

# Patent Law

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## Chapter I General Provisions

### Section 1. Terms used in this Law

The following terms are used in this Law:

- 1) **national patent application** – a patent application, which has been filed to the Patent Office of the Republic of Latvia (hereinafter – Patent Office) in accordance with the requirements of this Law;
- 2) **national patent** – a Latvian patent granted on the basis of the national patent application;
- 3) **Paris Convention** – the 20 March 1883 Paris Convention for the Protection of Industrial Property (as revised at Stockholm on 14 July 1967, and as amended on 28 September 1979);
- 4) **Paris Union** – the Union of the states that are parties to the Paris Convention;
- 5) **priority** – the date of priority, which is assigned to the patent application in accordance with the Paris Convention;
- 6) **Patent Cooperation Treaty** – a treaty concluded on 19 June 1970 (as revised on 2 October 1979 and 3 February 1984);
- 7) **international application** – an application, which has been filed in accordance with the Patent Cooperation Treaty in any of its Contracting States;
- 8) **European Patent Convention** – a convention to which the Republic of Latvia has acceded **with the Law On the Convention regarding the Grant of European Patents of 5 October 1973 (European Patent Convention), Agreement of 17 October 2000 regarding the Application of Article 65 of the Convention regarding the Grant of European Patents and the Amendments of 29 November 2000 in the Convention regarding the Grant of European Patents of 5 October 1973 (European Patent Convention)**;
- 9) **European patent application** – a patent application which has been filed in accordance with the European Patent Convention;
- 10) **European patent** – a patent granted in accordance with the European Patent Convention, on the basis of the European patent application by the European Patent Office;
- 11) **biological material** – a material which contains genetic information and is capable of reproducing itself or which may be reproduced in a biological system;
- 12) **biotechnological inventions** – inventions that pertain to the products which consist of biological material or contain biological material or to the methods with which biological material is obtained, processed or used;
- 13) **microbiological method** – a method in which microbiological material is involved or in the result of which it appears or which has been carried out with biological material; and
- 14) **biological method** – a plant or animal production method which consists entirely of natural phenomena, such as crossing or selection.

### Section 2. Purpose of this Law

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

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

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

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

(3) If the international agreements binding on Latvia include provisions, which differ from the norms of this Law, the provisions of the international agreements shall be applied.

## **Chapter II Preconditions for Patent Protection**

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

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

### **Section 5. Novelty**

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

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

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

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

- 1) are intended to be used by using the methods referred to in Section 8, Paragraph two of this Law, and this use is not a part of the state of the art; or
- 2) are intended for a specific use in the methods referred to in Paragraph one of this Section in the cases when the specific use is not a part of the state of the art.

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

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

- 1) an abusive action against the applicant of the patent (hereinafter – applicant) or against the legal predecessor; or
- 2) demonstration of the invention of the applicant or the legal predecessor thereof has taken place in an official international exhibition or international exhibition equivalent to it, which has been organised in accordance with the Convention on International Exhibitions in Paris signed on 22 November 1928 and last revised on 30 November 1972.

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

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

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

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

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

(1) An invention shall be deemed as susceptible of industrial application, if the subject-matter thereof may be manufactured or it may be used in any kind of industry, in agriculture or other field of economy.

(2) Therapeutic or surgical treatment methods and diagnostic methods, which are practised on the human or animal body, shall not be deemed as susceptible of industrial application. This exception shall not apply to devices and substances or the compositions thereof, which are used when employing the referred to methods.

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

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

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

- 1) discoveries, scientific theories and mathematical methods;
- 2) aesthetic creations;
- 3) schemes, methods of performing mental acts, playing games or doing business, as well as computer programs; and
- 4) presentation of information.

(3) The patenting of the subject-matter referred to in Paragraph two of this Section shall be excluded only to the extent to which patent protection is sought for these subject-matters as such.

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

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

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

- 1) contain biological material, which is isolated from its natural environment or produced by means of a technical method, even if it previously occurred in nature;
- 2) pertain to plants or animals, if the technical feasibility of the invention does not confine itself to a particular plant or animal variety; and
- 3) pertain to microbiological or other technical method, or to the product obtained by means of such method, if it is not a plant or animal variety.

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

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

- 1) human cloning;
- 2) modification of the genetic identity of human beings in germ cells;
- 3) use of human embryos for industrial or commercial purposes; and
- 4) methods for modifying the genetic identity of animals, which are likely to cause them suffering without any substantial medical benefit to people or animals, as well as animals resulting from such methods.

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

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

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

#### **Section 11. Secret Inventions**

(1) If an invention affects the interests of State defence, it shall be secret and it shall be registered by the Ministry of Defence, according to the procedures specified by the Cabinet.

(2) The condition for the utilisation of a secret invention, as well as compensation for the utilisation thereof shall be determined by the agreement between the inventor and the Ministry of Defence. If the parties fail to agree regarding the compensation, it shall be determined by a court, according to the procedures specified by the Civil Procedure Law.

(3) The patent application in relation to the invention, which is referred to in Paragraph one of this Section, may be submitted to the Patent Office, after the receipt of the relevant permission from the Ministry of Defence.

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

#### **Section 12. Holders of the Right**

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

(2) If several persons have jointly created an invention, they shall have joint rights to the patent.

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

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

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

(2) If a person in accordance with Section 12, Paragraph two of this Law has joint rights to a patent together with another person, and such rights have not been observed, the referred to persons may in accordance with the procedures specified in Paragraph one of this Section request to be recognised as the joint applicants or joint proprietors of the patent.

(3) The rights provided for by Paragraphs one and two of this Section shall be used not later than within a period of two years from the day when the notification regarding the grant of a patent was published in the Official Gazette of the Patent Office. The limit of the term shall not be applied if the person who does not have the right to the patent has acted in bad faith during the time when the patent application was filed or the ownership rights to the patent were transferred to him or her.

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

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

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

The inventor, irrespective of the fact who is the applicant or the proprietor of a patent, shall have inalienable moral rights to the following:

- 1) inventorship – the right to be recognised as the inventor;
- 2) name – has the right to be indicated as the inventor in the patent application and in all documents and publications related to the patenting of the invention, or also to waive these rights, requesting in writing to the Patent Office that the name thereof would not be indicated.

## **Section 15. Inventions that are Invented within the Framework of Employment Legal Relations**

(1) The employer has the rights to a patent, if the invention, in relation to which the patent application has been filed, has been invented by the employee, the work duties of which include:

- 1) the activity of an inventor; and
- 2) research, designing and construction or preparation of technological development.

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

(3) The employee who has invented the invention in accordance with the provisions of Paragraph one of this Section, has the duty to immediately inform in writing thereof the employer and to submit the documents that allow to assess the invention.

(4) If the employer waves the rights to the invention or within a time period of three months does not inform the employee regarding the intention thereof to exercise these rights, the rights to the invention shall be transferred to the employee.

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

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

(7) A contract may be concluded regarding the rights of the patent, the provisions of which differ from the provisions of Paragraph one or two of this Section.

