

3/2001 Coll.

Complete wording of Act

No. 527 / 1990 Coll. on Inventions and Rationalisation Proposals,

**as follows from amendments implemented by Act No. 519/1991 Coll., Act No. 116/2000 Coll.
and Act No. 207/2000 Coll.**

ACT

on Inventions and Rationalisation Proposals

Section 1

Purpose of the Act

The purpose of this Act is to regulate the rights and obligations deriving from the creation and exploitation of inventions and rationalisation proposals.

PART ONE

INVENTIONS

CHAPTER ONE

PATENT FOR INVENTION

Section 2

The Industrial Property Office (hereinafter referred to as "the Office") shall grant patents for inventions, which meet the requirements set out in this Act.

Section 3

Patentability of inventions

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

(2) The following in particular shall not be regarded as inventions:

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

(3) The patentability of the subject-matter or activities referred to in paragraph 2 is excluded only to the extent to which an application or a patent relates to such subject-matter or activities as such.

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in these methods for treatment and these diagnostic methods.

Section 4

Exclusions from patentability

Patents shall not be granted in respect of:

- a) inventions the exploitation of which would be contrary to public order or morality; this fact may not be concluded merely because the exploitation of invention is prohibited by law;
- b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes and the products thereof.

Section 5

Novelty

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

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, prior to the date from which the right of priority (Section 27) belongs to the applicant.

(3) The state of the art shall also comprise the content of applications for inventions filed in the Czech Republic which enjoy earlier priority and have been published on or after the date from which the priority right belongs to the applicant (Section 31). This provision shall also apply to the international applications of inventions with the earlier right of priority, where the Office acts as a designated Office^{1a}, and to the European patent applications (Section 35a) with the earlier right of priority where the Czech Republic is a validly designated state. Invention applications kept secret under special provisions shall be considered to have been published on expiry of an 18-month period as from the date on which the priority right began.

(4) The provisions of paragraphs 1 to 3 shall not exclude patentability of any substance or composition for use in a method referred to in Section 3 paragraph 4, provided that its use for this method is not comprised in the state of the art.

(5) The disclosure of an invention which took place no earlier than six months prior to the filing of the application shall not be considered as being part of the state of the art if it was due to or in consequence of:

^{1a} Art.2(xiii) of the Patent Cooperation Treaty published in the communication of the Federal Ministry of Foreign Affairs No. 296/1991Coll., on Patent Cooperation Treaty and the related Implementing Regulations.

- a) an evident abuse in relation to the applicant or his legal predecessor,
- b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, exhibition within the terms of the relevant international treaty.¹ In such case, it shall be for the applicant to declare, when filing the application, that the invention has been displayed and to produce in support of his declaration, within a period of four months as from filing, a certificate attesting that the invention has been displayed in compliance with the provisions of the international treaty.

Section 6

Inventive step

- (1) An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.
- (2) However, the content of applications that have only been published as of the date on which the applicant's priority right began (Section 31) shall not be taken into consideration in assessing the inventive step.

Section 7

Industrial application

An invention shall be considered as susceptible of industrial application if its subject-matter can be made or used in any kind of industry, agriculture or other fields of the economy.

Section 8

Right to a patent

- (1) The right to a patent shall belong to the inventor or his successor in title.
- (2) The inventor is the person who has made the invention by means of his own creative work.
- (3) Joint inventors shall be entitled to a patent in the proportion in which they have participated in the creation of the invention.

Invention belonging to an enterprise

Section 9

- (1) Where an inventor has made an invention as part of his tasks deriving from an employment relationship, by reason of the fact that he is a member of an organisation or of any other similar employment relationship (hereinafter referred to as "the employment relationship"), the right to the patent shall pass to the employer, unless otherwise laid down by contract. The right of inventorship as such shall remain unaffected.

¹ Convention on International Exhibitions done at Paris on November 22, 1928 (No. 46/1932 of the Collection of Laws of the Czechoslovak State).

(2) An inventor who has made an invention within the framework of an employment relationship shall be required to report the fact without delay, in writing, to his employer and to communicate to him the documents required for assessing the invention.

(3) Where the employer does not claim the right to the patent within a period of three months as from receipt of the communication referred to in paragraph 2; the right shall revert to the inventor. Both the employer and the employee shall be required to maintain the secrecy of the invention with respect to third parties.

(4) Any inventor who has made an invention under an employment relationship shall be entitled, where the employer claims the right to the patent, to appropriate remuneration from the employer. In order to assess the amount of remuneration, the technical and economic importance of the invention and the benefit obtained from possible exploitation or other use, together with the material contribution by the employer to the making of the invention and the extent of the inventor's service obligations shall be taken into consideration. Where remuneration that has already been paid is obviously no longer proportionate to the benefit obtained from exploitation or other subsequent use of the invention, the inventor shall be entitled to additional remuneration.

Section 10

Termination of the employment relationship between the inventor and the employer shall not prejudice the rights and obligations deriving from the provisions of Section 9.

Effect of the patent

Section 11

(1) The proprietor of a patent (Section 34) shall have the exclusive right to use the invention, to authorise others to use the invention or to assign the patent to others.

(2) The patent shall have effect as from the date of publication of the mention of its grant in the Official Bulletin of the Industrial Property Office (hereinafter referred to as "the Official Bulletin").

(3) The applicant shall be entitled to appropriate remuneration from any person who uses the subject-matter of the invention application after the application has been published (Section 31). The right to appropriate remuneration may be asserted as from the date on which the patent has effect.

(4) An applicant filing an international application requesting grant of a patent in the Czech Republic and which has been published in compliance with the international treaty shall be entitled to appropriate remuneration in accordance with paragraph 3 only after the translation of the application into the Czech language has been published (Section 31).

Section 12

(1) The extent of the protection conferred by a patent or an invention application shall be determined by the terms of the patent claims. For the interpretation of the patent claims, the description and drawings shall be used.

(2) For the period up to grant of the patent, the extent of the protection conferred by the invention application shall be determined by the terms of the patent claims contained in the application published under Section 31. However, the patent, as granted or as amended in the revocation procedure under Section 23, shall determine retroactively the extent of the protection conferred by the invention application, in so far as the protection is not thereby extended.

Section 13

Prohibition of direct use

Nobody shall be allowed without the consent of the proprietor of the patent,

- a) to make, offer, put on the market or use a product which is the subject-matter of the patent, or to import or stock the product for this purpose, or to dispose with it by another manner;
- b) to use a process which is the subject-matter of the patent or to offer the process for use;
- c) to offer, put on the market, use or import or stock for this purpose the product obtained directly by a process, which is the subject-matter of the patent; identical products shall be held to have been obtained by means of the process, which is the subject-matter of the patent, when it is highly probable that the product was obtained by means of the process, which is the subject-matter of the patent, and in spite of reasonable effort, the proprietor of the patent was not able to determinate the really used process; unless the contrary is proved. In proving the contrary, rights conferred by the trade secret protection^{1b} shall be respected.

