

# Patents Act of the Kingdom 1995

(of December 13, 1994)

## Chapter 1 General Provisions

### Art. 1.

In this Act of the Kingdom and the Rules based on it:

"European Patent Convention" shall mean the Convention on the Grant of European Patents signed in Munich on October 5, 1973 (Trb. 1975, 108 and 1976, 101);

"Community Patent Convention" shall mean the Convention for the European Patent for the Common Market signed in Luxembourg on December 15, 1989 (Trb. 1990, 121);

"European patent" shall mean a patent granted under the European Patent Convention, insofar as it has been granted for the Kingdom and is not a Community Patent;

"Community patent" shall mean a patent as referred to in Article 2 of the Community Patent Convention;

"European patent application" shall mean an application for a European patent as referred to in the European Patent Convention;

"Patent Cooperation Treaty" shall mean the Patent Cooperation Treaty signed in Washington, D.C. on June 19, 1970 (Trb. 1973, 20);

"Office" shall mean the Industrial Property Office as referred to in Article 4 of the Act of April 25, 1963 (Stb. 221);

"patent register" shall mean the register referred to in Article 19 of this Act;

"The Minister" shall mean the Dutch Minister of Economic Affairs;

"natural resources" shall mean the mineral and other non-living resources from the seabed and substratum, as well as living organisms of the sedentary type, i.e., organisms that at the moment they can be harvested are stationary either on or under the seabed, or cannot move except in constant physical contact with the seabed or substratum.

### Art. 2.

—

1. Inventions that are new, that involve an inventive step and that are susceptible of industrial application shall be patentable.

2. The following inventions shall not be regarded as inventions within the meaning of the first paragraph:

a. discoveries, as well as scientific theories and mathematical methods;

b. aesthetic creations;

c. schemes, rules and methods for performing mental acts, playing games or doing business, as well as computer programs;

d. presentations of information.

3. The second paragraph applies only insofar as it concerns the subject matter or activities referred to as such.

#### Art. 3.

No patent shall be issued for:

- a. inventions the publication or exploitation of which would be contrary to public order or morality;
- b. plant or animal varieties, or essentially biological processes for the production of plants or animals and the products thereof, with the exception of microbiological processes unless these are prohibited by or pursuant to the Act on Health and Welfare of Animals.

#### Art. 4.

—

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 comprise everything made available to the public by means of a written or oral description, by use or in any other way before the date of filing of the application.
3. The state of the art shall also comprise the contents of previously filed applications that have been entered in the patent register pursuant to Article 31 on or after the date referred to in paragraph (2), above.
4. The state of the art shall also comprise the contents of European patent applications and of international applications as referred to in Article 158(1) and (2) of the European Patent Convention, the date of filing of which, pursuant to Article 54(2) and (3) of said Convention, precedes the date referred to in paragraph (2), above, and which have been published pursuant to Article 93 of said Convention or Article 21 of the Patent Cooperation Treaty on or after that date, provided that the Kingdom has been designated in the published application.
5. Notwithstanding the provisions of paragraphs (1) to (4), substances or compositions included in the state of the art may be patented when they are intended for use in one of the methods referred to in Article 7(2) provided that said use for any method referred to in that paragraph is not included in the state of the art.

#### Art. 5.

—

1. For the purposes of Article 4 the disclosure of an invention shall be disregarded if it occurred no earlier than six months prior to the filing of the patent application as a direct or indirect consequence of:
  - a. an evident abuse in relation to the applicant or his legal predecessor, or
  - b. the fact that the applicant or his legal predecessor displayed the invention at an official, or officially recognized, international exhibition within the terms of the Convention on International Exhibitions signed in Paris on November 22, 1928, and last revised by the Protocol of November 30, 1972 (Trb. 1973, 100), on condition that the applicant declares, upon filing his application, that the invention has been so displayed and submits proof thereof within a period set by administrative order and in accordance with provisions set by administrative order.
2. Official recognition of exhibitions in the Netherlands shall be accorded by the Minister.

Recognition of exhibitions in the Netherlands Antilles shall be accorded by the Government of the Netherlands Antilles.

#### Art. 6.

An invention shall be deemed to be the result of inventive activity if, having regard to the state of the art, it is not obvious to a person skilled in the art. Documents as referred to in Article 4(3) and (4) belonging to the state of the art shall not be taken into consideration in assessing inventive activity.

#### Art. 7.

1. An invention shall be considered susceptible of industrial application if it can be made or used in any field of industry, including agriculture.

2. Methods for treatment of the human body or animal body whether through surgery or medical treatment and diagnostic methods practiced on the human or animal body shall not be regarded as inventions that are susceptible of industrial application within the meaning of the preceding paragraph. This provision does not apply to products, particularly substances or compositions, for use in any of these methods.

#### Art. 8.

Without prejudice to Articles 11, 12 and 13, the applicant shall be deemed to be the inventor and in that capacity to be the person entitled to the patent.

#### Art. 9.

1. A person who has duly filed an application for a patent or for a utility certificate or for the protection of a utility model in any of the countries members of the International Union for the Protection of Industrial Property<sup>3</sup> and in accordance with the laws in force in that country or in accordance with treaties concluded between two or more of the aforementioned countries, shall enjoy a right of priority within the Netherlands and the Netherlands Antilles during a period of 12 months from the filing date of the application with regard to obtaining a patent for the subject matter in respect of which the protection referred to above has been applied for. The foregoing shall apply mutatis mutandis to a person who has applied for an inventor's certificate if the relevant legislation provides an option regarding the grant of such a certificate or of a patent.

2. An application within the meaning of paragraph (1) shall be understood to mean any application of which the date of filing can be ascertained, regardless of the subsequent fate of the application.

3. If the person entitled to do so has filed more than one application for the same subject matter, only the first application shall serve as a basis for claiming a right of priority. Nevertheless, a subsequent application for protection in the same country may serve as a basis for claiming a right of priority, provided that, on the filing date of the subsequent application, the previous application has been withdrawn, abandoned or refused without being open to public inspection and without leaving any rights outstanding, and provided it has not served as a basis for claiming a right of priority. If a right of priority based on a later application is invoked, the first application may not thereafter serve as a basis for claiming a right of priority.

4. For the purposes of Articles 4(2), (3) and (4) and Article 6, the effect of the right of priority shall be that the application for which this right exists shall be deemed to have been filed on the date of filing of the application that confers the right of priority.

5. The applicant may claim multiple rights of priority, even if the rights originated in different countries. The application for which one or more rights are claimed may also include elements for which no rights were claimed in the claims formulated in the application upon which his claim to right of priority is based, provided that the documents of the latter application refer to the product in question or the process in question with sufficient accuracy.

6. A person wishing to avail himself of the right of priority shall claim it in writing upon filing the application or within three months thereafter, stating the date of filing of the application upon which his claim is based and also the country in which or for which it was filed; within 16 months after filing the application upon which his claim is based, he must submit to the Office the number of that application and a copy of it in Dutch, French, German or English, or a translation of the application upon which his claim to right of priority is based in one of these languages and, if he is not the person who filed the application serving as a basis for the priority claim, a document establishing his rights. The Office may require that the translation referred to in the previous sentence be certified.

7. The right of priority shall be lost if the conditions of paragraph (6) are not met.

#### Art. 10.

1. Where for a patent granted pursuant to this Act the right of priority of a patent application filed previously pursuant to this Act is claimed, the patent granted on said application has no legal consequences insofar as it concerns the same invention as the first-mentioned patent.

2. Claims to establish the absence of legal consequences as referred to in the first paragraph may be brought by any person.

3. Article 75(4), (8), first sentence, and (9) shall apply mutatis mutandis.

#### Art. 11.

The applicant shall not be entitled to a patent insofar as the contents of his application have been obtained unlawfully from subject matter made or applied by another person or from descriptions, drawings or models belonging to another person without that person's consent. The latter person shall remain entitled to a patent to the extent that the subject matter thus unlawfully obtained is patentable. For the purposes of Article 4(3) and (4), the application filed by the person who has so obtained the subject matter shall not be taken into consideration for the subject matter of an application filed by the person from whom the aforementioned subject matter has been so taken.

#### Art. 12.

1. Where the invention for which a patent application has been filed has been made by a person employed in the service of another person, the employee shall be entitled to the patent unless the nature of the service entails the use of the employee's special knowledge for the purposes of making inventions of the same kind as that to which the patent application relates. Should the latter be the case, the employer shall be entitled to the patent.

2. Where the invention for which a patent application has been filed has been made by a person who performs services for another in the context of a training course, the person for whom the services are performed shall be entitled to the patent unless the invention has no connection with the subject of the services.

3. Where the invention has been made by a person carrying out research in the service of a

university, college or research establishment, the university, college or research establishment shall be entitled to the patent.

4. For the purposes of Article 4(3) and (4), an application filed by a person not having a right to a patent shall be disregarded in respect of the subject matter of an application filed by the employer referred to in the first paragraph, last sentence, or by a person providing the opportunity to perform the services referred to in the second paragraph.

5. The provisions of paragraphs (1), (2) and (3) may be departed from by written agreement.

6. Where the inventor cannot be deemed to have been compensated, in the salary he earns or the pecuniary allowance he receives or in any extra remuneration he receives, for not having been granted a patent, the person who is entitled to the patent on the basis of paragraphs (1), (2) and (3) shall be obliged to award him equitable remuneration related to the pecuniary importance of the invention and the circumstances under which it was made. Any right of the inventor to claim under this provision shall lapse after the expiry of three years from the date of the grant of the patent.

7. Any stipulation departing from the sixth paragraph shall be void.

#### **Art. 13.**

Where an invention has been made by two or more persons working together by agreement, they shall have a joint right to a patent.

#### **Art. 14.**

—

1. Any person who has made an invention for which a patent application has been filed, but who cannot claim any title to a patent under Article 12(1), (2) or (3) or under an agreement concluded with the applicant or his predecessors in title, shall have a right to be mentioned as the inventor in the patent.

