which the technical preparations for publishing the patent application are deemed to have been completed.

(8) If the biological material deposited in accordance with the provisions of paragraphs (1) to (7) ceases to be available from the recognised depositary institution, a new deposit of the material shall be permitted on the same terms as those laid down in the Budapest Treaty.

(9) Any new deposit shall be accompanied by a statement of the depositor certifying that the newly deposited biological material is the same as that originally deposited.

(10) The biological material may be deposited by a person other than the applicant, provided that the name and address of the depositor are stated in the patent application and a declaration is submitted that the depositor has authorised the applicant to refer to the deposited biological material in the patent description and has given his unreserved and irrevocable consent to the biological material being made available to the public in accordance with paragraphs (1) to (9).

#### *Declaration and certification of exhibition*

#### **Article 64**

(1) The applicant may request under Article 3(b) that the display of his invention at an exhibition shall not be taken into consideration when the state of the art is determined, if

(a) he files a statement to this effect within two months after the date of filing of the patent application and

(b) he files within four months after the date of filing of the patent application, a certificate issued by an authority responsible for the exhibition attesting to the display and date of the exhibition.

(2) The certificate must be accompanied by a description and, if necessary, drawings bearing the authentication of the authority responsible for the exhibition.

(3) The certificate may only be issued during the period of the exhibition and only while the invention or its disclosure can be seen at the exhibition.

#### *Information on applications related to atomic energy*

#### **Article 64/A**

In accordance with the relevant provisions of the Treaty of Rome Establishing the European Atomic Energy Community, the Hungarian Intellectual Property Office shall communicate to the European Commission, together with the name, address or seat of the applicant and the inventor

(a) the content of national patent applications which relate expressly to atomic energy, and

(b) the existence or – at the request of the European Commission – the content of such national patent applications, which do not expressly belong to the field of atomic energy but directly relate to the development of the use of atomic energy in the Community and is of fundamental significance therefor.

#### *Examination on filing*

#### **Article 65**

Following the filing of a patent application, the Hungarian Intellectual Property Office shall examine whether

(a) the application satisfies the requirements for according a date of filing as prescribed in Article 58,

(b) the filing fee and the search fee pursuant to Article 57(4) have been paid,

(c) the description, the claims, the abstract, and the drawings, if any, filed as attachments to the patent application, are in the Hungarian language.

#### **Article 66**

(1) If a date of filing cannot be accorded, the applicant shall be invited to rectify the irregularities within two months.

(2) If the applicant complies with that invitation within the specified time limit, the date of receipt of the rectification shall be accorded as the date of filing. Failing to comply with the said invitation, the document received shall not be considered to be a patent application and the procedure shall be terminated.

(3) In the absence of indications permitting contacts with the applicant no invitation to rectify the irregularities shall be issued, and the time limit of two months for rectification of the irregularities shall be reckoned from the receipt of the application.

(4) If parts of the description or drawings referred to in the description or in the claims appear to be missing from the application, the applicant shall be invited to rectify this irregularity within two months. The applicant may not invoke the omission of such an invitation.

(5) If the applicant files the missing parts of the description or the missing drawings later than the date of filing, but within two months from this date or from the invitation issued under paragraph (4), the date of receipt of the rectification shall be considered as the date of filing and the date of filing shall be modified accordingly.

(6) If the applicant rectifies the irregularities within the period under paragraph (5), and the application claims the priority of an earlier application which contains the missing parts of the description or the missing drawings, the date of filing shall remain the date on which the requirements laid down in Article 58(1) to (3) were fulfilled, provided that the applicant files, within the period under paragraph (5)

(a) a copy of the earlier application,

(b) where the earlier application is in a foreign language, the Hungarian translation thereof,

(c) an indication as to where the missing parts of the description or the missing drawings are contained in the earlier application, or in the translation thereof.

(7) The requirements laid down in paragraphs (6)(a) and (b) shall be considered to have been fulfilled where the provisions of Article 61(5) apply.

(8) If the applicant fails to comply with the requirements referred to in paragraph (6) within the prescribed time limit, the date on which the missing parts of the description or the missing drawings were filed shall be considered as the date of filing and the date of filing shall be modified accordingly.

(9) If the applicant fails to file the missing parts of the description or the missing drawings within the time limit under paragraph (4) or (5), or withdraws under paragraph (11) any missing part of the description or missing drawing filed under paragraph (5), any references to this part or drawing shall be deemed to have been deleted from the description or the claims by the applicant. The applicant shall be informed accordingly.

(10) The applicant shall be notified of the accorded date of filing or the modification thereof.

(11) If, within one month of the notification concerning the modification of the accorded date of filing under paragraph (5) or (8), the applicant withdraws the missing parts of the description or the missing drawings filed as rectification of the irregularities, the modification of the filing date shall be deemed not to have been made. The applicant shall be informed accordingly.

(12) If the filing fee and the search fee have not been paid or the patent description with the claims, the abstract and the drawings have not been filed in the Hungarian language, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities within the period specified by this Act [Article 57(4) and (5)]. Failing to comply with the said invitation, the application shall be considered withdrawn.

## **Article 67**

*[repealed]*

### *Examination as to formal requirements*

## **Article 68**

(1) If a patent application satisfies the requirements examined under Article 65, the Hungarian Intellectual Property Office shall examine whether the formal requirements of Article 57(2) to (3a) have been met.

(2) Where the application does not comply with the requirements examined under paragraph (1), the applicant shall be invited to rectify the irregularities.

(3) The patent application shall be rejected if, in spite of rectification or comments, it still does not comply with the requirements under examination. An application may be rejected only for grounds precisely and expressly stated in the invitation.

(4) Where the applicant does not reply to the invitation within the fixed time limit, the patent application shall be considered withdrawn.

### *Novelty search*

#### **Article 69**

(1) If a patent application satisfies the requirements laid down in Article 65(a) and (b) and the applicant (a) filed the patent description with the claims, the abstract and the drawings, where necessary, in the Hungarian language, or

(b) submits a request pursuant to Article 69/A(13), the Hungarian Intellectual Property Office shall carry out a novelty search and shall draw up a search report on the basis of the claims, with due regard to the description and any drawings.

(1a) If the patent application – with regard to all the claims or certain claims – is unsuitable for a proper novelty search, the search report shall only contain a statement to it and the reasons thereof. If the patent application also contains claims suitable for novelty search, the Hungarian Intellectual Property Office shall prepare a partial search report with regard to such claims.

(1b) If the patent application does not satisfy the requirements of unity of the invention (Article 59), the Hungarian Intellectual Property Office shall prepare a partial search report concerning the invention mentioned in the first place among the claims, or concerning the inventions constituting a uniform group with this invention as laid down in Article 59. The Hungarian Intellectual Property Office shall invite the applicant for the division of the patent application during the substantive examination (Article 76).

(2) The search report shall mention those documents and data, which may be taken into consideration in deciding whether the invention to which the patent application relates is new and involves an inventive activity.

(3) The search report together with copies of any cited document shall be transmitted to the applicant.

(4) Information shall be published in the official journal of the Hungarian Intellectual Property Office on the search carried out simultaneously with the publication of the application, or separately if the search report is available at a later date.

#### **Article 69/A**

(1) At the request of the applicant, the Hungarian Intellectual Property Office shall draw up a search report supplemented with a written opinion.

(2) The written opinion – containing also reasons – is a preliminary establishment whether the invention, taking into account the documents and the information cited in the search report, appears to meet the requirements of novelty, inventive activity and industrial application.

(3) The request for a search report supplemented with a written opinion shall be filed within ten months from the accorded filing date.

(4) A fee fixed by the law on fees for administrative services in industrial property procedures shall be paid for a search report supplemented with a written opinion.

(5) The request for the search report supplemented with a written opinion shall be rejected if it does not comply with the requirement under paragraph (3).

(6) The Hungarian Intellectual Property Office shall draw up the search report supplemented with a written opinion – with the exceptions defined in paragraph (11) and (16) – on the basis of the description, claims and drawings at its disposal on the last day of the fourth month from the filing of the request to this effect, and send it to the applicant within six months from the filing of the request for a search report supplemented with a written opinion.

(7) On request, the Hungarian Intellectual Property Office shall refund the fee for the search report supplemented with a written opinion if

(a) the applicant withdraws the patent application within four months from the filing of the request for the search report supplemented with a written opinion;

(b) the Hungarian Intellectual Property Office rejects the patent application within the time limit in point (a);

(c) the patent application is considered withdrawn for a reason occurring within the time limit in point (a);

(d) the search report supplemented with a written opinion was mailed after the last day of the sixth month from the filing date of the request not because the Hungarian Intellectual Property Office admitted a request for *restitutio in integrum* concerning a failure to comply with a time limit in paragraph (3).

(8) At the request of the applicant, the Hungarian Intellectual Property Office shall draw up the search report supplemented with a written opinion pursuant to paragraph (1) in an accelerated procedure. The request for an accelerated procedure may only be filed together with the request for the search report supplemented with a written opinion; in such case the double of the fee for the request for the search report supplemented with a written opinion shall be paid. If the fee paid is less than that, but it reaches the amount of the fee for the request for the search report supplemented with a written opinion, the Hungarian Intellectual Property Office shall draw up the search report supplemented with a written opinion applying paragraph (6).

(9) If the patent application does not satisfy the requirements examined under Article 65 or it is unsuitable with regard all the claims for a proper novelty search, the Hungarian Intellectual Property Office shall reject the request for preparing the search report supplemented with a written opinion in an accelerated procedure and hereafter proceeds as defined in paragraph (6).

(10) If the applicant amends the patent application after sending the search report supplemented with a written opinion, a new request for search report supplemented with a written opinion may be filed within the time limit defined in paragraph (3).

(11) If the request for accelerated procedure complies with the requirements under paragraph (8), the Hungarian Intellectual Property Office shall draw up the search report supplemented with a written opinion on the basis of the description, claims and drawings at its disposal on the date of filing the request and shall send it to the applicant within two months from the date of filing the request.

(12) In case of applying the procedure under paragraph (11), paragraph (7) shall not be applied, but the Hungarian Intellectual Property Office

*a)* shall refund the fee in excess for the fee for the search report supplemented with a written opinion on request, if the search report supplemented with a written opinion was drawn up – on the basis of paragraph (8) – with the application of paragraph (6)

*b)* shall refund half of the fee paid on the basis of paragraph (8) on request, if the search report supplemented with a written opinion was mailed after the time limit in paragraph (11) not because the Hungarian Intellectual Property Office admitted a request for *restitution in integrum* concerning the failure to comply with the time limit in paragraph (3), and the entire fee shall be refunded on the request of the applicant if the applicant indicates in his request filed before the mailing of the search report supplemented with written opinion that he does not claim the said report.

*c)* shall refund half of the fee paid on the basis of paragraph (8) on request, if the request for preparing the search report supplemented with a written opinion was rejected on the basis of paragraph (9).

(13) If the applicant filed the patent description, the claims, the abstract and the drawings in the English language, on his request the Hungarian Intellectual Property Office shall draw up a search report supplemented with a written opinion on the basis of the English language attachments; in such case the quadruple of the fee for a request for the search report supplemented with a written opinion shall be paid.

(14) The Hungarian Intellectual Property Office shall reject the request pursuant to paragraph (13) and, on request, refund the fee already paid if

(a) the fee paid is of a lesser amount than that specified in paragraph (13), or

(b) the patent application does not meet the requirements examined in accordance with Article 65(a) and (b), or

(c) the patent application is not suitable for carrying out a proper novelty search in respect of any of the claims.

(15) Paragraphs (2) to (5), (7)(d) and (10) shall apply *mutatis mutandis* to the procedure relating to the search report supplemented with a written opinion prepared on the basis of the English language attachments.

(16) The Hungarian Intellectual Property Office shall draw up the search report supplemented with a written opinion on the basis of the English language attachments based on the description, claims and drawings at its disposal on the date of filing of the request and shall send it to the applicant within six months from the date of filing of the request.

*Publication*

**Article 70**

- (1) A patent application shall be published after the expiry of 18 months from the earliest date of priority.
- (2) At the request of the applicant, the application may be published at an earlier date if it satisfies the requirements of Article 65.
- (3) Publication shall be made by giving information to the public in the official journal of the Hungarian Intellectual Property Office as laid down in Article 56(b).
- (4) The applicant shall be notified of the publication.

*Observations*

**Article 71**

- (1) During the patent granting procedure any person may file an observation with the Hungarian Intellectual Property Office to the effect that the invention or the application does not comply with a requirement of patentability.
- (2) Such observation shall be taken into consideration when the requirement objected to in the observation is examined.
- (3) The person making the observation shall not be a party to the patent granting procedure. That person shall be notified of the outcome of his observation.

*Amendment and division*

**Article 72**

- (1) A patent application may not be amended in such a way that, by introducing new subject matter, it contains subject matter which extends beyond the content of the application at the date of filing.
- (2) The applicant shall be entitled to amend the description, claims and drawings as laid down in paragraph (1) until the day on which the decision on the grant of the patent is delivered.

**Article 73**

- (1) If the applicant has claimed patent protection for more than one invention in one application, he may divide the application, retaining the date of filing and any earlier priority, until the day on which the decision on the grant of the patent is delivered.
- (2) A fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid for division within two months from the filing of the relevant request.
- (3) If the fee for division is not paid upon filing the request, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit in paragraph (2). Failing to comply with the said invitation, the request for division shall be considered withdrawn.

*Substantive examination*

**Article 74**

- (1) The Hungarian Intellectual Property Office shall carry out a substantive examination of the published patent application at the request of the applicant.
- (2) The substantive examination shall ascertain
  - (a) whether the invention meets the requirements of Articles 1 to 5/A and whether it is not excluded from patent protection under Article 6(2) to (4) and (10);
  - (b) whether the application complies with the requirements laid down by this Act.

### **Article 75**

(1) Substantive examination may be requested simultaneously with the filing of the patent application or within six months at the latest after the date of the official information on the performance of the novelty search [Article 69(4)]. Failing this, provisional patent protection shall be considered surrendered.

(2) Withdrawal of the request for a substantive examination shall have no legal effect.

(3) An examination fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid within two months from the filing of the request.

(4) If the examination fee is not paid upon filing the request, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit in paragraph (3). Failing to comply with the said invitation, the application shall be considered withdrawn or the provisional patent protection shall be considered surrendered, as the case may be.

(5) The examination fee shall be refunded on request if before the date of the official information on the novelty search the applicant withdraws the application or surrenders provisional patent protection.

### **Article 76**

(1) If a patent application does not meet the requirements examined under Article 74(2), the applicant shall be invited, according to the nature of the objection, to rectify the irregularities, to submit comments or to divide the application.

(2) A patent application shall be rejected in whole or in part if it does not meet the examined requirements even after the rectification of irregularities or the submitting of comments.

(3) An application may be rejected only on grounds that have been precisely and expressly stated and duly reasoned in the invitation. Where necessary, a further invitation shall be issued.

(4) If the applicant fails to reply to the invitation or to divide the application, he shall be considered to have surrendered the provisional patent protection.

### **Grant of patent**

### **Article 77**

(1) If the patent application and the invention to which it relates meet all the requirements of the examination [Article 74(2)], the Hungarian Intellectual Property Office shall grant a patent for the subject matter of the application.

(2) Before the grant of a patent, the text of the description, claims and drawings forming the basis of the grant shall be transmitted to the applicant who may notify, within three months, his approval of the text transmitted.

(3) If the applicant approves the text or fails to submit comments, a patent shall be granted on the basis of the description, claims and drawings as transmitted. If the applicant proposes amendments or files a new description, claims and drawings, the Hungarian Intellectual Property Office shall decide whether these shall be taken into account when stating the final text.

(4) Before the grant of a patent, the fee for grant fixed by the law on fees for administrative services in industrial property procedures shall be paid within the period of three months stipulated for the notification under paragraph (2). If the applicant fails to pay this fee, he shall be considered to have surrendered the provisional patent protection.

### **Article 78**

(1) After the grant of a patent, the Hungarian Intellectual Property Office shall issue a patent certificate to which the description, claims and drawings shall be annexed.

(2) The grant of the patent shall be recorded in the Patent Register (Article 54), and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office (Article 56).

**Chapter X****OTHER PROCEDURES IN PATENT MATTERS***Procedure for declaration of termination and for restoration of patent protection***Article 79**

(1) The Hungarian Intellectual Property Office shall declare the termination of provisional patent protection under Article 38(b) and (c) and that of definitive patent protection under Article 39(b) and (c); it shall restore patent protection under Article 40.

(2) The declaration of termination of patent protection and the restoration thereof shall be entered in the Patent Register (Article 54), and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office (Article 56).

*Revocation procedure***Article 80**

(1) Any person may institute proceedings for revocation of a patent against the patentee under Article 42, with the exception laid down in paragraph (2).

(2) Under Article 42(1)(d), revocation of the patent may be requested by the person who is entitled to it under this Act.

(3) In addition to the data specified in Article 45(5) to (6), the request for revocation shall state the grounds on which it is based and documentary evidence shall be attached.

(4) A fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid for the request for revocation within two months from the filing thereof.