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

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

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

- 1) to produce the patented product, to offer it for sale, place on the market otherwise, use it, as well as to import, export and store it for the referred to purposes;
- 2) to use the patented method;
- 3) to offer for sale, place on the market otherwise, use, as well as to import, export and store for the referred to purposes a product that has been directly obtained with the patented method; and
- 4) to supply or offer to supply the essential elements of the patented product, if the third persons knew or they should have known in the relevant circumstances that such elements are suitable and intended for the implementation of the invention.

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

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

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

(2) Assessing the scope of exclusive rights resulting from the patent in the case of an infringement of the patent, the equivalents of the features, which are elements of the subject-matter to be analysed, referred to in the claims shall be also observed. The element of the subject-matter to be analysed shall be considered as equivalent to the feature referred to in the claims if at the time of infringement of the patent it fulfils the same function in the same way and produces the same result as the feature

referred to in the claims and if it is evident to a skilled person in the art that it is possible to obtain the same result by using the equivalent element of the subject-matter to be analysed.

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

### **Section 18. Terms of Exclusive Rights**

(1) Exclusive rights shall come into force in full scope on the day when the notification regarding the grant of the patent is published, and shall expire not later than after 20 years from the filing date of the patent application.

(2) Provisional protection shall be conferred to the invention for the time period from the day when the patent application was published according to the procedures specified in Section 35 of this Law until the day of the grant of the patent. If during this time period third persons use the invention to be patented without the consent of the applicant, the proprietor of the patent has the right to request a compensation.

(3) Determining a compensation, the good faith of the user of the invention shall be taken into account.

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

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

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

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

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

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

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

The exclusive rights resulting from the patent shall not extend to:

- 1) activities performed for personal needs and non-commercial purposes;
- 2) experimental or investigative activities;
- 3) examination of the subject-matter of a patent, as well as to the research of patented or protected with a supplementary protection certificate medicinal products or plant protection means, which is carried out in order to obtain a permission for the placing on the market thereof;
- 4) the extemporaneous preparation of medicinal products for individual cases in a pharmacy with a doctor's prescription, as well as to the actions with medicinal products prepared in such a way; and

- 5) use of the invention in the construction or exploitation of such foreign vehicle which temporarily or accidentally enter the territory of Latvia, if the invention is used only for the vehicle.

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

(1) The rights resulting from the patent shall not extend to the activities which have been carried out with the patented product in the European Economic Area, after this product has been put on the market in the European Economic Area by the proprietor of the patent himself or herself or another person with his or her consent, unless the proprietor of the patent has a legal basis to object against the further commercialisation of the product.

(2) The protection referred to in Section 19, Paragraphs one, two and three of this Law shall not extend to the biological material, which has been obtained by multiplying such biological material, which has been put on market in the European Economic Area by the proprietor of the patent himself or herself or by another person with his or her consent, if multiplication arises directly from the use thereof, for the purposes of which the biological material was sold with a condition that the obtained material shall not be used afterwards for another multiplication.

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

(1) The person who in good faith had used the invention for commercial purposes or had carried out the necessary preparations for such use in the territory of Latvia prior to the filing or priority date of application has the right to use this invention further on for commercial purposes as planned during preparations, without hindrance and without paying a remuneration to the proprietor of the patent.

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

## **Chapter V Patent Office**

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

Within the framework of the competence specified in the regulatory enactments, the Patent Office shall implement the State policy in the field of industrial property, ensuring the registration of the industrial property rights and promoting comprehension regarding the necessity of the protection of these rights in the State.

### **Section 24. Duties and Restrictions of the Employees of the Patent Office**

(1) The employees of the Patent Office, on the basis of the result of an examination, independently and in conformity with the regulatory enactments in the field of industrial property shall, on behalf of the Patent Office, take the decision regarding the grant of a patent or the registration of a trademark, design, topographies of semiconductor products or supplementary protection certificate.

(2) The employees of the Patent Office, while they are working at the Patent Office, as well as a year after the employment relations thereof with the Patent Office were terminated, do not have the right to file a patent application, as well as to obtain the patent directly or indirectly, except for an inheritance, which has been granted or shall be granted by the Patent Office, or also to obtain any of the rights resulting from the patent. The priority rights shall not be granted to the patent applications of these persons, if the relevant application has been filed within a time period of one year after these persons have terminated the employment relations with the Patent Office.

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

(1) The Board of Appeal of the Patent Office (hereinafter – Board of Appeal) shall be a collegial decision-making institution, which is developed as the structural unit of the Patent Office for the reviewing of the disputes related to the patents, trademarks, designs and topographies of semiconductor products.

(2) After the recommendation of the Director of the Patent Office, the Minister for Justice shall determine the number of the members of the Board of Appeal and shall appoint members of the Board of Appeal for a period of three years, one of which shall be approved as the chair of the Board of Appeal. The representatives of the Patent Office and science, technology or law specialists shall be within the composition of the Board of Appeal.

(3) The Board of Appeal shall, on the basis of a written appeal or opposition, review the disputes related to the patents, trademarks, designs and topographies of semiconductor products. The composition of the Board of Appeal for the review of a specific matter shall be approved by the chair of the Board of Appeal, taking into account the nature of the case, competence of the members of the Board of Appeal and workload. Each appeal and opposition shall be reviewed by an uneven number of the members of the Board of Appeal, but not less than by three members, besides at least one of them shall be a lawyer and at least one of them shall be a specialist, which is not an employee of the Patent Office. If necessary, the Board of Appeal may invite independent experts for the provision of the opinion in the cases of disputes.

(4) A person, which has carried out the formal review and examination of the relevant application in the Patent Office, shall not be included within the composition of the Board of Appeal for the review of an appeal or opposition. A member of the Board of Appeal does not have the right to sit in a case if he or she personally is, directly or indirectly, interested in the outcome of the case, or if other circumstances exist which cause doubt as to his or her impartiality. The participants in the matter may submit a rejection of a member of the Board of Appeal. The decision regarding the submitted rejection shall be taken by the relevant composition of the Board of Appeal.

(5) Upon taking the relevant decision, the members of the Board of Appeal shall be independent and shall not be subject to orders or any other influence. The decisions shall be taken by a simple majority vote. The member of the Board of Appeal, which has participated in the review of the case, does not have the right to abstain from voting.

(6) The Board of Appeal shall review the appeals and oppositions according to the procedures specified in this Law, the Law On Trademarks and Geographical Indications, Law On Designs and Law On Protection of Topographies of Semiconductor Products.

## **Section 26. Representation**

(1) A legal or natural person, the place of permanent residence of which or residence of which is not Latvia or which is not the owner of an undertaking in the territory of Latvia, shall be represented in the Patent Office by a professional patent attorney.

(2) A legal or natural person, the place of permanent residence of which or place of residence of which is Latvia or which is the owner of an undertaking in the territory of Latvia, may be represented personally in the Patent Office or by an employee thereof, or through an authorised representative. This representative may not be a professional patent attorney.