2. Any stipulation departing from the provisions of the preceding paragraph shall be void.

## **Chapter 2 Processing of Patent Applications**

### **Part 1 General Provisions**

#### **Art. 15.**

The Office is an institution of the Netherlands. It shall serve, with respect to patents, as the central office for the Netherlands and the Netherlands Antilles pursuant to Article 12 of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967 (Trb. 1969, 144).

#### **Art. 16.**

If the Office is closed on the last day of any time limit to be observed under this Act by or vis-à-vis the Office, that time limit shall be extended for the purposes of this Act to the end of the first day thereafter on which the Office is open.

#### **Art. 17.**

—

1. The Office shall act as a receiving Office within the meaning of Article 2(xv) of the Patent Cooperation Treaty and shall exercise its functions in that capacity in accordance with the provisions of said Treaty.

2. Inasmuch as the Patent Cooperation Treaty permits, the amount and the due date of the fees

that can be levied under the Patent Cooperation Treaty and the Regulations under it shall be set by administrative order. Furthermore, additional regulations may be laid down by administrative order concerning the subject matter in respect of which the receiving Office is empowered to make provision by virtue of the aforementioned Regulations.

#### Art. 18.

The designation or, in appropriate cases, the election of the Kingdom in an international application as referred to in Article 2(vii) of the Patent Cooperation Treaty shall be deemed to be a request by the applicant to be granted a European patent.

#### Art. 19.

—

1. The Office shall maintain a register in which, by virtue of this Act, particulars concerning patent applications and patents are recorded.
2. The register shall be open for inspection by any person free of charge.
3. Additional regulations may be set by administrative order with respect to this register. These may provide that the registration of given particulars is dependent upon the payment of an amount by the individual requesting registration.
4. In return for payment of amounts to be set by administrative order, any individual may request written information on or certified extracts from the patent register or documents relating to a patent application or patent registered in the patent register, as well as copies of the latter documents.

#### Art. 20.

—

1. All particulars recorded in the patent register shall also be reported in a Journal to be published periodically by the Office.
2. Additional regulations may be fixed by administrative order with respect to the provisions of the first paragraph.

#### Art. 21.

—

1. From the moment the patent application is recorded in the patent register any person can inspect free of charge all documents pertaining to the application or the patent granted as a result of such application that the Office has received or has sent to the applicant or to third parties in the context of the provisions of this Act. As soon as possible, but not before the application is entered in the patent register, the Office shall give notice of these documents in the Journal referred to in Article 20.
2. Documents pertaining to an application that has not yet been entered in the patent register may only be inspected with the consent of the applicant. It shall, however, be possible to inspect such documents without the consent of the applicant if the person in question shows that the applicant has invoked the rights under the application against the person in question. This provision does not pertain to the patent applications referred to in Part 3 of this Chapter.
3. The declaration of the inventor stating that he does not wish to be recorded as the inventor in the patent may not be inspected.

#### Art. 22.

Persons entitled to act as authorized representatives before the Patent Office may act as

authorized representatives for the applicant before the Office. The provisions of Article 18A of the Patents Act of the Kingdom (last amended in 1987) and provisions thereunder shall also apply to professional representation before the Office.

#### Art. 23.

–

1. If, despite taking all due care required by the circumstances, the applicant for or proprietor of a patent or the proprietor of a European patent has not been able to observe a time limit with respect to the Office or the office referred to in Article 99, he shall, at his request, have his rights reestablished by the Office, if failure to observe the time limit pursuant to this Act has directly led to the loss of any right or means of redress.
2. The first paragraph shall not apply to failure to file the patent application within the time limit stipulated in Article 9(1) or to failure to comply with the time limit referred to in paragraph (3), below.
3. The request shall be filed as soon as possible, but in any case not more than a year after expiry of the time limit that was not observed. The omitted act is to be made good together with the request. If the applicant is not resident in the Kingdom, he shall elect domicile with an authorized representative. An amount to be set by administrative order is to be paid upon filing the request.
4. The Office shall record the reestablishment in the patent register.
5. Any person remains authorized notwithstanding the patent to continue the acts stipulated in Article 53(1) where said person has, in or for his business, commenced manufacture or application of that for which as a result of the reestablishment a patent is in force, or has commenced implementation of his decision to do so in or for his business within the Netherlands or the Netherlands Antilles or where a European patent is concerned, within the Netherlands, in the period between the loss of rights or means of redress and the reestablishment. Article 55(2) and (3) shall apply *mutatis mutandis*.

### Part 2 Grant of Patent

#### Art. 24.

–

1. An application for a patent must be filed with the Office in writing and must:
  - a. contain the name and address of the applicant;
  - b. contain the name and place of residence of the inventor unless, according to a written declaration attached to the application, he does not wish to be recorded on the patent as the inventor;
  - c. contain a request for the grant of a patent;
  - d. contain a concise indication of the subject matter of the invention;
  - e. be accompanied by a description of the invention containing, in one or more claims at the end, a definition of the subject matter for which exclusive rights are being sought;
  - f. be accompanied by an abstract of the description.
2. The abstract is only intended to serve as a source of technical information; it specifically

may not serve for interpreting the scope of the protection requested or for the application of Article 4(3) or Article 75(2).

3. The application and the description of the invention should be written in Dutch and signed by the applicant or the person appointed as his representative by written authorization.

4. The application, the description of the invention, the drawings and the abstract shall also meet the other formal regulations laid down by administrative order.

5. Proof confirming that an amount equal to the rate set by administrative order has been paid to the Office should be submitted with the application.

#### Art. 25.

–

1. The description of the invention must be clear and complete; the definition given in one or more claims at the end should be precise. The description should, if necessary, be accompanied by corresponding drawings and be of such a nature as to enable a person skilled in the art to understand and carry out the invention on the basis of that description.

2. If an invention involving a microbiological process or a product made using such a process involves the use of a microorganism that is not accessible to the public, a culture of the organism shall also be deposited at an institution designated by or by virtue of an administrative order no later than the date of filing and shall comply with the requirements stipulated by administrative order regarding the identification and availability of the microorganism.

#### Art. 26.

If the applicant's place of residence is not in the Kingdom, he shall be required to elect domicile in the Netherlands with an authorized representative as referred to in Article 22.

#### Art. 27.

Each application for a patent shall relate to one invention only or to a group of related inventions so linked as to form a single general inventive concept. Further regulations in this matter may be laid down by administrative order.

#### Art. 28.

–

1. The applicant may divide a previously filed application by filing a separate application for a part of the contents. Except for the purposes of Article 30(1), Article 31(3) and Article 32(1), this application shall be deemed to have been filed on the date of filing of the original application.

2. The applicant may change the description, claims and drawings of the application already filed.

3. The subject matter of the divisional or amended application must be covered by the contents of the original application.

4. The division or amendment may be made up to the time at which the patent application is to be entered in the patent register in accordance with Article 31(1) or (2).

5. If the applicant has requested a search of the state of the art pursuant to Article 32, the division or amendment may be made up to two months after dispatch of the notice referred to in



Article 34(4) if this time limit expires after the time limit referred to in the fourth paragraph. This time limit may be extended once by two months by the Office at the written and reasoned request of the applicant.

#### Art. 29.

-

1. The date of filing shall be the date on which the following are submitted:

a. a request for the grant of a patent;

b. particulars identifying the applicant;

c. a description of the invention and one or more claims, even if they fail to comply with the provisions of Article 24 or provisions thereunder.

2. The Office shall record the date referred to in the first paragraph and assign a serial number to the application and shall notify these to the applicant as soon as possible by post or hand delivery.

3. If the Office is of the opinion that the filed documents do not meet the requirements of the first paragraph, then the Office shall refuse to record the date referred to in the first paragraph. It shall notify the applicant of its decision and the reasons for it as soon as possible by post or hand delivery.

#### Art. 30.

-

1. If the provisions of Articles 24 and 26 and provisions thereunder are not complied with or disclosure of the invention to the public would be contrary to public order or morality, the Office shall notify the applicant of this in writing within one month of the date of filing referred to in Article 29(1) or, in the case of a divisional application, within one month of the date on which the divisional application was filed, together with a statement of the provisions that have not been complied with.

2. If the shortcomings are not remedied within three months after dispatch of the notice referred to in the first paragraph or if the applicant makes it known before then that he does not wish to remedy them, the Office shall decide not to process the application. The Office shall inform the applicant of its decision and the reasons for it by post or hand delivery as soon as possible.

#### Art. 31.

-

1. The Office shall enter a patent application in the patent register as soon as possible after the expiration of 18 months:

a. following the date of filing referred to in Article 29(1), or,

b. if it concerns an application for which one or more rights of priority have been claimed, after the first date of priority.

2. At the written request of the applicant, registration shall take place at an earlier date.

3. A divisional application as referred to in Article 28 shall be registered as soon as possible after its filing, although not prior to the registration of the original application.

#### Art. 32.

—

1. Within 13 months of:
  - a. the date of filing referred to in Article 29(1), or,
  - b. if the application is one for which one or more rights of priority have been claimed, after the first date of priority,  
the applicant may request the Office to perform a search of the state of the art with respect to the subject matter of the patent application prior to the grant of the patent.
2. If a divisional application as provided for in Article 28 is involved, then the request referred to in the first paragraph may be made within 13 months of the date of filing of the original application provided for in Article 29(1) or within two months after the filing of the divisional application, if the resulting date is later.
3. The request shall be filed in writing with the Office, accompanied by proof that a payment has been made to the Office in accordance with the rate set by administrative order. If this proof is not submitted within the time limit stipulated in the first paragraph then the request shall not be processed.
4. As soon as possible after the patent application has been entered in the patent register, the Office shall record the request referred to in the first paragraph in the patent register.

#### Art. 33.

—

1. If the applicant has not made said request within the time limit stipulated in Article 32(1) or has informed the Office in writing that he will not make such a request, the Office shall grant the patent as soon as the patent application has been entered in the register and shall record the grant in the register.
2. The patent shall relate only to the invention or group of inventions referred to in Article 27 that is mentioned first in the claims.
3. The patent shall be granted by signing and affixing the date to the application in the form in which it was filed or amended pursuant to Article 28 or 30(2).
4. The Office shall issue the specifications and drawings attached to the application in the form of a patent specification and supply a certified copy to the applicant.
5. A patent granted by virtue of this Article shall remain in force, barring earlier lapse or invalidation by the court, until the expiry of six years from the date of filing referred to in Article 29(1).