(5) If the request for revocation does not comply with the requirements laid down in this Act, the person requesting revocation shall be invited to rectify the irregularities; if the fee for the request has not been paid, the person requesting revocation shall be invited to make payment within the time limit fixed by this Act. Failing to rectify the irregularities shall result in the request for revocation being considered withdrawn.

**Article 80/A**

In the case of a patent granted for a service invention, the Hungarian Intellectual Property Office shall send the request for revocation to the inventor informing him that he may be a party to the revocation proceedings if a statement to this effect is submitted within thirty days from receipt of the request.

**Article 81**

(1) The Hungarian Intellectual Property Office shall invite the patentee and – in the case of a patent granted for a service invention – the inventor to submit comments on the request for revocation. Following the written preparatory work, it shall decide at a hearing on the revocation or limitation of the patent or on the refusal of the request. The order terminating the procedure may also be taken without a hearing. After the time limit fixed by the Hungarian Intellectual Property Office for the person requesting revocation, no ground shall be admissible as ground forming the basis of revocation, which was not stated as ground for revocation within the said time limit. The ground so stated shall be left out of consideration when taking the ruling terminating the procedure.

(2) If there is more than one request for revocation of the same patent, they shall be dealt with in the same procedure if possible.

(3) If the request for revocation is withdrawn, the procedure may be continued *ex officio*. In such a case the Hungarian Intellectual Property Office shall also proceed within the framework of the request, taking into consideration the statements and allegations made by the parties earlier.

(4) The orders taken in the course of the hearing and the ruling shall be pronounced on the day of the hearing. The pronouncement may be deferred – for not more than eight days – only in respect of the ruling

and only in the event if it is indispensable because of the complexity of the case. In such a case the time limit for pronouncement shall be fixed immediately and the ruling shall be put into writing until the day of pronouncement.

(5) The pronouncement of the decision shall consist of the presentation of the operative part and of the grounds.

(6) The decision shall be put in writing not later than fifteen days from the day it was taken – except where the Hungarian Intellectual Property Office deferred its pronouncement – and it shall be delivered within fifteen days from putting it in writing.

(7) The losing party shall be required to bear the costs of the revocation procedure. If the patentee has not provided any grounds for the revocation procedure, and he surrenders the patent protection – at least with respect to the part of the claims concerned – with retroactive effect to the date of filing prior to the expiration of the time limit for submitting comments under paragraph (1), the costs of procedure shall be borne by the person requesting revocation.

(8) The revocation or limitation of the patent shall be recorded in the Patent Register (Article 54) and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office (Article 56).

### ***Article 81/A***

(1) At the request of any party, revocation procedures shall be accelerated if proceedings were initiated for patent infringement or a request for provisional measures was filed before lodging the statement of claim and this fact is substantiated.

(2) For the request for accelerated procedure a fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid within one month from the filing of the relevant request.

(3) If the request does not meet the requirements referred to in paragraph (1), the party requesting accelerated procedure shall be invited to rectify the irregularities or to submit comments. The request for accelerated procedure shall be rejected if it does not meet the requirements laid down in this Act even after the rectification of irregularities or the submitting of comments. Failing to comply with the said invitation, the request for accelerated procedure shall be considered withdrawn.

(4) If the fee for the request has not been paid, the person requesting accelerated procedure shall be invited to make payment within the time limit fixed by this Act. Failing to comply with the said invitation shall result in the request for accelerated procedure being considered withdrawn.

(5) The Hungarian Intellectual Property Office shall establish the accelerated procedure by an order.

(6) By way of derogation from the provisions of Articles 48 and 81, in the case of accelerated procedures

(a) a time limit of fifteen days may also be fixed for rectifying the irregularities or submitting comments;

(b) an extension of time limits may be granted only in particularly justified cases;

(c) the Hungarian Intellectual Property Office shall only hold an oral hearing if the clarification of the facts requires that the parties be heard together or if any of the parties so requests in due time.

### *Procedure for a decision on lack of infringement*

### ***Article 82***

(1) In addition to the data specified in Article 45(5) to (6), the description and drawings of the product or process exploited or intended for exploitation, as well as the description and drawings of the patent involved shall be enclosed to the request for a decision on lack of infringement (Article 37). If the Hungarian translation of the text of the European patent has not been submitted for becoming effective in the Republic of Hungary, or the patentee has not made available such translation to the requesting party, the Hungarian Intellectual Property Office, on the request of the person requesting a decision on lack of infringement, shall invite the patentee to submit the translation.

(2) A request for a decision on lack of infringement may be filed only in respect of one patent and in respect of one product or process exploited or intended to be exploited.

(3) A fee fixed by the law on fees for administrative services in industrial property procedures shall be paid for a request for a decision on lack of infringement within two months from the filing of the request.

(4) If the request for a decision on lack of infringement does not comply with the requirements laid down in this Act, the requesting party shall be invited to rectify the irregularities; if the fee for the request has not been paid, that party shall be invited to make payment within the time limit fixed by this Act. Failing to rectify the irregularities shall result in the request for a decision on lack of infringement being considered withdrawn.

(5) If the patentee fails to comply with the invitation under paragraph (1) for submitting the translation, the requesting party may commission the preparation of the translation the cost of which shall be borne by the patentee, except where the patentee declares in his reply to the invitation that the product or process exploited or to be exploited by the requesting party does not infringe the patent involved.

### **Article 83**

(1) The Hungarian Intellectual Property Office shall invite the patentee to submit comments on the request for a decision on lack of infringement. Following the written preparatory work, it shall decide at a hearing whether the request shall be admitted or refused. The order terminating the procedure may also be taken without a hearing.

(2) The cost of preparing the Hungarian translation of the text of the European patent shall be borne by the patentee. The requesting party shall bear the costs of the procedure for a decision on lack of infringement.

(3) The provisions of Article 81(4) to (6) shall also apply in procedures for a decision on lack of infringement.

(4) The provisions of Article 81/A shall also apply in procedures for a decision on lack of infringement.

*Procedures relating to compulsory licenses to which Regulation 816/2006/EC [Article 33/A(1)] applies*

### **Article 83/A**

(1) Notwithstanding Article 48, in procedures provided for in Articles 83/B to 83/G, a time limit less than thirty days, but at least of fifteen days may also be fixed to rectify the irregularities or to submit comments, and an extension of a time limit may be granted only in particularly justified cases.

(2) In procedures provided for in Articles 83/B to 83/H, the Hungarian Intellectual Property Office shall proceed out of turn.

(3) The provisions of Article 81(4) to (6) of this Act shall also apply in procedures provided for in Articles 83/B to 83/G.

### **Article 83/B**

(1) *[repealed]*

(2) A fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid for an application for a compulsory license under Article 6 of Regulation 816/2006/EC simultaneously with the filing of the application.

(3) The application for a compulsory license shall contain – in addition to the data specified in Article 45(5) to (6) and the declarations and data as defined in Regulation 816/2006/EC – the following:

(a) registration number of the patent granted for the invention to be exploited under the compulsory license;

(b) in compliance with Article 10(5) of Regulation 816/2006/EC the details which distinguish the pharmaceutical product to be produced under the compulsory license from those produced by the patentee or by others with his consent (e.g. special packaging, colouring or shaping);

(c) the website address referred to in Article 10(6) of Regulation 816/2006/EC.

(4) The Hungarian Intellectual Property Office shall examine whether

(a) the application contains the details provided for in paragraph (3) and in Article 6(3) of Regulation 816/2006/EC;

(b) the conditions set out in Article 8 of Regulation 816/2006/EC are fulfilled;

(c) the applicant has provided evidence that he had carried out prior negotiations with the patentee under Article 9(1) of Regulation 816/2006/EC;

(d) the amount of product to be manufactured under the compulsory license is in compliance with the condition set out in Article 10(2) of Regulation 816/2006/EC.

(5) If the application for a compulsory license does not comply with the conditions laid down in Regulation 816/2006/EC and in this Act, or the fee for the request has not been paid in accordance with paragraph (1), the applicant shall be invited to rectify the irregularities or to submit comments. The application shall be refused if, in spite of rectification or comments, it still does not comply with the conditions under examination. Where the applicant does not reply to the invitation within the fixed time limit, the application shall be considered withdrawn.

#### ***Article 83/C***

(1) The Hungarian Intellectual Property Office shall invite the patentee to submit comments on the application for a compulsory license. Following the written preparatory work, it shall decide at a hearing on the grant of the compulsory license or on the refusal of the application. The order terminating the procedure may also be taken without a hearing.

(2) The decision on the grant of a compulsory license shall include

(a) the duration of the compulsory license;

(b) in compliance with Article 10(5) of Regulation 816/2006/EC the details which distinguish the pharmaceutical product to be produced under the compulsory license from those produced by the patentee or by others with his consent (e.g. special packaging, colouring or shaping);

(c) a notice concerning the provisions of Article 10(4), (5) and (7) of Regulation 816/2006/EC;

(d) a notice concerning the provisions of Article 10(6) of Regulation 816/2006/EC and the website address communicated by the licensee;

(e) a notice to the effect that the books and records of the licensee must contain the details and documents referred to in Article 10(8), second sentence of Regulation 816/2006/EC;

(f) the remuneration to be paid to the patentee.

(3) The grant of the compulsory license shall be recorded in the Patent Register, and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office.

#### ***Article 83/D***

(1) The Hungarian Intellectual Property Office shall notify the European Commission of the grant of the compulsory license by indicating the details referred to in Article 12 of Regulation 816/2006/EC, and shall send a copy of the decision to the customs authority and the pharmaceutical administrative authority.

(2) When a compulsory license has been granted, the Hungarian Intellectual Property Office shall post on its website the details referred to in Article 12 of Regulation 816/2006/EC as well as those which distinguish the pharmaceutical product to be produced under the compulsory license from those produced by the patentee or by others with his consent.

(3) The Hungarian Intellectual Property Office shall regularly inform the customs authority and the pharmaceutical administrative authority of the details, and the changes thereof, of compulsory licenses granted in other Member States of the European Union and posted on the website of the World Trade Organization.

#### ***Article 83/E***

(1) The request for access to the books and records of the licensee under Article 10(8) of Regulation 816/2006/EC shall be filed with the Hungarian Intellectual Property Office in one copy if electronic means of communication are used, otherwise in two copies. In addition to the data specified in Article 45(5) to (6), the request shall indicate the number of the decision granting the compulsory license and the details to be disclosed.

(2) A fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid for the request for access simultaneously with the filing of the request.

(3) If the request for access does not comply with the conditions laid down in Regulation 816/2006/EC and in this Act, or the fee for the request has not been paid in accordance with paragraph (2), the requesting

party shall be invited to rectify the irregularities or to submit comments. The request shall be refused if, in spite of rectification or comments, it still does not comply with the conditions under examination. Where the requesting party does not reply to the invitation within the fixed time limit, the request shall be considered withdrawn.

(4) The Hungarian Intellectual Property Office shall invite the licensee to submit comments on the request for access. Following the written preparatory work, it shall decide on the ordering the access or on the refusal of the request. After the written preparatory work, the Hungarian Intellectual Property Office shall only hold a hearing if the clarification of the facts requires that the parties be heard together or if any of the parties so requests in due time.

(5) The Hungarian Intellectual Property Office shall notify the patentee of the outcome of the access to books and records of the licensee within the framework of the request under paragraph (1). The notification of the outcome of the access may be used as evidence in the procedure for review of the compulsory license (Article 83/F).

#### ***Article 83/F***

(1) The request for review of the compulsory license under Article 16(1) of Regulation 816/2006/EC shall indicate, in addition to the data specified in Article 45(5) to (6), the number of the decision granting the compulsory license, the grounds for review, and documentary evidence shall be attached. An assessment made in the importing country may also be attached to the request.

(2) A fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid for the request for review of the compulsory license simultaneously with the filing of the request.

(3) If the request for review of the compulsory license does not comply with the conditions laid down in Regulation 816/2006/EC and in this Act, or the fee for the request has not been paid in accordance with paragraph (2), the requesting party shall be invited to rectify the irregularities or to submit comments. The request shall be refused if, in spite of rectification or comments, it still does not comply with the conditions under examination. Where the requesting party does not reply to the invitation within the fixed time limit, the request shall be considered withdrawn.

(4) The Hungarian Intellectual Property Office shall invite the licensee or the patentee – subject to the person of the requesting party – to submit comments on the request for review of the compulsory license. Following the written preparatory work, it shall decide at a hearing on the termination or modification of the compulsory license or on the refusal of the request. The order terminating the procedure may also be taken without a hearing.

(5) If the Hungarian Intellectual Property Office does not order – pursuant to Article 16(3) of Regulation 816/2006/EC – destruction, at the licensee's expense, of the pharmaceutical product in the licensee's control and produced under the compulsory license, the decision on the termination of the compulsory license shall indicate a period of time for the licensee to redirect such pharmaceutical product to a country in need as referred to in Article 4 of Regulation 816/2006/EC.

(6) Termination of the compulsory license shall be recorded in the Patent Register, and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office.

(7) Of the termination of the compulsory license the Hungarian Intellectual Property Office shall

- (a) notify the European Commission;
- (b) notify the customs authority and the pharmaceutical administrative authority by sending them the decision;
- (c) provide information on its website.

#### ***Article 83/G***

(1) The request for modification of the compulsory license under Article 16(4) of Regulation 816/2006/EC shall contain

- a) the data specified in Article 45(5) to (6) with the exception of the name and address of the applicant and his representative, provided that holder of the compulsory licence cited the original compulsory license; and

b) the number of the compulsory license, the grounds for modification and evidence to the effect that the licensee has carried out prior negotiations with the patentee under Article 9(1) of Regulation 816/2006/EC, provided that the additional amount requested exceeds 25% of the amount granted under the original license.

(2) To the request under paragraph (1) documentary evidence shall be attached.

(3) In issues not regulated in paragraphs (1) and (2), the provisions of Article 83/F shall apply *mutatis mutandis* to the modification of the compulsory license under paragraph (1), with the following exceptions:

(a) the Hungarian Intellectual Property Office shall decide on the modification of the compulsory license or on the refusal of the request;

(b) after the written preparatory work the Hungarian Intellectual Property Office shall only hold a hearing if the clarification of the facts requires that the parties be heard together or if any of the parties so requests in due time.

#### **Article 83/H**

(1) Where the pharmaceutical administrative authority establishes that the import of the pharmaceutical product is contrary to the provisions of Article 13(1) of Regulation 816/2006/EC, it shall prohibit distribution of the pharmaceutical product in the country.

(2) The pharmaceutical administrative authority shall send a copy of its final decision under paragraph (1) to the Hungarian Intellectual Property Office.

(3) [repealed]

(4) After the decision of the pharmaceutical administrative authority prohibiting distribution in the country has become final and binding, the customs authority shall arrange for the pharmaceutical product to be impounded and destroyed at the expense of the importer, and shall notify the Hungarian Intellectual Property Office thereof.

(5) The Hungarian Intellectual Property Office shall notify the European Commission of the decision under paragraph (1) and the arrangements referred to in paragraph (4).

#### *Proceedings relating to public health compulsory licences*

#### **Article 83/I**

(1) In proceedings relating to public health compulsory licences the provisions of this Act shall apply subject to the following derogations:

a) to remedy deficiencies or make statements, a time limit not shorter than fifteen days but not longer than thirty days shall be set, and extensions of time limits may be granted only in particularly justified cases;

b) the HIPO shall proceed as a matter of priority.

(2) In addition to the requirements specified in section 45(5) and (6), an application for a public health compulsory licence shall contain the following:

a) information on whether the application concerns exploitation in Hungary, exploitation for export, or exploitation both in Hungary and for export;

b) in the case of exploitation for export, the designation of the countries for which exploitation is applied for;

c) the registration number of the patent or supplementary protection certificate granted for the invention to be exploited under the public health compulsory licence;

d) the name of the healthcare product, or the non-proprietary name of the medicinal product, that the applicant wishes to produce under the compulsory licence;

e) the markings distinguishing the healthcare products to be produced under the public health compulsory licence from the products of the patent holder, in accordance with section 33/C(10);

f) a certificate of the pharmaceutical state administration organ certifying that the applicant applies for a public health compulsory licence for a healthcare product which is suitable for satisfying the needs arising in Hungary in connection with the health crisis and which is of the necessary quantity specified in the certificate;

g) a certificate that the applicant for a public health compulsory licence has the capacity required for the production of the quantity to be produced under the public health compulsory licence as specified in the certificate under point f), or in the case of exploitation for export – if the foreign compulsory licence provides for it – the capacity required for the production of the quantity to be produced under the foreign compulsory licence;

h) if the requirements set out in point g) are not met, a certificate that the applicant has made substantial preparations to ensure the capacity required for the production of the quantity specified in the certificate under point f), or in the case of exploitation for export – if the foreign compulsory licence provides for it – the capacity required for the production of the quantity to be produced under the foreign compulsory licence; and

i) in the case of exploitation for export, the foreign compulsory licence and its certified translation into English or Hungarian.

(3) The submission of an application for public health compulsory licence shall be subject to a fee, to be paid simultaneously with the submission, laid down in the law on administrative service fees in industrial property procedures. In the event of failure to do so, the application shall be deemed withdrawn.