(3) The Patent Office shall maintain the register of professional patent attorneys. The professional patent attorney may have a particular specialisation. The Cabinet shall determine the content of the entries to be made in the register of professional patent attorneys, as well as the procedures for the maintenance of the register.

(4) Only the data of natural persons may be included in the register of professional patent attorneys, if the person conforms with the following requirements:

- 1) he or she is a citizen of Latvia or another European Union Member State;
- 2) he or she has an academic or vocational higher education of the second level (the diplomas issued in the relevant specialities by foreign higher educational institutions have to be recognised in Latvia);
- 3) he or she has work experience of at least three years in the field of industrial property protection, including activity in international and national industrial property institutions, and it has to be affirmed by conforming documents;
- 4) he or she has passed the qualification examination of patent attorney, according to the procedures specified by the Cabinet; and
- 5) an address in the territory of Latvia is indicated for the correspondence with the Patent Office.

(5) Paragraph four, Clauses 2, 3 and 4 of this Section shall not be applied to the European Union citizen, who has the right to act as the professional patent attorney in another European Union Member State in accordance with the regulatory enactments of this State. This person shall submit the documents, which attest the right to act as a professional patent attorney.

(6) Such person shall be excluded from the register of professional patent attorneys:

- 1) who submits a written request to exclude him or her from the register of professional attorneys;
- 2) who is not any more a citizen of Latvia or of another European Union Member State;
- 3) who has been recognised as not having the capacity to act, according to the procedures specified by the law;
- 4) who has died or whose whereabouts are not known;
- 5) to whom it is prohibited to act as a patent attorney, in accordance with a court judgement; or
- 6) who has falsely indicated the information referred to in Paragraph four, Clause 1, 2 or 3 of this Section.

(7) The register of professional patent attorneys shall be kept in the Patent Office and shall be accessible to any interested person. The Patent Office shall publish the list of professional patent attorneys in the Official Gazette of the Patent Office not less than twice per year.

## **Chapter VI**

### **Procedures for the Grant of a Patent**

#### **Section 27. Patent Application**

- (1) The patent application shall include:
- 1) a request regarding the granting of the patent;
  - 2) a description of the invention;
  - 3) one or more claims;
  - 4) drawings, if there are references to them in the description or claims; and
  - 5) an abstract.
- (2) The Cabinet shall determine the standard and content of the patent application.

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

- (1) A person, who wishes to obtain a patent to an invention, shall file a patent application to the Patent Office.
- (2) Such date shall be considered as the filing date of the patent application (hereinafter – filing date), on which the Patent Office has received at least the following:
- 1) a request to grant the patent;
  - 2) information which permits to identify the applicant, and contact information; or
  - 3) part of the application with a description of the invention or a reference to an earlier application.
- (3) The information referred to in Paragraph two, Clauses 1 and 2 of this Section shall be filed in Latvian, but the part of the application for the determination of filing date referred to in Clause 3 may be submitted in another language.
- (4) In the reference to the patent application filed earlier, which is referred to in Paragraph two, Clause 3 of this Section, the date, number and state, in which it has been filed, shall be indicated.
- (5) The patent application shall be filed in Latvian. If the application has been filed in another language for the determination of the filing date, the applicant shall file the translation thereof in Latvian within a time period of three months. If the translation has not been filed within the specified time period, the application shall be considered as withdrawn. All further record-keeping and correspondence related to the application shall be in Latvian.
- (6) The applicant shall pay the State fee and shall file the document that attests the payment thereof within a time period of one month after the filing of the application. If this time limit has been exceeded, it shall be considered that the application has not been filed.
- (7) If the invention provides for the use of such biological material, which is not publicly available and which cannot be described in the application, so that it might be implemented by a person skilled in the art, a statement regarding the deposition of the biological material in an internationally recognised depository shall be filed together with the application in accordance with the Budapest Treaty of

28 April 1977 on the international recognition of the deposit of micro-organisms for the purposes of patent procedure. If the biological material, which has been deposited, is no longer available at the internationally recognised depository, it shall be permitted to deposit the material once again with the same conditions that have been included in the contract referred to in this Paragraph. The procedures according to which the biological material is available shall be determined by the Cabinet.

### **Section 29. Priority Right**

(1) A person or his or her successor in title, which according to certain procedures has filed the patent application or the application of utility model in any member state of the Paris Union, member state of the World Trade Organisation or any other state or union with which Latvia has concluded an agreement regarding the recognition of priority right, filing the patent application in Latvia in relation to the same invention, shall have the priority right within a time period of 12 months from the date of the first application.

(2) When determining priority, the next patent application to the same invention, to which the previous first application related to, shall be considered as the first application, if on the day of the filing of the next application the previous application was withdrawn, abandoned or rejected, was not published, no rights were retained to it or it has not yet been as the basis for claiming of priority right. From this moment the previous application cannot be as the basis for claiming of priority right.

(3) The applicant, who wishes to use the priority right, shall file a declaration of priority concurrently with the patent application, indicating the date of application for the claimed priority and the state in which it has been filed, as well as the number of application. The declaration of priority may be filed or corrected within a time period of 16 months after the date of the earliest priority. This declaration may not be submitted or corrected, if the applicant has filed a request in accordance with Section 35, Paragraph four of this Law. The document, which attests the priority right, shall be a copy of the previous application, the conformity of which with the original has been certified by the institution, which received this application. The document shall be submitted to the Patent Office within a time period of 16 months after the date of the earliest priority.

(4) The applicant may claim the rights to several priorities in the patent application. If several priorities have been claimed, the terms that start on the priority date shall start from the date of the earliest first priority.

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

(6) If certain features of an invention, to which a priority is claimed, have not been mentioned in the earlier claims of application, the priority right may still be granted, if the documents of the earlier application as a whole specifically disclose these features.

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

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

(1) The description of the invention shall disclose the invention in a manner sufficiently clear and complete so that a person skilled in the art would be able to carry out this invention. The invention shall not be in conflict with the scientifically attested laws of nature.

(2) The claims shall define the subject to which the patent protection is sought, and the extent of the protection conferred by patent, using the technical features of the invention. The claims shall be clear and concise and substantiated in the description.

(3) If more than 10 claims have been included in the patent application, the applicant shall pay a fee for the 11<sup>th</sup> and each following claim, in addition to the State fee to be paid for filing the application. The State fee for claims shall be paid within one month after the filing the application. If the State fee for claims has not been paid within the specified term, it may be done within one month after receipt of the notification regarding the failure to observe the terms. After this term, it shall be considered that the claims, for which the State fee has not been paid, have not been filed.

(4) The abstract shall include only technical information, which shall not be taken into account for other purposes (for example, for the interpretation of the extent of the protection conferred by patent).

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

- (1) Only one patent per one invention or group of inventions, which are united by a single inventive concept, may be sought in one patent application.
- (2) The condition of the unity of an invention shall be fulfilled, if protection is sought to a group of such inventions, when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features which define a contribution which each of the claimed inventions considered as a whole makes over the prior art.
- (3) The group of inventions shall be united by a single inventive concept independently from the fact whether the inventions are claimed in separate claims or as alternatives in one claim.