#### Art. 34.

—

1. A search of the state of the art as provided for in Article 32(1) shall be conducted by the Office, if necessary with the assistance of the European Patent Office referred to in the European Patent Convention.
2. If the applicant so requests, the Office shall cause the application to be subjected to an international search as provided in Article 15(5) (a) of the Patent Cooperation Treaty. Such a search shall be deemed to be a search of the state of the art as referred to in Article 32(1).

3. If it is apparent from the search that the application filed does not comply with the provisions of Article 27 and provisions thereunder, it shall be carried out with respect to the element of the application relating to the invention or group of inventions referred to in Article 27 that is mentioned first in the claims.

4. The Office shall notify the applicant in writing of the results of the search of the state of the art.

5. If the third paragraph applies, the Office shall state this in the notification provided for in paragraph (4), providing reasons therefor and specifying the invention or group of inventions regarding which the search was conducted.

#### Art. 35.

—

1. If the Office is of the opinion that the search of the state of the art cannot be conducted owing to lack of clarity of the claims in the application, it shall so inform the applicant in a reasoned, written statement as soon as possible.

2. If the shortcomings are not remedied within two months of the dispatch of the notice referred to in the first paragraph, or if the applicant makes it known before then that he does not wish to remedy them, the Office shall decide not to process the application. The Office shall inform the applicant of its decision and the reasons for it by post or hand delivery as soon as possible.

#### Art. 36.

—

1. If the applicant has requested a search of the state of the art as provided in Article 32(1), the Office shall grant the patent as soon as the patent application has been entered in the register, but not earlier than two months or—if Article 28(5), second sentence, applies—four months after the dispatch of the notification referred to in Article 34(4). It shall record this in the patent register.

2. Article 33(3) and (4) shall apply.

3. If Article 34(3) applies, the patent shall relate only to that invention or group of inventions referred to in Article 27 that is mentioned first in the claims.

4. The report on the search of the state of the art shall be attached to the patent specification.

5. A patent granted by virtue of this Article shall remain in force, barring earlier lapse or invalidation by the court, until the expiry of 20 years from the date of filing provided for in Article 29(1).

#### Art. 37.

—

1. Any person may at any time request the Office in writing to conduct a search of the state of the art in respect of the subject matter of a patent granted by the Office.

2. If the person making the request precisely states in the request to which specific part of the patent the request for a search applies, the search shall be conducted in accordance with the request.

3. The request should be accompanied by proof that payment has been made to the Office in

accordance with the rate set by administrative order. If this proof is not submitted, the request shall not be processed.

4. The Office shall immediately notify the applicant of a request as referred to in the first paragraph and record the submission of the request as soon as possible in the register.

5. Article 34(1), (3), (4) and (5) and Article 35(1) shall apply mutatis mutandis.

#### Art. 38.

—

1. Anyone may provide the Office with information on a patent application or the patent granted on it in a written statement. The Office shall then pass this information on to the applicant or the patent proprietor if it did not originate with said person in the first place.

2. If the identification of the inventor as referred to in Article 24(1) (b) is incorrect, or if a person other than the inventor declares that the inventor does not wish to be identified as such in the patent, then the applicant and inventor may jointly request the Office in writing to make the necessary corrections to the patent against payment of an amount to be set by administrative order. If applicable, the request must be accompanied by the written consent of the person wrongly designated as the inventor.

#### Art. 39.

—

1. The withdrawal of a patent application entered in the patent register shall have no consequences for third parties as long as no legal claims have been finally and irrevocably decided in any legal proceedings that have been instituted concerning the application according to documents registered in the patent register.

2. Where a person other than the applicant is entitled to the patent or has a joint right to the patent by virtue of an irrevocable judgment in legal proceedings as referred to in paragraph (1), the withdrawal shall be deemed not to have occurred.

3. The Office shall record the withdrawal in the patent register.

### Part 3 Maintenance of Secrecy of the Contents of Patent Applications

#### Art. 40.

—

1. If the Office is of the opinion that the secrecy of the contents of a patent application may be in the interest of the defense of the Kingdom or its allies, it shall notify the applicant thereof as soon as possible, but no later than three months from the date of filing of the application. The Minister of Defense may give directions to the Office on whether or not there is such an interest.

2. At the same time as the notification is sent, the Office shall send a copy thereof and of the description and drawings pertaining to the application to the aforementioned Minister.

3. Where paragraph (1) applies, the entry of the application in the patent register shall be suspended.

#### Art. 41.

—

1. Within eight months of the filing of a patent application as referred to in Article 40, the Minister of Defense shall notify the Office whether the contents of the application are to be

kept secret in the interest of the defense of the Kingdom or its allies.

2. Notification in the affirmative under paragraph (1) shall have the effect of suspending the entry of the application in the patent register for a period of three years from the date of notification of said decision. Notification in the negative shall terminate such suspension. The absence of any notification shall be treated as a notification in the negative.

3. The aforementioned Minister may extend the term of suspension within six months preceding its expiry for periods of three years at a time by notifying the Office that the contents of the application are to be kept secret in the interest of the defence of the Kingdom or its allies.

4. The aforementioned Minister may at any time notify the Office that the contents of the application need no longer be kept secret. Such a notification shall terminate the suspension.

5. The Office shall inform the applicant without delay of any notification under paragraph (1), (3) or (4). The Office shall also inform the applicant without delay of the absence of any notification as referred to in paragraph (1) or (3).

6. For as long as the suspension has not been terminated the Office shall send the aforementioned Minister, at his request, copies of all the relevant documents exchanged between the Office and the applicant.

7. If the suspension ends, the application shall nevertheless not be entered in the patent register until a period of three months has elapsed, unless the applicant requests otherwise.

#### Art. 42.

—

1. Any person whose patent application has become subject to Articles 40, 41 or 46 shall, at his request, be awarded compensation by the State for any damage he has sustained through the enforcement of these Articles.

2. The amount of the compensation shall be determined on the termination of the suspension. If, however, the term of suspension has been extended by virtue of Article 41(3), the amount of the compensation shall be determined, at the request of the applicant, in installments, the first relating to the period prior to the commencement of the first extension, the next to the period between two successive extensions and the last to the period from the commencement of the last extension to the termination of the suspension; the amounts shall be determined upon expiration of the relevant periods.

3. The amount of the compensation shall be determined, if possible, by mutual consent between the Minister of Defense and the applicant. If no agreement has been reached within six months from the date of the expiry of the period to which the compensation relates, Article 58(6), first sentence, shall apply mutatis mutandis.

#### Art. 43.

—

1. If an applicant requests that the contents of a patent application be kept secret in the interest of the defense of some other State, or if the government of that State makes such a request, the Office shall, provided the applicant has stated in writing that he renounces any compensation for damages he might sustain by reason of the enforcement of this Article, send without delay a copy of that request and of the specification and drawings pertaining to the application as well as the aforementioned statement of renunciation to the Minister of Defense. In such a case, the entry of the application in the patent register shall be suspended. In the absence of a statement of renunciation, the Office shall notify the aforementioned Minister

thereof without delay.

2. Within three months following the date of filing of the request, the aforementioned Minister may notify the Office that the contents of the application are to be kept secret in the interest of the defense of the State concerned, provided that he has ascertained that secrecy has been imposed on the applicant by that State and that the applicant was given permission by the same State to file an application the subject matter of which has been made secret.

3. A notification by virtue of paragraph (2) shall result in the entry of the application in the patent register being suspended until the aforementioned Minister notifies the Office that the contents of the application need no longer be kept secret. Absence of the aforesaid notification shall end the suspension.

4. Article 41(6) and (7) shall apply mutatis mutandis with regard to an application as referred to in paragraph (1).

#### Art. 44.

—

1. Where the Minister of Defense is of the opinion that it is in the interest of the defense of the Kingdom for the State to use, put into practice or cause to be used or to be put into practice the subject matter of a patent application to which Article 40, 41 or 43 has been applied, he may take measures to that effect after notifying the applicant thereof. The notification shall contain a precise account of the acts that the State must perform or cause to be performed.

2. The State shall compensate the applicant for the use or the putting into practice of the subject matter of the application pursuant to paragraph (1).

3. The amount of this compensation shall be fixed, if possible, by mutual consent between the aforementioned Minister and the applicant. If no agreement has been reached within six months following the date of the notification referred to in paragraph (1), Article 58(6), first sentence, shall apply mutatis mutandis.

#### Art. 45.

If the State itself is the owner of a patent application and if the Minister of Defense notifies the Office that its contents are to be kept secret in the interest of the defense of the Kingdom or its allies, the entry of the application in the patent register shall be suspended until the aforementioned Minister notifies the Office that the contents of the application need no longer be kept secret.

#### Art. 46.

—

1. A European patent application whose applicant knows or should reasonably know that the contents thereof should be kept secret in the interests of the defense of the Kingdom or its allies shall be filed with the Office.

2. The Office shall without delay send a copy of the specification and drawings pertaining to the application to the Minister of Defense.

3. Within a period not exceeding three weeks before expiration of the time limit referred to in Article 77(3) of the European Patent Convention, the Minister of Defense shall notify the Office whether the contents of the application shall be subject to secrecy in the interest of the defense of the Kingdom or its allies.

4. If notification under paragraph (3) has been effected in the negative or if no notification has been effected at all, the Office shall forward the European patent application to the European Patent Office referred to in the European Patent Convention with due observance of the time limit referred to in Article 77(3) of said Convention.

5. The Office shall inform the applicant without delay of any notification by virtue of paragraph (3) or of the absence thereof.

#### Part 4 Conversion of European Patent Applications

##### Art. 47.

A European patent application which complies with the provisions of Article 80 of the European Patent Convention and is deemed to have been withdrawn under Article 77(5) of said Convention and which has been filed at the Office as an annex to a regular request for conversion to a patent application in the Kingdom, hereinafter referred to as a converted application, shall be deemed to be a patent application as referred to in Article 24, directed to the Office and filed at the Office. A request for conversion shall be regular if it has been filed, and has been transferred to the Office, in due time with due observance of the provisions of Part VIII, Chapter I, of the European Patent Convention.