(4) After receipt of the application, the HIPO shall examine whether

a) the application meets the conditions set out in paragraphs (2) and (3); and

b) the conditions set out in section 33/B are met.

(5) Within eight days from receipt of the application, the HIPO shall notify the patent holder concerned of the fact that an application for compulsory licence has been submitted regarding his invention.

(6) Any infringement proceedings against the applicant for a public health compulsory licence related to the patent or supplementary protection certificate specified in the application, or any provisional measures connected thereto, shall be suspended pending the decision of the HIPO.

(7) If an application for a public health compulsory licence does not meet the conditions referred to in paragraph (4), the applicant shall be called upon to remedy the deficiencies or to make a statement. If, in spite of action to remedy the deficiencies or statements made, the application fails to meet the examined requirements, it shall be rejected. If the applicant fails to respond to a notice to remedy deficiencies within the time limit set, the application shall be deemed withdrawn.

### ***Article 83/J***

(1) The HIPO shall decide on granting a public health compulsory licence or rejecting an application without conducting a hearing. The decision shall be put in writing and communicated to the applicant. The HIPO shall notify the patent holder of the decision within eight days from the taking of the decision.

(2) A decision granting a public health compulsory licence shall include the following:

a) information on whether the application concerns exploitation in Hungary, exploitation for export, or exploitation both in Hungary and for export;

b) in the case of exploitation for export, the country or countries covered by the public health compulsory licence;

c) the duration of the public health compulsory licence;

d) the markings distinguishing the healthcare products to be produced under the public health compulsory licence from the products of the patent holder;

e) the remuneration payable to the patent holder;

f) the registration number of the patent or the supplementary protection certificate; and

g) the name of the healthcare product or the non-proprietary name of the medicinal product.

(3) The public health compulsory licence shall be registered in the register of patents or supplementary protection certificates, and an official notice thereon shall be published in the official journal of the HIPO.

(4) The HIPO shall notify the pharmaceutical state administration organ of the granting of a public health compulsory licence without delay.

**Article 83/K**

For the duration of the public health compulsory licence, no interim relief shall be allowed in an action brought against a decision of the pharmaceutical state administration organ concerning a medicinal product produced under the public health compulsory licence.

*Interpretation of patent descriptions*

**Article 84**

In the case of a dispute concerning the interpretation of a patent description, the Hungarian Intellectual Property Office shall give an expert opinion at the request of the competent court or other authority.

**PART III**

**PROVISIONS CONCERNING THE EUROPEAN PATENT SYSTEM AND THE  
INTERNATIONAL PATENT COOPERATION**

*Chapter X/A*

**PROVISIONS CONCERNING EUROPEAN PATENT APPLICATIONS AND EUROPEAN PATENTS**

*General provisions*

**Article 84/A**

For the purposes of this Act:

- (a) *European patent*: a patent granted in accordance with the Munich Convention on the Grant of European Patents of 5 October 1973 (hereinafter referred to as the “Convention”);
- (b) *European patent application*: a patent application for the grant of a European patent filed in accordance with the Convention.

**Article 84/B**

- (1) A European patent application may also be filed and a European patent may also be granted with effect extending to the territory of Hungary.
- (2) The provisions of Articles 84/D to 84/O shall apply to European patent applications designating Hungary and to European patents granted with effect extending to Hungary.
- (3) In the case of any difference between the Convention and this Act, the provisions of the Convention shall apply to European patent applications and to European patents.

*Filing of the European patent application*

**Article 84/C**

- (1) A European patent application may also be filed with the Hungarian Intellectual Property Office, with the exception of European divisional applications.
- (2) A European patent application shall be filed with the Hungarian Intellectual Property Office if the applicant is Hungarian citizen or if his residence or seat is in Hungary, unless, in the European patent application, the priority of a patent application which was not classified by the President of the Hungarian

Intellectual Property Office and was filed with the Hungarian Intellectual Property Office at least two months earlier is claimed.

(3) A European patent application may be filed with the Hungarian Intellectual Property Office in any of the languages prescribed by the Convention, provided that the application contains in Hungarian or in any of the official languages of the European Patent Office at least the following:

- (a) an indication that a European patent is sought;
- (b) indications identifying the applicant or permitting contacts with the applicant.

#### *Effects of the European patent application*

#### **Article 84/D**

(1) A European patent application which has been accorded a date of filing by the European Patent Office shall – retaining the priority claimed for the European patent application – be considered as having the same effect as a national patent application filed with the Hungarian Intellectual Property Office with the same date of filing.

(2) For the purposes of Article 2(3), publication of a European patent application in proceedings before the European Patent Office or a publication which, by virtue of the Convention, replaces also in this respect the publication in proceedings before the European Patent Office shall be considered as having the same effect as the publication in proceedings before the Hungarian Intellectual Property Office (Article 70).

(3) The Hungarian Intellectual Property Office shall make available for inspection the contents of the European patent application as published, subsequent to its publication, and shall ensure access to the entries relating to the European patent application contained in the Register of European Patents.

#### *Provisional protection conferred by the publication of the European patent application*

#### **Article 84/E**

(1) Provisional patent protection conferred by the publication of the European patent application shall be effective in Hungary when the Hungarian Intellectual Property Office has published official information in its official journal (Articles 56 and 56/A) on the filing of the Hungarian translation of the claims.

(2) The Hungarian Intellectual Property Office shall publish the official information referred to in paragraph (1) if the applicant has filed a request to this effect. The request shall also contain the Hungarian translation of the claims as published.

(3) In addition to the data specified in Article 45(5) and (6), the request shall contain the name and address of the inventor, or an indication that the inventor requests that his name and address not be indicated in the patent documents; in such a case the name and address of the inventor has to be given on a separate sheet. The name and address of the inventor may also be provided by a reference to the European patent application containing the same. In other respects, the translation of the application and of the claims shall be filed in compliance with the detailed requirements laid down in the law on the detailed formal requirements of patent applications and the law on the electronic filing of industrial property applications.

(4) A fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid for the publication of the translation of the claims within two months from the filing of the request.

(5) The Hungarian Intellectual Property Office shall examine whether the request satisfies the requirements laid down by paragraphs (2) and (3). In the course of this, it shall proceed by applying Article 68(2) to (4) *mutatis mutandis*.

(6) If the fee for the publication of the claims is not paid upon filing the request, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit fixed in paragraph (4). In the event of failing to observe this provision, the request shall be considered as withdrawn.

(7) Subsequent to the official information prescribed by paragraph (1), the Hungarian Intellectual Property Office shall make available for inspection the Hungarian translation of the claims.

(8) The Hungarian Intellectual Property Office shall indicate in a separate list that provisional protection has been conferred by the publication of the European patent application under the provisions of paragraph (1). This list may be inspected by any person.

*Conversion of the European patent application into a national patent application*

**Article 84/F**

(1) When the European patent application is deemed to be withdrawn pursuant to Article 14(2), Article 77(3) or Article 78(2) of the Convention, the Hungarian Intellectual Property Office shall, at request of the applicant and on conditions laid down in paragraphs (2) to (5) of this Article, start the procedure for the grant of a national patent in accordance with Chapter IX of this Act.

(2) The filing fee and the search fee [Article 57(4)] shall be paid within two months from the filing of the request referred to in paragraph (1), or – if the request was not filed with the Hungarian Intellectual Property Office – from the receipt thereof.

(3) If the European patent application has been drawn up in a foreign language, the Hungarian translation of the application shall be filed with the Hungarian Intellectual Property Office within four months from the filing of the request referred to in paragraph (1), or – if the request was not filed with the Hungarian Intellectual Property Office – from the receipt thereof. For the purposes of the provisions of Chapter IX, this translation shall be deemed to be a translation filed under Article 57(5).

(4) If the applicant requests paragraph (1) to be applied to the text of the European patent application as amended in the proceedings before the European Patent Office, the provisions of paragraph (3) shall apply to the translation of the amended text.

(5) If the request referred to in paragraph (1) has not been filed with the Hungarian Intellectual Property Office, the applicant shall be notified of the receipt of the request simultaneously with the invitation as prescribed in Article 66(12).

(6) In any other matters, the provisions of Chapter IX shall apply to procedures started in accordance with the provisions of paragraph (1).

*Effects of the European patent*

**Article 84/G**

(1) A European patent shall have the same effect as a patent granted by the Hungarian Intellectual Property Office. A European patent shall be regarded as granted when the mention of the grant is published in the European Patent Bulletin.

(2) If the patentee has not submitted the Hungarian translation of the European patent as laid down in 84/H, in the event of a legal dispute related to the European patent the patentee shall be required to provide such a translation at his own expense, upon request of the alleged infringer, or – if necessary upon invitation – in a procedure before the court or the Hungarian Intellectual Property Office.

*Translation requirements concerning the European patent*

**Article 84/H**

(1) The European patent shall become effective in Hungary provided that the patentee supplies the Hungarian Intellectual Property Office with the Hungarian translation of the claims of the European patent, and – if the language of procedure before the European Patent Office has been French or German – the English or Hungarian translation of the text beyond the claims of the European patent within three months from the date on which the mention of the grant is published in the European Patent Bulletin.

(1a) The Hungarian translation of the text beyond the claims of the European patent may also be filed together with the Hungarian translation of the claims if the language of procedure before the European Patent Office has been English.

(2) Where the English or Hungarian translation of the text beyond the claims of the European patent is also to be filed, the translation shall be deemed to be filed at a date on which the patentee has filed both translations as laid down in paragraph (1) or has already filed the second one of them.

(3) The act prescribed in paragraph (1) may also be performed within three months from the last day of the time limit specified in that paragraph, if the surcharge determined by the law on fees for administrative services in industrial property procedures is also paid within the latter time limit.

(4) In addition to the data specified in Article 45(5) to (6), the request on the filing of the translation or translations prescribed in paragraphs (1) and (1a) (hereinafter together “translation”) for the validation of a European patent shall contain the name and address of the inventor, or an indication that the inventor requests that his name and address not be indicated in the patent documents; in such a case his name and address shall be given on a separate sheet. The name and address of the inventor may also be provided by a reference to the European patent application containing the same. In other respects, the translation shall be filed in compliance with the detailed requirements laid down in the law on the detailed formal requirements of patent applications and the law on the electronic filing of industrial property applications.

(5) For the publication of the translation a fee fixed by the law on fees for administrative services in industrial property procedures shall be paid within two months from the filing of the translation.

(6) The Hungarian Intellectual Property Office shall examine the translation whether the requirements of paragraph (4) have been satisfied. In the course of this, it shall proceed by applying Article 68(2) to (4) *mutatis mutandis*, except that in the cases referred to in Article 68(3) and (4), the translation shall be deemed not to have been filed.

(7) If the fee prescribed by paragraph (5) is not paid upon filing the translation, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit fixed in paragraph (5). In the event of failing to observe this provision, the translation shall be deemed not to have been filed.

(8) If the act prescribed in paragraph (1) is not performed within the time limit specified in that paragraph and it is not performed even within the time limit specified in paragraph (3) together with the payment of the surcharge, the European patent shall be deemed – by virtue of this Act – not to have taken effect *ab initio* in Hungary.

(9) If the translation laid down in paragraph (1) has been duly filed, the European patent shall be entered in a separate part of the Patent Register (Article 54).

(10) The Hungarian Intellectual Property Office shall give information to the public on the filing of the translation in its official journal (Articles 56 and 56/A), and shall make the translation available to the public.

(10a) Apart from cases laid down in paragraphs (1) and (1a), the patentee may file at any time the Hungarian translation of the text beyond the claims of the European patent to the Hungarian Intellectual Property Office. Paragraphs (4) to (7) and (10) shall apply *mutatis mutandis* to the filing and publication of this translation.

#### **Article 84/I**

The provisions of Article 84/H shall apply *mutatis mutandis* to European patents maintained as amended as a result of opposition and limitation procedures under the Convention.

#### *Authentic text of a European patent application or a European patent*

#### **Article 84/J**

(1) If the scope of the protection conferred by the translation of the claims or of the description of the European patent application or of the European patent (Article 84/E, Article 84/H and Article 84/I) is narrower than that conferred by the claims or by the description in the language of the proceedings before the European Patent Office, the extent of protection shall be determined by the translation.

(1a) If the patentee has also filed the Hungarian translation of the text beyond the claims of the European patent under Article 84/H(1a) or (10a), paragraph (1) shall apply to this translation after official information on the filing of the translation was published.

(1b) If the language of procedure before the European Patent Office has been French or German and the patentee has also filed the Hungarian translation of the text beyond the claims of the European patent under Article 84/H(10a), Article 84/K(6) shall apply *mutatis mutandis*, except that the use gives the right of

continued use if it had been commenced before official information on the filing of the translation was published.

(2) The provisions set out in paragraphs (1) to (1a) shall not apply in matters related to the revocation of the European patent.

#### **Article 84/K**

(1) The applicant for or the holder of the patent may request at any time the correction of the translation of the claims or the description (Article 84/E, Article 84/H and Article 84/I). The protection conferred by such corrected translation shall become effective when the Hungarian Intellectual Property Office has published official information on the correction of the translation.

(2) The provisions of Article 84/E(2) and (3) and Article 84/H(4) shall apply *mutatis mutandis* to the request for correction and its annexes, with the proviso that the request shall not contain the name and address of the inventor, even in a case where the inventor did not request that his name be omitted

(3) A fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid for the publication of the corrected translation within two months from the filing of the request for the correction of the translation of the claims or of the description.

(4) The Hungarian Intellectual Property Office shall examine the request whether it satisfies the requirements of paragraph (2). In the course of this, it shall proceed by applying Article 68(2) to (4) *mutatis mutandis*.

(5) If the fee for the publication of the correction is not paid upon filing the request, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit fixed in paragraph (3). In the event of failing to observe this provision, the request shall be considered as withdrawn.

(6) The protection conferred by the European patent shall have – to the extent of the use or the preparations existing at the date of the official information laid down in paragraph (1) – no effect against any person who, prior to the said date, in the territory of the country, in good faith and within the framework of his economic activities, has begun using or has made serious preparations for using an invention the use of which would not constitute infringement of the patent according to the original translation. Such right may only be transferred together with the entitled economic organisation [Civil Code, Article 685(c)] or with that part of it by which such use or preparations are pursued.

#### *Maintenance of the European patent*

#### **Article 84/L**

(1) Renewal fees in respect of a European patent shall only be paid in accordance with the provisions of this Act (Article 23) for the years subsequent to the year in which the mention of the grant of the European patent is published in the European Patent Bulletin.

(2) Any renewal fees falling due within three months after the publication of the mention of the grant of the European patent in the European Patent Bulletin can also be paid after the due date – without surcharge – within this period of three months.

(3) Those maintenance fees which – in the case of revocation of a European patent as a result of an omission or a decision reviewed by the Enlarged Board of Appeal – would have fallen due after the revocation, may also be paid within a grace period of six months from the communication of the decision re-establishing the rights or re-opening proceedings before the Board of Appeal.

#### *Revocation of the European patent in opposition procedure*

#### **Article 84/M**

(1) If the European patent is revoked or maintained as amended in the opposition, limitation or revocation procedure under the Convention, the provisions of Article 81(8) shall apply *mutatis mutandis*.

(2) If an opposition has been filed against the same European patent, or the limitation or revocation of the same European patent was requested in accordance with the Convention the procedure for the revocation

of the European patent shall be suspended in justified cases until the final termination of the opposition, limitation or revocation procedure in accordance with the Convention.

(3) The suspended revocation procedure shall be continued at the request of any party after the final termination of the limitation procedure under the Convention or if the final termination of the opposition or revocation procedure under the Convention does not result in the revocation of the European patent.

*Revocation of the European patent*

**Article 84/N**

(1) A European patent shall be revoked on the grounds laid down in Article 138(1) of the Convention and shall be limited in the event referred to in paragraph (2) of the same Article of the Convention. In the procedure for revocation of the European patent, the provisions of Article 138(3) of the Convention shall also apply.

(2) In any other matters concerning the revocation of a European patent, the provisions of this Act shall apply *mutatis mutandis*.

**Article 84/O**

*[repealed]*

**Chapter X/B**

**PROVISIONS CONCERNING INTERNATIONAL PATENT APPLICATIONS**

*General provisions*

**Article 84/P**

(1) For the purposes of this Act, international patent application means a patent application filed under the Patent Cooperation Treaty done at Washington on June 19, 1970 (hereinafter referred to as the "Treaty").

(2) Where this Act refers to the application of the Treaty, it shall be construed as meaning also the application of the Regulations under the Treaty.

(3) Unless otherwise provided in the Treaty, the provisions of this Act shall apply to international patent applications.

*The Hungarian Intellectual Property Office as a receiving office*

**Article 84/R**

(1) The Hungarian Intellectual Property Office shall act as a receiving Office with respect to international patent applications, where the applicant thereof is of Hungarian nationality or having residence or principal place of business in the country.

(2) The international patent application shall be filed with the Hungarian Intellectual Property Office as a receiving Office in compliance with the formal requirements and in the manner prescribed by the Treaty, in one of the languages accepted by the International Searching Authority chosen by the applicant.

(3) The international patent application, except for the request, may also be filed in Hungarian. In this case, a translation of the application into a language prescribed in paragraph (2) shall be filed within one month from the date of receipt of the application.