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

- (1) If the application is filed through a representative, a document certifying the authorisation of the representative must be attached to the application. The Cabinet shall determine the procedures for the authorisation.
- (2) A foreign applicant shall file the patent application, maintain correspondence and carry out all further activities in the Patent Office and the Board of Appeal only through the professional patent attorney in conformity with Section 26 of this Law.
- (3) The document for the authorisation of the representative shall be submitted concurrently with the patent application or within a time period of three months after the notification regarding the lack of the document has been received. If the document for the authorisation of the representative has not been submitted within the specified time period, it shall be deemed that the representative is not authorised and the activities carried out by him or her, except for the filing of the application material, have not taken place.

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

- (1) The Patent Office shall examine whether the submitted documents conform with the requirements of Section 28 of this Law. If the submitted documents conform with the requirements of Section 28, Paragraphs two, three and four of this Law, the Patent Office shall determine the filing date of application and shall notify it to the applicant.
- (2) If the application does not conform or partially conforms with the requirements of Section 28, Paragraphs two, three and four of this Law, the Patent Office shall notify the applicant thereof, explaining the non-conformity, and shall determine a time period of two months for the elimination of the indicated deficiencies.
- (3) If the Patent Office, examining the submitted documents, concludes that the parts of the description of the invention and drawings are not present in the patent application, to which the references in the description or claims apply to, it shall send to the applicant a notification in which it is requested to send the missing parts of the description or drawings within a time period of two months.
- (4) If the missing parts of the description or drawings are submitted after the filing date of application, but not later than within a time period of two months after the date of application or after the sending of the notification referred to in Paragraph three of this Section, the Patent Office shall determine as the filing date of application the day when the missing parts of the description or drawings are received unless they are withdrawn within one month after the submission.
- (5) If the missing parts of the description or drawings are submitted within a time period referred to in Paragraph four of this Section, and priority right of an earlier application is claimed, then as the filing date of application (assuming that the lacking parts of the description or drawings have been included completely in the earlier application) shall be kept the date when the requirements of Section 28, Paragraph one of this Law were fulfilled, if only the applicant expresses such request and submits the copy of the earlier application. If the copy is not in Latvian, then a translation, certified according to certain procedures, shall be submitted within a time period specified in Section 28, Paragraph five of this Law.
- (6) If the applicant does not submit the missing parts of the description or drawings within the specified time period, then any references to these parts of the description or drawings shall be considered as non-existent.

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

(1) When a filing date of the patent application has been allocated, the Patent Office shall examine whether the filed application conforms with the requirements of Section 6, Paragraph two, Section 28, Paragraphs five, six and seven, Section 29, Paragraph three, Section 30, Paragraph three and Section 32 of this Law. The examination shall be carried out within three months from the filing date of the application to the Patent Office. Within this time period, the Patent Office shall prepare an abstract for publication.

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

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

(4) If the applicant has not eliminated the deficiencies indicated by the Patent Office, the application shall be rejected. The applicant shall be notified in writing thereof.

### **Section 35. Making a Patent Application Publicly Available**

(1) The Patent Office shall make the patent application publicly available as soon as possible after 18 months from the filing date of application or – if priority has been claimed – from the earliest priority date of the application.

(2) The making a patent application publicly available shall include the following:

- 1) publication of the notification regarding the patent application in the Official Gazette of the Patent Office; and
- 2) the right for every person to get acquainted with the materials of the patent applications in the Patent Office, as well as to receive a copy of the materials of the relevant patent application, by settling the payment specified by the Cabinet.

(3) The following shall be included in the publication:

- 1) information regarding the inventor (if he or she has not waived the right to be mentioned), applicant and representative (if there is such);
- 2) title of the invention;
- 3) indices of the international patent classification;
- 4) number, filing date of the patent application, date of the patent publication and number of the publication;
- 5) information regarding the priority; and
- 6) an abstract of the application.

(4) After the request of the applicant, the patent application may be made publicly available prior to the time period of 18 months, but only after it has been notified about the completion of the examination of formal requirements.

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

(1) Until the date when the notification of the Patent Office regarding the grant of a patent is published, the applicant has the right to make amendments once, upon its own initiative in the patent application, if it does not change the essence of the invention and does not extend beyond the extent of claims. Such amendments may also be made upon the request of the Patent Office. The time period for the examination of the patent application shall be extended accordingly in both cases. If the applicant makes amendments upon its own initiative, he or she shall pay the State fee for the making of the amendments. The Cabinet shall determine the procedures, according to which the amendments in the patent application shall be submitted.

(2) Until the date when the notification of the Patent Office regarding the grant of patent is published, the applicant, in accordance with Section 38, Paragraph one of this Law, without exceeding the extent of the patent application, may divide it in two or more applications, maintaining the filing and priority date of the initial application for each of them. The requirements of this Section, Section 27,

Section 28, Paragraphs one, five and six, Sections 30, 31 and 32 shall be applied to each divisional application. If the applicant fails to submit the necessary documents and materials which relate to the divisional patent application or to pay the State fee within a time period of three months from the date of the receipt of the request regarding the division of the application by the Patent Office, the divisional application shall be deemed to have been withdrawn.

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

(1) The Patent Office shall examine whether the patent application conforms with the requirements of Section 8, Paragraph two, Section 9 and 10, Section 30, Paragraphs one and two and Section 36 of this Law. The Patent Office shall not carry out the patentability examination of an invention during the process of the substantive examination of a patent in conformity with the requirements of Sections 5 and 7 and Section 8, Paragraph one of this Law.

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

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

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

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

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

(2) The notification shall include:

- 1) information regarding the inventor (unless he or she has waived the right to be mentioned), proprietor of the patent and representative (if there is such);
- 2) title of the invention;
- 3) indices of the international patent classification;
- 4) number, filing date of the patent application, date on which the application was made publicly available and number of the patent (publication number in accordance with Section 35, Paragraph three, Clause 4 of this Law);
- 5) information regarding the priority; and
- 6) patent claims.

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

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

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

### **Section 39. Submission of an Appeal**

If an applicant or another addressee of a decision of the Patent Office (the proprietor of the patent, the former proprietor of the patent, the successor in title, the licensee) disagrees in full or in part with the results of the examination of the application or with a decision of the Patent Office taken at another stage of the procedure related to the grant of the patent, he or she is entitled, within three months from the date of the receipt of the decision, after the payment of a relevant State fee, to submit to the Patent Office a substantiated written appeal. The submission of an appeal shall suspend the performance of the decision of the Patent Office.

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

(1) The Patent Office shall without delay revoke or amend the relevant decision insofar as it acknowledges that the submitted appeal is substantiated.

(2) If the revocation or amendment of a decision may concern the rights or legal interests of a third person or the decision has not been revoked or amended in accordance with the procedures provided for in Paragraph one of this Section within a period of two weeks after the submission of an appeal, the Patent Office shall transfer the appeal for review in the Board of Appeal.

