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Utility Models Act

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Amended by the following acts

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05.06.2002	RT I 2002, 53, 336	01.07.2002
19.06.2002	RT I 2002, 63, 387	01.09.2002
29.01.2003	RT I 2003, 18, 106	01.04.2003
17.12.2004	RT I 2003, 88, 594	08.01.2004
10.03.2004	RT I 2004, 20, 141	01.05.2004
15.06.2005	RT I 2005, 39, 308	01.01.2006
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09.11.2011	RT I, 29.11.2011, 1	01.01.2012
07.12.2011	RT I, 28.12.2011, 1	01.01.2012
19.06.2014	RT I, 12.07.2014, 1	01.01.2015
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, the ministers' official titles have been replaced on the basis of subsection 4 of § 107 ³ of the Government of the Republic Act.
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Chapter 1

GENERAL PROVISIONS

§ 1. Purpose of Act

This Act provides for the legal protection of inventions as utility models.

§ 2. [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

§ 3. Equality of rights and obligations of persons of the Republic of Estonia and of foreign states

The rights and obligations established by legal acts concerning the legal protection of inventions as utility models apply, taking account of the restrictions provided for in this Act, equally to persons of the Republic of Estonia and of foreign states (hereinafter *persons*).

§ 4. [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

Chapter 2 LEGAL PROTECTION AND PATENTABILITY OF UTILITY MODELS

§ 5. Legal protection of utility model

(1) A utility model is an invention which is new, which involves an inventive step and which is capable of industrial application.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) The following is not regarded as inventions:

- 1) industrial designs;
- 2) layout-designs of integrated circuits;
- 3) discoveries, scientific theories and mathematical methods;
- 4) schemes, rules and methods for performing mental acts or doing business;
- 5) design documentation for and plans of constructions, buildings or areas;
- 6) symbols;
- 7) algorithms for computers and computer programs;
- 8) presentations of information;
- 9) human bodies or parts thereof;
- 10) plant or animal varieties.

(3) An invention is granted legal protection upon registration in the register of utility models (hereinafter *register*).

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(4) An invention that has obtained legal protection as a utility model is disclosed and the scope of the legal protection is determined by the substance of the claims of the utility model.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(5) A device, a method and a substance can be protected as a utility model.

§ 6. Inventions not protected as utility models

(1) The following cannot be protected as utility models:

- 1) inventions which are contrary to public order and morality;
- 2) methods of treatment and diagnostic methods practised on the human or animal body;
- 3) biotechnological inventions.

(2) For the purposes of this Act, “biotechnological inventions” specified in clause 3 of subsection 1 of this section mean:

- 1) inventions concerning biological materials or products which contain such materials;
- 2) inventions concerning the derivation or use of biological materials.

(3) For the purposes of this Act, “biological material” specified in subsection 2 of this section means any material, including micro-organisms, which contains genetic information and is capable of reproducing itself or being reproduced in a biological system.

§ 7. Novelty, inventive step and industrial application

(1) An invention is new where it does not form part of the state of the art. The state of the art is held to comprise any technical information made available to the public by means of written or oral description, by use, or in any other way, in any part of the world, before the filing date of the registration application of a

utility model (hereinafter *registration application*) or before the date of priority where priority is claimed. In determining novelty, the content of registration applications published in accordance with § 33 of this Act and of patent applications published in accordance with § 24 of the Patents Act prior to the filing date of the registration application or the date of priority, where priority is claimed, is taken into consideration where the filing dates or, where priority is claimed, the dates of priority of such applications are earlier.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) In determining the state of the art, provided that a corresponding request is submitted, no information disclosing an invention, which is disclosed within twelve months before the filing date of a registration application or, where priority is claimed, before the date of priority, by a person who is entitled to the registration of a utility model in accordance with § 11 of this Act, or by any other person who has received the information from such person against or according to the intent of the person, is taken into consideration. Where another person acquired the information unlawfully or the information was published unlawfully or without the knowledge of the person who has the right to apply for the registration of a utility model, the request may be filed in the course of the examination of the registration application or in case the utility model is contested. Evidence supporting the request is appended to the request.

(3) For the purposes of this Act, an invention is considered as involving an inventive step where, due to difference from the state of the art, beneficial technical characteristics or other beneficial characteristics become evident upon using the invention.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(4) A utility model is capable of industrial application where it can be manufactured or used in the economy.

§ 8. Unity of utility model

Legal protection of the utility model on the basis of one and the same registration application can be applied for one invention only.
[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 9. Claims of utility model

(1) The claims of a utility model define the subject matter of the invention in words in a clear, concise and short manner.

(2) In claims, the subject matter of an invention is presented as a set of essential technical features.

(3) The claims of a utility model consist of an independent claim and dependent claims. The claims of a utility model may contain more than one independent claim only where the invention consists of several products grouped together and on the condition that the requirement of unity of the invention is complied with.

(4) The description and drawings of the invention are used to interpret the claims of the utility model. The abstract of an invention has no legal effect upon interpreting the claims of the utility model or in determining the legal protection of the utility model. The abstract merely serves for use upon disclosing technical information concerning the invention.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 10. Priority

(1) Priority is the preferential right of the person who files the first registration application or patent application to apply for legal protection of an invention as a utility model. The filing date of the first registration application or patent application is considered the date of priority.

(2) Where a registration application is filed with the Patent Office within twelve months after the filing date of the first registration application or patent application, priority is established:
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

1) on the basis of the filing date of the first registration application or patent application in any State party to the Paris Convention of the Protection of Industrial Property (RT II 1994, 4/5, 19) or member of the World Trade Organisation;

2) on the basis of the filing date of the first registration application or patent application in a state which is not a State party to the Paris Convention for the Protection of Industrial Property or in a state which is not member of the World Trade Organisation where such state guarantees equivalent conditions for first registration applications and patent applications filed in the Republic of Estonia.

(3) [Repealed – RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(4) Where priority is claimed, priority is established for a registration application on the basis of the filing dates of several registration applications or patent applications filed earlier. In the event of several registration

applications or patent applications filed earlier, the twelve-month term specified in subsection 2 or 3 of this section is calculated as of the earliest date of priority.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(5) [Repealed – RT I 2004, 20, 141 – entry into force 01.05.2004]

(6) Where priority is claimed, priority for a registration application filed with the Patent Office after expiry of the twelve-month term specified in subsection 2 or 3 of this section is established on the basis of the filing date of a first registration application or patent application in accordance with subsection 2 or 2 where:

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

- 1) the reasons for the failure to comply with the abovementioned term are appended to the priority claim;
- 2) the reasons stated in accordance with clause 1 of this subsection prove that the failure to file the application within the term was unintentional;
- 3) the registration application was filed within two months from the date on which the abovementioned term expired.

(7) In case of a registration application filed on the basis of a patent application in accordance with § 19 of this Act, the priority valid in respect of the patent application or the corresponding part of the patent application is retained for the registration application.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

Chapter 3

RIGHT TO APPLY FOR REGISTRATION OF UTILITY MODELS

§ 11. Right to utility model

(1) The right to apply for the registration of a utility model and to become the owner of the utility model is vested in the author of the invention and a successor or legal successor of the author.

(2) Where an invention is created in the performance of contractual obligations or duties of employment, the right to apply for the registration of a utility model and to become the owner of the utility model is vested in the author or another person in accordance with the contract or employment contract unless otherwise prescribed by the legislation of the country of the residence or seat of the applicant.

(3) Any person who in accordance with subsections 1 or 2 of this section has the right to apply for the registration of a utility model may transfer such right to another person.

(4) The right to apply for the registration of a utility model transfers to a legal successor.

(5) Where two or more persons apply for legal protection of the utility model regarding the same invention independently of each other, the right to apply for the registration of a utility model is vested in the person who is indicated as the applicant in the registration application which has been filed earlier or which has an earlier date of priority, provided that such registration application has not been withdrawn or the Patent Office has not rejected the registration application or deemed the registration application to be withdrawn.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 12. Author of utility model

(1) The author of a utility model (hereinafter *author*) is a natural person who has created an invention as a result of his or her creative activities.

(2) Where an invention is created as a result of the joint creative activities of several natural persons, such persons are joint authors.