(4) If the translation of the international patent application is not filed by the date of the notification containing an accorded filing date, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit fixed in paragraph (3) or within one month from the invitation or within two months from receipt of the international application, whichever expires later. Failing to comply with the said invitation, the international application shall be considered withdrawn.

(5) The transmittal of the international patent application shall be subject to the payment of a transmittal fee determined by the law on fees for administrative services in industrial property procedures, and in connection with the international application an international fee and a search fee provided for by the Treaty shall be paid within the time limit and in the manner prescribed by the Treaty.

(6) In the official journal of the Hungarian Intellectual Property Office the President of the Hungarian Intellectual Property Office shall publish information on the amount of the international fee and of the search fee and on the prescriptions relating to the payment thereof.

*Procedure of the Hungarian Intellectual Property Office as a designated or an elected office*

**Article 84/S**

(1) The Hungarian Intellectual Property Office shall act as a designated Office with respect to international patent applications in which Hungary has been designated under the Treaty, except in cases where the international application has been filed for the grant of a European patent for Hungary [Article 84/A(a)].

(2) The Hungarian Intellectual Property Office shall act as an elected Office with respect to international patent applications referred to in paragraph (1) concerning which the applicant has made a demand for international preliminary examination and has elected Hungary as a Contracting State in which he intends to use the results of the preliminary examination.

(3) If the Hungarian Intellectual Property Office acts as a designated or an elected Office, the Hungarian translation of the international application together with the indication of the name and address of the inventor shall be filed and the national fee determined by the law on fees for administrative services in industrial property procedures shall be paid within 31 months from the priority date of the international patent application.

(4) The acts prescribed in paragraph (3) may also be performed within three months from the last day of the time limit specified in that paragraph, if the surcharge determined by the law on fees for administrative services in industrial property procedures is also paid within the latter time limit.

(5) The translation provided for in paragraph (3) shall contain the description, the claims, any text matter of the drawings and the abstract. If the claims have been amended under the Treaty or during the performance of the acts prescribed in paragraph (3), both the original and the amended claims shall be filed in Hungarian.

(6) If the acts prescribed in paragraph (3) are not performed either within the time limit specified in that paragraph or within the time limit specified in paragraph (4) with the simultaneous payment of the surcharge, the effect of the international patent application shall cease in Hungary which shall have the same consequences as the withdrawal of a patent application filed with the Hungarian Intellectual Property Office.

(7) Those parts of the international patent application which have not been searched by the International Searching Authority on the basis of Article 17(3)(a) of the Treaty shall be considered withdrawn, unless an additional search fee determined by the law on fees for administrative services in industrial property procedures is paid by the applicant within three months from the filing of the translation of the international application with the Hungarian Intellectual Property Office.

(8) If the additional search fee has not been paid with the filing of the translation of the international patent application, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit fixed in paragraph (7).

(9) The Hungarian Intellectual Property Office shall establish by an order if the part of the international patent application determined in paragraph (7) shall be considered withdrawn.

**Article 84/T**

(1) In compliance with Article 29(1) of the Treaty, publication of the international patent application shall establish provisional patent protection in Hungary on the day on which the Hungarian translation of the international application has been published. The provisions of Article 70 shall apply *mutatis mutandis* to the publication of the translation.

(2) For the purposes of Article 2(3), the effects of the publication of the international patent application shall be the same as those of publication in the procedure before the Hungarian Intellectual Property Office

(Article 70), provided that the acts prescribed in Article 84/S(3) are duly performed with respect to the international application.

#### **Article 84/U**

(1) The Hungarian Intellectual Property Office as a designated or an elected Office shall carry out the substantive examination of the international patent application at the special request of the applicant. The request may be filed simultaneously with the acts prescribed in Article 84/S(3), or within six months at the latest after the date of the official information on the performance of novelty search.

(2) An examination fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid within two months from the filing of the request.

(3) In any other matters pertaining to substantive examination and to the request therefor, the provisions of Articles 74 to 76 shall apply *mutatis mutandis*.

#### **Article 84/V**

With respect to the conditions for and the effect of any priority claim, the provisions of Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property shall apply *mutatis mutandis* also in the case referred to in Article 8(2)(b) of the Treaty.

#### **Article 84/Z**

(1) On the basis of Article 7(2)(ii) of the Treaty, the Hungarian Intellectual Property Office may invite the applicant to file drawings illustrating the invention even if they are not necessary for the understanding of the invention, but the nature of the invention admits of illustration by drawings.

(2) On the basis of Article 27(2)(ii) of the Treaty, the Hungarian Intellectual Property Office may invite the applicant to furnish documents constituting proof of allegations or statements made in the international patent application. However, in the cases specified in the Treaty the applicant may only be required to furnish such evidence if there is reasonable doubt about the veracity of any allegation made in the application.

(3) At the request of the applicant, the Hungarian Intellectual Property Office as a designated Office shall carry out the review provided for in Article 25 of the Treaty, with regard to the provisions of Article 84/P(3) as well, by applying the provisions of this Act *mutatis mutandis*.

### **PART IV**

## **COURT PROCEEDINGS IN PATENT MATTERS**

### **Chapter XI**

#### ***Review of decisions of the Hungarian Intellectual Property Office***

##### *Request for review*

#### **Article 85**

(1) Upon request, the court may review the Hungarian Intellectual Property Office's

(a) decisions referred to in Article 53/A;

(b) decisions suspending procedure or furnishing a basis for entries in the Patent Register;

(c) orders excluding or limiting the inspection of files, against which independent legal remedy is admissible under the provisions of the Code of General Administrative Procedure;

(d) orders denying persons the legal status as a party to the procedure apart from those who have submitted request for the commencement of a procedure;

(e) decisions imposing procedural fines or ruling on the amount and on the apportionment of procedural costs and their payment.

(2) A request for review brought against a decision imposing procedural fine or ruling on the amount and on the apportionment of procedural costs shall have no delaying force with respect to any other provisions of the decision not contested in the request for review, and shall not prevent them from becoming final.

(2a) A request for review brought against a decision granting a public health compulsory licence shall have no suspensory effect in respect of the public health compulsory licence granted.

(3) Any order of the Hungarian Intellectual Property Office not referred to in paragraph (1) may only be contested in a request for the review of the decisions referred to in paragraph (1).

(4) Review of a decision may be requested by

(a) any party to the procedures before the Hungarian Intellectual Property Office;

(b) any person excluded from, or limited in, the inspection of files;

(c) any person whose legal status as a party to the procedure has been denied.

(5) Review of a ruling on the grant and revocation of a patent may be requested by the public prosecutor under Article 6(2). Any other participant to the procedures before the Hungarian Intellectual Property Office may submit, in his own right, an independent request for review of the decision or a provision of the decision relating to him.

(6) The request for review must be filed or posted by registered mail, with the exceptions laid down in paragraphs (7) and (8), within thirty days from the date of communication of the decision to the party concerned or to any other party to the procedure.

(7) The time limit of thirty days for the filing of a request for review shall be reckoned from the communication of the order refusing, or considering not to have been filed, the request for continuation of the procedure or the request for *restitutio in integrum*, if

(a) that date is later than the date of communication of the decision under paragraph (6), and

(b) the request for continuation of the procedure or the request for *restitutio in integrum* was filed to avert the consequences of an omission which served directly as a basis for the decision under paragraph (6).

(8) [repealed]

(9) The request for review shall be filed with the Hungarian Intellectual Property Office, which shall forward it, together with the documents of the patent file, to the court within fifteen days, except for the case provided for in paragraph (10). Where an opposing party took part in the procedure, the Hungarian Intellectual Property Office shall simultaneously notify the opposing party of the forwarding of the request.

(10) If the request for review raises legal questions of fundamental importance, the Hungarian Intellectual Property Office may make a written statement about that question and shall forward it, together with the request for review and the documents of the patent file, to the court within thirty days.

(11) The following data shall be indicated in the introductory part of the request for review:

(a) the name of the court seized,

(b) the identification details of the requesting party specified in Article 45(5) to (6), and, if there is a party with opposing interests, the known identification details of that party, and

(c) the identification details of the legal representative of the requesting party specified in Article 45(5) to (6) and his secure delivery service address.

(11a) The following data shall be indicated in the substantive part of the request for review:

(a) the number of the decision whose review is sought, and, where necessary and available, the registration number, as well as the provision or part of the decision whose review is sought,

(b) the explicit request that the court review the decision, and

(c) the grounds demonstrating the necessity of reviewing the decision, together with the supporting evidence and a reference to the legal basis.

(11b) The following shall be indicated in the closing part of the request for review:

(a) the facts and a reference to the legal provisions establishing the material and territorial jurisdiction of the court,

(b) the amount paid as a procedural fee and the method of payment, or, if a partial procedural fee was paid, the request for legal aid, or, if the law provides for an exemption from paying procedural fees, the facts and a reference to the legal provisions serving as a basis for the exemption,

(c) the facts and a reference to the legal provisions establishing the power of representation of the agent,

- (d) the supporting evidence for the facts referred to in the closing part.  
(12) If a request for review is filed late, the court shall decide on the request for *restitutio in integrum*.

*Material and territorial jurisdiction*

**Article 86**

(1) In proceedings for the review of decisions taken by the Hungarian Intellectual Property Office, the Budapest-Capital Regional Court (Fővárosi Törvényszék) shall have exclusive territorial jurisdiction.

(2) *[repealed]*

*Composition of the court*

**Article 87**

The Budapest-Capital Regional Court shall sit in a chamber consisting of three professional judges of whom two shall have technical university degrees or equivalent qualifications.

*Rules governing proceedings concerning requests for review*

**Article 88**

The court shall adjudicate requests for the review of decisions taken by the Hungarian Intellectual Property Office in accordance with the rules of non-contentious proceedings, subject to the derogations laid down in this Act. To procedural matters not regulated otherwise by this Act, the provisions of Act CXXX of 2016 on the Code of Civil Procedure (hereinafter "the Code of Civil Procedure") shall apply with the derogations arising from the particular features of non-contentious proceedings, together with the general provisions of the Act on the rules applicable in non-contentious civil court procedures and on certain non-contentious court procedures.

*Publicity*

**Article 89**

The court may, at the request of a party, exclude the public from the hearing even if the conditions prescribed in the Code of Civil Procedure are not fulfilled.

*Exclusion*

**Article 90**

(1) In addition to the cases determined in the Code of Civil Procedure, the following persons shall be excluded from participating in the proceedings or from acting as judges:

- (a) persons who participated in taking the decision of the Hungarian Intellectual Property Office;
- (b) relatives, as defined in the Civil Code, of a person referred to in point (a), above.

(2) The provisions of paragraph (1) shall also apply to the persons drawing up the minutes and to the experts.

*Parties to the proceedings and other participants*

**Article 91**

(1) The person who filed the request shall be a party to the court proceedings. The public prosecutor instituting proceedings shall be entitled to all the rights to which a party is entitled, except that he may not agree to a settlement, admit claims or waive any rights.

(2) Where an opposing party has also taken part in the procedure before the Hungarian Intellectual Property Office, the court proceedings shall be initiated against that party.

#### ***Article 92***

Where a joint patentee acts independently to maintain and protect patent rights, or proceedings have been initiated against one only of the joint patentees, the court shall notify the other joint patentees that they may join the proceedings.

#### ***Article 93***

(1) Any person having a legal interest in the outcome of the proceedings for review of decisions taken by the Hungarian Intellectual Property Office may intervene in the proceedings, until such time as the court decision becomes final, in favour of the party whose interests he shares.

(2) Save for settlement, admission of claims and waiver of rights, the intervenor may take any action, which the party he supports is entitled to take, except that his acts shall have effect only where they do not conflict with the acts of the party concerned.

(3) Any legal dispute between the intervenor and the party concerned may not be decided in the course of the proceedings.

#### ***Representation***

#### ***Article 94***

(1) In the course of the proceedings, patent attorneys may also act as authorised representatives, including legal representation pursuant to Article 94/A.

(2) As to the validity of a power of attorney given to a patent attorney or an attorney-at-law either in the country or abroad, the signature by the principal shall be sufficient.

#### ***Article 94/A***

Representation is mandatory in proceedings before the court, including appeal proceedings.

#### ***Costs of proceedings***

#### ***Article 95***

(1) Where an opposing party also takes part in the court proceedings, the provisions on litigation costs shall apply *mutatis mutandis* to the advance and payment of the costs of proceedings.

(2) In the absence of an opposing party, the applicant shall advance and meet the costs.

(3) The expenses and fees of the patent attorney representing the party shall be added to the costs of proceedings.

#### ***Omission***

#### ***Article 96***

Where neither the applicant nor any of the parties appear at the hearing or where none of the parties respond to the invitation of the court in the fixed time limit, the court shall decide on the request on the basis of the material at its disposal.

#### ***Restitutio in integrum***

#### ***Article 97***

The provisions of Article 49 shall apply *mutatis mutandis* to the submission of a request for *restitutio in integrum* in non-contentious proceedings.

*Measures on the basis of the request*

**Article 97/A**

If the Hungarian Intellectual Property Office has made a written statement concerning the request for review [Article 85(10)], the chairman of the proceeding chamber shall inform the party or parties of this statement in writing.

*Hearing and taking of evidence*

**Article 98**

(1) The court of first instance shall take evidence and shall hold its hearings in accordance with the provisions of the Code of Civil Procedure, and it shall hold hearings in accordance with the provisions on the main hearing stage of the Code of Civil Procedure.

(1a) The court proceedings may not be stayed.

(2) If no opposing party takes part in the proceedings and the case can be settled on the basis of documentary evidence, the court may take a decision without a hearing, but the party shall be heard at his request.

(3) Should the court consider the case without a hearing, but find during the proceedings that a hearing is necessary, it may at any time order such hearing. However, where the court considers the case at a hearing, or has ordered a hearing, it may not revoke such order and consider the case without a hearing.

(4) Settlement may not be reached in the court proceedings if settlement was not possible in the procedure before the Hungarian Intellectual Property Office.

(5) The provisions of Article 84/M shall also apply *mutatis mutandis* to the suspension of the court proceedings.

*Decisions*

**Article 99**

The court shall decide both on the merits of a case and on other matters by an order.

**Article 100**

(1) If the court alters a decision taken in a patent case, its order shall replace the decision of the Hungarian Intellectual Property Office.

(2) The court shall repeal a decision and order the Hungarian Intellectual Property Office to start a new procedure if

(a) the decision was taken with the participation of a person who could be objected to on the grounds of exclusion;

(b) substantive rules of procedure were infringed during the procedure before the Hungarian Intellectual Property Office which cannot be remedied by the court.

(c) [repealed]

(3) Where a party requests a court decision on a matter which was not the subject of the procedure before the Hungarian Intellectual Property Office, the court shall refer the request to the Hungarian Intellectual Property Office, except when, in the revocation procedure, the Hungarian Intellectual Property Office left the ground for revocation out of consideration under paragraph 81(1) or when the new ground for revocation was stated in the request for review or after the filing thereof; such ground for revocation shall be left out of consideration by the court. In the case of the referral of the request the court shall, if necessary, repeal the decision of the Hungarian Intellectual Property Office.

(4) The court shall leave out of consideration any facts, allegations or evidence submitted by the party in the request for review or after the filing thereof, which the Hungarian Intellectual Property Office – in compliance with Article 47(3) – duly left out of consideration in the procedure before it.

(5) Where, after the filing of a request for review, the Hungarian Intellectual Property Office withdraws any of its decisions referred to in Article 85(1)(b) to (d), the court shall terminate the proceedings. If the Hungarian Intellectual Property Office has altered its decision, the court proceedings may only continue in respect of matters still pending.

### **Article 101**

(1) The court order on the merits of a case shall be communicated by service; it shall not be considered published by the pronouncement thereof. If the court decides on the request for review at a hearing, the order on the merits of the case shall be pronounced also on the day of the hearing. The pronouncement may be deferred – for not more than eight days – only in the event if it is indispensable because of the complexity of the case. In such a case the time limit for pronouncement shall be fixed immediately and the judgment shall be put into writing until the day of pronouncement.

(2) In the course of adjudicating the appeal filed against an order of the Budapest-Capital Regional Court, the provisions of sections 389 to 391 of the Code of Civil Procedure shall apply *mutatis mutandis*, with the proviso that in the case of a request to this effect the court of second instance shall also hear the parties orally, except when the appeal was filed against an order on a request for review submitted against decisions of the Hungarian Intellectual Property Office referred to in Article 85(1)(c) and (d).

### **Article 102**

*[repealed]*

### **Article 103**

*[repealed]*

## **Chapter XII**

### **PATENT LITIGATION**

#### *Rules governing patent litigation*

### **Article 104**

(1) The Budapest-Capital Regional Court shall have exclusive jurisdiction and shall sit in a chamber composed as laid down in Article 87 in the following court proceedings:

(a) litigation concerning the grant, modification or cancellation of a compulsory license, with the exception of matters concerning compulsory licenses to which Regulation 816/2006/EC [Article 33/A(1)] applies (Articles 83/A to 83/H);

(b) litigation concerning the existence of the right of prior or continued use, furthermore the existence of the right provided for in Article 84/K(6) as well as in Article 112a(6) and Article 122(5) of the Convention [Article 84/A(a)]; and

(c) litigation concerning the infringement of an invention or of a patent.