(3) If the Patent Office has revoked or amended the decision taken by it and the appellant is satisfied therewith, the appellant shall withdraw the appeal. The State fee paid for the submission of an appeal shall be paid in accordance with the procedures specified by the Administrative Procedure Law.

(4) If the Patent Office has amended the decision taken by it previously and the appellant is not satisfied therewith, he or she shall notify the Patent Office thereof within a period of three months after the receipt of such decision. The Patent Office shall without delay transfer the appeal for review to the Board of Appeal.

(5) Before the review of the appeal in the Board of Appeal, the appellant is entitled to clarify and supplement the submitted appeal.

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

(1) Any person, upon paying the relevant State fee, may submit an opposition to the Patent Office to the grant of a patent, within nine months after the publication of the notification regarding the grant of the patent. The opposition shall be submitted in writing. The arguments and references to the Law shall be indicated there by the opponent. After the expiration of the referred to time period, the opponent is not entitled to alter the initial legal basis of the opposition, which expands it, but may, before the decision of the Board of Appeal is taken, submit additional documents and materials that confirm (clarify) the facts on which the opposition is based.

(2) The opposition to the grant of a patent may be submitted on the basis of Sections 8, 9 and 10, Section 30, Paragraph one and two or Section 36, Paragraph one of this Law.

(3) The grant of a patent may be contested in court on the basis of other requirements of this Law, according to the procedures specified by the Civil Procedure Law.

(4) The Board of Appeal shall inform the proprietor of the patent regarding the submitted opposition and shall determine a time period of three months for the submission of a reply.

(5) If an opposition is not submitted within the time period specified in Paragraph one of this Section, the registration of the patent may be contested in court, according to the procedures specified by the Civil Procedure Law.

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

(1) Appeals submitted in accordance with Section 39 of this Law and oppositions submitted in accordance with Section 41 of this Law shall be examined by the Board of Appeal.

(2) An appeal shall be examined within three months after the receipt thereof at the Patent Office.

(3) The opposition shall be examined within three months after the receipt of a reply of the proprietor of the disputed patent or after the expiration of the time period specified for the submission of a reply.

(4) An appellant or his or her representative shall be invited to the meeting of the Board of Appeal where the appeal against a decision of the Patent Office is examined but, if the decision of the Board of Appeal may concern a third person, also such person or his or her representative shall be invited. The appellant and the proprietor of the disputed patent shall be invited to the meeting of the Board of

Appeal where the opposition to the grant of the patent is examined. The referred to persons are entitled to submit the necessary documents and materials, and to provide oral explanations.

(5) The Board of Appeal shall take a decision regarding the satisfaction of the appeal, in full or in part, or regarding the rejection thereof. Pursuant to such decision the relevant decision of the Patent Office may be revoked, amended or allowed to remain in effect. If new facts are revealed in a case in connection with the appeal, the Board of Appeal may take a decision regarding a repeated examination of the patent application.

(6) The Board of Appeal shall take a decision regarding the satisfaction of an opposition, in full or in part, or regarding the rejection thereof, in addition, pursuant to such decision the disputed patent may be declared invalid from the filing day, declared valid in an amended form or declared valid without any amendments.

(7) The Board of Appeal shall take a decision without the presence of other persons. The operative part of the decision shall be announced at the end of the meeting, but a substantiated written decision shall be sent to the persons referred to in Paragraph four of this Section within a time period of one month. If a decision of the Board of Appeal does not satisfy any of the participants in a case, any such person within a period of six months after the receipt of the true copy of the decision may appeal such decision to the court, according to the procedures specified by the Administrative Procedure Law.

(8) The submission of an application to the court shall suspend the operation of the decision of the Board of Appeal.

(9) The interested person may dispute the granted patent, according to the procedures specified by the Civil Procedure Law, irrespective of whether the action against the decision of the Board of Appeal has been brought to court. If such action has been brought before a decision of the Board of Appeal is reviewed in administrative court, the administrative proceeding shall be suspended until the adjudication of the action by Civil court.

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

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

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

#### **Section 44. Extension of Time Periods**

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

(2) Paragraph one of this Section shall not apply to the time periods which have been determined in Section 6, Paragraph one; Section 28, Paragraph five; Section 29, Paragraphs one and three; Section 39; Section 41, Paragraph one; Section 43, Paragraph one; Section 45, Paragraph two; Section 46, Paragraph two; Section 71, Paragraphs two and three; Article 7 of the Regulation referred to in Section 76, Paragraph one and Article 7 of the Regulation referred to in Paragraph two.

#### **Section 45. Continuation of Processing after the Non-observance of Time Periods**

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

(2) The request regarding the continuation of the processing shall be filed not later than two months after the notification of the Patent Office regarding the non-observance of the time periods or the notification regarding the loss of rights has been received, if the activities provided for in the non-observed time period have been carried out and the State fee for the continuance of the processing has been paid. If the activities provided for have not been carried out or the State fee for the

continuance of the processing has not been paid, it shall be deemed that the request has been withdrawn.

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

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

#### **Section 46. Reestablishment of Rights**

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

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

(3) If in the cases provided for in Paragraph one of this Section, sufficiency of reasons due to which the time periods have not been observed have proven to be true and the requirements of Paragraph two of this Section have been fulfilled, the Patent Office shall reestablish the rights to the patent application or to the patent of the applicant or proprietor of the patent.

(4) Prior to the request regarding a full or partial rejection of the reestablishment of rights, the Patent Office shall notify the applicant or the proprietor of the patent in writing of the reasons for a full or partial rejection and shall invite him or her to submit explanations in relation to the reasons of rejection within a time period of three months from the day of the receipt of the notification.

(5) The reestablishment of rights may not be requested if the time period has not been observed, which has been determined:

- 1) for the filing a request regarding the reestablishment of rights (Paragraph two of this Section);
- 2) for the payment of the State filing fee for the patent application (Section 28, Paragraph six);
- 3) for the submission of the copy of the earlier application (Section 29, Paragraph three);
- 4) for the submission of a request regarding the change or addition of priority (Section 29, Paragraph three);
- 5) for the submission of an appeal (Section 39);
- 6) for the submission of an opposition (Section 41); and
- 7) for the submission of a request regarding the continuance of the processing (Section 45, Paragraph two).

(6) A person who, in the territory of Latvia after the publication of the patent application within a time period in between the loss of the rights in accordance with Paragraph one of this Section and the day when the notification regarding the reestablishment of the rights was published in the Official Gazette of the Patent Office, had used the invention in good faith for commercial purposes or had carried out the necessary preparatory work for such use, is entitled to use such invention further on for commercial purposes in the planned extent during the period of preparatory work, without hindrance and without paying the remuneration to the applicant or the proprietor of the patent.

## **Section 47. Register of Patents**

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

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

- 1) the patent applications, after the publication thereof, and the patents granted on the basis of them shall be registered in the first book;
- 2) the European patents shall be registered in the second book after the coming into force thereof in the Republic of Latvia; and
- 3) the applications of supplementary protection certificates shall be registered in the third book after the publication thereof and on the basis of the granted supplementary protection certificates.

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

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

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

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

(3) The documents and materials of the case for the grant of a patent after the publication of the patent shall be available to any person who has submitted a relevant request.

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

(5) Any person has the right to get acquainted with the books of the Patent Register. Upon submission of an appropriate written request any person has the right to receive an extract from the Patent Register.

Upon the request of the recipient, the accuracy of an extract shall be certified by the signature and seal of an official of the Patent Office, indicating the date of issue thereof.

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

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

(1) The amount of the State fee to be paid for the invention protection and the relevant allowances shall be determined by the Cabinet.

(2) The State fee shall be paid in the cases provided for and according to the procedures specified in Section 28, Paragraph six; Section 30, Paragraph three; Section 36, Paragraph one; Section 38, Paragraph one; Section 39; Section 41, Paragraph one; Section 43, Paragraph one; Section 44, Paragraph one; Section 45, Paragraph two; Section 46, Paragraph two; Section 48, Paragraph six; Section 51, Paragraph four; Section 52, Paragraph four; Section 58, Paragraph one, Clause 2; Section 71, Paragraphs two and three; Section 74, Paragraph two; Section 76, Paragraphs three and four of this Law.

## **Chapter VII**

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

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

(1) The rights to an invention, which are based on a patent or the application thereof, shall confer the same legal status as the rights to a movable property within the meaning of the Civil Law. The general norms regarding movable property and property transactions shall be applied to the referred to rights, insofar as it is not provided for otherwise by this Law. The property rights associated with the patents and patent applications may be sold, offered as a gift or otherwise included in private legal circulation, they may be inherited or obtained according to the procedures of succession of rights, they may be the subject of a pledge or subordinated otherwise to the property rights and recovery may be directed towards them in accordance with an injunction of a court in the case of insolvency and other cases.

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

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

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

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

(1) The proprietor of a patent may transfer the ownership rights to the patent to another person together with the undertaking or a part thereof that utilises such patent, or independently from such undertaking.

(2) The Patent Office shall include in the Patent Register and publish in the Official Gazette of the Patent Office the information regarding a change of the registered proprietor of the patent after a relevant submission, a document certifying the succession of rights and a document confirming the payment of the State fee has been received, as well as shall send to the proprietor of the patent a notification regarding the entry made in the Patent Register.

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

(4) Before the Patent Office has taken the decision regarding the grant of a patent, the patent application may be transferred to another person if a relevant submission, a document certifying the succession of rights and a document confirming the payment of the State fee has been received. The examination of the patent application shall be continued in relation to the new applicant.

(5) The procedures according to which a patent and patent application shall be transferred to another person shall be determined by the Cabinet.

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

(1) The proprietor of the patent shall have the right, pursuant to a licensing agreement, to grant to another person in full or in part the right to use the patent. An exclusive licence or non-exclusive licence may be granted in conformity with the licence contract.

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

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

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

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

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

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

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

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

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

(1) If within four years after filing date of application or within three years after the date when the notification regarding the grant of a patent was published, the patented invention has not been used or has been used in an insufficient amount in the Republic of Latvia, any person may submit to the administrative court an application with a request to provide a permit (compulsory licence) to it to use the patented invention in conformity with this Law and court judgement. This provision shall not be applied if the proprietor of the patent proves to the court that there have been substantiated reasons for the failure to use or insufficient use of the invention.

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

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

- 1) the patented subject or the product acquired with a patented method is of vital importance for ensuring of the welfare, protection or economic interests of Latvian citizens; or
- 2) an invention which is of a significant economic importance may not be used without the use of another earlier patented invention.

(4) The compulsory licence shall be granted by the court if the submitter of the claim within a reasonable time period has made an effort to acquire, but has not acquired the licence from the proprietor of the patent with acceptable commercial terms.

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

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

- 1) the amount of and the time period for use of the patent may be restricted, depending on the purpose for which the compulsory licence has been granted;
- 2) the compulsory licence shall be regarded as equal to a non-exclusive licence;
- 3) a compulsory licence may not be transferred to another person, except for the case when it is transferred together with an undertaking, which is directly related to the use of the relevant patent or a part of such undertaking; and
- 4) the compulsory licence shall be granted for use in the internal market of Latvia.

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

- 1) the proprietor of the patent granted earlier (first) may request a cross-licence with reasonable terms for the use of an invention from the proprietor of later granted patent; and
- 2) the licence to the first patent shall not be transferred further unless it is transferred together with the rights to the later patent.

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

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

## **Chapter VIII Patent Invalidation**

### **Section 55. Early Patent Invalidation**

(1) An early patent invalidation shall take place, if:

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

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

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

A patent invalidation shall take place, if:

- 1) the subject-matter of the patent does not conform with the requirements of Sections 4, 5, 6, 7, 9 or 10 of this Law;
- 2) the essence of the invention has not been disclosed in the patent as clearly and completely that a person skilled in the art would be able to implement such invention (Section 30, Paragraph one);
- 3) the subject-matter of the patent extends beyond the content of the patent application as filed (Section 36, Paragraph one) or – if the patent has been granted on the basis of a divisional application – the content of the parent patent application; or
- 4) the patent has been granted to a person who did not have the rights to receive it (Section 12).

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

- (1) On the basis of the requirements specified in Section 56 of this Law, a patent may be declared invalid by court, according to civil procedures.
- (2) The action regarding a patent invalidation may be brought by any person, observing the requirements of Section 56, Clauses 1, 2 and 3 of this Law.
- (3) A person who has the right to the invention in conformity with Section 12 of this Law may request a patent invalidation in accordance with Section 56, Clause 4 of this Law.
- (4) The action regarding a patent invalidation may be brought throughout the whole period of validity of the patent. The patent shall be declared invalid also then, if at the moment of the bringing an action or review of the action, the time period of the validity of the patent has ended or the patent has been excluded from the Patent Register upon the initiative of the proprietor thereof.

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

- (1) The extent of the granted patent may be limited, if:
  - 1) the court, reviewing the case regarding the patent invalidation in accordance with Section 57 of this Law, declares the patent as partially invalid. The court shall limit the claims of the patent, if the circumstances referred to in Section 56, Clauses 1, 2 and 3 of this Law do not apply to the patent in full; or
  - 2) the proprietor of the patent shall submit to the Patent Office a request regarding the limitation of the extent of the patent, changing the claims, description or drawings thereof, and if he or she has paid a State fee.
- (2) In accordance with Paragraph one, Clause 2 of this Section, the request may not be submitted during the procedure of opposition specified in Section 41 of this Law or during the time period when the legal proceedings regarding the patent invalidation take place.
- (3) In accordance with Paragraph one, Clause 2 of this Section, an action may be brought to court only by the proprietor of the patent. If information regarding the grant of a licence has been included in the Patent Register, the proprietor of the patent may submit the request only then, if he or she proves that he or she has the consent of the licensee or that he or she has informed the licensee regarding his or her intention to limit the patent at least three months in advance.

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

- (1) If a patent has been declared invalid in conformity with Sections 56 and 58 of this Law, it shall be deemed that the invention loses the legal protection provided for in this Law as of the filing date of patent application in such extent, in which the patent has been declared invalid.
- (2) The patent invalidation shall not have the effect on the following:
  - 1) the court judgement regarding the infringement of the patent, which has already been executed, prior the decision regarding the patent invalidation was taken; and
  - 2) the contract, which has been concluded prior the decision regarding the patent invalidation was taken and has been executed prior to the taking of such decision. The court may decide upon the repayment of the already paid amount provided for in the contract, insofar as it conforms with the principle of equity in the relevant circumstances.

## **Chapter IX**

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

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

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

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

- (1) The proprietor of the patent and the licensee, with the consent thereof, has the right to label products in which the invention has been implemented or included with warning designations by indicating the patent number or providing a text that warns regarding the existence of the patent application. The name of the proprietor of the patent and the date of the grant or application filing date shall be indicated on the warning mark.

- (2) The warning mark may not be placed on products to which the protection of a patent does not apply. A false warning shall be considered as an expression of an unfair competition.
- (3) If the proprietor of the patent has reasons to consider that a person is infringing exclusive rights, he or she may warn it regarding the possible infringement.

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

- (1) The infringement of exclusive rights of the proprietor of the patent shall be considered as an illegal use of the invention – use of a patent without the consent of the proprietor within the meaning of Section 16 of this Law, if it has taken place during the period of validity of the patent.
- (2) The proprietor of the patent may bring an action to court regarding an illegal use of a patent, according to civil procedures. The licensee has the right to bring an action to court regarding an illegal use of a patent, with the consent of the proprietor of the patent. The consent of the proprietor of the patent shall not be necessary, if he or she does not bring the action to court, even though the licensee of an exclusive licence has invited him or her in writing to do it.
- (3) The proprietor of the patent has the right to intervene in the proceedings if the action regarding an illegal use of the patent is brought to court by the licensee in accordance with Paragraph two of this Section.
- (4) Any licensee is entitled to intervene in the proceedings and request damages that have resulted from an illegal use of the licensed patent.

#### **Section 63. Responsibility for an Illegal Use of a Patent**

- (1) The responsibility for an illegal use of a patent shall arise if, in conformity with Section 62 of this Law, the fact of a patent infringement is proved. The proving of the fact of infringement is the duty of the claimant (the proprietor of the patent or licensee).
- (2) If the subject-matter of the patent is a method for the obtaining a new product, it shall be deemed that same product has been obtained with the patented method without the consent of the proprietor of the patent. In such case, the proof of the non-existence of the patent infringement shall be the duty of the defendant. During the judicial proceedings, the legal rights to the protection of the commercial secret of the defendant shall be taken into account.
- (3) A person against whom the action is brought to court in relation to an illegal use of the patent may not object against the action, based only on the fact that the patent is not used or the activity thereof has to be discontinued due to other reasons. The defendant may bring a counter-claim to court regarding the invalidation of the patent in conformity with Section 56, Clauses 1, 2 and 3 of this Law. In such case, the patent infringement may be determined insofar as the patent is declared valid.
- (4) Determining the responsibility for an illegal use of a patent and the scope of this responsibility, the fact of the receipt of a warning, referred to in Section 61, Paragraph three of this Law, may be taken into account.

#### **Section 64. Procedures for the Determination of the Amount of Damages and Compensation for Moral Harm**

- (1) If an illegal use of a patent has taken place due to the fault of a person, the holders of the right referred to in Section 62, Paragraph two of this Law are entitled to request for damages and a compensation for moral harm.
- (2) The amount of the damages and compensation for moral harm shall be determined in accordance with the Civil Law. When determining the amount of the damages, the illegally gained profit of such person may be taken into account, which has used the patent unlawfully.
- (3) If the amount of actual losses may not be determined in accordance with Paragraph two of this Section, the amount of the damages shall be determined only to such sum, which might be received by the proprietor of the patent for the transfer of the patent use rights to the licensee.

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

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

- (1) The disputes regarding exclusive rights and other rights based on the patent or this Law shall be examined by the court according to the same procedures by which the disputes in respect of which

civil liability is provided for are reviewed in accordance with the norms of the Civil Law regarding movable property, if this Law or other regulatory enactments do not provide for otherwise.

(2) The Riga Regional Court as the Court of First Instance according to civil procedures shall review the following cases related to the legal protection of inventions:

- 1) regarding the reestablishment of the rights to a patent;
- 2) regarding patent invalidation;
- 3) regarding the rights of prior use;
- 4) regarding the illegal use of a patent (infringement of a patent);
- 5) regarding the determination of the fact of the non-existence of an infringement;
- 6) regarding the grant of a licence, the provisions of a licence contract or the performance thereof; and
- 7) regarding the rights to a compensation due to the impossibility to use the invention openly.

(3) Jurisdiction of other disputes shall be determined in accordance with the Civil Procedure Law.

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

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

#### **Section 67. Time Periods for the Bringing an Action**

(1) In disputes regarding patents, the time period for the bringing an action to a court shall be three years from the time when the aggrieved party found out or was supposed to find out the fact that his or her rights have been infringed.

(2) An action in relation to a dispute regarding the declaring of a granted patent invalid (Section 57), grant of a licence or provisions of a licence contract may be brought to a court throughout the whole period of validity of the patent.

### **Chapter XI**

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

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

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

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

(3) The international application shall be filed in Latvian, English, French, Russian or German. If the application has been filed in Latvian, the translation thereof in English, French, Russian or German, depending on the international search institutions or preliminary examination institutions chosen by the applicant, shall be filed to the Patent Office within the time period specified by the Patent Cooperation Treaty, the Regulations of the Patent Cooperation Treaty and administrative instruction of the Patent Cooperation Treaty.

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

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

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

## **Chapter XII**

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

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

- (1) The European patent application may be filed to the Patent Office, except for the divisional application. The application may be filed in any language that has been referred to in Article 1, Paragraphs one and two of the European Patent Convention.
- (2) The conditions specified in Section 11 of this Law shall be applied to the European patent applications in relation to inventions that affect the interests of State protection.

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

- (1) The European patent application, to which the European Patent Office has accorded a filing date of application, as well as a priority date (if a priority was requested), irrespective of the result with which the reviewing thereof shall end in the European Patent Office, shall be comparable to the patent application filed to the Patent Office and completed in accordance with this Law.
- (2) When the European patent application has been published in accordance with Article 67 of the European Patent Convention, a provisional legal protection shall be granted to the invention in conformity with Section 18, Paragraph two of this Law, starting from the date when the applicant communicates it to the person, who uses the invention in Latvia, sending a Latvian translation of the published European patent application's claims to this person, or when, upon the request of the applicant, it is published in the Official Gazette of the Patent Office. The European patent application shall not have the consequences referred to in this Section, if it is withdrawn or it is deemed to be withdrawn.
- (3) The Patent Office shall publish the claims of the European patent application in Latvian in accordance with Paragraph one of this Section, if the applicant pays for the publication of the claims.

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

- (1) A European patent, in which Latvia is the designated state, shall grant the same rights as the national patent, starting from the date when the notification of the European Patent Office regarding the grant of a patent has been published.
- (2) Within three months after the notification of the European Patent Office regarding the grant of a patent has been published in the Official Gazette of the European Patent Office in accordance with Article 64 of the European Patent Convention, the holder of the patent shall submit to the Patent Office a translation of the European patent claims in Latvian and shall pay a State fee for the publication thereof. The procedures by which the translations are submitted shall be determined by the Cabinet.
- (3) If, after reviewing the opposition to the grant of a patent submitted to the European Patent Office, the European patent is maintained in force with amended claims, the proprietor of the patent shall submit to the Patent Office the translation of the amended claims into Latvian and shall pay a State fee for the publication within a time period of three months after the decision regarding the maintaining of the European patent in force was published. The provisions of Section 41 of this Law shall not be applied to oppositions against the grant of the European patent.
- (4) If there are references to the drawings in the claims, these drawings shall be attached to the translation which has been referred to in Paragraphs two and three of this Section. The text present in the drawings shall be translated into Latvian.
- (5) The Patent Office shall publish the translation, which has been submitted in conformity with Paragraphs two, three or four of this Section, as soon as possible in the Official Gazette of the Patent Office.
- (6) If the translation referred to in Paragraph two, three or four of this Section has not been submitted or the State fee for the publication has not been paid within the time period specified in Paragraph two of this Section, the European patent shall be considered invalid in Latvia from the filing date of the patent application.
- (7) The European patent in Latvia shall not have the legal effect provided for in this Chapter from the filing date of the application, if the European Patent Office, after examining the received opposition against the grant of the patent, declares the patent invalid.

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

(1) The text of the European patent application or European patent in the language of the proceedings before the European Patent Office shall be the authentic text in any stage of the examination thereof in the Patent Office or court.

(2) In conformity with Section 71, Paragraphs two and three of this Law, the translation of the European patent shall be deemed as authentic, except the translation in a court case, which is related to invalidation of the European patent (Section 56), and in which the translation of the claims of the European patent application or European patent confers a narrower protection in comparison with the European patent application or European patent in the language of the proceedings before the European Patent Office.

(3) The applicant or proprietor of the European patent may submit an corrected translation of the claims throughout the whole period of validity of the European patent. The corrected translation shall come into force after the publication thereof in the Official Gazette of the Patent Office or after the applicant or proprietor of the European patent notifies it to the person, who uses the invention in Latvia.

(4) The person who in the territory of Latvia prior to the date of publication of the corrected translation, without infringing the extent of protection granted by the initially published patent application and patent translation, in good faith used the invention in his or her undertaking or for the needs of his or her undertaking or carried out preparatory works necessary for such use, is entitled to use the relevant invention further on in his or her undertaking or for the needs of his or her undertaking without hindrance and without paying remuneration to the proprietor of the patent, if the scope of user of the invention is not extended.

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

(1) The proprietor of the patent shall pay to the Patent Office for maintaining the patent in force for each next year that follows the year in which the notification of the European Patent Office regarding the grant of the European patent. The payments shall be carried out according to the same procedures by which the State fee for national patents has to be paid in accordance with Section 43 of this Law.

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

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

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

(1) The European patent application, in which protection in Latvia is requested, may be converted in the national application if the European patent application is considered to be withdrawn in accordance with Article 75, Paragraph five of the European Patent Convention or if the translation of the application, observing Article 14, Paragraph two of the European Patent Convention, has not been submitted within the specified time period in accordance with Article 90, Paragraph three of the European Patent Convention.

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

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

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

## **Chapter XIII Supplementary Protection Certificate**

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

- (1) If a patent protects medicinal products, a supplementary protection certificate shall be granted in accordance with Council Regulation (EEC) No. 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products.
- (2) If a patent protects a plant protection product, a supplementary protection certificate shall be granted in accordance with Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products.
- (3) A person, who wishes to obtain a supplementary protection certificate, shall file the relevant application to the Patent Office. The applicant shall pay the State fee for filing application. The provisions of Section 13, Paragraphs four and five and of Section 32 of this Law shall be applied to this application.
- (4) The annual State fee shall be paid for the maintaining the supplementary protection certificate in force. In such case, the provisions of Section 43 of this Law shall be applied. If the last year of the operation of the supplementary protection certificate is not full, the fee for it shall be paid for the whole year.

### **Transitional Provisions**

1. With the coming into force of this Law, the Patent Law of 30 March 1995 (*Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 1995, No. 10) is repealed.
2. The provisions of Chapter XII of this Law shall be applied to the European patent applications that have been filed to the European Patent Office, starting from 1 July 2005 when the Convention on the Grant of European Patents of 5 October 1973 came into force in Latvia. The provisions of Chapter V of the Patent Law of 30 March 1995 shall be applied to the European patent applications that have been filed within the time period from 1 May 1995 until 30 June 2005.
3. The procedures for the grant of a patent, which were in force on the date when the patent application was filed, shall be applied to the patent applications that were filed to the Patent Office prior to the coming into force of this Law.
4. The patents which have been granted in accordance with the Patent Law of 30 March 1995 and are in force shall be used from the day of the coming into force of this Law and shall be protected in conformity with the provisions of this Law. The extent of legal protection of patents and the rights resulting from them, exclusive rights as well, shall be equal to the extent and rights of the patent protection specified by this Law.
5. The registration of those European patents shall be continued in Latvia, the applications of which have been filed to the European Patent Office until 1 May 1995, if:
  - 1) the proprietor of the patent has filed a relevant request to the Patent Office not later than within one year after the issuance of the European patent;
  - 2) an officially approved copy of the description of a patent and invention, claims of the invention, the translation in Latvian of the text attached to the abstract and drawing are attached to the application;
  - 3) the relevant fee has been paid; and
  - 4) the invention is patentable.
6. The registered European patent shall have the same legal force and the same provisions of the Law shall be applied thereto, which are applied to the national patent with the following exceptions:
  - 1) exclusive rights which are granted by a patent shall come into force on the date when the Patent Office publishes the notification regarding the registration of the European patent and shall end not later than after 20 years from the date when the Patent Office has received a request regarding the registration of the European patent;
  - 2) the provisions of Section 22 of this Law in relation to the registered European patent shall be applied, if before the receipt of the request regarding the registration of the European patent

in Latvia at the Patent Office, a use of the invention has commenced or preparatory work necessary for such use has been carried out in good faith; and

- 3) The invalidation of the European patent or an early discontinuance of validity in another Contracting State of the European Patent Convention shall not be deemed as the basis for the declaration of the patent, registered in Latvia, as invalid.

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

#### **Informative Reference to European Union Directives**

This Law contains legal norms arising from:

- 1) Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions;
- 2) Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use; and
- 3) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

This Law shall come into force on 1 March 2007.

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

President V. Vīķe-Freiberga

Riga, 27 February 2007