##### Art. 48.

1. The date of delivery to the Office, together with a serial number, shall be noted on the converted application. The Office shall inform the applicant of this as soon as possible.
2. Proof of payment for the converted application as specified in Article 24(5) shall be furnished within a period of three months from the date of filing referred to in paragraph (1). If the European patent application has not been filed in Dutch, a translation into Dutch of the original documents of that application shall be filed within the same period. The translation shall form part of the converted application; it shall be certified at the request of the Office within a time limit to be stipulated by the Office. If the provisions of this paragraph have not been complied with in due time, the Office shall give the applicant one opportunity to remedy this deficiency within a period to be stipulated by the Office. If the applicant does not remedy the deficiency within this time limit, the Office shall decide not to process the application. The Office shall notify the applicant of this decision and the reasons for it by post or hand delivery as soon as possible.
3. The formal requirements imposed by or by virtue of Articles 24 and 26 shall not apply to the converted application if and to the extent that they differ from or are supplementary to the provisions of the European Patent Convention or provisions thereunder; in such cases the latter provisions shall apply to the converted application.
4. As soon as the applicant has complied with the provisions of paragraph (2), the Office shall determine whether the application satisfies the provisions of Articles 24 and 26 or provisions thereunder or, if applicable, the provisions of the European Patent Convention as referred to in paragraph (3). If this is not the case, or if making the invention public is contrary to public order or morality, the Office shall so inform the applicant in writing as soon as possible, stating the requirements that have not been complied with. Article 30(2) shall apply *mutatis mutandis*.
5. For the application of Articles 31(1), 32(1), 33(5), 36(5) and 61(1) to the converted patent application, "the date of filing referred to in Article 29(1)," should read: the date of filing of the application pursuant to Article 80 of the European Patent Convention in consideration of Articles 61 or 76 of that Convention.

6. The entry in the patent register referred to in Article 31 shall not be made until it has been ascertained that the requirements of paragraph (4) have been satisfied or that deficiencies in this respect have been remedied.

### Chapter 3 Provisions Governing European Patents and Community Patents

#### Art. 49.

1. In conformity with the provisions of this Act, European patents shall have the same effect in the Netherlands and shall be governed by the same legal provisions and have the same legal consequences as patents granted under Article 36 of this Act from the date on which the mention of the grant is published in accordance with Article 97(4) of the European Patent Convention. Community patents in the Netherlands shall from that date be governed by the same legal provisions and have the same legal consequences as patents granted under Article 36 of this Act only insofar as that follows from the Community Patent Convention.

2. Barring earlier lapse or invalidation by the court, a European patent shall remain in force for a period of 20 years from the date of filing of the European patent application that led to the European patent concerned pursuant to Article 80 of the European Patent Convention, in accordance with Articles 61 or 76 of that Convention.

3. Where the provisions of Articles 55(1), 57(4) and 77(1) govern European patents, the date of filing shall be deemed to be the date of filing of the European patent application which resulted in the grant of the European patent pursuant to Article 80 of the European Patent Convention, in accordance with Articles 61 or 76 of that Convention.

#### Art. 50.

1. A European patent shall be deemed, entirely or partly, not to have had the legal consequences referred to in Articles 53, 72 and 73 from the outset insofar as the patent is entirely or partly revoked during opposition proceedings.

2. The retroactive force of the revocation shall not affect:

a. a decision, which is not a temporary order, relating to acts that conflict with the exclusive rights of the patent proprietor, referred to in Article 53, or acts as referred to in Articles 72 and 73 which had become *res judicata* and had been enforced before the revocation;

b. an agreement concluded prior to the revocation, insofar as it was also implemented prior to the revocation; however, in the interest of equity repayment can be demanded in respect of payments made on the basis of this agreement to the extent justified by the circumstances.

3. For the application of paragraph (2) (b), the conclusion of an agreement shall be deemed to include the creation of a license in another manner provided for in Articles 56(2), 59 or 60.

#### Art. 51.

1. The Office shall without delay enter in the patent register the publication, pursuant to Article 97(4) of the European Patent Convention, of the mention of the grant of a European patent.

2. The Office shall without delay enter in the patent register any notice of opposition to a European patent, stating the date of filing of the opposition and the decisions of the European Patent Office relating thereto.



#### Art. 52.-

1. Within a time limit to be set by administrative order, any person to whom a European patent has been granted shall provide the Office with a translation into Dutch of the text in which the European Patent Office proposes the patent be granted. Furthermore, a fee shall be due, the amount thereof and the time limit within which it is to be paid being set by administrative order. The translation must be certified by a professional representative. The translation and the certification thereof must satisfy formal requirements to be set by administrative order.

2. If on receipt within the time limit referred to in paragraph (1) the formal requirements referred to in the last sentence of said paragraph have not been satisfied, the Office shall so notify the proprietor of the patent without delay, with a statement of the requirements that have not been satisfied and of the time limit within which the noted deficiencies may be remedied.

3. On receipt of the translation in the proper form, the Office shall without delay enter it in the patent register.

4. The European patent shall be deemed not to have had the legal consequences referred to in Article 49 from the outset if:

- a. within the time limit referred to in paragraph (1), the translation has not been received by the Office or the fee due by virtue of that paragraph has not been paid; or
- b. within the time limit referred to in paragraph (2), the stipulated requirements have not yet been satisfied.

5. In the event of a situation provided for in paragraph (4) arising, the Office shall without delay record the fact in the patent register.

6. Paragraphs (1) to (5) shall apply *mutatis mutandis* if the European patent has been amended during opposition proceedings.

7. The proprietor of the patent may at any time provide the Office with a corrected translation, for which a fee shall be due in an amount to be set by administrative order. Paragraph (1), third and fourth sentences, and paragraphs (2) and (3) shall apply.

8. From the moment the entry referred to in Article 51(1) is made in the patent register, all documents pertaining to the European patent received by the Office or sent to the proprietor of the European patent or given to third parties within the context of the provisions of this Act shall be open to public inspection free of charge. The Office shall publish a mention of all these documents in the Journal referred to in Article 20 as soon as possible, but not before the time referred to in the first sentence.

## Chapter 4 Legal Effects of the Patent

### Part 1 Rights and Obligations of the Patent Proprietor

#### Art. 53.-

1. Subject to the provisions of Articles 54 to 60, a patent shall confer on its owner the exclusive right:

- a. to make, use, put on the market or resell, hire out or deliver the patented product, or otherwise deal in it in or for his business, or to offer, import or stock it for any of those purposes;

b. to use the patented process in or for his business or to use, put on the market, or resell, hire out or deliver the product obtained directly as a result of the use of the patented process, or otherwise deal in it in or for his business, or to offer, import or stock it for any of those purposes, with the exception of any product excluded from the grant of a patent pursuant to Article 3.

2. The exclusive right shall be determined by the contents of the claims in the patent specification, and the description and the drawings shall serve to interpret those claims.

3. The exclusive right shall not extend to acts solely serving for research on the patented subject matter, including the product obtained directly as a result of using the patented process. The exclusive right shall likewise not extend to the preparation of medicines in pharmacies for immediate use in individual cases on medical prescription, or to acts related to medicines prepared in this manner.

4. If a product as referred to in paragraph (1) (a) or (b) has been put on the market lawfully in the Netherlands or the Netherlands Antilles, or, where a European patent is concerned, in the Netherlands, or if it is put on the market lawfully in one of the Member States of the European Union or in another State that is party to the Agreement concerning the European Economic Area by the patent proprietor or with his consent, the person who obtains or later holds the product shall not contravene the patent by using, selling, hiring out or delivering the product or by otherwise dealing in it in or for his business, or by offering, importing, or stocking the product for any of those purposes.

5. A product as specified in paragraph (1) (a) or (b) which was manufactured by a business prior to the grant of a patent or, where a European patent is concerned, prior to the date of publication of the mention of the grant of the European patent in accordance with Article 97(4) of the European Patent Convention, may continue to be used on behalf of that business notwithstanding the patent.

#### Art. 54.

The exclusive right of the patent owner shall not extend to:

a. the use, on board vessels of other countries, of the subject matter of the patent in the body of the vessel or in the machinery, rigging, tackle and other accessories thereof when such vessels are in the waters of the Netherlands or Netherlands Antilles temporarily or accidentally, provided that the use is for the actual needs of the vessel only;

b. the use of the subject matter of the patent in the construction or operation of aircraft or land vehicles or of the accessories of such aircraft or land vehicles belonging to other countries, when such aircraft or land vehicles are in the Netherlands or Netherlands Antilles temporarily or accidentally;

c. acts specified in Article 27 of the Chicago Convention on International Civil Aviation of December 7, 1944 (Stb. 1947, H 165), provided that those acts relate to aircraft of a State other than the Kingdom or Aruba—mentioned under (c) in that Article.

#### Art. 55.—

1. Any person who, in the Netherlands or Netherlands Antilles or, in the case of a European patent, in the Netherlands, has already manufactured or applied or commenced implementation of his intention to manufacture or apply, in or for his business, the subject matter of a patent application filed by another on the filing date thereof or, if the applicant has a right of priority under Article 9(1) or Article 87 of the European Patent Convention, on the filing date

of the priority application, shall, notwithstanding the patent, continue to have the right to perform the acts referred to in Article 53(1), this right being based on prior use, unless his knowledge was obtained from matter already made or applied by the applicant or from the applicant's descriptions, drawings or models.

2. Paragraph (1) shall apply mutatis mutandis to that part of the continental shelf contiguous to the Netherlands or Netherlands Antilles—or, in the case of a European patent, contiguous to the Netherlands—in which the Kingdom has sovereign rights, but exclusively to the extent that such acts are associated with and performed during the exploration for or recovery of natural resources.

3. The right referred to in paragraph (1) may only be assigned to other persons with said business.

4. For the application of this Article to Community patents pursuant to Article 37 of the Community Patent Convention, "a European patent" should read: a Community patent.

#### Art. 56. -

1. The right to perform acts prohibited to any person other than the proprietor of the patent by virtue of Article 53 may be acquired from the patent proprietor by means of a license. That right shall extend to all acts referred to in the aforementioned Article and shall remain in force as long as the patent has effect, except where a less extensive right has been granted under the license.

2. A license shall be created by an agreement, by an accepted testamentary disposition or, in accordance with Articles 57 and 58, by a decision taken by the Minister or by a court decision that has become *res judicata*. A license created by an agreement or an accepted testamentary disposition shall have effect *vis-à-vis* third parties after the ownership thereof has been entered in the patent register. For this entry a fee, to be set by administrative order, shall be due.

3. Where the right to remuneration in respect of a license passes to another under Article 75(8) or Article 78(4), the successor in title shall be entitled to a part of the total remuneration paid or to be paid for the license in proportion to the period during which the license should continue to have effect under normal circumstances. If the amount still to be paid by the licensee is insufficient to provide the successor in title with that which he is due, the latter may seek redress for the shortfall from his predecessor.

#### Art. 57. -

1. The Minister may, if he considers it in the public interest, grant a license under a patent, the contents of which shall be described precisely by him, to a person designated by him. Before giving his decision the Minister shall, unless this is incompatible with the urgency of the matter, ascertain whether the proprietor of the patent is willing to grant the license voluntarily and on reasonable terms. To this end, he shall give the patent proprietor an opportunity to express his sentiments on the matter in writing and, at his request, also orally. The decision shall be accompanied by a statement of reason and shall be posted or hand-delivered to the proprietor of the patent and the licensee. In his decision, the Minister may impose upon the licensee the obligation to provide security within a certain time limit. The lodging of an appeal as referred to in Article 81 shall have staying effect, unless the decision of the Minister provides otherwise in view of the urgency of the matter.

2. If, after three years have elapsed since the grant of the patent, neither the proprietor of the patent nor any other person who has been granted a license operates an industrial

establishment in the Kingdom or in another State to be designated by administrative order in which the product concerned is being made or where the process concerned is being applied in good faith and on a sufficient scale, the patent proprietor shall be obliged to grant the license needed for operating such an establishment unless valid reasons are shown to exist for the absence of such an establishment. This obligation shall be effective against the proprietor of a European patent if, after three years have elapsed since the date on which the mention of the grant of the European patent was published in accordance with Article 97(4) of the European Patent Convention, an industrial establishment as referred to above is not in operation in the Netherlands or in another State to be designated by administrative order.

3. Paragraph (2) shall not apply if the patent proprietor or any other person who has been granted a license has an industrial establishment in operation in that part of the continental shelf contiguous to the Netherlands or Netherlands Antilles, or, where a European patent is concerned, contiguous to the Netherlands in which the Kingdom has sovereign rights, in which those acts referred to in that paragraph are performed in good faith and on a sufficient scale, provided that such acts are associated with and performed during the exploration for or recovery of natural resources.

4. The patent proprietor shall be obliged at any time to grant a license required for the working of a patent granted in respect of an application which has the same or a later date of filing or, where a right of priority exists for the application, the same or later priority date, insofar as the patent for which the license is requested represents a considerable advance; the patent proprietor shall, however, only be obliged to grant a license required for the working of a European patent after the time limit for filing an opposition to the European patent has expired or after opposition proceedings thus instituted have been terminated. Such a license shall not extend further than is necessary for the application of the patented invention of the licensee. The latter shall be obliged to grant a reciprocal license under his patent to the proprietor of the other patent.

#### **Art. 58.-**

1. If the license referred to in Article 57(2) or (4) is unjustifiably withheld, the license shall be granted by the court on a claim by the interested party. At the request of the claimant, the Office shall enter the writ in the patent register.

2. If a patent is granted on the basis of this Act, the claimant's claim shall not be admitted if he does not append to his statement of claim the results of a report by the Office or the European Patent Office as referred to in the European Patent Convention concerning the state of the art with regard to the subject matter of the patent for which the license was claimed.

3. The grant of a license claimed pursuant to Article 57(4), first sentence, may be suspended with or without a time limit if, within two months after service of the writ in which the license is claimed, a claim for the invalidation of the patent for which the license is claimed has been submitted.

4. In the specification of the license granted the court may derogate from the licensee's claims and can also require that the licensee provide security within a certain period. A license granted pursuant to Article 57(2) shall not be exclusive and shall not be transferable, even by sublicensing, otherwise than together with the part of the company in which the license is being worked. A license granted pursuant to Article 57(4), first or third sentence, shall not expire because the patent on which the license is granted has lapsed on expiry of the period referred to in Article 33(5) or Article 36(5) or has been successfully claimed, but shall expire where the patent is partially or entirely invalidated as a result of the claim referred to in the third paragraph.

5. A decision as referred to in Article 57(1) or a court decision having become *res judicata* shall be entered in the patent register by the Office. If security is to be provided, the entry shall not be made before that requirement has been met. A fee, the amount of which shall be determined by administrative order, shall be due for the entry. The license shall only come into effect after the entry, but shall subsequently also have effect with regard to persons who became entitled to the patent after the entry in the register of the writ referred to in paragraph (1). A registered license granted on the basis of Article 57(4) shall have retroactive effect to the date on which the writ was entered.

6. On a claim by the most diligent party, in the absence of agreement, the court shall fix the remuneration that the licensee has to pay to the patent proprietor. The court may also require the licensee to provide security within a certain period, or confirm or change the security fixed by virtue of Article 57(1) or paragraph (5) of this Article.

7. For the application of Article 57 and this Article to Community patents pursuant to Articles 45 to 47 of the Community Patent Convention, "a European patent" should read: a Community patent; in the fourth paragraph of this Article, "the period referred to in Article 33(5) or Article 36(5)" should read: the period referred to in Article 63 of the European Patent Convention.

#### **Art. 59. -**

1. In the interest of the defense of the Kingdom, and on a joint recommendation from the Minister directly concerned and the Minister, it may be provided by Royal Decree that the State shall be authorized to perform or cause others to perform acts, to be described precisely in the Decree, which the proprietor of a patent to be specified in said Decree has the exclusive right to perform, or cause others to perform, pursuant to Article 53. The authorization shall apply throughout the lifetime of the patent unless a shorter term has been specified in the Decree.

2. Upon the entry into force of the Royal Decree, the Minister directly concerned shall determine, by agreement with the proprietor of the patent, the remuneration payable to the latter by the State. If the Minister directly concerned has not reached an agreement with the patent proprietor within six months from the date of the entry into force of said Decree, Article 58(6), with the exception of the provisions concerning the deposit of security, shall apply *mutatis mutandis*.

3. In applying this Article to Community patents pursuant to Article 45 of the Community Patent Convention, in the first paragraph "acts ... which the proprietor of a patent to be specified in said Decree has the exclusive right to perform pursuant to Article 53" should read: acts ... which the proprietor of a patent to be specified by Royal Decree may prohibit third parties from performing pursuant to Article 25 of the Community Patent Convention.

#### **Art. 60. -**

1. Without prejudice to Article 56(2), first sentence, a license may be created by:

a. a decision of the Arbitration Committee referred to in Article 20 of the Treaty establishing the European Atomic Energy Community (EURATOM) (Trb. 1957, 92);

b. a decision of the Minister pursuant to Article 21 of the aforementioned Treaty.

2. With respect to a license obtained by a final decision as specified in paragraph (1) (a), Article 56(2), second and third sentences, shall apply *mutatis mutandis*.

3. With respect to a decision as referred to in paragraph (1) (b), Article 58(1) and (4) and (5), first, second and third sentences, shall apply *mutatis mutandis*. With respect to a license

granted by virtue of such a decision, Article 58(5), fourth sentence, and (6) shall apply mutatis mutandis.

4. A license as referred to in paragraph (1) shall not be effective in the Netherlands Antilles.

## Part 2 Annual Fee and Expiry of Patent

### Art. 61.-

1. In order to maintain the patent, an amount to be specified by administrative order must be paid every year to the Office, starting in the fifth year after the date referred to in Article 29(1), on the last day of the month in which the application resulting in the grant of a patent was filed or is deemed to have been filed pursuant to Article 28(1).

2. With regard to maintenance of a European patent, an annual fee as mentioned in paragraph (1) must be paid to the Office, starting after the year referred to in Article 86(4) of the European Patent Convention has ended, on the last day of the month in which the filing date, under Article 80 of the European Patent Convention, of the European patent application that resulted in the grant of the patent fell in accordance with Article 61 or 76 of that Convention. If the fee falls due for the first time within a period of two months from the date of publication of the mention of the grant of the European patent in accordance with Article 97(4) of the European Patent Convention, the fee may be paid on the last day of the month in which this period expires.

3. For payments after the due date an additional fee shall be due, the amount of which shall be set by administrative order.

### Art. 62.

A patent shall expire, as of right, when the amounts referred to in Article 61 are not paid within six calendar months of the due date mentioned in said Article. Any such expiry shall be recorded in the patent register of the Office.

### Art. 63.-

1. A patent shall expire, wholly or in part, if the patent proprietor surrenders it wholly or in part.

2. Surrender shall occur by the registration of a deed to this effect in the patent register. The Office shall not register the deed as long as there are persons who, by virtue of documents entered in the patent register, have registered rights in the patent or have received licenses or have commenced legal proceedings concerning the patent, and these persons have not consented to the surrender.

## Part 3 The Patent as an Object of Property

### Art. 64.-

1. The patent and the right to obtain a patent shall be assignable or otherwise transferable in full or joint ownership.

2. The assignment and other transfer of the patent or of the right arising from the patent application may be the subject of an entry in the patent register. A fee to be set by administrative order shall be due for such an entry.

### Art. 65.-

1. The submission required for the assignment of the patent or the rights arising from a patent application shall be effected by means of a deed containing a declaration by the proprietor of

the patent that he assigns the patent or the rights arising from the patent application to the assignee and a declaration of the assignee that he accepts the assignment.

2. Any reservation relating to the assignment must be specified in the deed; in the absence of any such reservation, the assignment shall be deemed to be unrestricted.

3. The assignment shall take effect vis-à-vis third parties only after an entry has been made concerning the deed in the patent register. Both parties shall be equally entitled to have the entry made in the register.

4. Article 88 of Book 3 of the Civil Code of the Netherlands shall apply.

#### Art. 66.-

1. Where several persons are jointly entitled to the patent, their mutual relationship shall be governed by a mutual agreement between them.

2. Where there is no agreement or where the agreement does not provide otherwise, any person entitled to the patent shall have the right to perform the acts referred to in Article 53 and to take action in accordance with Articles 70 to 73 against any such act, as well as against acts referred to in Article 73(1) and (2) performed by a non-entitled person, but a license or consent as referred to in Article 73(2) may only be granted with the common consent of the persons entitled to the patent.

3. With regard to the payment of the fee referred to in Article 61, the persons entitled to the patent shall be severally liable.

#### Art. 67.-

1. A pledge (see Art. 3:227 of the Civil Code of the Netherlands) on a patent shall be established by a deed and shall be effective against third parties only when entered in the patent register.

2. The pledgee shall be required, by means of a declaration bearing his signature to be sent to the Office for registration, to elect domicile in The Hague. If domicile has not been elected in this way, the Office shall be deemed to be the elected domicile.

3. Stipulations in the deed of pledge concerning the licenses to be granted after registration shall take effect, also vis-à-vis third parties, from their date of entry in the patent register. Stipulations concerning remuneration for licenses granted prior to registration shall take effect vis-à-vis the licensee after he has been served with a writ.

4. An entry of deeds from which it appears that the right of pledge has ceased to exist or has ceased to have effect shall be made in the patent register.

#### Art. 68.-

1. In the case of attachment of a patent, the writ of attachment shall be entered in the patent register and the provisions of the Code of Civil Procedure of the Netherlands concerning executory and conservatory attachment of real property shall apply mutatis mutandis, subject to the condition that in the writ of attachment a description of the patent shall be included instead of the nature and location of the real property.

2. Alienation, encumbrance, the placing under management or the granting of a license taking effect after registration of the writ of attachment may not be invoked against the attaching creditor.

3. License fees not paid prior to the entry of the writ of attachment shall be included, as of right, in the attachment of the patent after the licensee has been served with notice of the registered attachment. These fees must be paid to the notary on whose behalf the writ is served, provided that the licensee has been expressly notified hereof when being served with notice and subject to the rights of third parties which the notary must honor. Any money paid to the notary falls under the proceeds as referred to in Article 69(2). Articles 475i, 476 and 478 of the Code of Civil Procedure of the Netherlands shall apply mutatis mutandis.

4. The registration of the writ of attachment may be cancelled:

a. pursuant to a written declaration offered for registration by the bailiff that he is discontinuing the attachment on the instructions of the attaching creditor, or that the attachment has expired;

b. pursuant to a court decision offered for registration lifting the attachment or which establishes or involves the expiry of the attachment.

5. Articles 504a, 507a, 538 to 540, 726(2) and 727 of the Code of Civil Procedure of the Netherlands shall apply mutatis mutandis to the attachment of a patent.

#### **Art. 69.-**

1. The sale of a patent by a pledgee or attaching creditor for the purposes of recovering a claim shall take place in public before a qualified notary. Articles 508, 509, 513(1), 514(2) and (3), 515 to 519 and 521 to 529 of the Code of Civil Procedure of the Netherlands apply mutatis mutandis, with the proviso that their provisions concerning mortgages and mortgagees apply to the pledges on the patent and the pledgees.

2. Articles 551 to 552 of the Code of Civil Procedure of the Netherlands shall apply mutatis mutandis to the distribution of the proceeds.

### **Part 4 Enforcement of the Patent**

#### **Art. 70.-**

1. The proprietor of a patent may enforce his patent vis-à-vis any person who, without being entitled to do so, performs any of the acts referred to in Article 53(1).

2. The claim of the proprietor of a patent granted on the basis of this Act shall not be admissible in the proprietor's legal action if he does not submit the search report on the state of the art with regard to the subject matter of the patent as drawn up by the Office or by the European Patent Office as mentioned in the European Patent Convention as an appendix to the statement of claim and at the hearing of summary proceedings.

3. Damages may be claimed only from a person who performs such acts in the knowledge that he has no right to do so. In any event, a person shall be deemed to have such knowledge if the infringement is committed after the expiry of 30 days following the service of a writ stating that the patent is violated by the acts performed.

4. Besides a claim for damages, the proprietor of a patent may seek to have the defendant ordered to surrender any profits derived from the infringement and to give an accounting of such profits; if the court determines, however, that the circumstances of the case do not justify such an order, it may order the defendant to pay damages.

5. The proprietor of a patent may institute claims for damages or for the surrender of profits on behalf of himself and licensees or pledgees, or on behalf of licensees or pledgees only,



without prejudice to the right of the latter parties to intervene in the claim brought by the proprietor of the patent, whether or not brought exclusively or also on their behalf, in order to obtain direct compensation for their damages or in order to be awarded a proportional share of the profits to be surrendered by the defendant. Independent claims may only be brought by licensees and pledgees, and writs as referred to in paragraph (3) may only be caused to be served with a view to such actions if they have been authorized by the proprietor of the patent.

6. Where proceedings are brought for the enforcement of a patent relating to a process for the manufacture of a new product, it shall be assumed that the product in question has been manufactured using the patented process unless the defendant can establish the plausibility of the contrary. In the evaluation of whether or not a product is new, the terms of Article 4(3) and (4) shall not be taken into consideration.

#### Art. 71. -

1. Subject to the provisions of paragraph (4), the proprietor of a patent may demand reasonable compensation from a person who, in the period between the registration of the application leading to the patent and the grant of the patent on that application or a divisional application pursuant to Article 28, has performed acts as referred to in Article 53(1), insofar as the patent proprietor has been granted exclusive rights for these acts.

2. Subject to the provisions of paragraph (4), the proprietor of a patent may also demand reasonable compensation from any person who, after the grant of the patent as referred to in paragraph (1), has performed the acts referred to in that paragraph with regard to products that were put on the market during the period stipulated in that paragraph. The proprietor of the patent may demand similar compensation from any person who, after the grant of the patent, has used for the purposes of his business products as specified in Article 53(1) (a) or (b) that were manufactured in his business in the period referred to in paragraph (1).

3. The compensation referred to in paragraphs (1) and (2) shall only be due for acts performed after the expiry of 30 days following the date on which the party concerned was informed, by means of a writ indicating precisely which part of the patent application relates to such acts, of the rights that belong to the proprietor of the patent by virtue of this Article.

4. The rights that belong to the proprietor of a patent by virtue of this Article shall not extend to acts performed by a person entitled to do so by virtue of Article 55 or by agreement, nor shall it extend to acts with regard to products that were put on the market either prior to the registration of the patent application in question or thereafter by the applicant or a person entitled to do so as specified above.

#### Art. 72. -

1. The proprietor of a European patent may, subject to the provisions of paragraph (4), demand reasonable compensation from any person who, in the period between the publication pursuant to Article 93 of the European Patent Convention of the application which has resulted in the grant of the patent and the publication, referred to in Article 97(4) of that Convention, of the mention of the grant of the European patent in respect of said application or in respect of a divisional application related thereto by virtue of Article 76 of said Convention, has performed acts as specified in Article 53(1) insofar as the proprietor of the patent has acquired the exclusive right thereto and such acts are within the scope of the last filed and published claims.

2. Subject to the provisions of paragraph (4), the proprietor of a European patent may also demand reasonable compensation from any person who, after the publication referred to in paragraph (1) of the mention of the grant of the European patent, has performed acts as referred to in that paragraph with regard to products that were put on the market during the period

stipulated in that paragraph. The proprietor of the patent may demand similar compensation from any person who, after the publication referred to in paragraph (1), has used for his business products as specified in Article 53(1) (a) or (b) that were manufactured in his business in the period referred to in paragraph (1).

3. The compensation referred to in paragraphs (1) and (2) shall only be due for acts performed after the expiry of 30 days following the date on which the party concerned was informed by means of a writ of the right to which the proprietor of the patent is entitled by virtue of this Article. This writ, indicating precisely which part of the patent application relates to such acts, shall be accompanied by the notification of a translation into Dutch of the claims as contained in the publication of the European patent application in accordance with Article 93 of the European Patent Convention. If such translation was sent to the Office prior to the serving of the writ and an entry made in the patent register regarding it, notification of the translation may be omitted, provided that the writ makes a mention of the entry in the patent register.

4. The right that belongs to the proprietor of a patent by virtue of this Article shall not extend to acts performed by a person entitled to do so by virtue of Article 55 or an agreement, nor shall it extend to acts with regard to products that were put on the market either prior to the publication of the application under paragraph (1) in accordance with Article 93 of the European Patent Convention, or thereafter by the applicant or a person entitled to do so as specified above.

5. The Office shall provide as soon as possible for the entry in the patent register specified in paragraph (3).

6. Paragraphs (3) and (5) shall apply *mutatis mutandis* with respect to claims for payments of reasonable compensation as provided in Article 32(1) of the Community Patent Convention.

#### **Art. 73.-**

1. The proprietor of the patent may institute the claims at his disposal in enforcing his patent against any person who, in the Netherlands or Netherlands Antilles or, where a European patent is concerned, in the Netherlands, supplies or delivers to or for his business, in respect of an essential part of the invention, to persons other than those who by virtue of Articles 55 to 60 are empowered to work the patented invention, the means for the application of the patented invention in the Netherlands or Netherlands Antilles, or where a European patent is concerned, in the Netherlands, provided that that person knows, or that it is evident considering the circumstances, that those means are suitable and intended for that application.

2. Paragraph (1) shall not apply if the supply or delivery takes place with the consent of the proprietor of the patent. That paragraph shall likewise not apply if the means delivered or offered are products which are generally available in commerce, unless the person involved incites the third party to whom he delivers to perform acts specified in Article 53(1).

3. Article 70(5) shall apply *mutatis mutandis*.

#### **Art. 74.**

The rights and obligations arising out of Articles 53 to 60 and 64 to 73 shall also apply in, on and above that part of the continental shelf contiguous to the Netherlands or the Netherlands Antilles—or, where a European patent is concerned, contiguous to the Netherlands—over which the Kingdom has sovereign rights, but exclusively to the extent that such acts are associated with and are performed during exploration for or the recovery of natural resources.

## **Chapter 5 Invalidation and Claiming Entitlement to the Patent**

Art. 75.-

1. A patent shall be invalidated by the court where:

- a. that for which the patent has been granted was unpatentable by virtue of the provisions of Articles 2 to 7 or, where a European patent is concerned, by virtue of the provisions of Articles 52 to 57 of the European Patent Convention;
- b. the patent specification does not contain a description of the invention which, in appropriate cases with the application of Article 25(2), is sufficiently clear and complete to allow a person skilled in the art to work the invention;
- c. the subject matter of the patent extends beyond the contents of the patent application as filed or by the contents of the original patent application if the patent has been granted on a divisional or amended application or on a new European patent application filed pursuant to Article 61 of the European Patent Convention;
- d. after the grant of the patent, the scope of protection has been extended;
- e. the proprietor of the patent was not entitled to it either by virtue of the provisions of Chapter 1 of this Act or, where a European patent is concerned, by virtue of Article 60(1) of the European Patent Convention.

2. For the purposes of paragraph (1) (a), the state of the art referred to in Article 54(3) of the European Patent Convention shall also include the contents of patent applications under this Act which were filed on a date prior to the date of filing of the European patent application to which that paragraph applies and which were entered in the patent register pursuant to Article 31 on or after that date.

3. Invalidation proceedings may be instituted under paragraph (1) (a) to (d) by any person, and under paragraph (1) (e) by a person who is entitled to the patent by virtue of the provisions specified therein. If the latter has been granted a patent for the relevant invention, the invalidation proceedings may also be instituted by licensees and pledgees.

4. The writ shall be recorded in the patent register within eight days of its date of issue. Where the entry is not made in due time, the claimant shall be obliged to pay compensation for damages sustained by any persons who, after expiry of the time limit and prior to the making of the entry, acquired in good faith rights affected by the invalidation.

5. A patent shall be deemed from the outset not to have had all or some of the effects specified in Articles 53, 71, 72 and 73 where the patent has been wholly or partially invalidated.

6. The retroactive effect of the invalidation shall not extend to:

- a. a decision, not being a provisional measure, relating to acts infringing the exclusive right of the proprietor of the patent referred to in Article 53 or relating to acts referred to in Articles 71, 72 and 73 which have become res judicata and have been enforced prior to the invalidation;
- b. any agreement concluded prior to the invalidation insofar as it has been implemented prior to the invalidation; on grounds of equity, repayment of sums paid under the agreement may be claimed to the extent justified by the circumstances.

7. For the purposes of paragraph (6) (b), the conclusion of an agreement shall also be deemed to include a license created in another manner provided for in Article 56(2), 59 or 60.

8. Where a patent is invalidated on the grounds of paragraph (1) (e), and the person who is entitled to the patent by virtue of the provisions referred to therein has obtained a patent for the relevant invention himself, licenses acquired in good faith in respect of the invalidated patent prior to the date on which the writ of invalidation was recorded in the register shall be deemed to be licenses under the existing patent. The proprietor of said patent shall be entitled pursuant to Article 56(3) to the fees due for the licenses. The proprietor of the invalidated patent who acted in good faith when filing his application or who obtained the patent in good faith from a previous proprietor prior to the date on which the writ of invalidation was registered shall, in relation to the subsisting patent, continue to have the right to work the invention in the manner specified in Article 55.

9. As soon as a decision in invalidation proceedings has become *res judicata* or the proceedings have lapsed, an entry to this effect shall be made in the patent register at the request of the most diligent party.

#### Art. 76. -

1. The action of a party seeking invalidation pursuant to Article 75 of a patent issued pursuant to this Act shall not be entertained if the party does not append to his statement of claim the results of an advisory report by the Office concerning the applicability of the grounds for invalidation as indicated in Article 75(1).

2. The president of the District Court referred to in Article 80(2) may, in a summary proceeding, require any person arguing that a patent granted pursuant to this Act should be invalidated to submit an advisory report by the Office concerning the applicability of the grounds of invalidation as indicated in Article 75(1).

#### Art. 77. -

1. Where a patent granted under this Act relates to an invention in respect of which a European patent or Community patent has been granted to the same inventor or his successor in title, and where the dates of filing or, as the case may be, the priority dates of the patent applications concerned are the same, the former patent, insofar as it protects the same invention as the European patent or the Community patent, shall cease to have the effects specified in Articles 53, 71 and 73 in the Netherlands as from the date on which:

- a. the time limit laid down for filing notice of opposition to the European patent has expired without notice of opposition having been filed;
- b. the opposition procedure has been concluded, resulting in maintenance of the European patent; or
- c. the patent has been granted under this Act, if that date is later than the date referred to in subparagraph (a) or (b), as the case may be.

2. The expiry, for whatever reason, of the European patent or the Community patent at a later date shall not affect the provisions of the preceding paragraph.

3. Proceedings to ascertain loss of rights as referred to in paragraph (1) may be instituted by any person.

4. Article 75(4), (8), first sentence, and (9) shall apply *mutatis mutandis*.

**Art. 78.-**

1. An action claiming entitlement to a patent in whole, in part or in joint ownership may be instituted by any person who, under Articles 11, 12 or 13 or, where a European patent is concerned, under Article 60(1) of the European Patent Convention, is entitled to or is jointly entitled to the patent.
2. The writ claiming entitlement must be entered in the patent register.
3. The proprietor of a patent who acted in good faith when filing his application, or who obtained the patent in good faith from a previous proprietor prior to the date on which the writ claiming entitlement was registered, shall continue, vis-à-vis the new proprietor, to have the right to work the invention in the manner specified in Article 55.
4. Licenses obtained in good faith prior to the registration date shall continue to have effect vis-à-vis the new proprietor of the patent; the latter shall be entitled to compensation due for licenses pursuant to the provisions of Article 56(3).
5. The provisions of paragraphs (3) and (4) shall not be applicable if the person who has successfully claimed entitlement to the patent previously claimed entitlement by filing a patent application himself and the writ claiming entitlement was entered in the patent register within three months from the date on which the patent was granted or, where a European patent is concerned, from the date on which, pursuant to Article 97(4) of the European Patent Convention, the mention of the grant of the European patent was published.
6. Pledges established by a previous proprietor of the patent shall only be binding on the new proprietor of the patent if the rights were acquired in good faith and the pledge was established before the date on which the writ claiming entitlement was registered. They shall not be binding on the new proprietor in the event referred to in the preceding paragraph.
7. The claim referred to in paragraph (1) shall lapse upon expiry of a period of two years from the date on which the patent was granted or, where a European patent is concerned, from the date on which, pursuant to Article 97(4) of the European Patent Convention, the mention of the grant of the European patent was published; such statute-barring may not, however, be invoked by a person who knew or ought to have known at the time of acquiring the patent that he, or the person who assigned the patent to him, was not entitled to it. Article 2006 of the Civil Code of the Netherlands Antilles shall not apply to this limitation.
8. As soon as a decision on a claim to entitlement has become res judicata or the proceedings have lapsed, an entry to this effect shall be made in the patent register at the request of the most diligent party.

**Art. 79.-**

1. Any person who deliberately infringes the rights of the patent proprietor by performing one of the acts specified in Article 53(1) shall be punished with imprisonment for no more than six months or a fine of the fourth category.
2. Any person who makes a profession or a business of criminal acts as referred to in the preceding paragraph shall be punished with imprisonment for no more than four years or a fine of the fifth category.
3. The court may order publication of the judgment on sentencing.
4. If any objects have been declared forfeit, the patent proprietor may require that these objects be surrendered to him, provided that he reports this to the clerk within a month of the

judgment having become res judicata. Such surrender shall confer title to these objects on the patent proprietor. The court may declare that the surrender shall not take place or shall take place only after compensation, to be set by the court and paid by the patent proprietor, has been paid to the State.

5. The criminal acts referred to in this Article shall be misdemeanors. In the Netherlands, the hearing of such misdemeanors in the first instance shall be exclusively within the jurisdiction of the District Court of The Hague.

## Chapter 6 Disputes Concerning Patent Rights

### Art. 80.-

1. The District Court of The Hague shall have exclusive jurisdiction in the first instance for:
  - a. actions to determine the absence of legal effect, the invalidation, or the loss of legal effect of a patent or to determine claims to entitlement to a patent as referred to in Articles 10, 75, 77 and 78;
  - b. actions claiming entitlement to European patent applications;
  - c. actions seeking the grant of licenses as referred to in paragraph (1) of Article 58;
  - d. actions seeking the award of remuneration as referred to in Articles 58, 59 and 60.
2. The District Court of The Hague, and the President of that Court in summary proceedings, shall have exclusive first-instance jurisdiction in the Netherlands with respect to:
  - a. actions referred to in Articles 70, 71, 72 and 73;
  - b. actions instituted by some person other than the proprietor of the patent to obtain a ruling that certain acts performed by him do not constitute infringement of a patent.

### Art. 81.-

1. Any person directly affected by a decision issued by virtue of this Act or provisions thereunder may appeal within one month of the issue of the decision concerned to the Court specified in Article 80. Article 4(4), second and third sentences, of the Act Concerning Administrative Jurisdiction (Stb. 1954, 416) shall apply.
2. The Court may annul a decision referred to in paragraph (1), and decide on the consequences of the annulment in its judgment. The Court may rule that the Office or the Minister shall make, repeal or amend a decision in accordance with the judgment or shall take or refrain from action.

### Art. 82.

Authorized representatives shall be permitted to plead on behalf of the parties in the hearing of the disputes referred to in Articles 80 and 81 without prejudice to the responsibility of counsel.