Section 13a

Prohibition of indirect use

(1) Nobody shall be allowed without the consent of the proprietor of the patent, to supply or offer to supply a person, other than the person authorised to use the patented invention, with the means relating to an essential element of the invention and serving in this sense to put in into effect, when it is obvious in the circumstances, that these means are suitable and intended for putting the patented invention into effect.

(2) The paragraph 1 shall not apply when the means are products commonly existing on the market, unless the third person induces the purchaser to commit the act, prohibited by Section 13.

(3) Persons performing the activities referred to in Section 18, letters c) to e) shall not be considered as persons authorised to use the invention within the meaning of paragraph 1.

Section 13 b

Exhaustion of rights

The proprietor of the patent shall not be entitled to prohibit third persons to dispose with the product, which is subject-matter of the protected invention, if the product has been put on the market in the Czech Republic by the proprietor of the patent or with his consent, unless there exist the reasons for the extension of patent rights to the mentioned activities.

^{1b} Section 124 of the Civil Procedure Code.

Section 14

(1) The authorisation to exploit an invention protected by a patent (licence) shall be given by written contract (hereinafter referred to as "the licence contract").

(2) The licence contract shall have effect in respect of third parties as from its entry in the Patent Register (Section 69).

Section 15

Assignment of a patent shall be effected by written contract that shall take effect in respect of third parties as from its entry in the Patent Register.

Section 16

Joint proprietorship of patent

(1) Where the rights deriving from one patent belong to more than one person (hereinafter referred to as "the joint proprietors"), the relationship between such persons shall be governed by the general rules of law on shares in joint proprietorship.²

(2) Unless otherwise agreed by the joint proprietors, each of them shall have the right to exploit the invention.

(3) Unless otherwise agreed, the conclusion of a licence contract shall require, in order to be valid, the consent of all joint proprietors each of the joint proprietors may independently take action against infringement of the rights deriving from the patent.

(4) Assignment of the patent shall require the consent of all joint proprietors. Failing the consent of the other joint proprietors, each joint proprietor may only assign his share to another joint proprietor; assignment to a third party may only be effected if none of the joint proprietors has accepted a written offer of assignment within a period on one month.

Limitation of effects of patent

Section 17

(1) A patent shall not have effect *vis-à-vis* a person (hereinafter referred to as "the prior user") who has already exploited the invention independently of the inventor or proprietor of the patent or who has made preparation therefore, that he can prove, before the priority right began (Section 27).

(2) In case of failure to reach agreement, the prior user shall be entitled to request a court that his right to be recognised by the proprietor of the patent.

² Act No. 40/1964 Coll., Code of Civil Law, in its current wording.
Act No. 109/1964 Coll., Code of Economy, in its current wording.

Section 18

The rights of the proprietor of the patent shall not be infringed by use of the protected invention:

- a) on board vessels of other States party to the Paris Convention for the Protection of Industrial Property (hereinafter “Paris Convention”)³ to which the Czech Republic is party, in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter in the Czech Republic, provided that such use is exclusively for the needs of the vessel;
- b) in the construction or operation of aircraft or land vehicles of other Union States when those aircraft or land vehicles temporarily or accidentally enter in the Czech Republic;
- c) in the individual preparation of a medicament in a pharmacy based on a medical prescription including acts concerning the medicament so prepared;
- d) in acts done for non-commercial purposes;
- e) in acts relating to the subject-matter of the invention done for experimental purposes.

Section 19

Offer of licence

- (1) If the applicant or the proprietor of a patent declares to the Office that he is prepared to offer right to exploit the invention to any person (offer of licence), any person who accepts the offer of a licence and notifies the fact in writing to the applicant or proprietor shall be entitled to exploit the invention. The Office shall enter the offer of licence in the Patent Register.
- (2) The declaration of offer of licence shall be irrevocable.
- (3) The fact that a person is entitled to exploit the invention shall not prejudice the right of the proprietor of the patent to obtain compensation with respect to the value of the licence.
- (4) The administrative fees for maintaining a patent in respect of which the proprietor has made an offer of licence under paragraph 1 shall be half the amount laid down in the relevant statutory provisions.⁴

Section 20

Compulsory licence

- (1) If the proprietor of the patent unreasonably does not exploit the invention at all or exploits it insufficiently and he did not accept a due offer for a licence agreement in a reasonable term, the Office, upon the justified request, may grant a non-exclusive right to use the invention (compulsory licence); the compulsory licence may not be granted before the expiry of the period of 4 years as from the filing date of the invention application or 3 years as from the grant of the patent; whichever period expires last.

³ Paris Convention for the Protection of Industrial Property of March 20, 1883, revised in Brussels on December 14, 1900, in Washington on June 2, 1911, in the Hague on November 6, 1925, in London on June 2 1934, in Lisbon on October 31, 1958 and Stockholm on July 14, 1967, published under the No. 64/1975.

⁴ Act No. 368/1992 Coll., on Administrative Fees, as amended

(2) The compulsory licence may be also granted, where an important public interest is endangered.

(3) The Office shall establish conditions, the scope and duration of the compulsory licence in its decision concerning the granting of the compulsory licence, taking into account circumstances of the case. The compulsory licence may be granted mainly for the supply of the home market.

(4) The compulsory licence may only be assigned within the transfer of the enterprise or its part, where the entrepreneur uses the invention based on the compulsory licence (thereinafter “compulsory licence holder”).

(5) The compulsory licence holder may waive the right to use the invention during the term of duration of the compulsory licence by notification made to the Office; on the day of delivery of the notification, the effect of decision on the grant of compulsory licence lapses.

(6) The Office shall revoke a compulsory licence or change conditions, scope or duration of the compulsory licence on the request of the proprietor of the patent in which he shall prove that conditions for the grant of compulsory licence have been changed and are unlikely to recur or the holder does not exploit the compulsory licence during one year or does not implement conditions established by the grant of the compulsory licence.

(7) The grant of a compulsory licence shall not affect the right of the proprietor of the patent for the compensation of the value of the licence. If the value of the licence is not agreed by concerned parties it shall be determined, upon request, by the court, taking into account the importance of the invention and the value of the licence contracts in the relevant technical field.

(8) The compulsory licence shall be recorded in the Patent Register (Section 69).

Section 21

Term of the patent

(1) The term of a patent shall be 20 years as from the filing date of the application for the invention.

(2) For maintaining the patent in force, the proprietor of the patent shall pay yearly administrative fees under the special regulation.⁴

(3) The rights of third persons, which after expiry of the time limit for payment of the fee for maintaining the patent in force, in good faith have begun to use the subject-matter of the invention or have realised serious and effective preparations to use this invention, shall not be affected by the payment of this fee in ulterior date.

Section 22

Lapse of a patent

A patent shall lapse:

a) on expiry of its term of validity;

- b) if the corresponding administrative fees⁴ have not been paid in good time by the proprietor of the patent;
- c) on relinquishment by the proprietor of the patent; in such case, the patent shall terminate as from the date on which the Office receives a written declaration by the proprietor of the patent.

