

ACT OF 30 JUNE 2000

INDUSTRIAL PROPERTY LAW

(JL of 2013, item 1410, as amended)

Title I

General Provisions

Article 1

1. This Act regulates:

- (i) the relations in the field of inventions, utility models, industrial designs, trade marks, geographical indications and topographies of integrated circuits,
- (ii) the principles on which entities may accept rationalisation proposals and remunerate authors thereof;
- (iii) the responsibilities and organisation of the Patent Office of the Republic of Poland, hereinafter referred to as the "Patent Office".

2. The provisions of this Act shall not prejudice the protection of the subject matter referred to in paragraph (1)(i), provided for in other legal acts.

Article 2

Combating of unfair competition is governed by a separate legal act.

Article 3

1. References in this Act:

- (i) to a person shall mean any natural or legal person or an organisational unit without legal personality conferred a legal capacity by an act of law;
- (ii) to a foreign person shall mean a person not being a Polish national and not having a domicile or a seat, or a real and effective establishment in the territory of the Republic of Poland;
- (iii) to an entity shall mean a person, who runs for profit the activity in manufacturing, building, trading or servicing, hereinafter referred to as "business activity";
- (iv) to an international agreement shall mean any international agreement to which the Republic of Poland is party;
- (v) to the Paris Convention shall mean the Stockholm Act of the Paris Convention for the Protection of Industrial Property of 20 March 1883 (JL 1975 No 9, item 51);
- (vi) to invention projects shall mean inventions, utility models, industrial designs, topographies of integrated circuits and rationalisation projects;
- (vii) to the International Bureau shall mean the International Bureau of Intellectual Property set up under the Convention establishing the World Intellectual Property Organization signed at Stockholm on 14 July 1967 (JL 1975, No 9, item 49);
- (viii) to the international trade mark shall mean a trade mark registered under the procedure established in the Agreement or the Protocol;
- (ix) to the Agreement shall mean the Madrid Agreement concerning the international registration of marks of 14 April 1891 (JL 1993, No 116, items 514 and 515);
- (x) to the Protocol shall mean the Protocol relating to the Madrid Agreement concerning the international registration of marks adopted at Madrid on 27 June 1989 (JL 2003, No 13, items 129 and 130);

- (xi) to the European Patent Convention shall mean the Convention on the grant of European patents adopted in Munich on 5 October 1973, amended by an act amending Article 63 of the Convention of 17 December 1991 and by the decisions of the Administrative Council of the European Patent Organization of 21 December 1978, 13 December 1994, 20 October 1995, 5 December 1996 and 10 December 1998, together with the Protocols constituting its integral part (JL 2004, No 79, items 737 and 738);
- (xii) to the Geneva Act - the Geneva Act of the Hague agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999 (JL 2009, No 198, item 1522);
- (xiii) to the international industrial design shall mean the industrial design registered pursuant to procedure specified in the Geneva Act.

2. The provisions of this Act in parts concerning economic entities shall also apply accordingly to persons running activities other than business.

Article 4

1. Where an international agreement or the provisions of European Union laws binding and directly applicable in all Member States provide for special procedures for granting protection for inventions, utility models, industrial designs, trade marks, geographical indications or topographies of integrated circuits, the provisions of this Act shall apply accordingly to the subject matter not governed by that agreement or these provisions, or falling within responsibilities of national authorities.

2. An international agreement or the provisions referred to in paragraph (1) indicate in particular the language of the proceedings for the grant of protection and the language in which documentation of patent, utility model, industrial design, trade mark, geographical indication and topography of integrated circuits applications should be drawn up.

Article 5

1. Foreign persons shall enjoy the rights under this Act on the basis of international agreements.

2. Insofar as it is not contrary to the provisions of international agreements foreign persons may enjoy the rights under this Act on the principle of reciprocity. It is for the President of the Patent Office to ascertain, for the purpose of the procedure before the Patent Office and after having this consulted with a competent minister, whether the reciprocity conditions are satisfied.

Article 6

1. The following shall be granted on the conditions as laid down in this Act: patents and supplementary protection rights for inventions, rights of protection for utility models and trade marks, as well as rights in registration for industrial designs, topographies of integrated circuits and geographical indications.

2. Patent Office shall be responsible in the matters referred to in paragraph (1).

Article 7

1. Economic entities may provide for the acceptance of rationalisation projects on conditions laid down in regulations on rationalisation activities adopted by themselves.

2. Any technical solution susceptible of utilisation and not being a patentable invention, a utility model, an industrial design or topography of an integrated circuit may be recognised by an economic entity as a rationalisation project within the meaning of this Act.

3. In the regulations referred to in paragraph (1) an economic entity shall at least determine what kind of solutions and made by whom may be recognised by that entity as rationalisation projects, the manner in which presented projects are to be handled as well as the rules of remunerating the authors of the projects in question.

Article 8

1. On the conditions as laid down in this Act, the author of an invention, a utility model, an industrial design or topography of an integrated circuit shall be entitled to:

- (i) obtain a patent, a right of protection or a right in registration;
- (ii) remuneration;
- (iii) be mentioned as such in specifications, registers and other documents and publications.

2. The author of a rationalisation project accepted by an economic entity for exploitation shall be entitled to the remuneration specified in the regulations referred to in Article 7(1) effective on the day of its presentation, unless regulations subsequently promulgated are deemed more advantageous for the author. The provisions of paragraph (1)(iii) shall apply accordingly.

3. The provisions of paragraphs (1) and (2) shall apply accordingly to the joint author.

Article 9

Representatives of social organisations whose activities include the encouragement of activities in industrial property matters may, in accordance with their statutes, provide assistance to the authors of inventive projects and act in their interest in proceedings before judicial bodies and, subject to Article 236, before the Patent Office.

Title II Inventions, Utility Models and Industrial Designs

Part I Common Provisions

Article 10

1. Decisions on the grant of a patent for an invention or a right of protection for a utility model shall be taken after having examined by the Patent Office, to the extent as specified, whether the statutory requirements for the grant of a patent or a right of protection are satisfied.

2. Decisions on the registration of an industrial design shall be taken after having been verified whether the industrial design has duly been filed with the Patent Office.

Article 11

1. Subject to paragraphs (2), (3) and (5), the right to obtain a patent for an invention or a right of protection for a utility model, or a right in registration for an industrial design shall belong to the author .

2. Where an invention, a utility model or of an industrial design has been made jointly by a number of persons, the right to obtain a patent, a right of protection or a right in registration, respectively, shall belong to them jointly.

3. Where an invention, a utility model or an industrial design has been made by an author in the course of employment duties or in the execution of any other contract, the right referred to in paragraph (1) shall belong to the employer or the commissioner, unless otherwise agreed by the parties concerned.

4. Agreements concluded between economic entities may designate the entity to which the rights referred to in paragraph (1) shall belong where an invention, a utility model or an industrial design has been made in connection with the execution of such agreement.

5. Where an invention, a utility model or an industrial design has been made by an author with the assistance of an economic entity, the latter may enjoy the right to exploit the invention, the utility model or the industrial design in its own field of activity. In the agreement on the provision of assistance, the parties may stipulate that the right referred to in paragraph (1) shall belong in whole or in part to the economic entity.

Article 12

1. The right to a patent for an invention, a right of protection for a utility model or a right in registration for an industrial design is transferable or may be subject to succession.

2. A contract for the transfer of the right referred to in paragraph (1) shall be in writing on pain of invalidity.

Article 13

1. Subject to Articles 14 and 15¹, priority to obtain a patent, a right of protection or a right in registration shall be determined according to the date on which a patent application, a utility model application or an industrial design application has been filed with the Patent Office.

2. Subject to Article 31(4), an application shall be deemed to have been filed at the date at which it has been received by the Patent Office in a written form also by means of fax or electronically.

3. Where an application has been transmitted by means of fax, the original copy thereof shall be required to be furnished within 30 days from the date on which the transmission by fax was effected. The above time limit shall be non-restorable.

4. Where an application transmitted by means of fax is found illegible or lacking in identity with the original copy subsequently furnished, the date at which the original copy has been furnished in accordance with paragraph (3) shall be deemed to be the filing date.

5. The provision of paragraph (4) shall apply accordingly, where the original copy has been furnished after the expiration of the time limit referred to in paragraph (3); in that case the application transmitted by means of fax shall be deemed not to have been filed.

6. Where an application transmitted in an electronic form is affected by a harmful software, the Patent Office shall not be obliged to open such a communication and process it further. In such a case, as well as where the transmitted application has been found illegible, the provision of paragraph (1) has no effect.

7. An electronic form of an application shall mean a form set while transmitting the application with the use of a telecommunication network or on a digital information carrier within the meaning of Article 3 (i) of the Act of 17 February 2005 on the informatisation of works of the entities performing public activity (JL of 2013 item 235).

8. In the cases referred to in paragraph (6), illegible parts of the application shall be deemed not to be filed. The provisions of Article 31 paragraphs (3) to (5) shall apply accordingly.

9. Patent Office shall without delay notify the applicant, while using the same means of transmission, that the application transmitted by fax is illegible as a whole or in part, or that one of the situations referred to in paragraph (6) or (8) has occurred, where it is possible to find the e-mail address or establish the identity of the applicant and his address, and where it does not threaten the safety of the Patent Office's teleinformation system, within the meaning of Article 2 (iii) of the Act of 18 July 2002 on providing services electronically (JL No 144 item 1204, as amended¹), and the technical conditions of the means of transmission used by the applicant allow.

Article 14

Priority to obtain a patent, a right of protection or a right in registration shall be granted in the Republic of Poland, on conditions laid down in relevant international agreements, according to the date on which a patent, utility model or industrial design application has originally and duly been filed in a designated country, provided that as from that date the application is filed with the Patent Office within:

- (i) 12 months, as far as inventions and utility model applications are concerned;
- (ii) 6 months as far as industrial design applications are concerned.

Article 15

(deleted)

Article 15¹

1. Priority to obtain a patent, a right of protection or a right in registration shall be determined, on conditions laid down in relevant international agreements, according to the date on which the invention, the utility model or the industrial design was displayed, in the Republic of Poland or elsewhere in the world, at an official or officially recognised international exhibition, provided that the patent, utility model or industrial design application has been filed within six months of that date.

¹ Amendments to the aforementioned Act were published in the JL of 2004 No 96 item 959 and No 173 item 1808, of 2007 No 50 item 331, of 2008 No 171 item 1056 and No 216 item 1371, of 2009 No 201 item 1540, of 2011 No 85 item 459 and No 134 item 779, of 2012 item 1445 and 2013 item 1036.

2. Priority to obtain a right of protection for a utility model or a right in registration of an industrial design in the Republic of Poland shall also be determined according to the date on which the utility model or industrial design was displayed in the Republic of Poland at an exhibition other than exhibition defined in paragraph (1), indicated by the President of the Patent Office by way of notice in the Official Journal of the Republic of Poland “*Monitor Polski*” if the application with the Patent Office of the utility model or industrial design has subsequently been filed with the Patent Office within six months of that date.

3. The exhibition referred to in paragraph (2) is to provide a warranty of its credibility, should have an established repute and a longstanding tradition.

4. The initiative of indicating the exhibition referred to in paragraph (2) shall lie with the competent minister, voivode or an entity who is professionally engaged in the organisation of exhibitions referred to in paragraph (2).

Article 16

Where an invention, a utility model or an industrial design, being the subject of the first duly filed application, has previously been displayed on an exhibition and since the date of display up to the filing date it has enjoyed the provisional protection provided for under the Paris Convention, the priority to obtain a patent, a right of protection or a right in registration, referred to in Article 14, as well as the start of the time limits for filing applications with the Patent Office provided therein, shall be determined according to the date at which the invention, utility model or industrial design has been displayed at the exhibition concerned.

Article 17

1. The priority referred to in Articles 14 and 15¹ (earlier priority) is transferable and may be subject to succession.

2. A contract for the transfer of the priority referred to in paragraph (1) shall be in writing on pain of invalidity.

Article 18

Where a patent, utility model or industrial design application has been made independently by at least two persons who enjoy the priorities accorded the same date, the right to obtain a patent, a right of protection or a right in registration shall belong to each of these persons separately.

Article 19

1. At the request of the applicant the Patent Office shall issue, for the purpose of claiming priority abroad, a document in confirmation of the filing of the patent, utility model or industrial design application with the Patent Office (priority document).

2. A priority document may only be issued on the basis of the application, which meets the requirements specified in the Act, requisite for it to be deemed to have been filed.

Article 20

The author of an invention, a utility model or an industrial design, entitled to obtain a patent, a right of protection or a right in registration may transfer that right free of charge or

against an agreed compensation in favour of an economic entity or make the invention, the utility model or the industrial design available for exploitation by that entity.

Article 21

Where an invention, a utility model or an industrial design has been made available for exploitation pursuant to Article 20, the transfer of the right to a patent, a right of protection or a right in registration shall, subject to its acceptance by the economic entity for exploitation and notifying the author of that fact within one month, be effective from the date at which such invention, utility model or industrial design has been presented in writing to the economic entity, unless the parties have agreed on another time limit.

Article 22

1. Unless the parties agreed otherwise, the author of an invention, a utility model or an industrial design shall be entitled to remuneration for the exploitation by the economic entity of his invention, utility model or industrial design, where the right to exploit it or the right to a patent, the right of protection or the right in registration belongs to that entity under Article 11(3) and (5) or Article 21.

2. Where the parties have failed to agree on the amount of the remuneration, the latter shall be determined in due proportion to the profits obtained by the economic entity from the exploitation of the invention, the utility model or the industrial design, when taking into account circumstances in which the invention, the utility model or the industrial design has been made, in particular the extent to which the author has been assisted in making the invention, the utility model or the industrial design, as well as the scope of the author's employment duties involved in making the invention, the utility model or the industrial design.

3. Unless the agreement stipulates otherwise, the remuneration shall be paid in the total amount or in instalments.

4. The total amount of the remuneration shall be paid at the latest within two months from the date on which initial profits have been obtained from the exploitation of the invention, the utility model or the industrial design. Where the payment is made in instalments, the first instalment shall be paid within the time limit specified in the previous sentence, whereas the remaining instalments shall be paid at the latest within two months after the expiry of each year, however for no longer than five years from the date on which the first profits have been obtained.

Article 23

The remuneration for the author of an invention, a utility model or an industrial design, determined and paid under the provisions of Article 22(2) and (3) should be increased if the profits obtained by the entity prove to substantially exceed the profits taken as a basis for the purpose of determining the remuneration paid.

Part II Inventions and Patents

Chapter I Inventions

Article 24

Patents shall be granted – regardless of the field of technology – for any inventions which are new, which involve an inventive step and which are susceptible of industrial application.

Article 25

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

2. The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, displaying or disclosure in any other way, before the date according to which priority to obtain a patent is determined.

3. The content of any patent applications or utility model applications which enjoy the earlier priority, not made available to the public, shall also be considered as comprised in the state of the art, provided that they were published in the manner as specified in this Act.

4. The provisions of paragraphs (1) to (3) shall not prevent a patent from being granted for an invention concerning a substance or compositions comprised in the state of the art for the use of such substance or for the use of such substance in a specific manner for the purpose of treatment or diagnostics referred to in Article 29(1)(iii), provided that such use does not form part of the state of the art.

5. The provisions of paragraphs (1) and (2) shall not prevent a patent for an invention from being granted, provided that it was not disclosed earlier than six months before the filing date and it was due to or in consequence of an evident abuse in relation to the applicant or his legal predecessor.

Article 26

1. An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

2. In deciding whether an inventive step has been involved, the applications referred to in Article 25(3) shall not be taken into consideration.

Article 27

An invention shall be considered as susceptible of industrial application if by means of that invention a product may be produced or a process may be used, in a technical sense, in any kind of industry, including in agriculture.

Article 28

The following in particular shall not be regarded as inventions within the meaning of Article 24:

- (i) discoveries, scientific theories and mathematical methods;
- (ii) aesthetic creations;
- (iii) schemes, rules and methods for performing mental acts, doing business or playing games;

- (iv) creations, whose incapability of exploitation may be proved under the generally accepted and recognised principles of science;
- (iv)¹ creations or methods whose:
 - (a) capability of exploitation cannot be proved, or
 - (b) exploitation will not bring the result expected by the applicant – in the light of commonly accepted principles of science;
- (v) programs for computers;
- (vi) presentations of information.

Article 29

1. Patents shall not be granted for:
 - (i) inventions whose exploitation would be contrary to public order or morality; the exploitation of an invention shall not be deemed to be so contrary merely because it is prohibited by law;
 - (ii) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products obtained with the use of such processes;
 - (iii) methods for treatment of the human or animal body by surgery or therapy or diagnostic methods applied on human or animal bodies; this provision shall not apply to products, and in particular to substances or compositions applied in diagnostics or treatment.

2. The process for the production of plants or animals, referred to in section (1)(ii), is essentially biological if it consists entirely of natural phenomena such as crossing or selection.

Article 30

A right holder may obtain a patent for an improvement or an addition to the invention, where such improvement or addition has the characteristics of an invention but cannot be applied separately (patent of addition). A patent of addition may also be obtained for a patent of addition already granted.

Chapter 2 Filing of Patent Applications

Article 31

1. A patent application by means of which patent protection is sought shall contain:
 - (i) a request at least containing indications concerning the applicant, the definition of the subject-matter of the patent application and a petition for the grant of a patent or of a patent of addition;
 - (ii) a description of the invention disclosing its nature;
 - (iii) one or more claims;
 - (iv) an abstract.

2. The patent application referred to in paragraph (1) shall also contain drawings when they are necessary for the understanding of the invention.

3. The patent application which contains at least a request and parts which appear to be a description of the invention and a patent claim or claims shall be capable of being deemed to have been filed.

4. If the Patent Office finds that in a patent application some elements, referred to in paragraph (3), are missing, it shall fix in an order a time limit for completing the application, failing which the proceedings shall be discontinued; the date of receipt of the last missing document shall be considered to be the actual filing date.

5. If the Patent Office finds that in the patent application drawings are missing, to which the applicant refers, the Patent Office shall fix in an order a time limit for furnishing them, failing which shall result in a reference to the drawings being deemed not to have been made. A date of receipt by the Patent Office of the last missing drawing shall be considered to be the actual filing date.

Article 32

Where the applicant is not the inventor, he shall be obliged to name the inventor in the request and state the grounds on which his own right to a patent is based.

Article 33

1. Subject to Article 93⁶(1), the description referred to in Article 31(1)(ii) shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. In particular, the description shall contain the title of the invention designating the subject matter of the invention, specify the technical field to which the invention relates, as well as indicate the background art known to the applicant; it shall also present the invention in a detail manner, describe the figures in the drawings (if any), and indicate the way or ways of carrying out or exploiting the invention claimed using examples.

2. (*deleted*)

3. The patent claims referred to in Article 31(1)(iii) shall be entirely supported by the description. They shall define, in a clear and concise manner, the invention claimed and its technical contribution by way of indicating the technical features pertaining to its construction or composition of the product or to the means of technical impact on the matter or to a new application of a known product.

3¹. Each claim shall be constructed in a clear manner and presented in a single sentence only or in an equivalent of a sentence.

4. In addition to an independent claim or independent claims, which should present the combination of the technical features of the invention or a group of inventions covered, according to Article 34, by one patent application, in one patent application a relevant number of dependent claims may be included which are necessary to present various elaborations of the invention or to specify the features indicated in a characterising portion of the independent claim or of another dependent claim.

4¹. Interrelations between an independent claim and dependent claims shall be clearly reflected in the application.

5. The abstract referred to in Article 31(1)(iv) shall contain concise and clear definition of the subject-matter and characteristic technical features of the invention, and the indication of its intended purpose if it is not clearly implied by the subject-matter itself. Article 93⁶(1) shall apply accordingly.

6. The drawings, referred to in Article 31(2) shall reproduce the subject-matter of the invention, together with the description and patent claims, in a readable form and formulate it in a schematic manner with the omission of any descriptive parts, except for single words, if necessary. The application may contain a number of sheets with drawings. One sheet may contain more than one figure, however clearly separated one from another.

Article 34

1. The patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (unity of invention).

2. A group of inventions claimed in one and the same patent application shall be considered to fulfil the requirement of unity of invention if a relationship among those inventions involves one or more of the same or corresponding technical features from among those which define the claimed inventions and a contribution which they make over the prior art.

Article 35

1. An applicant wishing to take advantage of the priority of an earlier application shall be required to make, in a request, a declaration to that effect in a form of a statement and enclose a document in confirmation that the earlier patent application was filed in the designated country or certifying that the invention was exhibited at the indicated exhibition. The document concerned may also be furnished within three months of the filing date. In case of late furnishing of the said declaration or document, the priority claim shall be without effect.

2. *(deleted)*

3. *(deleted)*

4. The applicant shall be obliged to furnish, within three months from the filing date, the translation of the evidence referred to in paragraph (1) into Polish or other language if it stems from an international agreement or the provisions referred to in Article 4.

5. If the Patent Office finds that in the patent application the translation referred to in paragraph (4) is missing, it shall invite the applicant in an order to complete the patent application within the fixed time limit, failing which shall result in the refusal to grant earlier priority.

6. The applicant who was granted the right to earlier priority of the application filed or of the display at an exhibition, of the invention made by another person, shall be obliged to furnish within three months from the filing date a declaration of his entitlement to enjoy the earlier priority. The provision of paragraph (5) shall apply accordingly.

Article 36

An applicant shall be required to also attach to a patent application documents or declarations other than those specified in Articles 31, 32 and 35 if they are found necessary for supporting the statements or requests contained in the application. All the elements making up the patent application may be furnished in one copy only, except for the

description, the patent claims, the drawings and the abstract, which are to be furnished in as many copies and in a form as reasonable for the purpose of the proceedings and for making the files uniform.

Article 37

1. Until such time as a decision is taken on the grant of a patent the applicant may, subject to paragraph (2), make additions and corrections to his application, provided that such additions or corrections do not extend, beyond the content of the application as filed, the subject matter disclosed, as the subject of the technical solution, in the specification of the application containing the description of the invention, patent claims and drawings.

2. The alteration of the patent claims resulting in the extension of the scope of protection originally sought may only be made until the time of publication of the application and subject to the restriction referred to in paragraph (1) above.

3. In the cases referred to in paragraphs (1) and (2), as well as in any other case where in the course of proceedings the scope of the protection sought is changed, the applicant shall be obliged to furnish the abstract of the description of the invention modified accordingly. The provisions of Article 42(1) and Article 46(3) and (4) shall apply accordingly.

Article 38

1. During the examination of the patent application or within two months from the date on which a decision to refuse a patent becomes final, the applicant may request utility model protection. The utility model application shall be deemed to have been filed on the filing date of the original patent application.

2. Industrial design application referred to in paragraph (1) must fulfil the requirements referred to in Article 31(1) and Article 97(2) and (3) accordingly.

Article 39

1. Where a patent application has been filed in breach of the provision governing unity of invention, separate patent applications subsequently filed at the invitation of the Patent Office (divisional applications) shall be deemed to have been filed on the filing date of the original application.

2. Paragraph (1) shall apply accordingly where the applicant files divisional applications without having been invited by the Patent Office to do so and where the original application did not comply with the requirement of unity of invention.

3. Patent Office shall refuse in an order to accord the filing date of the original application to a divisional application if it considers that the latter does not involve the invention disclosed in the original application or that the application complied with the requirement of unity. The provisions of Article 37(1) and (2) and Article 49(2) shall apply accordingly.

Article 39¹

1. A divisional application shall meet the requirements referred to in Article 31(1).

2. Where the applicant wishes to enjoy an earlier priority in respect of a divisional application, and declarations to that effect and the evidence referred to in Article

35(1) together with the translation, when required, have been, within the prescribed time limit, furnished and included in the files of the original application from which that application has been made divisional, the applicant should confirm in the request those declarations and furnish, together with the divisional application, a copy of the evidence, referred to in Article 35(1) or a copy of its translation, when required. The provisions of Article 35(5) and (6) shall apply accordingly.

3. Patent Office shall invite by way of order, under pain of refusal to grant earlier priority in respect of a divisional application, to complete the application within a prescribed time limit if it finds that it does not contain a copy of a document referred to in Article 35(1).

Article 40

A person having his seat or domicile in the territory of the Republic of Poland who wishes to seek patent protection in another country, may file a patent application through the intermediary of the Patent Office, under the procedure provided for in:

- (i) an international agreement or provisions of law of the European Union, referred to in Article 4, or
- (ii) this Act
 - after filing of the said patent application with the Patent Office.

Chapter 3 Processing of Patent Applications

Article 41

1. Upon receipt of a patent application, the Patent Office shall accord a serial number to it, acknowledge the date of actual receipt and notify the applicant accordingly.

2. In the instances referred to in Article 13(4) and (5) and Article 31(4) and (5), the date of filing of the application shall be acknowledged by way of order.

Article 42

1. As from the receipt of the patent application filed in accordance with Article 31(3)-(5) and throughout the patent granting proceedings the Patent Office shall, subject to paragraph (2), invite the applicant, by way of orders, to complete the application or to remedy any identified omissions or serious defects within a fixed time limit, failure to do which shall result in discontinuance of the proceedings.

2. Where it has been established that the application was filed in breach of the provision governing unity of invention the Patent Office shall invite, in an order, the applicant to file divisional applications. If the divisional applications is not received by the Office within the fixed time limit, the original application shall be recognised as relating to the invention first mentioned in the patent claims as well as to other inventions fulfilling the requirement of unity of invention, other inventions being considered to have been withdrawn.

Article 43

1. Subject to paragraphs (2) and (3), the Patent Office shall publish the particulars of the patent application filed immediately after the expiry of eighteen months from the date of priority to obtain a patent. Within a period of twelve months from the date of priority the applicant may request publication at an earlier date.

2. The particulars of the patent application shall not be published where:

- (i) the application relates to a secret invention, or
- (ii) before the publication a final decision has been taken on discontinuance of the proceedings or on refusal to grant a patent.

3. Where in the cases referred to in paragraph (2) the reasons for non-publication of the particulars of the patent application cease to exist the Patent Office shall publish the particulars of the application immediately after the proceedings have been initiated or resumed.

Article 44

1. As from the date of publication of the particulars of the patent application third parties may inspect the application specification. Until a decision on the grant of a patent is taken, such parties may submit to the Patent Office any observations as to the existence of grounds that may prevent the grant of a patent.

2. Any amendments to the patent claims received by the Patent Office at least one month before the publication of the particulars of the patent application shall be introduced in the specification together with the indication of the date of making thereof.

Article 45

1. During a period preceding the publication of the particulars of a patent application filed, the files relating to the application may not be disclosed or made available to unauthorised parties without the applicant's consent.

2. Where in the request for a patent the applicant gives his consent, the Patent Office may only make available to third parties the information on the filing of the application, while disclosing its number, the filing date, the title of the invention and the applicant's name.

3. In the course of examination of the patent application the Patent Office may, without the applicant's consent, seek opinions, as necessary. Anyone involved in the preparation and the issue of such opinions shall be bound not to disclose the data concerning the application.

Article 46

1. When reasonable, the Patent Office, when having established that the statutory requirements for the grant of a patent have been satisfied, may invite the applicant in an order to furnish, within a fixed time limit and under pain of discontinuance of the proceedings, documents and explanations relating to the application, as well as to make specific corrections or additions in the documents making up the application and to furnish drawings which, although not essential for a better understanding of the invention, however are needed for the purpose of the proper presentation of the invention or are for other reasons necessary.

2. Paragraph (1) shall apply accordingly where after the start of patent granting proceedings the applicant has made additions or corrections in the application documentation that are prohibited by this Act.

3. Subject to paragraph (4) the Patent Office may make corrections in the documents making up the application only to the extent as necessary to rectify obvious mistakes or language errors.

4. Patent Office may also make corrections in the abstract, other than those specified in paragraph (3).

Article 47

1. For each patent application, the particulars of which are to be published, the Patent Office shall draw up a search report containing the citations of the documents which may be taken into consideration in evaluating the invention claimed in the application.

1¹.The provisions of paragraph (1) shall not apply to the extent to which the documentation of the application, referred to in paragraph (1) does not enable to conduct searches in the state of the art. In such a case the Patent Office shall notify the applicants about the reasons for failure to draw up a report, referred to in paragraph (1), in such extent.

2. Immediately after it has been drawn up, the search report referred to in paragraph (1) shall be communicated by the Patent Office to the applicant.

3. With regard to the application referred to in paragraph (1) the Patent Office can draw up a preliminary assessment concerning the novelty of the invention, inventive step or the requirement of unity. The preliminary assessment shall be communicated to the applicant without delay. Under no circumstances shall the preliminary assessment be made available to third parties.

4. After publication, referred to in Article 43 exclusively the search report can be made available to third parties by the Patent Office.

Article 48

Patent Office shall, by way of order, decide on refusal to grant the earlier priority in whole or in part, if it has been found that:

- (i) the applicant is not entitled to enjoy the earlier priority right, or
- (ii) a patent application filed abroad, of which priority is claimed by the applicant, is not the first application within the meaning of Article 14, or
- (iii) the exhibition, the display at which serves as a basis for claiming priority by the applicant, does not meet the requirements specified in Article 15¹, or
- (iv) the invention applied for protection with the Patent Office or the relevant part thereof differs from the invention to which the applicant has the right of priority, or
- (v) the applicant has failed to observe the time limits prescribed for filing an application pursuant to Articles 14 and 15¹, or the time limit for furnishing a priority document or other documents or declarations required for the purpose of obtaining the priority right, or
- (vi) the applicant has furnished a declaration of priority of an earlier application in breach of the provision of Article 35.

Article 49

1. If the Patent Office establishes that:

- (i) the requirements for the grant of a patent have not been satisfied or
- (ii) the invention has not been disclosed in a sufficient manner

- it shall take a decision on refusal to grant a patent.

2. Before the Patent Office takes the decision referred to in paragraph (1), it shall fix a time limit within which the applicant may comment on collected evidence and documents which could prove the existence of the grounds for the refusal to grant a patent. The evidence and documents shall be made available to the applicant in the language in which they were drawn up and they may extend beyond the list of the citations contained in the search report.

Article 50

1. Subject to paragraph (2), the provisions of Article 49 shall also apply where the statutory requirements for the grant of a patent have not been satisfied only in respect of a part of the application and the applicant refrains from reducing the scope of the protection sought.

2. Where the statutory requirements for the grant of a patent are not satisfied only in respect of some of the inventions covered by one application and the applicant refrains from reducing the scope of the protection sought, a patent for these inventions shall be first to be refused by the Patent Office. On the respective decision becoming final the Patent Office shall issue an order by which it invites the applicant to make the relevant amendments in the application specification as filed, failing which result in the discontinuance of the proceedings.

Article 51

Patent Office may choose to take the decision referred to in Article 49(1) before the particulars of the application are published.

Article 52

1. Where the Patent Office establishes that the statutory requirements for the grant of a patent are satisfied, it shall decide on the grant of a patent.

2. A patent shall be granted subject to payment of a fee for the first protection period. If the fee is not paid within the prescribed time limit the Patent Office shall declare by that the decision on the grant of the patent has lapsed.

Article 53

Granted patents shall be recorded in the Patent Register.

Article 54

1. The grant of a patent shall be evidenced by the issue of letters patent.

2. The patent specification consisting of the description of the invention, the claims and drawings shall constitute an integral part of the letters patent. The patent specification shall be published by the Patent Office.

Article 55

1. Any rectification of the patent specification may only be made to remedy obvious mistakes or misprints.

2. In its decision on rectification the Patent Office shall determine, at the same time, whether and to what extent:

- (i) the patent specification is to be re-published;

(ii) the right holder should bear the cost of the republication of the specification.

3. Communication of the rectification shall be published in the official gazette “*Wiadomości Urzędu Patentowego*”.

Chapter 4 Secret Inventions

Article 56

1. An invention made by a Polish national may be considered to be a secret invention if it concerns national defence or the security of the State.

2. The following, in particular, are inventions concerning national defence: new categories of weapons or military equipment and methods of combat.

3. The following, in particular, are inventions concerning the security of the State: technical means applied by civil services authorised to carrying out actions and reconnoitring operations, as well as new categories of equipment and matériel, and methods of use thereof by the said services.

Article 57

1. A secret invention shall be an invention which constitutes non-public information which has been classified as: “top secret”, “secret”, “confidential” or “proprietary.”

2. Secrecy of an invention in the field of national defence or the security of the State shall be determined, respectively, by the Minister of National Defence, a minister competent in internal affairs or by the Chief of the State Security Office.

Article 58

1. A secret invention may be applied for protection with the Patent Office only for the purpose of claiming priority to obtain a patent. Throughout the period where the invention applied for protection remains secret, the Patent Office shall refrain from processing that application.

2. Paragraph (1) shall apply accordingly where a decision on the secrecy of the invention is issued after the receipt of the application by the Patent Office.

Article 59

1. The right to a patent for a secret invention applied with the Patent Office for the purpose of claiming priority shall be transferred, against compensation, to the State Treasury represented by the Minister of National Defence, a minister competent in internal affairs or by the Chief of the State Security Office, respectively.

2. The amount of the compensation referred to in paragraph (1) shall be determined in proportion to the market value of the invention.

3. If the parties have failed to agree on the amount and the terms of payment of the compensation referred to in paragraph (1), the said compensation determined by the Minister

of National Defence, a minister competent in internal affairs or by the Chief of the State Security Office, respectively, shall be payable yearly from the funds of the State budget in total or in instalments, however for no longer than five years.

Article 60

1. The Minister of National Defence, a minister competent in internal affairs or the Chief of the State Security Office, respectively, shall decide whether the invention has ceased to be secret. In that case, the Patent Office shall, at the request of a competent authority, initiate or resume the patent granting proceedings, provided that the 20-year period counted from the date of filing of the invention for protection has yet not expired.

2. After the period referred to in paragraph (1) has expired, applications relating to secret inventions shall be deemed not to have been filed.

Article 61

The Council of Ministers shall, by way of regulation, determine the categories of inventions which fall within the sphere of national defence or the security of the State procedures applied in respect of such inventions both before ascertainment by a competent authority whether or not said inventions are secret and after deciding on their secrecy.

Article 62

1. To the extent as agreed between the authorities concerned, the Patent Office shall communicate to the Minister of National Defence, a minister competent in internal affairs or to the Chief of the State Security Office, lists of the inventions filed concerning national defence or the security of the State as well as, at the request of these authorities, the descriptions and drawings thereof. The provision of Article 45(3), second sentence, shall apply accordingly.

2. The files of the application relating to a secret invention may be made available to parties duly authorised by the Minister of National Defence, a minister competent in internal affairs or to the Chief of the State Security Office.

Chapter 5 Patents

Article 63

1. A patent shall confer the exclusive right to exploit the invention, for profit or for professional purposes, throughout the territory of the Republic of Poland.

2. The scope of the protection sought shall be determined by the claims contained in the patent specification. The patent specification and drawings may be used to interpret the claims.

3. The term of a patent shall be 20 years counted from the date of filing of the patent application with the Patent Office.

Article 64

1. A patent granted for a process of manufacture shall also cover products directly obtained by means of that process.

2. In the case of new products, or where the right holder proves that he was unable through reasonable efforts to identify the process of manufacture actually used by another person, the product which may be obtained by means of the patented process shall be deemed to have been obtained by that process.

3. In the case referred to in paragraph (2), in the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

Article 65

A patent granted for an invention relating to the use of a substance comprised in the state of the art for the purpose of obtaining a product eligible for a new use shall also cover products specifically prepared for such use by means of that invention.

Article 66

1. The patent holder shall have the right to prevent any third party not having his consent from exploiting his invention for profit or for professional purposes by way of performing the acts consisting of:

(i) making, using, offering, putting on the market a product that is the subject matter of the invention, or importing the product for such purposes, or

(ii) employing a process that is the subject matter of the invention, as well as using, offering, putting on the market or importing for such purposes the product directly obtained by that process.

2. The patent holder shall have the right to authorise (license) another party to exploit his invention (license agreement).

Article 67

1. The patent is transferable or may be subject to succession.

2. The transfer contract shall be in writing on pain of invalidity.

3. The transfer of a patent shall be binding on third parties as from the date of its entry in the Patent Register.

4. The establishment of registered pledge on a patent shall be effective upon its entry into the Pledge Register and shall be subject to disclosure in the Patent Register.

5. At the request of a competent authority the Patent Office shall enter the information on the seizure of patent into the Patent Register.

Article 68

1. The patent holder or the licensee may not abuse their rights, in particular by preventing the invention from being exploited by a third party if such exploitation is necessary for the purpose of meeting home market demands and is particularly dictated by

public interest considerations, and consumers are supplied with the product in insufficient quantity or of inadequate quality, or at excessively high prices.

2. Preventing third parties from exploiting the invention within a period of three years from the date of the grant of the patent shall not be considered the abuse of rights, referred to in paragraph (1).

3. Patent Office shall have the right to request a patent holder or a licensee to submit any explanations as to the scope of the exploitation of the invention for the purpose of establishing whether or not the patent is abused.

4. The provisions of paragraphs (1) and (2) shall not prejudice the provisions on counteracting monopolistic practices.

Article 69

1. The following shall not be considered acts of infringement of a patent:

(i) the exploitation of an invention concerning means of transport or their parts or accessories, temporarily located in the territory of the Republic of Poland, or concerning articles which are in transit through its territory;

(ii) the exploitation of an invention for national purposes, to a necessary extent, without the exclusive right, where it is has been found indispensable to prevent or eliminate a state of emergency relating to vital interests of the State, in particular to security or public order;

(iii) employing of an invention for search and experimental purposes, for the evaluation thereof, analysis or teaching;

(iv) the exploitation of an invention to a necessary extent, for the purpose of performing the acts as required under the provisions of law for obtaining registration or authorisation, being, due to the intended use thereof, requisite for certain products to be allowed for putting them on the market, in particular those being pharmaceutical products;

(v) the extemporaneous preparation of a medicine in a pharmacy on a physician's prescription.

2. Depending on the circumstances involved, a decision on taking the invention for exploitation in the cases referred to in paragraph (1)(ii) shall be taken by a competent minister or a Voivode and communicated without delay to the patent holder. In the decision, the scope and duration of the exploitation of the invention shall be determined.

3. The decision referred to in paragraph (2) shall be liable to complaint lodged in the administrative court.

4. The person whose invention is exploited for national purposes shall have the right to compensation payable from the State budget funds at an amount corresponding to the market value of the license.

5. Grant of the registration or the authorisation referred to in paragraph (1)(iv) shall be without prejudice to civil liability for putting on the market of a product without the patent holder's consent, where such consent is required.

Article 70

1. The rights conferred by a patent shall not extend to acts concerning a product embodying the invention or manufactured by means of the invention, consisting in particular

of its offering for sale or further putting on the market if that product has been put on the market in the territory of the Republic of Poland by the patent holder or with his consent.

2. A patent shall neither be considered infringed by an act of importation into the territory of the Republic of Poland or other acts referred to in paragraph (1) in respect of a product that has earlier been put on the market in the territory of the European Economic Area by the patent holder or with his consent.

Article 71

1. Any person who, at the date according to which the priority for the grant of a patent is determined, exploited the invention in the territory of the Republic of Poland in good faith, may continue to exploit it in his enterprise free of payment to the extent to which he had previously exploited the invention. This right shall also belong to a person who at the same date had already made substantial preparations for the exploitation of the invention.

2. The rights referred to in paragraph (1) shall, at the request of the person concerned, be recorded in the Patent Register. The rights may be transferred to another party only together with the enterprise.

Article 72

1. A joint patent holder may, without the consent of the other joint holders, exploit the invention himself and enforce his claims in the event of infringement of the patent.

2. Unless the agreement stipulates otherwise, where one of the joint holders makes profits from the exploitation of the invention, each of the other joint holders shall be entitled to receive an adequate part, proportional to his share in the patent, of one fourth of the profits so obtained after deduction of the expenses incurred.

3. Unless the contract on joint ownership of the patent stipulates otherwise, in cases not covered by paragraphs (1) and (2), the provisions of the Code of Civil Law governing joint ownership in fractional parts shall apply accordingly.

4. The provisions of paragraphs (1)-(3) shall apply accordingly to the joint right to the patent.

Article 73

A patent holder may indicate, in particular by means of marking products with an appropriate sign, that his invention enjoys patent protection.

Article 74

Where a patent application has been filed or a patent obtained by a person not entitled thereto, the entitled person may demand that the patent granting proceeding be discontinued or the patent granted be revoked. He may also demand that a patent be granted in his favour or that the patent already granted be transferred to him against reimbursement of the incurred costs of filing of the application or of granting the patent.

Article 75

1. A person who, acting in good faith, was granted or acquired the patent subsequently transferred to the entitled person under Article 74, or, being in good faith, acquired a license and had exploited the invention for at least one year before a proceeding for the transfer of the

patent was instituted, or within that period made substantial preparations necessary for exploiting the invention, may, subject to payment in favour of the entitled person of compensation at the amount as determined, continue to exploit that invention in his enterprise to the extent to which he had exploited it at the date of institution that proceeding.

2. The right to exploit the invention, referred to in paragraph (1) shall, at the request of the person concerned, be recorded in the Patent Register. The right may be transferred to another party only together with the enterprise.

Chapter 5¹ Supplementary protection right

Article 75¹

In the territory of the Republic of Poland supplementary protection rights shall be granted on the conditions laid down in the regulations concerning the creation in the European Union of supplementary protection certificates for medicinal products and plant protection products.

Article 75²

1. The application for the grant of a supplementary protection right, hereinafter referred to as “the application”, shall be lodged with the Patent Office. The provisions of Article 13(2)-(9) shall apply accordingly.

2. The provisions of Title VI shall apply accordingly to proceedings for the grant of a supplementary protection right.

Article 75³

Patent Office shall take a decision on the grant of a supplementary protection right after having established that the requirements for its grant have been satisfied. The provisions of Articles 42 and 46 shall apply accordingly.

Article 75⁴

1. The grant of a supplementary protection right shall be evidenced by the issue of a supplementary protection certificate. The provision of Article 73 shall apply accordingly.

2. Granted supplementary protection rights shall be recorded in the Supplementary Protection Right Register.

Article 75⁵

1. Where the Patent Office finds that the requirements for the grant of a supplementary protection right are not satisfied or that the application has been lodged after the expiry of the prescribed time limit, it shall decide on the refusal to grant the supplementary protection right. The provision of Article 49(2) shall apply accordingly.

2. The term for lodging an application, referred to in paragraph (1) shall not be restorable.

3. *(deleted)*

Article 75⁶

1. Patent Office shall declare the decision on the grant of the supplementary protection right lapsed where:

(i) the basic patent has expired before the termination of the term for which it was granted, or

(ii) during the term of the basic patent the market authorisation for the product has been withdrawn or the right holder has surrendered his supplementary protection right.

2. In the cases referred to in paragraph (1), the granted supplementary protection right shall cease to be valid.

3. Patent Office shall declare the supplementary protection right lapsed where the authorisation, referred to in paragraph (1)(ii), has been withdrawn after the expiry of the term for which the basic patent was granted.

4. The provisions of Article 90 shall apply accordingly to supplementary protection right.

Article 75⁷

1. Any party may request that the supplementary protection right be invalidated, where:

(i) it has been granted in breach of the provisions governing the requirements for its grant, or

(ii) the basic patent has been invalidated in the part, on which the supplementary protection right has based.

2. The provision of Article 89(2) shall apply accordingly to the cases referred to in paragraph (1).

3. Where the basic patent is invalidated in whole, the granted supplementary protection right shall become invalid by virtue of law.

Article 75⁸

Decisions, declared lapsed, on the grant of the supplementary protection right or on the lapse of that right, or on its invalidation shall be recorded in the Supplementary Protection Right Register.

Article 75⁹

1. The provisions governing licence contracts and transfer of the patent shall apply accordingly to the supplementary protection right.

2. The declaration of licenses of the right to exploit the invention, when submitted according to the provisions of Article 80, shall also be effective in respect to the supplementary protection right.

Article 75¹⁰

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by an application for the grant of a supplementary protection right, the detailed rules and procedure to be applied in the course of processing applications including, in

particular, the place and the manner of publication of the mention of applications lodged, as well as the information to be contained in the supplementary protection certificate. The requirements to be satisfied by applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

Chapter 6

License Contracts

Article 76

1. The license contract shall be in writing on pain of invalidity.
2. In a license contract restricted exploitation of the invention may be provided for (restricted license). Unless the license contract provides for the restricted exploitation of the invention, the licensee shall have the right to exploit the invention to the same extent as the licensor (full license).
3. The license shall terminate at the latest on the lapse of the patent. The parties shall be free to provide for a longer duration of the contract in respect of the provisions other than those governing the license, and in particular those involving payable services necessary for the purpose of exploiting the invention.
4. Unless in a license contract the exclusive exploitation of the invention in a specific manner is reserved, the grant of a license to one party shall not prevent other parties from being granted a license, as well as the patent holder from concurrent exploiting of the invention (non-exclusive license).
5. A licensee may grant a further license (sub-license) only with the patent holder's consent; grant of further sub-licenses shall not be permitted.
6. The license shall, at the request of the interested party, be recorded in the Patent Register. The holder of an exclusive license recorded in the Register may, to the same extent as the patent holder, enforce his claims in the event of infringement, unless the license contract stipulates otherwise.

Article 77

Unless otherwise agreed in the license contract, the licensor shall be required to transfer to the licensee all the technical know-how as necessary to exploit the invention that is available to him at the time of concluding the contract.

Article 78

Where a licensed patent is transferred, the license contract shall be binding on the successor in title.

Article 79

Unless otherwise agreed between the parties, the provisions on license contracts shall apply accordingly to contracts for exploitation of an invention applied for protection with the

Patent Office and for which no patent has as yet been granted, as well as to contracts for exploitation of an invention not applied for protection but being company's know-how.

Article 80

1. A patent holder may submit to the Patent Office a declaration of licenses of the right to exploit the invention (open license). The declaration shall be irrevocable and non-liable to change.

2. Submission of the declaration referred to in paragraph (1) shall be recorded in the Patent Register.

3. Where the declaration of open license is submitted, renewal fees due for patent protection shall be reduced by one half. The same shall also apply to a single renewal fee or a fee for first protection period if the fee so reduced is received together with the declaration at the latest at the prescribed term.

4. An open license shall be full and non-exclusive and a royalty may not exceed ten percent of the profits obtained by the licensee in each year of exploiting the invention, after deduction of the expenses incurred.

5. An open license shall be acquirable by way of:

- (i) conclusion of a license contract, or
- (ii) starting to exploit the invention without entering into, or before the conclusion of, negotiations; in that case the licensee shall be obliged to inform the licensor of that fact in writing within one month of the date of start to exploiting the invention.

6. Unless the license contract stipulates otherwise, the licensee shall pay the maximal royalty provided for in paragraph (4) within one month from the end of each calendar year in which the licensee has exploited the invention, unless a royalty in a lower amount is provided for in the licensor's declaration.

Article 81

Unless otherwise stipulated in a contract for research work or in another contract of similar effect, the person carrying out the work shall be deemed to have granted a license for exploiting the inventions contained in the results thereof transferred to the commissioning party (implied license).

Chapter 7 Compulsory license

Article 82

1. Patent Office may grant authorisation to exploit a patented invention of another person (a compulsory license), where:

- (i) it is necessary to prevent or eliminate a state of national emergency, in particular in the field of defence, public order, the protection of human life and health, as well as the protection of natural environment, or
- (ii) it has been established that the patent has been abused within the meaning of Article 68, or

(iii) it has been established that the patent holder enjoying the right of priority of an earlier application (the earlier patent) prevents, by refusing to conclude a license contract, the meeting of home market demands through the exploitation of the patented invention (the dependent patent), whose exploitation would encroach upon the earlier patent; in such case the holder of the earlier patent may demand that an authorisation be given to him for the exploitation of the invention that is the subject matter of the dependent patent (cross-license).

2. The grant of a compulsory license for the exploitation of an invention in the case referred to in paragraph (1)(iii) shall be conditional upon ascertainment that the exploitation of the invention that is the subject matter of the dependent patent, where the both inventions concern the same subject matter, involves an important technical advance of considerable economic significance. In case of an invention concerning semi-conductor technology, a compulsory license may only be granted to counteract unreasonable anti-competitive practices.

3. Where the Patent Office finds that the patent is abused within the meaning of Article 68, it may decide that a compulsory license may be applied for and shall announce this fact in "*Wiadomości Urzędu Patentowego*".

4. A compulsory license may be granted if the applying party is able to prove that it has earlier made, in good faith, efforts to obtain a license. This requirement may be waived in the case of a compulsory license to be granted for the purpose of preventing or eliminating a state of national emergency or where it is announced that a compulsory license may be applied for.

5. Where it is announced that a compulsory license may be applied for, waiver of the requirement referred to in paragraph (4) shall not be applicable in respect of applications for the grant of a license submitted after the expiration of a period of one year counted from the date of that announcement.

6. The provision of paragraph (1)(iii) shall apply accordingly where a plant breeder is not able to exercise his right to the protected plant variety or demands a cross-license to be granted to him by the patent holder.

Article 83

The compulsory license shall be non-exclusive.

Article 84

1. The person exploiting the invention under a compulsory license shall be obliged to pay a royalty to the patent holder.

2. Patent Office shall determine the scope and duration of a compulsory license, the detailed terms and conditions of its exercise, as well as the amount, in proportion to the market value of the license, of the royalty and the manner and time limits of payment.

Article 85

A compulsory license may only be transferred together with the enterprise or with that of its part, in which it is worked. A compulsory license relating to the earlier patent may only be transferred to a third party together with the dependent patent.

Article 86

When reasonable in specific circumstances, the decision on the grant of a compulsory license may, at the request of the interested party, be changed, in part relating to the scope and duration of the license or to the amount of the royalty, two years after it was taken.

Article 87

Compulsory licenses and cross-licenses shall, at the request of the interested party, be entered in the Patent Register.

Article 88

The provisions on the grant of a compulsory license in the case referred to in Article 82(1)(iii) shall apply accordingly to a utility model, whose exploitation would encroach upon the earlier patent.

Chapter 8 Invalidation and Lapse of the Patent

Article 89

1. A patent may be declared invalid in whole or in part at the request of any person having a legitimate interest therein, who is able to prove that:

- (i) the requirements for the grant of a patent have not been satisfied, or
- (ii) the invention has not been disclosed in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, or
- (iii) the patent has been granted for an invention not covered by the contents of the application or of the original application

2. The General Prosecutor of the Republic of Poland or the President of the Patent Office may, in the public interest, request that a patent be invalidated or intervene in an invalidation action already pending.

Article 90

1. A patent shall lapse on:

- (i) the expiration of the term for which it has been granted, or
- (ii) the surrender of the patent by the patent holder before the Patent Office, with the consent of the parties having rights in the patent, or
- (iii) failure to pay a renewal fee in the prescribed time limit, or
- (iv) the invention, subject to Article 93⁷, becoming irreversibly unfeasible for exploitation due to the lack of access to the biological material, which is needed for that purpose, however it became inaccessible and unfeasible for reproduction on the basis of the description.

2. In the cases referred to in paragraph (1)(ii)-(iv), the Patent Office shall take decisions on the lapse of a patent.

3. Subject to paragraph (4), a patent shall lapse at a date, at which an event has occurred that is considered under this Act as giving rise to the lapse of the patent. The date of the lapse of the patent shall be confirmed in a decision.

4. In the case of failure to pay a renewal fee within the prescribed time limit, a patent shall lapse at the date at which a preceding period of protection has expired.

Article 91

Patents of addition shall cease to have effect together with a basic patent. Where a basic patent ceases to have effect for a reason which does not affect the invention that is the subject matter of a patent of addition, the patents of addition of the basic patent shall become regular patents and continue to have effect for the period for which the basic patent has been granted.

Article 92

Invalidation or lapse of a patent shall be recorded in the Patent Register.

Article 92¹

The provisions of Articles 89, 91 and 92 shall apply accordingly to invalidation of European patents granted under the procedure established in the European Patent Convention.

Article 93

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by a patent application, the detailed rules and procedure to be applied in the course of processing and examination of patent applications at the Patent Office including, in particular, the manner and form of publication of patent applications, the extent to which the Patent Office is authorised to make corrections in abstracts, as well as the form in which search reports are to be established, and the manner and term of making them available to third parties. The requirements to be satisfied by patent applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

Chapter 9 Special Provisions on Biotechnological Inventions

Article 93¹

Any reference in this Chapter:

(i) to “biotechnological invention” shall mean the invention, within the meaning of Article 24, concerning a product consisting of or containing biological material, or a process by means of which biological material is produced, processed or used,

(ii) to “biological material” shall mean any material containing genetic information and capable of reproducing itself or being reproduced in a biological system,

(iii) to “microbiological process” shall mean any process involving or performed upon or resulting in microbiological material.

Article 93²

1. The following, in particular, shall be considered biological inventions eligible for patent protection:

(i) inventions, the subject of which is biological material which is isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature,

(ii) elements isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, even if the structure of that element is identical to that of a natural element,

(iii) inventions which concern plants or animals, if the technical feasibility of the invention is not confined to a particular plant or animal variety.

2. In a patent application containing a sequence or a partial sequence of a gene, the industrial application of the sequence shall be disclosed in the description of the patent, while an independent patent claim shall indicate the function performed by the sequence.

3. In order to fulfil the industrial application criterion in the case of the sequence or a partial sequence of a gene being used to produce protein or protein component, the description of the invention shall determine which protein or which protein component is produced and what functions it performs.

4. If the patent application referred to in paragraph 2 discloses nucleotide or amino acid sequences, the applicant shall submit the sequence listing electronically.

Article 93³

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

2. The following, in particular, shall be considered biotechnological inventions, whose exploitation would be contrary to public order or morality within the meaning of Article 29(1)(i), or with public morality:

- (i) processes for cloning human beings;
- (ii) processes for modifying the germ line genetic identity of human beings;
- (iii) uses of human embryos for industrial or commercial purposes;
- (iv) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.

Article 93⁴

1. The protection conferred by a patent on a biological material possessing specific characteristics indicated in a patent claim or claims as a result of the invention shall extend to any biological material derived from that biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

2. The protection conferred by a patent on a process that enables a biological material to be produced, possessing specific characteristics indicated in a patent claim or claims as a result of the invention shall extend to biological material directly obtained through that process and to any other biological material derived from the directly obtained biological material through propagation or multiplication in an identical or divergent form and possessing those same characteristics.

3. The protection conferred by a patent on a product containing or consisting of genetic information shall extend to all material, save as provided in Article 93³(1), in which the product is incorporated and in which the genetic information is contained and performs its function.

Article 93⁵

1. The protection conferred by a patent shall not extend to biological material obtained by means of a single act of propagation or multiplication of biological material placed on the market by the holder of the patent or with his consent, where the propagation or multiplication necessarily results from the application of the biological material.

2. Any party who has acquired or otherwise obtained the patented biological material from the holder of a patent or with his consent for agricultural use shall be authorised to use it for propagation or multiplication on his own farm, the extent and conditions of this derogation being the same as provided for the use, without the plant breeder's consent, of plant propagating material of the plant variety protected under the provisions of the act of 26 June 2003 on the legal protection of plant varieties (JL No 137, item 1300; 2006 No 126, item 877; 2007 No 99, item 662; 2011 No 186, item 1099).

3. The provision of paragraph (2) shall apply accordingly to breeding stock or other animal reproductive material.

Article 93⁶

1. Where an invention involves the use of biological material which is not available to the public and which cannot be described in the description in such a manner as to enable the invention to be reproduced by a person skilled in the art, the disclosure thereof may be made by reference to the material deposited, at the latest at the filing date, in a depositary institution recognised under an international agreement or in a national depositary institution, which is mentioned by the President of the Patent Office in an announcement published in the Official Gazette of the Republic of Poland "*Monitor Polski*".

2. The President of the Patent Office shall announce the acquisition of the status of the national depositary institution, referred to in paragraph (1), after having received, at the request of the institution concerned, acceptance from the minister competent in respect of the subject of deposited biological materials.

3. Where the deposit referred to in paragraph (1) has been made, the application must be accompanied by an attestation issued by the depositary institution, furnished by the applicant. The attestation should include at least the name of the institution, the date of the deposit and the accession number given to the biological material.

4. The attestation issued by a depositary institution may be furnished within six months from the filing date. In case of late furnishing of the said attestation the deposit of the biological material shall not be considered equivalent to its disclosure in the application.

5. Access to the deposit referred to in paragraph (1) before the publication of the particulars of the patent application shall be limited to the parties mentioned in Article 251(1). At the applicant's request submitted to the Patent Office before the publication of the particulars of the patent application, the above limitation shall extend for the entire term during which the application is processed.

6. After the particulars of the application have been published, unless the request referred to in paragraph (5) has been submitted, and after the patent has been granted, access to the deposit may not, subject to the condition referred to in paragraph (7), be denied to third parties. This provision shall apply accordingly notwithstanding invalidation or lapse of the patent.

7. The sample of the biological material shall be supplied only if the person requesting it undertakes in writing, vis-à-vis the applicant or the holder of the patent, for the term during which the patent remains in force:

- (i) not to make it or any material derived from it available to third parties,
 - (ii) not to use it or any material derived from it except for experimental purposes
- unless the applicant or the holder of the patent expressly waives such an undertaking.

8. Where the Patent Office takes a decision to refuse the grant of a patent or to discontinue the patent granting proceedings, the access to the deposited biological material, at the applicant's request submitted within the term provided for in paragraph (5), shall be limited to the parties, mentioned in paragraph (5), for 20 years from the date on which the patent application was filed. The provision of paragraph (7) shall apply accordingly.

Article 93⁷

If the biological material deposited in accordance with Article 93⁶ ceases to be available from the depositary institution, a new deposit shall be permitted on the terms as laid down in an international agreement.

Part III Utility Models and Rights of Protection for Utility Models

Article 94

1. Any new and useful solution of a technical nature affecting shape, construction or durable assembly of an object shall constitute a utility model.

2. A utility model shall be considered a useful solution if by means of that solution a practical effect is attainable, expedient in the process of manufacturing or exploitation of the product.

Article 95

1. For a utility model a right of protection shall be granted.

2. A right of protection shall confer the exclusive right to exploit the utility model for profit or for professional purposes throughout the territory of the Republic of Poland.

3. The term of a right of protection shall be ten years counted from the date of filing of a utility model application with the Patent Office.

Article 96

The scope of the right of protection shall be determined by the claims contained in the utility model specification.

Article 97

1. Subject to paragraph (2), the provisions of Articles 31 to 33 shall apply accordingly to utility model applications.

2. A utility model application shall include drawings.

3. A utility model application may relate to one solution only.

4. The requirement referred to in paragraph (3) shall not prevent an application from comprising various forms of the product, representing the same essential technical features of the claimed solution, as well as of the product consisting of elements inherently or functionally linked each with another.

Article 98

Granted rights of protection for utility models shall be recorded in the Utility Models Register.

Article 99

1. Grant of a right of protection for a utility model shall be evidenced by the issue of a certificate of protection.

2. The utility model specification consisting of the description of the utility model, the claims and drawings shall constitute an integral part of the certificate of protection. The utility model specification shall be made available to third parties and disseminated by the Patent Office.

Article 100

1. Subject to paragraph (2), the provisions of Articles: 25, 28, 29, 35-37, 39-52, 55-60, 62, 66-75, 76-90 and 92 shall apply accordingly to utility models and rights of protection for utility models.

2. In the case of a utility model, the period provided for in Article 60 shall be ten years.

Article 101

1. The Council of Ministers shall, by way of regulation, determine the categories of utility models which fall within the sphere of national defence or the security of the State, as well as procedures applied in respect of such utility models both before ascertainment by the competent authority whether or not said utility models are secret, and after deciding on their secrecy.

2. The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by a utility model application, the detailed rules and procedure to be applied in the course of processing and examination of utility model applications at the Patent Office including, in particular, the manner and form of publication of utility model applications, the extent to which the Patent Office is authorised to make corrections in abstracts, as well as the form in which search reports are to be established and the manner and term of making them available to third parties; finally, the manner of making available utility model specifications and disseminating them. The requirements to be satisfied by utility model applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

Part IV
Industrial Designs and Rights in Registration
for Industrial Designs

Article 102

1. Any new and having individual character appearance of the whole or a part of a product resulting from the features of, in particular, the lines, colours, shape, texture or materials of the product and its ornamentation, shall constitute an industrial design.

2. Any industrial or handicraft item, including, in particular, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs, shall be considered to be a product.

3. The following shall also be considered to be a product:

(i) a product which is composed of multiple components, which can be replaced permitting disassembly and reassembly of the product (complex product);

(ii) a replaceable component part of a complex product, if, once incorporated into the complex product, it remains visible during normal use of the latter, the use being understood as excluding maintenance, servicing or repair work.

(iii) (*deleted*).

4. In case of a design applied to or incorporated in a product which constitutes a component part of a complex product within the meaning of paragraph (3)(i), assessment of novelty and individual character shall only be made in consideration of its visible features.

Article 103

1. An industrial design shall be considered new if before the date according to which priority to obtain a right in registration is determined and subject to paragraph (2) no identical design has been made available to the public, i.e. used, exhibited or otherwise disclosed. Designs shall also be deemed to be identical with those made available to the public if their features differ only in immaterial details.

2. The designs shall not be deemed to have been made available to the public within the meaning of paragraph (1) if it could not have become known to the circles specialised in the sector to which the design belongs.

3. The provision of paragraph (1) shall not prevent a right in registration to be granted if a design:

(i) has been disclosed to a third party under explicit or implicit conditions of confidentiality;

(ii) has been disclosed during twelve-month period preceding the date according to which priority to obtain a right in registration is determined, by the designer, his successor in title or a third person with the right holder's consent, as well as if the disclosure has occurred as a consequence of an abuse in relation to the designer or his successor in title.

Article 104

1. An industrial design shall be considered to have individual character, if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available before the date according to which priority is determined.

2. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

Article 105

1. For an industrial design a right in registration shall be granted.

2. The right in registration shall confer the exclusive right to exploit the industrial design for profit or for professional purposes throughout the territory of the Republic of Poland.

3. The holder shall enjoy the right to prevent any third party from making, offering, putting on the market, importing, exporting or using a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

4. The right conferred by the registration of an industrial design shall include any design which does not produce on the informed user a different overall impression. Article 104(2) shall apply accordingly.

5. The right conferred by the registration of an industrial design shall be limited to the kind of products, in respect of which the protection has been applied for.

6. Subject to Article 111, the term of a right in registration shall be twenty five years counted from the date of filing of an industrial design application with the Patent Office, the said term being divided into five-year periods.

Article 106

1. Rights in registration shall not be granted for industrial designs whose exploitation would be contrary to public order or morality; exploitation of an industrial design shall not be considered to be contrary to public order merely because it is prohibited by law.

2. Subject to the exceptions provided for in this Act, rights in registration shall neither be granted for industrial designs that include the signs referred to in Article 129¹ (1)(viii)-(xi).

Article 106¹

1. Protection conferred by the registration of a design shall not exist for a product which constitutes a component part of a complex product used for the purpose of the repair of that complex product so as to restore its original appearance.

2. Third parties shall be permitted to use the product referred to in paragraph (1) in a form of making, offering, putting on the market, importing, exporting or using of the product in which the design is incorporated or to which it is applied, or stocking such product for those purposes.

Article 107

1. The right in registration of an industrial design shall not subsist in features of a product:

- (i) which are solely dictated by its technical function;
- (ii) which must necessarily be reproduced in their exact form and dimensions in order to permit the product to be mechanically connected to, or to interact with, another product.

2. The provision of paragraph (1) shall be without prejudice to the registration of an industrial design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

Article 108

1. An industrial design application by means of which a right in registration is sought shall contain:

- (i) a request at least containing indications concerning the applicant, the definition of the subject-matter of the application and a petition for the grant of a right in registration;
- (ii) an illustration of the industrial design.

(iii) (*deleted*).

2. The illustration of the industrial design shall consist in particular of drawings, photographs or samples of a textile fabric.

2¹. Where a new and individual character applies to a part of the product referred to in Article 102(1), the illustration of the industrial design must represent the whole product.

3. The applicant may supplement the application referred to in paragraph (1) with a description clarifying the illustration of the industrial design.

4. One industrial design application may relate to individual appearances of a product having the essential features common (forms of an industrial design).

5. The number of forms of the industrial design as may be covered by one application may not exceed ten, unless these forms as a whole form a set of products. One drawing or photograph, referred to in paragraph (2), should present the figures of all the forms of the design covered by the application.

6. The industrial design application which contains at least a request and parts which appear to be the illustration of the industrial design and the description describing the illustration shall be capable of being deemed to have been filed.

7. If the Patent Office finds that in the application some of the element referred to in paragraph (1) are missing, it shall invite the applicant in an order to complete the application within the fixed time limit, failing which shall result in the discontinuance of the proceedings. The application shall be deemed to have been filed at the date of receiving by the Patent Office of the last missing element.

Article 108¹

1. Where an industrial design application has been filed in breach of the provision of Article 108(4) and (5), the Patent Office shall invite the applicant in an order to file divisional applications within the fixed time limit.

2. In the case of failure to file divisional applications for products within the time limit referred to in paragraph (1), the original application shall be deemed to cover the first ten forms of the design.

3. In the case of failure to file divisional applications for products which are not forms of the industrial design within the time limit referred to in paragraph (1), the original application shall be deemed to cover the design placed as the first in the illustration of the industrial design.

Article 109

The provisions of Article 48 shall apply accordingly to the grant of priority in respect of industrial designs. However, the Patent Office shall not verify the ground for granting priority as regards the condition referred to in Article 48(iv).

Article 110

1. After having established that the industrial design application has not been duly made up, the Patent Office shall decide to refuse to grant of a right in registration.

2. The application referred to in paragraph (1) shall not be considered to have been duly made up if the subject matter of the application does not constitute a form of a product or of its part, or in the case referred to in Article 106.

3. Patent Office may take a decision on refusal to grant of a right in registration for an industrial design if a form of the product or of its part evidently lacks novelty or individual character or the product does not evidently meet the requirements referred to in Article 102(3).

4. In the cases referred to in paragraphs (1) and (3) the provision of Article 49(2) shall apply accordingly.

Article 111

1. Patent Office shall take a decision on the grant of a right in registration after having established, subject to Article 110(3), that the industrial design application has been duly made up.

2. A right in registration shall be granted subject to payment of a fee for first protection period. If the fee is not paid within the time limit fixed by the Patent Office, the Office shall declare the decision on the grant of a right in registration for the industrial design lapsed.

Article 112

Granted rights in industrial designs registration shall be recorded in the Industrial Designs Register.

Article 113

During the period preceding registration of an industrial design the Patent Office shall refrain from giving unauthorised parties, without the applicant's consent, any information on the application.

Article 114

1. Grant of a right in industrial design registration shall be evidenced by the issue of a certificate of registration.

2. The industrial design specification containing: the description of the design, the drawing and the photographs or samples of a textile fabric, if any, shall constitute an integral part of the certificate of registration. The industrial design specification shall be made available to third parties and disseminated by the Patent Office.

Article 115

The holder of the right in industrial design registration may not prevent any third party from making use of the design:

- (i) for private and for non-commercial purposes;
- (ii) for experimental purposes;
- (iii) consisting of acts of reproduction for the purposes of making citations or of teaching, provided that such acts do not violate decency and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source;
- (iv) applied in or incorporated in the equipment on ships and aircraft registered in another country when these temporarily enter the territory of the Republic of Poland;
- (v) by way of importation of spare parts and accessories for the purpose of repairing the craft referred to in sub-paragraph (iv);
- (vi) by way of execution of repairs on the craft referred to in sub-paragraph (iv);
- (vii) by way of execution, on an individual order, of repairs intended to reproduce a component part of a complex product so as to restore its original appearance.

Article 116

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Article 117

1. The provisions of Article 89 shall apply accordingly to invalidation of a right in industrial design registration.

2. The finding that the exploitation of the industrial design infringes third parties' personal or economic rights shall also constitute a ground for invalidation of the right in registration.

Article 117¹

1. If the Patent Office finds that the conditions for the grant of protection of the international industrial design in the territory of the Republic of Poland are not met, it shall decide on refusal of the effects, in part or in whole, of international registration in the territory of the Republic of Poland.

2. The decision referred to in paragraph 1 shall be delivered only at the request of the holder of the registration of the international industrial design, filed within two months

counted from the date of transmission of the copy of notification of refusal, pursuant to Article 12(3) of the Geneva Act.

Article 117²

Patent Office shall, while applying the procedure, form and language provided for in the Geneva Act, communicate to the International Bureau:

- (i) a decision on refusal of the effects of the international registration of an industrial design or designs in the territory of the Republic of Poland,
- (ii) a decision as a result of re-examination of the matter concluded by the decision referred to in point (i),
- (iii) a final decision of an administrative court on repealing of the decision referred to in point (i),
- (iv) withdrawal of the refusal of the effects of an international registration of an industrial design in the territory of the Republic of Poland.

Article 117³

1. Anyone may file a justified opposition against the effects of international registration of an industrial design given in the territory of the Republic of Poland. The provisions of Article 246 (1) and Article 247 shall apply accordingly.

2. Patent Office shall take a decision on invalidation of the protection of the international industrial design registration if the holder of the international industrial design registration fails to react on the opposition referred to in paragraph (1) or agrees with the opposition.

3. The decision of the Patent Office may be subject to a request for re-examination of the matter. The provisions of Article 244 (1) – (1⁴), (4) and (5), Article 244¹ and 245(1) and (2) shall apply accordingly.

Article 117⁴

The provisions of Article 89 shall apply accordingly to the invalidation of the effects of international registration of an industrial design in the territory of the Republic of Poland.

Article 117⁵

In respect of claims of infringement of rights in international registration of an industrial design in the territory of the Republic of Poland the provisions of Articles 287-291 shall apply accordingly, the claims being enforceable for the period starting on a day following the date of announcement in the official gazette “*Wiadomości Urzędu Patentowego*” of the effects of that international registration and in the case of earlier notification by the holder of the right of the party infringing such right – for the period starting on a day following the date of the notice.

Article 118

1. The provisions of Articles: 32, 35-37, 39, 39¹, 41, 46, 50, 55, 66(2), 67, 68, 70-75, 76-79, 81-88, 90 and 92 shall apply accordingly to industrial designs and to rights in industrial design registration.

2. Changes made in an application in the course of processing thereof may not be such as to alter the design itself and the forms thereof, as presented in the description, in the drawing and in the photographs. This shall not cover the cases where the claimed form of a

product is modified, provided that the identity of the product is retained and the modification is requisite for the registration of the industrial design to be granted.

Article 119

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by an industrial design application, the detailed rules and procedure of processing applications, including, in particular, the manner of making available and disseminating industrial designs specifications. The requirements to be satisfied by industrial design applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

Title III Trade marks and Geographical Indications

Part I Trade marks and Rights of Protection

Chapter I Trade marks

Article 120

1. Any sign capable of being represented graphically may be considered a trade mark, provided that such signs are capable of distinguishing the goods of one undertaking from those of other undertakings.

2. The following, in particular, may be considered trade marks within the meaning of paragraph (1): words, designs, ornaments, combinations of colours, the three-dimensional shape of goods or of their packaging, as well as melodies or other acoustic signals.

3. Any references in this Act to:

- (i) trade marks shall also mean service marks;
- (ii) goods shall mean, in particular, industrial or handicraft goods, agriculture products or natural products, such as, in particular, waters, minerals, raw materials, as well as, subject to Article 174(3), services;
- (iii) counterfeit trade marks shall mean identical trade marks illegally used or trade marks which in the course of trade cannot be distinguished from the trade marks registered for the goods covered by the right of protection;
- (iv) earlier trade marks shall mean the trade marks applied for registration or registered basing on the earlier priority.

Article 121

For a trade mark a right of protection shall be granted.

Article 122

1. The provision of Article 120(1) shall not prevent a sign from being considered as a trade mark, if the sign is intended for concurrent use by several parties, including by

entrepreneurs, who have jointly applied for the protection thereof, provided that such use is not contrary to public interests and is not intended to mislead the public, in particular as to the nature, intended purpose, quality, properties or origin of the goods (joint right of protection).

2. The principles of the use of a trade mark on the basis of a joint right of protection shall be determined by the regulations governing use of trade marks adopted by the parties, including entrepreneurs, referred to in paragraph (1).

Article 123

1. Subject to Articles 124 and 125, priority to obtain a right of protection for a trade mark shall be determined according to the date of filing of a trade mark application with the Patent Office.

2. An application shall be deemed to have been filed on the date on which it has been received by the Patent Office. The provisions of Article 13(2)-(9) shall apply accordingly.

Article 124

Priority to obtain a right of protection for a trade mark shall be available in the Republic of Poland under the rules laid down in international agreements and shall be determined according to the date of the first regular filing of the trade mark application, provided that the application is subsequently filed with the Patent Office within a period of six months counted from that date.

Article 125

1. Priority to obtain a right of protection for a trade mark shall be determined, under the rules laid down in international agreements, according to the date on which the goods bearing that trade mark have been displayed in Poland or abroad at an official or officially recognised international exhibition, provided that the trade mark concerned is applied for protection with the Patent Office within a period of six month from that date.

2. *(deleted)*

3. *(deleted)*

4. *(deleted)*

Article 126

Where a trade mark which is the subject matter of the first regular application has been affixed to the goods earlier displayed at an exhibition and within an interval between the date of display and the date of filing of the application it has enjoyed the provisional protection provided for in the Paris Convention, the priority to obtain a right of protection, referred to in Article 124 and the beginning of the period prescribed therein for filing an application with the Patent Office shall be determined according to the date of displaying the goods bearing this trade mark at the exhibition.

Article 127

1. The priority referred to in Articles 124 and 125 (earlier priority) is transferable and may be subject to succession.

2. A contract for the transfer of the priority referred to in paragraph (1) shall be in writing on pain of invalidity.

Article 128

For the purpose of claiming priority abroad the Patent Office shall, at the request of the applicant filing a trade mark application, issue a document in evidence that the trade mark application has been filed with the Patent Office (priority document). The provisions of Article 19(2) shall apply accordingly.

Article 129

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Article 129¹

1. Rights of protection shall not be granted for signs which:

- (i) cannot constitute a trade mark;
- (ii) are not capable of distinguishing, in trade, the goods for which they have been applied;
- (iii) consist exclusively of elements which may serve in trade to designate, in particular, the kind, origin, quality, quantity, value, intended purpose, manufacturing process, composition, function or usefulness of the goods;
- (iv) consist exclusively of elements which have become customary in the current language and are used in fair and established business practices;
- (v) constitute the form of the goods, dictated exclusively by their nature, is necessary in order to achieve a technical result or significantly increases the value of the goods;
- (vi) have been applied for protection in bad faith;
- (vii) are contrary to public order or morality;
- (viii) incorporate an element which being a symbol, especially of a religious, patriotic or cultural nature, whose use would offend religious feelings, sense of patriotism or national tradition;
- (ix) incorporate the symbol of the Republic of Poland (emblem, national colours or national anthem), the insignia of the armed forces, paramilitary organisations or police forces, reproductions of Polish decorations, honorary distinctions or medals, military medals or military insignia, or other official or generally used distinctions and medals, in particular those of government administration, local self-administration or social organisations performing activities in vital public interests, where these organisations' activities extend to the entire territory of the State or to a substantial part thereof, unless the applicant is able to produce evidence of his right, in particular in a form of an authorisation issued by a competent State agency or a self-administration or a permission given by organisation, to use the sign in the course of trade;
- (x) contain a symbol (armorial bearings, flag or emblem) of another country, name, its abbreviation or symbol (armorial bearings, flag, emblem) of an international organization or a adopted in another country official sign, hallmarks indicating control and warranty if such prohibition follows from international agreements, unless the applicant is able to produce an authorisation of a competent authority, which permits him to use such sign in the course of trade;
- (xi) contain officially recognised sign adopted to be used in the course of trade, especially safety sign, quality label or hallmark of legalization to the extent in which they could mislead the public as to the nature of such sign, unless the applicant is able to prove his right to use the sign;

(xii) which, as for their nature, may mislead the public, in particular as to the nature, quality or the geographic origin of the product;

(xiii) constitute a protected name of plant variety and relates to plant variety of the same or related species.

2. In respect of alcoholic products, any trade mark containing geographical elements discordant with the origin of the product shall be considered to be misleading the public.

3. A right of protection shall not be granted for a trade mark containing geographical elements which, although literally true as to the territory, region or a place of origin of the product, which could mislead the public by false representing that the product originates in a different region, famous for the given product. In the case of homonymous geographical indications for wine and beers, protection may be granted, on the condition that the Patent Office shall invite the party who filed the application later to make appropriate changes in the trade mark enabling it to be distinguished from an earlier trade mark.

4. A right of protection shall not be granted for a trade mark for identical or similar products if the trade mark is identical or similar to a registered geographical indication, name of origin, traditional name for wine or geographical indication of a spirit, whose protection is ensured by provisions of law and within the scope provided for therein.

Article 130

Grant of a right of protection under Article 129¹(1)(ii)-(iv) may not be refused where prior to the date of filing of a trade mark application with the Patent Office the trade mark concerned has acquired, in consequence of its use, a distinctive character in the conditions of the regular trade.

Article 131

(deleted)

Article 132

(deleted)

Article 132¹

1. After consideration of the opposition referred to in Article 152^{6a}(1) or Article 152¹⁷(1), and having deemed it justified, rights of protection shall not be granted for signs:

- (i) whose use infringes third parties' personal or economic rights;
- (ii) which are identical to a trade mark, which has been granted a right of protection with earlier priority to another party for identical products;
- (iii) which are identical or similar to trade mark, which has been granted a right of protection with an earlier priority to another party for identical or similar products, if there is a risk of misleading the public, which includes in particular the risk of associating the trade mark with an earlier trade mark;
- (iv) which are identical or similar to a renowned trade mark for which a right of protection with an earlier priority has been granted to another person for any kind of goods, if the use of the trade mark filed without reasonable cause would bring unfair advantage to the applicant or be detrimental to the distinctive character or the repute of the earlier trade mark;
- (v) which are identical or similar to a trade mark which, prior to the date according to which the priority to obtain a right of protection is determined, has been commonly known in the Republic of Poland and used as a trade mark intended to mark products identical or

similar to those of another party, if there is a risk of misleading the public, which includes in particular the risk of associating the trade mark with a commonly known trade mark.

2. The ground for the opposition referred to in Article 152^{6a}(1) or Article 152¹⁷(1) may also be trade marks applications with earlier priority, referred to in paragraph (1)(ii)-(iv), provided that they are granted the right of protection. Until final termination of earlier granting procedures, the opposition proceedings shall be suspended.

3. Where an earlier trade mark has been applied for protection or registered according to the procedure provided for in Article 4, provisions of paragraph (1) and (2) shall apply accordingly.

4. The protection of a trade mark containing signs referred to in Article 129¹(1)(viii)-(xi), or signs relating to the origin of the goods shall not exclude the possibility of obtaining the right of protection by another party for a trade mark containing the same elements for identical or similar goods if such trade marks can be easily distinguished in the course of trade.

Article 133

If the holder of the earlier trade mark or the holder of the earlier personal or economic right express written consent to the grant of a right of protection for later trade mark, the opposition referred to in Article 152^{6a}(1) or Article 152¹⁷(1) shall be dismissed.

Article 134

(deleted)

Article 134¹

Where two or more parties using the same priority date applied for protection of identical or similar trade marks, the right of protection for the trade mark may be granted to each of these parties.

Article 135

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Chapter 2 Collective Trade marks and Collective Guarantee Trade marks

Article 136

1. Any organisation enjoying the status of legal entity and established in order to represent interests of entrepreneurs, may be granted a right of protection for a trade mark intended for use in the course of trade by that organisation and the entities grouped therein (collective trade mark).

2. The principles of the use of a trade mark in the course of trade by the organisation referred to in paragraph (1) and by the entities grouped therein shall be determined by the regulations governing use of trade marks adopted by that organisation.

Article 137

1. Any organisation enjoying the status of legal entity, which itself refrains from using the trade mark, may be granted a right of protection for a trade mark intended for use by entrepreneurs, which follow the rules laid down in the regulations governing use of trade marks adopted by the entitled organisation and are liable to control by that organisation to this extent (collective guarantee trade mark).

2. A holder of the right of protection for a collective guarantee trade mark may not, without important reasons, deny entrepreneurs, which meet the conditions specified in the regulations referred to in paragraph (1), the right to use that trade mark.

Article 137¹

The provisions on trade marks shall apply accordingly to the matters not regulated in this Chapter.

Chapter 3 Filing of Trade mark Applications

Article 138

1. In a trade mark application the trade mark has to be determined and the goods for which the trade mark is intended specified. The provision of Article 31(4) shall apply accordingly.

2. One and the same application may relate to one trade mark only. In the case of colour trade marks, a sign that incorporates one arrangement of colours shall be considered as one trade mark. The provisions of Article 39 shall apply accordingly.

3. An application concerning a collective trade mark, collective guarantee trade mark or an application concerning a trade mark filed in order to obtain a joint right of protection shall be accompanied by the regulations governing use of trade marks.

4. The regulations referred to in paragraph (3) shall, in particular, specify the manner of use of the trade mark, common properties of the goods for which the mark is intended, the principles of verifying those properties, and the consequences of failure to comply with the rules of the regulations. The regulations governing use of collective guarantee trade marks shall additionally be required to specify the detailed conditions for and the procedure of recognition by the entitled organisation of other entrepreneurs to use the trade mark.

Article 139

An applicant wishing to take advantage of the priority of an earlier application shall be required to include in his trade mark application a relevant declaration to that effect together with a document in evidence that the trade mark application has been filed in the indicated country or the product bearing the trade mark has been displayed at a specified exhibition. The document may also be furnished within three months from the date of filing of the application. In case of late furnishing of such declaration or document, the priority claim shall be without effect.

Article 140

1. Until such time as a decision is taken, the applicant may make additions and corrections to his application, provided that such additions or corrections may not alter the essential characteristics of the trade mark nor extend the list of the goods for which the trade mark has been applied.

1.¹ Until such time as a decision is taken, the applicant may submit a request for the removal from the trade mark of the signs, referred to in Article 129¹. The provision of paragraph (1) shall apply accordingly. The request should be accompanied by photographs or printed copies of the trade mark modified accordingly, when required in the application.

2. Subject to paragraph (1), the applicant may divide the application in respect of the indicated goods, while preserving the date of priority.

Article 141

1. When specifying in the trade mark application the goods for which the mark is intended, the applicant shall be required to use technical terminology in the Polish language and explicit terms, and to present the list of the goods grouped according to an accepted classification system. Lists containing more than 15 words shall be drawn up on a separate sheet.

2. The provisions of Article 36 shall apply accordingly to the filing of trade mark applications. An application concerning a trade mark presented or expressed in a specific graphical form shall include photographic reproductions or printed copies, which represent or constitute the expression of that mark. An application concerning a sound mark shall include the sound recorded on an information carrier of data within the meaning of Article 3 (i) of the Act of 17 February 2005 on the informatisation of works of the entities performing public activity.

Article 142

Patent Office may make corrections in the documents making up the application only in order to remedy obvious mistakes or language errors. This shall not apply to the list of goods and classification thereof, provided that the said corrections may not alter the scope of the protection sought.

Chapter 4 Processing of Trade mark Applications

Article 143

(deleted)

Article 144

(deleted)

Article 144¹

If after the proceedings have started the applicant has made additions or corrections in the trade mark application, which are not permitted by the provisions of this Act, the Patent Office shall by way of an order refuse to accept such additions or corrections.

Article 145

1. Where the Patent Office finds that the requirements for the grant of a right of protection for a trade mark have not been satisfied for the reasons specified in Article 129¹, it shall take a decision on refusal to grant the right of protection for the trade mark.

2. Before the decision referred to in paragraph (1) is taken, the Patent Office shall inform the applicant on collected evidence as well as circumstances which may imply the existence of grounds which may cause the right of protection to be denied and shall fix a time limit for the applicant to present his position.

3. Where the requirements for the grant of a right of protection for a trade mark are found not to have been satisfied for the reasons specified in Article 129¹ in respect of certain goods only, the Patent Office shall take a decision on refusal to grant the right of protection for the trade mark in respect of those goods.

Article 146

(deleted)

Article 146¹

1. Patent Office shall publish, without delay, the information on filing of the trade mark application in “*Biuletyn Urzędu Patentowego*” for which no lack of conditions required to obtain the right of protection for a trade mark for the reasons referred to in Article 129¹ has been found.

2. Prior to the publication referred to in paragraph (1), however no later than within two months from the filing date, the Patent Office shall disclose the information on the trade mark, priority date, application date and number, list of goods and services, name, surname or business name of the applicant, place of residence or seat and country code.

3. After the decision on refusal to grant the right of protection for a trade mark, referred to in Article 145(3), becomes final, the Patent Office shall publish the information on the trade mark for other goods in “*Biuletyn Urzędu Patentowego*”.

4. Third parties may submit their observations as to the occurrence of the circumstances referred to in Article 129¹.

5. Patent Office may, after becoming aware of the circumstances referred to in Article 129¹, take a decision on refusal to grant the right of protection for a trade mark, even after the publication of the information on filing a trade mark application. The provision of Article 145(2) shall apply accordingly.

6. For a trade mark application being subject to publication, the Patent Office shall establish a notice on the existence of identical or similar trade marks with earlier priority, intended to distinguish the same or similar goods and shall forward them to the applicant. Such notice shall be of informative nature only and shall not be binding.

Article 147

1. Following an ineffective expiration of the time limit to file opposition referred to in Article 152¹⁷, the Patent Office shall take a decision on grant of the right of protection for the trade mark, unless it became aware, after the publication of filing a trade mark application, of the circumstances referred to in Article 129¹.

1¹. Following a final termination of all opposition proceedings, the Patent Office shall refuse to grant the right of protection for a trade mark within a scope in which the opposition was found to be justified, whereas it shall grant the right of protection for the trade mark for the remaining scope.

2. A right of protection shall be granted subject to payment of a fee for a ten-year protection period. If the fee is not paid within the fixed time limit, the Patent Office shall declare the decision on the grant of the right of protection lapsed.

3. The provision of paragraph (2) shall apply accordingly where a right of protection has been granted at the request for the conversion, into a domestic application, of the trade mark registered in accordance with the European Union's regulations on the Community trade mark, provided that for a purpose of determining when the fees become due, a ten-year period shall start running from the date of filing the request for conversion.

Article 148

The provisions of Articles: 35 (4)-(6), 39¹(2), 41, 42, 43(2)(ii) and (3), 45(1), 46(1), 48 and 55 shall apply accordingly to the processing of trade mark applications.

Article 149

(deleted)

Article 150

(deleted)

Article 151

(deleted)

Article 152

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by a trade mark application, the detailed rules and procedure to be applied in the course of examination of trade mark applications including, in particular, the extent to which the relevant information may be disclosed to the public, the manner in which it is made available, as well as the extent to which the Patent Office is authorised to make corrections in the list of goods and their classification. The requirements to be satisfied by trade mark applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

Chapter 4¹

The procedure of extension of protection of international trade marks to the territory of the Republic of Poland

Article 152¹

Patent Office shall conduct proceedings concerning the protection in the territory of the Republic of Poland of international trade marks to the extent provided for in the Agreement or the Protocol.

Article 152²

1. Where the Patent Office finds that the requirements for the extension to the territory of the Republic of Poland of the protection resulting from the international registration have not been satisfied for the reasons referred to in Article 129¹, the Office shall take a decision on definitive refusal to grant the protection for the international trade mark in the territory of the Republic of Poland.

2. Before the decision, referred to in paragraph (1), is taken, the Patent Office shall, when applying the procedure, form and language as provided for in the Agreement or the Protocol, transmit to the International Bureau a notification of the grounds which prevent the protection of an international trade mark to be granted in the territory of the Republic of Poland (preliminary refusal to grant the protection), and shall fix the time limit for the holder of the international trade mark registration, within which he is expected to submit his observations in this matter.

Article 152³

Where the requirements for the extension to the territory of the Republic of Poland of the protection resulting from the international registration have not been satisfied only in respect of certain goods, for the reasons referred to in Article 129¹, the Patent Office shall take a decision on refusal to grant the protection for the international trade mark in the territory of the Republic of Poland in respect of these goods. The provision of Article 152² (2) shall apply accordingly.

Article 152⁴

(deleted)

Article 152⁵

Patent Office shall transmit to the International Bureau a notification of refusal to grant the protection for the international trade mark in the territory of the Republic of Poland when applying the procedure, form and language as provided for in the Agreement or the Protocol. The notification shall include the decision referred to in Article 152² or Article 152³.

Article 152⁶

1. Patent Office shall, without delay, publish the information in "*Biuletyn Urzędu Patentowego*" on the designation of the Republic of Poland for the extension of the protection of an international trade mark for which no grounds preventing the grant of protection for that international trade mark for the reasons referred to in Article 129¹ were found.

2. After the decision referred to in Article 152³ on refusal to grant the protection for an international trade mark, in the territory of the Republic of Poland becomes final, the Patent Office shall publish the information on the designation of the Republic of Poland for the extension of the protection for that international trade mark in respect of the remaining goods.

3. Third parties may submit their observations on the occurrence of the circumstances referred to in Article 129¹.

4. Patent Office may take a decision on refusal to grant the protection for an international trade mark in the territory of the Republic of Poland if it becomes aware of the circumstances referred to in Article 129¹, even after to publication of information on

designation of the Republic of Poland for the extension of the protection for an international trade mark. The provision of Article 152²(2) shall apply accordingly.

Article 152^{6a}

1. Within three months from the date of publication of the information on the designation of the Republic of Poland for the extension of the protection for an international trade mark, the holder of the right to an earlier trade mark or to an earlier moral or economic rights may file an opposition against the grant of the protection for an international trade mark in the territory of the Republic of Poland for the reasons referred to in Article 132¹(1)-(3). The said time limit shall be non-restorable.

2. If an opposition against the grant of the protection for an international trade mark in the territory of the Republic of Poland is filed, the Patent Office shall notify the International Bureau a statement of the grounds resulting from the opposition which may prevent the protection of the international trade mark in the territory of the Republic of Poland from being granted.

3. The provisions of Article 152¹⁷(2)-(7) and Articles 152¹⁸-152²³ shall apply accordingly to the proceedings relating to the opposition against the designation of the Republic of Poland for the extension of the protection for an international trade mark.

Article 152^{6b}

1. Following an ineffective expiration of the time limit to file opposition referred to in Article 152^{6a}(1), the Patent Office shall take a decision on the extension of the protection of the international trade mark to the territory of the Republic of Poland unless it becomes aware, even after the publication of the filing of the trade mark application, of the circumstances referred to in Article 129¹. The provision of Article 152⁵ shall apply accordingly.

2. Following the final termination of all opposition proceedings the Patent Office shall refuse to grant the protection for an international trade mark in the territory of the Republic of Poland within the scope in which the oppositions were considered justified, whereas in the remaining scope it shall extend the protection of the international trade mark to the territory of the Republic of Poland.

Article 152⁷

1. Patent Office's decisions on definitive refusal to grant the protection for the international trade mark in the territory of the Republic of Poland may be subject to a request for re-examination of the matter within the time limit of five months from the date of publication in the International Register as defined in the Agreement and the Protocol of the information on refusal to grant the protection for the international trade mark in the territory of the Republic of Poland. The provisions of Article 244 (1¹)-(1⁴) and (5), Article 244¹ and 245 shall apply accordingly.

Article 152⁸

(deleted)

Article 152⁹

(deleted)

Article 152¹⁰
(deleted)

Article 152¹¹
(deleted)

Article 152¹²

1. Patent Office's decisions on definitive refusal to grant the protection for an international trade mark in the territory of the Republic of Poland in respect of all or certain goods only, as well as decisions on revocation of the protection for an international trade mark in the territory of Poland shall be liable to complaints that may be lodged to an administrative court by the holder of the registration of that trade mark. The provisions of Articles 249 (1) and 250 shall apply accordingly.

2. (deleted)

Article 152¹³

In respect of the revocation of the protection of an international trade mark in the territory of the Republic of Poland the provisions of Articles 164-167 shall apply accordingly.

Article 152¹⁴

Patent Office shall transmit to the International Bureau a notification of revocation of the protection of an international trade mark in the territory of Poland when applying the procedure, form and language as provided for in the Agreement or the Protocol.

Article 152¹⁵

In respect of declarations of the lapse in the territory of the Republic of Poland of the protection of an international trade mark the provisions of Articles 169-172 shall apply accordingly, however the time limit, referred to in Article 169 (1)(i) shall start running as from the date of announcement in the official gazette "*Wiadomości Urzędu Patentowego*" of the grant of protection for that trade mark.

Article 152¹⁶

In respect of claims of infringement of rights in international trade mark registration which enjoys protection in the territory of the Republic of Poland the provisions of Articles 296-298 shall apply accordingly, the claims being enforceable as from the date of announcement in the official gazette "*Wiadomości Urzędu Patentowego*" of the grant of protection for that trade mark.

Chapter 4²

The opposition proceedings

Article 152¹⁷

1. Within three months from the date of publication of a trademark application the holder of the right to an earlier trade mark or holder of an earlier moral or economic right may file an opposition against a trade mark application on the grounds referred to in Article 132¹(1)-(3). The said time limit shall be non-restorable.

2. The opposition is subject to a fee.

3. The opposition shall include the designation of the parties, indicate a factual and legal grounds with justification and the scope of the opposition, and the signature of the party filing the opposition.

4. The opposition and other letters shall be submitted with their copies for the other party.

5. The materials and documents established in a foreign language shall be submitted together with their translation into Polish.

6. Patent Office, by way of an order, shall not consider the opposition which:

(i) has been filed after the expiry of the time limit, or

(ii) does not indicate the trade mark application, against which the opposition is filed,

or

(iii) does not indicate an earlier right referred to in Article 132¹(1)-(3)

– unless such defects have been remedied within the time limit referred to in paragraph (1).

7. If the opposition does not fulfil formal requirements, the Patent Office shall fix a time limit for the party lodging the opposition to remedy defects under pain of discontinuation of proceedings.

Article 152¹⁸

1. The parties of the proceedings shall be the applicant and the party lodging the opposition.

2. The President of the Patent Office shall designate an examiner to consider the opposition.

Article 152¹⁹

1. Patent Office shall, without delay, notify the applicant of an opposition and inform parties of the possibility of an amicable settlement of the dispute within two months of the date of delivery of the information.

2. The time limit referred to in paragraph (1) may be extended to six months upon joint request of the parties.

3. After the expiry of the time limit referred to in paragraph (1), the Patent Office shall invite the applicant to react to the opposition within a fixed time limit. In the reaction to the opposition the applicant shall include objections and cite all factual circumstances and supporting evidence.

4. Within the time limit referred to in paragraph (3) the applicant may raise an objection of the lack of actual use of an earlier trade mark during the uninterrupted period of five years prior to the filing date of a trade mark being the subject of opposition for goods included in the opposition unless there are significant reasons for the lack of use or the period of five years from the registration of an earlier trade mark has not expired. If the objection is found to be justified, the Patent Office shall dismiss the opposition.

5. Patent Office shall submit the reaction to the opposition to the party filing the opposition and shall fix a time limit for him to react and to complete evidence. The provision of Article 169(6) shall apply accordingly.

6. The applicant may react to the evidence and claims presented pursuant to paragraph (5) by the party filing the opposition within the time limit fixed by the Patent Office.

7. Patent Office may invite the party to the proceedings to present within a fixed time limit, its position in respect of the materials presented by the other party or the Patent Office.

8. Patent Office shall disregard claims and evidence which were not presented within the fixed time limit unless the party proves that they could not have been put forward or that the need to present them arose later. Further claims and supporting evidence shall be admitted within a month from the date on which the possibility or the need of presenting them arose.

Article 152²⁰

Patent Office shall consider the opposition within its limits and shall be bound by the legal basis indicated by the party submitting the opposition.

Article 152²¹

After the consideration of the opposition the Patent Office shall take a decision on dismissing the opposition or on finding it justified in whole or in part.

Article 152²²

1. Decisions of the Patent Office shall be liable to a party's request for re-examination of the matter decided on by boards adjudicating in litigious cases. The provisions of Article 244(1¹),(1²) and (3)-(5), Article 244¹, 245, 255⁷ and 255⁸ shall apply accordingly.

2. New facts and evidence can only be put forward if it was not possible earlier or the need to present them arose later.

3. Patent Office shall conduct a hearing ex officio or at the request of a party if it deems it justified. In the case of appointing a hearing, the provisions of Article 255³, 255⁵ and 255⁶ shall apply accordingly.

Article 152²³

To the opposition proceedings the provisions of Article 242(1) and (2), 251, 252, 253(1) and 256(2) shall apply accordingly.

Chapter 5 Rights of Protection for Trade marks

Article 153

1. The right of protection shall confer the exclusive right to use the trade mark for profit or for professional purposes throughout the territory of the Republic of Poland.

1¹. Granted rights of protection for trade marks shall be subject to entry in the Trade mark Register.

1². The grant of the right of protection for a trade mark shall be confirmed by a trade mark protection certificate.

1³. The right holder may indicate that his mark has been registered by placing the letter "R" in a circle next to the trade mark.

2. The term of the right of protection shall be ten years counted from the date of filing of a trade mark application with the Patent Office.

3. The term of protection may, at the request of the right holder, be extended by way of a decision for subsequent ten-year periods in respect of all or of a part of the goods.

4. The request referred to in paragraph (3) shall be submitted before the expiration of a running protection period, however not earlier than one year before the expiration thereof. The request shall be submitted together with the payment of a due protection fee, pursuant to rules in Article 224(2)-(4).

5. The request referred to in paragraph (3) may also be submitted, against payment of an additional fee, within six months after the expiration of a protection period. The said time limit shall be non-restorable.

6. Patent Office shall take a decision on refusal to extend the term of protection for a trade mark, where the request has been submitted after the expiration of the time limit referred to in paragraph (5) or the due fees referred to in paragraphs (4) and (5) have not been paid.

Article 154

The use of a trade mark shall, in particular, consist of:

(i) affixing the trade mark to the goods covered by the right of protection or to the packaging thereof, offering and putting the goods on the market, importing or exporting thereof, or their storing for the purpose of offering and putting on the market, as well as offering or providing services under that trade mark;

(ii) using the trade mark on business documents handled in putting the goods on the market or in rendering services;

(iii) using the trade mark in advertising.

Article 155

1. The right of protection for a trade mark shall not extend to the acts in respect of the goods bearing that trade mark consisting, in particular, of offering the goods or further putting on the market the goods bearing that trade mark, where the said goods have earlier been put on the market in the territory of the Republic of Poland by the right holder or with his consent.

2. The right of protection for a trade mark shall neither be considered infringed by an act of importation or other acts, referred to in paragraph (1), in respect of the goods bearing the trade mark, if these goods have earlier been put on the market in the territory of the European Economic Area by the right holder or with his consent.

3. Paragraphs (1) and (2) shall not apply where there exist legitimate reasons for the right holder to oppose further commercialization of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market.

Article 156

1. The right of protection shall not confer on the right holder the right to prohibit third parties from using, in the course of trade:

(i) their addresses and surnames or names of other marks distinguishing an individual entrepreneur or his enterprise,

(ii) indications concerning, in particular, the features and characteristics of goods, the kind, quantity, quality, intended purpose, origin, the time of production or of expiration of usability period,

(iii) a registered mark or a similar mark, if it is necessary to indicate the intended purpose of the product, in particular as far as offered spare parts, accessories or services are concerned,

(iv) a registered geographical indication, if the use thereof by these parties is authorised under other provisions of this Act.

2. The use of the signs referred to in paragraph (1) shall only be permitted, where it satisfies reasonable needs of the user and of purchasers of the goods and is, at the same time, in accordance with honest practices in industrial or commercial business, or in services.

Article 157

The holder of a trade mark registration shall not have the right to prohibit a third party from using that mark or a mark similar thereto in the course of trade if he has refrained from using that mark within the meaning of Article 169(1)(i), (4) and (5).

Article 158

1. The holder of a trade mark registration shall not have the right to prohibit a third party from using the name under which he runs his business activity, provided that said name is not used for marking the goods being the subject of that activity and no risk of misleading the public as to the origin of the goods exists, in particular owing to a different range of activities or the use of the name being limited to a particular locality.

2. Paragraph (1) shall not apply, where a third party, when using the name under which it runs its business activity, is in bad faith.

Article 159

1. A joint owner of a trade mark registration may use the trade mark in his own scope of activity and enforce his claims for infringement of the right of protection without the other joint owners' consent.

2. To the extent as not regulated by this Act, the provisions of the Code of Civil Law governing joint ownership in fractional parts shall apply to the joint ownership, unless the contract of joint ownership of the right of protection stipulates otherwise.

Article 160

1. Any person who, when running a business activity locally to a limited extent, has used in good faith the mark subsequently registered as a trade mark on behalf of another party, shall have the right to continue to use that mark free of payment to the same extent to which he had previously used it.

2. At the request of an interested party, the right referred to in paragraph (1) shall be recorded in the Trade mark Register. The right may be assigned to another party only together with the enterprise.

Article 161

1. To the extent as follows from an international agreement, where a trade mark has been applied for protection by and on behalf of, or the right of protection has been granted for, an agent or a representative of the person enjoying the exclusive right to use that trade mark in another country, that person may, if the agent or representative acted without that person's consent, demand that the protection granting proceeding be discontinued or the right of protection revoked. He may also demand that the right of protection be granted on his behalf, or the right already granted transferred to him.

2. The right may not be demanded to be revoked or transferred, where the entitled person referred to in paragraph (1) has acquiesced, for a period of five successive years, in the use of the registered trade mark while being aware of such use.

3. The provision of paragraph (1) shall apply accordingly to a party who filed an application for a trade mark for its benefit or obtained a right for protection for it without authorisation.

Article 162

1. The right of protection for a trade mark is transferable or may be subject to succession. The provisions of Article 67(2) and (3) shall apply accordingly.

1¹. The right of protection for a trade mark may be transferred to the organizations referred to in Articles 136 and 137 as a collective trade mark or collective guarantee trade mark respectively or to a number of entities as a collective right of protection.

1². Transfer of the right of protection, referred to in paragraph (1¹) may be effected only with the consent of the parties who enjoy that right.

1³. Entry in the Trade mark Register of the transfer of the right of protection, referred to in paragraph (1¹) after the regulations governing use of the trade mark, referred to in Article 122 (2), Article 136(2) or Article 137(1) have been submitted.

1⁴. A collective right of protection may be transferred to a single party as a right of protection for a trade mark.

2. *(deleted)*

3. The right of protection for a collective trade mark may be transferred as a joint right of protection to the entrepreneurs grouped in the organisation referred to in Article 136. In a contract of transfer of the right the rules governing the use of that trade mark should

determine be to the extent as it is provided for in respect of the regulations referred to in Article 122(2).

3¹. A collective right of protection may be transferred to the organizations referred to in Articles 136 and 137 as a collective trade mark or a collective guarantee mark. In a contract of transfer of the right the rules governing the use of that trade mark should be determined to the extent as it is provided for in respect of the regulations referred to in Article 136(2) and Article 137(1) respectively.

4. The right of protection for a trade mark may also be transferred in respect of certain goods for which the right of protection has been granted, if the goods for which the trade mark remains registered on behalf of the vendor are not of the same kind. Once transferred, the right in question shall be dealt with as independent of the right enjoyed by the vendor.

5. The contract of transfer of a share in the joint right of protection shall be valid subject to the consent given by all of the joint owners.

6. Paragraphs (1), (3) to (5) shall apply accordingly to the right deriving from an application filed with the Patent Office, for which no right of protection has yet been granted.

Article 162¹

During the course of the proceedings initiated as a result of filing a request for invalidation, the right of protection for a trade mark may be divided at the request of the holder of the right in respect of indicated goods, while maintaining the priority date. The provision of Article 140 shall apply accordingly. On filing the request the holder of the right shall make a payment for the division of the right of protection for the trade mark.

Article 163

1 The holder of a trade mark registration may authorise another party to use the trade mark under a concluded licence contract. The provisions of Article 76, Articles 78 and 79 shall apply accordingly to such contracts.

2. A licensee may grant a sub-licence for the use of the trade mark within the scope of the authorisation granted to him.

3. A licensee may indicate that he has been granted a licence for the use of the trade mark by adding an indication "lic." next to the trade mark.

4. In case of exercising a licence for the use of the trade mark, the licensee shall, at the request of the licensor, be obliged to indicate that he uses the trade mark under the licence contract by adding the indication referred to in paragraph (3).

Chapter 6 Invalidation and Lapse of the Right of Protection for a Trade mark

Article 164

1. The right of protection for a trade mark may be invalidated on request in whole or in part if the conditions required for the grant of such right have not been satisfied for the

reasons referred to in Article 129¹, or in the case of existence of an earlier right referred to in Article 132¹(1)-(3).

2. Where the request is based on an earlier right referred to in Article 132¹(1)-(3), only the holder of the right may invoke such right. The provisions of Article 133 shall apply accordingly.

Article 165

1. A request for invalidation of the right of protection shall not be admissible:

(i) on the ground that it conflicts with an earlier trade mark or the personal or economic rights of the requesting party have been infringed, where the requesting party has acquiesced, for a period of five successive years, in the use of the registered trade mark while being aware of such use;

(ii) where the right of protection for a trade mark was granted in breach of the provisions of Article 129¹(1)(ii)-(iv), and since the filing date of the request the trade mark has acquired a distinctive character in the course of normal commercial exploitation;

(iii) on the ground that it conflicts with a well-known trade mark, where the party entitled to the well-known trade mark has acquiesced, for a period of five successive years of the use of the registered trade mark, in the use of the latter while being aware of such use;

(iv) where the opposition based on the same earlier rights and on the same legal grounds was finally dismissed.

2. Paragraph (1)(i) and (iii) shall not apply, where the holder of the right has acquired the right of protection in bad faith.

Article 166

1. The right of protection for a trade mark may not be invalidated on a sole ground that the trade mark is similar to an earlier trade mark, where the latter has not been used within the meaning of Article 169(1)(i), (4) and (5).

2. In the case referred to in paragraph (1), an allegation of non-use of the trade mark may only be raised when accompanied by a request for declaring the right of protection lapsed. The allegation shall be liable to examination jointly with the request for invalidation.

Article 167

The General Public Prosecutor of the Republic of Poland or the President of the Patent Office may, in the public interest, request that the right of protection for a trade mark be invalidated or intervene in an invalidation action already pending.

Article 168

1. The right of protection for a trade mark shall lapse:

(i) on expiry of the term of protection for which it has been granted,

(ii) on surrender of the right by the owner thereof before the Patent Office, with the consent of the parties having their rights therein.

2. The surrender of the right, referred to in paragraph (1)(ii), may also concern only certain goods for which the right has been granted (restriction of the list of the goods).

3. The surrender of a share in the joint right shall result in the transfer of the share on behalf of the other joint owners, proportionally to their shares.

4. Subject to paragraph (3), in the case referred to in paragraph (1)(ii), the Patent Office shall take a decision on the lapse of the right of protection.

Article 169

1. The right of protection for a trade mark shall also lapse:

(i) on failure to put to genuine use of the registered trade mark for the goods covered by the registration for a period of five successive years after a decision on the grant of a right of protection has been taken, unless serious reasons of non-use thereof exist;

(ii) on loss by the trade mark of distinctive features for the reason that in consequence of the owner's acting or negligence it has become, in the course of trade, a customary mark consisting exclusively of elements which may serve, in the course of trade, for indicating, in particular, the kind, quality, quantity, price, intended purpose of the good, the process, time or place of its manufacturing, the composition, function or usability of the good, in respect of the goods for which the trade mark has been registered;

(iii) in consequence of acting by the right holder or by a third party with his consent, where the trade mark is likely to mislead the public as to, in particular, the nature, quality, characteristic features or origin of the good;

(iv) in consequence of removal from a respective register of the legal entity who enjoyed the right of protection for the trade mark.

2. In the instances referred to in paragraph (1), the Patent Office shall, at the request of any party, take a decision on the lapse of the right of protection for the trade mark.

2¹ In the instances referred to in paragraph (1)(iii) the Patent Office shall take a decision declaring the right of protection for the trade mark lapsed at the request of:

(i) national or regional organisations whose statutory task is to protect interests of:

(a) consumers;

(b) entrepreneurs;

(ii) President of the Office for Competition and Consumer Protection;

(iii) district (city) consumer ombudsman.

3. The General Public Prosecutor of the Republic of Poland or the President of the Patent Office may, in the public interest, request that a right of protection for a trade mark be declared lapsed or may intervene in an invalidation action already pending.

4. Use of a trade mark within the meaning of paragraph (1) shall also mean the use of a mark:

(i) in a form varying in elements which do not alter the distinctive character of the mark in the form for which the right of protection has been granted;

(ii) by affixing the mark to goods or the packaging thereof solely for export purposes;

(iii) by a third party with the right holder's consent;

(iv) by a party authorised to use the collective trade mark or the collective guarantee trade mark.

5. Use of a trade mark in advertising of the product, which is neither available on the market nor is manufactured in the country for export purposes shall not be deemed to constitute genuine use.

6. Where a proceeding for the declaration of the right of protection lapsed is initiated, the burden of proof that the trade mark has been used or that serious reasons for non-use of the trade mark exist shall be on the holder of the right of protection.

7. On the conditions laid down in paragraphs (1) to (6), as well as in case of the regulations governing use of trade marks not being observed, a decision may be taken on the lapse of the right in respect of a joint owner. This provision shall apply accordingly to a right of protection for a collective trade mark and collective guarantee mark.

Article 170

1. Subject to paragraph (2), the Patent Office shall dismiss a request for declaring the right of protection lapsed in the case referred to in Article 169(1)(i), if before the submission of the request genuine use of the mark has started or has been resumed.

2. Start or resumption of the use of the trade mark after the expiration of an uninterrupted period of five successive years of non-use and within a period of three months preceding the submission of the request for declaring the right of protection lapsed, shall be disregarded, if preparations for the start or resumption of the use have been undertaken immediately after the right holder became aware of possible submission of such request.

3. Paragraphs (1) and (2) shall apply accordingly in the instances referred to in Article 169(7).

4. Loss of a right to use a sign or a symbol, referred to in Article 129¹(1)(vi) and (viii)-(xi) incorporated in a trade mark shall not constitute a ground for non-taking a decision declaring the right of protection for that trade mark lapsed, if that sign or symbol ceased to be used in the trade mark before a request for the declaration of the right of protection lapsed has been submitted.

Article 171

Where the reason for the lapse of the right of protection for a trade mark involves only certain goods, the lapse of the right shall be effective only in respect of these goods.

Article 172

Subject to Article 170, a right of protection for a trade mark shall terminate on the date of the occurrence of the event, which is considered under this Act as giving rise to the lapse of the right of protection. The date of the termination of the right of protection shall be confirmed in a decision.

Article 173

Invalidation or lapse of a right of protection shall be recorded in the Trade mark Register.

Part II Geographical Indications

Chapter 1 Introductory Provisions

Article 174

1. For the purpose of this Act, geographical indications shall be word indications which in an explicit or implicit manner designate the name of a place, locality, region or country (territory), which identify a good as originating in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to the geographical origin of that good.

2. A foreign geographical indication may only be granted protection in Poland if it enjoys protection in the country of its origin.

3. Any reference in this Part to goods shall not mean services, agricultural products intended for consumption by people, listed in Annex I to the Treaty Establishing European Community, agricultural products and foodstuffs listed in Annexes to the Regulation No. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ EU L 343 of 14.12.2012, p. 1) and spirit beverages which are subject to registration on the national list of protected geographical indications of spirit beverages in accordance with the provisions of the Council Regulation (EEC) No. 110/2008 of 15 January 2008 laying down general rules on the definition, description and presentation of spirit drinks and revoking the regulation of the Council (EEC) No. 1576/89 (OJ EU L 39 of 13.02.2008, p. 16, as amended).

Article 175

1. The following shall constitute geographical indications:

(i) designations of origin used to describe products:

(a) originating in a specific territory, and

(b) the properties of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production or processing of which takes place in that territory,

(ii) names of regions used to describe products:

(a) originating in a specific territory, and

(b) the properties or other characteristics of which are essentially attributable to their geographical origin, that is the territory on which they are produced or processed.

2. Geographical indications shall also mean designations used to describe the products produced of raw materials or intermediate products coming from a defined area larger than the production or processing area, provided that special conditions for the preparation of the raw materials or intermediate products exist and there are inspection arrangements to ensure that those conditions are adhered to.

3. Subject to the conditions referred to in paragraph (2), geographical indications shall also be geographical designations which do not correspond to the true place, in which the product originates, or other traditional designations, if they are normally used in respect of the goods originating in a defined area.

Chapter 2

Filing and Processing of Applications Concerning Geographical Indications

Article 176

1. An application concerning a geographical indication shall include:
- (i) a detailed description of the indication applied for registration;
 - (ii) the specification of the goods for which the indication is intended;
 - (iii) the detailed delimitation of the area, to which it relates;
 - (iv) a description of the characteristic features or properties of the products, in particular including principal physical, chemical, microbiological or organoleptic characteristics of the product and a description of the details bearing out the link of these characteristics with the geographical environment or the geographical origin;
 - (v) the conditions of the use of the geographical indication, including: the production process, the characteristic features or properties of the products, other requirements to be fulfilled by the persons wishing to use that indication and, where applicable, the inspection arrangements;
 - (vi) the specification of the entrepreneurs which use or intend to use the indication.

1¹. The geographical indication application shall relate to one indication and one type of products only. The provisions of Articles 39 and 42(2) shall apply accordingly.

2. An application may be filed by an organisation entitled to represent interests of the producers running their business activities in a given territory.

3. The organisation referred to in paragraph (2) shall be required to attach to the application concerning the geographical indication a certificate confirming its title to act.

4. An application may also be filed by a state or local administration agency competent in respect of the territory, to which the geographical indication relates.

5. In the instances referred to in paragraphs (2) and (4), persons applying for registration of foreign geographical indications shall be required to refer to, or to complete the application with, a document confirming that the indication is provided protection in the country of its origin. In particular, any international agreement under which geographical indications are protectable may be considered as such confirmation document.

Article 177

1. A geographical indication, the use of which would encroach upon a right of protection for a trade mark, shall only be eligible for registration, if the holder of the right of protection surrenders his right.

2. Surrender of the right of protection for a trade mark shall not be required where in the application of the geographical indication for registration, filed in agreement with the holder of the trade mark registration, the latter is mentioned among the parties authorised to use that indication and the maintenance of his right is not supposed to entail excessive restrictions on freedom to use the geographical indication by other authorised parties.

3. When assessing whether or not the protection of the trade mark is supposed to entail excessive restrictions on freedom to use the geographical indication by other authorised parties, that indication's capability of being used in forms other than the form which is represented by the trade mark shall, in particular, be taken into account.

Article 178

1. Indications which, although literally true as to the territory in which the goods originate, falsely represent to the public that the goods originate in another territory famous of given goods originating therein, shall not be eligible for registration. In the case of homonymous geographical indications, protection shall be accorded on the condition that the applicant of the later application makes, at the invitation of the Patent Office, appropriate alterations in his indication enabling it to be easily distinguishable from the indication already registered or earlier applied for registration.

2. The provision of paragraph (1) shall apply where a geographical indication has been registered under the procedure referred to in Article 4 or has been listed in the national list of protected geographical indications of spirit beverages in accordance with the provisions of the Regulation of the European Parliament and of the Council (EC) No. 110/2008 of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89

Article 179

A right in registration may not be granted for the indication, which in consequence of its extensive use for marking a kind of goods became a generic name, unless it is in public interest or the protection of the indication follows from an international agreement.

Article 179¹ *(deleted)*

Article 180

In the course of processing an application concerning a geographical indication the Patent Office shall invite the applicant to complete the application or correct identified defects or essential faults within a fixed time limit, failure which shall result in discontinuance of the proceedings.

Article 181

During the period preceding registration of a geographical indication, the Patent Office shall not disclose to unauthorised parties any information on the application without the applicant's consent.

Article 182

1. Patent Office shall take a decision on the grant of a right in registration for a geographical indication after having established that the application for registration has duly been made up.

2. The application shall not be deemed to have duly been made up, where the indication fails to represent or falsely represents the origin of the product, or where it fails to satisfy the requirements for the grant of the right in registration, referred to in Articles 174(2) and 176 to 179. The provisions of Article 49 shall apply accordingly.

3. A right in registration shall be granted subject to payment of a protection fee. If the fee is not paid within the prescribed time limit the Office shall declare that the decision on the grant of the right in registration has lapsed.

4. Granted rights in registration for geographical indications shall be recorded in the Register of Geographical Indications.

5. Grant of a right in registration for a geographical indication shall be evidenced by the issue of a certificate of registration.

Article 183

The Prime Minister shall, by way of regulation, determine the detailed requirements to be fulfilled by the application of a geographical indication for registration, as well as the detailed rules and procedure applied in processing applications. The requirements to be satisfied by geographical indication applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

Chapter 3 Rights in Registration for Geographical Indications

Article 184

1. For a geographical indication a right in registration may be granted.

2. Term of protection for a geographical indication shall be unlimited and shall start from the date of its entry in the Register of Geographical Indications kept by the Patent Office.

Article 185

1. A geographical indication for which a right in registration has been granted may not be used in the territory of the Republic of Poland by parties, whose products do not satisfy the requirements for the grant of a right in registration. The provisions of Articles 154, 155 and 156 shall apply accordingly.

2. A geographical indication may not be used by the parties referred to in paragraph (1) even if such use is not intended to designate the geographical origin of the products or where the true place of the production of the product is indicated.

3. A geographical indication may not be used by the parties referred to in paragraph (1) even if accompanied by expressions indicating the kind of the product, such as "imitation", "type", "process".

4. The prohibition referred to in paragraphs (1) to (3) shall cover geographical indications in their original reading, in translations or in other related forms.

Article 186

Any parties who, while operating in a given territory, earlier used a geographical indication in good faith, and whose products do not satisfy the requirements for the grant of a right in registration, may continue to use that indication, however for no longer than one year counted from the date of the grant of the right in registration.

Article 187

1. A party whose products satisfy the conditions for the use of the geographical indication shall have a right to use it in the course of trade. It may also request the Patent Office to enter it in the Register as a party authorised to use that indication.

2. The entry referred to in paragraph (1) shall be made subject to furnishing by the requesting party of a written confirmation issued by the holder of the right in registration to the effect that the products of the requesting party satisfy the conditions for the use of the geographical indication, or on the basis of a court decision.

3. The right holder referred to in paragraph (2) may also demand the party whose products fail or ceased to satisfy the requirements for the grant of a right in registration to be removed from the Register.

Article 188

1. At the request of the holder of the right in registration, the conditions for the use of the geographical indication, such as the delimitation of the area to which the geographical indication relates, the conditions of the product manufacture, specific features or properties of the product or methods of inspection thereof, may be adjusted, if it is reasonable in the light of technological development or developments in product production.

2. Where the holder of the right in registration proves that the requested adjustment, referred to in paragraph (1), is not opposed by the parties appearing in the Register as those authorised to use the indication, the Patent Office shall take a decision on the adjustment and make the relevant entry in the Register.

3. Where a party opposing the adjustment referred to in paragraph (1) submits, within a period of one month, a request to the Patent Office for recognising the requested adjustment as unreasonable, the matter at issue shall be referred for examination in litigation proceedings. Failing this, the Patent Office shall consider the opposition withdrawn and take the decision referred to in paragraph (2).

4. In cases of foreign geographical indications, the adjustment referred to in paragraph (1) may only be made on the basis of evidence produced by the holder of the right in registration to the effect that the relevant conditions for the use of the indication in the country of its origin have changed.

Article 189

Subject to the conditions referred to in Article 176(2)-(4), the holder of the right in registration for a geographical indication may, by way of agreement, assign his right to another organisation or an agency. Entry in the Register of the above change in ownership shall be made on request.

Article 190

Parties authorised to mark their products with a registered geographical indication may indicate that the indication has been registered by placing on the product the words “Registered geographical indication” or the letter “G” within a circle next to the indication.

Chapter 4
Invalidation and Lapse
of the Right in Registration
for a Geographical Indication

Article 191

A right in registration for a geographical indication may be invalidated at the request of any party having a legitimate interest therein, if he is able to prove that the statutory requirements for the grant of that right have not been satisfied.

Article 192

1. Subject to paragraph (3), any party having a legitimate interest may demand that a decision be taken on the lapse of the right in registration for the geographical indication which ceased to satisfy the requirements for the grant of protection or has not been used for a period of five years and no serious reasons for non-use thereof exist.

2. The burden of proof that the geographical indication is used or that the justified reasons for non-use thereof exist shall be on the holder of the right in registration.

3. Paragraph (1) shall not apply to indications, the protection of which follows from an international agreement.

4. Use in the course of trade of the name of a region as a generic name for similar products may not constitute a ground for invalidation of the right in registration for that indication or for declaring the right lapsed.

5. A right in registration for a geographical indication shall also lapse on surrender of the right by the holder before the Patent Office, with the consent of the parties appearing in the Register as authorised to use the indication.

6. In the case referred to in paragraph (5), the Patent Office shall take a decision on the lapse of the right in registration.

Article 193

The General Public Prosecutor of the Republic of Poland or the President of the Patent Office may, in public interest, request that a right in registration for a geographical indication be invalidated or intervene in an invalidation action already pending.

Article 194

A right in registration for a geographical indication shall terminate on a date of the occurrence of the event, which is considered under this Act as giving rise to the lapse of the right in registration. The date of the termination of the right in registration shall be confirmed in a decision.

Article 195

Invalidation or lapse of a right in registration shall be recorded in the Register of Geographical Indications.

Title IV
Topographies of Integrated Circuits

Part I
Introductory Provisions

Article 196

1. Any solution consisting of a three-dimensional arrangement of the elements, however expressed, at least one of which is an active element, and of all or some interconnections in an integrated circuit, shall be considered as a topography of an integrated circuit, hereinafter referred to as a “topography”.

2. An integrated circuit shall mean any three-dimensional product having one or more layers, composed of elements of semiconducting material forming a continuous layer and of conducting interconnections and insulating spaces, inseparably interconnected, intended to perform electronic functions.

Article 197

1. For a topography a right in registration shall be granted.

2. Subject to paragraphs (3) and (4), a right in registration may only be granted for a topography if it is original.

3. A right in topography registration shall not be granted if before it is applied for registration with the Patent Office it has been commercially exploited for more than two years.

4. A right in topography registration may not be granted if the topography has not been commercially exploited within a period of 15 years from its fixation or encoding in any form.

Article 198

1. A topography shall be considered original if it is the result of its author’s own intellectual effort and is not commonplace at the time of its creation.

2. Where the topography consists of elements that are commonplace, a right in registration shall be granted only to the extent to which the combination of such elements is original.

Article 199

A right in registration shall not be granted for a topography if it explicitly results from the function of an integrated circuit in which it is applied.

Article 200

The right to topography registration shall belong to the author, his successor in title or a person with whom the author has concluded a contract of employment or another contract, or a person who assisted the author in creating the topography. The provisions of Articles 11, 12, 20 and 21 shall apply accordingly.

Article 201

The author of a topography shall be entitled to remuneration for the exploitation of his topography by an entity. The provisions of Articles 22 and 23 shall apply accordingly.

Part II Filing and Processing of Topography Applications

Article 202

1. An application for topography registration shall contain:
 - (i) a request;
 - (ii) material identifying the topography, including the data necessary to clearly define the topography;
 - (iii) a statement as to the date of putting the topography into commercial exploitation if it precedes the date of its filing for registration.

2. In the application referred to in paragraph (1) the applicant shall not be required to disclose the information which constitute an industrial or trade secret, unless it is necessary to identify the topography.

3. One and the same topography application may relate to one solution only.

4. Where a topography application contains at least the request and a part which appears to be the material identifying the topography, the application shall be deemed to have been filed.

Article 203

1. The right in topography registration shall be obtained by the registration of the topography that is the subject of the application duly filed with the Patent Office.

2. Patent Office shall take a decision on the grant of a right in registration, where in the course of checking the application as to the requirement referred to in paragraph (1) it establishes that nothing prevents the right in topography registration from being granted. Registration shall be subject to payment of a fee for first protection period.

3. If the the fee is not paid within the prescribed time limit, the Patent Office shall declare the decision on the grant of the right in registration lapsed.

Article 204

Patent Office shall take a decision on refusal to grant the right in registration if it finds that the obstacles preventing the right from being granted are of such a nature that they cannot be removed. The provision of Article 49(2) shall apply accordingly.

Article 205

Granted right in topography registration shall be entered in the Register of Topographies of Integrated Circuits.

Article 206

Grant of the right in registration shall be evidenced by the issue of a certificate of topography registration.

Article 207

1. Before a right in registration is granted, the Patent Office shall not disclose any information on the application to third parties without the applicant's consent.

2. The material identifying the topography shall not be disclosed without the right holder's consent even after the grant of the right in registration.

3. Paragraph (2) shall be without prejudice to the disclosure of the relevant documentation at the request of a court or the parties to litigation concerning the validity or infringement of the right granted.

Article 208

The owner of the right may indicate that his topography has been registered by adding the letter "T" in a circle on the topography or on the product embodying the protected topography.

Article 209

1. Subject to paragraph (2), the provisions of Articles: 31(4), 32, 36, 37, 39, 41, 42 and 46 shall apply accordingly to filing and processing of topography applications.

2. Any alterations made in the application in the course of its processing may not relate to the topography itself.

Article 210

The Prime Minister shall, by way of regulation, determine the detailed requirements to be satisfied by topography applications and the detailed rules and procedure applied in processing applications. The requirements to be satisfied by topography applications may not be determined in such a way as to encumber the applicant with excessive and unreasonable impediments.

Part III **Rights in Topography Registration**

Article 211

The right in registration shall confer the exclusive right to exploit the topography for profit or for professional purposes in the whole territory of the Republic of Poland.

Article 212

1. The right in registration shall be considered infringed by a party committing, without the right holder's consent, an act of:

- (i) reproduction of the whole or of a part of the protected topography, except for the reproduction of that of its part, which fails to satisfy the requirement of originality referred to in Article 198, or
- (ii) importation, selling or otherwise putting on the market of a copy of the protected topography, integrated circuits manufactured with the use of such copy or of the product embodying such integrated circuits.

2. Reproduction of a topography shall consist of its reproduction in an integrated circuit basing on the pattern, the documentation or analysis.

Article 213

The right in registration shall not be considered infringed by applying the topography of an integrated circuit in means of transport or their parts or accessories, temporarily located in the territory of the Republic of Poland, or in articles which are in transit through its territory.

Article 214

The right in registration shall not be considered infringed by a party who, without the right holder's consent, reproduces the protected topography privately or solely for the purpose of evaluation, analysis, testing or teaching.

Article 215

The right in registration shall not be considered infringed by a party who, in result of evaluation or analysis, has created a topography satisfying the criterion of originality, referred to in Article 198.

Article 216

The right in registration shall not be considered infringed by the exploitation, to a necessary extent and on the basis of non-exclusivity, of the topography for national purposes if it is necessary to prevent or eliminate a state of emergency regarding vital interests of the State, in particular in the sphere of security and public order. The provisions of Article 69(2)-(4) shall apply accordingly.

Article 217

The right in topography registration shall not be considered infringed by an act of importation or putting on the market of the product embodying a topography unlawfully exploited by a person being in good faith. After having been informed that the topography is protected, the person concerned shall be entitled to continue the commercial exploitation of the topography only subject to the right holder's consent. The products stocked or ordered before the information has become known may be put on the market subject to payment to the right holder of the compensation amounting to a licence fee.

Article 218

1. The right in registration shall not extend to acts involving copies of a protected topography, the integrated circuits manufactured by means of such copies, or the products embodying such integrated circuits if such acts consist, in particular, of offering for sale or further commercialisation thereof, and such copies, circuits or products have been put on the market in the territory of the Republic of Poland by the right holder or with his consent.

2. The right in registration shall neither be consider infringed by an act of importation or other acts, referred to in paragraph (1) in respect of the copies of a protected topography, the integrated circuits manufactured by means of such copies, or the products embodying such integrated circuits if they have earlier been put on the market in the territory of the European Economic Area by the right holder or with his consent.

Article 219

1. The right holder may not enforce his rights in respect of another topography that is identical and has been created by a third party independently.

2. Where there are two topographies which are identical in whole or in part, a topography which might be a reproduction of the topography earlier applied for registration with the Patent Office or earlier put on the market shall be presumed to actually be the reproduction thereof.

Article 220

Topography protection shall terminate ten years from the end of the calendar year in which the topography or an integrated circuit embodying such topography was put on the market or from the end of the calendar year in which the topography was applied for registration with the Patent Office, whichever term expires earlier.

Article 221

1. Subject to paragraph (2), the provisions of Articles: 67, 68, 72, 74, 75, 76-79, 81-90 and 92 shall apply accordingly to the right in topography registration.

2. The right in topography registration shall also terminate 15 years from its creation or fixing if that period expires before the expiry of a period for which the right in registration has been granted and the topography has not been exploited for commercial purposes during that time.

Title V

Fees, Registers, Documents and Official Communications

Part I

Fees

Article 222

1. Patent Office shall charge single fees and renewal fees on account of granting protection for inventions, medicinal products, plant protection products, utility models, industrial designs, trade marks, geographical indications and topographies of integrated circuits.

2. The fees referred to in paragraph (1) shall constitute the income of the State budget.

3. The Council of Ministries shall, by way of regulation, determine the detailed rules of fixing and paying fees, and the amount thereof, while taking into account the division of protection term into one-year-, or more than one year- protection periods. Fees may not entail

excessive and unreasonable restrictions on accessibility to procedures concerning the acquisition and maintenance of the protection.

Article 223

1. Single fees for applications, requests, declarations and for performing other acts provided for in this Act shall be payable in advance, unless this Act or the regulation referred to in Article 222(3) provides for payment of a fee at an invitation of the Patent Office within a prescribed time limit.

2. A single filing fee shall be payable within one month from the date of service of the Patent Office's invitation.

3. Where the Patent Office's decision is reversed in result of a submitted request for re-examination of the matter, the request fee already paid shall be liable to reimbursement.

4. If the fees which have to be paid in advance are not paid pay within the fixed time limit the Patent Office shall invite to pay those fees within 14 days. Ineffective expiration of the fixed time limit shall result in the discontinuance of the proceeding initiated on the basis of an application filed or a request submitted, or abandonment of the act whose performance is conditional upon payment of a fee.

Article 224

1. A time limit for payment of a single protection fee or a fee for first protection period, specified in a decision on the grant of a patent, of a right of protection or of a right in registration, respectively, shall be three months from the date of service of the invitation. The applicant shall be allowed to pay, at the same time, fees for subsequent protection periods which have started to run or a fee for the maintenance of the protection for the periods which have started to run before that time limit.

2. Subject to paragraph (1), fees for subsequent protection periods shall be payable in advance, however not later than on a day of expiry of the preceding protection period.

3. The renewal fees referred to in paragraph (2) may be paid within one year before the date referred to in paragraph (2). The fees shall be liable to reimbursement if before the said time limit the exclusive right has been invalidated or has lapsed. The fees paid for the lapsed protection periods and a fee for the running protection period shall not be liable to reimbursement.

4. The fees referred to in paragraph (2) may also be paid within six months after the expiry of the time limit referred to in paragraph (2), a surcharge amounting to 30% of the due fee being payable at the same time. The time limit in question shall not be restorable.

5. Where a patent of addition is granted, a single fee shall be payable for the protection of the invention.

6. Where a patent of addition becomes a patent, renewal fees shall be payable starting from a protection period following the termination of the basic patent, at the amount as would be due for that period and subsequent periods of protection of the invention that is the subject matter of the basic patent.

7. Subject to paragraph (8), the provisions of paragraphs (2)-(4) shall apply accordingly to renewal fees for the protection of a medicinal product or a plant protection product under a supplementary protection right.

8. Where a decision on the grant of a supplementary protection right is taken and the term for which the basic patent is about to expire or has expired, a due protection fee may be paid within three months from the date on which the decision has been served upon.

Article 225

1. Subject to paragraph (3), the time limit for payment of a fee, referred to in Article 223(2) or Article 224(1), may, at the request of the applicant, be restored if within two months from the date on which the reason for failure to observe the time limit ceased to exist, however not later than within six months from the date on which the time limit expired, the applicant provides a plausible explanation that the non-observance has been without fault on his part. Submission of the request shall be subject to payment, at the same time, of the overdue fee.

2. The time limit for submission of the request referred to in paragraph (1) shall not be restorable.

3. Where a decision on discontinuance of the proceeding has been taken on the ground of non-payment of the fee referred to in Article 223(2), or a decision on the lapse of the decision on the grant of a patent, of a right of protection or a right in registration, respectively, has been taken on the ground of non-payment of the fee referred to in Article 224(1), the said decision may be reversed at the request of the applicant for re-examination of the matter, in which he provides a plausible explanation that the non-observance has been without fault on his part, and subject to payment, at the same time, of the overdue fee.

4. Paragraphs (1)-(3) shall apply accordingly in the case of non-payment, within the time limit referred to in Article 224(1), second sentence, of the fees for subsequent protection periods which have started to run or a fee for the maintenance of the protection for the periods which have started to run before that time limit.

Article 226

1. Where an applicant proves his incapability of paying a fee for a patent, utility model, trade mark or industrial design application at its full amount, the Patent Office shall release him, at applicant's request, from that fee in part. The remaining amount of the fee may not be less than 20% of the fee as due.

2. Where a requesting party proves its incapability of paying a fee, at its full amount, for a request for taking a decision in litigation proceedings or for a request for re-examination of the matter, the Patent Office shall release that party from that fee in part or in whole.

3. Paragraph (2) shall also apply to renewal fees for the protection of inventions or utility models and to single fees for the protection of inventions being the subject matter of patents of addition. This shall not apply to fees for periods longer than ten years from the filing date.

3¹. In the instances referred to in paragraphs (1)-(3), the Patent Office may, under pain of leaving the request unexamined, invite the applicant or the requesting person to submit a

statement of the family status and property of the persons running a common household with the requesting person.

4. At the justified applicant's request submitted before the expiry of the fixed time limit, a time limit for payment of the fees referred to in Article 224(1) may be postponed by the Patent Office, however of no more than six months. The postponed time limit shall not be restorable.

5. In the matters referred to in paragraphs (1)-(4), the Patent Office shall issue orders. Where release or partial release from the payment of a fee is refused, a new time limit for payment shall be fixed.

6. A request for re-examination of the matter submitted in consequence of the order referred to in paragraph (5) shall not be charged with any fee.

Article 227

Patent Office shall charge a single fee for the publication in the "*Wiadomości Urzędu Patentowego*" of a communication on the grant of a patent, a supplementary protection right, a right of protection, a right in registration and for the publication of those parts of the application, which are mandatory for publication, as well as for the issue of a document certifying the grant of protection (publication fee). The applicant shall be obliged to pay the fee after having been served with the decision on grant, within three months from the date of service of the invitation to pay it. In that case the provision of Article 223(4) shall not apply.

Article 227¹

Patent Office shall suspend the issuance of letters patent, a supplementary protection certificate, a certificate of protection or a certificate of registration until such time as the publication fee referred to in Article 227 is paid.

Part II Registers and Documents

Article 228

1. For the purpose of making entries of granted patents, supplementary protection rights, rights of protection and rights in registration, the Patent Office shall be keeping:

- (i) the Patent Register;
- (i¹) Register of Supplementary Rights of Protection;
- (ii) the Register of Utility Models;
- (iii) the Register of Industrial Designs;
- (iv) the Trade mark Register;
- (v) the Register of Geographical Indications;
- (vi) the Register of Topographies of Integrated Circuits.

1¹. The Register referred to in paragraph (1)(i) shall, in addition to entries on the legal status of granted patents, also include a separate part with entries of European patents within the meaning of the Act of 14 March 2003 on filing European patent applications and effects of European patents in the territory of the Republic of Poland (JL No 65 item 598 No 136, item 958 of 2007, and of 2015 item 1266).

2. *(deleted)*

3. The registers referred to in paragraph (1) shall be open to the public.

4. Entries in the registers, referred to in paragraph (1) shall be presumed to be truthful and known to the public.

5. In confirmation of data included in the Registers the Patent Office shall issue excerpts.

Article 229

1. In matters in which entries in a register are conditional upon submission of a request, the entry shall be made by virtue of a decision.

1¹. The request referred to in paragraph (1) shall contain in particular:

- (i) indication of the requesting person and its address;
- (ii) the clearly expressed request;
- (iii) signature of the requesting person or his statutory representative or proxy and the date of request;
- (iv) a list of attachments.

1². The following shall be attached to the request:

- (i) a power of attorney, when a representative has been appointed by the requesting person;
- (ii) a receipt for the payment of the fee due for lodging the request;
- (iii) the documents providing grounds for taking a decision on making the entry in the register.

1³. Where the request fails to meet the requirements referred to in paragraph (1¹) or (1²) the Patent Office shall invite the requesting party in an order to complete or correct the request within the time limit specified in Article 242(1), failing which the request shall be left non-examined.

2. When examining the request referred to in paragraph (1) the Patent Office shall investigate whether the submitted documents, supposed to provide grounds for taking a decision on entry in a register, are in accordance with this Act and satisfy the effective provisions as to form.

2¹. Patent Office shall refuse to make an entry in the register where the submitted documents and explanations fail to provide the grounds for taking a decision on making the entry. Prior the decision is taken the Patent Office shall invite the requesting party in an order to correct the defects or submit explanations within the time limit specified in Article 242(1), failing which the proceedings shall be discontinued.

3. The entries referred to in paragraph (1) shall not be binding on an authority whose responsibilities, under the provisions of law, include deciding on a document founding the decision on entry in a register or in a case, the outcome of which may affect a decision of the Patent Office on entry in a register.

Article 230

The Prime Minister shall, by way of regulation, determine the detailed rules which govern the keeping of the Registers and the conditions and manner of making entries therein, including, in particular, the principles and manner which govern the inspection of the Registers, and of making excerpts from them. Determination of the rules, conditions and manner shall be in favour of the use of modern tools of making information accessible, however it may not create unreasonably excessive impediments to holders of patents, supplementary rights of protection, rights of protection or rights in registration.

Article 231

1. The Patent Office shall issue the holders of the rights letters patents, supplementary protection certificates, certificates of protection for utility models, protection certificates for trade marks, certificates of registration of an industrial design, certificates of registration of geographical indications and the certificates of registration of topography and priority documents. The documents certifying the grant of a patent, supplementary protection right, the right of protection, the right in registration and the priority documents shall bear a round seal with the image of a crowned eagle and the inscription "Patent Office of the Republic of Poland" within the rim.

2. Patent Office shall, at the request of the right holder, issue a duplicate of the document referred to in paragraph (1).

Article 231¹

The Prime Minister shall, by way of regulation, determine the template of letters patent, supplementary protection certificate, certificates of protection for utility models, protection certificates for trade marks, certificates of registration of an industrial design, certificates of registration of geographical indications and the certificates of registration of topography and priority documents, taking into consideration the necessity of unifying the form and contents of documents certifying the grant of the patent, right of protection and the right in registration or priority by the patent holder.

Part III

Official Announcements

Article 232

1. Granted patents, supplementary protection rights, rights of protection and rights in registration, as well as notices of international trade mark and industrial design registrations and translations of European patents submitted shall be announced in the official gazette "*Wiadomości Urzędu Patentowego*".

2. Subject to paragraph (3), entries and changes concerning granted rights, made in the Registers, shall likewise be announced in "*Wiadomości Urzędu Patentowego*".

3. Lapse of a patent, of a supplementary protection right, of a right of protection or of a right in registration on expiry of a period for which it was granted, shall not be announced.

Article 233

The following shall also be announced in "*Wiadomości Urzędu Patentowego*": decisions on refusal to grant a patent, a supplementary protection right, a right of protection for a utility model or for a trade mark; on discontinuance of proceedings or on the lapse of

decisions on the grant of a patent, a supplementary protection right, a right of protection; requests for utility model protection (Article 38); decisions taken in respect of inventions, utility models and trade marks, the applications of which were published by the Patent Office in accordance with this Act; as well as addresses, software and format used with the Patent Office in respect of applications filed electronically or on a data information carrier, and documents which can be submitted electronically or on a data information carrier.

Article 233¹

Communications on filing patent, utility model and trade mark applications, to the extent indicated in Article 146¹(1)-(3) and Article 152⁶ (1) and (2) as well as on filing of an opposition, referred to in Article 152^{6a} (1) and Article 152¹⁷(1) shall be published in “*Biuletyn Urzędu Patentowego*”.

Article 234

In “*Wiadomości Urzędu Patentowego*” communications other than those specified in Articles 232, 233 and 233¹ provided for by this Act, official acts and announcements shall also be published.

Title VI

A Party, Representatives, Time Limits, Appeal Measures and Information on application in Filing and Registration Proceedings

Article 235

1. *(deleted)*

2. The applicant shall be a party to the proceedings before the Patent Office concerning grant of a patent, a right of protection or a right in registration.

Article 236

1. In proceedings before the Patent Office in matters relating to the filing and processing of applications and maintenance of the protection of inventions, medicinal products and plant protection products, utility models, industrial designs, geographical indications and topographies of integrated circuits, a patent agent or a person providing cross-border services within the meaning of the Act of 11 April 2001 on Patent Agents (JL of 2011 No. 155, item 925, as amended), hereinafter referred to as “Act on Patent Agents” may act as a representative of a party to proceedings.

1¹. In proceedings before the Patent Office in matters relating to filing and processing of applications and maintaining the protection of trade marks a patent agent, attorney, legal counsel or a person providing cross-border services within the meaning of the Act on Patent Agents may act as a representative of a party to proceedings.

2. Subject to paragraph (3), a natural person may also be represented by a joint right holder or parents, spouse, siblings, descendants of the party or persons in the relation-by-adoption with the party.

3. In the matters referred to in paragraph (1) and (1¹), any persons not having their domicile or seat in the Republic of Poland may only act when represented by a patent agent, attorney or a legal counsel. The obligation shall not apply to persons having their domicile or

seat in the European Union, a member state of the European Free Trade Association (EFTA) – parties to the agreement on the European Economic Area or the Swiss Confederation.

Article 237

1. In the performance of one act a party may be represented by one natural person only.

2. A power of attorney shall be in writing and shall be included in the files on performance of first legal act.

3. Where the power of attorney covers two or more cases, it shall be included in the files of that of the cases, in respect of which the first act is performed by the representative. When acting in other cases covered by the power of attorneys, the representative shall be required to furnish a certified copy of the power of attorney.

4. A patent agent shall be allowed to certify himself a copy of the power of attorney granted to him.

5. If a document certifying the power of attorney is not received or a due stamp duty for the power of attorney is not paid, the Patent Office shall, by way of an order, invite the representative to remedy the defects and it shall additionally invite the party to confirm, within the fixed time limit, the acts performed by the representative under the pain of discontinuance of the proceedings or of the payment dependent act.

Article 238

1. Where another representative has been appointed by a party in the case, in which the first representative has already acted within the same scope of the power of attorney, the first representation shall be deemed to have been withdrawn.

2. In the case of power of attorney covering more than one person appointed to perform the same acts, that from among these persons who has performed an act and furnished the power of attorney for inclusion in the files, shall be considered as the representative. In the case of an act being performed by another person mentioned in the power of attorney, paragraph (1) and the provision of Article 237(3) shall apply accordingly.

Article 239

Where a party authorises an organisation, whose activities include rendering professional services in representation, to act in proceedings before the Patent Office, and the head of that organisation furnishes a statement whereby he appoints as the authorised representative one of the patent agents practising therein, such statement shall be considered to constitute the power of attorney.

Article 240

1. Except for the persons referred to in Article 236(2), a representative shall be authorised to appoint a substitute (substitution).

2. Authorisation by another joint right holder shall not be required for performing conservatory action.

Article 241

1. Where two or more persons are parties to a proceeding and no representative has been appointed, the persons concerned shall be required to indicate one address for service. If no such address is indicated, the address of the person named first in the application or in another document, on the basis of which the proceeding is instituted, shall be deemed to be that address.

2. At a party's request the Patent Office shall also send letters addressed according to paragraph (1) to the addresses additionally indicated by that party. This provision shall also apply accordingly, where only one person who has appointed a representative is a party to the proceeding.

Article 241¹

1. In proceedings before the Patent Office for the grant of patent, supplementary protection right, right of protection or right in registration, as well as for the maintenance of such rights, any applications and correspondence shall be made in writing; applications and correspondence may also be transmitted by fax or electronically.

2. To correspondence transmitted:

- (i) by fax – the provisions of Article 13(3) and (4) shall apply accordingly;
- (ii) electronically – the provisions of Article 13 (6) and (7) shall apply accordingly.

2¹. In applications and correspondence sent in an electronic form an electronic signature fulfilling requirements set out in international agreements or provisions of the European Union law, referred to in Article 4, shall also be considered equivalent of a handwritten signature.

3. The Prime Minister shall, by way of regulation, determine in detail technical conditions for filing applications and correspondence referred to in paragraph (1) electronically. Determination of the conditions, which applications and correspondence submitted electronically should satisfy shall not create unreasonably excessive impediments for applicants.

Article 242

1. Unless otherwise stipulated in this Act, in the course of processing applications and maintaining the protection of inventions, medicinal products, plant protection products, utility models, industrial designs, trade marks, geographical indications and topographies of integrated circuits, as well as in proceedings for making entries in the registers kept by the Patent Office, referred to in Article 228(1), the Patent Office shall fix the following time limits for performing specified acts by a party, no less than:

- (i) one month, where the party has its domicile or seat in the territory of the Republic of Poland,
- (ii) two months, where the party has its domicile or seat in another country.

2. When reasonable, the Patent Office shall fix a time limit longer than that referred to in paragraph (1), however of no more than three months.

3. Any act may be performed within two months after the expiry of a time limit fixed in accordance with paragraph (1) or (2), if before its expiry the Patent Office is notified in writing by the party on the reasons of non-observance of that time limit.

Article 242¹

1. The applicant who in the course of the proceedings before the Patent Office requests the translation of documents and materials drawn up in a foreign language, which may indicate to the existence of obstacles for the grant of a patent, a supplementary protection right, the right of protection or the right in registration, shall bear the costs of their translation into Polish.

2. Patent Office may invite the applicant to make an advance payment to cover the costs referred to in paragraph (1).

3. If the applicant fails to make the advance payment in the amount and time limit indicated in the invitation to pay, the request referred to in paragraph (1) shall be considered to be withdrawn.

4. For translation of materials and documents for the purposes of the proceedings before the administrative court the provisions of paragraph (1) shall apply accordingly.

Article 243

1. Unless otherwise stipulated in this Act, where in the course of proceedings a time limit to perform an act requisite, under this Act, for continuance of the proceeding has not been observed, the Patent Office may, at the party's request, restore the time limit, provided that the party provides a plausible explanation that non-observance was without fault on its part. Simultaneously with the filing of the request to restore the time limit, the party filing the request shall perform the acts, for which the time limit was fixed.

2. The request referred to in paragraph (1) shall be submitted to the Patent Office:

(i) within six months from the date on which the time limit to perform a specific act has expired— for trade marks;

(ii) within two months from the date on which the reason for non-observance has ceased to exist, however not later than within six months from the date of the expiry of that time limit – for inventions, supplementary protection rights, utility models, industrial designs, geographical indications and topographies.

3. A time limit to submit the request referred to in paragraph (2) shall not be restorable.

4. Where a decision has been taken on discontinuance of the proceedings for the reason of failure to observe a time limit for performance of a specified act, that decision may, at the party's request for re-examination of the matter, be reversed, provided that the party provides in the request a plausible explanation that the non-observance was without fault on its part, while performing, at the same time, the act in respect of which the time limit was fixed.

5. Where the time limit for filing an application for the purpose of preserving the right of earlier priority or the time limit for furnishing a document expires on a day on which the Patent Office is closed to the public, the application or the document received on the first subsequent day on which the Patent Office is open to the public shall be deemed to have been received within the time limit concerned.

6. In respect of time limits to which paragraph (1) is not applicable and the non-observance of which has been caused by exceptional circumstances, the provisions on suspension of the course of negative prescription caused by acts of God shall apply accordingly. In such cases the Patent Office shall give orders after having been furnished with relevant evidence by the interested party.

7. Notwithstanding the provisions of paragraphs (5) and (6), the Patent Office shall secure the reception at any time of day of letters delivered by interested persons.

Article 244

1. Decisions of the Patent Office shall be liable to a party's request for re-examination of the matter within the meaning of the Code of Administrative Procedure.

1¹. Subject to paragraphs (1²) to (1⁴), the provisions of the Code of Administrative Procedure governing deciding on appeals from decisions shall apply accordingly to proceedings on re-examination of the matter.

1². Requests for re-examination of the matter shall require to be substantiated.

1³. In the case referred to in Article 89(2) of the Code of Administrative Procedure a hearing shall also be conducted at the applicant's request.

1⁴. The matter shall be re-examined by an expert appointed by the President of the Patent Office.

2. (*deleted*)

3. Paragraphs (1) and (1¹) to (1⁴) shall apply accordingly to orders.

4. A time limit for submitting a request for re-examination of the matter in which a decision has been taken or an order issued, shall be, accordingly, two months and one month from a day on which the party has been served with the decision or the order.

5. Before the expiry of the time limit for submitting the request for re-examination of the matter the decision shall not be liable to execution.

Article 244¹

Where a request for re-examination of the matter fails to meet formal requirements, the Patent Office shall invite the requesting party in an order to correct the defects within the time limit of 30 days, failing which the proceedings shall be discontinued.

Article 245

1. Following the re-examination of the matter, the Patent Office shall take a decision in which it:

i) maintains the appealed decision, or
 ii) repeals it in whole or in part and in this regard decides on the merits, or
 iii) repeals the appealed decision in whole or in part and in this regard discontinues the proceedings, or

iv) discontinues the proceedings in part, and within the remaining scope it maintains the appealed decision or repeals the appealed decision and decides on the merits, or

v) discontinues the proceedings.

2. Where the request is disregarded and the appealed decision maintained, the time limit to perform the act fixed in the appealed decision shall start running again.

3. Paragraphs (1) and (2) shall apply accordingly in deciding on the request for re-examination of the matter in respect of which an order has been issued.

Article 246

1. Within six months from the publication in “*Wiadomości Urzędu Patentowego*” of the mention of the grant of a title of protection, any person may give a reasoned notice of opposition to a final decision of the Patent Office on the grant of a patent, a right of protection for a utility model or a right in registration.

2. The opposition referred to in paragraph (1) may be filed on the same grounds on which a patent, a right of protection for a utility model or a right in registration may be invalidated.

Article 247

1. Patent Office shall without delay communicate the opposition referred to in Article 246 to the right holder and invite him to file his observations within a fixed time limit.

2. Where following the communication of the Patent Office referred to in paragraph (1) the right holder claims the opposition to be unjustified, the case shall be submitted for examination in litigation proceedings. Otherwise the Patent Office shall decide to repeal the decision on the grant of a patent, a right of protection for a utility model or a right in registration and discontinue the proceedings.

Article 248

Decisions taken and orders issued by the Patent Office shall be subject to complaint to the administrative courts.

Article 249

1. The President of the Patent Office shall appoint an expert for examining whether or not the complaint lodged is justified.

2. Following the examination of the complaint the Patent Office shall either admit the complaint in whole or forwards the reply to the complaint together with the files of the case to the administrative court.

Article 250

In consequence of the complaint referred to in Article 248, execution of the decision or of the order may be suspended by the President of the Patent Office also where the suspension has not taken place by virtue of law or has not been ordered by the administrative court.

Article 251

1. Patent Office shall provide information on applications concerning inventions, supplementary protection rights, utility models, industrial designs, trade marks, geographical

indications or topographies of integrated circuits and shall make available application files, at each stage of proceedings, to:

- (i) applicants and their representatives;
- (ii) prosecution agencies and courts, in connection with cases handled by them;
- (iii) other persons, with the applicant's consent given in writing.

2. After the expiry of the time limits within which information on the applications referred to in paragraph (1) may not be disclosed the Patent Office may, at the request of a person having a legitimate interest, make accessible to that person the documents included in the application files, as well as the documents included in these files in the course of the registration procedure.

2¹. Patent Office may refuse to make available documents under the procedure referred to in paragraph (2) where it could threaten the legally justified interests of the right holder, and in particular if it could breach their trade secret.

3. Any disclosure of any confidential information on an application and any act of making application files accessible for inspection shall be annotated in the application files concerned.

4. Paragraphs (1)-(3) shall not apply to applications concerning secret inventions and secret utility models.

5. Paragraphs (2) and (3) shall apply to applications concerning topographies of integrated circuits, subject to the reservations referred to in Article 207(2) and (3).

Article 252

Subject to Article 253, the provisions of the Code of Administrative Procedure shall apply accordingly to cases not regulated by this Act.

Article 253

1. The provisions of the Code of Administrative Procedure governing time limits for settling cases shall not apply to the processing of applications filed to obtain a patent, a supplementary protection right, a right of protection or a right in registration.

2. The provisions of the Code of Administrative Procedure governing resumption of proceedings or ascertainment of non-validity of a decision shall not apply if the grounds for resumption of a proceeding or ascertainment of non-validity of a decision may be invoked in a dispute concerning invalidation of a granted patent, a supplementary protection right, a right of protection or a right in registration.

Article 253¹

The assessment of the fulfilment of the conditions required for the grant of the patent, the right of protection, supplementary protection right and the right in registration shall not require an expert evidence unless the Patent Office considers such evidence necessary.

Article 254

Any final decision of the Patent Office which terminates the proceedings and grossly violates law may be subject to complaint lodged by the President of the Patent Office, the

General Prosecutor of the Republic of Poland and the Ombudsman to the administrative court within a period of six months from the party being served with the decision.

Title VII

Litigation Procedure

Article 255

1. Patent Office shall decide in litigation procedure:

- (i) on invalidation of a patent, a supplementary protection right, a right of protection or a right in registration;
- (i)¹ on invalidation of a European patent granted under the European Patent Convention;
- (i)² on invalidation of the extension of an international trade mark registration in the territory of the Republic of Poland;
- (ii) on the lapse of a patent for an invention concerning a biological material or for the use thereof in the case referred to in Article 90(1)(iv);
- (ii)¹ on the lapse of a supplementary protection right in the cases referred to in Article 75⁶(3);
- (iii) on the lapse of a right of protection for a trade mark in the cases referred to in Article 169;
- (iii)¹ on the lapse in the territory of the Republic of Poland of an international trade mark registrations in the cases provided for in Article 169;
- (iii)² on the invalidation of the protection of an international industrial design registration in the territory of the Republic of Poland;
- (iv) on the lapse of a right in registration for a geographical indication in the case referred to in Article 192(1);
- (v) on the lapse of a right in topography registration in the case referred to in Article 221(2);
- (vi) on the grant of a compulsory licence for exploiting an invention, a utility model, an industrial design or a topography;
- (vi)¹ on the grant of a compulsory licence for exploiting an invention for which a patent has been granted under the European Patent Convention;
- (vii) on the change of a decision on the grant of a compulsory licence;
- (viii) on the ascertainment that a request for the amendment of the conditions for the use of a geographical indication in the case referred to in Article 188(3), is unjustified;
- (ix) on the invalidation of a patent, a right of protection for a utility model or a right in registration in consequence of an opposition filed, which is claimed by the right holder to be unjustified.

2. The cases referred to in paragraph (1) shall be heard by boards adjudicating in litigious cases.

3. The provisions of the Code of Administrative Procedure governing time limits for settling cases shall not apply to cases heard by the Patent Office in litigation procedure. The Patent Office shall make all-out efforts to settle the case within six months from the submission of the request.

4. Patent Office shall settle cases in litigation procedure within the scope of the request and shall be bound by the legal ground invoked by the requesting party.

Article 255¹

1. Litigation proceedings in the cases referred to in Article 255(1)(i)-(viii) shall be initiated at a written request.

2. A request for initiation of a proceeding shall be subject to payment of a fee.

3. A request shall contain:

- (i) identification of the parties and their addresses;
- (ii) brief presentation of the case;
- (iii) clear definition of the decision sought;
- (iv) reference to the legal ground;
- (v) indication of evidence;
- (vi) signature of the requesting party and the date.

4. The request shall be accompanied by:

- (i) a power of attorney, where the request is submitted by the representative;
- (ii) copies of the request in a number corresponding to the number of the parties to the litigation proceeding;
- (iii) a receipt for the payment of the fee referred to in paragraph (2).

5. Patent Office shall check whether the request for initiation of a litigation proceeding satisfies the formal requirements referred to in paragraphs (3) and (4).

6. Where the request fails to satisfy the formal requirements, the Patent Office shall invite the requesting party to remove the defects or deficiencies, under pain of discontinuance of the proceedings, within 30 days.

Article 255²

1. Patent Office shall serve the copies of the request upon the parties to the litigation proceeding and fix the term for submitting a written reply to the request.

2. The party invited to reply to the request shall enclose the copies of the reply in a number corresponding to the number of the parties to the litigation proceeding.

3. The provisions of paragraphs (1) and (2) shall apply accordingly to other letters submitted by the parties to litigation proceedings.

Article 255³

1. On expiry of the term fixed for submitting by the party a reply to the request the Patent Office shall fix a date for a hearing and communicate it to the parties or their representatives while serving on them, at the same time, a copy of the reply to the request, if any.

2. In the cases mentioned in Articles 255¹(6), 255⁴, 255⁵(2), 255⁶(3) and in case of the time limit specified in Article 255¹(6) being restored, the Patent Office may chose to hear the case in camera.

3. In the communication on the hearing the date, venue and the matter at issue shall be specified.

4. The communication on the hearing shall be served upon the parties no later than seven days before the fixed date.

5. Where the proceedings is excessively protracted by the parties, the Patent Office may, in the course of the proceedings, also in camera, fix a time-limit for producing by the parties all the claims and any additional supporting evidence, failing which the right to invoke them in the course of the proceedings is lost, unless a party proves that the invocation thereof within the fixed time-limit has been infeasible or that the need to invoke them has arose later.

Article 255⁴

1. Where the Patent Office finds its incompetence in deciding on the request in litigation proceedings, the Office shall conclude by way of order.

2. Where the requesting party withdraws its request before the hearing, the Patent Office shall decide to discontinue the proceedings.

Article 255⁵

1. The hearing shall be held public, unless litigation proceedings concern a secret invention or a secret utility model.

2. If for the determination of the case the information legally protected under the separate provisions has to be invoked by the parties, a decision may be taken to hear the case, in whole or partially, at a non-public sitting. The decision cannot exclude the parties from being present at the hearing.

Article 255⁶

1. The hearing shall be recorded and the minutes of the court session shall be signed by the presiding judge and the recording clerk.

2. The minutes shall contain:

(i) indication of the adjudicating body, the venue and date of the session, the first names and family names of the members of the adjudicating panel, of the recording clerk, the parties, their representatives and statutory representatives, as well as the identification of the case and the mention of the secrecy of the hearing;

(ii) proceedings of the hearing, in particular the conclusions and statements of the parties, proceedings of the hearing of evidence, listing of the rulings made and orders issued at the session together with the mention of their pronouncement, the conclusions and statements of the parties may be replaced in the minutes by references to the preparatory writings;

(iii) actions taken by the parties, in particular conciliation, admission of the claim, withdrawal, modification, broadening or restriction of the request.

3. The parties may, however no later than at the next session or, if a decision has been taken – within 30 days from its taking, request the minutes to be rectified or completed.

Article 255⁷

1. On conclusion of the litigation proceeding the Patent Office shall take a decision.

2. The decision shall be taken by a simple majority of votes.

3. A member of the adjudicating panel disagreeing with the determination of the case may submit a dissenting opinion together with a written substantiation.

4. Next to the signature put on the decision a note on the submission of the dissenting opinion shall be made.

5. The dissenting opinion shall not be made public.

Article 255⁸

1. A decisions shall contain:
 - (i) indication of the adjudicating body;
 - (ii) the date of the decision;
 - (iii) the first names and family names of the members of the adjudicating panel and of the recording clerk;
 - (iv) identification of the parties;
 - (v) indication of the subject of the case and of its determination;
 - (vi) reference to the legal ground for the determination;
 - (vii) decision in respect of the court costs;
 - (viii) factual and legal substantiation;
 - (ix) instruction on the appealing procedure;
 - (x) the signatures of the members of the adjudicating panel.

2. Written substantiation of the decision shall be drawn up *ex officio* within 30 days from the date of its pronouncement. The substantiation shall be signed by the chairman and the member of the adjudicative panel that has drawn up the substantiation. A copy of the decision and the substantiation shall be served upon the parties.

Article 255⁹

1. Subject to Article 255¹⁰(1), decisions of the Patent Office shall be subject to pronouncement.

2. The decision shall be pronounced immediately after the hearing.

3. Pronouncement of the decision may be delayed of up to two weeks, this, including the date and venue of the pronouncement of the decision, being announced by the chairman of the adjudicating panel.

Article 255¹⁰

1. Orders issued and decisions taken in the closed hearing shall not be pronounced.

2. The provision of Article 255⁸(2) shall apply accordingly to the orders and decisions referred to in paragraph (1) above.

Article 255¹¹

The provisions of Articles 242 and 243 shall apply accordingly to litigation proceedings before the Patent Office.

Article 255¹²

The provisions of Articles 255¹ to 255¹¹ shall apply accordingly to the cases referred to in Article 255(1)(ix), except for the provisions governing requests for initiation of litigation proceedings.

Article 256

1. The provisions of the Code of Administrative Procedure shall apply accordingly to litigation procedure before the Patent Office in cases not regulated by this Act.

2. To costs of proceedings the provisions applied in civil law proceedings shall apply accordingly.

3. The provisions of the Code of Administrative Procedure governing re-examination, at a party's request, of cases, in which decisions not liable to appeal were taken, shall not apply to decisions on merits taken after hearing.

3¹. The cases referred to in Article 255³(2) may be requested to be re-adjudicated. A time limit for submitting a request shall be, in case of a decision taken – two months and in case of an order issued – one month from the date of the decision or the order being served upon the party.

4. *(deleted)*

Article 257

Decisions taken or orders issued by the Patent Office in the cases referred to in Article 255, shall be liable to complaint lodged with the administrative court.

Article 258

The provision of Article 254 shall apply accordingly to final decisions of the Patent Office made in the cases referred to in Article 255.

**Title VIII
Patent Office****Part I
Responsibilities and Organisation
of the Patent Office****Article 259**

Patent Office of the Republic of Poland is a central government agency responsible in industrial property matters.

Article 260

1. Patent Office shall be subordinated to the Council of Ministers. Supervision over the Patent Office's activities shall be exercised by a minister competent in economy.

2. The Prime Minister shall, by way of regulation, grant statutes to the Patent Office and determine therein, in particular, the organisation, structure and rules of administration of the Office, as well as the allocation of responsibilities, while taking into account the status of experts, officers of civil service and of other employees.

Article 261

1. Patent Office shall perform its responsibilities in the industrial property matters specified in this Act, in separate regulations and in international agreements.

2. The responsibilities of the Patent Office shall, in particular, include:
- (i) receiving and examination of applications seeking protection for inventions, utility models, industrial designs, topographies of integrated circuits, trade marks and geographical indications;
 - (ii) deciding in matters related to granting patents and supplementary protection rights for inventions, rights of protection for utility models and trade marks, as well as rights in registration for industrial designs, geographical indications and topographies of integrated circuits;
 - (iii) adjudicating cases in litigation proceedings to the extent as specified by this Act;
 - (iv) keeping the Registers referred to in Article 228;
 - (v) publishing of an official gazette titled “*Wiadomości Urzędu Patentowego*”;
 - (v)¹ publishing of “*Biuletyn Urzędu Patentowego*”;
 - (vi) participating in activities of international bodies on account of the international agreements in the field of industrial property concluded by the Republic of Poland, in particular the Paris Convention for the Protection of Industrial Property;
 - (vii) keeping of the centralised collection of Polish and foreign patent specifications.

3. When performing its responsibilities, in particular tasks relating to international co-operation, as well as in the course of preparation of drafts of regulations governing industrial property, the Patent Office shall act in agreement and co-operation with interested central and local government agencies.

Article 262

The Council of Ministers shall, by way of regulation, determine the detailed scope of activity of the Patent Office, taking, in particular, into account the Office’s tasks and responsibilities, as well as the principles and forms of collaboration of the Office with other central and local government agencies, social organisations and trade unions in the matters falling within its responsibilities.

Article 263

1. Patent Office shall be headed by the President of the Patent Office, whose responsibility is to manage the Office and, subject to Article 264(2), represent the Office in outside relations, as well as to determine in detail its internal structure and the scope of responsibilities of its individual organisational units.

2. The President of the Patent Office shall be appointed by the Prime Minister from among the persons selected in an open and competitive recruitment procedure, on a motion of a minister competent in the matters of economy. The President of the Patent Office shall be recalled by the Prime Minister.

3. Deputies of the President of the Patent Office shall be appointed by the Prime Minister, on a motion of the President of the Patent Office, from among the persons selected in an open and competitive recruitment procedure. The Prime Minister, on a motion of the President of the Patent Office, shall recall its deputies.

4. The position of the President of the Patent Office may be held by a person, who:

- (i) is a holder of a Master's degree or equivalent;
- (ii) is a Polish citizen;
- (iii) enjoys full public rights;
- (iv) has not been convicted by a valid judgement for a intentional offence or an intentional tax offence;
- (v) has managerial skills;
- (vi) has at least six years of professional experience, including at least three years of professional experience at a managerial position;
- (vii) has education and knowledge on matters within the competence of the Patent Office.

5. The information concerning recruitment for the position of the President of the Patent Office shall be published by placing a notice in a generally available place in the seat of the Office as well as in the Office's Public Information Bulletin and the Public Information Bulletin of the Chancellery of the Prime Minister. The notice should include:

- (i) name and address of the Office;
- (ii) name of the position;
- (iii) requirements linked with the positions as required by the provisions of law;
- (iv) the scope of tasks performed by the holder of the position;
- (v) indication of required documents;
- (vi) time limit and place of filing documents;
- (vii) information on recruitments methods and techniques.

6. The time limit referred to in paragraph (5)(vi) shall not be shorter than ten days from the date of publication of the notice in the Public Information Bulletin of the Chancellery of the Prime Minister.

7. The recruitment for the position of the President of the Patent Office shall be conducted by a team appointed by the minister competent in the matters of economy and comprising of at least three persons, whose knowledge and experience ensure selection of the best candidates. In the course of recruitment, professional experience of the candidate, his knowledge necessary to perform tasks required on the position for which the recruitment is conducted as well as his managerial skills.

8. The assessment of knowledge and managerial skills referred to in paragraph (7) may be commissioned by the team to a non-team member, which is qualified to make such assessment.

9. A team member and a person referred to in paragraph (8) are required to keep confidentiality of information relating to the persons applying for the position, obtained in the course of recruitment.

10. In the course of recruitment the team shall select three candidates at maxim, who are presented to the minister competent in the matters of economy.

11. The team shall draw up a protocol documenting the recruitment procedure containing:

- (i) the name and address of the office;
- (ii) the name of the position for which the recruitment was conducted and the number of candidates;
- (iii) names, surnames and addresses of no more than three best candidates ranked according to the level of fulfilment of requirements specified in the call for position;
- (iv) information on applied recruitment methods and techniques;
- (v) justification of selection of a candidate or reasons for not selecting a candidate;
- (vi) composition of the team.

12. The result of the recruitment shall be announced without delay by publishing information in the office's Public Information Bulletin and the Public Information Bulletin of the Chancellery of the Prime Minister. The information on the result of the selection shall contain:

- (i) name and address of the office;
- (ii) the position, for which the recruitment was conducted;
- (iii) names, surnames of selected candidates and their place of residence within the meaning of the Civil Code or information on not selecting a candidate.

13. Publishing in the Public Information Bulletin of the Chancellery of the Prime Minister of the call for position and information on its result shall be free of charge.

14. The recruitment team referred to in paragraph (3) shall be appointed by the President of the Patent Office.

15. The provisions of paragraph (4) – (13) shall apply to the manner of recruitment for positions referred to in paragraph (3).

Article 264

1. Examiners appointed by the President of the Patent Office shall be responsible for deciding in the cases referred to in Article 261(2)(ii) and (iii) and in matters relating to making entries in the Registers.

1¹. In the matters referred to in Article 261(2)(ii), examiners may also decide in adjudication boards.

2. An examiner shall represent the Patent Office in proceedings before the administrative court in the cases referred to in Articles 248 and 257.

3. The examiner referred to in paragraph (1) may be entrusted with additional powers, such as: directing, co-ordinating or supervising, or supplementary tasks related to the activity concerning education on the protection of industrial property.

4. The additional powers, referred to in paragraph (3), may be entrusted for an unlimited period of time or for a period contracted for the performance of a given task.

5. The members of the adjudicating board, referred to in paragraph (1¹), shall be appointed by:

- (i) the President of the Patent Office, or
 - (ii) an examiner performing a directing or supervising function authorised by the President of the Patent Office
- considering the need to ensure an expedience and correctness of the matters processed.

Article 265

1. Examiners shall co-administer the Patent Office through the Board of Examiners, which constitutes the examiners' general assembly.

2. The Board of Examiners shall appoint the Spokesman for the Interests of the Profession, who represents the experts before government and administration bodies in any matters involving their work.

3. The following shall be the Board's responsibilities:

- (i) making proposals and giving opinions on tasks to be carried out in processing applications filed and advising on means to be applied for carrying them out;
- (ii) establishing the principles of awarding examiners from the award fund created under Article 271(3);
- (iii) giving opinions on problems incidental to the course of deciding cases, in particular as to inconsistencies identified in the decisions taken, and making respective proposals;
- (iv) giving opinions on other questions put forward by the President of the Patent Office or by the Spokesman for the Interests of the Profession.

4. Subject to paragraph (5), the Board of Examiners shall be convened at least once a year by the President of the Patent Office, who chairs its meetings. The Board of Examiners may also be convened at any time by the Spokesman for the Interests of the Profession for the presentation of a matter that needs to be consulted with the Board.

5. The Board of Examiners may also debate in sections in which examiners are grouped depending on the subject matter and problem involved and according to the tasks performed. Debates in a section may be chaired by the President of the Patent Office, a Deputy President or an expert, who has been assigned an executive duty under Article 264(3).

6. The President of the Patent Office shall make division into sections and appoint chairmen of works in sections.

Article 265¹

The employees of the Patent Office on posts of officials, except for examiners, assistant examiners and trainee examiners, shall be members of the corps of civil servants.

Part II Examiners, Assistant Examiners and Trainee Examiners

Article 266

1. Subject to paragraph (2), only a person who holds a university degree and has graduated from a faculty enabling him/her to carry out the examiner's duties, who completed

an examiner's practical training, hereinafter referred to as the "examiner's training" and served his/her traineeship as an assistant examiner, may be admitted as an examiner.

2. Any person:

- (i) being a Polish national and enjoying full civic rights;
- (ii) having a record clean of any punishment for an offence committed intentionally;
- (iii) having command of at least one foreign language to an extent and degree as necessary for carrying out examiner's duties, including those arising out from international agreements;
- (iv) being of unimpeachable character;
- (v) having a state of health and predisposition making him/her capable of being assigned expert's duties;
- (vi) *(deleted)*

shall be eligible for being an examiner.

3. A trainee examiner who is required to have command of more than one foreign language, may be released from the command of one of those languages, provided that he/she makes up for the deficiency concerned while undergoing the examiner's training.

Article 267

1. The President of the Patent Office shall organise recruitment for examiner's training by placing an announcement in a publicly available place in the Patent Office's seat and by publishing it in the official gazette "*Wiadomości Urzędu Patentowego*".

2. The President of the Patent Office shall carry out qualifying appraisal. Candidates shall be expected to hold university education degree and to satisfy the requirements referred to in Article 266(2) and (3).

3. The examiner's training shall last three years; when reasonable, it may, at the request of a trainee, be shortened to up to one and a half-year.

4. An employment relationship of a trainee examiner shall be established by the President of the Patent Office in a form of a fixed-term employment contract.

5. A trainee examiner may be assigned performance of certain acts associated with the decision-taking process, however without a right to take a decision.

6. The examiner's training shall be completed with an examination. The failed examination may be re-sat only once, not earlier than six months and not later than one year after the date of the first sitting for the examination.

7. An examination shall be conducted by an examination board appointed by the President of the Patent Office. Participation in the commission's works shall be subject to remuneration.

8. Failure to sit for an examination without giving reasons or failure to pass the examination for the second time shall result in the dissolution by the President of the Patent Office, at prior notice, of a contract of employment with a trainee examiner.

9. A trainee examiner shall be liable to disciplinary responsibility for professional wrongdoing. The provisions of Part III shall apply accordingly to disciplinary responsibility.

Article 268

1. After the pass of the examination the President of the Patent Office shall establish an employment relationship with the assistant examiner in an employment contract for an indefinite period.

2. The assistant examiner shall be assigned performance of the examiner's work, which shall be subject to assessment made according to the principles specified in the regulation referred to in paragraph (8).

3. Where the assessment of the assistant examiner's work is positive, the assistant examiner shall be admitted as an examiner.

3¹. The President of the Patent Office shall appoint an examiner to a specific examiner position for a fixed-time or an indefinite period.

4. On admittance, the examiner shall take an oath before the President of the Patent Office, the formula of which is the following: "I hereby swear to conscientiously perform the examiner duties assigned to me, to decide in all fairness and respect for law, to keep state and public service secrets, and to follow in conduct the principles of dignity and honesty."

5. The oath shall not be taken again, where an examiner takes on another examiner's post.

6. Unless otherwise stipulated in this Act, the provisions of this Act applicable to examiners shall apply accordingly to assistant examiners.

7. Where after two years of holding the assistant examiner's post the assistant examiner does not receive a positive evaluation of the course of their post, the President of the Patent Office may terminate their employment contract with notice.

8. The Prime Minister shall, by way of regulation, determine the detailed principles, extent and procedure of undergoing the examiner's traineeship and apprenticeship, and of passing examinations, including remuneration of persons conducting an examination.

Article 269

1. When deciding cases, examiners shall only be amenable to law.

2. To the extent as determined in paragraph (1), the provisions of other acts of law on obligation to respect superior's service instructions, as well as the provisions providing for periodic or incidental assessment of employee's performance of his/her duties, shall not apply to examiners.

3. When deciding in a case, the examiner shall be obliged to follow interpretation instructions prescribed in general guidelines of the President of the Patent Office, issued in accordance with the procedure provided for in paragraphs (4) and (5).

4. The general guidelines referred to in paragraph (3) shall be issued by the President of the Patent Office after having consulted or at the request of the Board of Examiners.

5. The President's general guidelines, referred to in paragraph (3), shall be given to public notice.

6. The President's general guidelines, referred to in paragraph (3), shall only be binding on examiners in deciding cases and may not be referred to as a legal basis for a decision taken or an order issued.

7. On the principles as laid down in separate provisions, examiners shall enjoy the protection as provided to public functionaries.

8. Direct supervision over the work of organisational units, within which examiners perform their duties in deciding cases, shall be executed by the President of the Patent Office or a Deputy President authorised by him. The supervision shall not be executable in respect of a decision-taking process.

Article 270

1. The examiner shall be bound to behave in accordance with the oath taken, in particular:

- (i) to observe the Constitution of the Republic of Poland and other laws and regulations;
- (ii) to observe, in decision-taking process, the general guidelines of the President of the Patent Office, referred to in Article 269(3);
- (iii) to perform his/her duties honestly, fairly, efficiently and in a timely manner;
- (iv) to keep state and service secrets;
- (v) to behave with dignity at the Office and in outside relations.

2. The examiner may not be involved in establishing of trade unions or be member thereof. Upon his/her appointment to an examiner's post, examiner's membership in trade unions shall terminate by virtue of law.

3. The examiner shall not be allowed to take on another employment without the consent of the President of the Patent Office, or to perform activities or works, which are contrary to his/her examiner's duties or impair confidence therein.

4. An examiner may not act in the capacity of a court expert in the case in which he/she decides.

5. The provisions governing restrictions on running business activity by persons performing public functions in part relating to civil servants members of civil service acting as managers, shall apply to examiners.

6. At a justified written invitation of the President of the Patent Office an examiner shall be obliged to submit, within one month, a medical report established by an authorised physician, in confirmation of the expert's physical and mental capabilities to continue the work on his/her post.

7. When reasonable, an examiner may be employed on part-time basis.

8. *(deleted)*

Article 271

1. The examiner's salary shall consist of the basic salary as fixed for a post held by the examiner and a seniority allowance for continuing service on that post, plus, if the examiner has been assigned an additional function, an allowance for performing that function. The amount of the salary and of the allowances shall be calculated by means of multipliers of the medium salary the amount of which, calculated under separate rules, is determined in the Budget Act .

2. An examiner shall be entitled to an extra salary payable once a year to employees of agencies remunerated from the state budget, at the amount and under the conditions laid down in separate provisions.

3. An award fund intended for awarding examiners, assistant examiners and trainee examiners for particular achievements in their work shall be established at the amount of three percent of the planned funds for their salaries. The amount of the deduction for the award fund may be increased by the President of the Patent Office within the amount of the wage fund held.

4. The provisions of the Act on Civil Service in part relating to the grant of anniversary awards and single compensations payable to an employee being pensioned for disability to work or retired on a pension shall apply accordingly to examiners.

5. The Prime Minister shall, by way of regulation, determine multipliers of the basic salary referred to in paragraph (1) as a basis for determining the amount of the basic salary for posts of examiners, assistant examiners and trainee examiners, and the amounts of seniority and function allowances, taking into account the scope of responsibilities conferred and the position held.

Article 272

1. The examiners 's working day may not be longer than eight hours and 40 hours per week on the average.

2. The work timetable in a week and the duration of individual working weekdays shall be determined taking into account the terms and conditions of work provided for the whole personnel of the Patent Office. Non-working days at the Office shall be added to the rest leave time.

3. A person serving as an examiner for at least ten years shall be entitled to an extra rest leave of six working days, and after twenty years of service on that post – of twelve working days.

4. *(deleted)*

5. For the period of disability to work in consequence of a disease suffered, an examiner shall be entitled to receive the salary and a sickness allowance for a period of one year at the amount and on the conditions laid down in separate provisions.

6. Paragraphs (3) to (5) shall not apply to assistant examiners.

Article 272¹

1. The provisions of Articles 72 and 78(3) shall apply accordingly to examiners and assistant examiners, and to assistant examiners also the provisions of Articles 91, 92 and 94 of the Act of 21 November 2008 on civil servants (JL No 227 item 1505, as amended).

2. The provisions of the Act of 26 June 1974 – Labour Code (JL of 1998, No 21 item 94, as amended) shall apply to the cases arising from the employment relationship of experts and assistant examiners and not regulated in this Act and in the provisions referred to in paragraph (1).

Part III
Disciplinary Responsibility.
Suspension and Termination
of Employment Contract with Examiner

Article 273

1. The examiner shall bear disciplinary responsibility for violation of service duties.

2. For the purpose of conducting proceedings and deciding in the cases referred to in paragraph (1), the President of the Patent Office shall appoint, from among the examiners, a disciplinary prosecutor and members of the Examiners' Disciplinary Commission and the Examiners' High Disciplinary Commission in a number enabling to form a bench.

3. When necessary, where the disciplinary prosecutor referred to in paragraph (2) is not able to act in the case, the President of the Patent Office may casually appoint a substitute of the disciplinary prosecutor.

4. The following shall be disciplinary punishments:

- (i) warning,
- (ii) reprimand,
- (iii) interdiction to occupy executive posts at the Patent Office,
- (iv) interdiction to occupy examiner's post.

5. In matters not regulated by this Law, the provisions on disciplinary responsibility of civil servants shall apply accordingly to disciplinary responsibility of examiners.

Article 274

1. The President of the Patent Office shall recall an examiner from his/her post in the event of his/her physical or mental disability to work, ascertained in a physician's report issued for the purpose of making arrangements for pensioning or in a physician's report ascertaining the loss of capability to work on an assigned post, established by a physician authorised to do medical examinations of the Patent Office's staff.

2. The President of the Patent Office may recall an examiner from his/her post:

- (i) on submitting by him/her a letter of resignation from the examiner's post;

- (ii) in case of a need for reducing the corps of examiners in consequence of changes in the range of tasks of the Patent Office or the continuing reduction in a number of cases handled,
- (iii) on failure by the examiner, in the event referred to in Article 270(6), to submit a report established by an authorised physician on the expert's continuing physical and mental capabilities to work,
- (iv) *(deleted)*
- (v) upon expiration of the periods provided for in Article 53 of the Labour Code, in case of the examiner's absence caused by sickness or isolation because of a contagious disease suffered, persisting for a period longer than the period of drawing the sick allowance, as well as in case of the excused absence in the work for other reasons,
- (vi) *(deleted)*.

3. An employment contract with an examiner arrested and awaiting trial shall be suspended by virtue of law.

4. The President of the Patent Office may suspend an examiner in service activities, where a disciplinary or penal proceeding has been instituted against him/her.

5. In the case of the suspension referred to in paragraphs (3) and (4), the examiner shall be entitled to receive the salary and enjoy the respective rights and benefits on the conditions laid down in the Act on Civil Service.

6. An employment contract with an examiner shall terminate in the cases determined in the Labour Code and in separate provisions, as well as:

- (i) on the loss of the Polish nationality,
- (ii) in case of a final decision inflicting the disciplinary punishment of interdiction to occupy examiner's post,
- (iii) in case of a final court decision on deprivation of the examiner of public rights or of interdiction to occupy an examiner's post,
- (iv) on refusal to take an oath,
- (v) in case of valid conviction for an intentional offence.

7. Unless otherwise decided in the recall, the recall of the examiner from his/her post shall effect upon his/her being served the notice of recall; the employee recalled from the post may be assigned performance of other tasks corresponding to his/her qualifications for the period up to the termination of the employment contract.

8. Termination of an employment contract with an examiner shall have the same effects as those of the recall from the examiner's post, the effects being binding as from the termination of the employment contract.

9. The recall of an examiner from his/her post in the cases referred to in paragraph (1) and paragraph (2)(ii)-(iii), as well as in the case of the submission by the examiner of the letter of resignation shall, subject to paragraph (11), be equal to the termination of the employment contract or its dissolution by mutual agreement.

10. Subject to paragraph (11), the recall of an examiner from his/her post in the cases referred to in paragraph (2)(v) shall amount to the dissolution of an employment contract without notice.

11. The recall of an examiner from his/her post may not prejudice the provisions governing special protection of employees in cases involving termination or dissolution of an employment contract.

12. Restrictions on the dissolution of an employment contract with an examiner shall not be applicable in respect of the additional powers referred to in Article 264(3).

Chapter 4

(deleted)

Part IV

Boards Hearing in Litigious Cases

Article 279

1. Adjudicative boards in litigious cases, hereinafter referred to as “boards”, shall act at the Patent Office.

2. The boards shall decide in cases falling within the scope of their competence in panels composed of: the chairman and two members of a board. For hearing complicated cases, a board composed of five members may be appointed.

Article 280

1. As chairman may be appointed an employee of the Patent Office:

- (i) being of the Polish nationality and enjoying full capacity to enter into legal transactions and civic rights;
- (ii) being of an unimpeachable character;
- (iii) who has not been convicted for an intentional offence;
- (iv) holding a university degree taken at the law faculty in the Republic of Poland and the title “master of laws” or holding a university degree taken abroad and recognized in the Republic of Poland;
- (v) who completed a legal training for judges, legal advisers, advocates or public prosecutors, or holds a title of professor or of *doctor habilitatus* of law, or who was holding in public agencies, for a period of ten years, a post involved in the application or creation of administrative law.

2. The provisions on examiners shall apply to chairmen of boards, provided they earlier obtained the qualifications of examiners or on assistant examiners, the chairmen being released from an obligation to complete the practical training and to pass the examination, referred to in Article 266(1) and in Article 267(6).

3. Members of the board shall be, besides chairman, examiners empowered by the President of the Patent Office to adjudicate in litigious cases.

4. *(deleted)*

5. *(deleted)*

Article 281

1. Administrative support for the boards shall be provided by a separate organisational unit of the Patent Office.

2. Head of the organisational unit referred to in paragraph (1), appointed by the President of the Patent Office, shall:

- (i) order completion of the documentary files requisite to fix a closed session or a trial, or of other evidence, as deemed necessary;
- (ii) appoint an adjudicative panel;
- (iii) order serving of copies of the request with the enclosures upon the opposite party in order to allow it to respond to the request;
- (iv) fix a date of a closed session or a trial at which the case is to be heard;
- (v) order notification about the trial of the parties and other persons, whose participation in the trial is deemed necessary;

Article 282

(deleted)

Title IX
Enforcement of Claims in Civil Law Procedure

Part I
Common Provisions

Article 283

Subject to Article 257, cases involving civil law claims in the field of industrial property protection, not falling within competence of other authorities shall be decided in civil law procedure in accordance with the general principles of law.

Article 284

The following cases, in particular, shall be decided in civil law procedure in accordance with the general principles of law:

- (i) for ascertainment of the authorship of an inventive project;
- (ii) for ascertainment of the right to a patent, a right of protection or a right in registration;
- (iii) for remuneration for the exploitation of an inventive project;
- (iv) for remuneration for the exploitation of an invention, a utility model or a topography for state purposes;
- (v) for compensation for the transfer to the State Treasury of a right to a patent for a secret invention or to a right of protection for a secret utility model;
- (vi) for infringement of a patent, a supplementary protection right, a right of protection or a right in registration;
- (vii) for ascertainment of the right to exploit an invention, a utility model or an industrial design in the cases referred to in Articles 71 and 75;
- (viii) for ascertainment of the right to use, in a local-scale activity, a mark registered on behalf of a third party as a trade mark;
- (ix) for ascertainment of the right to use a geographical indication;
- (x) for ascertainment of the loss of the right to use a geographical indication;

- (xi) for the transfer of a patent, a right of protection for a utility model or a right in registration of an industrial design or a topography obtained by a person not entitled thereto;
- (xii) for the transfer of a right of protection for a trade mark in the case referred to in Article 161.

Article 285

The holder of a patent, a supplementary protection right, a right of protection or a right in registration, or a person entitled under this Act, may demand stopping the acts threatening infringement of the right.

Article 286

When ruling on the infringement of a right, the court may, at the holder's request, decide as to the disposal of unlawfully manufactured or marked products and of the means used in their manufacturing or marking, and being the infringer's ownership. The court may, in particular, decide on their removal from the market or on making them over to the right holder on account of the sum of money to be adjudged to him, or on their destruction. When ruling, the court shall take into account a gravity of the infringement and third parties' interests.

Article 286¹

1. The court of place where the perpetrator runs his activity or on which his property is located, competent to hear the case involving infringement of industrial property rights, shall, also before an action is brought, however no later than three days, or seven days in case where the matter is particularly complicated, from the date of its filing to the court by the holder of the patent or supplementary protection right, or the right of protection or the right in registration, or by the party who is permitted by law to do so, examine a request for:

- (i) securing the evidence;
- (ii) securing the claims by obligating the party infringing the patent, supplementary protection right, right of protection or right in registration, to provide the information, as necessary in enforcing the claims referred to in Articles 287(1) and 296(1), on the origin and distribution networks of the goods or services which infringe the patent, supplementary protection right, right of protection or right in registration, where the likelihood of infringement of these rights is great;
- (iii) securing the claims by obligating a party other than the infringing party to provide the information, as necessary in enforcing the claims referred to in Articles 287(1) and 296(1), on the origin and distribution networks of the goods or services which infringe the patent, supplementary protection right, right of protection or right in registration, where the likelihood of infringement of these rights is great, and that party:
 - (a) was found in a possession of the goods which infringe the patent, supplementary protection right, right of protection or right in registration, or
 - (b) was found to make use of the services which infringe the patent, supplementary protection right, right of protection or right in registration, or

- (c) was found to provide services used in activities which infringe the patent, supplementary protection right, right of protection or right in registration, or
- (d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services which infringe the patent, supplementary protection right, right of protection or right in registration,

and the above activities are intended to directly or indirectly gain profit or other economic benefits, however the activities of customers in good faith being excluded there from.

2. The information referred to in paragraph (1)(ii) and (iii) shall exclusively comprise:

- (i) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services which infringe the patent, supplementary protection right, right of protection or right in registration, as well as the intended wholesalers or retailers of the goods or services,
- (ii) information on the quantities of the produced, manufactured, delivered, received or ordered goods or services which infringe the patent, supplementary protection right, right of protection or right in registration, as well as the price obtained for the goods or services in question.

3. When admitting evidence or examining requests referred to in paragraph (1) the court shall protect confidential information of the entrepreneur and other confidential information protected by virtue of law.

4. The obligation referred to in paragraph (1) (ii) and (iii) may be waived in respect of any person who as a witness might, under the provisions of the Code of Civil Procedure, refuse to testify or answer the questions posed.

5. At a well-documented request of the party referred to in paragraph (1)(iii), the right holder shall be obliged to reimburse the costs and expenses incurred by it while providing information.

6. When reasonable, the court may give a ruling on securing the evidence referred to in paragraph (1)(i) conditional upon posting bail.

7. The court shall rule on the securities mentioned in paragraph (1)(ii) and (iii) after having conducted a trial.

8. The court shall settle a complaint against the court's rulings in the cases referred to in paragraph (1) within seven days.

9. To the securing of evidence the provisions of Articles 733, 742 and 744-746 of the Code of Civil Procedure shall apply accordingly.

Part II
Claims Concerning Inventions,
Utility Models, Industrial Designs
and Topographies of Integrated Circuits

Article 287

1. A patent holder, whose patent has been infringed or any person who is permitted by law to do so, may demand the infringing party to cease the infringement, to surrender the unlawfully obtained profits and in case of infringement caused by fault also to redress the damage:

- (i) in accordance with the general principles of law, or
- (ii) by the payment of a sum of money at the amount corresponding to the license fee or of other reasonable compensation, which while being vindicated would have been due on account of consent given by the patent holder to exploit his invention.

2. When ruling on the infringement of a patent the court may, at the holder's request, decide on publishing the judgement in full or in part, or the mention of the judgement, in a manner and at the extent as specified by the court.

3. The court may, at the request of the person infringing the patent, if the act of infringement was committed unintentionally, order that that person pay the holder an adequate amount of money if the cessation of the infringement or the judgement referred to in Article 286 would be excessively severe for the infringing person and the payment of the adequate sum of money properly meets the interests of the holder.

Article 288

1. Claims for infringement of a patent shall be enforceable after the grant of the patent.

2. Where the infringing person has acted in good faith, claims for the infringement of a patent shall be enforceable in respect of the period beginning on the day following the date of publication by the Patent Office of the patent application, and in case of the infringing person being earlier notified by the holder on the filing of the patent application, from the date of notice.

Article 289

1. The period of prescription for claims for infringement of the patent shall be three years. The period concerned shall run, separately in respect of each individual infringement, from the date where the right holder has learned about the infringement of his patent and about the infringing person. However, in any case, the claim shall become barred by prescription five years after the date on which the infringement has occurred.

2. The period of prescription shall be suspended for the time between the filing of the patent application with the Patent Office and the grant of the patent.

Article 290

The entitled person referred to in Article 74 may demand that the person who, not being entitled to do so, applied for a patent or was granted the patent, surrender the unlawfully obtained profits and redress the damage, in accordance with the general principles of law.

Article 291

Unless otherwise agreed between the parties, in the event of the invalidation of the patent, an acquirer, a licensee or any other person on behalf of which the holder of the patent disposed of his right against payment, shall be entitled to reimbursement of such payment and to redress of damage, in accordance with the general rules of law. The disposer may, however, deduct any profits obtained by the acquirer as a result of the exploitation of the invention before the invalidation of the patent; where the profits exceed the payment and the damages sought, the disposer shall be exempted from liability.

Article 291¹.

The provisions of Articles 287-291 shall apply accordingly to supplementary protection rights.

Article 292

1. The provisions of Articles 287 to 291 shall apply accordingly to utility models and, subject to paragraph (2), to industrial designs.

2. If the infringer has acted in good faith, claims for infringement of a right in industrial design registration shall be enforceable in respect of a period beginning on the day following the date of publication of the mention of the grant of the right in the “*Wiadomości Urzędu Patentowego*” and in case of the infringer being earlier notified by the right holder of the application filed, from the date of notice.

Article 293

1. Subject to paragraphs (2) and (3), the provisions of Articles 287 to 291 shall apply accordingly to topographies of integrated circuits.

2. If the infringer has acted in good faith, claims for infringement of a right in registration shall be enforceable in respect of a period beginning on the day following the date of publication of the mention of the grant of the right in the “*Wiadomości Urzędu Patentowego*” and in case of the infringer being earlier notified by the right holder of the application filed, from the date of notice.

3. Paragraph (2) shall apply accordingly where within a period of two years from putting a topography into exploitation for commercial purposes for the first time a person entitled to the right in registration has notified a party, who has exploited the topography without his consent, of his intention to apply the topography for registration with the Patent Office.

Article 294

1. An inventor may enforce his claims for remuneration for the exploitation of his invention before a district court.

2. In the case referred to in paragraph (1), the provisions of the Code of Civil Procedure governing legal actions involving claims arising out of employment shall apply accordingly.

Article 295

The provisions of Article 294 shall apply accordingly to remuneration for utility models, industrial designs and topographies of integrated circuits.

Part III
Claims Concerning Trade marks
and Geographical Indications

Article 296

1. Any person whose right of protection for a trade mark has been infringed or any person who is permitted by law to do so, may demand the infringing party to cease the infringement, to surrender the unlawfully obtained profits and in case of infringement caused by fault also to redress the damage:

- (i) in accordance with the general principles of law, or
- (ii) by the payment of a sum of money at the amount corresponding to the license fee or of other reasonable compensation, which while being vindicated would have been due on account of consent given by the holder to exploit his trade mark.

1a. To the claims referred to in paragraph (1) the provisions of Article 287(2) and (3) shall apply accordingly.

2. Infringement of the right of protection for a trade mark consists of unlawful use in the course of trade of:

- (i) a trade mark identical to a trade mark registered in respect of identical goods;
- (ii) a trade mark identical or similar to a trade mark registered in respect of identical or similar goods if a likelihood of misleading the public, including in particular a risk of associating the trade mark with a registered trade mark, exists;
- (iii) a trade mark identical or similar to a renown trade mark registered for any kind of goods if such use would without due cause bring unfair advantage to the user or be detrimental to the distinctive character or the repute of the earlier trade mark.

3. The claims referred to in paragraph (1) shall also be enforceable against a person who only puts on the market the goods already bearing that trade mark, provided that the goods do not originate from the right holder or from a party authorised by him to use the trade mark.

4. When invoking the right of protection conferred by his trade mark, the licensor may enforce the claims referred to in paragraph (1) against a licensee who breaches any provision in his licence contract with regard to its duration and territory covered by the contract, the form covered by the contract in which the trade mark may be used, as well as the scope of the goods for which the trade mark may be used, or the quality of the goods. This provision shall apply accordingly to the sub-licence.

5. A holder of a right of protection for a trade mark may enforce the claims referred to in paragraph (1) against a licensee or a sub-licensee in case where the provisions of the sub-licence contract referred to in paragraph (4) have been breached, as well as in the case where the contract has been concluded in breach of Article 163(2).

Article 297

1. In case of products bearing a counterfeit trade mark, the court, when ruling in accordance with Article 286 on further disposal of the products, may only in exceptional cases recognise removal of the trade mark there from sufficient enough for putting the product into circulation.

2. *(deleted)*

Article 298

Where the infringer has acted in good faith, claims for infringement of a right of protection for a trade mark shall be enforceable in respect of the period beginning on the day following the date of making the information on the filing of the application public by the Patent Office in accordance with Article 146¹(1), and in case of the infringer being earlier notified on the filing of the application, from the date of notice. The provisions of Article 288(1) and 289 shall apply accordingly.

Article 299 – *(deleted)*

Article 300 – *(deleted)*

Article 301

Subject to Article 165(1)(iii), a holder of a well-known trade mark in the territory of the Republic of Poland may demand the cessation of the use of the identical or similar trade mark in respect of identical or similar goods if such use is likely to mislead the public as to the origin of the product.

Article 302

1. Subject to Article 186, the provisions of Articles 296 to 298 shall apply accordingly to geographical indications.

2. The claims referred to in Article 296 may be enforced by a holder of a right in registration for a geographical indication, as well as by any party entered in the Register as authorised to use it.

Title X

Penal Provisions

Article 303

1. Anyone who usurps another person's authorship or misleads another party as to the authorship of another person's inventive project, or otherwise infringes rights of the author of an inventive project, shall be liable to a fine, limitation of freedom or imprisonment for a period not exceeding one year.

2. A person committing the act referred to in paragraph (1) for material profit or personal gain shall be liable to a fine, limitation of freedom or imprisonment for a period up to two years.

Article 304

1. Any person who, not being entitled to be granted a patent, a right of protection or a right in registration, files another person's invention, utility model, industrial design or

topography of an integrated circuit in order to be granted a patent, a right of protection or a right in registration, shall be liable to a fine, limitation of freedom or imprisonment for a period of up to two years.

2. The same penalties shall incur anyone disclosing information on another person's invention, utility model, industrial design or topography of integrated circuit or otherwise preventing another party from being granted a patent, a right of protection or a right in registration.

3. A person committing the act referred to in paragraph (2) unintentionally shall be liable to a fine.

Article 305

1. Anyone marking goods with a counterfeit trade mark or a registered trade mark while not being entitled to use it in order to place the goods on the market or to trade in goods bearing such trade mark shall be liable to a fine, limitation of freedom or imprisonment for a period of up to two years.

2. In case of an act of minor gravity, a person committing the offence referred to in paragraph (1) shall be liable to a fine.

3. A person who has made the offence referred to in paragraph (1) his regular source of proceeds or commits that offence in respect of the goods of handsome value shall be liable to imprisonment for a period from six months to five years.

Article 306

1. In case of conviction for the offence specified in Article 305(3), the court shall order forfeiture to the Treasury of the materials, tools and technical means, which have served or have been intended to serve for the purpose of committing the offence; if such materials, tools or technical means do not belong to the perpetrator, the court may order the forfeiture thereof to the Treasury.

2. In case of conviction for the offence specified in Article 305(1) and (2), the court may order forfeiture to the Treasury of the materials, tools and technical means which have served or have been intended to serve for the purpose of committing the offence, even if they do not belong to the perpetrator.

3. In case of ordering the forfeiture referred to in paragraph (1) or (2), Article 195 of the Executive Penal Code shall apply accordingly, whatever is the value of the goods the forfeiture of which has been ordered.

Article 307

1. Anyone marking goods not protected by a patent, a supplementary protection right, a right of protection for a utility model or a right in registration for an industrial design, for a topography of an integrated circuit, or for a geographical indication, with statements or signs calculated to give the impression that the goods enjoy such protection, shall be liable to a fine or detention.

2. Anyone putting on the market, or preparing or stocking for that purpose the goods referred to in paragraph (1), or providing by announcements, communications or otherwise,

information calculated to give the impression that the goods enjoy legal protection, while being aware of their being falsely marked, shall be liable to the same penalties.

Article 308

Anyone putting on the market goods bearing a trade mark accompanied by a distinguishing feature which is intended to make the false impression that the goods enjoy such protection, shall be liable to a fine.

Article 309

In organisational entities, the liability referred to in Articles 303, 304, 305, 307 and 308 shall incur a person running or managing an entity, unless the allocation of responsibilities implies the liability of another person.

Article 310

1. Prosecution of persons committing the offences referred to in Articles 303, 304 and 305(1) and (2) shall be initiated at the injured person's request.

2. Cases involving the acts referred to in Articles 307 and 308 shall be adjudicated under the provisions governing the procedure applied in cases concerning petty offences.

Title XI

**Changes in the Effective Provisions
Transitional and Final Arrangements**

Part I

Changes in the Effective Provisions

Article 311-314

(omitted)

Part II

Transitional and Final Arrangements

Article 315

1. Rights conferred in respect of inventions, utility models, ornamental designs, topographies of integrated circuits, trade marks and rationalisation projects, existing at the time of entry into force of this Act, shall remain effective. To these rights the previous provisions are applicable, unless the provisions of this Part stipulate otherwise.

2. Legal relationships established prior to the entry into force of this Act shall continue to be governed by the previous provisions.

3. Statutory requirements for the grant of a patent, a right of protection or a right in registration shall be assessed under the provisions effective at a date of filing with the Patent Office of an application concerning an invention, a utility model, a trade mark or topography of an integrated circuit. However, the provision of Article 37(2) shall apply to patent and utility model applications pending at the date of entry into force of this Act.

Article 316

1. Applications concerning ornamental designs filed before the date of entry into force of this Act and pending at that date shall be considered as industrial design applications.

2. Patent applications concerning secret inventions or applications for the grant of a right of protection for a secret utility model, filed before the date of entry into force of this Act and pending at that date shall be considered as applications filed for the purpose of claiming priority.

3. Applications for the grant of a right of protection of addition for a utility model filed before the date of entry into force of this Act and pending at that date shall be considered as applications filed for the purpose of obtaining a right of protection.

4. As from the date of entry into force of this Act applications concerning inventions, utility models, industrial designs, trade marks and topographies of integrated circuits shall be processed under the provisions of this Act.

5. The previous Register of Collective Trade marks shall be considered as a separate complete book of the Trade mark Register.

Article 317

Subject to Articles 318 and 319, litigation proceedings before the Patent Office and proceedings before the Board of Appeals with the Patent Office, initiated before the date of entry into force of this Act and pending at that date shall, as from the date of entry into force of this Act, be conducted under its provisions.

Article 318

1. Litigation proceedings in the cases referred to in Article 255, conducted by the Patent Office under the previous provisions shall be continued before the Litigation Division.

2. Proceedings before the Board of Appeals in the cases referred to in Article 255, conducted under the previous provisions shall be taken over by the Supreme Administration Court.

3. Appeals and complaints examined under the previous provisions before the Board of Appeals in the course of administrative procedure shall be taken over by the Patent Office and examined before the Chamber of Appeals in the procedure applied to retrial.

4. Any proceedings in cases decided by the Patent Office and the Board Appeals in litigation procedure under the previous provisions and not falling under this Act within the competence of the Patent Office shall be discontinued. Paid fees for requests for taking a decision and in case of cases heard by the Board of Appeals also appeal fees shall be liable to reimbursement.

Article 319

Any cases initiated or pending before the date of entry into force of this Act, in which a decision on the lapse of a right in trade mark registration for the reason of non-use thereof is sought shall be forwarded to the Litigation Division, and appeals against such decisions, as

complaints against decisions of the Patent Office, shall be forwarded to the Supreme Administration Court.

Article 320

Pursuant to Article 318(2) and Article 319, the provision of Article 318(4) second sentence shall apply accordingly to appeals and complaints forwarded to the Supreme Administration Court.

Article 321

Judgements of the Supreme Court passed in consequence of extraordinary appeals shall be transmitted for enforcement to competent authorities pursuant to the provisions of this Act.

Article 322* (*omitted*)

Article 323

1. Staff members of the Patent Office who at the date of entry into force of this Act remain, under the previous provisions, authorised by the President of the Patent Office to decide in the matters referred to Article 261(2)(ii) and (iii), as well as on entries in registers, shall be authorised to decide for a period of three years from the date of entry into force of this Law and to the extent as provided for in this Act. However, if necessary, the President of the Patent Office may alter the scope of the authorisation granted.

2. Any employment relationships established with the staff members referred to in paragraph (1) by way of nomination, shall upon the entry into force of this Act convert into an employment relationship based on a contract of employment unlimited in time.

3. Grant of the authorisation for the staff member referred to in paragraph (1) to decide after the expiry of the three-years period from the date of entry into force of this Act shall be conditional upon the pass of an examination. The provisions of Article 267(3) and (4) shall apply accordingly.

4. A staff member who successfully passed the examination required under paragraph (3) may be advanced to an examiner's post, while being released of the obligation to serve his apprenticeship as an assistant examiner.

Article 324

Unless this Act stipulates otherwise, the provisions on determination of salaries in the agencies financed from the state budget, applicable in respect of members of civil servants corps, shall apply accordingly to determination of salaries and limits for recruitment of examiners and assistant examiners at the Patent Office.

Article 325

1. In case of entities lacking legal personality, a patent, a right of protection or a right in registration may only be granted on behalf of a legal person, of which the entity is member, or on behalf of a natural person or persons running that entity on their own behalf.

* Deleted as declared in the decision of the Constitutional Court taken on 21 March 2001 to be against the Constitution of the Republic of Poland, case K.24/2000 (*Monitor Polski* No 10, item 160), pursuant to Article 122(4) of the Constitution

2. Rights belonging to the State Treasury shall be exercised in its name by a government agency or a State organisational unit competent to manage a respective State Treasury's property being the subject of a given right.

Article 326

The following shall be repealed:

- 1) Act of 19 October 1972 on Inventive Activity (JL 1993 No 26 item 117; 1997 No 88 item 554 and No 121 item 770),
- 2) Act of 31 January 1985 on Trade marks (JL No 5 item 17; 1989 No 35 item 192; 1993 No 10 item 46; 1994 No 74 item 331 and 1997 No 88 item 554),
- 3) Act of 30 October 1992 on the Protection of Topographies of Integrated Circuits (JL No 100 item 498; 1997 No 88 item 554 and No 121 item 770),
- 4) Act of 31 May 1962 on the Patent Office of the Republic of Poland (JL 1993 No 26 item 118),
- 5) the provisions of Articles 5-7 of the Act of 30 October 1992 amending the Act on Inventive Activity and the Act on the Patent Office of the Republic of Poland (JL 1993 No 4 item 14).

Article 327

This Act shall enter into force three months after its promulgation.