(2) In patent litigation, provisional measures – until the contrary is rendered probable – shall be considered necessary on grounds deserving special appreciation pursuant to section 103(1)d) of the Code of Civil Procedure if the plaintiff proves that the invention is patented, and he is the patentee or an exploiter entitled to institute proceedings for infringement in his own name. In rendering the contrary probable, all circumstances of the case shall be taken into consideration, in particular that the patent was revoked by the Hungarian Intellectual Property Office or by the court of first instance, the European patent effective also in Hungary was revoked by an opposition division of the European Patent Office or in another Member State of

the European Patent Organisation. The provision relating to the presumption substantiating the existence of a ground deserving special appreciation shall not apply where six months have already elapsed from the beginning of patent infringement or sixty days from the date on which the plaintiff became aware of the infringement and of the identity of the infringer.

(3) In assessing the harm caused, or the advantage obtainable, by the provisional measures, it shall also be taken into consideration if the measures obviously and considerably prejudice public interest or the legitimate interests of third parties.

(4) In the case of patent infringement or the imminent danger thereof, the request for provisional measures may also be filed before lodging the statement of claim, even if before lodging the statement of claim the additional conditions which are provided for in the provisions of the Code of Civil Procedure relating to provisional measures are not fulfilled. The request for provisional measures submitted before lodging the statement of claim shall be decided on by the Budapest-Capital Regional Court. To the non-contentious procedure applicable to requests for provisional measures, in the absence of any provision in this Act stipulating otherwise, the rules of the Code of Civil Procedure shall apply, with the derogations deriving from the nature of the non-contentious procedure, as well as the general provisions pertaining to the rules applicable in non-contentious civil law procedure of the Act on the rules applicable in non-contentious civil law procedures and on certain non-contentious court procedures. If the plaintiff has initiated an action for patent infringement in accordance with paragraph (8), the amount exceeding the fee paid in the non-contentious procedure shall be paid as fee for the action.

(5) In addition to civil remedies applicable in the case of infringement, the patentee may request the court, on conditions relating to provisional measures, to

(a) order precautionary measures in accordance with the provisions of the Act on judicial enforcement, if he demonstrates circumstances likely to endanger the later satisfaction of his claim for damages or for the surrender of the enrichment obtained by infringement;

(b) compel the infringer to communicate or present his banking, financial or commercial documents with a view to ordering the precautionary measures in accordance with point (a);

(c) order the lodging of a counter-security, if in place of demanding discontinuance of the patent infringement, the patentee consents to the continuation, by the infringer, of the allegedly infringing activity.

(6) The court may order the lodging of a counter-security under paragraph (5)(c) even in the absence of a request of the patentee to this effect, provided that the patentee filed a request for the discontinuance of patent infringement, which the court does not allow.

(7) The court shall decide on the provisional measures by an order and out of turn, but not later than within fifteen days from the filing of a request to this effect. The court of second instance shall decide on the appeal filed against the decision on the provisional measures by an order and out of turn, but not later than within fifteen days from the filing of the appeal.

(8) At the request of the other party, the court shall annul its order on the request for provisional measures – including the measures that may be taken pursuant to paragraphs (5) and (6) – filed before the initiation of an action, if the patentee has not instituted, within fifteen days from the communication of such order, proceedings for patent infringement with respect to the claim enforced by the provisional measures. The court shall decide on the request for annulling the provisional measures by an order and out of turn, but not later than within fifteen days from the filing of the request.

(9) Where, in the course of proceedings for patent infringement, one of the parties has already produced reasonably available evidence, the court may, at the request of the party producing the evidence, require the other party to

(a) present the documents and other exhibits in his possession and to make inspection possible;

(b) communicate or present his banking, financial or commercial documents.

(10) Preliminary taking of evidence shall also be admissible before instituting proceedings for patent infringement if the patentee has rendered the fact or danger of patent infringement probable to a reasonable extent. The court shall decide on the preliminary taking of evidence by an order and out of turn, but not later than within fifteen days from the filing of a request to this effect. An appeal shall lie against orders rejecting the preliminary taking of evidence; the court of second instance shall decide on the appeal lodged against the order rejecting the preliminary taking of evidence by an order and out of turn, but not later than within fifteen days from the lodging of the appeal. If the proceedings have not yet started, the preliminary taking of evidence shall be requested at the Budapest-Capital Regional Court. Preliminary evidence shall be taken by the Budapest-Capital Regional Court.

(11) At the request of the other party, the court shall annul its order ordering the preliminary taking of evidence, if the patentee has not instituted proceedings for patent infringement within fifteen days from the communication of the order ordering the preliminary taking of evidence. The court shall decide on the request for annulment of the order on the preliminary taking of evidence by an order and out of turn, but not later than within fifteen days from the filing of the request.

(12) When ordering provisional measures, including those which can be ordered pursuant to paragraphs (5) and (6), the court may dispense with the hearing of the other party, if the delay caused thereby would cause irreparable harm. When ordering the preliminary taking of evidence, the court may dispense with the hearing of the other party pursuant to section 337(1b) of the Code of Civil Procedure, if the delay caused thereby would cause irreparable harm or if there is a significant risk of the destruction of evidence. Orders of the court on provisional measures or the preliminary taking of evidence made without the other party having been heard shall be communicated to the other party without delay after execution. After communication of the order, the other party may request to be heard, the review or the annulment of the order ordering provisional measures or the preliminary taking of evidence.

(13) At the request of the other party, the court may subject the ordering of the preliminary taking of evidence and – with the exception of paragraph (5)(c) and paragraph (6) – of provisional measures to the lodging of a security.

(14) To the payment or release of the security or counter-security referred to in paragraph (5)(c), paragraph (6) and paragraph (13), the provisions concerning security of the Code of Civil Procedure shall apply, with the proviso that the court may provide for the payment of the security or counter-security or the release of the security or counter-security not only in a judgement but also in an order annulling an order on the preliminary taking of evidence or on provisional measures, or in an order establishing the nullity of such order.

(15) Where the patentee has not submitted the Hungarian translation of the text of the European patent under Article 84/H, and he neither has provided the alleged infringer with the said translation upon the latter's request in accordance with Article 84/G(2), it shall be regarded that the defendant has not provided any grounds for the litigation.

(16) In case of a European patent the Hungarian translation of the text of such patent shall be annexed to the request for litigation. In case of failure to comply with this requirement an invitation shall be issued. The cost of translation shall be borne by the patentee.

(17) In other respects, in court proceedings pursuant to paragraph (1) as well as in any other patent-related court proceedings, the provisions of the Code of Civil Procedure shall apply, with the derogations laid down in sections 89, 94 and 95(3).

(18) *[repealed]*

## **PART V**

### **PROTECTION OF PLANT VARIETIES**

#### *Chapter XIII*

#### ***PLANT VARIETIES AND PROTECTION OF PLANT VARIETIES***

##### *General provisions*

##### ***Article 105***

For the purposes of this Act

(a) *plant variety*: a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions of protection are fully met, can be

1. defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

2. distinguished from any other plant grouping by the expression of at least one of the said characteristics, and

3. considered as a unit with regard to its suitability for being propagated unchanged;

(b) *propagating material*: entire plants, seeds or other parts of plants suitable for growing the whole plant or for producing it in any other way.

### *Object of plant variety protection*

#### **Article 106**

(1) Plant variety protection shall be granted for varieties that are distinct, uniform, stable and new.

(2) Varieties of all botanical genera and species, including hybrids between general or species, may form the object of plant variety protection.

(3) The variety shall be deemed to be distinct if it is clearly distinguishable, by the expression of the characteristics resulting from a given genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge at the date of priority. The existence of another variety shall in particular be deemed to be a matter of common knowledge from the date of filing of the application if

(a) it was already object of plant variety protection or entered in an official register of plant varieties;

(b) an application for the granting of plant variety protection or for state registration was filed, provided that the application leads to the granting of plant variety protection or to the entering of the said variety in the official register of plant varieties.

(4) The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, its individuals are sufficiently uniform in the expression of those characteristics which are included in the examination of distinctness, as well as any others used for the variety description.

(5) The variety shall be deemed to be stable if the expression of the characteristics which are included in the examination for distinctness as well as any others used for the variety description, remain unchanged after repeated propagation or in the case of a particular cycle of propagation at the end of each such cycle.

(6) The variety shall be deemed to be new if the propagating or harvested material of the variety has not been sold or otherwise disposed of to others by or with the consent of the breeder [Article 108(1)] or his successor in title, for purposes of exploitation of the variety

(a) in the country earlier than one year before the date of priority,

(b) abroad earlier than four years or, in the case of trees or of vines, earlier than six years before the date of priority.

### *Plant varieties eligible for protection*

#### **Article 107**

(1) Plant variety protection shall be granted to a plant variety if

(a) it satisfies the requirements laid down in Article 106;

(b) the plant variety has been given a variety denomination meeting the requirements of paragraph (2);

and

(c) the application therefor complies with the requirements laid down by this Act.

(2) The plant variety must be given a variety denomination suitable for identification. A variety denomination shall, in particular, not be suitable for identification

(a) if it designates an existing variety of the same plant species or of a closely related species or can be confused with it;

(b) if its use would infringe the earlier rights of others;

(c) if it is liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeders;

(d) if it consists solely of figures except where this is an established practice for designating varieties;

(e) if its use would be contrary to public policy or morality.

### *Breeder of the plant variety and entitlement to plant variety protection*

#### **Article 108**

- (1) Breeder is the person who bred, or discovered and developed a variety.
- (2) The right to plant variety protection shall belong to the breeder or to his successor in title.
- (3) On the basis of this Act, an applicant may obtain plant variety protection if
  - (a) he is of Hungarian nationality or has his domicile or seat in the country;
  - (b) he is a national of a State or of a Member State of an international organization party to the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as the "UPOV Convention"), or has his domicile or seat in such a State.
- (4) In addition to the cases laid down in paragraph (3), plant variety protection may also be obtained on the basis of other international treaties or subject to reciprocity. In the matter of reciprocity, the opinion of the President of the Hungarian Intellectual Property Office shall be decisive.
- (5) In any other matters pertaining to the moral rights of the breeder, to the right to plant variety protection, to service and employee plant varieties and to the remuneration of the breeder, the provisions of Article 7(2) to (7), Article 8(2) to (4) and Articles 9 to 17 shall apply *mutatis mutandis*.

#### *Rights conferred by plant variety protection*

#### **Article 109**

- (1) Plant variety protection shall confer on the holder of plant variety protection (hereinafter referred to as "the holder") the exclusive right to exploit the variety.
- (2) On the basis of the exclusive right of exploitation, the holder shall be entitled to prevent any person not having his consent from the following acts in respect of the propagating material of the protected variety:
  - (a) production or reproduction (multiplication),
  - (b) conditioning for the purpose of propagation,
  - (c) offering for sale,
  - (d) selling or other marketing,
  - (e) exporting,
  - (f) importing,
  - (g) stocking for any of the purposes mentioned in (a) to (f).
- (3) The provisions of paragraph (2) shall also apply to harvested material obtained through the unauthorized use of propagating material of the protected variety or to products made directly from such harvested material through the unauthorized use of the harvested material, unless the holder has had reasonable opportunity to exercise his right in relation to the said propagating or harvested material.
- (4) The provisions of paragraphs (2) and (3) shall also apply in relation to varieties
  - (a) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
  - (b) which are not clearly distinguishable in accordance with Article 106(3) from the protected variety;
  - (c) whose production requires the repeated use of the protected variety.
- (5) For the purposes of paragraph (4)(a), a variety shall be deemed to be essentially derived from another variety ("the initial variety") when
  - (a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
  - (b) it is clearly distinguishable in accordance with Article 106(3) from the initial variety; and
  - (c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- (6) The exclusive right of exploitation shall not extend to
  - (a) acts done privately or not involved in an economic activity;
  - (b) acts done for experimental purposes relating to the plant variety;
  - (c) acts done for the purpose of breeding other varieties, and, except where the provisions of paragraph (4) apply, acts referred to in paragraphs (2) and (3) in respect of such other varieties.
- (7)–(8) [repealed]

*Claim to remuneration arising from plant variety protection***Article 109/A**

(1) The farmer may exploit the product of the harvest in his own holding without the permission of the holder for the purposes of propagation – other than the hybrids and synthetic plant varieties – which he obtained by sowing in his own holding the seed or tuber (hereinafter referred to together as the “seed”) of the plant variety being under plant variety protection and belonging to plant species specified in paragraph (2). With respect to this exploitation – with the exception defined in paragraph (4) – the holder is entitled to an equitable remuneration.

(2) Paragraph (1) shall be applied to the following agricultural plant species:

(a) Fodder plants:

1. Chickpea milkvetch – *Cicer arietinum* L.
2. Yellow lupin – *Lupinus luteus* L.
3. Lucerne – *Medicago sativa* L.
4. Field pea – *Pisum sativum* L. (partim)
5. Berseem/Egyptian clover – *Trifolium alexandrinum* L.
6. Persian clover – *Trifolium resupinatum* L.
7. Field bean – *Vicia faba*
8. Common vetch – *Vicia sativa* L.

(b) Cereals:

1. Oats – *Avena sativa*
2. Barley – *Hordeum vulgare* L.
3. Rice – *Oryza sativa* L.
4. Canary grass – *Phalaris canariensis* L.
5. Rye – *Secale cereale* L.
6. Triticale – X *Triticosecale* Wittm.
7. Wheat – *Triticum aestivum* L. emend. Fiori et Paol.
8. Durum wheat – *Triticum durum* Desf.
9. Spelt wheat – *Triticum spelta* L.

(c) Potatoes:

1. Potatoes – *Solanum tuberosum*

(d) Oil and fibre plants:

1. Swede rape – *Brassica napus* L. (partim)
2. Turnip rape – *Brassica rapa* L. (partim)
3. Linseed with the exclusion of flax – *Linum usitatissimum*.

(3) For the purposes of this Act

(a) *own holding*: any holding or part of an estate which is actually used by the farmer to grow plants, irrespectively of the fact whether it is his own property or uses it on other legal grounds;

(b) *farmer*: any natural person, legal person or organization without legal personality who or which is engaged in growing arable crops.

(4) The obligation to pay a remuneration defined in paragraph (1) shall not be applied to any farmer who is engaged in growing arable crops in less than 20 hectares, or, in the case of potatoes, in less than 1 hectare.

(5) The rights specified in this Article and in Article 109/B may be exercised by the holders individually or through their organization. The organization of the holders may proceed exclusively on behalf of those members or other holders who have given a written authorization to the organization to do so. If the holder has given a written authorization to an organization, he may not proceed individually to claim remuneration. When enforcing the claims under Article 109/C and 114/C, the rules of Chapter V of the Code of Civil Procedure shall apply for the legal representation performed by the organization of the holders.

(6) The obligation to pay a remuneration defined in paragraph (1) is effective from the date on which the farmer actually exploits the product of the harvest for the purposes of propagation in the fields.

(7) The rate and the payment of the remuneration is subject to the agreement between the holder and the farmer. The holders may conclude the agreement – in respect of the members of the farmers’ organizations – with the farmers’ organizations as well.

(8) In the absence of the agreement under paragraph (7)

(a) the basis of the remuneration is the seed quantity recommended by the holder for the propagation of the respective plant variety multiplied by the size of the field indicated by the farmer under Article 109/B(3)(c); the rate of the remuneration is 50% of the licence fee included in the price of the sealed seed with the lowest propagation degree of the respective plant variety, applied to the quantity determined above;

(b) the term of payment reasonable under the circumstances of the case and the method of payment is determined by the written invitation of the holder addressed to the farmer, directly or through the organization of the farmers representing the addressee; the farmer is notified of the rate of the remuneration defined in point (a) by the holder in that invitation.

(9) In respect of each plant variety, the recommended sowing quantity under point (a) of paragraph (8) and the rate of the licence fee applied to a quantity unit shall be published upon the initiative of the holder by the ministry led by the minister responsible for agricultural policy in its official gazette annually, before their respective sowing periods. With the exception of the case specified in paragraph (7), if this publication has not occurred, the remuneration may not be claimed through public authorities.

### **Article 109/B**

(1) For the purposes of claiming the remuneration under Article 109/A(1), if such data are included in its records, the authority for plant growing – upon request, against the payment of the costs, and in case of proving the entitlement – provides the following data to the holder of the plant variety being under protection and belonging to the plant species specified in Article 109/A(2):

(a) the name, propagation degree and the quantity propagated of the protected plant varieties of the holder, belonging to the plant species specified in Article 109/A(2), controlled in the holding of the farmers – who do not belong to the circle of farmers specified in Article 109/A(4) – being engaged in producing seeds and, as well as the name of the respective farmers and the address of their holding;

(b) the name of the protected plant varieties of the holder processed by the seed processors, belonging to the plant species specified in Article 109/A(2), as well as the quantity of the processed raw seed.