Section 23

Revocation of the patent

- (1) The Office shall revoke the patent, if it is ascertained subsequently:
 - a) that the invention did not meet the conditions of patentability;
 - b) that the invention is not disclosed in the patent so clearly and completely, to be carried out by a person skilled in the art;
 - c) that the subject-matter of the patent extends beyond the content of the invention application as filed or the subject-matter of the patents granted on the divisional application extend beyond the content of the invention application as filed, or the extent of the protection arising from the patent was extended;
 - d) revocation upon the request of the authorised person (Section 29);
- (2) If the grounds for revocation concern only a part of the patent, the patent shall be revoked in part. The partial revocation of the patent shall be carried out by the amendment of claims, description or drawings.
- (3) Revocation of a patent shall have retroactive effect to the date on which the patent became valid.
- (4) The request for revocation of a patent may be filed even after lapse of the patent if the person filing the request can prove a legal interest.

CHAPTER TWO

PATENT GRANTING PROCEDURE

Invention application

Section 24

- (1) The patent granting procedure shall begin with the filing with the Office of an invention application.
- (2) The Office is the body with which Czech natural and legal persons and other natural and legal persons having their domicile or an establishment on the territory of the Czech Republic may file international applications.

⁴ Act No. 368/1992 Coll., on Administrative Fees, as amended.

(3) The Office is the body with which the European patent application according to the Convention on the Grant of European Patents done at Munich on October 5, 1973 (hereinafter referred to „the European Patent Convention“) may be filed; this shall not apply in the case of a divisional European patent application.

(4) If the European patent application or the international application contains matters that are kept secret under special regulations,^{4a} the applicant shall file the application with the Office together with the approval issued by the National Security Office.

(5) The person filing an application under paragraph 1 or 2 shall be required to pay an administrative fee in accordance with the relevant statutory provisions⁴ and the person filing an international application under paragraph 2 shall further be required to pay for the international procedure regarding the application for the invention those fees that are laid down in accordance with the relevant international treaty the Office shall publish the schedule of the above-mentioned fees in the Official Bulletin.

Section 25

(1) The name of the inventor shall be mentioned in the application.

(2) At the request of the inventor, the Office shall not mention the name of the inventor in the published application and in the announcement of the grant of the patent.

Section 26

(1) An application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept. Where a group of inventions is claimed in one and the same patent application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression „special technical features“ shall mean those features, which define a contribution, which each of the claimed inventions considered as a whole makes the prior art.

(2) The invention must be disclosed in the invention application in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. Where the invention concerns an industrial microorganism for the purposes of production, the microorganism must be kept in a public collection as from the date on which the applicant's priority right begins.

(3) Where there is a doubt, the Office may invite the applicant to provide evidence of the applicability of the invention by producing the subject-matter of the application or in some other appropriate manner. If the applicant is unable to furnish such evidence, the subject-matter of the application shall be deemed not to have applicability.

Section 27

(1) The priority right of the applicant shall begin with the filing of the application.

^{4a} Act No. 148/1998 Coll., on Protection of Classified Matters and on the Changes of several Acts, as amended.

(2) The priority right under the Paris Convention³ must already be claimed by the applicant in his application if invited to do so by the Office, the applicant must furnish evidence of his right within the stipulated time limit, otherwise the priority right shall not be taken into consideration.

(3) The priority right under the paragraph 2 can be claimed, if the invention application has been filed in the state or for the state, which is party to the Paris Convention³ or a member of the World Trade Organization^{4b}. If the state, where the first filing of the invention application is made, is neither a party of the Paris Convention, nor a member of the World Trade Organisation, the priority right can only be granted under condition of the reciprocity.

Section 28

(1) Where legal proceedings in respect of the right to a patent have been instituted before a competent organ, the Office shall suspend the procedure with respect to the application concerned.

(2) The time limits laid down by this Act shall be suspended, with the exception of the time limit laid down in Section 31 paragraph 1, for as long as the procedure is suspended.

(3) If the legitimate applicant files a request to continue the procedure within three months from the date on which the decision on the right to a patent becomes final, the priority right shall be maintained. Acts carried out for the granting of a patent prior to suspension of a procedure shall likewise be deemed valid for the continued procedure.

Section 29

(1) The Office shall transfer the invention application or the patent to the person who is the inventor in accordance with the decision taken by the court.

(2) If the organ competent to hear legal proceedings with regard to the right to a patent decides that the right belongs to another person, the Office shall replace the name of the person filing the application or of the proprietor of the patent with the name of such other person.

Preliminary examination of the invention application

Section 30

(1) All the invention applications shall be subject to a preliminary examination carried out by the Office in order to find whether:

a) the application contains no element that is obviously contrary to the provisions of Section 3 paragraph 1 or Section 26 paragraph 2,

b) the application contains no element referred to in the provisions of Section 3 paragraph 2 or Section 4,

^{4b} Agreement establishing the of World Trade Organization (WTO), published under the No. 191/1995 Coll..

- c) the application contains no deficiency constituting a bar to the publication,
- d) the applicant has paid the corresponding administrative fees.⁸

2) The Office shall reject the invention application if it contains an element contrary to the provisions of Section 3 paragraph 1 or Section 26 paragraph 2 or an element referred to in the provisions of Section 3 paragraph 2 or Section 4. The applicant shall be given an opportunity to make observations on the documents on the basis of which the decision has been taken, prior to rejection.

(3) If an invention application contains an element that constitutes a bar to its publication or if the applicant has not paid the corresponding administrative fee,⁴ the Office shall invite the applicant to submit his observations and to remedy any deficiencies within the set up time limit.

(4) If the applicant does not remedy the deficiencies in the invention application constituting a bar to its publication or does not pay the corresponding administrative fee⁴ within the stipulated time limit, the Office shall terminate the procedure. The attention of the applicant shall be drawn to such consequence.

Section 31

(1) The Office shall publish an invention application on expiry of a period of 18 months as from the date on which the priority right begins and shall announce the publication in the Official Bulletin.

(2) An invention application may be published before expiry of the time limit laid down in paragraph 1 at the request submitted by the applicant within 12 months from the date on which the priority right begins and on payment of the administrative fee laid down in the relevant regulations.⁴ The Office shall publish an invention application before expiry of the period referred to in paragraph 1 if a patent has already been granted for the invention. However, if the proprietor of the patent does not give his consent, the Office shall not publish the application before expiry of 12 months as from the date on which the priority right begins.

(3) Together with the invention application, the Office may publish a report on the state of the art (search report) relating to an invention claimed in the application.

Section 32

(1) Following publication of an invention application, any person may submit observations on the patentability of the subject-matter; the Office shall take such observations into consideration when carrying out the full examination of the application.

(2) Persons who have submitted observations under paragraph 1 shall not become party to the procedure with respect to the application. However, the applicant shall be informed of any observations submitted.