### Art. 83.-

1. All disputes other than those specified in Articles 80 and 81 shall be brought before the court which has jurisdiction under the general rules governing the administration of justice.
2. Proceedings instituted under the provisions of Article 12(6) shall be deemed to be proceedings relating to a contract of employment except where legal relationship between those involved is not determined by such a contract.

3. Where it appears to the court that a decision on a matter in dispute may be affected by proceedings instituted or possibly to be instituted under Articles 10, 75, 77 or 78, the court may stay the proceedings relating to the matter in dispute, with or without setting a time limit. The court may also so act where a decision relating to such proceedings may be affected by proceedings instituted on different grounds.

4. The court may stay proceedings relating to a dispute in respect of a European patent, with or without setting a time limit, where notice has been given to the European Patent Office of opposition to that patent by virtue of Article 99 of the European Patent Convention.

#### Art. 84.-

1. Any person may request the Office in writing to provide an advisory report on the applicability of the grounds for invalidation specified in Article 75(1) to a patent granted on the basis of this Act.

2. The request shall contain a reasoned indication of the objections derived from Article 75(1) to the granted patent concerning which an advisory report is requested.

3. Rules concerning the fee to be paid for an advisory report shall be enacted by administrative order.

#### Art. 85.-

1. The Office shall give the petitioner indicated in Article 84 the opportunity to explain the objections made. The proprietor of the patent concerned shall be given the opportunity to respond to the objections at least once.

2. The Office is authorized to set time limits within which the petitioner and patent proprietor must make their submissions.

3. The advisory report referred to in Article 84 shall be issued as soon as possible, but no more than two months after the Office has been informed of the views of the petitioner and the patent proprietor, or, if the preceding paragraph is applicable, within two months of the expiration of the time limit set.

#### Art. 86.

The advisory report referred to in Article 84 shall consist of a reasoned evaluation of the objections stated in the request.

#### Art. 87.-

1. The Office shall be obliged to provide the court with all information and technical advice that it may require for a decision in legal proceedings subject to its jurisdiction concerning patents.

2. Advice as referred to in paragraph (1) shall be equal in value to that of experts as referred to in Article 221 of the Code of Civil Procedure.

#### Art. 88.

The Court referred to in Article 80 shall act as a central authority responsible for the receipt of letters rogatory and authorized to act on such letters from the European Patent Office, referred to in Article 99 of the Implementing Regulations to the European Patent Convention.

#### Art. 89.

A separate copy of all court decisions rendered in patent matters shall be sent free of charge to the Office within one month by the clerk of the court which has rendered the judgment and, where a European patent is involved, also to the European Patent Office referred to in the European Patent Convention.

### Chapter 7 Supplementary Protection Certificates

#### Art. 90.

For the purposes of this Chapter, with the exception of Article 98 and the provisions based on it:

"Regulation" means Council Regulation (EEC) No. 1768/92 of June 18, 1992 Concerning the Creation of a Supplementary Protection Certificate for Medicinal Products (PbEG L 182);

"basic patent" means a patent as indicated in Article 1(c) of the Regulation; "certificate" means a supplementary protection certificate as indicated in Article 1(d) of the Regulation.

#### Art. 91.

The application for a certificate shall be filed at the Office.

#### Art. 92.

Upon application for a certificate, proof must be provided that an amount, in accordance with a tariff to be set by decree, has been paid to the Office.

#### Art. 93.

With reference to applications for a certificate, Articles 24(3), 26 and 38(1) of this Act shall apply mutatis mutandis.

#### Art. 94.

If the provisions of Article 8 of the Regulation or Articles 92 and 93 of this Act are not satisfied, the Office shall so inform the applicant in writing within one month of the filing of the application for a certificate, stating the requirements which have not been met. Article 30(2) shall apply mutatis mutandis.

#### Art. 95.

In order to maintain a certificate in force, an amount to be set by decree shall be paid to the Office each year as from the year in which the legal term of the basic patent has expired. This amount shall be paid no later than on the last day of the month in which the legal term of the basic patent has expired. Articles 61(3) and 62 of this Act shall apply mutatis mutandis.

#### Art. 96. -

1. The notifications required by Articles 9(2), 11 and 16 of the Regulation shall be placed in the publication specified in Article 20 of this Act.

2. The Office shall record the information specified in Articles 9(2), 11 and 16 of the Regulation in the patent register.

#### Art. 97.

Articles 64 to 69 inclusive shall apply to certificates mutatis mutandis.

#### Art. 98.

If a regulation other than that established by the Council of the European Communities concerning supplementary protection certificates mentioned in Article 90 is required in the interest of



proper implementation, it shall take place by administrative order. This can provide for fees, insofar as is permitted under the regulation concerned.

## Chapter 8 Special Provisions for the Netherlands Antilles

### Art. 99.

An industrial property office may be established in the Netherlands Antilles. That office shall be an institution of the country.

### Art. 100.-

1. Patent applications may be filed by residents of the Netherlands Antilles at the industrial property office established there.
2. The date of filing of the application shall be deemed to be the date upon which the documents indicated in Article 29(1) (a), (b) and (c) are filed at the office concerned. Article 29(2) and (3) shall apply mutatis mutandis.
3. After the office concerned has recorded the date referred to in paragraph (2) on the application, it shall send the application with all documents filed to the Office referred to in Article 1 as soon as possible, unless it is of the opinion that the filing does not meet the requirements specified in or by virtue of Articles 24 and 26.
4. In the event referred to in paragraph (3), the office shall inform the applicant of the alleged deficiencies in writing, with the request that he remedy these deficiencies within a time limit to be set by the office. After expiry of that time limit, and regardless of whether or not the request has been fulfilled, the documents filed by the applicant, accompanied by a copy of the receipt issued to him, shall be sent by the office concerned to the Office referred to in Article 1 as soon as possible.

## Chapter 9 Transitional and Final Provisions

### Art. 101.

The Patents Act of the Kingdom (last amended in 19875) is repealed with effect from a time to be set by Royal Decree.

### Art. 102.-

1.
  - a. Patent applications filed prior to the entry into force of this Act and divisional patent applications arising from these applications,
  - b. patents granted on the applications referred to in (a), above, and
  - c. licenses under the patents referred to in (b), above, shall be governed exclusively by the provisions of the 1987 Act and provisions thereunder.
2.
  - a. Patent applications filed after the entry into force of this Act, with the exception of the divisional patent applications referred to in paragraph (1) (a),
  - b. patents granted on the applications referred to in (a), above, and
  - c. licenses under the patents referred to in (b), above,

shall be governed exclusively by the provisions of this Act and provisions thereunder.

3. This Act shall not apply to applications for certificates as referred to in Article 90 filed at the Office prior to the date upon which this Act enters into force.

4. Articles 95 and 97 shall also apply to certificates granted on applications filed prior to the date upon which this Act enters into force.

#### **Art. 103.-**

1. European patents the mention of the grant of which has been published in accordance with Article 97(4) of the European Patent Convention prior to the entry into force of this Act, and licenses under these patents, shall be governed exclusively by the provisions of the 1987 Act and provisions thereunder.

2. European patents the mention of the grant of which has been published in accordance with Article 97(4) of the European Patent Convention after the entry into force of this Act, and licenses under these patents, shall be governed exclusively by the provisions of this Act and provisions thereunder.

#### **Art. 104.**

Article 17A of the 1987 Act is amended as follows:

1. In the first paragraph, "If the applicant" is replaced by: If the applicant or patent proprietor or the proprietor of a European patent.

2. In the second paragraph, "payment, admissible after the due date, that has not been effected punctually," is deleted.

3. In the third paragraph, "or, if it concerns a European patent, within the Netherlands" is added after "Kingdom" and in the sixth paragraph, "or has been maintained" is added after "has been granted".

#### **Art. 105.**

Article 22K, paragraph (1), of the 1987 Act shall read:

1. An application shall lapse if a request as referred to in Article 22J is not filed within one year of the entry into force of the 1995 Act.

#### **Art. 106.**

Article 29Q of the 1987 Act is repealed.

#### **Art. 107.**

In Article 54 of the 1987 Act, a new paragraph (3) is inserted after paragraph (2) and the former paragraph (3) is renumbered (4), said new paragraph (3) reading as follows:

3. Authorized representatives may plead on behalf of parties in proceedings for the settlement of the disputes referred to in paragraphs (1) and (2), without prejudice to the responsibility of counsel.

#### **Art. 108.-**

1. By derogation from Article 102(1) (c), with respect to licenses, Articles 57(2) to (4) and 58 of this Act shall replace Article 34(2) to (9) of the 1987 Act.

2. If, prior to the entry into force of this Act, a request is made for the grant of a license in accordance with Article 34(5) of the 1987 Act, the first paragraph shall not apply.

**Art. 109.**

The state of the art, referred to in Article 4, shall also comprise the contents of patent applications filed before the entry into force of this Act, which are laid open to public inspection in accordance with Article 22C of the 1987 Act or which, if they were not laid open to public inspection, are published, in accordance with Article 25 of the 1987 Act, on or after the date referred to in Article 4(2).

**Art. 110.**

If the matters provided for in this Act require further regulation in the interest of the proper implementation thereof, this may take place by administrative order.

**Art. 111.**

This Act shall enter into force at a time to be set by Royal Decree, which may differ for the various articles or parts thereof.

**Art. 112.**

This Act is to be referred to as the Patents Act of the Kingdom with the mention of the year of the Official Gazette in which it has been published.

**Art. 113.-**

1. This Act shall be binding on the Netherlands and, with the exception of Chapter 7, on the Netherlands Antilles 2. This Act is binding on Aruba only with respect to Articles 40 to 45, 59, 101, 102(1), 105, 108, 111 and 114. For the application of Articles 40 to 45 in Aruba, "Office" shall be defined as the Office for Intellectual Property of Aruba.

**Art. 114.**

The common regulations provided for in this Act may be ended by Act in the Netherlands and by local enactment in the Netherlands Antilles and Aruba. With effect from the third calendar year following the year in which such an Act or local enactment is published, this shall acquire the status of a national Act in the Netherlands and of a local enactment in the Netherlands Antilles. The provisions of the previous sentences shall not apply to Articles 40 to 45 and Article 59.