(2) For the purposes of claiming the remuneration under Article 109/A(1), if such data are included in its records, the agency responsible for agriculture and rural development – upon request, against the payment of the costs, and in case of proving the entitlement – provides the following data to the holder of the plant variety being under protection and belonging to the plant species specified in Article 109/A(2):

(a) the name of the farmers notifying the growing of plant species specified in Article 109/A(2), not belonging to the circle of farmers specified in Article 109/A(4), as well as the address of their holding;

(b) the overall size of the field used by the farmer defined in point (a), indicating the size of the field exploited for each plant variety.

(3) For the purposes of claiming the remuneration under Article 109/A(1), any farmer who – based on the data under paragraph (1) or other data – may be deemed to have performed an exploitation under Article 109/A(1) is obliged to deliver the following data to the holder – upon his request – within the reasonable time limit defined by the holder:

(a) the name of plant varieties belonging to the plant species specified in Article 109/A(2), being under protection in favour of the holder the harvested product of which he exploited in his own holding for the purposes of propagation;

(b) in case of plant varieties under point (a) the quantity, the seal number of the seed bearing a seal, purchased and exploited in the given economic year and indication of the size of the field where it has been sowed;

(c) indication of the size of the field where the harvested product of the plant varieties under point (a) has been sowed;

(d) the name and address of the person(s) processing the product of the harvest of plant varieties under point (a) for the purposes of exploitation under Article 109/A(1).

(4) For the purposes of claiming the remuneration under Article 109/A(1), the seed processor – upon the written request of the holder – is obliged to give information about the quantity processed for the purposes of sowing of the harvested product of the protected plant variety of the holder belonging to the plant species specified in Article 109/A(2), as well as about the name and address (place of business) of the persons for whom he has fulfilled this activity of processing.

(5) Providing of data specified in paragraphs (3) and (4) may be required in respect of the given economic year and of that year or those years of the preceding three years in respect of which the farmer had not provided the data to the holder previously. Any farmer obliged to provide data under paragraph (3) shall prove the data under point (b) of paragraph (3) related to the quantity of the purchased and exploited seed bearing a seal by certified documents as well.

(6) In his request under paragraphs (3) and (4) the holder is obliged to give his name and address and the names of the protected plant varieties belonging to him. In his request under paragraph (3) he shall refer to the facts upon which he had supposed that the farmer had made exploitation under Article 109/A(1). Upon request of the farmer or the processor, the entitlement shall be proved.

(7) The holder may also submit the request under paragraphs (3) and (4) to the farmers or to the seed processors – in case of an agreement to this end – through their organizations.

### ***Article 109/C***

(1) In case of the entire or partial failure – in spite of a repeated invitation – to provide data specified in Article 109/B(3) and (4), or in case of providing false data, the holder may claim the provision or correction of data specified in Article 109/B(3) and (4).

(2) If the authenticity of the data provided is disputed, the burden of proof shall be on the farmer.

### ***Exhaustion of the exclusive right of exploitation conferred by plant variety protection***

### ***Article 110***

(1) The exclusive right of exploitation conferred by plant variety protection shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 109, paragraph (4), which has been sold or otherwise marketed by the holder or with his consent in the territory of the European Economic Area, or any material derived from the said material.

(2) The exclusive right of exploitation shall extend to acts referred to in paragraph (1) if such acts involve further propagation of the variety in question, or involve an export of such material of the variety which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety referred to in paragraph (1) belongs, except where the exported material is for final consumption purposes.

(3) For the purposes of paragraphs (1) and (2), material means propagating material, harvested material and any product made directly from the harvested material.

### ***Term of plant variety protection***

### ***Article 111***

Definitive plant variety protection shall have a term of 25 years or, in the case of vines and trees, a term of 30 years, from the date of the grant of the protection.

### ***Maintenance of plant variety protection***

### ***Article 111/A***

(1) Maintenance fees, specified by the law on fees for administrative services in industrial property procedures, shall be paid for each year of the duration of plant variety protection.

(2) In respect of the maintenance and the maintenance fee of plant variety protection, the provisions related to the maintenance and the maintenance fee of patent protection shall apply *mutatis mutandis*.

### ***Remuneration of the breeder of the plant variety***

### ***Article 112***

The breeder of the plant variety shall be entitled to a remuneration (remuneration for the breeder) under the provisions relating to remuneration for inventions (Article 13).

*Maintenance of the plant variety, use of variety denominations*

**Article 113**

(1) The holder shall be required to maintain the plant variety during the period of plant variety protection.

(2) When a variety is offered for sale or is marketed, it shall be permitted to associate a trademark, a geographical indication or other similar indication with the registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

(3) When a variety is offered for sale or marketed, the registered variety denomination must be used, even after the termination of plant variety protection, except where such use would infringe the earlier rights of others.

*Other rights and obligations deriving from plant varieties and plant variety protection*

**Article 114**

(1) Rights deriving from plant varieties and plant variety protection may not be transferred to any person who cannot be granted plant variety protection under the provisions of Article 108(3) and (4). In any other matters pertaining to the succession in title, the provisions of Article 25 shall apply *mutatis mutandis*.

(2) If, after the grant of plant variety protection, the holder of plant variety protection obtained a Community plant variety right [Article 115(b)] for the same variety, he will be exempt from paying the annual fees until the termination of the Community plant variety right. If the Community plant variety right terminates before the expiry of the term of plant variety protection, the holder may request re-establishment of the plant variety protection in accordance with the provisions of Article 115/B.

(3) With respect to the establishment of plant variety protection, the limitations of protection, the joint right to plant variety protection and joint plant variety protection, the provisions of Articles 18, 21 and 26 shall apply *mutatis mutandis*.

(4) Matters relating to the moral and economic issues concerning plant variety protection that are not covered by this Act shall be governed by the provisions of the Civil Code.

*Exploitation contracts*

**Article 114/A**

With respect to contracts of exploitation of plant varieties (plant variety license contracts), the provisions of Articles 27 to 30, and, in matters that are not covered by this Act, the provisions of the Civil Code shall apply *mutatis mutandis*.

*Compulsory licenses*

**Article 114/B**

(1) If a patented invention cannot be exploited without infringing a plant variety protection (hereinafter referred to as the “dominant plant variety protection”), a compulsory license shall be granted, on request and to the extent necessary for the exploitation of the variety according to the dominant plant variety protection, to the holder of the dependent patent, provided that the invention claimed in the dependent patent involves significant technical progress of considerable economic interest compared with the variety claimed in the dominant plant variety protection.

(2) In any other matters pertaining to the compulsory licenses granted for the exploitation of the protected plant varieties, the provisions of Articles 31, 32(2) and 33 shall apply *mutatis mutandis*.

*Infringement of plant varieties and of plant variety protection*

**Article 114/C**

- (1) An infringement of the plant variety protection is committed by any person who
  - (a) illegitimately exploits the plant variety being under protection;
  - (b) does not fulfil the obligation to pay remuneration prescribed in Article 109/A(1).
- (2) In respect of infringement of plant variety and plant variety protection, the provisions of Articles 34 to 36 shall apply *mutatis mutandis*.

*Revocation of plant variety protection*

**Article 114/D**

- (1) Plant variety protection shall be revoked *ex tunc* if
  - (a) the subject matter of the plant variety protection does not satisfy the requirements laid down in Article 106(3) and (6);
  - (b) the grant of plant variety protection has been essentially based upon information and documents furnished by the breeder or his successor in title and the conditions laid down in Article 106(4) and (5) were not complied with at the time of the grant of plant variety protection;
  - (c) the plant variety protection has been granted to a person who is not entitled to it under the Act, unless it is transferred to the person who is so entitled.
- (2) Should the request for revocation be rejected by a final decision, a new procedure for the revocation of the same plant variety protection on the same grounds may not be instituted by any person.

*Cancellation of plant variety protection and of variety denomination*

**Article 114/E**

- (1) Plant variety protection shall be cancelled – with retroactive effect to the date of instituting proceedings for cancellation or to the date on which the conditions for cancellation have already existed, whichever is earlier – if, after the grant of protection, the conditions laid down in Article 106(4) and (5) are no longer fulfilled.
- (2) In addition to the cases referred to in paragraph (1), plant variety protection shall be cancelled – with retroactive effect to the date of instituting proceedings for cancellation – if the holder, after being requested to do so and within a prescribed period,
  - (a) does not provide the authority with the documents or other means necessary for verifying the maintenance of the variety;
  - (b) does not request the registration of another variety denomination complying with the conditions laid down in Article 107(2), where the previous denomination is cancelled after the grant of plant variety protection.
- (3) The registered variety denomination shall be cancelled if the holder, after being requested to do so and within a prescribed period, does not verify that it fulfils the conditions laid down in Article 107(2). If, after the cancellation of the variety denomination, the holder files a request which contains a variety denomination complying with the conditions laid down in Article 107(2), the new variety denomination shall be registered.
- (4) Should the request for cancellation of the plant variety protection or of the variety denomination be rejected by a final decision, a new procedure for cancellation of the same plant variety protection or of the same variety denomination on the same grounds may not be instituted by any person.

*Other provisions concerning termination of plant variety protection*

**Article 114/F**

In any other matters pertaining to the termination of plant variety protection, the provisions of Articles 38 to 41 and 43 shall apply *mutatis mutandis*, except that definitive plant variety protection shall also terminate, in addition to the cases laid down in Article 39, if the plant variety protection is cancelled, with retroactive effect to the date of instituting proceedings for cancellation or at the date on which the conditions for cancellation have already existed.

#### Chapter XIV

### PROCEDURES BEFORE THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE IN MATTERS OF PLANT VARIETY PROTECTION

#### General provisions governing procedures concerning plant variety protection

#### Article 114/G

(1) The Hungarian Intellectual Property Office shall have competence in the following matters of plant variety protection:

- (a) grant of plant variety protection,
- (b) decision on the termination and the restoration of plant variety protection,
- (c) revocation of plant variety protection,
- (d) cancellation of plant variety protection and of variety denomination,
- (e) keeping the registers of applications for plant variety protection and of protected plant varieties, including any particulars pertaining to their maintenance,
- (f) official information on matters of plant variety protection.

(2) Experimental testing relating to the conditions laid down in Article 106(3) to (5) shall be carried out in the territory of the country by an authority (examination authority) designated in the law on state recognition of plant varieties.

(3) At the hearing, the Hungarian Intellectual Property Office shall proceed and shall take its rulings in procedures for revocation and for cancellation in the form of a board consisting of three members. The board shall take its decisions on a majority.

(4) With respect to *restitutio in integrum*, the provisions of Article 49 shall apply, with the proviso that *restitutio in integrum* shall be excluded:

- (a) in the event of failing to comply with the time limit prescribed for filing the declaration of priority [Article 114/L(2)], or with the time limit of 12 months fixed for claiming priority,
- (b) in the event of failing to comply with the time limits prescribed for filing a request for *restitutio in integrum* and a request for continuation of the procedure [Article 48(3) and Article 49(1) and (2)];
- (c) in the event of failing to comply with the time limit of three months prescribed for filing a request for the re-establishment of plant variety protection [Article 115/B(1)].

(5) The language of procedures concerning plant variety protection shall be Hungarian, the declaration of novelty of the variety and the provisional description of the variety shall be made in Hungarian and the common name of the species shall be given in Hungarian. In any other matters pertaining to the use of languages, the provisions of Article 52(2) shall apply *mutatis mutandis*.

(6) Prior to the publication of the application for plant variety protection, the examination authority may also inspect the files. After publication until the grant of protection, only the applicant, his representative, the expert, the body called upon to give an expert opinion and the examination authority may inspect the provisional description of the variety. In any other matters pertaining to the access to files, the provisions of Article 53 shall apply *mutatis mutandis*.

(7) In the absence of a provision of this Act to the contrary, the Hungarian Intellectual Property Office may withdraw or modify its decisions – terminating the procedure – taken in the following matters only if a request for review is made and only until such request is transmitted to the court:

- (a) grant of plant variety protection;
- (b) decision on the termination and the restoration of plant variety protection,
- (c) revocation of plant variety protection;
- (d) cancellation of plant variety protection;

- (e) cancellation of variety denomination;
- (f) re-establishment of plant variety protection.

(8) In the absence of a provision of this Act to the contrary, the Hungarian Intellectual Property Office may withdraw or modify its decision – terminating the procedure – taken in the matters referred to in paragraph (7)(c) to (e) on the basis of a request for review only if it establishes that its decision infringes legislation or if the parties request unanimously the modification or withdrawal of the decision.

(9) In issues not regulated in paragraphs (1) to (8), the provisions of Chapter VII shall apply *mutatis mutandis* to general provisions governing procedures concerning plant variety protection.

(10)–(12) [*repealed*]

#### *Register of Protected Plant Varieties, information to the public*

#### **Article 114/H**

(1) The Hungarian Intellectual Property Office shall keep a Register of applications for plant variety protection and of protected plant varieties which shall contain all facts and circumstances concerning plant variety protection. With respect to the Register of Protected Plant Varieties as well as entries therein, the provisions of Article 54(2) to (5) and Article 55 shall apply *mutatis mutandis*, except that any reference to the title of the invention in this Act shall mean the variety denomination, the common name and the Latin name of the species.

(2) With respect to information to the public relating to applications for plant variety protection and plant variety protection, the provisions of Article 56 shall apply *mutatis mutandis*, except that any reference to the title of the invention in this Act shall mean the variety denomination, the common name and the Latin name of the species.

(3) In compliance with the relevant provisions of the UPOV Convention, the Hungarian Intellectual Property Office shall inform the States and intergovernmental organisations party to the UPOV Convention of the submission, registration and cancellation of variety denominations and of any new variety denomination registered after cancellation.

#### *Procedure for the grant of plant variety protection; filing of applications for plant variety protection and its requirements*

#### **Article 114/I**

(1) The procedure for the grant of plant variety protection shall begin with the filing of an application with the Hungarian Intellectual Property Office.

(2) The application for plant variety protection shall contain a request for the grant of plant variety protection, a declaration of novelty of the variety, the definitive description containing the result of the experimental testing relating the conditions laid down in Article 106(3) to (5), the variety denomination, the common name and Latin name of the species and, if necessary, other relevant documents.

(3) In addition to the data specified in Article 45(5) and (6), the application for plant variety protection shall contain the name and address of the breeder, or an indication that the breeder requests that his name and address not be indicated in the plant variety protection documents and that the breeder gives his name and address on a separate sheet.

(3a) In all other respects, applications for plant variety protection shall be filed in compliance with the detailed requirements laid down in the law on the detailed formal requirements of patent applications and the law on the electronic filing of industrial property applications.

(4) An application for plant variety protection shall be subject to the payment of a filing fee specified by the law on fees for administrative services in industrial property procedures; the fee shall be paid within two months after the date of filing.

(5) Where the documents making up the application have been prepared in a foreign language, the provisional description in Hungarian language and the Hungarian name of the species shall be filed within four months after the date of filing.

(6) Until publication, the applicant may withdraw the application for plant variety protection in compliance with the provisions of Article 41. The Hungarian Intellectual Property Office shall take note of the withdrawal by an order.

*Date of filing*

**Article 114/J**

(1) The filing date of an application for plant variety protection shall be the date on which the application filed with the Hungarian Intellectual Property Office contains at least:

- (a) an indication that plant variety protection is sought,
  - (b) the name of the applicant, his address or seat or secure delivery service address, in the case of representation the name of the representative, his address or seat or secure delivery service address or any other data making it possible to contact the applicant,
  - (c) a provisional description of the variety, even though it does not comply with other requirements,
  - (d) a provisional variety denomination,
  - (e) the common name and the Latin name of the species.
- (2) In place of filing the provisional description of the variety, reference to a priority document shall suffice to accord a date of filing for the application.

*Unity; division of the application for plant variety protection*

**Article 114/K**

- (1) An application for plant variety protection may seek protection for one plant variety only.
- (2) If the applicant has claimed protection for more than one plant variety in one application, he may divide the application, retaining the date of filing and any earlier priority, if any, until such time as the experimental testing has begun. In any other matters pertaining to division, the provisions of Article 73(2) and (3) shall apply.

*Priority*

**Article 114/L**

- (1) The date establishing priority shall be
  - (a) generally, the date of filing of the application for plant variety protection,
  - (b) in the cases defined by the UPOV Convention, the date of filing of the foreign application.
- (2) Priority under paragraph (1)(b) shall be claimed on the date of filing of the application for plant variety protection. The document establishing priority shall be filed within four months after the date of filing of the application.
- (3) On the basis of other international treaties or subject to reciprocity and on conditions laid down in the UPOV Convention and in paragraph (2), priority may also be claimed if the application has been filed in a State or with an intergovernmental organization not party to the UPOV Convention. In the matter of reciprocity, the opinion of the President of the Hungarian Intellectual Property Office shall be decisive.

*Examination on filing*

**Article 114/M**

- (1) Following the filing of an application for plant variety protection, the Hungarian Intellectual Property Office shall examine whether
  - (a) the application satisfies the requirements for according a date of filing (Article 114/J),
  - (b) the filing fee has been paid [Article 114/I(4)],
  - (c) the provisional description of the variety in Hungarian language and the Hungarian name of the species have been filed [Article 114/I(5)].

(2) In the course of the examination following the filing of the application, the Hungarian Intellectual Property Office shall proceed by applying the provisions of Article 66(1) to (3) and (10) *mutatis mutandis*.