(3) In the case of joint authorship, all rights arising from the authorship are exercised by the authors jointly, including the right to apply for the registration of a utility model and to become the owner of the utility model, unless they have entered into a written agreement which prescribes otherwise.

(4) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

(5) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

(6) Authorship is inalienable and unspecified in term.

(7) An author has the right to a pseudonym and he or she may:

- 1) request the disclosure of his or her name as the author;
- 2) prohibit the disclosure of his or her name as the author;
- 3) revoke at any time the prohibition to disclose his or her name.

(8) An author has the right to receive fair proceeds from the profit received from the utility model.

(9) The proprietary rights of an author are transferable and inheritable.
[RT I 2004, 20, 141 – entry into force 01.05.2004]

Chapter 4

RIGHTS TO UTILITY MODEL

[RT I 2004, 20, 141 - entry into force 01.05.2004]

§ 13. Owner of utility model

(1) The owner of a utility model is the person in respect of whom the last entry as the owner of the utility model has been made in the register.

(2) Upon the registration of a utility model, the applicant for the registration of the utility model (hereinafter *applicant*) is entered in the register as the owner of the utility model.

(3) The owner of a utility model has the exclusive right to the invention protected as the utility model. Only the owner of a utility model has the right to exercise rights arising from the legal protection of the utility model and to prohibit other persons from exercising those rights.

(4) The owner of a utility model may transfer the rights of the owner of a utility model in full or in part to another person or to surrender the rights or to pledge the utility model in accordance with the procedure provided by this Act. The rights to a utility model may be transferred to a legal successor of the owner of the utility model, provided that the registration in the register is valid.

(5) The exclusive right of the owner of a utility model may only be restricted by this Act or the rights of other persons.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 14. Exclusive right of owner of utility model

(1) The exclusive right of the owner of a utility model means that during the period of the protection of a utility model and without the permission of the owner of the utility model no person may:

- 1) manufacture, use, distribute, sell or offer for sale products protected as utility models or to acquire (including by importation) such products for the aforementioned purposes;
- 2) manufacture, sell or offer for sale components which form a significant part of the product protected as a utility model or to acquire and export such components for the manufacture or preparation of the product, except where the components are other independent products;
- 3) use or offer for use to third persons a process protected as a utility model;
- 4) use, distribute, sell or offer for sale products manufactured by using a process protected as a utility models or to acquire (including by importation) such products for the aforementioned purposes.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(2) In the case of products manufactured according to a process which is protected as a utility model, the manufacture, use, distribution, sale, offering for sale or acquisition (including by importing) for the aforementioned purposes of a similar product without the authorisation of the owner is considered an infringement of the exclusive right of the owner of the utility model unless it is proved that the similar product is manufactured according to a different process.

§ 15. Acts which do not constitute infringement of exclusive right of owner of utility model

The following acts do not constitute infringement of the exclusive right of the owner of a utility model:

- 1) the use of the utility model on board of ships of other states (within the hull, machinery, rigging, radio-navigation equipment or other equipment) where such ships are temporarily or accidentally in the waters of the Republic of Estonia and the utility model is used solely for the purposes of the ship;
- 2) the use of the utility model within the construction or auxiliary equipment of aircraft or land vehicles of other states, or in the operation of the vehicles or equipment where such vehicles are temporarily or accidentally in the Republic of Estonia;
- 3) the use of the utility model in testing related to the utility model itself;
- 4) the private non-commercial use of the utility model where such use does not harm the interests of the owner of the utility model.

§ 15¹. Exhaustion of rights

The owner of a utility model has no right to prohibit the acquisition (including by importing) or use, distribution, sale or offer for sale of a product which contains an invention protected as a utility model when the product has been put on the market in the territory of the Republic of Estonia or a State party to the Agreement of the European Economic Area by the owner of the utility model or with the owner's consent. [RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 16. Right of prior use

(1) A person who, prior to the filing of a registration application for an invention by another person, has, in good faith and independently of the person who files the registration application, used the same invention for industrial application in the Republic of Estonia, may continue to use the invention retaining the same general nature of application. Use is in good faith unless the user knew or should have known that the filing of a registration application for the invention was intended.

(2) The right of prior use also belongs to a person who has, in good faith, made serious preparations for the industrial application of an invention in the Republic in Estonia.

(3) The right of prior use can only be transferred to another person together with the enterprise with regard to which the right of prior use is established or in which it was intended to be used.

§ 16¹. Provisional protection

(1) An invention is granted provisional protection as of the filing date of a registration application until the date when a notice of registration of the utility model is published in the official publication of the Patent Office.

(2) A person who commences use of an invention during the period between the filing date of the registration application and the date when the notice of registration of the utility model is published in the official publication of the Patent Office is not deemed to infringe the exclusive right of the owner of the utility model, unless the person knew or should have known that a registration application has been filed with regard to the invention or the applicant notified the person in writing of filing the registration application.

(3) Persons whom an applicant notifies of the filing of the registration application are deemed, after the date when the notice of registration of the utility model is published in the official publication of the Patent Office, to infringe the exclusive right of the owner of the utility model as of the date of receipt of the notice concerning the filing of the registration application, unless such persons have the right of prior use in accordance with § 16 of this Act.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

Chapter 5 REGISTRATION APPLICATION AND PROCESSING THEREOF

§ 17. Registration application

(1) A registration application must include the following documents:

- 1) registration application of a utility model which contains a request to register the utility model and information concerning the applicant and author and the name of the invention;
 - 2) the description of the invention in which the invention must be disclosed in a sufficiently clear and concise manner which enables a person skilled in the art to make the invention;
 - 3) the claims of the utility model;
 - 4) the drawing referred to in the description of the invention or claims of the utility model;
- [RT I, 29.11.2011, 1 – entry into force 01.01.2012]
- 5) an abstract of the invention.

(2) The following documents must be annexed to a registration application:

- 1) an authorisation document where the registration application is filed via a patent agent;
- 2) documents certifying the priority claim, unless a specification specified in § 18² of this Act applies.

(3) Where the applicant is not the author, the applicant must declare, in the registration application of a utility model or another document annexed to the registration application, the legal basis of the right to apply for the registration of the utility model as specified in § 11 of this Act.

(4) The requirements for the content and format of the documents included in a registration application are established by the minister responsible for the field. The minister responsible for the field establishes:

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

- 1) the structure of documents and information that each structural part must contain;
- 2) the data medium on which documents must be submitted;

3) national and international standards applied to documents and the format of information contained therein.

(5) A registration application must be filed in Estonian. The name of an invention in an application for the registration of a utility model and the abstract of an invention must be filed in Estonian and in English.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(6) The Patent Office has the right to request the submission of the Estonian translation of any foreign language document included in a registration application, document annexed to a registration application or document submitted in the course of processing within a term of two months, unless a different term is provided by this Act.
[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 18. Filing of registration application

(1) Registration applications are filed with the Patent Office.

(2) A state fee for filing a registration application is paid within two months as of the filing date of the registration application. The term for payment of the state fee cannot be extended.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(3) The procedure for filing registration applications is established by the minister responsible for the field.
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

§ 18¹. Representation in performance of procedures related to legal protection of utility model

(1) Procedures related to legal protection of utility models are performed in the Patent Office and in the Industrial Property Board of Appeal (hereinafter *Board of Appeal*) by interested persons or patent agents who are expressly authorised by the interested persons and who have been awarded patent agent qualifications for operation in the area of inventions in accordance with the Patent Agents Act. An interested person or patent agent may involve, at own expense, an interpreter or adviser without the right of representation in oral proceedings in the Patent Office or in the Board of Appeal.

(2) A person whose residence or seat is not located in the Republic of Estonia authorises a patent agent as the person's representative for the performance of procedures relating to legal protection of a utility model in the Patent Office and in the Board of Appeal, except for filing a registration application, filing a request for acceptance of an international application for national processing specified in subsection 1 of § 30 of this Act and payment of all the state fees specified in this Act.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(3) Where procedures related to the legal protection of a utility model are performed in the Patent Office or in the Board of Appeal by several persons together, they may authorise a patent agent as their representative or choose a representative from among themselves (hereinafter *joint representative*) whose residence or seat is in the Republic of Estonia. A joint representative has the right to perform all procedures relating to the legal protection of the utility model, unless it follows otherwise from the authority granted to the joint representative.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 18². Filing, correction or addition of priority claim

(1) A priority claim is filed upon filing of the registration application.

(2) Documents certifying the priority claim are filed together with the priority claim or within sixteen months as of the date of priority. Documents certifying the priority claim need not be submitted where priority is claimed on the basis of a first registration application or patent application in the Republic of Estonia.

(3) Translations of foreign language documents certifying the priority claim are submitted at the request of the Patent Office in accordance with the provisions of subsection 2 of § 21 of this Act during the term determined by the Patent Office.

(4) A priority claim may be corrected or added until the Patent Office has, on the basis of the registration application, made a decision to register the utility model or to reject the registration application.
[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 19. Registration application based on patent application

(1) A person who has filed a patent application may file a registration regarding the same invention, taking into account the restrictions provided for in §§ 5–9 of this Act.

- (2) A registration application must be submitted before any of the following events has occurred:
- 1) filing a claim for the withdrawal of a pending patent application;
 - 2) informing of the termination of the patent application procedure due to the Patent Office declaring the patent application as withdrawn;
 - 3) informing of the decision to grant a patent;
 - 4) informing of the decision to reject the patent application.

(3) In the event of a patent application involving a combination of inventions relating to a single general inventive concept, an individual registration application may be filed regarding each invention included in the combination. All individual registration applications to be filed regarding the inventions included in the combination must be filed concurrently.

(4) A registration application cannot be filed after ten years have passed from the date of filing a patent application.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 20. Establishing filing date of registration application and acceptance thereof for processing

(1) The Patent Office establishes as the filing date of a registration application the date on which the Patent Office received all of the following elements in a set of documents:

- 1) request to register a utility model in Estonian or another express indication to the effect that the documents are intended to be a registration application of a utility model;
- 2) the applicant's name and address or other details allowing for sending the Patent Office's notices to the applicant;

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

- 3) a document which on the face of it appears to be a description of the invention.

(2) Where, upon review of the documents received, the Patent Office finds that an element of the registration application of a utility model listed in subsection 1 of this section is missing from the set of documents, the Patent Office notifies the person who filed the registration application thereof. The missing elements are filed within two months as of the date of the notice of the Patent Office.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(3) The Patent Office does not have the obligation to give notice of deficiencies as specified in subsection 2 of this section where the missing element of the registration application is the information referred to in clause 2 of subsection 1 of this section. In such case, the applicant must submit all the missing elements of the registration application as specified in subsection 1 on the applicant's own initiative within two months from the date on which the initially submitted documents were received by the Patent Office.

(4) In the case specified in subsection 2 of this section, the Patent Office establishes the date on which the applicant has eliminated all the deficiencies in the initially submitted documents as listed by the Patent Office as the filing date of the registration application and, in the case specified in subsection 3 of this section, the Patent Office establishes the date on which the applicant submitted all the missing elements of the registration application as listed in subsection 1 on the applicant's own initiative as the filing date of the registration application.

(5) Where the Patent Office finds that a part of the description of the invention appears to be missing from the set of the documents of the registration application, or that the claims of the utility model refer to a drawing which appears to be missing from the application (hereinafter missing part), the Patent Office promptly notifies the applicant thereof. Where the applicant wishes to add the missing part to the registration application, the applicant, whether notified by the Patent Office or not, must file the missing part within two months from the filing date of the registration application. Where the missing part is filed later, it is not taken into account upon processing the registration application. The Patent Office establishes the date on which the missing part is received by the Patent Office as the new filing date of the registration application.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(6) Where, within the term specified in subsection 5 of this section, the applicant gives notice to the Patent Office of declining to file the missing part or fails to file the missing part, the Patent Office establishes the filing date of the registration application in accordance with the provisions of subsection 1 of this section.

(7) Where both the provisions of subsection 4 and subsection 5 of this section apply to the establishment of the filing date of a registration application, the filing date of the registration application is the later date as established in accordance with the said provisions.

(8) The Patent Office does not establish the filing date of a registration application where the applicant fails:

- 1) in the event specified in subsection 2 of this section, to eliminate any deficiencies listed in the notice of the Patent Office within two months as of the date of the Patent Office's notice;

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

- 2) in the event specified in subsection 3 of this section, to file, on own initiative, all the elements of the registration application referred to in subsection 1 of this section that are missing within two months from the date of receipt of the initially submitted documents at the Patent Office.

(9) Where a registration application has been filed on the basis of a patent application pursuant § 19 of this Act, the filing date of the registration application is set as the filing date of the patent application.

(10) The Patent Office accepts a registration application for processing where the filing date of the registration application has been established.

(11) The Patent Office notifies the applicant of the number and filing date of the registration application accepted for processing.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 20¹. Refusal to accept registration application for processing

(1) The Patent Office refuses to accept a registration application for processing where the filing date of the registration application is not established on the bases prescribed in subsection 8 of § 20 of this Act.

(2) Upon the refusal to accept a registration application for processing, the applicant is notified thereof in writing. The applicant is entitled to a refund of the state fee paid by the applicant.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 21. Processing of registration application

(1) In the course of processing a registration application, the Patent Office verifies:

- 1) payment of the state fee specified in subsection 2 of § 18 of this Act;
- 2) existence of the documents specified in subsections 1 and 2 of § 17 of this Act;
- 3) compliance of the priority claim with the provisions of §§ 10 and 18² of this Act, where priority is claimed;
- 4) information on the author and compliance with the requirement to declare the legal basis of the right to apply for the utility model referred to in subsection 3 of § 17 of this Act where the applicant is not the author;
- 5) the right of the patent agent to operate in the area of inventions, where the registration application is filed via a patent agent;

5¹) the compliance of the registration application with subsection 2 of § 5, § 6, subsection 4 of § 7 and § 8 of this Act;

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

6) compliance of the registration application documents with the requirements for the content and format provided for in subsection 4 of § 17 of this Act.

(1¹) The Patent Office carries out a search of the state of the art regarding the invention in accordance with § 21¹ of this Act.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) Where, upon verification specified in subsection 1 of this section or upon carrying out the search of the state of the art in accordance with § 21¹ of this Act, it is ascertained that a document is missing from the registration application or deficiencies relating to the form or content of the documents exist or where the contents of a document are not sufficient or are unclear for processing the registration application, including for carrying out a search of the state of the art, the Patent Office notifies the applicant thereof in writing and sets a term of two to four months or, by way of exception, six months for the elimination of deficiencies or provision of explanations. Not later than one month before the expiry of the set term, the applicant may apply for oral proceedings in accordance with subsection 2 of § 26² of this Act for providing explanations.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(3) In justified cases an applicant has the right to request the extension of a term set by the Patent Office, but not over the term of six months specified in subsection 2 of this section. A request for the extension of the term must be filed with the Patent Office before the expiry of the term specified in subsection 2 of this section. The decision of the Patent Office regarding granting an extension of the term is final.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(4) Where a registration application is in compliance with the provisions of subsection 2 of § 5, § 6, subsection 4 of § 7 and §§ 8 and 17 of this Act, the Patent Office makes a decision to register the utility model and notifies the applicant thereof in writing. A registration entry is made on the basis of the decision.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(5) The Patent Office refuses to register a utility model, making a decision to reject the registration application, and informs the applicant thereof in writing where:

- 1) the object of the registration application cannot be protected as a utility model on the basis of subsection 2 of § 5 or § 6 of this Act;
- 2) the invention is not susceptible of industrial application on the basis of subsection 4 of § 7 of this Act;

- 3) the registration application does not comply with § 8 or § 17 of this Act and the applicant fails to eliminate any of the deficiencies identified by the Patent Office in the course of the verification specified in subsection 1 of this section or the search of the state of the art in accordance with § 21¹ of this Act or fails to provide sufficient explanations within the term set in accordance with subsection 2 or 3 of this section or has not applied for oral proceedings in accordance with subsection 2 of this section;
 - 4) the registration application filed on the basis of a patent application has disregarded § 19 of this Act;
 - 5) in the event specified in subsection 2¹ of § 23 of this Act, the applicant refuses to withdraw corrections or amendments altering the invention; or
 - 6) the applicant has not filed an objection in accordance with § 26¹ of this Act or the Patent Office has not agreed with an objection.
- [RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 21¹. Search of state of art

- (1) The Patent Office identifies the state of the art preceding the invention in accordance with subsections 1 and 2 of § 7 of this Act. The claims of the utility model filed by the applicant are taken into account upon identifying the state of the art.
- (2) The Patent Office draws up a search report of the state of the art (hereinafter *search report*) and submits it to the applicant so that the applicant could take notice thereof.
- (3) The search report must set out information about technical solutions identical to the invention and technical solutions similar to the invention and indicate the date of the search.
- (4) The substance and form requirements of the search report and the procedure for drawing up the report are established by the minister responsible for the field.
[RT I, 28.12.2011, 1 – entry into force 01.01.2012]
- (5) Taking into account the terms and conditions provided for in subsection 1 of § 23 of this Act, the applicant may make corrections and amendments to the registration application on the basis of the search report within two months after the date of issue of the search report by the Patent Office.
- (6) The search report has an informative meaning.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 22. Suspension and resumption of processing of registration application

- (1) Where an applicant fails to perform an act within a time limit set by the Patent Office under this Act and has not applied for oral proceedings for providing explanations in accordance with subsection 2 of § 21 of this Act or fails to attend oral proceedings at the agreed time without good reason, the Patent Office suspends the processing of the registration application and notifies the applicant thereof in writing.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]
- (2) Where documents certifying the priority claim have not been submitted together with the priority claim in accordance with subsection 2 of § 18², the Patent Office suspends the processing of the registration application until the documents are submitted, however not for longer than 16 months from the date of priority.
- (3) The processing of a registration application whose processing has been suspended in accordance with subsection 1 of this section is resumed where the applicant performs the prescribed act or, in the event of failing to attend oral proceedings, proposes a new time for oral proceedings, pays the state fee and submits information about the paid state fee within two months as of the date of notification of the registration application procedure.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]
- (4) The processing of a registration application the processing of which was suspended in accordance with subsection 2 of this section is resumed where the applicant submits documents certifying the priority claim or, where the applicant has not submitted documents certifying the priority claim, after 16 months as of the date of priority. In the last case mentioned, the Patent Office refuses to satisfy the priority claim and notifies the applicant thereof in writing.
- (5) [Repealed – RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 23. Correction and supplementation of registration application

- (1) An applicant may correct and amend a registration application during processing such that no alterations are made to the subject matter of the invention which was disclosed in the registration application on the filing date of the registration application.
- (2) Corrections and amendments are deemed to alter an invention where they contain essential characteristics of the invention which were not included in the description of the invention, the claims of the utility model or the drawings on the filing date of the registration application.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2¹) In the event of corrections and amendments altering an invention, the Patent Office makes a proposal to the applicant to withdraw them, granting a term of two to four months for that purpose.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(3) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

(4) During processing, the Patent Office may correct obvious mistakes, delete excessive data and make wording-related corrections in the documents of a registration application without the approval of the applicant, except in the description of the invention, in the claims of the utility model or in drawings. The abstract of the invention may be altered without the applicant's approval.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 24. Withdrawal of registration application

(1) An applicant may file a request for the withdrawal of a registration application and withdraw a pending registration application. The date of withdrawal of a registration application is the date when the request to withdraw the registration application reaches the Patent Office. Registration application documents are not returned.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) Where several persons apply for the registration of a utility model, a request for the withdrawal of the registration application is filed with the consent of all such persons.

(3) The Patent Office deems a registration application to be withdrawn where:

1) the Patent Office has suspended the processing of a registration application in accordance with subsection 1 of § 22 of this Act and the processing cannot be resumed in accordance with subsection 3 of § 22 of this Act, or
2) the applicant has not paid the prescribed state fee within the two-month term specified in subsection 2 of § 18 of this Act or within the one-month term specified in subsection 7 of § 11 of the Convention of the Grant of European Patents Implementation Act or, where the state fee has been paid, has not submitted information certifying payment of the state fee within the aforementioned terms.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 25. Termination of processing of registration application

(1) The Patent Office terminates the processing of a registration application which is withdrawn or deemed to be withdrawn.

(2) The applicant is notified of the termination of the processing of a registration application in writing.

§ 26. Resumption of processing of registration application

(1) An applicant may request the resumption of the processing of a registration application where the Patent Office has terminated the registration application procedure by having deemed the registration application to be withdrawn in accordance with clause 1 or 2 of subsection 1 of § 24 of this Act, provided that the failure to perform the acts occurred due to *force majeure* or another impediment beyond the control of the applicant or the applicant's representative.

(2) The Patent Office resumes the registration application procedure where the applicant files a request to resume the procedure, proves the existence of *force majeure* or another impediment beyond the control of the applicant or the applicant's representative, and performs the prescribed acts within two months after the impediment ceases to exist, pays the state fee and submits the information certifying payment of the state fee within the specified term.

(3) A request for the resumption of a registration application procedure can be filed within one year after the due date of the act that was not performed.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 26¹. Applicant's right to file observations

(1) Where the Patent Office finds that circumstances which have become evident in the course of the registration application procedure bring about the rejection of the registration application under this Act, the Patent Office, before making a decision to reject the registration application, informs the applicant of the intended decision and the circumstances thereof and gives the applicant at least one opportunity to file written or oral observations.

(2) The time limit for filing a written observation or, in the event of oral observations, for filing a request for oral proceedings is two months as of the date of the Patent Office's notice. A request for oral proceedings must be filed in writing.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 26². Appealing against decision of Patent Office

(1) The Patent Office may summon the applicant to oral proceedings at the Patent Office to provide explanations about the registration application or to resolve issues relating to the patent application.

(2) The applicant can apply for oral proceedings for providing explanations about the registration application. The written request must indicate the circumstances which the applicant intends to explain. The Patent Office's reasoned decision regarding whether it is practicable to conduct oral proceedings is final.

(3) The oral proceedings are conducted at the agreed time.

(4) Neither the Patent Office nor the applicant has the right to request the conduct of oral proceedings sooner than two or later than six months after the date of issue of the Patent Office's summons or the date of delivery of the applicant's request or claim to the Patent Office. The Patent Office and the applicant can agree that the oral proceedings are held before or after the given dates.

(5) Minutes are taken of oral proceedings and the minutes must contain at least the following:

- 1) the number of the request;
- 2) the date of the oral proceedings;
- 3) the names and positions of the participants of the oral proceedings;
- 4) the purpose of the oral proceedings;
- 5) a brief summary of the progress of the proceedings;
- 6) the agreement reached or the parties' dissenting opinions;
- 7) the signatures of the participants.

The minutes are binding. Where no agreement is reached or the parties have dissenting opinions, the Patent Office continues the proceedings. The applicant's refusal to sign the minutes does not mean that no oral proceedings have taken place. The Patent Office may take into account circumstances that have become evident in the oral proceedings where the circumstances have been recorded in the minutes.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 27. Filing appeals against decisions of Patent Office

(1) An applicant may file an appeal with the Board of Appeal against a decision of the Patent Office made on the basis of this Act.

[RT I 2008, 59, 330 – entry into force 01.01.2009]

(2) An applicant may file an appeal with the Board of Appeal within two months as of the date on which the decision of the Patent Office is made, and must pay a state fee.

(3) [Repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) [Repealed – RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 28. Completion of processing of registration application

The registration application proceedings terminate as of the entry into force of the registration of the utility model or as of the rejection of the registration application.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

Chapter 6 INTERNATIONAL REGISTRATION APPLICATION OF UTILITY MODEL

§ 29. Definition of international registration application of utility model

(1) For the purposes of this Act, international registration application of a utility model (hereinafter *international registration application*) is an international application filed on the basis of the Patent Cooperation Treaty (RT II 1994, 6/7, 21) made on 19 June 1970 in Washington (hereinafter *Patent Cooperation Treaty*).

(2) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

(3) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

(4) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

(5) The Patent Office is the designated or elected office for such international registration applications in which the Republic of Estonia is indicated as the designated or elected state.

(6) International registration applications in which the Republic of Estonia is indicated as the designated state are deemed equal to registration applications filed in accordance with §§ 17 and 18 of this Act.

(7) An international registration application in which the Republic of Estonia is indicated as the designated state is deemed to be filed with the Patent Office on the international filing date which is determined by the receiving office (hereinafter receiving office), as specified in the Patent Cooperation Treaty.

(8) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

§ 30. Specifications of processing of international registration applications

(1) For an international registration application to be accepted for national processing, an applicant must file a corresponding request together with an Estonian translation of the international registration application with the Patent Office and pay a state fee not later than within thirty-one months as of the date of priority.

(2) [Repealed – RT I 2003, 18, 106 – entry into force 01.04.2003]

(3) In justified cases and at the request of an applicant, the applicant may be granted an additional period for filing the translation of an international application specified in subsection 1 of this section, but for not more than until the end of the thirty third month as of the date of priority, and in case of several priorities, until the end of the thirty third month as of the date of the earliest date of priority. An additional period is not granted where more than two months remain until the end of the thirty-one months' period specified in subsection 1 of this section. In case of submission of a translation or in case of expiry of the thirty three months' period specified in this section, a supplementary state fee must be paid.

(3¹) A utility model is not registered in the register before the international application is published in accordance with Article 21 of the Patent Cooperation Treaty, except in case twenty months have passed as of the date of priority.

(3²) Where an international registration application to is accepted for national processing, the procedure established on the basis of subsection 3² of § 33 of the Patent Act applies.

(4) [Repealed – RT I 2004, 20, 141 – entry into force 01.05.2004]

(5) [Repealed – RT I 2004, 20, 141 – entry into force 01.05.2004]

(6) An international registration application loses the effect specified in subsections 6 and 7 of § 29 of this Act where:

- 1) the provisions of Articles 24(1)(i) and (ii) of the Patent Cooperation Treaty apply;
- 2) the applicant fails to comply with the requirements provided for in subsection 1 or 3 of this section;
- 3) the applicant fails to comply with the requirements for the authorisation of a representative specified in § 18¹ of this Act.

(6¹) An international registration application is rejected where:

- 1) the applicant has failed to observe the term specified in subsection 1 of this section or to pay a state fee in the prescribed amount;
 - 2) the applicant has failed to pay a state fee in the prescribed amount by the end of the additional period specified in subsection 3 of this section;
 - 3) the applicant has failed to comply with the requirements specified in subsection 3² of this section.
- [RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(7) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

(8) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

(9) [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

(10) Where the receiving office refuses to accept an international filing date or reports that an international registration application is deemed to be withdrawn, or where the International Bureau of the World Intellectual Property Organization (hereinafter *International Bureau*) has made a decision in accordance with Article 12 (3) of the Patent Cooperation Treaty, or where the receiving office reports that the designation of the Republic of Estonia is deemed to be withdrawn, the applicant may, within two months after receipt of the corresponding report or decision, request the review of the international registration application in the Republic of Estonia and request that the International Bureau send a copy of the international registration application to the Patent

Office. The applicant must file a translation of the international registration application with the Patent Office and, in the cases prescribed, information concerning the patent agent, and pay a state fee during the term determined by the Patent Office. The Patent Office verifies the correctness of the decision of the receiving office or the International Bureau and notify the applicant of the results. Where the decision of the receiving office or the International Bureau is incorrect, the registration application is reviewed as an international registration application.

(11) Where the processing of an international registration application is terminated on the grounds that an applicant has failed to perform an act prescribed by the receiving office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau or an act provided for in subsection 1 of this section on time due to *force majeure* or some other impediment independent of the applicant, the Patent Office resumes the processing of the international registration application in the Republic of Estonia, provided that the applicant adheres to the provisions of subsections 2 and 3 of § 26 of this Act.

Chapter 7 **REGISTER OF UTILITY MODELS**

[RT I 2004, 20, 141 - entry into force 01.05.2004]

§ 31. Register of utility models

(1) The register of utility models is maintained on the basis of this Act and the Principles of Legal Regulation of Industrial Property Act and in accordance with the procedure provided for in the specified Acts.

(2) Notices concerning register entries are published in the official publication of the Patent Office in the events provided for in the Acts specified in subsection 1 of this section. The Patent Office may, in the public interest and in accordance with the procedure established in the statutes of the official publication of the Patent Office, publish in the official publication of the Patent Office notices concerning other register entries and other information whose publication is not prohibited or restricted on the basis of the specified Acts or international agreements.

(3) The statutes of the official publication of the Patent Office are established by the minister responsible for the field. The title of the official publication of the Patent Office is "Eesti Kasuliku Mudeli Leht" [*Estonian Utility Model Paper*].

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

§ 32. Registration of utility models in register

(1) Where a registration application is accepted for processing, the number and filing date of the registration application and the receipt in the Patent Office of the documents submitted on the basis of § 17 of this Act and other documents submitted on the applicant's own initiative, and information contained in such documents in accordance with § 25 of the Principles of Legal Regulation of Industrial Property Act, are entered in the register.

(2) In the course of processing a registration application, information and notices concerning the procedural acts performed in accordance with this Act, documents received and issued, terms provided for in this Act and terms established by the Patent Office are entered in the register.

(3) Upon grant of legal protection to a utility model, a registration entry is made in the register.

(4) A registration entry is made in accordance with subsection 4 of § 21 of this Act on the basis of a decision of the Patent Office to register a utility model or, in the events specified in § 27, in accordance with a decision of the Board of Appeal or a court decision made regarding an appeal filed under subsection 1 of § 63 of the Principles of Legal Regulation of Industrial Property Act on the basis of a decision of the Patent Office to register the utility model. The applicant has the right to request the postponement of the entry into force of the registration entry, but not for more than 18 months as of the priority date. The request may be filed upon filing the registration application or in the course of the registration application procedure before the Patent Office has made a decision to register the utility model.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(5) Registration data is the following:

- 1) the registration number;
- 2) the registration date;
- 3) the name of the invention;
- 4) the index of the international patent classification;
- 5) the given name, surname and address of the author;
- 6) the given name, surname and the address of the residence or seat of the enterprise of the owner of the utility model, and in the case of a legal person, the name, address of the seat and the country code;
- 7) the date of beginning of the period of validity of the registration;
- 8) the date of expiry of the registration;
- 9) in the case of a patent agent, the given name and surname of the patent agent;

- 10) in the case of a joint representative, the given name and surname of the joint representative, and in the case of a joint representative who is a legal person, the name of the legal person;
 - 11) the number of the registration application;
 - 12) the filing date of the registration application;
 - 13) priority data (date of priority, country, application number);
 - 14) the number and filing date of an earlier, continued registration application or patent application which is the basis for the filing of the registration application;
 - 15) international application or European patent application data;
 - 16) the date of disclosure of information specified in subsection 2 of § 7 of this Act;
 - 17) the claims of the utility model;
 - 18) the description of the invention;
 - 19) the drawing;
- [RT I, 29.11.2011, 1 – entry into force 01.01.2012]
- 20) the date of the search of the state of the art;
- [RT I, 29.11.2011, 1 – entry into force 01.01.2012]
- 21) the date of issue of a search report.
- [RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(6) The applicant specified in subsection 4 of this section is entered in the register as the owner of the utility model.

(7) After making a registration entry, the Patent Office prepares a description of the utility model. The requirements for the form and the procedure for drawing up the description of utility models are established by the minister responsible for the field.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(8) After making a registration entry, the Patent Office publishes in its official publication a notice of the registration of the utility model, the description of the utility model and the search report. The date of publication of the notice is entered in the register.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(9) A registration enters into force on the publication date of a notice of the registration of the utility model in the official publication of the Patent Office.

(10) After the notice of the registration of the utility model is published, the Patent Office issues the owner of the utility model a utility certificate which contains the specification of the utility model.

(11) Only one utility certificate is issued regardless of the number of owners of the utility model.

(12) The formal requirements and the procedure for drawing up and issuing utility model certificates are established by the minister responsible for the field.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 33. Access to and release of data from register

(1) The register is public. Everyone has the right, as of the date of publication of the notice of the registration of a utility model, to examine the registry file concerning of a registration application and data entered in the database record taking account of the restrictions provided for in this Act, including the author's right to prohibit the disclosure of the author's name. The publication date of the specified notice is the date of the publication of the registration application.

(2) In order to access a registry file or receive copies or printouts from the register, a written request together with information concerning payment of the state fee for each file, copy or printout of a document are submitted. Applicants, owners of utility models and authors have access to the registry files of their utility models free of charge. Other persons can access the registry free of charge where authorised by the given persons.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(3) At the written request of the applicant or owner of the utility model and where the state fee has been paid, the Patent Office issues a document certifying priority of the invention consisting of a copy of the registration application and the official confirmation by the Patent Office. The requirements for the form and procedure for drawing up documents certifying priority are established by the minister responsible for the field.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

(4) The procedure for access to the register and release of information from the register is established by the minister responsible for the field.

[RT I, 28.12.2011, 1 – entry into force 01.01.2012]

Chapter 8

VALIDITY OF LEGAL PROTECTION OF UTILITY MODELS

§ 34. Period of validity of registration

(1) A registration is valid for four years as of the filing date of the registration application.

(2) The period of validity of a registration can be extended initially for four years and thereafter for another two years. A state fee is paid for the extension of a registration.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(3) A registration becomes prematurely invalid where the owner of the utility model files an application for the termination of the validity of the registration.

(4) A state fee is paid for the extension of validity of a registration:

- 1) within six months before the date of expiry of the validity of the registration, or,
- 2) upon payment of additional state fee, within six months as of the date of expiry of the validity of the registration.

(5) [Repealed – RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(6) The validity of a registration is extended also where the state fee for the validity of the registration was not paid due to *force majeure* due to an impediment beyond the control of the owner of the utility model or their representative. The Patent Office extends the validity of a registration where the owner of the utility model, within two months after the cessation of the impediment, files a request to extend the validity of the registration, evidences the existence of *force majeure* another impediment beyond the control of the owner of the utility model or their representative and pays the state fee for the extension of the registration and the additional state fee specified in clause 2 of subsection 4 of this section. The aforementioned claim can be filed within one year as of the expiry of the term specified in clause 2 of subsection 4 of this section.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 34¹. Payment of state fee

The state fee is deemed as paid where information on the state fee paid has been submitted to the Patent Office. Where, by a mistake, the same act has been paid for more than once or where different persons have performed it, the information submitted first regarding the state fee paid in the right amount is considered payment of the state fee.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 35. [Repealed – RT I 2000, 19, 177 – entry into force 01.07.2000]

§ 36. Amendments to utility models

(1) The owner of a utility model may restrict the scope of legal protection during the entire period of the validity of the registration without altering the invention by amending the claims of the utility model, and correct any bibliographical data and obvious spelling mistakes and calculation errors in the description of the utility model. A request for making amendments and new claims of the utility model and, where necessary, a new description of the invention is filed with the Patent Office and a state fee prescribed by subsection 2 of this section is paid. The Patent Office, on its own initiative or upon request of the owner of the utility model, corrects its own mistakes without charge.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) Where a request for amendments is made, a state fee is paid for publication of the notice of the amendment of the specification of the utility model in the case of correction of bibliographical data and spelling and calculation mistakes, and a state fee is paid for the publication of a notice concerning the amendment to the claims of the utility model and publication of a new specification of the utility model in the case of restricting the scope of legal protection.
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(2¹) The Patent Office publishes a notice of making amendments to a utility model in the official publication of the Patent Office. Where the scope of legal protection is restricted, the new specification of the utility model is published as well.
[RT I 2004, 20, 141 – entry into force 01.05.2004]

(3) In order to correct obvious spelling mistakes and calculation errors which restrict the scope of legal protection of a utility model, the owner of the utility model may file a request with the Patent Office within one year after the publication of a registration notice of the utility model.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(4) The extension of the scope of legal protection of a utility model caused by amendments made on the basis of subsection 3 of this section does not restrict the rights of persons who had, prior to the publication of the notice concerning the making of amendments to the registration of the utility model, taken into consideration the initial scope of legal protection of the utility model in their economic and commercial activities.

Chapter 9
§ 37. – § 39. [Repealed – RT I 2000,
19, 177 – entry into force 01.07.2000]

Chapter 10
TRANSFER OF RIGHTS TO UTILITY MODEL

§ 40. Transfer of right to apply for registration of utility model

(1) The transfer of the right to apply for the registration of a utility model from the author to another person is performed on the basis of a separate written agreement or in accordance with a contract or employment contract as provided for in subsection 2 of § 11 of this Act. The specified agreement or contract must contain provisions which ensure, in accordance with subsection 8 of § 12, the right of the author to receive fair proceeds from the profit received from the invention during the entire period of validity of the registration.

(2) Upon the transfer of the right to apply for the registration of a utility model on the basis of law, the law of the country of the residence or seat of the applicant applies.

(3) The legal basis for the transfer of the right to apply for the registration of a utility model in accordance with subsection 1 or 2 of this section and the author's details are indicated in a registration application. In cases of justified doubt, the Patent Office, the Board of Appeal and courts have the right to require the submission of documents certifying the right to apply for the registration of the utility model and the authorship of the invention.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 41. Transfer of registration application

(1) An applicant may transfer a registration application which is being processed by the Patent Office to another person.

(2) In the event of the death of an applicant or dissolution of an applicant who is a legal person, a registration application which is being processed by the Patent Office transfers to a successor or a legal successor.

(3) In order to amend the applicant's data in a registration application, the applicant or the person to whom the registration application is transferred files a corresponding application and a document certifying payment of the state fee with the Patent Office. Where the application is filed by the person to whom the registration application is transferred, the person encloses with the application reliable documents certifying the transfer.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(4) A registration application is deemed to be transferred to another person as of the date on which the entry to amend the registration application data entry is made.

§ 42. Transfer of utility model

(1) The owner of a utility model may transfer the utility model to another person.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) In the event of the death of the owner of a utility model or dissolution of an owner who is a legal person, the utility model transfers to a successor or a legal successor.

(3) In order to amend the data concerning the owner of a utility model in the registration, the owner of the utility model or the person to whom the utility model is transferred files a corresponding application and a document certifying payment of the state fee with the Patent Office. Where the application is filed by the person to whom the utility model is transferred, the person encloses with the application reliable documents certifying the transfer.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(4) The application specified in subsection 3 of this section must be filed within one year after the date of transfer of the utility model set in the transaction or after the date of emergence of legal succession. Where the

utility model is transferred on the basis of a decision of the Board of Appeal or a court judgment, the application must be filed within one month after the date on which the decision or judgment enters into force. Where the time limits specified in this subsection are disregarded, the registration is deemed invalid.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(5) A utility model is deemed transferred to another person as of the date of transfer of the utility model determined by a transaction, decision of the Board of Appeal or court judgment or date of emergence of legal succession.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(6) A person to whom a utility model is transferred in accordance with the provisions of this section may commence use of the rights of the owner of the utility model as of the date on which the entry to amend the registration data becomes valid. A registry entry becomes valid on the date on which it is made. A registry entry has legal effect with regard to a third person as of the date on which a notice of the making of the registry entry is published in the official publication of the Patent Office.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 43. Licence

(1) The owner of a utility model (licensor) may, in accordance with a written licence agreement, grant the use of the rights of the owner of the utility model listed in subsection 1 of § 14 of this Act to another person or persons (licensee) for commercial purposes in part or in full or inform of the granting of a public non-exclusive licence via the Patent Office in accordance with § 43¹ of this Act.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) With the consent of a licensor, a licensee may, by way of a sublicense, transfer the rights deriving from a licence to a third person.

(3) The term of a licence must not be longer than the term of the registration.

(4) Licences may be registered in the register. A written request of the licensor or the licensee together with a copy of the licence agreement or an extract from the licence agreement which contains information necessary for the registration serve as the basis for the making of an entry concerning a licence. A state fee is paid for an entry concerning a licence. An unregistered licence has no legal effect with respect to third persons. Where there is a conflict of rights granted by different licences to several licensees, preference is given to the licensee whose licence is registered.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(5) Upon transfer of a utility model to another person in the cases provided for in § 42 of this Act, the rights and obligations deriving from the licence are also transferred to the said person.

§ 43¹. Public non-exclusive licence

(1) A public non-exclusive licence means a licence to which anyone who pays the owner of the utility model the licence fee set by the owner of the utility model is entitled. With the utility model, the licensee has the right to, for commercial purposes, perform the acts listed in subsection 1 of § 14 of this Act throughout the territory of the Republic of Estonia.

(2) A public non-exclusive licence can be granted on the condition that no prior valid licences have been registered in the register regarding the same utility model.

(3) For the purpose of granting a public non-exclusive licence, the owner of the utility model must submit to the Patent Office an application for the registration of a public non-exclusive licence and pay the state fee. The application must set out at least the following:

- 1) the registration number;
- 2) the name of the invention;
- 3) the given name and surname of the owner of the utility model; in the event of a legal person, the name of the legal person;
- 4) the given name and surname of the patent agent where the application is filed via a patent agent;
- 5) the application for the registration of a public non-exclusive licence;
- 6) the term of validity of the licence;
- 7) the amount of the licence fee or the procedure for calculating it, the term of payment of the licence fee and, where necessary, other terms of payment;
- 8) information about the state fee paid;
- 9) the signature of the applicant and the date.

(4) A power of attorney must be enclosed with an application for registration of a public non-exclusive licence where the application is submitted via a patent agent.

(5) Where an application for the registration of a public non-exclusive licence complies with the requirements, the Patent Office enters the details of the licence in the register and publishes a respective notice in the official publication of the Patent Office.

(6) A person who wishes to obtain a public non-exclusive licence must submit a written application to the Patent Office and pay a state fee. The application must set out at least the following:

- 1) the registration number;
- 2) the name of the invention;
- 3) the given name and surname of the owner of the utility model; in the event of a legal person, the name of the legal person;
- 4) the application for a public non-exclusive licence;
- 5) the given name and surname of the licensee, the address of their place of residence or seat and the country code; in the event of a legal person, the address of the seat and the country code;
- 6) the given name and surname of the patent agent where the application is filed via a patent agent;
- 7) a confirmation of agreement with the amount of the licence fee and other terms of payment;
- 8) information about the state fee paid;
- 9) the signature of the applicant and the date.

(7) A power of attorney must be enclosed with an application for a public non-exclusive licence where the application is submitted via a patent agent.

(8) Where an application for a public non-exclusive licence complies with the requirements, the Patent Office enters the data of the licensee in the register regarding the grant of the public non-exclusive licence, publishes a respective notice in the official publication of the Patent Office and communicates the data of the licensee to the owner of the utility model in writing. In legal terms the entry of the data of the licensee in the register is deemed the entry into a licence agreement containing terms and conditions established on the basis of clauses 6 and 7 of subsection 3 of this section between the owner of the utility model and the licensee.

(9) The owner of the utility model can terminate the validity or shorten the term of validity of a public non-exclusive licence before the expiry of the term of validity entered in the register only with the consent of all the licensees.

(10) A licensee may waive a public non-exclusive licence by informing the Patent Office and the owner of the utility model thereof in writing. A public non-exclusive licence can be waived on the condition that the licence fee has been paid in the prescribed amount and in accordance with the terms and conditions of payment. Where the owner of a utility model has not, within one month after receiving a notice from the licensee, informed the Patent Office of any overdue licence fees, the Patent Office deletes the data of the licensee from the register and publishes a respective notice in the official publication of the Patent Office.

(11) A public non-exclusive licence becomes invalid towards a licensee at the request of the owner of the utility model where the licensee fails to pay the required amount of the licence fee within the term or on other terms and conditions of payment entered in the register.

(12) In the event of a significant change in the overall nature of using an invention, the owner of a utility model or a licensee has the right to demand that the other party amend the amount of the licence fee or the terms of payment thereof.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 44. [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

Chapter 11

CONTESTATION AND PROTECTION OF RIGHTS TO UTILITY MODEL

§ 45. Contestation of authorship

(1) Disputes concerning authorship are resolved after the registration of a utility model.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) Any person who finds that they are, in accordance with subsection 1 of 2 of § 12 of this Act, the author or joint author of a utility model, may file an appeal against the owner of the utility model in order to be recognised as the author.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) Authorship may be contested by the author or a successor of the author.

(4) Where authorship is recognised, the person may contest the owner of the utility model in accordance with subsection 1 of § 46 of this Act within the same proceedings.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(5) A party to the appeal proceedings specified in subsection 2 of this section who does not accept a decision of the Board of Appeal may file a claim against the other party to the proceedings within the time limit provided for in subsection 1 of § 64 of the Principles of Legal Regulation of Industrial Property Act.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 46. Contestation of owner of utility model

[RT I 2003, 18, 106 – entry into force 01.04.2003]

(1) Any person who finds that the right to a utility model belongs to them on the basis of § 11 of this Act may file an appeal with the Board of Appeal against the owner of the utility model for recognition of their rights. Where the appeal is granted, the appellant has the right to:

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

- 1) register the utility model in the person's name,
- 2) revoke the registration and file a new registration application with the same filing date concerning the same invention, or
- 3) revoke the registration.

(1¹) A party to the appeal proceedings specified in subsection 1 of this section who does not accept a decision of the Board of Appeal may file a claim against the other party to the proceedings within the time limit provided for in subsection 1 of § 64 of the Principles of Legal Regulation of Industrial Property Act in order to have their right recognised.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2) A request stating the choice made in accordance with subsection 1 of this section along with the final decision of the Board of Appeal or the final court judgment is filed with the Patent Office within one month after entry into force of the decision or judgment. Upon filing a new registration application, the person must file the documents of the new registration application in accordance with the provisions of § 17 of this Act with the Patent Office within three months from the date of the final decision or judgment. In the event of failure to comply with the aforementioned requirements, the registration is revoked.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) Where a request submitted in accordance with subsection 1 of this section is granted, the person who has used the invention or made serious preparations therefor may apply to the court for the right to use the invention for a charge or without charge in their economic or professional activities after the transfer of the utility model, provided that the nature of use of the invention does not change.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) [Repealed – RT I 2003, 18, 106 – entry into force 01.04.2003]

(5) [Repealed – RT I 2003, 18, 106 – entry into force 01.04.2003]

§ 47. Contestation of utility model

(1) A person may file with the Board of Appeal an appeal against the owner of a utility model for the revocation of the registration where the person finds that:

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

- 1) the registered utility model does not comply with §§ 5–9 of this Act;
- 2) the invention has not been described in the description with sufficient accuracy and clarity, so that an expert of the field can implement the invention, or
- 3) the invention does not correspond to the invention as disclosed in the initial registration application.

[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) An appeal specified in subsection 1 of this section can be filed even after the registration has expired.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(2¹) A party to the appeal proceedings specified in subsection 1 of this section who does not accept a decision of the Board of Appeal may file a claim against the other party to the proceedings within the time limit provided for in subsection 1 of § 64 of the Principles of Legal Regulation of Industrial Property Act.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(3) On the basis of the final decision of the Board of Appeal or the final judgment of the court, the Patent Office makes an entry in the register where the owner of a utility model or a person specified in subsection 1 of this section submits to the Patent Office an application containing information on the final decision or judgment.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(4) The revocation of a registration cannot serve as a basis for the annulment of a court judgment made concerning the protection of the exclusive right of the owner of the utility model or termination of a contract, including a licence agreement, before the court judgment on the revocation of the registration enters into force. Where the performance of the contract is continued, one party has the right to require the other party to change the payments or make recalculations.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 48. Protection of rights of author

(1) The author of a utility model or, in the event of the author's death, the author's successors may file, without a limitation period, a claim with court in the event of infringement of the rights provided for in subsection 7 of § 12 of this Act and for the resolution of other non-economic disputes deriving from authorship.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) [Repealed – RT I 2002, 53, 336 – entry into force 01.07.2002]

§ 49. Protection of rights of applicant

(1) In accordance with § 27 of this Act, an applicant may file an appeal with the Board of Appeal against a decision of the Patent Office.
[RT I 2008, 59, 330 – entry into force 01.01.2009]

(2) Where an applicant does not agree with a decision of the Board of Appeal, the applicant may contest it by filing an appeal with the county court within the time limit specified in subsection 1 of § 63 of the Principles of Legal Regulation of Industrial Property Act.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 50. Protection of rights of owner of utility model

(1) In the case of unlawful use of a utility model, the owner of the utility model may request:

- 1) compensation for damage caused by unlawful use of the utility model in accordance with § 1043 of the Law of Obligations Act;
- 2) the transfer of that which is received as a result of the unlawful use of the utility model in accordance with §§ 1037 and 1039 of the Law of Obligations Act;
- 3) termination of the unlawful use of the utility model and refraining from further violation in accordance with § 1055 of the Law of Obligations Act;

(2) [Repealed – RT I 2002, 63, 387 – entry into force 01.09.2002]

(3) A person who infringes the exclusive right of the owner of a utility model by a wrongful act and causes the owner proprietary damage is required to compensate for the damage. Upon use of a utility model in good faith, the court may order a compensation which does not exceed the extent of damage caused within five years before the filing of the claim.

(4) The owner of a utility model has the right to file a claim within three years as of the time when the owner learns who the person is who has infringed the exclusive right.

(5) Upon infringement of an exclusive right prior to the publication of a notice of registration of a utility model, a claim should be filed within the term specified in subsection 4 of this section or within one year as of the date of the publication of the notice of registration of the utility model, depending on which one expires later.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 51. Protection of rights of other persons

(1) A person who used an invention in good faith before a registration application was filed may file an application with the court for recognition of the person's right of prior use. The court hears the application in accordance with the petition procedure.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

(2) A licensee may file a claim in court for resolution of a dispute related to the licence.

(3) A licensee may also file a claim upon infringement of the exclusive right of the owner of a utility model by other persons, unless otherwise prescribed upon the grant of licence. The licensee notifies the owner of a utility model of the licensee's wish to file a claim beforehand. The obligation to notify is deemed to be performed where the notice is sent to the owner of the utility model by registered mail to the address indicated in the licence agreement or the address entered in the register.

(4) Any person may, upon doubt that the person's activities may infringe the exclusive right of the owner of a utility model, file a claim with the court against the owner of the utility model in order to have it recognised that the existence of the utility model does not hinder the person's economic or professional activities.

(5) A person against whom a claim has been filed on the basis of § 50 of this Act has the right to file a counter-claim specified in subsection 1 of § 45, subsection 1 of § 46 or subsection 1 of § 47 of this Act.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

(6) A person against whom misdemeanour or criminal proceedings have been initiated in connection with an infringement of the exclusive right of the owner of a utility model has the right to file an appeal with the Board of Appeal against the owner of the utility model for the purpose of revocation of the registration. At the request of the alleged infringing party, the court may suspend the misdemeanour or criminal proceedings for the period of hearing the appeal for revocation of the registration. The court may, as a prerequisite for suspension, demand a security covering possible damage caused to the owner of the utility model in the event where the registration remains in force.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 52. Procedure for hearing disputes relating to utility models

(1) In the cases provided by law, disputes related to utility models are heard by the Board of Appeal or a court.

(2) Applications and claims concerning the legal protection, validity and unlawfulness of a utility model, requests for securing a claim, requests for provisional legal protection and other applications, appeals and claims specified in this Act are heard exclusively by Harju County Court.

[RT I, 19.03.2019, 4 – entry into force 01.04.2019]

(3) Courts hear disputes related to utility models in accordance with the procedure provided for in the Code of Civil Procedure, taking into consideration the specifications established in this Act.

(4) [Repealed – RT I 2005, 39, 308 – entry into force 01.01.2006]

(5) The Board of Appeal hears applications and appeals submitted to it on the basis of this Act in accordance with the procedure provided for in the Principles of Legal Regulation of Industrial Property Act.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 52¹. Burden of proof

(1) Where a claim is filed on the basis of the provisions of subsection 2 of § 14 of this Act, the defendant is required to prove that the defendant used a process different from the process protected as a utility model for manufacturing a similar product.

(2) Where the use of a different process cannot be proved, the product is deemed to have been manufactured according to the process protected as a utility model provided that, in spite of reasonable efforts, the owner of the utility model has not succeeded in determining the process actually used for manufacturing the product and the use of the process protected as a utility model is likely or where the product manufactured according to the process protected as a utility model is new.

(3) Evidence submitted by the defendant containing the defendant's production or business secrets may be disclosed only with the consent of the defendant.

§ 53. Acts of court upon filing of statement of claim

(1) In the event of a claim specified in subsection 4 of § 51 of this Act, a copy of the notice sent to the owner of a utility model is annexed to the statement of claim. In the event of absence of the copy, the court does not proceed with the statement of claim and sets a term for the claimant for performance of the notification obligation.

(2) The court may decide, at the request of the claimant, that the products or objects protected as utility models and manufactured without the permission of the owner of the utility model, the use of which infringes the exclusive right of the owner of the utility model, are to be removed from circulation for the time of hearing the claim filed for termination of an infringement of the exclusive right.

(3) In the event specified in subsection 2 of this section, the court may, at the request of the defendant, rule that the possessor of a product or an object may continue using the product or object for a fair fee payable to the owner of the utility model during the entire or a part of the remaining time of the period of validity of the registration.

[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 54. Participation of Patent Office

(1) [Repealed – RT I 2005, 39, 308 – entry into force 01.01.2006]

(2) The court sends a copy of the judgment made in a dispute related to a utility model to the Patent Office so that the latter could take notice thereof.

[RT I 2005, 39, 308 – entry into force 01.01.2006]

§ 55. Representatives in resolution of judicial disputes relating to utility models

[RT I 2005, 39, 308 – entry into force 01.01.2006]

(1) In disputes related to utility models, a patent agent may act as a representative in the county court (first instance) and in the court of appeal (second instance). In the Supreme Court (third instance), the patent agent may act as a representative jointly with an attorney-at-law.

(2) [Repealed – RT I 2004, 20, 141 – entry into force 01.05.2004]

(3) [Repealed – RT I 2004, 20, 141 – entry into force 01.05.2004]

Chapter 12

REGISTRATION OF UTILITY MODELS IN FOREIGN STATES

§ 56. Registration procedure

(1) Persons whose residence or seat is in the Republic of Estonia may register their utility models in foreign states regardless of the registration thereof in the Republic of Estonia.

(2) Persons whose residence or seat is in the Republic of Estonia are responsible for the registration of their utility models in foreign states in accordance with the law of the foreign state and international conventions.

§ 57. [Repealed – RT I 2000, 19, 117 – entry into force 01.07.2000]

Chapter 12¹

LIABILITY

[Repealed -RT I, 12.07.2014, 1 - entry into force 01.01.2015]

§ 57¹.–§ 57².[Repealed – RT I, 12.07.2014, 1 – entry into force 01.01.2015]

Chapter 13

IMPLEMENTATION OF ACT

§ 58. Entry into force of Act

(1) The Utility Models Act enters into force on 23 May 1994.

(2) The provisions of clause 1 of subsection 2 of § 10 of this Act apply after the membership of the Republic of Estonia in the Paris Convention for the Protection of Industrial Property is restored.

(3) The provisions of Chapter 4 of this Act do not apply earlier than three months after the accession of the Republic of Estonia to the Patent Cooperation Treaty entered into on 19 June 1970 in Washington.

(4) The basis for establishing the priority specified in subsection 2 of § 10 of this Act may only be patent applications and registration applications filed after the entry into force of this Act.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 59. Transition provision

Section 21¹ of this Act applies also to all registration applications accepted before the entry into force of § 21¹ with regard to which no decision to register the utility model in accordance with subsection 4 of § 21 of this Act or a decision to reject the registration application in accordance with subsection 5 of the same section has been made by the date of entry into force of § 21¹.
[RT I, 29.11.2011, 1 – entry into force 01.01.2012]

§ 60. Hearing of application, appeal or claim filed before 1 April 2019

(1) A claim filed on the basis of this Act before 1 April 2019 is heard in court also where from the given date a mandatory pre-court procedure before the Board of Appeal has been prescribed for resolving the dispute.

(2) An application, appeal or claim filed with the court before 1 April 2019 on the basis of this Act is heard in a county court other than Harju County Court also where, as of the given date, Harju County Court has exclusive jurisdiction over hearing the relevant application, appeal or claim.
[RT I, 19.03.2019, 5 – entry into force 01.04.2019]