Full examination of invention application

Section 33

- (1) The Office shall carry out a full examination of the invention application to ensure that it meets the conditions for granting a patent laid down by this Act.
- (2) The full examination of an invention application shall be carried out by the Office at the request of the applicant or of another person or may be carried out ex officio.
- (3) The request for full examination shall be filed within 36 months as from the filing date of the invention application and may not be withdrawn. The person filing the request shall be required, on submitting the request, to pay an administrative fee in accordance with the relevant statutory provisions.⁴
- (4) The Office shall carry out the full examination immediately after the request has been filed.
- (5) Where no request for full examination of an invention application has been duly filed or where the Office has not carried out an ex officio examination within the period laid down in paragraph 3, the Office shall terminate the procedure concerning the application.

Section 34

- (1) If the conditions for granting a patent have not been met, the Office shall reject the invention application. The applicant shall be given the possibility of submitting observations on the documents on the basis of which the decision on the application is to be taken before rejection.
- (2) If the applicant does not remedy a defect constituting a bar to the granting of a patent within the given time limit, the Office shall terminate the procedure concerning the application. The attention of the applicant shall be drawn to such consequence of failure to comply when the time limit is stipulated.
- (3) If the subject-matter of the invention application satisfies the stipulated conditions and if the applicant has paid the fee laid down in the relevant statutory provisions,⁴ the Office shall grant a patent to the applicant who shall thereupon become the proprietor of the patent. The Office shall issue to the proprietor of the patent letters patent in which the name of the inventor shall be mentioned, the description of the invention and the claims shall form an integral part of the letters patent, a notice of the grant of the patent shall be published in the Official Bulletin.

Section 35

If more than one invention application relating to the same subject-matter is filed, only one patent can be granted.

CHAPTER THREE

EUROPEAN PATENT APPLICATION AND EUROPEAN PATENT

Section 35a

(1) A European patent application with effects for the Czech Republic (hereinafter “European patent application”), which has been accorded a date of filing shall have the same effect in the Czech Republic as an invention application filed according to Section 24 on the same date. If the European patent application enjoys a priority right from a date preceding the date of filing the European patent application, the earlier date shall apply for according the effects of the application.

(2) If the European patent application was withdrawn or if it is considered to be withdrawn, it shall have the same effects as the termination of the procedure on the invention application under Section 64 paragraph 2. If the European patent application was rejected, it shall have the same effects as the rejection of the invention application under Section 34 paragraph 1.

(3) The reestablishment of rights by the European Patent Office to the applicant of the European patent application, or to the proprietor of the European patent with effects for the Czech Republic (hereinafter “European patent”) shall also apply in the Czech Republic.

(4) If the European patent application has been published by the European Patent Office, the applicant has presented the translation of patent claims to the Czech language and paid the administrative fee for making the translation available under the special rules,⁴ the Office makes the translation available to the public and announces this fact in the Bulletin. The applicant can then claim a reasonable compensation according to Section 11 paragraph 3, if the patent, granted by the European Patent Office has effects in the Czech Republic (Section 35c).

(5) The content of the European patent application, determined by the wording of the European patent in the language, in which the European patent application has been proceeded before the European Patent Office, shall be decisive for the interpretation of the scope of protection conferred by the European patent application; if the protection conferred by the European patent is larger than the protection conferred by the published European patent application, the protection shall only be granted in the scope, which is conferred both by the published European patent application and the granted European patent. If the translation of patent claims according to the paragraph 4 does not comply with the wording of the claims in the language of proceedings, the protection conferred by the European patent application can only be claimed in the scope, which is obvious from its translation to the Czech language.

(6) If the applicant files with the Office the corrected translation of patent claims to the Czech language, the corrected translation shall have effect instead of the original translation since the day of the mention of its publication in the Bulletin; the applicant shall pay the administrative fee for the publication according to special regulation.⁴ The rights of the third persons, which in good faith have used or have made serious and effective preparations for using the subject-matter of the European patent application which according to the translation presented by the applicant was not covered by its scope, are not affected by the delivery of the new translation.

Section 35b

Conversion of the European patent application into a national application

(1) The Office shall, at the request of the applicant of the European patent application, filed according to the Article 136 paragraph 2 of the European Patent Convention, start the procedure with the application as with respect to the national application.

(2) If the Office receives the request pursuant the paragraph 1, it shall invite the applicant to submit the Czech translation of the European patent application in three copies within a period of three months and to pay the filing fee.

(3) If the applicant has met the conditions pursuant in the paragraph 2 and the Office has received the request for conversion of the European patent application within a period of 20 months from the date of priority, the Office shall accord to the national application the right of priority deriving from the European patent application as filed.

(4) The Office shall, at the request of the applicant of the European patent application filed under paragraph 1, proceed the European patent application as the national application of a utility model in accordance with special regulations.^{4c} The provisions of paragraphs 2 and 3 shall apply *mutatis mutandis*.

Section 35c

Effects of the European patent

(1) The patent granted by the European Patent Office shall have the same effects, as the patent granted in accordance with Section 34 paragraph 3.

(2) The European patent shall have the effects in the Czech Republic as from the date, when the grant of the European patent was announced in the European Patent Bulletin; the proprietor of the patent shall be obliged to submit to the Office the translation of the patent specification to the Czech language within 3 months since this date, and to pay the administrative fee for the publication according to special legal regulation.⁴ In the same time, the proprietor of the patent shall be obliged to submit to the Office the address in the Czech Republic, where the official notifications concerning his patent are to be sent. The Office shall announce the grant of the European patent in the Bulletin and publish the translation of the European patent specification.

(3) If the translation of the European patent specification to the Czech language is not submitted within the period according to the paragraph 2, the proprietor of the European patent may submit it in the additional time limit of 3 months, provided that he will pay the administrative fee according to the special regulation.⁴

(4) If the translation of the European patent specification to the Czech language is not submitted even within the time limit according to the paragraph 3, the European patent shall be considered in the Czech Republic as null and void from the outset.

(5) After the announcement of the grant of the European patent in the European Patent Bulletin, the Office shall enter the European patent to the Czech Register of European patents with the data recorded in the European Patent Register.

Section 35d

Extent of protection from the European patent

(1) The text of the European patent in the language of the proceedings before the European Patent Office shall be decisive for the determination of the extent of protection conferred by the

^{4c} Act No. 478/1992 Coll., on Utility Models, as amended by Act No. 116/2000 Coll.

European patent; nevertheless, if the extent of protection conferred by the translation of the patent specification, submitted to the Office according to Section 35c paragraph 2, is narrower than in the language of proceedings, third parties can refer to this translation.

(2) The proprietor of a European patent is entitled to submit to the Office the corrected translation of the European patent specification to the Czech language. The corrected translation shall have effects instead of the original translation as from the publication of the corrected translation by the Office; the proprietor of the European patent shall pay the fee for the publication according to special regulations.⁴

(3) The rights of third persons, which on the territory of the Czech Republic in good faith have used or have realised serious and effective preparations to use the subject-matter, which pursuant to the translation valid in the period before the publication of the corrected translation by the Office was not covered by the extent of this European patent, are not affected by the delivery of the new translation.

Section 35e

Prohibition of the simultaneous protection

(1) If the national patent is granted to the invention, to which the European patent has been granted with the same right of priority to the same proprietor of the patent or his successor in title, the national patent shall cease to have effect to the extent that it is identical with the European patent, from the date, on which the period for filing the notice of opposition to the European patent expires without such notice being filed, or the date of entry into force of the decision, by which the European patent has been maintained in the opposition proceedings.

(2) The national patent shall not have effects under Section 11 paragraph 2 to the extent that it is identical with the European patent, if it was granted after the expiry of the period for filing the notice of opposition to the European patent without such notice being filed, or after the date of entry into force of the decision, by which the European patent has been maintained in the opposition proceedings.

(1) The provisions of paragraphs 1 and 2 shall not be affected by the revocation of the European patent under Section 35f paragraph 5.

Section 35f

Revocation of the European patent

(1) If the European Patent Office revokes the European patent or maintains it in the amended form, the decision shall have effects in the Czech Republic.

(2) The Office shall announce in the Bulletin the revocation of the European patent or its maintaining in the amended form according to the paragraph 1.

(3) If the European patent is maintained in the amended text in the opposition proceedings by the European Patent Office, its proprietor shall be obliged to submit to the Office the translation of the amended text of the patent specification to the Czech language and to pay the publication fee

within 3 months from the announcement of this amendment in the European Patent Bulletin. In the Bulletin, the Office shall announce the maintaining of the European patent in the amended text and shall publish the translation of the amended text of the patent specification.

(4) If the Czech translation of the amended text of the European patent specification is not submitted by the time limit according to the paragraph 3, the European patent shall be considered in the Czech Republic as null and void from the outset.

(5) If the time limit laid down by the European Patent Convention for filing the notice of opposition expires without such notice being filed, or if the European patent is not revoked during the opposition proceedings, the European patent can be revoked by the Office according to Section 23; the Office shall suspend the revocation procedure with regard to the European patent, if the opposition procedure concerning the same matter is pending before the European Patent Office. If the European patent was not revoked in the opposition procedure, the Office shall upon request continue in the revocation procedure.

(6) In the revocation proceedings, the text of the European patent in the language of the proceedings shall be authentic.

Section 35g

Maintenance fees

(1) The proprietor of patent shall be obliged to pay yearly fees for the maintaining the European patent in the Czech Republic (thereinafter “maintenance fees”). The Office stipulates the amount of maintenance fees by decree.

(2) The obligation to pay the maintenance fees shall arise by the announcement of the grant of the European patent in the European Patent Bulletin. The maintenance fees shall be paid to the Office and shall be payable in advance on the anniversary of the date of filing the application. If there is a period shorter than 2 months between the announcement of the grant of the European patent and the date corresponding to the date of filing the application, the proprietor of the European patent shall be obliged to pay the first maintenance fee within 2 months from the date of announcement. If the maintenance fee is not paid within the prescribed time limit, it can still be validly paid within an additional period of 6 months in the double amount.

(3) The rights of third persons, which after the expiry of the period for payment of the maintenance fee without such fee being paid, in good faith have begun to make a use of the subject-matter of the invention or have realised serious and effective preparations to such use, are not affected by the additional payment of the maintenance fee.

CHAPTER FOUR

GRANT OF SUPPLEMENTARY PROTECTION CERTIFICATES FOR MEDICAMENTS AND PLANT PROTECTION PRODUCTS

Section 35 h

(1) The Office shall grant supplementary protection certificates (hereinafter “certificates”) for substances protected on the territory of the Czech Republic by the valid patent, if they are the active substances of the products which prior being placed on the market, are subject to the registration according to the special regulations^{4d}.

(2) The active substance shall mean a chemically manufactured substance or a combination of substances, a micro-organism or a combination of micro-organisms, which have general or specific therapeutic or preventive effects with regard to human or animal diseases or which may be administered to the human beings or animals in order to disease diagnosis, improvement or arrangement of their health condition or which are destined to the protection of plants or plant products.

(3) The product referred to in paragraph 1 shall mean any active substance or a combination containing one or more active substances put up in the form for being placed on the market as a medicament^{4e} or a plant protection product.^{4f}

Section 35i

Application for a certificate

(1) The application for a certificate shall be filed by the proprietor of the patent, whose subject-matter is a substance, except for the patent granted according to Section 82, or a method for obtaining a substance or a use of a substance as a medicament or as a plant protection product (hereinafter “basic patent”), or his successor in title.

(2) The application for a certificate shall be filed within 6 months from the date on which the decision on the registration of the product is issued according to special regulations;^{4d} if the registration is made prior to the grant of the basic patent, the application for a certificate shall be filed within the period of 6 months from the date on which the patent is granted.

(3) The application for a certificate shall contain:

a) a request for the grant of the certificate stating in particular:

1. the name and address of the applicant;
2. the name and address of the representative, if any;
3. the number of the basic patent and the title of the invention;
4. the number and date of the first registration of the product according to special regulations;^{4d}

b) a copy of the decision on the registration of the product issued according to special regulations,^{4d} where the product is identified, including the product data summary, if it is a medicament;

c) chemical, generic or other terminology enabling to identify the substance protected by the basic patent with the registered product.

^{4d} Act No. 147/1996 Coll., on Plant Medicine Care and on changes of some relating Acts.

Act No. 79/1997 Coll., on Medicaments and on changes and amendments of some relating Acts.

^{4e} Section 2 paragraph 1 of the Act No. 79/1997 Coll.

^{4f} Section 2 paragraph 7 of the Act No. 147/1996 Coll.

(4) When filing the application for a certificate, the applicant shall pay the administrative fee according to the special regulations.⁴

(5) The Office shall record the filing of the application for a certificate to the Patent Register and publish it in the Bulletin. The publication shall contain the name and address of the applicant, the number of the basic patent and the title of the invention protected by the patent, the number and the date of the registration, including of the mention of the product, putting on the market of which is authorised by means of this registration.

Section 35j

Conditions for obtaining a certificate

The Office shall grant a certificate, if the following conditions are met on the date of filing the application under Section 35i:

- a) the basic patent is valid on the territory of the Czech Republic;
- b) the product contains the active substance protected by the basic patent and is validly registered as a medicament or a plant protection product according to special regulations;^{4d}
- c) the certificate has not yet been granted to the substance;
- d) the registration referred to in the letter b) is the first authorisation to place a medicament manufactured en masse in the Czech Republic or the first authorisation to place a plant protection product on the market in the Czech Republic.

Section 35 k

Grant of the certificate

(1) If the application for a certificate meets the conditions laid down in Section 35i and the substance, for which the certificate is applied for, meets the conditions laid down in Section 35j, the Office shall grant the certificate and record it in the Patent Register. The certificate shall contain:

- a) the name and address of the proprietor of the certificate;
- b) the number of the basic patent and the title of the invention;
- c) the number and date of the first registration, the authority having issued the decision on the registration, and the mention of the product, placing on the market of which is authorised by means of this registration;
- d) the duration of the certificate.

(2) The Office shall publish the grant of the certificate in the Bulletin. The publication shall contain the data referred to in paragraph 1.

(3) If the application for a certificate does not meet conditions laid down in Section 35j, the Office shall invite the applicant to remedy the deficiencies within a set time limit. If the applicant fails to complete the application within the set time limit, the Office shall terminate the procedure; the applicant shall be notified about this consequence.

(4) If conditions for the grant of the certificate are not met the application a certificate shall be rejected.

(5) The Office shall publish the rejection of the application for a certificate and the termination of the procedure of the grant of the certificate in the Bulletin; the publication shall contain the data specified in Section 35i paragraph 5.

Section 35l

Subject-matter and effects of the certificate

(1) Within the limits of the protection conferred by the basic patent, the protection by the certificate shall extend to the chemical substance or a combination of substances, micro-organism or a combination of micro-organisms, which represent the active substance of the registered product, as well as to every use of the subject-matter of the patent as a medicament or plant protection product, which was authorised before the expiry of the certificate.

(2) The certificate shall confer the same rights as conferred by the basic patent; the certificate shall be subject to the same limitations and the same obligations.

Section 35m

Duration of the certificate

(1) The certificate shall take effect for a period equal to the period, which elapsed between the filing date of the basic patent application and the date of the first registration enabling to place the product on the market in the Czech Republic as a medicament or plant protection product, reduced by 5 years, but at most 5 years from the date, on which the certificate takes effect.

(2) The certificate shall take effect after the expiry of the lawful term of the basic patent.

(3) For maintaining the certificate, the proprietor shall pay yearly administrative fees according to the special regulations.⁴

(4) The rights of third persons, which after the expiry of the period for payment of the maintenance fee without such fee being paid, in good faith have begun to make a use of the subject-matter of the invention or have realised serious and effective preparations to use this invention, are not affected by the payment of this fee in the additional time limit.

Section 35n

Lapse of the certificate

(1) The certificate shall lapse

a) by expiry of its duration period in terms of Section 35m paragraph 1;

b) if its proprietor surrenders it;

c) if its proprietor does not pay administrative fees for maintaining the certificate in force;

d) if the product may no longer be placed on the market following the revocation or expiry of the registration;

e) by revocation of the certificate according to Section 35o.

(2) The Office shall record the lapse of the certificate to the Patent Register and announce it in the Bulletin.

Section 35o

Revocation of the certificate

(1) The Office shall revoke the certificate, if

a) the conditions for its grant according to Section 35j have not been met;

b) the basic patent has lapsed before its duration term;

c) the basic patent has been revoked or limited to the extent that the substance, for which the certificate was granted, is no longer protected by the basic patent; it shall apply also in case of the basic patent revocation, which occurred after its lapse.

(2) The request for revocation of the certificate may also be submitted after the lapse of the basic patent under paragraph 1, if the applicant proves his legal interest.

PART TWO

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PART THREE

COMMON PROVISIONS ON PROCEDURE BEFORE THE OFFICE

Section 63

Administrative procedure

(1) The general statutory rules on administrative procedure shall apply to procedure before the Office, subject to the exceptions laid down by this Act and excluding the provisions on suspension of procedure, declarations of honour, time limits for decisions and measures in the event of failure to act.⁵ The proceedings before the Office shall be in the Czech language.

(2) The Office shall levy administrative fees⁴ for acts carried out in connection with the procedure laid down by this Act. The person requesting the procedure under Sections 23, 35f, 35o, and 68 paragraphs 1 and 2 shall be required to deposit a security for the cost of the procedure such security shall be refunded to the person filing the request if the request is substantiated by the procedure. Security shall amount to 2500 CZK.

⁵ Sections 29, 39, 49 and 50 of the Act No. 71/1967 Coll., on Administrative Procedure (Administrative Regulations).

Section 64

Termination of procedure

- (1) If one of the parties to a procedure does not comply with an invitation by the Office within the stipulated time limit, the Office may terminate the procedure.
- (2) The Office may also terminate the procedure at the request of one of the parties a request for termination of the procedure may not be withdrawn.

Section 65

Excusing failure to comply with a time limit

- (1) The Office may excuse failure to comply with a time limit on legitimate grounds if a party to the procedure so requests within two months of the day on which the reason for failure to comply has ceased to exist, provided that the omitted act has been performed within that period and that the administrative fee in accordance with the relevant statutory provisions has been paid.⁴
- (2) Failure to comply with a time limit may not be excused after expiry of a period of one year as from expiry of the period within which the act should have been performed, failure to comply with a time limit for claiming and proving a priority right or for filing a request for full examination of an application for an invention or a request for continuation of the procedure under Section 28 paragraph 3 may likewise not be excused.
- (3) Rights acquired by third parties between the date of expiry of the time limit that has not been complied with and the date on which the failure to comply was excused shall not be affected.

Section 66

Inspection of files

The Office shall enable the inspection of files to third persons only when they prove the legal interest. Before the publishing of an invention application, only following data may be communicated: who is author of the invention, applicant of the invention, data concerning the right of priority, title of the invention application and its reference mark.

Section 67

Procedure for declaratory judgement

At the request of any person proving a legal interest, the Office shall determine whether the production process, the given products, their exploitation or their putting on the market fall within the scope of the patent.

Section 68

Appeals procedure

- (1) Decisions taken by the Office, with the exception of decisions on excusing failure to comply with a time limit under Section 65, may be appealed from within one month of service of their notification.
- (2) Decisions on appeal shall be taken by the President of the Office on a proposal by an expert commission established by the President.

Section 69

Patent Register and Official Bulletin of the Office

- (1) The Office shall keep a Patent Register for the purpose of entering the particulars of decisive importance relevant to applications for inventions, the procedure relating to them and the relevant particulars of decisive importance concerning granted patents and registered industrial designs.
- (2) The Office shall keep the Register of European patents valid on the territory of the Czech Republic. Provisions of paragraph 1 shall apply to entries in the Register of European Patents.
- (3) The Office shall publish an Official Bulletin, which shall contain, *inter alia*, all particulars concerning published applications for inventions, granted patents and other particulars relating to inventions, as also official notices and leading decisions.

Section 70

Representation

Persons not having the domicile or headquarters on the territory of the Czech Republic, shall be represented in the proceedings before the Office by a representative according to the special regulations.⁷ This shall apply also for filing of translations in terms of the Chapter three.

Section 71

This Act shall apply also to the procedures on inventions, which are kept secret in terms of the special regulations^{4a} or international agreement, by which the Czech Republic is bound, except publication thereof.

PART FOUR

RATIONALISATION PROPOSALS

Section 72

⁷ Act No. 237/1991 Coll., on Patent Attorneys, as amended by Act No.14/1993 Coll.
Act No. 85/1996 Coll., on Legal Profession, as amended by Act No. 210/1999 Coll.

(1) A rationalisation proposal shall be any technical improvement of a manufacturing or operational nature and any solution to a problem of safety, protection of health at work or protection of the environment the rationalisator shall have the right to dispose of his proposal.

(2) No right may derive from a rationalisation proposal if rights deriving from a patent constitute an obstacle thereto.

Section 73

(1) The rationalisator shall offer to his employer his rationalisation proposal if it falls within the scope of his employer's work or activities.

(2) The rationalisator shall have the right to dispose unrestrictedly of his rationalisation proposal if his employer does not conclude an agreement for the acceptance of the offer of the rationalisation proposal and the corresponding remuneration within two months as from receipt of the offer (Section 74).

Section 74

The right to exploit a rationalisation proposal shall begin on conclusion of the agreement of acceptance of the offer of the rationalisation proposal and the corresponding remuneration between the employer and the rationalisator.

PART FIVE

COMMON, TRANSITIONAL AND FINAL PROVISIONS

Common Provisions

Section 75

Infringement of rights

(1) Any person suffering a prejudice due to infringement of rights protected under this Act may, in particular, request prohibition of the infringement of his rights and suppression of the unlawful consequences thereof. If damages have been incurred through the infringement, the injured party shall be entitled to claim indemnification; the indemnification shall consist in the loss of value suffered by the injured party's property by reason of the prejudice (actual prejudice) and of the profits that the injured party would have obtained but for the prejudice (loss of profit). If the infringement causes an immaterial prejudice, the injured party shall be entitled to appropriate compensation, which may, depending on the circumstances, consist of a monetary indemnity.

(2) The damaged party may request that the court order to the jeopardiser or infringer of the rights to destroy products, the production or placing on the market of which has jeopardised or infringed the right protected by this Act, or to destroy the material and implements having been intended or used exclusively or predominantly in activities, jeopardising or infringing rights protected by this Act. The court shall not order the destruction, if the products in question are not

property of the person, against which the proposal is directed or if the jeopardy or infringement of the right could be removed otherwise and the destruction would not be in proportionality with the jeopardy or infringement.

(3) Disputes arising from legal relationships with respect to inventions and rationalisation proposals shall be heard and decided by the courts or by economic arbitration boards, as appropriate except where this Act affords jurisdiction to the Office.

Section 75a

Right of information

The holder of the right protected by this Act shall have towards everybody, who jeopardises or infringes his rights, the right to be informed about the source of the product including information concerning placing of products on the market; the court shall not grant the right of information, if there is no proportionality in relation to the severity of the threat or infringement.

Section 75b

(1) If a preliminary measure is requested in proceedings concerning the infringement of right to the invention, the court can order the plaintiff to provide a security, sufficient to indemnify the defendant and to prevent the misuse of the protection granted to the proprietor of patent.

(2) The court, which is competent to order a preliminary measure either

a) orders the plaintiff to provide the security under the paragraph 1 within 7 days as from the filing date of the request and decides upon the request for the preliminary measure within 7 days from the date on which the court finds that the plaintiff has provided the security, or

b) decides on the request for the preliminary measure within 7 days at the latest from the filing date of the request.

Section 76

Relations with foreign countries

(1) Persons having their domicile or headquarters on the territory of the state, which is party to the Paris Convention³ or a member of the World Trade Organization,^{4b} shall enjoy the equal rights as nationals of the Czech Republic.

(2) The provisions of international treaties by which the Czech Republic is bound shall not be affected by this Act.

Transitional provisions

Section 77

Procedures in respect of applications for discoveries that have not been completed on entry into force of this Act shall be completed in accordance with prior law.

Section 78

(1) Applications for inventions for which no decision has been taken prior to entry into force of this Act shall be processed in accordance with the provisions of this Act, whereby the Office shall carry out a full examination *ex officio*.

(2) In the case of inventions governed by the provisions of Section 28 letter a) of Act No. 84/1972 Coll., the right to the patent shall belong to the employer if he files an application for a patent within three months as from entry into force of this Act. The inventor shall be entitled to appropriate remuneration from the employer under Section 9 paragraph 4 of this Act. If the employer does not apply for grant of a patent within that period, the right to the patent shall be deemed to belong to the employee.

(3) The rights of third parties shall not be affected in the event of exploitation of the subject-matter of an invention application under paragraphs 1 and 2, prior to the entry into force of this Act, in accordance with the provisions of prior law. The inventor's right to receive remuneration for exploitation, in accordance with such provisions, the subject-matter of an application for invention requesting the issue of an inventor's certificate under prior law shall not be affected.

Section 79

The Office shall grant a patent on a request for recognition of an inventor's certificate filed in accordance with an international treaty,⁹ prior to entry into force of this Act, provided that the applicant makes the application for recognition of an inventor's certificate comply with the conditions for granting a patent within six months as from entry into force of this Act. If the applicant fails to do so, the Office shall terminate the procedure.

Section 80

(1) Applications for industrial designs on which no decision has been taken prior to entry into force of this Act shall be processed in compliance with the provisions of this Act.

(2) The employer of a creator of an industrial design, for which an application has been filed, created under the provisions of Act No. 84/1972 Coll., shall be entitled to file the application if he submits a request to be entered as the applicant within three months of the entry into force of this Act. The creator shall be entitled to receive from the employer remuneration in accordance with Section 44 paragraph 4 of this Act. If the employer does not submit a request to be entered as the applicant within that period, the registration of the industrial design shall be deemed to have been applied for by the creator of the industrial design.

(3) The rights of third parties to exploit the subject-matter of applications for industrial designs referred to in paragraphs 1 and 2 that began prior to entry into force of this Act under the provisions of prior law shall not be affected. The right of the creator to receive remuneration for exploitation under the provisions of prior law shall not be affected.

⁹ Decree of the Minister of Foreign Affairs of the Czechoslovak Socialist Republic No. 133/1978, on the Agreement on the Mutual Recognition of Inventor Certificates and other Titles of Protection for Inventions.

Section 81

(1) An inventor's certificate issued under Act No. 84/1972 Coll. shall terminate on expiry of the fifteenth year as from the filing date of the application. However, its term of validity shall not terminate earlier than one year after the entry into force of this Act. Maintenance of the validity of the inventor's certificate after the expiry of one year as from the entry into force of this Act shall be subject to payment of an administrative fee in accordance with the relevant statutory provisions.⁴

(2) An industrial design certificate issued under Act No. 84/1972 Coll. shall terminate on expiry of the fifth year as from the filing date of the application on request, the Office shall extend the term of validity of the industrial design certificate for a further five-year period. However, the term of validity of the certificate shall not terminate earlier than one year after the entry into force of this Act. Submission of the request shall be subject to payment of an administrative fee in accordance with the relevant statutory provisions.⁴

(3) An organisation, which possesses or has obtained, under prior law, the right to use an invention or industrial design shall have the same rights as the proprietor of a patent or of an industrial design.

(4) Any person who has made, in circumstances other than those laid down in Section 28 letter a) of Act No. 84/1972 Coll., an invention that is protected by an inventor's certificate granted under prior law and of which the right to dispose belongs to an organisation or has been obtained by an organisation, but which has not been exploited by that organisation, shall have the right to request the Office, at any time during the term of validity of the inventor's certificate, to transform the inventor's certificate into a patent. Transformation of an inventor's certificate into a patent shall be subject to payment of an administrative fee. This provision shall be set out in more detail in the Regulations.

(5) The inventor or the creator of an industrial design shall have the right to exploit the right in the invention or in the industrial design, as appropriate, within the framework of his enterprise, if the invention protected by an inventor's certificate has not been made in accordance with the provisions of Section 28 letter a) of Act No. 84/1972 Coll. or if the industrial design protected by an inventor's certificate has not been created under the provisions of Section 82 of that Act.¹⁰

(6) If an organisation having the rights referred to in paragraph 3 does not pay the administrative fee for maintaining the inventor's certificate in accordance with the relevant statutory provisions⁴ or does not submit a request for entry in the Industrial Designs Register within six months of expiry of the period laid down in paragraph 1, the right shall revert to the proprietor of the patent or industrial design provided he performs those acts within an additional period of six months. Failure to comply with this time limit may not be excused.

Section 82

(1) At the request of the proprietor of a patent granted abroad and of which subject-matter falls under Section 28 letters b) and c) of Act No. 84/1972 Coll., the Office may grant a priority right

¹⁰ Act No. 109/1964 Coll., Code of the Economy, as amended.
Act No. 105/1990 Coll., on the private enterprising of Citizens.

in accordance with the Paris Convention³ for an invention application filed in the Czech Republic after expiry of the time limit laid down in that Paris Convention.

(2) The request referred to in paragraph 1 must be submitted when the application for the invention is filed and a document certifying grant of a patent abroad must be furnished within 12 months of entry into force of this Act.

(3) The Office shall not grant a patent on an invention application filed under paragraph 2 if

(a) the applicant has not submitted a document certifying the authorisation given in any country for the sale or manufacture of the subject-matter of the patent;

(b) the applicant has not submitted a document certifying authorisation to sell or manufacture the subject matter of the patent in the Czech Republic given by the competent body of the Czech Republic on a request submitted within six months of grant of the authorisation for sale or manufacture of the subject-matter of the patent in any country;

(c) the subject-matter of the patent granted abroad has been placed on the market in the Czech Republic prior to filing of the application in accordance with paragraphs 1 and 2.

4) After submitting a request under paragraphs 1 and 2, the proprietor of a patent issued abroad must produce the documents referred to in paragraph 3 letter a) and b) within three months as from their issue and, at the latest, before expiry of the term of validity of the patent in accordance with paragraph 5.

(5) The term of validity of a patent granted as a result of an application submitted in accordance with paragraph 2 shall be 16 years as from the priority date afforded to it.

(6) Failure to comply with the time limits set out in paragraph 2, paragraph 3 letter a) and b) and paragraph 4 may not be excused.

Section 83

Prior law shall apply to legal relationships deriving from patents for inventions and patents for industrial designs granted before the entry into force of this Act.

Section 84

The exploitation of an invention protected by an inventor's certificate or an industrial design protected by a certificate under prior law which began before entry into force of this Act or exploitation which was authorised on a contractual basis before entry into force of this Act shall not constitute an infringement of the rights of the proprietor of the patent. The right of the inventor to remuneration for such exploitation shall not be affected.

Section 85

(1) The processing of applications for rationalisation proposals not terminated before the entry into force of this Act shall be completed in accordance with this Act, it being understood that the time limit laid down in Section 73 paragraph 2 shall begin to run on the date of entry into force of this Act.

(2) Prior law shall be applicable to legal relationships deriving from rationalisation proposals on which a favourable decision has been given before entry into force of this Act, it being understood that the term of validity of a rationalisation certificate shall be three years as from the entry into force of this Act.

Section 86

(1) Claims to remuneration for a discovery or for exploitation of an invention, an industrial design or a rationalisation proposal, claims for reimbursement of the appropriate cost of preparing drawings, models or prototypes, for the spirit of initiative in participation in the execution, trials and implementation of discoveries, inventions, industrial designs or rationalisation proposals, as also claims to remuneration for drawing attention to the possibility of using an invention or rationalisation proposal, that originated before the entry into force of this Act shall be governed by prior law.

(2) Where an invention, protected by an inventor's certificate and for which an organisation has obtained in accordance with Section 81 paragraph 3 of this Act the rights of the proprietor of a patent, is exploited after the entry into force of this Act, the organisation shall pay to the inventor remuneration in accordance with Section 9 paragraph 4 of this Act. Where an industrial design, protected by a certificate and for which an organisation has obtained in accordance with Section 81 paragraph 3 of this Act the rights of an industrial design certificate holder, is exploited after the entry into force of this Act, the organisation shall pay to the holder of the industrial design remuneration in accordance with Section 44 paragraph 4 of this Act.

(3) Claims to remuneration for exploitation of a rationalisation proposal for which a rationalisator's certificate has been issued and that originated before the entry into force of this Act shall be governed by prior law.

Section 87

Thematic tasks announced before the entry into force of this Act shall be governed and treated in accordance with prior law.

Empowering, repealing and final provisions

Section 88

The Office shall set out in detail, by Decree, the procedure in matters of inventions and industrial designs. The Office shall set out by a Decree the amount of the maintenance fees.

Section 89

The following instruments are hereby repealed:

1. Act No. 84/1972 Coll. on discoveries, inventions, rationalisation proposals and industrial designs;

2. Decree No. 104/1972 Coll. on the procedure relating to discoveries, inventions and industrial designs;
3. Decree No. 105/1972 Coll. on rationalisation proposals;
4. Decree No. 107/1972 Coll. on relations with foreign countries in matters concerning foreign inventions and industrial designs;
5. Decree No. 93/1972 Coll. on the conciliation procedure in disputes concerning remuneration for inventions, rationalisation proposals and industrial designs;
6. Decree No. 27/1986 Coll. on remuneration for discoveries, inventions, rationalisation proposals and industrial designs;
7. Decree No. 28/1986 Coll. on the administration of inventions, rationalisation proposals and industrial designs and on their planned utilisation in the national economy;
8. Decree No. 29/1986 Coll. on the planning of thematic tasks;
9. Decree No. 68/1974 Coll. determining exceptions to the provisions of Act No. 84/1972 Coll. on discoveries, inventions, rationalisation proposals and industrial designs.

Section 90

Entry into force

This Act shall enter into force on January 1, 1991.

* * *

The Act No. 519/1991 Coll. amending Civil Procedure Code and Notarial Code entered into force on January 1, 1992.

The Act No. 116/2000 Coll. amending some Acts on the Protection of Industrial Property entered into force on the date of the publication (May 10, 2000), except for the provisions of the Section 24 paragraph 3 and the Part one Chapter III, which shall enter into force on July 1, 2002.

The Act No. 207/2000 Coll. on the protection of industrial designs and the amendment to the Act No. 527/1990 Coll. on inventions, industrial designs and rationalisation proposals, as amended, entered into force on October 1, 2000.

* * *

Transitional provisions of the Act No. 116/2000 Coll.

1. If it is not thereinafter stipulated otherwise, this Act shall also apply to the relations created before the date of the entry into force of this Act. The creation of the relations shall be considered under the so far existing regulations.

2. The legal effects of the acts in pending procedures, which occurred before the effect of this Act, remain unaffected.

3. The pending procedures will be finished in accordance with this Act.