(3) If the filing fee has not been paid or the provisional description of the variety in Hungarian language or the Hungarian name of the species has not been filed, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities within the period specified by this Act [Article 114/I(4) and (5)]. Failing to comply with the said invitation, the application shall be considered withdrawn.

#### *Communication of certain data*

##### **Article 114/N**

If an application for plant variety protection satisfies the requirements examined under Article 114/M(1), the Hungarian Intellectual Property Office shall publish official information in the Gazette of Patents and Trademarks, which contains the name and address of the applicant and the representative, the reference number of the application, the date of filing and the date of priority where the latter is different, the variety denomination mentioned in the application, the common name and the Latin name of the species.

#### *Examination as to formal requirements*

##### **Article 114/O**

If an application for plant variety protection satisfies the requirements examined under Article 114/M(1), the Hungarian Intellectual Property Office shall examine whether the formal requirements of Article 114/I(2) to (3a) have been satisfied. In the course of this, it shall proceed by applying the provisions of Article 68(2) to (4) *mutatis mutandis*.

#### *Publication, observations*

##### **Article 114/P**

(1) With respect to the publication of the application for plant variety protection, the provisions of Article 70 shall apply *mutatis mutandis*, except that at the request of the applicant the application may be published at an earlier date if it satisfies the requirements examined under Article 114/M(1).

(2) After publication any person may file an observation with the Hungarian Intellectual Property Office in the procedure for the grant of plant variety protection to the effect that the plant variety or the application therefor does not comply with any of the requirements for protection laid down in this Act. In any other matters pertaining to observations, the provisions of Article 71(2) and (3) shall apply *mutatis mutandis*.

#### *Substantive examination of applications for plant variety protection*

##### **Article 114/R**

(1) The substantive examination of the application carried out by the Hungarian Intellectual Property Office shall ascertain whether

(a) the plant variety meets the requirements of Article 106(3) to (6),

(b) the plant variety has been given a variety denomination meeting the requirements of Article 107(2),

(c) the application for plant variety protection complies with the requirements laid down in this Act.

(2) The conditions laid down in Article 106(3) to (5) shall be assessed in the course of the procedure for state registration or on the basis of the results of experimental testing carried out for the purposes of the procedure concerning plant variety protection.

(3) The results of experimental testing carried out by a competent foreign authority may be taken into consideration with the consent of such authority. If the applicant files the result of an experimental testing carried out by a foreign authority, the Hungarian Intellectual Property Office shall forward the result of the testing together with the consent of the foreign authority to the examination authority [Article 114/G(2)].

When using the results of experimental testing, the examination authority shall proceed in accordance with the law on state recognition of plant varieties.

(4) The costs of experimental testing shall be borne by the applicant.

(5) The applicant may file the results of experimental testing with the Hungarian Intellectual Property Office within four years from the date of priority or within three months from the notification of the results of experimental testing, whichever expires later.

(6) If the results of experimental testing are not filed within three months preceding the expiration of four years from the date of priority, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit fixed in paragraph (5) or to verify that the results of experimental testing have not yet been communicated. Failure to comply with the said invitation, the applicant shall be considered to have surrendered the provisional plant variety protection.

(7) If the application for plant variety protection does not meet the requirements examined under paragraph (1), the applicant shall be invited, according to the nature of the objection, to rectify the irregularities, to submit comments or to divide the application. In the course of this, the Hungarian Intellectual Property Office shall proceed by applying the provisions of Article 76(2) to (4) *mutatis mutandis*.

#### *Information to the examination authority*

##### **Article 114/S**

(1) Simultaneously with the communication of certain data of the application for plant variety protection (Article 114/N), the Hungarian Intellectual Property Office shall transmit copies of the documents indicated in Article 114/J(1) to the examination authority. Copies of documents relating to matters of plant variety protection and necessary for performing the tasks of the examination authority shall also be sent subsequently.

(2) If the procedure for the grant of plant variety protection ends without the grant of protection, the Hungarian Intellectual Property Office shall inform the examination authority thereof by sending it the copy of the decision terminating the procedure.

#### *Grant of plant variety protection*

##### **Article 114/T**

(1) If the plant variety and the application therefor meet all the requirements of the examination [Article 114/R(1)], the Hungarian Intellectual Property Office shall grant plant variety protection for the subject matter of the application.

(2) The grant of plant variety protection together with the variety denomination shall be recorded in the Register of Protected Plant Varieties [Article 114/H(1)], and official information shall be published thereon in the official journal of the Hungarian Intellectual Property Office (Article 56). The date of the grant of plant variety protection shall be the date of the ruling on the grant. The Hungarian Intellectual Property Office shall inform the examination authority of the grant of plant variety protection and of the registration of the variety denomination by sending it the ruling on the grant.

(3) After the grant of plant variety protection, the Hungarian Intellectual Property Office shall issue a certificate to which the definitive description of the variety shall be annexed.

#### *Other procedures concerning plant variety protection*

##### **Article 114/U**

(1) Any person may institute proceedings for revocation or cancellation of plant variety protection or for cancellation of variety denomination against the holder of the plant variety protection. Under Article 114/D(1)(c), only that person may request revocation of plant variety protection who is entitled to it under this Act.

(2) In any other matters pertaining to other procedures concerning plant variety protection, the provisions of Articles 79 to 81 shall apply *mutatis mutandis*.

**Chapter XIV/A**

**COURT PROCEEDINGS IN CASES OF PLANT VARIETY PROTECTION**

*Provisions concerning court proceedings with regard to plant variety protection*

**Article 114/V**

With respect to court proceedings concerning plant variety protection, the provisions of Chapters XI and XII shall apply *mutatis mutandis*, with the proviso that decisions referred to in Article 53/A(3) shall be regarded as decisions referred to in Article 114/G(7).

**Chapter XIV/B**

**PROVISIONS CONCERNING THE SYSTEM OF COMMUNITY PLANT VARIETY RIGHTS**

*General provisions*

**Article 115**

For the purposes of this Act:

(a) *Community plant variety regulation*: Council Regulation (EC) No 2100/94 on Community plant variety rights;

(b) *Community plant variety rights*: plant variety rights referred to in Article 1 of the Community plant variety regulation;

(c) *application for a Community plant variety right*: an application for the grant of a Community plant variety right filed on the basis of the Community plant variety regulation.

*Forwarding applications for Community plant variety rights*

**Article 115/A**

(1) For the forwarding, pursuant to Article 49(2) of the Community plant variety regulation, of applications for Community plant variety rights filed with the Hungarian Intellectual Property Office, a forwarding fee prescribed by the law on fees for administrative services in industrial property procedures shall be paid on filing the application.

(2) If the fee for forwarding the application for a Community plant variety right has not been paid, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity. The Hungarian Intellectual Property Office shall forward the application for a plant variety upon the payment of the fee.

*Re-establishment of plant variety protection*

**Article 115/B**

(1) In the case of the termination of a Community plant variety right, the holder of the plant variety protection – having regard to Article 92(2) of the Community plant variety regulation – may request re-establishment of the plant variety protection from the Hungarian Intellectual Property Office within three months from the termination of the Community plant variety right.

(2) The holder shall be required to prove in the request for the re-establishment of plant variety protection the fact and date of the termination of the Community plant variety right, and to pay, within two months from the filing of the request, the proportionate part of the annual fee applicable in the year of the

termination of the Community plant variety right together with the annual fee applicable in the subsequent year.

(3) If the request for the re-establishment of plant variety protection does not comply with the requirements laid down in this Act, the holder shall be invited to rectify the irregularities; if the annual fee prescribed in paragraph (2) has not been paid, he shall be invited to make payment within the time limit fixed in paragraph (2). Failing to comply with the said invitation shall result in the request being considered withdrawn.

(4) If the Hungarian Intellectual Property Office allows the request for the re-establishment of plant variety protection, the plant variety protection shall be re-established on the day following the termination of the Community plant variety right.

(5) If the holder does not request re-establishment of the plant variety protection within three months from the termination of the Community plant variety right, the plant variety protection shall terminate, by virtue of this Act, on the day following the termination of the Community plant variety right.

*Sanctions in the case of the infringement of Community plant variety rights*

**Article 115/C**

In the case of an infringement of a Community plant variety right – in compliance with the provisions of Part VI of the Community plant variety regulation – the same sanctions and remedies shall apply as in the case of an infringement of a plant variety protection granted by the Hungarian Intellectual Property Office on the basis of this Act.

**PART VI**

***PROVISIONS ON THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE***

***Chapter XIV/C***

**The Hungarian Intellectual Property Office**

*Legal status of the Hungarian Intellectual Property Office*

**Article 115/D**

(1) The Hungarian Intellectual Property Office (hereinafter referred to in this Chapter as “the Office”) shall be the central government office for the protection of intellectual property.

(2) The Office’s President shall be appointed and dismissed by the Prime Minister; its three vice-presidents shall be appointed and dismissed – on the President’s proposal – by the minister exercising the rights of supervision (hereinafter referred to as “the Minister”).

(3) The employer’s rights over the vice-presidents – except for appointment and dismissal – shall be exercised by the President of the Office.

(4) The seat of the Office shall be in Budapest.

*Management of the Office*

**Article 115/E**

(1) The Office shall cover its operational costs from its own incomes.

(2) In industrial property procedures before the Office fees for administrative services laid down by the law on fees for administrative services in industrial property procedures shall be paid. Such fees shall be paid for certified or uncertified copies prepared by the Office, extracts, translations, as well as for certification performed by the Office. In cases and with conditions defined in this Act or in a separate Act a fee – the amount of which is defined in the law on fees for administrative services in industrial property procedures –

shall be paid for the maintenance and renewal of industrial property protection. The amount of these fees shall be reviewed regularly. During the review – besides the provisions of paragraph (3) – the operational costs of the industrial property system, the specialities of each form of industrial property protection and the aspects of promoting innovation by the means of industrial property protection shall be taken into consideration.

(3) The incomes of the Office consist of the fees for administrative services, the maintenance fees and renewal fees under paragraph (2), the fees and shares for administrative activities carried out by the Office on the basis of the international treaties administered by the World Intellectual Property Organization, and shares from fees paid for European Union or other regional industrial property protection with a unitary effect extending to the territory of Hungary, taking into account the tasks performed by the Office, the income from services provided by the Office as well as other incomes. These incomes shall ensure the continuous and smooth operation of the Office.

(4) The Office shall be entitled to manage its incomes independently, and to use them to cover its operational costs

(5) The Office shall be entitled to form a financial reserve from its incomes to an extent not more than 5% of the actual income in the given year. The reserve so formed shall exclusively be used, until the end of the second year following its formulation, to cover the operational costs of the Office and shall not be drawn away for any other purposes.

(6) The Office shall annually publish a report on its incomes and their use.

(7) The Office shall involve companies that it exercises control over as holder, and are defined in a government decree into the performance of its tasks referred to in Articles 115/I and 115/K, furthermore it may make use of the services of these companies in order to perform its tasks and for supporting its operation and management.

#### *National Intellectual Property Council*

#### **Article 115/F**

(1) In the performance of tasks referred to in Articles 115/J to 115/L, the President of the Office shall be assisted by the National Intellectual Property Council (hereinafter referred to as “the Council”) as a professional advisory and opinion-giving body. At the request of the President of the Office, the Council shall give its opinion on the draft of comprehensive measures (programs, strategic plans, national and Community legal acts, international agreements) concerning the protection of intellectual property. The Council participates in the elaboration of the national strategy on intellectual property protection, as well as monitors and facilitates its implementation.

(2) The Council is a body consisting of not more than twelve members having industrial property and copyright expertise or expertise in disciplines related to intellectual property.

(3) About the persons he proposes as members of the Council, the President of the Office informs the Minister, who may raise objection against the persons proposed within fifteen days from the date of receipt of the information. The person objected to may not be appointed as member of the Council. The members of the Council shall be appointed by the President of the Office subsequently.

(4) The members of the Council shall be appointed for a period of three years. The appointment extends only to the person himself, and no replacement may take place. The appointment can be extended for further three-year-long periods.

(5) The membership shall terminate with

(a) the expiration of the defined time period;

(b) resignation;

(c) release;

(d) the death of the member.

(6) The Council shall function according to the rules of procedure established by the President of the Office.

#### *The functions and competence of the Office*

#### **Article 115/G**

The Office's functions and competence include

- (a) official examinations and procedures in the field of industrial property;
- (b) performance of certain tasks in connection with copyright and rights related to copyright;
- (c) central governmental information and documentation activities in the field of intellectual property;
- (d) participation in the preparation of intellectual property legislation;
- (e) preparation and implementation of the Government's strategy for the protection of intellectual property, initiation and execution of governmental measures required for this purpose;
- (f) performance of professional tasks of international and European co-operation in the field of intellectual property protection;
- (g) performance of official and expert tasks relating to the assessment of research and development activity;
- (h) performance of registration tasks related to the tax base reduction benefit that may be claimed by enterprises supporting start-up enterprises.

### **Article 115/H**

(1) The Office shall perform the following tasks of industrial property authority determined by this Act and by specific legislation:

(a) the examination of patent, plant variety, utility model, topography, design, trademark, and geographical indication applications and applications for a supplementary protection certificate, the grant and registration of protection resulting from these applications as well as the procedures related to the granted rights;

(b) the examination and transmission of international applications for patents, industrial designs, trademarks and appellations of origin as well as the performance of search, examination, transmission, register-keeping and other procedural acts entrusted to a national industrial property authority and deriving from regional industrial property co-operation based on an international agreement, from other international treaties and from European Community law.

(2) At the request of the customs authorities, the Office shall furnish information about the holders of industrial property rights for the purposes of customs proceedings initiated due to infringement of intellectual property rights.

(2a) On the basis of specific legislation, the Office shall perform the tasks of preliminary assessment of research and development activity, and it shall participate in deciding specific questions relating to qualifying an activity as research or development and whether certain expenses may be attributed to a given research and development activity.

(2b) On the basis of legislation, the Office shall perform the tasks related to the entry in, and the deletion from the register of proof of entitlement to the tax base reduction benefit that may be claimed by enterprises supporting start-up enterprises.

(3) On the basis of specific legislation, the Office shall provide for the operation of the Body of Experts on Industrial Property.

(4) In connection with copyright and rights related to copyright, the Office shall perform – on the basis of specific legislation – in particular the following tasks:

(a) it shall conduct the procedures related to the use of orphan works and keep a register of the licences granted for the use of orphan works;

(b) in connection with the use of orphan works by beneficiary organisations, it shall transmit the data provided by the beneficiary organisations to the European Union Intellectual Property Office with a view to registering these data in its publicly accessible unified online register;

(c) it shall keep a register of organisations performing collective management of copyright and related rights and of independent rights management organisations;

(d) it shall authorise the performance of collective rights management as a representative collecting society;

(e) it shall supervise the activities of organisations performing collective management of rights and the activities of independent rights management organisations;

(f) it shall prepare the ministerial approval of the tariffs of the representative organisations performing collective management of rights, and take the necessary measures to that effect;

(g) it shall keep contact with the authorities supervising collective rights management organisations and independent rights management organisations in EEA States, in accordance with Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market and with those laid down in the Act on the Collective Management of Copyright and Related Rights;

(h) it shall keep the voluntary register of works;

(i) it shall provide for the operation of the Body of Experts on Copyright and the Conciliation Body established within the Body of Experts on Copyright.

(5) On the basis of specific legislation, the President of the Office shall exercise legality control over the activity of the Hungarian Chamber of Patent Attorneys.

#### ***Article 115/I***

Within the scope of central governmental documentation and information activity in the field of intellectual property the Office shall perform, in particular, the following tasks:

(a) it shall publish an official journal on industrial property matters;

(b) it shall publish the Hungarian patent specifications, utility model, industrial design and topography descriptions, and those provided for in international agreements;

(c) it shall collect, process by using information technology tools and make accessible to the public the industrial property documents in its specialised public library;

(d) it shall render information and documentation services concerning the protection of intellectual property.

#### ***Article 115/J***

(1) In issues concerning intellectual property protection, the minister responsible for justice shall submit a proposal for the adoption Acts or Government decrees and shall represent the Office in these issues before the Government and the Parliament.

(2) The Office shall be involved in preparing, and giving an opinion of, draft legislation affecting the protection of intellectual property.

(3) The Office shall study and analyse the implementation of intellectual property legislation, it shall assess and evaluate the effects and experience concerning the application of that legislation.

(4) In order to improve the protection of intellectual property, the Office shall – in conformity with international and European Community obligations and the policy objectives of the Government in the fields of economic strategy, research and development, technology and innovation and culture – initiate the adoption of new industrial property and copyright legislation, as well as amendments to existing legal rules and shall participate in the preparation of these pieces of legislation.

#### ***Article 115/K***

In order to develop and enforce the Government's strategy aimed at the protection of intellectual property as well as to initiate and implement governmental measures required for this purpose, the Office shall perform, in particular, the following tasks:

(a) it shall contribute to the establishment, development and implementation of the Government's economic strategy as well as its research and development, innovation, technology and cultural policies by means of the analysis of intellectual property protection-related domestic, foreign and international trends, the monitoring of the development of intellectual creative, innovative and industrial property activities, the preparation of a methodology to evaluate intellectual property and the making available of official experience;

(b) it shall initiate, establish, execute, and participate in, programs for promoting intellectual creative and innovative activities;

(c) it shall participate in the development of a system which serves the public recognition of intellectual creations and innovative results, and it shall launch, organise or promote competitions, exhibitions and other programs related to intellectual creative activity and intellectual property protection;

(d) it shall disseminate knowledge related to intellectual property protection, develop industrial property culture, enrich industrial property and copyright knowledge of enterprises – in particular the small

and medium-sized ones – by means of information, customer and advisory service, counselling and by other means, and it shall promote among them the respect for intellectual property rights;

(e) it shall operate, pursuant to the provisions of specific legislation, the National Board Against Counterfeiting, and it shall also contribute in other ways to the establishment and development of a system of conditions required for the effective enforcement of intellectual property rights;

(f) it shall professionally supervise intellectual property training outside public school system, operate its system, furthermore, it shall provide for the organisation of industrial property and patent attorney examinations;

(g) it shall provide for the operation of the Hungarian Design Council and participate in the implementation of awarding national design prizes and scholarships;

(h) it shall promote that intellectual property protection be used accordingly for the forming of the country's image, for the establishment of a uniform nation brand, as well as for the popularisation and the protection of the reputation of the typical Hungarian products.

#### **Article 115/L**

Within the framework of international and European co-operation in the field of intellectual property, the Office shall perform, in particular, the following representative and other professional tasks, in co-operation with the central state administrative organs concerned:

(a) it shall participate in the activities of the governing and other bodies of the World Intellectual Property Organization, the European Patent Organisation, the European Union Intellectual Property Office, the Community Plant Variety Office, as well as in the activities of the Council for TRIPS of the World Trade Organization and, on the basis of a general or *ad hoc* authorisation of the minister responsible for the subject matter, in the activities of other international organisations;

(b) it shall provide for the exercising of rights due to, and for the fulfilment of obligations incumbent on, the Member States of the European Patent Organisation and shall carry out the tasks falling upon the national patent authorities from the operation of the European patent system;

(c) in the field of intellectual property protection it shall carry out the tasks deriving from Hungary being a Member State of the European Union, it shall participate in establishing the Government position to be represented in the decision-making processes of the European Union as well as in representing it in the expert bodies on intellectual property of the Council and Commission of the European Union, it shall perform the professional tasks of co-ordination involved, furthermore it shall co-operate with the industrial property authorities of the European Union;

(d) it shall participate in the preparation and implementation of international agreements aimed at intellectual property protection and shall make proposals to conclude such agreements;

(e) it shall maintain relations with intellectual property authorities of other countries and international organisations.

#### **Chapter XIV/D**

### **COMMON RULES RELATED TO FEES FOR ADMINISTRATIVE SERVICES IN INDUSTRIAL PROPERTY PROCEDURES BEFORE THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE AND TO FEES PAYABLE FOR THE MAINTENANCE OR RENEWAL OF INDUSTRIAL PROPERTY PROTECTION**

#### *Payment of maintenance fees and the fee of request for restoration of protection*

#### **Article 115/M**

(1) The maintenance fees of patents, plant variety protection and utility model protection, as well as the maintenance fees of supplementary protection certificates shall be paid without a surcharge in the first three months of the six month grace period, and with a surcharge of 50 per cent from the fourth month of that period. The maintenance fee shall be paid with this surcharge also in case if the maintenance fee is paid after the expiry of the six month grace period, on the basis of a request for *restitutio in integrum*.

(2) If the patent application and the application for plant variety protection is divided following the publication, for the new applications created by the division the grace period in respect of the payment of maintenance fees that became due by virtue of the division and at a date preceding the division shall begin when the decision on the acknowledgement of the division becomes final.

(3) The maintenance fee may be paid also within two months before the grace period starts.

*Allowance, exemptions and deferment*

**Article 115/N**

For the fees for administrative services in industrial property procedures and for the maintenance and renewal fees – with the cases specified in Articles 115/O and 115/P – no allowances and exemptions may apply.

**Article 115/O**

(1) If, on the date of payment, the person entitled to the right to protection or the holder of the protection is exclusively the inventor, the breeder or the designer himself, one fourth of the patent filing and search fee, examination and granting fees and filing fees for utility model protection, plant variety protection, design or topography protection shall be paid.

(2) If, on the date of payment, the holder of the patent, utility model or plant variety protection is exclusively the inventor or the breeder himself, half of the maintenance fee of the patent, utility model or plant variety protection shall be paid.

(3) If, on the date of payment, the holder of the design protection is exclusively the designer himself, half of the fee of the request for renewal of the design protection shall be paid.

(4) Inventors, breeders or designers are entitled only to the allowances under paragraphs (1) to (3) if no priority of a foreign application has been claimed related to the application or if the protection is based on an application for which no priority of a foreign application has been claimed.

(5) The provisions of paragraphs (1) to (4) shall apply also if – in case of more inventors, breeders or designers – any of the inventors, breeders or designers has surrendered the right to protection or the protection itself in favour of the co-inventor, co-breeder or co-designer, or if any of the inventors, breeders or designers is succeeded by his heir.

**Article 115/P**

(1) Upon request the Hungarian Intellectual Property Office may accord an exemption from the patent filing and search fee, the examination fee and granting fees as well as from the fees of applications for plant variety, utility model, design and topography protection, moreover it may grant deferment of maintenance fees of patent, plant variety and utility model protection for the period from the first till the fifth years, if the holder of the right as natural person – due to his wages, income and financial standing – is unable to cover them; the fees subject to the deferment shall be paid together with the maintenance fee for the sixth year.

(2) Only those natural persons are entitled to exemption and deferment who can certify that their income (wage, pension, other regular financial allowance) does not exceed the standard prescribed lowest wage (minimal wage) and have no assets other than what is necessary for subsistence and furnishing. Exemption shall be granted to any person who is entitled to benefits for persons of active age, without verifying his income and financial standing.

(3) Exemption and deferment may be granted exceptionally also if the conditions specified in paragraph (2) do not exist but the Hungarian Intellectual Property Office – taking other circumstances of the natural person into consideration – finds that the subsistence of the natural person and his dependents is endangered.

(4) To the request for the exemption or for the deferment, an income certificate of the applicant and of his close relatives under the Civil Code (hereinafter referred to as “close relatives”) living in a common household with him, issued not earlier than thirty days by the employer, or in case of pensioners – instead of or besides the income certificate issued by the employer – the last month’s pension slip (postal certificate) or, in case of transferring the pension to a bank account, the last month’s bank account statement shall be enclosed.

(5) If the applicant and the close relative living in a common household with him have an income not considered as work-related income or pension (e. g. scholarship, benefits related to education, provisions based on social insurance, unemployment allowance, other regular pecuniary benefits, withdrawal of business, letting out of real estate, interest income, exchange gain, dividend income), the postal certificate, bank account statement, cashier's certificate of these incomes or other documents suitable for certifying the income shall be attached.

(6) If the applicant and the close relative living in a common household with him are not employed and are not pensioners and have no other incomes, this fact shall be declared in the request.

(7) For the purposes of paragraph (3) the applicant may present in the request, besides the documents suitable for certifying his income or pension, other circumstances (disaster, illness, etc.) upon which it can be established that the subsistence of the natural person and his dependents is endangered.

(8) If the request for exemption or deferment submitted contains irregularities, the applicant shall be invited to rectify them within the fixed time limit. In the invitation the applicant shall be warned that failing to rectify the irregularities shall lead to the refuse of the request.

(9) The request shall be refused if, in spite of a rectification, it still does not comply with the requirements specified in paragraphs (1) to (7). Where the applicant does not reply to the invitation within the fixed time limit, the request shall be considered withdrawn.

(10) No individual legal remedy against the order of the Hungarian Intellectual Property Office on the refusal of the exemption or deferment can be made, the review of this order may be requested in the request for review submitted against the decision terminating the industrial property procedure.

#### *Due date*

#### **Article 115/R**

(1) Unless otherwise provided by an act, the fees for administrative services and the renewal fees to be paid in industrial property procedures are due on the filing date of the application or on the filing date of the request.

(2) The due date of the maintenance fee shall be determined according to the provisions of this Act and other acts.

(3) In the event of paying the fees for administrative services, the renewal fees and the maintenance fees by transfer, the date of payment is the second working day of the bank prior to crediting the amount on the Office's account specified by the law on fees for administrative services in industrial property procedures, in the event of a transfer from abroad, the fifth working day of the bank prior to crediting. Calculating the working days of the bank the work schedule of the Hungarian State Treasury shall be decisive. If payment is made by money order, the date of payment shall be the day of posting the money order.

#### *Consequences of failure to pay the fees*

#### **Article 115/S**

(1) If the fee has not been paid in the industrial property procedure, the client – with the exception of the provisions of paragraphs (2) and (3) – shall be invited to rectify the irregularities or shall be warned. If the client still fails to pay the prescribed fees, the application and the request shall be refused or shall be considered withdrawn unless the relevant law stipulates different legal consequences or different procedural rules for cases when the fee has not been paid.

(2) Failure to pay the maintenance fee under the rules – pursuant to the provisions of this Act or a separate Act – results in the termination of protection.

(3) Requests for extension of time limits and requests for continuation of the procedure or *restitutio in integrum* and requests for a search report supplemented with a written opinion, furthermore requests for preparing a search report supplemented with a written opinion in an accelerated procedure shall not be considered as filed till the fee of the request is not paid.

## **PART VII**

## FINAL PROVISIONS

### Chapter XV

#### ENTRY INTO FORCE; TRANSITIONAL PROVISIONS

##### *Body of experts on industrial property*

##### **Article 115/T**

(1) In professional questions arising in industrial property legal disputes, the courts and other authorities may request an expert opinion of the body of experts on industrial property at the Hungarian Intellectual Property Office.

(2) On request, the body of experts on industrial property may, on commission, give an expert opinion in industrial property questions out of court as well.

(3) Detailed rules of the organisation and activity of the body shall be laid down by specific legislation.

##### *Rules establishing provisions concerning the entry into force of this Act and transitional provisions*

##### **Article 115/U**

(1) This Act shall enter into force on January 1, 1996; its provisions shall apply – with the exceptions set out in paragraphs (2) and (5) – only in procedures started after its entry into force.

(2) The provisions of Article 49 shall also apply *mutatis mutandis* to pending matters.

(3) Where a contract of remuneration or a patent license agreement was concluded or a service invention was utilized before the entry into force of this Act, the provisions effective at the time of the conclusion of the contract or of the utilization shall apply.

(4) Exploitation commenced before the entry into force of this Act shall be subject to the previously applicable provisions with respect to the scope and limitations of patent protection and patent infringement.

(5) The registration, maintenance, termination and restoration of patents effective at the date of entry into force of this Act shall be subject to the provisions of this Act except that, with respect to the conditions of revocation of the patent, the provisions applicable at the date of priority shall be decisive.

(6) *[repealed]*

##### **Article 116**

Articles 84/G and 84/H of this Act provided for by Act CXLVIII of 2010 on the necessary amendments relating to Act XLII of 2010 on the listing of the ministries of the Republic of Hungary and on the amendment of certain industrial property acts shall be applicable to those European patents in the case of which the mention of the grant has been published in the European Patent Bulletin.

##### **Article 116/A**

The rules of this Act applicable to public health compulsory licences shall be applied to public health compulsory licences granted pursuant to Government Decree 212/2020 (16 May) on public health compulsory licences for exploitation in Hungary.

##### **Article 117**

(1) Exploitation commenced before 1 January 2003 shall be subject to the provisions previously in force with respect to the scope and limitation of patent protection and patent infringement, to the extent of the exploitation on 1 January 2003.

(2) For patents granted for plant varieties under the provisions in force before 1 January 2003 the provisions regarding plant varieties of this Act shall apply to the extent that

(a) exploitation commenced before 1 January 2003 shall be subject to the provisions previously in force with respect to the scope and limitation of protection and infringement, to the extent of the exploitation on 1 January 2003;

(b) Article 110 (2) shall apply only to material placed on market before 1 January 2003;

(c) in case of patents granted for plant varieties, the definitive patent protection of which expired before 1 January 2003 due to the expiration of the time of protection calculated on the basis of provisions previously in force, Articles 23, 40 and 21(4) shall apply to the extent that the maintenance fee for the first of the years remaining from the time of protection of the plant variety calculated according to Article 111, shall be due on the day when the definitive protection for the plant variety terminated because of expiration of protection calculated on the basis of the provisions previously in force;

(d) Article 113(3) shall also apply if the definitive protection of the plant variety terminated because of expiration before this Act entered into force;

(e) to the contract regarding the assignment of rights deriving from a plant variety and plant variety protection, provisions in force at the time of concluding the contract shall apply;

(f) to the conditions of revocation and cancellation of patents, with a filing date before 1 January 2003, granted for plant varieties and plant variety protection and to the conditions of cancellation of variety denomination, the provisions – possibly on the revocation of the patent granted for a plant variety and the cancellation of the variety denomination – in force on the day of the application shall be applicable.

(3) By patent granted for a plant variety, plant variety protection shall be understood after 1 January 2003.

(4) To patents granted for animal breeds, in accordance with the provisions previously in force, the special provisions for animal breeds as previously in force shall apply even after 1 January 2003.

(5) The provisions laid down in Articles 12(4), 41(2) and 48(2) effective from 1 January 2008 shall apply to procedures pending on 1 January 2008.

(6) To the conditions of revocation of patents granted with a filing date before 1 January 2008, the provisions in force on the day of filing the patent application shall apply.

(7) Exploitation commenced before 1 January 2008 shall be subject to the provisions previously in force with respect to the scope of patent protection, to the extent of the exploitation on 1 January 2008.

#### ***Article 117/A***

(1) Articles 69/A and 115/S(3) provided for by Act CLIX of 2013 on the amendment of certain intellectual property acts shall also be applicable in procedures where the time limit for filing a request for a search report supplemented with a written opinion has elapsed due to the rules applicable before the entry into force of Act CLIX of 2013 on the amendment of certain intellectual property acts.

(2) Articles 57(5), 65, 66(12), 69(1), 69/A(6), (8) and (13) to (16) of this Act as established by Act XXXIV of 2019 on the amendment of Acts necessary in order to implement the data protection reform of the European Union (hereinafter “Data Protection Amendments Act”), shall apply to patent applications the filing date of which is the day of entry into force of the Data Protection Amendments Act or a later date.

#### ***Article 117/B***

The provisions of this Act as established by Act L of 2017 amending certain Acts in respect of the entry into force of the Act on the Code of General Administrative Procedure and the Act on the Code of Administrative Court Procedure (hereinafter “Administrative Procedure Amending Act”) shall apply to proceedings commenced or repeated after the entry into force of the Administrative Procedure Amending Act.

*Common rules relating to the procedure of entering into the register start-up enterprises and enterprises supporting start-up enterprises*

#### ***Article 117/C***

(1) *[repealed]*

(2) [repealed]

### *Authorizations*

#### **Article 118**

(1) The Government shall be authorised to establish by decree the detailed rules of the organisation and activity of the body of experts on industrial property.

(2) The Government shall be authorised to establish by decree the rules concerning the implementation of Community Regulations relating to the supplementary protection of certain products.

(3) The Government shall be authorised to establish by decree the detailed rules of the deposit and handling of biological materials for the purposes of patent procedure.

(4) The Government shall be authorised to establish by decree the detailed rules concerning electronic filing of certain documents in industrial property procedures.

(4a) The Government shall be authorised to establish by decree the rules of organisation and operation of the National Board Against Counterfeiting.

(4b) The Government shall be authorised to establish by decree the company defined in Article 115/E(7) and to determine the provisions of performing the tasks and utilization of services.

(5) The minister responsible for justice shall be authorised to establish by decree, in consultation with the President of the Hungarian Intellectual Property Office and in agreement with the Minister e, the detailed formal rules for patent applications, documents related to European patent applications, European patents and international patent applications as well as for applications for plant variety protection.

(6) The Minister shall be authorised to establish by decree, in consultation with the President of the Hungarian Intellectual Property Office and in agreement with the minister responsible for tax policy, the rate of the fees for administrative services to be paid in industrial property procedures before the Hungarian Intellectual Property Office, taking into consideration the specialities of industrial property procedures and each form of industrial property protection, as well as the detailed rules related to the handling, registration, reimbursement and the method of payment of the fees for administrative services to be paid in industrial property procedures before the Hungarian Intellectual Property Office and of the maintenance and renewal fees.

(7) The Government shall be authorised to establish by decree the detailed rules of the procedure to classify a patent application.

(8) The Minister shall be authorized to establish by decree, in consultation with the President of the Hungarian Intellectual Property Office, the rate of the fees to be paid for the maintenance and renewal of industrial property protection, taking into consideration the operational costs of the industrial property protection system, the specialities of each form of industrial property protection and the aspects of promotion of innovation by the means of industrial property protection.

### *Compliance with the law of the European Union*

#### **Article 119**

(1) This Act serves compliance with the following acts of the European Union:

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

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

(2) This Act lays down the rules required for implementing the following acts of the European Union:

(a) Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights;

(b) Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems.