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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Liġi mressaq mill-Onorevoli Josef Bonnici, M.P., Ministru għas-Servizzi Ekonomiċi, u moqri għall-Ewwel Darba fis-Seduta ta' l-20 ta' Lulju, 1999.

ATT sabiex jipprovdi dwar ir-registrazzjoni u r-regolament tal-Privattivi.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable Josef Bonnici, M.P., Minister for Economic Services, and read the First time at the Sitting of the 20th July, 1999.

AN ACT to make provision for the registration and regulation of Patents.

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI msejjah

ATT sabiex jipprovdi dwar ir-registrazzjoni u r-regolament tal-Privattivi.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:-

TAQSIMA I: TITOLU

1. Dan l-Att jista' jissejjah l-Att dwar il-Privattivi Industrijali, u għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-protezzjoni tal-Proprietà Industrijali jista' jistabbilixxi b'avviż fil-Gazzetta, u jistgħu jiġu hekk stabbiliti dati differenti għal dispożizzjonijiet differenti u għal għanijiet differenti ta' l-Att. Titolu fil-qosor
u bidu fis-sehh.

TAQSIMA II: TIFSIRIET

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tehtiegħ Tifsir.
xort'ohra:

“Kontrollur” tfisser il-Kontrollur tal-Proprietà Industrijali u tinkludi lil kull persuna oħra li tiġi mahtura sabiex teżercita is-setgħat kollha jew x'uhud minnhom u twettaq id-dmirijiet kollha jew x'uhud minnhom tal-Kontrollur;

“Ministru” tfisser il-Ministru responsabbli għall-protezzjoni tal-Proprietà Industrijali;

“preskritt” tfisser preskritt b’dan l-Att jew b’kull regolamenti maghmulin tahtu;

“privattiva” tfisser id-dritt esklużiv konċess mill-Kontrollur skond il-provvedimenti ta’ dan l-Att;

Kap. 29.

“reġistru” tfisser ir-reġistru ta’ privattivi li jinżamm taht dan l-Att u tinkludi r-reġistru ta’ privattivi li jinżamm taht l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrijali, li hi f’parti minnha mhassra b’dan l-Att.

TAQSIMA III: L-UFFIĊĊJU TAL-KONTROLLUR

Hatra u dmirijiet tal-Kontrollur.

3. (1) L-amministrazzjoni ta’ dan l-Att għandha tkun fdata lill-Kontrollur tal-Proprietà Industrijali, hawnhekk iżjed ‘il quddiem imsejjah “il-Kontrollur”.

(2) Il-Kontrollur għandu jinhatar mill-Ministru responsabbli għall-Uffiċċju dwar il-Proprietà Industrijali.

TAQSIMA IV: JEDD GHALL-PRIVATTIVA

Invenzjonijiet b’jedd għal privattiva.

4. (1) Invenzjoni jkollha jedd għal privattiva jekk din tkun waħda ġdida, tkun tinvolvi pass inventiv u tkun applikabbli fl-industrija.

(2) Dawn li ġejjin, b’mod partikolari, ma għandhomx jitqiesu bħala invenzjonijiet fi hdan it-tifsira tas-subartikolu (1):

(a) skoperti, teoriji xjentifiċi u metodi matematiċi;

(b) kreazzjonijiet estetici;

(ċ) skemi, regoli u metodi għat-twettiq ta’ atti mentali, attivitajiet ta’ loġhob jew il-ġestjoni ta’ kummerċ u programmi għall-computers;

(d) kull preżentazzjoni ta’ informazzjoni.

(3) Id-dispożizzjonijiet tas-subartikolu (2) għandhom jeskludu l-jedd għall-privattiva tas-suġġett jew ta’ l-attivitajiet imsemmija f’dak is-subartikolu biss sal-limitu li bih applikazzjoni ta’ privattiva jew privattiva ikunu jirrelataw għal dak is-suġġett jew attivitajiet bħala tali.

(4) Metodu għall-kura ta’ ġisem il-bniedem jew ta’ animal permezz ta’ kirurgija jew ta’ terapija u metodu djanjostiku li jigi ppratikat

fuq gisem il-bniedem jew ta' annimal ma ghandhomx jitqiesu bhala xi invenzjoni li tkun tista' tigi applikata industrijalment ghall-ghanijiet tas-subartikolu (1):

Izda dan is-subartikolu ma ghandux ikun japplika ghal prodotti, b'mod partikolari ghal sustanzi jew kompozizzjonijiet, li jintuzaw f'xi wiehed minn dawn il-metodi li ghejjin.

(5) Ma ghandhiex tinghata privattiva ghar-rigward ta':

(a) invenzjoni li l-esplotazzjoni taghha tmur kontra l-ordni pubbliku jew il-moralità pubblika:

Izda dik l-esplotazzjoni ma ghandhiex titqies bhala li tkun hekk kuntrarja sempliċement ghaliex tkun projbita b'xi ligi jew regolament;

(b) varjetà ta' annimal jew proċess li essenzjalment ikun wiehed bijoloġiku ghall-produzzjoni ta' pjanti jew annimali u li ma jkunx proċess mikrobijoloġiku jew il-prodotti tieghu.

(6) Il-Ministru jista' jagħmel regolamenti sabiex jimmodifika xi wiehed mill-provvedimenti ta' dan l-artikolu minbarra l-paragrafu (a) tas-subartikolu (5) ghall-ghanijiet li dawn jinżammu konformi ma' żviluppi fix-xjenza u fit-teknoloġija.

5. (1) Invenzjoni titqies bhala wahda ġdida jekk din ma tkunx Innovazzjoni. tagħmel parti minn xi arti prijuri.

(2) L-arti prijuri tfisser dak kollu li, qabel id-data tal-prezentata jew, meta tigi vantata l-prijorità, qabel id-data ta' priyorità ta' l-applikazzjoni li fiha tkun qed tigi vantata l-invenzjoni, kien disponibbli ghall-pubbliku f'għamla miktuba jew xort'ohra grafika, b'deskrizzjoni orali, b'użu jew b'kull mod ieħor x'imkien ieħor fid-dinja.

(3) L-arti prijuri tinkludi wkoll il-kontenut ta' kull applikazzjoni ghal privattiva kif tkun ġiet ipprezentata f'Malta, jew b'seħh ghal Malta, sal-limitu li dik l-applikazzjoni jew il-privattiva konċessa dwarha tigi sussegwentement ippubblikata minn jew ghall-Uffiċċju tal-Kontrollur:

Izda d-data ta' l-applikazzjoni jew, meta tigi vantata l-prijorità, id-data ta' priyorità ta' dik l-applikazzjoni ghandha tigi qabel id-data msemmija fis-subartikolu (2).

(4) Id-dispożizzjonijiet tas-subartikoli (1) sa (3) ma ghandhomx jeskludu l-jedd ghal privattiva ta' xi sustanza jew

kompożizzjoni, kompriża fl-arti prijuri, għall-użu f'xi metodu msemmi fis-subartikolu (4) ta' l-artikolu 4 sakemm l-użu tagħha għal xi metodu msemmi fl-istess subartikolu (4) ma jkunx kompriż fl-arti prijuri.

Pass inventiv.

6. Invenzjoni għandha tiġi kkunsidrata bhala li tinvolvi pass inventiv jekk, fil-konsiderazzjoni ta' arti prijuri kif imfissra fis-subartikolu (2) ta' l-artikolu 5, ma jkunx ovvju għal persuna li jkollha sengħa fl-arti:

Iżda jekk l-arti prijuri tkun ukoll tinkludi xi wiehed mid-dokumenti msemmi fis-subartikolu (3) ta' l-artikolu 5 ta' dan l-Att, dawn id-dokumenti ma għandhomx jitqiesu meta jiġi deċiż jekk kienx hemm pass inventiv.

Applikabilità industrijali.

7. Invenzjoni għandha titqies bhala wahda industrijalment applikabbli jekk din tista' tintgħamel jew tintuża f'xi xorta ta' industrija. Għall-ghanijiet ta' dan l-artikolu il-frazi "industrija" għandha tiftiehem fl-iktar sens wiesgħa tagħha u għandha mingħajr preġudizzju għal dak hawn aktar qabel imsemmi tinkludi l-artiġġanat, l-agrikoltura u s-sajd.

Iktar żmien.

8. (1) L-iżvelar, matul it-tmax il-xahar li jiġu qabel id-data ta' l-applikazzjoni jew, meta tiġi vantata l-prijorità, id-data ta' prijorità ta' applikazzjoni speċifika, ta' informazzjoni li kieku xort'ohra jolqot il-jedd għal privattiva ta' invenzjoni vantata f'dik l-applikazzjoni, ma għandux jolqot il-jedd għal privattiva ta' dik l-invenzjoni meta l-informazzjoni tkun ġiet żvelata:

(a) mill-inventur;

(b) minn ufficċju ta' proprjetà intellettuali u

(i) l-informazzjoni kienet tinsab f'applikazzjoni ohra ppreżentata mill-inventur u ma kellhiex tiġi żvelata minn dak l-ufficċju, jew

(ii) l-informazzjoni kienet tinsab f'applikazzjoni ppreżentata mingħajr il-konozzenza jew il-kunsens ta' l-inventur minn terzi li jkunu kisbu l-informazzjoni, sew direttament sew mhux, mingħand l-inventur;

(ċ) minn terzi li kisbu l-informazzjoni, sew direttament sew mhux, mingħand l-inventur.

(2) Għall-ghanijiet tas-subartikolu (1), "inventur" ukoll tfisser kull persuna naturali li, jew xi enti legali li, fid-data tal-preżentata, kellha jedd tikseb privattiva fuq l-applikazzjoni fir-rigward,

irrispettivament minn jekk dik il-persuna jew enti tkunx l-applikant ta' l-applikazzjoni fir-rigward.

TAQSIMA V: JEDD TA' APPLIKAZZJONI GHAL PRIVATTIVA U L-KSIB TAGHHA U GHAT-TISMIJA TA' INVENTUR

9. Kull persuna naturali jew enti legali tista' tipprezenta applikazzjoni ghal privattiva sew wahidha jew solidalment ma' ohrajn. Jedd ghal prezentata ta' applikazzjoni.

10. (1) Id-dritt ghal privattiva jappartjeni lill-inventur jew lis-successur tieghu fit-titlu. Inventuri solidali ghandhom, kemm-il darba ma jaqblux xort'ohra, ikollhom drittijiet indaq u meta l-applikazzjoni ghal privattiva ssir minn zewg persuni jew iktar solidalment, privattiva tista' tigi koncessa lilhom solidalment. Dritt ghal privattiva.

(2) Meta zewg applikazzjonijiet jew iktar ikunu gew ipprezentati minn persuni differenti ghar-rigward ta' l-istess invenzjoni u l-inventuri involuti jkunu ghamlu l-invenzjoni indipendentement minn xulxin, id-dritt ghal privattiva ghal dik l-invenzjoni ghandu jappartjeni lill-applikant li l-applikazzjoni tieghu jkollha l-iktar data ta' prezentata kmieni jew, meta tigi vantata prijorita, l-iktar data ta' prijorita li tigi kmieni, kemm-il darba l-applikazzjoni tieghu tkun giet ippubblikata.

(3) Ghall-ghan ta' procedimenti quddiem Qorti, l-applikant ghandu jitqies li jkollu jedd li jezercita d-dritt ghal privattiva.

11. (1) Minkejja d-dispozizzjonijiet ta' l-artikolu 10, meta invenzjoni ssir b'eżekuzzjoni ta' kummissjoni jew ta' kuntratt ta' impieg, id-dritt ghal privattiva ghal dik l-invenzjoni ghandu jappartjeni, fin-nuqqas ta' provvedimenti kuntrattwali kuntrarji, lil min ikun ikkummissjona x-xoghol jew lill-principjal. Invenzjoni li ssir b'eżekuzzjoni ta' kummissjoni jew ta' kuntratt ta' impieg.

(2) L-impjegat ikollu dritt ghal rimunerazzjoni gusta fil-qjies tas-salarju tieghu, l-valur ekonomiku ta' l-invenzjoni u kull beneficcju li l-principjal jikseb mill-invenzjoni. Fin-nuqqas ta' ftehim bejn il-partijiet, ir-rimunerazzjoni ghandha tigi stabbilita mill-Prim'Awla tal-Qorti Civili.

12. L-inventur ghandu jissemma bhala tali fil-privattiva, kemm-il darba huwa ma jindikax f'dikjarazzjoni speċjali bil-miktub li tigi indirizzata lill-Kontrollur illi huwa jixtieq li ma jissemmiex. Tismija ta' l-inventur.

TAQSIMA VI: APPLIKAZZJONIJIET

Htiġiet ta' applikazzjoni.

13. (1) Applikazzjoni għal privattiva għandha ssir f'duplikat fuq il-formula preskritta u għandha tiġi ppreżentata fl-Uffiċċju tal-Kontrollur u għandu jkun fiha:

- (a) talba għall-konċessjoni ta' privattiva;
- (b) deskrizzjoni ta' l-invenzjoni;
- (ċ) talba wahda jew iktar;
- (d) dawk id-disinji li jkun hemm imsemmija fid-deskrizzjoni jew fit-talbiet;
- (e) astratt ta' l-invenzjoni.

(2) L-applikazzjoni għandha ssemmi min ikun l-inventur jew, meta jkun hemm iktar minn inventur wiehed, id-diversi inventuri li jkun hemm. Jekk l-applikant ma jkunx l-inventur, jew inkella ma jkunx l-inventur uniku, l-applikant għandu jindika r-raġunijiet legali għall-jedd li jvanta li jippreżenta l-applikazzjoni.

(3) L-applikazzjoni għandha tkun sugġetta għall-ħlas ta' dritt għall-preżentata hekk kif jista' jiġi preskritt.

(4) L-applikazzjoni trid tkun magħmula fl-ilsien preskritt u tissodisfa kull kundizzjoni li tista' tiġi preskritta.

Data tal-preżentata.

14. (1) Id-data tal-preżentata ta' applikazzjoni għandha tkun id-data meta l-Uffiċċju tal-Kontrollur jirċievi d-dokumenti li jkun fihom:

- (a) indikazzjoni espressa jew impliċita li tkun pretiża l-konċessjoni ta' privattiva;
- (b) indikazzjonijiet li jkunu jippermettu li tiġi stabbilita l-identità ta' l-applikant;
- (ċ) deskrizzjoni ta' l-invenzjoni li dwarha tkun qeghda ssir l-applikazzjoni għal privattiva.

(2) (a) Jekk f'dak iż-żmien li tasallu applikazzjoni, jirriżulta lill-Kontrollur li l-htiġiet imsemmija fis-subartikolu (1) ma jkunux twettqu, huwa għandu jistieden lill-applikant biex iħares kull htiġa li ma tkunx ġiet sodisfatta, f'dak il-perjodu li jista' jiġi preskritt.

(b) Jekk l-applikant jikkonforma ruhu ma' l-istedina msemmija fil-paragrafu (a), id-data tal-preżentata ta' l-

applikazzjoni ghandha tkun id-data ta' meta jigu rċevuti l-htigiet kollha li jkun ghad jonqos. Jekk l-applikant jonqos milli jhares stedina bhal dik, l-applikazzjoni ghandha tigi ttrattata bhallikieku din ma tkunx giet ipprezentata.

(ċ) Meta d-deskrizzjoni tkun tirreferi ghal disinji li ma jkunux inkluzi fl-applikazzjoni, il-Kontrollur ghandu jistieden lill-applikant sabiex jipprovdi d-disinji li jkun ghad jonqos f'dak il-perjodu li jistqa' jigi preskritt. Jekk l-applikant ikun konformi ma' dik l-istedina, id-data tal-prezentata ta' l-applikazzjoni tkun id-data meta huwa jirċievi d-disinji li jkun ghad jonqos. Jekk l-applikant jonqos milli jkun konformi ma' l-istedina, id-data tal-prezentata tkun id-data meta huwa jirċievi l-applikazzjoni u kull riferenza ghad-disinji ghandha titqies bhallikieku din ma tkunx saret.

(3) (a) L-indikazzjonijiet imsemmija fil-paragrafu (1) (a) u (b) ghandhom jigu pprezentati f'dak l-ilsien u jew dawk l-ilsna li jistghu jigu preskritti, hawnhekk iżjed 'il quddiem imsejha bhala l-ilsna ufficjali ta' l-Ufficċju.

(b) Jekk xi wahda mid-deskrizzjoni u t-talbiet imsemmija fil-paragrafi (1) (ċ) u (d) jew xi kitba li tkun tinsab f'xi disinn tkun f'ilsien li ma jkunx l-ilsna ufficjali ta' l-Ufficċju, ghandha tigi depożitata fl-Ufficċju tal-Proprietà Industrijali traduzzjoni ta' dan f'wiehed mill-ilsna ufficjali ta' l-Ufficċju f'dak it-terminu li jista' jigi preskritt.

15. (1) L-applikazzjoni ghandha tiżvela l-invenzjoni b'mod li jkun biżżejjed ċar u komplet sabiex l-invenzjoni tkun tista' tingieb fis-seħh minn persuna li tkun tas-sengha. Żvelar ta' l-invenzjoni.

(2) Meta l-applikazzjoni tkun tirreferi ghal materjal bijologikament riproducibbli li ma jkunx jista' jigi żvelat fl-applikazzjoni b'dak il-mod li l-invenzjoni tkun tista' tingieb fis-seħh minn persuna li tkun tas-sengha, u dak il-materjal ma jkunx disponibbli għall-pubbliku, l-applikazzjoni ghandha tkun supplementata b'depożitu ta' dak il-materjal li jsir f'istituzzjoni depożitarja hekk kif jista' jigi preskritt.

16. (1) It-talbiet ghandhom jagħtu definizzjoni tal-materja li dwarha tkun qeghda tigi pretiża l-protezzjoni permezz ta' privattiva. Talbiet.

(2) It-talbiet ghandhom ikunu ċari u koncizi.

(3) It-talbiet ghandhom jissejsu fuq dik id-deskrizzjoni li tista' tkun mehtieġa jew li tista' tigi preskritta.

(4) It-talbiet ghandhom jigu pprezentati bil-mod preskritt.

Astratt.

17. L-astratt ghandu semplicement jinghata bil-ghan ta' informazzjoni teknika; b'mod partikolari, ma ghandux jitqies bil-ghan li jinterpreta t-talbiet.

Unità ta' l-invenzjoni.

18. (1) Applikazzjoni ghandha tkun tirrigwarda invenzjoni wahda biss jew grupp ta' invenzjonijiet li jkunu hekk konnessi li jiffurmaw kuncett inventiv generali uniku.

(2) In-nuqqas ta' tharis tal-htiega tas-subartikolu (1) ma jkunx raġuni għall-invalidament jew għar-revoka ta' privattiva.

Qsim ta' applikazzjoni.

19. (1) Sakemm issir koncessjoni konformi ma' applikazzjoni pendenti, l-applikant jista' jaqsam applikazzjoni pendenti bħal dik f'żewġ applikazzjonijiet jew iktar ("applikazzjoni diviżorja").

(2) Applikazzjoni diviżorja ghandha titqies li tkun giet ipprezentata fid-data tal-prezentata ta' l-applikazzjoni li tkun saret l-aktar kmieni u jkollha l-benefiċċju ta' kull dritt għall-prijorità li jkun jappartjeni għal applikazzjoni li tkun saret aktar kmieni bħal dik sakemm il-kontenut tagħha ma jkunx imur oltre l-iżvelar fl-applikazzjoni li tkun saret aktar kmieni kif tkun giet ipprezentata.

(3) Dokumenti ta' priyorità u kull traduzzjoni tagħhom mehtiega li jiġu pprezentati fl-Uffiċċju tal-Kontrollur għar-rigward ta' l-applikazzjoni tal-bidu għandhom jitqiesu bhala li jkunu ġew ipprezentati għar-rigward ta' kull applikazzjoni diviżorja.

Emenda jew tiswija u ritirar ta' applikazzjonijiet.

20. (1) L-applikant ikollu id-dritt, bla hsara għall-hlas ta' dawk id-drittijiet li jistghu jiġu preskritti, b'inizjattiva tiegħu nnifsu, li jemenda jew isewwi l-applikazzjoni sal-waqt meta l-applikazzjoni tkun adatta għal koncessjoni.

(2) Ebda emenda jew tiswija ta' l-applikazzjoni ma ghandha tmur oltre dak li jkun gie żvelat fl-applikazzjoni hekk kif tkun giet ipprezentata.

(3) L-applikant jista' jirtira l-applikazzjoni f'kull waqt li matulu tkun ghadha pendenti.

Spezzjon ta' inkartamenti.

21. Wara applikazzjoni għal privattiva jew wara li l-privattiva koncessa dwarha tkun giet ippubblikata skond l-artikolu 25, kull persuna tista' tispezzjona kull inkartament ta' l-applikazzjoni skond dawk ir-regolamenti li jistghu jiġu preskritti.

Dritt ta' priyorità.

22. (1) L-applikazzjoni jista' jkun fiha dikjarazzjoni li tivvanta priyorità b'mod konformi mal-Konvenzjoni ta' Pariġi għall-Protezzjoni

ta' Proprjeta' Industrijali, ta' xi wahda jew iktar mill-applikazzjonijiet nazzjonali, reġjonali jew internazzjonali li jiġu pprezentati mill-applikant jew mill-predeċessur tiegħu fit-titlu fi jew għal xi parti Statali għal dik il-Konvenzjoni jew għall-World Trade Organisation jew għal xi Stat li Malta jkollha arrangament internazzjonali miegħu għall-protezzjoni reċiproka ta' l-invenzjonijiet.

(2) Meta l-applikazzjoni jkun fiha dikjarazzjoni taht is-subartikolu (1), l-Uffiċċju tal-Kontrollur jista' jehtieg li l-applikant jipprovdni, f'dak iż-żmien li jista' jiġi hekk preskritt, kopja ta' l-applikazzjoni li tkun saret aktar kmieni, ċertifikata bħala korretta mill-Uffiċċju jew minn xi organizzazzjoni reġjonali jew internazzjonali li tkun giet ipprezentata quddiemha.

(3) L-effett tad-dikjarazzjoni imsemmija fis-subartikolu (1) għandu jkun hekk kif inhu pprovdut fil-Konvenzjoni msemmija f'dak is-subartikolu li b'mod konformi miegħu tkun saret id-dikjarazzjoni.

(4) Jekk il-Kontrollur jirriżultalu li l-htigiet taht dan l-artikolu u taht kull regolamenti li jistgħu jiġu preskritti ma jkunux ġew imwettqa, huwa għandu jstieden lill-applikant jipprezenta t-tiswija mehtieġa f'dak il-perjodu li jista' jiġi preskritt. Jekk l-applikant ma jharisx dik l-istedina, id-dikjarazzjoni msemmija fis-subartikolu (1) għandha titqies bhallikieku ma tkunx saret.

(5) Il-Ministru responsabbli għall-Uffiċċju tal-Proprjeta' Industrijali jista', bi ftehim mal-Ministru responsabbli għall-Affarijiet Barranin, b'ordni jispeċifika l-pajjiżi li magħhom ikun hemm fis-seħh xi ftehim internazzjonali bħalma hemm imsemmi fis-subartikolu (1), u jista' b'ordnijiet sussegwenti jemenda, jirrevoka jew jissostitwixxi kull ordni bħal dak.

TAQSIMA VII: EŻAMI U KONĊESSJONI JEW ĊHID

23. (1) Meta tkun giet ipprezentata applikazzjoni għal privattiva u din ma tkunx giet irtirata, il-Kontrollur għandu jirreferi l-applikazzjoni lil uffiċjal fid-dipartiment tiegħu hawnhekk iżjed 'il quddiem imsejjah "l-eżaminatur" biex jistabbilixxi jekk l-applikazzjoni tkunx konformi ma' daww il-htigiet ta' dan l-Att u ta' kull regolamenti magħmulin tahtu u li jkunu msemmija b'xi regolamenti li jistgħu jiġu preskritti bħala htigiet formali u l-eżaminatur għandu jagħmel rapport dwarhom lill-Kontrollur.

Eżami dwar il-formalitajiet.

(2) Jekk l-eżaminatur jirrapporta lill-Kontrollur li ma jkunux ġew imharsa l-htigiet kollha formali, l-applikant għandu jingħata opportunità li jagħmel l-osservazzjonijiet tiegħu fuq ir-rapport u li

jsewwi l-applikazzjoni matul dak il-perjodu li jista' jiġi preskritt sabiex ihares dawk il-htigiet, u jekk l-applikant jonqos milli jagħmel dawk l-emendi, l-Kontrollur jista' jiċhad l-applikazzjoni.

(3) Jekk l-eżaminatur jirrapporta lill-Kontrollur li l-applikazzjoni, sew kif originalment ipprezentata jew kif emendata b'mod konformi mas-subartikolu (2) tkun thares il-htigiet formali kollha f'kull waqt qabel tmiem il-perjodu preskritt bħalma hemm imsemmi fis-subartikolu (2), il-Kontrollur għandu javża lill-applikant skond hekk.

Konċessjoni.

24. (1) Meta l-applikant ikun ġie avżat skond ma hemm fl-artikolu 23 (3) li l-applikazzjoni tiegħu tkun konformi mal-htigiet kollha formali, il-Kontrollur għandu malli jithallas id-dritt preskritt, jikkonċedi privattiva fuq l-applikazzjoni.

(2) Kemm jista' jkun malajr wara d-deċiżjoni li tiġi konċessa privattiva, il-Kontrollur għandu jippubblika avviż li l-privattiva tkun ġiet konċessa u għandu jippubblika l-privattiva bil-mod preskritt.

Publikazzjoni ta' applikazzjonijiet jew ta' privattivi.

25. (1) (a) Bla hsara għall-paragrafi (b) u (ċ) ta' dan l-artikolu, il-Kontrollur għandu, fit-terminu li hemm ipprovdut dwaru fis-subartikolu (2) u bil-mod preskritt, jippubblika kull applikazzjoni li tkun ġiet ipprezentata għandu.

(b) Ma għandha tiġi ppubblikata ebda applikazzjoni jekk din tiġi rtirata jew miċhuda qabel l-iskadenza ta' 17 il-xahar mid-data tal-prezentata jew, meta tiġi vantata prijorità, mid-data ta' prijorità ta' l-applikazzjoni.

(ċ) Jekk sa meta applikazzjoni tiġi ppubblikata skond il-paragrafu (2), privattiva tkun ġiet konċessa b'mod konformi ma' dik l-applikazzjoni, il-Kontrollur ma għandux jippubblika l-applikazzjoni iżda għandu jippubblika l-privattiva bil-mod preskritt.

(2) Il-Kontrollur għandu jippubblika kull applikazzjoni li tkun ġiet ipprezentata għandu kemm jista' jkun malajr wara l-iskadenza ta' 18 il-xahar mid-data tal-prezentata jew, meta tintalab prijorità, mid-data ta' prijorità ta' l-applikazzjoni. Madankollu, meta, qabel l-iskadenza ta' dak il-perjodu ta' 18 il-xahar, l-applikant jipprezenta talba bil-miktub lill-Uffiċċju tal-Kontrollur biex l-applikazzjoni tiegħu tiġi ppubblikata, l-Uffiċċju tal-Kontrollur għandu jippubblika l-applikazzjoni kemm jista' jkun malajr wara li jkun irċeva t-talba.

TAQSIMA VIII: EFFETTI TA' APPLIKAZZJONI GHAL
PRIVATTIVA U TA' PRIVATTIVA

26. (1) It-terminu ta' privattiva jkun ta' 20 sena mill-prezentata ta' l-applikazzjoni.

Terminu ta' privattiva u ta' drittijiet ta' manutenzjoni.

(2) Il-manutenzjoni ta' privattiva jkun bla hsara għall-hlas tad-drittijiet preskritti hawnhekk iżjed 'il quddiem imsejha "id-dritt għall-manutenzjoni". Id-dritt għall-manutenzjoni jkun dovut għar-rigward tat-tielet sena, u ta' kull sena sussegwenti warajha, li tibda għaddejja mid-data tal-prezentata tal-applikazzjoni u għandha tithallas fid-data dovuta preskritta jew qabilha.

(3) Meta ma jkunx thallas dritt għall-manutenzjoni fid-data dovuta preskritta jew qabilha, dan xorta jista' validament jithallas matul sitt xhur minn dik id-data, sakemm f'dak il-perjodu tithallas is-soprataxxa preskritta.

27. (1) Meta privattiva tkun tirrorwarda xi prodott, il-proprjetarju tal-privattiva jkollu d-dritt li jipprevjeni lil terzi milli jwettqu, minghajr ma jkollhom l-awtorizzazzjoni tiegħu, dawn l-attijiet li ġejjin:

Xi drittijiet iġġib magħha privattiva.

(a) l-għemil ta' att li jkun jinkorpora s-sugġett tal-privattiva;

(b) l-offerta għall-bejgħ jew it-tqeghid fis-suq ta' prodott li jkun jinkorpora is-sugġett tal-privattiva, l-użu ta' dak il-prodott, jew l-importazzjoni jew il-hażna ta' dak l-oġġett għal dik l-offerta jew dak it-tqeghid fis-suq jew għal dak l-użu;

(ċ) it-thajjir ta' terzi li jwettqu xi wiehed mill-attijiet hawn aktar qabel imsemmija.

(2) Meta l-privattiva tkun tinvolvi xi proċess, il-proprjetarju tal-privattiva jkollu d-dritt li jipprevjeni lil terzi milli jwettqu, minghajr ma jkollhom l-awtorizzazzjoni tiegħu, dawn l-attijiet li ġejjin:

(a) l-użu ta' xi proċess li jkun is-sugġett tal-privattiva;

(b) dwar kull prodott direttament miksub mill-użu tal-proċess, xi wiehed mill-attijiet imsemmija fis-subartikolu (1) (b), ukoll meta privattiva ma tkunx tista' tinkiseb għal dak il-prodott;

(ċ) it-thajjir ta' terzi li jwettqu xi wiehed mill-attijiet hawn aktar qabel imsemmija.

(3) Minkejja s-subartikoli (1) u (2), il-proprjetarju ta' privattiva ma ghandu jkollu ebda dritt biex jipprevjeni lil terzi milli jwettqu, minghajr l-awtorizzazzjoni tieghu, l-attijiet imsemmija fis-subartikoli (1) u (2) f'dawn iċ-ċirkostanzi li ġejjin:

(a) meta l-att ikun jirrigwarda prodott li jkun tqiegħed fis-suq mill-proprjetarju tal-privattiva, jew bil-kunsens espress tieghu, sakemm dak l-att jitwettaq wara li dak il-prodott hekk tqiegħed fis-suq f'Malta jew f'xi territorju li jista' jiġi speċifikat b'regolamenti;

(b) meta l-att isir privatament u għal għanijiet mhux kummerċjali, sakemm dan ma jkunx jippreġudika b'mod sinjifikattiv l-interessi ekonomiċi tal-proprjetarju ta' dik il-privattiva;

(ċ) meta l-att ikun jikkonsisti fl-għemil jew fl-użu ta' dak il-prodott għal għanijiet purament sperimentali jew għal riċerka xjentifika;

(d) meta l-att ikun jikkonsisti fit-thejjija improvviżata għal każijiet individwali, ġo xi spiżerija jew minn tabib mediku jew veterinarju, ta' xi mediċina skond riċetta medika jew ta' attijiet li jirrigwardaw il-mediċina hekk imhejjija.

(4) (a) Bla hsara għall-paragrafu (b) ta' dan l-artikolu, privattiva tghaddi wkoll fuq il-proprjetarju tagħha id-dritt li jipprevjeni terzi milli jissupplixxu jew joffru li jissupplixxu lil xi hadd, li ma jkunx parti li jkollha jedd li tesplojta l-invenzjoni li jkollha privattiva, b'mezzi, li jirrigwardaw element ta' dik l-invenzjoni, li jkunu essenzjali għall-esekuzzjoni ta' dik l-invenzjoni, meta t-terzi jafu, jew imisshom ikunu jafu fiċ-ċirkostanzi, li dawk il-mezzi jkunu xierqa u maħsubin għall-esekuzzjoni ta' dik l-invenzjoni. Il-provvediment ta' dan il-paragrafu ma għandux japplika meta dawk il-mezzi jkunu l-ewwel prodotti kummerċjali u ċ-ċirkostanzi tal-provvista ta' dawk il-prodotti ma jkunux jikkostitwixxu thajjir għall-kontravvenzjoni tal-privattiva.

(b) Persuni li jwettqu xi attijiet imsemmija fis-subartikolu (3) (b), (ċ) u (d) ma għandhomx jitqiesu li jkunu partijiet bil-jedd li jesplojtaw l-invenzjoni fi hdan it-tifsira tal-paragrafu (a).

28. (1) Applikazzjoni għal privattiva għandha, meta din tkun pubblikata taht l-artikolu 25, tagħti provviżorjament lill-applikant mid-data ta' dik il-pubblikazzjoni l-istess drittijiet għar-rigward tas-sugġett ta' l-applikazzjoni bħalma jiġu mogħtija bl-artikolu 27 għar-rigward tas-sugġett ta' privattiva.

(2) Applikazzjoni għal privattiva bhala li qatt ma kellha l-effetti imsemmija fis-subartikolu (1) jekk din tiġi rtirata, jew titqies bhala li tiġi rtirata jew finalment miċhuda.

29. (1) Privattiva ma għandu jkollha ebda seħħ kontra persuna li bonafidi, għall-ghanijiet ta' l-impriża jew in-negozju tagħha, qabel id-data tal-preżentata, jew, meta tiġi vantata prijorità, qabel id-data ta' prijorità ta' l-applikazzjoni li dwarha tiġi konċessa l-privattiva, u f'Malta kienet qeghda tuża l-invenzjoni jew kienet qeghda tagħmel thejjijiet effettivi u serji għal dak l-użu. Kull persuna bhal dik għandu jkollha d-dritt, għall-ghanijiet ta' l-impriża jew tan-negozju tagħha, li tkompli b'dak l-użu jew li tuża l-invenzjoni kif prevista f'dawk it-thejjijiet. L-utent prijuri.

(2) Id-dritt ta' l-utent prijuri jista' jkun biss trasferit jew jista' biss jiddevolvi flimkien ma' l-impriża jew in-negozju tiegħu, jew ma' dik il-parti ta' l-impriża jew negozju tiegħu li fiha jkunu saru l-użu jew it-thejjijiet għall-użu.

30. (1) L-estensjoni tal-protezzjoni mogħtija bil-privattiva għandha tiġi stabbilita bit-talbiet, li għandhom jiġu interpretati fid-dawl tad-deskrizzjoni u d-disinjati sabiex jikkombinaw protezzjoni ġusta għall-proprjetarju tal-privattiva ma' grad raġonevoli ta' ċertezza għal terzi. Sa fejn hemm protezzjoni.

(2) Għall-ghanijiet li jiġi stabbilit sa fejn hemm protezzjoni u skond dawk ir-regolamenti li jistgħu jiġu preskritti, għandu jittiehed qies xieraq ta' elementi li fil-waqt ta' xi kontravvenzjoni allegata jkunu ekwivalenti għall-elementi kif espressi fit-talbiet.

(3) Għall-perjodu sal-konċessjoni tal-privattiva, l-estensjoni tal-protezzjoni mogħtija b'applikazzjoni għal privattiva għandha tiġi stabbilita bit-talbiet ippreżentati l-ahhar li jkunu jinsabu fil-pubblikazzjoni taht l-artikolu 25. Madankollu, il-privattiva kif konċessa jew kif emendata fi proċedimenti ta' invalidament għandha tistabbilixxi retroattivament il-protezzjoni mogħtija bl-applikazzjoni għall-privattiva, sakemm dik il-protezzjoni ma tkunx estiza biha nnifisha.

(4) Fid-deċiżjoni sa fejn hemm protezzjoni, għandha titqies sew kull dikjarazzjoni li b'mod mhux ambigwu tkun tillimita l-iskop tat-talbiet li jsiru mill-applikant jew mill-proprjetarju tal-privattiva matul proċeduri li jirrigwardaw il-konċessjoni jew il-validità tal-privattiva.

(5) Jekk il-privattiva jkun fiha eżempji tal-inkorporament ta' l-invenzjoni jew eżempji tal-funzjonijiet jew tar-riżultati ta' l-invenzjoni, it-talbiet ma għandhomx jiġu interpretati bhala li huma limitati għal dawk l-eżempji.

TAQSIMA IX: ASSENJAMENT TA' PRIVATTIVI

Bdil ta' proprjetarju f'każ ta' applikazzjonijiet għal privattiva jew ta' privattivi.

31. (1) Kuntratt li jkun jassenja applikazzjoni għal privattiva jew privattiva għandu jsir, u fin-nuqqas ikun null, bil-miktub u għandu jkun iffirmit mill-partijiet fil-kuntratt.

(2) Kull bidla tal-proprjetarju ta' applikazzjoni għal privattiva jew ta' privattiva għandha tigi registrata fir-registru tal-privattivi malli jsir il-hlas tad-dritt preskritt. Il-proprjetarju l-ġdid ta' l-applikazzjoni jew tal-privattiva għandu jkollu jedd jibda kull proċedimenti legali li jkunu jirrigwardaw il-privattiva biss jekk huwa jkun ġie registrat fir-registru tal-privattivi bhala l-proprjetarju l-ġdid.

(3) It-trasferiment jew l-assenjament ta' applikazzjoni għal privattiva jew ta' privattiva ma għandux jolqot id-drittijiet legali li jinkisbu minn terzi qabel id-data ta' trasferiment jew assenjament bhal dak u għandu jkollu effett għar-rigward ta' terzi biss wara li jsir dak it-tniżżil relattiv fir-registru tal-privattivi, sakemm dawk it-terzi ma jkunux kisbu d-drittijiet wara d-data tat-trasferiment jew assenjament iżda qabel dak it-tniżżil fir-registru kienu jafu bit-trasferiment jew assenjament fid-data meta dawk id-drittijiet ġew miksuba:

Iżda meta jkun hemm assenjament ġudizzjarju ta' privattiva b'ordni tal-Qorti taht l-artikolu 32 il-liċenzi kollha u drittijiet ohra għandhom jiskadu mar-registrazzjoni tal-persuna li jkollha jedd għall-privattiva fir-registru tal-privattivi hlief meta l-proprjetarju ta' qabel tal-privattiva jew id-detentur ta' liċenza tiegħu, qabel ma jinbdew il-proċedimenti legali, li jkun qed jaġixxi b'bonafidi, uża l-invenzjoni jew għamel thejjijiet effettivi u serji biex jagħmel dan, f'liema każ il-proprjetarju ta' qabel tal-privattiva jew id-detentur tal-liċenza tiegħu jista' jkompli juża l-invenzjoni sakemm huwa jitlob fiż-żmien preskritt liċenza non-esklużiva tal-privattiva minghand il-proprjetarju l-ġdid li jkollu ismu mdahhal fir-registru tal-privattivi.

Il-liċenza mhux esklużiva msemmija qabel għandha tinghata għal żmien raġonevoli u b'pattijiet raġonevoli.

Assenjament ġudizzjarju ta' applikazzjoni ta' privattiva jew ta' privattiva.

32. Jekk applikazzjoni għal privattiva tigi pprezentata jew tinghata privattiva lil persuna li ma jkollhiex jedd għall-privattiva taht l-artikolu 10 jew 11, il-persuna li jkollha jedd għaliha tista' titlob lill-Prim' Awla tal-Qorti Ċivili fi żmien sentejn mid-data tal-pubblikazzjoni ta' dik l-applikazzjoni jew privattiva biex tordna l-assenjament lilha ta' l-applikazzjoni għall-privattiva jew tal-privattiva:

Iżda jekk il-persuna li ma jkollhiex jedd għal privattiva kienet taf fil-waqt li ġiet ipprezentata jew konċessa lilha l-applikazzjoni għall-privattiva li hija ma kellhiex jedd għall-privattiva, dak il-perjodu ta' limitazzjoni ma għandux ikun japplika fir-rigward tiegħu.

33. (1) Meta jkun hemm applikanti solidali ta' applikazzjoni ta' privattiva, kull wiehed minnhom jista' bi ftehim ma' l-ohrajn jew minghajru jassenja separatament jew jittrasferixxi permezz ta' suċċessjoni s-sehem tiegħu ta' l-applikazzjoni, iżda l-applikanti solidali jistgħu biss jaġixxu solidament sabiex jirtiraw l-applikazzjoni jew jikkonkludu l-kuntratti ta' liċenza ma' terzi skond l-applikazzjoni.

Proprietarji solidali ta' applikazzjoni għal privattiva jew ta' privattiva.

(2) Meta jkun hemm proprjetarji solidali ta' privattiva, kull wiehed minnhom jista' bi ftehim ma' l-ohrajn jew minghajru jassenja separatament jew jittrasferixxi permezz ta' suċċessjoni s-sehem tiegħu tal-privattiva jew inkella jistitwixxi proċedimenti fil-Qorti għal kontravvenzjoni tal-privattiva, iżda s-sidien solidali jistgħu biss jaġixxu solidament biex iċedu l-privattiva jew jikkonkludu kuntratti ta' liċenza ma' terzi skond il-privattiva.

(3) Il-provvedimenti ta' dan l-artikolu għandhom ikunu applikabbli biss fin-nuqqas ta' ftehim għall-kuntrarju bejn l-applikanti jew is-sidien solidali.

34. (1) Il-Kontrollur għandu jara li jkun hemm reġistru tal-privattivi li fih għandhom jiġu reġistrati applikazzjonijiet għal privattivi u privattivi konċessi.

Reġistru tal-Privattivi.

(2) Ir-reġistru tal-privattivi għandu jinkludi dawk il-hwejjeġ li jikkostitwixxu jew jirrigwardaw l-applikazzjoni għall-privattiva jew għall-privattiva kif jistgħu jiġu preskritti kif ukoll kull tniżżil ta' tiswijiet, emendi, bdil fi proprjetà jew kull haġa ohra li huwa jkollu setgħa jew mehtieġ jirreġistra b'dan jew taht dan l-Att. Ma għandha jsir ebda tniżżil fir-reġistru qabel il-pubblikazzjoni ta' l-applikazzjoni.

(3) Ir-reġistru tal-privattivi għandu jkun prova *prima facie* ta' kull haġa ordnata jew awtorizzata b'din il-liġi jew tahta biex hemm tiddahhal.

(4) Ir-reġistru tal-privattivi għandu, bla ħsara għal dawk ir-regolamenti li jistgħu jiġu preskritti, jkun miftuħ għall-ispezzjon pubbliku.

TAQSIMA X: LIĊENZI KUNTRATTWALI U LIĊENZI GHAD-DRITT

35. (1) Applikazzjoni għal privattiva jew privattiva tista' tingħata liċenza għar-rigward ta' Malta kollha jew parti minnha. Liċenza tista' tkun esklużiva jew mhux esklużiva. Għall-ghanijiet ta' din il-liġi, "kuntratt ta' liċenza" tfisser kull kuntratt li permezz tiegħu parti ("il-konċedent tal-liċenza") thalli lill-parti l-ohra ("id-detentur tal-

Kuntratt ta' liċenza.

liċenza”) twettaq xi wiehed mill-attijiet imsemmija fl-artikolu 27 ghar-rigward ta’ invenzjoni vantata fi privattiva jew f’applikazzjoni ghal privattiva.

(2) Kuntratt ta’ liċenza ghandu, u fin-nuqqas ikun null, isir bil-miktub u ghandu jkun iffirmit mill-partijiet fil-kuntratt.

(3) Liċenza tista’ tigi rreġistrata fir-reġistru tal-privattivi malli jsir il-hlas tad-dritt preskritt. Is-subartikolu (3) ta’ l-artikolu 31 ghandu jkun japplika *mutatis mutandis* ghall-konċessjoni jew ghat-trasferiment ta’ liċenza.

Drittijiet tad-detentur tal-liċenza.

36. (1) Fin-nuqqas ta’ xi provvediment ghall-kuntrarju fil-kuntratt tal-liċenza, il-ftehim bejn il-konċedent tal-liċenza lid-detentur tal-liċenza ghandu jkun jestendi ghat-twettiq ghar-rigward ta’ l-invenzjoni ta’ l-attijiet kollha msemmija fl-artikolu 27 minghajr ebda limitazzjoni dwar iż-żmien, fit-territorju kollu ta’ Malta, u b’kull applikazzjoni ta’ l-invenzjoni.

(2) Fin-nuqqas ta’ xi provvedimenti ghall-kuntrarju fil-kuntratt tal-liċenza, id-detentur tal-liċenza jista’ ma jippermettix lil terzi jwettqu ghar-rigward ta’ l-invenzjoni xi wiehed mill-attijiet imsemmija fl-artikolu 27.

Drittijiet tal-konċedent tal-liċenza.

37. (1) Fin-nuqqas ta’ xi provvediment ghall-kuntrarju fil-kuntratt tal-liċenza, il-konċedent tal-liċenza jista’ jippermetti lil terzi jwettqu ghar-rigward ta’ l-invenzjoni xi wiehed mill-attijiet imsemmija fl-artikolu 27 u ma ghandhomx jiġu mcaħhda milli jwettquhom huma nfushom.

(2) Jekk il-kuntratt tal-liċenza jkun jipprovdi li l-liċenza tkun wahda esklużiva, u kemm-il darba ma jiġix espressament provdut xort’ohra fil-kuntratt tal-liċenza, il-konċedent tal-liċenza jista’ la jippermetti lil terzi li jwettqu lanqas iwettaq hu nnifsu ghar-rigward ta’ l-invenzjoni xi wiehed mill-attijiet imsemmija fl-artikolu 27 li huma koperti bl-imsemmi kuntratt.

Liċenzi ghad-dritt.

38. (1) Meta l-proprjetarju ta’ privattiva jippreżenta dikjarazzjoni bil-miktub fl-Uffiċċju tal-Kontrollur li huwa jkun imhejji jippermetti lil kull persuna li tuża l-invenzjoni bhala detentur ta’ liċenza wara li jinghata kumpens xieraq, id-drittijiet ta’ manutenzjoni li jkunu dovuti wara li tigi riċevuta l-istqarrija ghandhom jiġu mnaqqa hekk kif jista’ jiġi preskritt permezz ta’ regolamenti.

(2) Izda jekk hadd ma jkun gharraf lill-proprjetarju tal-privattiva bl-intenzjoni tiegħu li juża l-invenzjoni, id-dikjarazzjoni tista’

tigi rtirata f'kull żmien malli jinghata avviż bil-miktub f'dan is-sens lill-Uffiċċju tal-Kontrollur.

Iżda wkoll, id-dikjarazzjoni titqies li tkun ġiet irtirata meta wara assenjament ġudizzjarju ta' privattiva b'ordni tal-Qorti taht l-artikolu 32 isem il-persuna li jkollha jedd għall-privattiva jiddaħhal fir-registru tal-privattivi.

(3) Id-dikjarazzjoni tista' ma tiġix ippreżentata sakemm ma tiġix registrata liċenza esklużiva fir-registru tal-privattivi.

(4) Fuq il-bażi tad-dikjarazzjoni, kulhadd ikollu jedd juża l-invenzjoni bhala konċedent ta' liċenza taht dawk il-kondizzjonijiet li jistgħu b'regolamenti jiġu stipulati. Kull liċenza hekk miksuba għandha tigi trattata bhala liċenza kuntrattwali.

(5) Ebda talba għar-registrar ta' liċenza esklużiva ma għandha tkun ammissibbli wara li tkun ġiet ippreżentata d-dikjarazzjoni, kemm-il darba dik id-dikjarazzjoni ma tkunx ġiet irtirata jew titqies li tkun ġiet irtirata.

TAQSIMA XI: LIĊENZI MHUX VOLONTARJI U ESPLOJTAZZJONI GOVERNATTIVA

39. (1) Il-Prim'Awla tal-Qorti Ċivili tista', meta ssirilha ċitazzjoni minn persuna li ġġib prova dwar il-kapaċità tagħha li taħdem l-invenzjoni li jkollha privattiva f'Malta, li ssir wara l-iskadenza ta' perjodu ta' erba' snin mid-data tal-preżentata ta' l-applikazzjoni għall-privattiva jew tliet snin mill-konċessjoni tal-privattiva, skond liema tigi l-aktar tard, tordna lill-Kontrollur jikkonċedi liċenza mhux esklużiva u mhux volontarja jekk l-invenzjoni li jkollha privattiva ma tinhadimx jew tinhadem b'mod mhux suffiċjenti f'Malta.

Liċenzi mhux
volontarji.

(2) Il-konċessjoni ta' liċenza mhux volontarja għandha tkun sugġetta għall-ħlas ta' dik ir-rimunerazzjoni ġusta lill-proprietarju tal-privattiva hekk kif tista' tigi stabbilita mill-Prim'Awla tal-Qorti Ċivili, u tista' tigi permessa jekk, qabel dak l-użu, l-utent propost jkun għamel sforzi biex jikseb l-awtorizzazzjoni minghand id-detentur tad-dritt b'pattijiet u kondizzjonijiet kummerċjali raġonevoli u jekk dawk l-isforzi ma jkollhomx suċċess f'perjodu ta' żmien raġonevoli.

(3) Minkejja s-subartikolu (1), liċenza mhux volontarja ma għandhiex tinghata jekk il-Qorti tkun konvinta li jkun hemm ċirkostanzi li jkunu jiġġustifikaw il-ghaliex invenzjoni li jkollha privattiva f'Malta ma tkun taħdem għal xejn jew b'mod mhux suffiċjenti. L-importazzjoni ma għandhiex tikkostitwixxi ċirkostanza bħal dik.

(4) Meta jkun qed jiġi deċiż jekk ghandhiex tinghata liċenza mhux volontarja, il-Qorti ghandha taghti sew lill-proprjetarju tal-privattiva u lill-persuna li tkun qeghda titlob il-liċenza mhux volontarja opportunità adegwata biex tipprezenta l-argumenti taghha.

(5) Kull liċenza mhux volontarja ghandha tiġi revokata meta ċ-ċirkostanzi li wasslu ghall-konċessjoni taghha ma jibqgħux jeżistu, wara li jitqiesu l-interessi legittimi tal-proprjetarju tal-privattiva u tad-detentur tal-liċenza. Meta dawn iċ-ċirkostanzi jibqgħu jeżistu, dawn ghandhom jiġu riveduti fuq talba tal-proprjetarju tal-privattiva b'ċitazzjoni quddiem il-Prim'Awla tal-Qorti Ċivili.

(6) Il-paragrafu (a) tas-subartikolu (3) ta' l-artikolu 27 ta' dan l-Att ghandu jiġi interpretat fis-sens li jekk il-prodott li jkollu privattiva jitqiegħed fis-suq minn detentur ta' liċenza skond u b'mod konformi ma' liċenza mhux volontarja, dan ma ghandux jitqies bhala li jkun hekk tqiegħed fis-suq bil-kunsens espress tal-proprjetarju tal-privattiva.

Esplojtazzjoni mill-Gvern jew minn terzi awtorizzati mill-Gvern.

40. (1) Meta s-sigurtà nazzjonali jew is-sigurezza pubblika jkunu hekk jehtieġu, il-Ministru responsabbli għall-Uffiċċju tal-Proprjetà Industrijali jista' jawtorizza, ukoll minghajr ma jkollu l-ftehim tal-proprjetarju tal-privattiva jew ta' l-applikazzjoni tal-privattiva, b'avviż li jiġi ppubblikat fil-forma preskritta, lil xi aġenzija tal-Gvern jew persuna li tissemma' f'dak l-avviż biex tagħmel, tuża jew tbiegħ invenzjoni li dwarha tkun tirrigwarda privattiva jew applikazzjoni għal privattiva, kif sugġetta għall-hlas ta' rimunerazzjoni ġusta lill-proprjetarju tal-privattiva jew tal-applikazzjoni għall-privattiva.

(2) L-iskop u ż-żmien ta' dik l-awtorizzazzjoni ghandu jkun limitat għall-iskop li għalih jkun ġie mogħti u għandhom ikunu:

(a) mhux esklużivi,

(b) mhux assenjabbli, hlief għal dik il-parti ta' l-impriza jew avvjament li jkollha dik l-awtorizzazzjoni,

(ċ) mitmuma jekk u meta ċ-ċirkostanzi li jkunu wasslu għalih itemmu milli jibqgħu jsehħu u x'aktarx li ma jergħux jiġru.

(3) Kull deċiżjoni li l-Ministri jiehu taht dan l-artikolu tista' tkun is-sugġett ta' appell f'azzjoni li ssir b'ċitazzjoni quddiem il-Prim'Awla tal-Qorti Ċivili.

TAQSIMA XII: EMENDI, ĊESSJONI U INVALIDAMENT

41. (1) Il-proprjetarju ta' privattiva ghandu, skond dawk ir-regolamenti li jistghu jigu preskritti, jkollu d-dritt jitlob lill-Kontrollur li jagħmel kull tibdil fil-privattiva biex jordna l-limitu sa fejn tkun inghatat il-protezzjoni minnu. Bdil fil-privattivi.

(2) Il-proprjetarju ta' privattiva ghandu jkollu d-dritt jitlob lill-Kontrollur li jagħmel kull tibdil fil-privattiva biex isewwi kull żball jew żbalji klerikali, li jsiru bonafidi.

(3) Ebda bidla bħal dik fil-privattiva ma ghandha tmur 'l hinn minn dak li jkun gie żvelat fl-applikazzjoni kif din tkun giet ipprezentata.

(4) Meta l-Kontrollur jagħmel xi tibdiliet fi privattiva huwa ghandu jippubblika dawk it-tibdiliet u sa fejn dawn ikunu jaslu u ghandu jirreġistrom fir-registru tal-privattivi.

42. (1) Il-proprjetarju ta' privattiva jista' jċedi l-privattiva kollha kemm hi b' dikjarazzjoni bil-miktub li tiġi pprezentata fl-Uffiċċju tal-Kontrollur. Dik iċ-ċessjoni ma ghandux ikollha effett sakemm tidahhal fir-registru tal-privattivi. Ċessjoni.

(2) Ċessjoni ghandha tiddahhal fir-registru tal-privattivi biss bi ftehim ta' terzi li jkollhom dritt in rem registrat fir-registru jew li jkunu bdew proċedimenti taht l-artikolu 32. Jekk liċenza tiġi registrata fir-registru dik iċ-ċessjoni tiddahhal biss jekk il-proprjetarju tal-privattiva jgħib prova ghas-sodisfazzjon tal-Kontrollur li huwa jkun qabel għarraf lid-detentur tal-liċenza bl-intenzjoni tiegħu li jċedi.

43. (1) Privattiva tiskadi: Skadenza.

(a) fi tmiem iż-żmien stabbilit fl-artikolu 26;

(b) jekk il-proprjetarju tal-privattiva jċediha, fid-data meta jkollha effett iċ-ċessjoni;

(ċ) jekk ma jkunux tħallsu fiż-żmien dovut xi dritt ta' manutenzjoni u kull soprataxxa, fid-data meta kien dovut id-dritt għall-manutenzjoni;

(d) jekk ikun gie limitat sa fejn il-protezzjoni ghandha tasal taht l-artikolu 41, sal-limitu li l-privattiva ma jkollhiex manutenzjoni fid-data meta l-limitazzjoni tiddahhal fir-registru tal-privattivi.

(2) L-Uffiċċju tal-Kontrollur ghandu jirreġistra kull skadenza tal-privattiva fir-registru tal-privattivi.

Invalidament ta' privattivi.

44. (1) Il-Kontrollur jista', fuq talba ta' terzi, jew salv fil-każ imsemmi fil-paragrafu (ċ) ta' dan is-subartikolu minn jeddu, jinvalida privattiva, kollha kemm hi jew parti minnha, ghal xi wahda minn dawn ir-raġunijiet li ġejjin u ma jista' jagħmel hekk ghal ebda raġuni oħra –

(a) li s-suġġett tal-privattiva ma jkollux jedd ghal privattiva skond ma jinsab fl-artikoli 4 sa 7;

(b) li l-privattiva ma tkunx tiżvela l-invenzjoni b'mod suffiċjentement ċar u shih sabiex tkun tista' titwettag minn persuna tas-sengha kif stipulat fl-artikolu 15;

(ċ) li d-dritt għall-privattiva ma jkunx jappartjeni lill-persuna li tkun inġhatatilha l-privattiva skond ma jinsab fl-artikoli 10 u 11;

(d) li s-suġġett tal-privattiva jkun jestendi 'l hinn mill-kontenut ta' l-applikazzjoni kif ipprezentata jew, jekk il-privattiva tkun inġhatat wara applikazzjoni diviżorja, oltre l-kontenut ta' l-applikazzjoni li tiġi aktar kmieni kif din tkun ġiet ipprezentata bla hsara ghal kull azzjoni mwettqa taht l-artikoli 20 u 41; u

(e) li l-protezzjoni mogħtija bil-privattiva tkun ġiet estiża b'emenda li ma jmesshiex kienet permessa.

(2) Jekk ir-raġunijiet għall-invalidament ikunu jolqtu lill-privattiva biss f'parti, l-invalidament ghandu jsir fl-ghamla ta' limitazzjoni korrispondenti tal-privattiva.

(3) Privattiva u l-applikazzjoni li tkun ibbażata fuqha għandha titqies, sal-limitu li l-privattiva tkun ġiet invalidata, bhala li qatt ma kellha l-effetti msemmija fl-artikoli 27 u 28:

Iżda dan ma għandux jolqot:

(a) deċiżjoni dwar kontravvenzjoni li jkun sar finali u li jkun ġie infurzat qabel ma tkun ittiehdet id-deċiżjoni dwar l-invalidament; jew

(b) kuntratt li jkun ġie konkluz qabel id-deċiżjoni ta' invalidament, sakemm dan ikun twettaq qabel dik id-deċiżjoni, bla hsara għad-dritt minhabba fi hlas lura ġust sa dak il-limitu ġustifikat biċ-ċirkostanzi, ta' ammonti mhallsa taht il-kuntratt rilevanti.

45. (1) Azzjoni li tinvalida privattiva tista' tittiehed ukoll jekk il-privattiva tkun skadiet. *Procedimenti.*

(2) Meta deċiżjoni biex tiġi invalidata privattiva, kollha kemm hi jew f'parti minnha, ssir wahda finali, il-Kontrollur ghandu jirreġistra d-deċiżjoni fir-reġistru tal-privattivi u ghandu jippubblika kull emenda ghal dik il-privattiva skond dawk ir-regolamenti li jistgħu jiġu preskritti.

TAQSIMA XIII: TWAQQIF MILL-ĠDID TA' DRITTJIET

46. (1) L-applikant għal, jew il-proprjetarju ta' privattiva li, minkejja li jkun ha kull prekawzjoni meħtieġ skond iċ-ċirkostanzi, li ma kienx kapaċi josserva terminu impost mill-Kontrollur ghandu, fuq talba tiegħu, jkollu d-drittijiet tiegħu stabbilit mill-ġdid jekk in-nuqqas ta' osservanza involuta jkollu l-konsegwenza diretta li jikkaguna r-rifjut ta' l-applikazzjoni għall-privattiva, jew ir-rifjut ta' talba, jew l-iskadenza ta' privattiva, jew it-telfien ta' xi dritt ieħor jew mezz ta' rimedju. *Restitutio in integrum.*

(2) It-talba għandha tiġi ppreżentata bil-miktub fi żmien xahrejn mit-tnehhija tal-kagun ta' nuqqas ta' tharis fit-terminu jew matul is-sena li tiġi minnufih wara l-iskadenza tat-terminu li ma jkunx ġie osservat, skond liema jkun l-iktar kmieni, wara li l-att imholli barra jkun ġie kompletat. Fil-każ ta' nuqqas ta' hlas ta' dritt ta' manutenzjoni, il-perjodu speċifikat fis-subartikolu (3) ta' l-artikolu 26 għandu jitnaqqas miż-żmien ta' sena.

(3) It-talba għandu jkun fiha r-raġunijiet li tkun imsejsa fuqhom, u għandha tistabbilixxi l-fatti li tkun tistrieħ fuqhom. Din ma għandhiex titqies li tkun ġiet ippreżentata sakemm ma jithallasx id-dritt preskritt għat-twaqqif mill-ġdid tad-drittijiet involuti.

(4) Dan l-artikolu ma japplikax għall-iskadenzi msemmija fis-subartikolu (2) ta' dan l-artikolu u fl-artikolu 22.

(5) Id-deċiżjoni li jergħu jiġu stabbiliti drittijiet taht is-subartikolu (1) għandhom jiġu reġistrati fir-reġistru dwar il-privattivi.

(6) Kull persuna li b'bonafidi tkun użat jew għamlet thejjijiet effettivi u serji biex tuża xi invenzjoni li tkun is-suġġett ta' applikazzjoni għal privattiva pubblikata jew ta' privattiva matul il-perjodu bejn it-telfien ta' drittijiet imsemmi fis-subartikolu (1) u l-pubblikazzjoni tad-deċiżjoni biex jerga' jwaqqaf mill-ġdid dawk id-drittijiet, jista' mingħajr hlas ikompli b'dak l-użu matul in-negozju tiegħu jew għall-htigiet tiegħu.

TAQSIMA XIV: KONTRAVVENZJONIJIET - AZZJONIJIET ĊIVILI

Sanzjonijiet
ghal att ta'
kontravvenzjoni.

47. (1) Kull persuna li bi ksur ta' l-artikolu 27 tesplojta invenzjoni li tkun is-sugġett ta' privattiva jew ta' applikazzjoni ghal privattiva ghandha tkun responsabbli ghad-danni lejn il-proprjetarju tal-privattiva jew ta' applikazzjoni ghal privattiva jew lej id-detentur tal-liċenza.

Kap. 12.

(2) Id-dritt li jharrek ghad-danni taht is-subartikolu (1) ta' dan l-artikolu ghandu jkun minghajr preġudizzju ghad-dritt ta' dik il-persuna li tapplika ghall-hrug ta' xi mandat kawtelatorju kif provdut fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili biex jiproteġilu d-drittijiet tiegħu.

(3) Il-Qorti tista', iktar minn hekk, fuq talba ta' l-attur, tordna li l-makkinarju jew mezzu jew tagħmir iehor industrijali li jintuza bi ksur tal-privattiva, l-oġġetti kontravvenjenti, u l-apparat intiż għall-produzzjoni relattiva, ghandu jiġi kkonfiskat, kollu kemm hu jew f'parti minnu, u kkunsinnat lill-proprjetarju tal-privattiva, minghajr preġudizzju għar-rimedju msemmi f'dan l-artikolu.

Proċedimenti dwar
kontravvenzjoni.

48. (1) Il-proċedimenti dwar kontravvenzjoni għandhom jingiebu quddiem il-Prim'Awla tal-Qorti Ċivili u ma jistgħux jinbdeu wara hames snin mid-data meta l-parti aggravata tkun saret konnoxxenti tal-kontravvenzjoni u ta' l-identità tal-kontravventur allegat.

(2) Meta s-sugġett tal-privattiva jkun proċess għall-ksib ta' prodott ġdid, l-istess prodott meta dan ikun prodott minn xi parti oħra, ghandu jitqies fin-nuqqas ta' prova kuntrarja li jkun ġie miksub bil-proċess kopert bil-privattiva. Fl-istima ta' kull prova kuntrarja mill-konvenut, il-Qorti għandha tikkonsidra l-interessi legittimi tal-konvenut fil-protezzjoni tas-sigrieti ta' manifattura u ta' kummerċ tiegħu.

(3) Il-Qorti tista' twaqqaf proċedimenti għal kontravvenzjoni għar-rigward ta' applikazzjoni dwar privattiva sa wara li l-Kontrollur ikun iddeċieda finalment li jikkonċedi jew jirrifjuta privattiva għal dik l-applikazzjoni.

(4) Il-konvenut fi proċedimenti msemmija f'dan l-artikolu jista' jitlob fl-istess proċedimenti l-invalidament ta' xi wahda mir-raġunijiet imsemmija fl-artikolu 44. F'kull każ bhal dak il-Kontrollur ghandu jkun parti fil-proċedimenti.

Dikjarazzjoni
ta' nuqqas
ta' kontravvenzjoni.

49. (1) Bla hsara għas-subartikolu (4), kull persuna interessata ghandu jkollha d-dritt li titlob, billi tibda proċedimenti kontra l-proprjetarju tal-privattiva, li l-Prim'Awla tal-Qorti Ċivili tiddikjara li t-twettiq ta' att speċifiku ma jkunx jikkostitwixxi kontravvenzjoni ta' privattiva.

(2) Jekk persuna li taghmel it-talba gġib prova li l-att involut ma jikkostitwix kontravvenzjoni tal-privattiva, il-Qorti ghandha taghti dikjarazzjoni ta' nuqqas ta' kontravvenzjoni.

(3) Il-proprjetarju tal-privattiva ghandu javża lil kull detentur bil-proċedimenti. Id-detenturi tal-liċenza ghandu jkollhom id-dritt li jidhlu fil-proċedimenti fin-nuqqas ta' kull provvediment kuntrarju fil-kuntratt tal-liċenza.

(4) Jekk l-att involut ikun diġà s-suġġett ta' proċedimenti ta' kontravvenzjoni, il-konvenut fil-proċedimenti ta' kontravvenzjoni ma jistax jibda proċedimenti ghal dikjarazzjoni ta' nuqqas ta' kontravvenzjoni.

(5) Salv meta l-invalidament jintalab taht is-subartikolu (5) ta' l-artikolu 48, proċedimenti ghal dikjarazzjoni ta' nuqqas ta' kontravvenzjoni jistghu jinbdew flimkien ma' proċedimenti ghall-invalidament tal-privattiva.

TAQSIMA XV: KONTRAVVENZJONIJIET - AZZJONIJIET KRIMINALI

50. (1) Kull min jiċċirkola, jew ibiegh xi oġġett, li b'qerq ikun jirrappreżenta li jkun oġġett li fuqu jkun hemm privattiva jista', meta jinsab hati, jehel multa ta' mhux inqas minn mitt lira u mhux iżjed minn hamest elef lira. Reati.

(2) Jekk persuna tiċċirkola jew tbiegħ xi oġġett li fuqu jkollu stampat, minqas jew inċiż jew xort'ohra applikat fuqu l-kliem "privattiva", "bi privattiva", jew kull kelma oħra li tesprimi jew timplika li privattiva tkun inkisbet ghall-oġġett, hija ghandha titqies ghall-iskop ta' dan l-artikolu bhala li tirrappreżenta li l-oġġett ikun wiehed bi privattiva.

51. Jekk is-sid ta' oġġetti jew hwejjeg, li, kieku kellu jinsab hati ta' xi reat imsemmi f'din it-Taqsima, seta' jehel konfiska, ma jkunx maghruf jew ma jkunx jista' jinsab, Magistrat jista', jekk ikun sodisfatt b'taghrifa ġuramentata li dawk l-oġġetti jew hwejjeg li permezz taghhom ikun sar reat taht din il-Taqsima jkunu jinsabu għewwa xi dar jew fond, u l-kontravventur ma jkunx maghruf jew ma jkunx jista' jinsab, permezz ta' *warrant* maħruġ minnu jordna lil xi uffiċjal tal-Pulizija li jissemma f'dak il-*warrant*, li jkun jista' jidhol f'kull dar, fond jew post hekk imsemmi fih, u hemm ifittex, jaqbad u jnehhi dawk l-oġġetti jew hwejjeg. Meta sid l-oġġetti ma jkunx maghruf.

Konfiska ta' ogġetti maqbuda.

52. L-ogġetti u l-hwejjeg hekk maqbuda ghandhom jingiebu quddiem il-Qorti tal-Maġistrati bhala qorti ta' ġudikatura kriminali, u dik il-Qorti ghandha taqta' jekk dawn ghandhomx jiġu konfiskati taht dan l-Att.

Il-proċedura meta s-sid ma jkunx maghruf.

53. (1) Fil-każ imsemmi fl-artikolu 51, il-Qorti ghandha tordna l-hruġ ta' bandi li ghandhom ikunu ppubblikati darbtejn, b'intervall ta' mill-inqas tmint ijiem, fil-Gazzetta tal-Gvern, u li jitwahhlu fl-entratura għall-edifiċċju tal-Qorti, u f'kull post iehor li l-Qorti jidhrilha li jkun xieraq, fejn jiġi ddikjarat li l-ogġetti jew il-hwejjeg maqbuda ghandhom jiġu kkonfiskati, kemm-il darba fil-hin u fil-post imsemmija fil-bandi l-proprjetarju ta' dawk l-ogġetti jew hwejjeg jew persuna ohra interessata f'dawk l-ogġetti jew hwejjeg ma tattendix quddiem il-Qorti u turi għaliex ma ghandux isir dan.

(2) Jekk is-sid jew kull persuna ohra f'ismu, jew persuna ohra interessata f'dawk l-ogġetti jew hwejjeg, tonqos mill tattendi fil-hin u fil-post imsemmija fil-bandi biex turi għaliex ma ghandux isir dan, il-Qorti tista' tordna li dawk l-ogġetti jew hwejjeg jew x'uhud minnhom ghandhom jiġu kkonfiskati.

Għoti ta' kumpens lil min ikollu bonafidi.

54. Il-Qorti tista' tordna li l-ogġetti jew il-hwejjeg hekk ikkonfiskati ghandhom jiġu meqruda jew imnehhija, u tista' wkoll tordna li, mir-rikavat nett li jista' jiġi realizzat bit-tnehhija ta' dawk l-ogġetti jew hwejjeg u sa l-ammont tagħhom, kull persuna bonafidi li tkun aggravata bil-konfiska ghandha tinghata kumpens għal kull danni lilha kaġunati.

Preskrizzjoni ta' azzjonijiet kriminali.

55. Azzjonijiet kriminali taht dan l-Att ghandhom ikunu preskritti bl-iskadenza ta' tliet snin mill-ġurnata meta jkun sar l-att li jikkostitwixxi r-reat, jekk il-persuna li bi preġudizzju tagħha jkun sar l-att ma kienetx taf bih minn qabel; fil-każijiet l-ohra kollha il-perjodu ta' preskrizzjoni għandu jkun ta' sena mill-ġurnata meta dik il-persuna tkun saret taf b'dak l-att.

Id-dritt għad-danni ma jintlaqatx.

56. Id-dispożizzjonijiet mill-artikolu 50 sa l-artikolu 55 ghandhom ikunu japplikaw minghajr preġudizzju għall-hlas ta' danni lil persuni li jkollhom jedd għalihom.

57. Ma ghandhom jigu istitwiti ebda procedimenti kontra xi persuna li tkun fis-servizz ta' xi persuna ohra, jekk din tkun bonafidi agixxiet b'ubbidjenza għall-istruzzjonijiet tal-principali tiegħu, u meta dik l-ewwel persuna tkun qegħda tiġi interrogata mill-Pulizija, hija tagħti tagħrif shih dwar il-principali tagħha u l-partikolaritajiet l-oħra kollha tal-każ.

Principali u impjegat.

TAQSIMA XVI: DRITT TA' APPELL

58. (1) Għandu jkun hemm appell minn kull deċiżjoni tal-Kontrollur li jkun qiegħed jirrifjuta milli jagħti privattiva, applikazzjoni għar-reintegrazzjoni fid-drittijiet jew kull talba oħra ta' l-applikant għal, jew proprjetarju ta', privattiva. Dak l-appell għandu jkollu effett sospensiv.

Dritt ta' appell.

(2) Għandhom jigu ppreżentati mill-appellant fl-Uffiċċju tal-Kontrollur avviż ta' appell u dikjarazzjoni li jkun fiha r-raġunijiet għall-appell fi żmien xahrejn milli l-istess appellant ikun gie nformat mid-deċiżjoni u jekk il-Kontrollur iqis l-appell bħala wiehed ammissibbli u msejjes sew, għandu jirrettifika d-deċiżjoni tiegħu fi żmien tlett xhur li jkun rċieva l-appell.

(3) Jekk matul dak il-perjodu ta' tlett xhur il-Kontrollur ma jkunx għarraf lill-appellant li huwa jkun irrettifika d-deċiżjoni tiegħu, jista' jsir appell mill-appellant b'rikors quddiem il-Qorti ta' l-Appell fi żmien xahrejn minn meta jirċievi avviż mingħand il-Kontrollur li huwa ma jkunx irrettifika d-deċiżjoni tiegħu, jew mill-iskadenza tal-perjodu ta' xahrejn imsemmi fis-subartikolu (2), skond liema jiġi l-iktar kmieni.

(4) Kull appell bħalma hemm imsemmi fis-subartikoli (2) u (3) ta' dan l-artikolu għandu jingiebu quddiem il-Qorti ta' l-Appell magħmul bil-mod kif hemm provdut fis-subartikolu (6) ta' l-artikolu 41 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili b'rikors fi żmien hmistax il-jum mill-iskadenza tal-perjodu ta' tlett xhur imsemmi minn meta l-Kontrollur ikun irretifika d-deċiżjoni tiegħu jew ma jkunx għarraf lill-appellant li huwa jkun irretifika d-deċiżjoni tiegħu, skond liema jiġi l-iktar kmieni.

(5) Il-Ministru jista' jagħmel regoli li jkunu jirregolaw l-appelli quddiem il-Qorti ta' l-Appell skond dan l-Att, u li jippreskrivi skala ta' spejjeż dwar dawk l-appelli.

(6) Il-Qorti ta' l-Appell tista, għar-rigward ta' spejjeż, tagħmel ordni skond il-provvedimenti ta' l-artikolu 223 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

TAQSIMA XVII: MIXXELLANJI

Regolamenti.

59. (1) Il-Ministru responsabbli għall-Uffiċċju ta' Proprjetà Industrijali jista' minn żmien għal żmien jagħmel regolamenti li ma jkunux inkonsistenti ma' dan l-Att li jkunu jippreskrivu dak kollu li b'dan l-Att ikun mehtieg jew permess li jiġ preskritt jew li jkunu mehtieġa jew mixtieqa li jiġu preskritti għat-twettiq jew għoti ta' sehh lil dan l-Att, jew għat-tmexxija ta' kull operat li jirrigwarda l-Uffiċċju tal-Kontrollur inklużi d-drittijiet li għandhom jithallisu lill-Gvern skond ma jista' jiġi preskritt taht dan l-Att.

(2) Il-Ministru jista' wkoll jagħmel regolamenti li jagħtu sehh f'Malta lill-provvedimenti ta' xi strument ta' reġistrazzjoni ta' privattivi sew reġjonali sew internazzjonali jew ta' kull ftehim iehor relatat li Malta tissieheb bhala parti fih.

Spejjeż.

60. Fi proċedimenti taht dan l-Att l-ispejjeż għandhom jiġu intaxxati u miġbura skond it-tariffi li hemm fi Skeda A li tinsab mal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Kap. 12.

Aġenti.

61. (1) Meta bis-sahha ta' dan l-Att, għandu jintgħamel xi att minn jew lil xi persuna f'dak li jkollu x'jaqsam ma' xi proċediment jew haġa taht dan l-Att, dak l-att jista' taht u skond ir-regolamenti jsir minn jew lil xi aġent ta' dik il-persuna debitament awtorizzata bil-mod preskritt.

(2) Jekk applikant ma jkollux ir-residenza ordinarja jew il-post prinċipali ta' negozju tiegħu f'Malta, huwa għandu jawtorizza bil-mod preskritt lil aġent f'Malta biex jirrapprezentah.

Thassir u
dispożizzjonijiet
transitorji.

62. (1) It-Taqsima I ta' l-Ordinanza dwar il-Protezzjoni tal-Proprjetà Industrijali (hawnhekk iżjed 'il quddiem f'dan l-artikolu

imsejha “il-liġi mhassra”) u kull riferenza ghal privattivi fit-Taqsima IV, Taqsima V u Taqsima VI tagħha qeghdin b’dan jiġu mhassra:

Iżda l-artikolu 17 għandu jibqa’ fis-sehh għar-rigward ta’ disinji u *trademarks* sa dak iż-żmien li l-provvedimenti li hemm fit-Taqsima II u fit-Taqsima III jiġu mhassra.

(2) Privattiva li, mad-dhul fis-sehh ta’ dan l-Att, jkun intemmilha t-terminu tagħha taht l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrjali, ma għandhiex terġa’ tiġi attivata taht jew bis-sahha tad-dispożizzjonijiet ta’ dan l-Att.

(3) Meta applikazzjoni għar-reġistrazzjoni ta’ privattiva tkun ġiet ippreżentata qabel id-dhul fis-sehh ta’ l-Att, il-l-provvedimenti ta’ l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrjali għandhom, minkejja t-thassir tagħhom b’dan l-Att, ikomplu japplikaw għal dik l-applikazzjoni; iżda ma’ l-għoti ta’ privattiva bhal dik il-provvedimenti ta’ dan l-Att għandhom ikunu japplikaw dwarha.

(4) Meta applikazzjoni għar-reġistrazzjoni ta’ privattiva tkun ġiet ippreżentata qabel id-dhul fis-sehh ta’ dan l-Att kull reġistrazzjoni ta’ privattiva mogħtija skond u b’mod konformi ma’ dik l-applikazzjoni għandha, minkejja kull provvediment ieħor ta’ dan l-Att, tkun sugġetta li titqies bhala nulla jew li għandha tiġi annullata biss skond id-dispożizzjonijiet tat-Titolu V tat-Taqsima I ta’ l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrjali kif kienet fis-sehh qabel il-bidu fis-sehh ta’ l-Att.

(5) Kull privattiva reġistrata taht l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrjali qabel id-dhul fis-sehh ta’ dan l-Att, li t-terminu tagħha ma jkunx mal-bidu fis-sehh ta’ dan l-Att, skada, għandha tibqa’ tgawdi t-terminu ta’ protezzjoni għaž-żmien kollu stipulat taht dan l-Att u għandha tibbenefika minn kull dritt mogħti għar-rigward ta’ privattivi taht dan l-Att.

(6) Kull regolament, ordni, htieġa, ċertifikat, avviż, deċiżjoni, direttiva, awtorizzazzjoni, kunsens, applikazzjoni, talba jew haġa li jsiru, jinharġu, jingħataw jew jintgħamli taht il-liġi mhassra

ghandhom, jekk ikunu għa jseħhu mal-bidu ta' dan l-Att, sakemm dawn ikunu setgħu saru, inhargu, inghataw jew intgħamlu taht dan l-Att, jibqgħu fis-seħħ u jkollhom effett bħallikieku dawn ikunu saru, inhargu, inghataw jew intgħamlu taht il-provvediment korrispondenti ta' dan l-Att.

Għanijiet u Raġunijiet

L-għan ta' l-Abbozz hu li jagħmel provvedimenti godda għar-rigward ta' privattivi minflok il-provvedimenti ta' l-Ordinanza dwar il-Protezzjoni tal-Proprietà Industrjali, Kap. 29.

**A BILL
entitled**

An Act to make provision for the registration and regulation of Patents.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I : DESIGNATION

1. This Act may be cited as the Patents Act, 2000, and shall come into force on such date as the Minister responsible for the protection of Industrial Property may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof. Short title and commencement.

PART II : DEFINITIONS

2. In this Act, unless the context otherwise requires: Interpretation.

“prescribed” means prescribed by this Act or by regulations made thereunder;

“the register” means the register of patents kept under this Act and includes the register of patents kept under the Industrial Property (Protection) Ordinance parts of which have been repealed by this Act; Cap.29.

“the Comptroller” means the Comptroller of Industrial Property and includes any other person appointed to exercise all

or any of the powers and perform all or any of the duties of the Comptroller;

“Minister” means the Minister responsible for the protection of Industrial Property;

“patent” means the exclusive right granted by the Comptroller in terms of the provisions of this Act.

PART III : THE OFFICE OF THE COMPTROLLER

Appointment and duties of the Comptroller.

3. (1) The administration of this Act shall be entrusted to the Comptroller of Industrial Property, hereinafter referred to as “the Comptroller”.

(2) The Comptroller shall be appointed by the Minister responsible for the Industrial Property Office.

PART IV : PATENTABILITY

Patentable inventions.

4. (1) An invention shall be patentable if it is novel, involves an inventive step and is industrially applicable.

(2) The following, in particular, shall not be regarded as inventions within the meaning of subsection (1):

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business and programs for computers;

(d) presentations of information.

(3) The provisions of subsection (2) shall exclude the patentability of the subject matter or activities referred to in that subsection only to the extent to which a patent application or patent relates to such subject matter or activities as such.

(4) A method for the treatment of the human or animal body by surgery or therapy and a diagnostic method practised on the human or animal body shall not be regarded as an invention capable of industrial application for the purposes of subsection (1):

Provided that this subsection shall not apply to products, in particular substances or compositions, for use in any of these methods.

(5) A patent shall not be granted in respect of:

(a) an invention the exploitation of which would be contrary to public order or morality:

Provided that exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation;

(b) an animal variety or an essentially biological process for the production of plants or animals other than a microbiological process or the products thereof.

(6) The Minister may make regulations to modify any of the provisions of this section other than paragraph (a) of subsection (5) for the purpose of maintaining them in conformity with developments in science and technology.

5. (1) An invention shall be considered novel if it does not Novelty. form part of the prior art.

(2) The prior art means everything which, before the filing date or, where priority is claimed, before the priority date of the application claiming the invention, was available to the public in a written or other graphic form, by an oral description, by use or in any other way anywhere in the world.

(3) The prior art includes also the content of any patent application as filed in, or with effect for, Malta to the extent that such application or the patent granted thereon is published subsequently by or for the Office of the Comptroller:

Provided that the filing date or, where priority is claimed, the priority date of such application is earlier than the date referred to in subsection (2).

(4) The provisions of subsections (1) to (3) shall not exclude the patentability of any substance or composition, comprised in the prior art, for use in a method referred to in subsection (4) of section 4 provided that its use for any method referred to in the said subsection (4) is not comprised in the prior art.

6. An invention shall be considered to involve an inventive step Inventive step. if, having regard to the prior art as defined in subsection (2) of section 5, it is not obvious to a person skilled in the art.

Provided that if the prior art also includes any of the documents referred to in subsection (3) of section 5 of this Act, these documents are not to be considered in deciding whether there has been an inventive step.

Industrial
applicability.

7. An invention shall be considered industrially applicable if it can be made or used in any kind of industry. For the purposes of this section the term "industry" shall be understood in its broadest sense and shall without prejudice to the foregoing include handicraft, agriculture and fishery.

Grace period.

8. (1) Disclosure, during the 12 months preceding the filing date or, where priority is claimed, the priority date of a given application, of information which otherwise would affect the patentability of an invention claimed in that application shall not affect the patentability of that invention where the information was disclosed:

(a) by the inventor;

(b) by an intellectual property office and

(i) the information was contained in another application filed by the inventor and should not have been disclosed by that office, or

(ii) the information was contained in an application filed without the knowledge or consent of the inventor by a third party who obtained the information directly or indirectly from the inventor;

(c) by a third party who obtained the information directly or indirectly from the inventor.

(2) For the purposes of subsection (1), "inventor" also means any natural person who or any legal entity which, at the filing date, was entitled to obtain a patent on the given application, irrespective of whether that person or entity is the applicant of the given application.

PART V : RIGHT TO APPLY FOR AND OBTAIN A PATENT AND BE MENTIONED AS INVENTOR

Entitlement to file
an application.

9. Any natural person or legal entity may file an application for a patent either alone or jointly with another.

Right to a patent.

10. (1) The right to a patent shall belong to the inventor or his successor in title. Joint inventors shall, unless they agree otherwise, have equal rights and where the application for a patent is made by two or more persons jointly, a patent may be granted to them jointly.

(2) Where two or more applications have been filed by different persons in respect of the same invention and the inventors concerned made the invention independently of each other, the right to a patent for that invention shall belong to the applicant whose application has the earliest filing date or, where priority is claimed, the earliest priority date, provided that his application has been published.

(3) For the purpose of proceedings before a Court the applicant shall be deemed to be entitled to exercise the right to a patent.

11. (1) Notwithstanding the provisions of section 10, when an invention is made in execution of a commission or a contract of employment, the right to a patent for that invention shall belong, in the absence of contractual provisions to the contrary, to the person having commissioned the work or to the employer.

Invention made in execution of a commission or an employment contract.

(2) The employee shall have a right to equitable remuneration taking into account his salary, the economic value of the invention and any benefit derived from the invention by the employer. In the absence of agreement between the parties, the remuneration shall be fixed by the Civil Court, First Hall.

12. The inventor shall be mentioned as such in the patent, unless in a special written declaration addressed to the Comptroller he indicates that he wishes not to be named.

Mention of inventor.

PART VI : APPLICATIONS

13. (1) An application for a patent shall be made in duplicate in the prescribed form and shall be filed at the Office of the Comptroller and shall contain:

Requirements of application.

- (a) a request for the grant of a patent;
- (b) a description of the invention;
- (c) one or more claims;
- (d) any drawings referred to in the description or the claims;
- (e) an abstract of the invention.

(2) The application shall designate the inventor or, where there are several inventors, all of them. If the applicant is not the inventor, or is not the sole inventor, the applicant shall indicate the legal grounds for his entitlement to file the application.

(3) The application shall be subject to the payment of a filing fee as may be prescribed.

(4) The application shall be drafted in the prescribed language and shall satisfy any conditions that may be prescribed.

Date of filing.

14. (1) The filing date of an application shall be the date of receipt by the Office of the Comptroller of the documents that contain:

(a) an express or implicit indication that the granting of a patent is sought;

(b) indications allowing the identity of the applicant to be established;

(c) a description of the invention for which a patent is applied for;

(2) (a) If the Comptroller finds that, at the time of receipt of an application, the requirements referred to in subsection (1) have not been fulfilled, he shall invite the applicant to comply with any requirement that has not been satisfied within such time as may be prescribed.

(b) If the applicant complies with the invitation referred to in paragraph (a), the filing date of the application shall be the date of receipt of all missing requirements. If the applicant fails to comply with such an invitation, the application shall be treated as if it had not been filed.

(c) Where the description refers to drawings which are not included in the application, the Comptroller shall invite the applicant to furnish the missing drawings within such period as may be prescribed. If the applicant complies with the said invitation, the filing date of the application shall be the date of receipt of the missing drawings. If the applicant fails to comply with the invitation, the filing date shall be the date of receipt of the application and any reference to the drawings shall be deemed as not having been made.

(3) (a) The indications referred to in paragraph (1) (a) and (b) must be submitted in such language or languages as may be prescribed, hereinafter referred to as the official languages of the Office.

(b) If any of the description and the claims referred to in paragraphs (1) (c) and (d) or any text contained in any drawings

is in a language other than the official languages of the Office, a translation thereof in one of the official languages of the Office shall be deposited at the Industrial Property Office within such time limit as may be prescribed.

15. (1) The application shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art. Disclosure of the invention.

(2) Where the application refers to biologically reproducible material which cannot be disclosed in the application in such a way as to enable the invention to be carried out by a person skilled in the art, and such material is not available to the public, the application shall be supplemented by a deposit of such material with a depositary institution as may be prescribed.

16. (1) The claims shall define the matter for which patent protection is sought. Claims.

(2) The claims shall be clear and concise.

(3) The claims shall be supported by such description as may be necessary or as may be prescribed.

(4) The claims shall be presented in the prescribed manner.

17. The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the claims. Abstract.

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

(2) Failure to comply with the requirement of subsection (1) shall not be a ground for invalidation or revocation of a patent.

19. (1) Until such time as a grant is made pursuant to a pending application, the applicant may divide such pending application into two or more applications ("divisional application"). Division of application.

(2) Any divisional application shall be deemed to have been filed on the filing date of the earlier application and shall have the benefit of any right to priority attaching to such earlier application provided its content does not go beyond the disclosure as filed in the earlier application.

(3) Priority documents and any required translation thereof that are submitted to the Office of the Comptroller in respect of the initial application shall be considered as having been submitted in respect of all divisional applications.

Amendment or correction and withdrawal of applications.

20. (1) The applicant shall have the right, subject to the payment of such fees as may be prescribed on his own initiative, to amend or correct the application up to the time when the application is in order for a grant.

(2) No amendment or correction of the application may go beyond what has been disclosed in the application as filed.

(3) The applicant may withdraw the application at any time during which it is pending.

Inspection of files.

21. After a patent application or the patent granted thereon has been published in accordance with section 25, any person may inspect the files of the application in accordance with such regulations as may be prescribed.

Right of priority.

22. (1) The application may contain a declaration claiming priority pursuant to the Paris Convention for the Protection of Industrial Property, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to the said Convention or the World Trade Organisation or for any State with which Malta has made an international arrangement for mutual protection of inventions.

(2) Where the application contains a declaration under subsection (1), the Office of the Comptroller may require that the applicant furnish, within such time as may be prescribed, a copy of the earlier application, certified as correct by the Office or any regional or international organisation with which it was filed.

(3) The effect of the declaration referred to in subsection (1) shall be such as is provided in the Convention referred to in that subsection pursuant to which the declaration has been made.

(4) If the Comptroller finds that the requirements under this section and any regulations as may be prescribed have not been fulfilled, he shall invite the applicant to file the required correction within such time as may be prescribed. If the applicant does not comply with the said invitation, the declaration referred to in subsection (1) shall be deemed not to have been made.

(5) The Minister responsible for the Industrial Property Office, with the concurrence of the Minister responsible for Foreign Affairs, may by order specify the countries with which any international arrangement as is referred to in subsection (1) are in force and may by subsequent orders amend, revoke or substitute any such order.

PART VII : EXAMINATION AND GRANT OR REFUSAL

23. (1) Where an application for a patent has been filed and is not withdrawn, the Comptroller shall refer the application to an officer in his department hereinafter referred to as “the examiner” to determine whether the application complies with such requirements of this Act and of any regulations made thereunder and which are designated by any regulations as may be prescribed as formal requirements. The examiner shall make a report thereon to the Comptroller.

Examination as to formalities.

(2) If the examiner reports to the Comptroller that not all the formal requirements are complied with, the applicant shall be given an opportunity to make observations on the report and to amend the application within such period as may be prescribed so as to comply with those requirements, and if the applicant fails to make such amendments the Comptroller may refuse the application.

(3) If the examiner reports to the Comptroller that the application, whether as originally filed or as amended pursuant to subsection (2) complies with all the formal requirements at any time before the end of such prescribed period as is referred to in subsection (2), the Comptroller shall notify the applicant accordingly.

24. (1) Where the applicant has been notified pursuant to section 23 (3) that his application complies with all the formal requirements, the Comptroller shall on payment of the prescribed fee, grant a patent on the application.

Grant.

(2) As soon as possible after the decision to grant a patent, the Comptroller shall publish a notification that the patent has been granted and shall publish the patent in the prescribed manner.

25. (1) (a) Subject to paragraphs (b) and (c) hereof, the Comptroller shall, within the time limit provided for in subsection (2) and in the prescribed manner, publish all applications filed with it.

Publication of applications or patents.

(b) No application shall be published if it is withdrawn or is rejected before the expiration of 17 months from the filing date or, where priority is claimed, from the priority date of the application.

(c) If by the time an application is published according to paragraph (2), a patent has been granted pursuant to that application, the Comptroller shall not publish the application but shall publish the patent in the prescribed manner.

(2) The Comptroller shall publish each application filed with it promptly after the expiration of 18 months from the filing date or, where priority is claimed, from the priority date of the application. However, where, before the expiration of the said period of 18 months, the applicant presents a written request to the Office of the Comptroller that his application be published, the Office of the Comptroller shall publish the application promptly after the receipt of the request.

PART VIII : EFFECTS OF A PATENT APPLICATION AND A PATENT

Term of patents and maintenance fees.

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

(2) The maintenance of a patent shall be subject to the payment of the prescribed fees hereinafter referred to as "the maintenance fee". The maintenance fee shall be due in respect of the third year and each subsequent year thereafter calculated from the filing date of the application and shall be paid on or before the prescribed due date.

(3) When a maintenance fee has not been paid on or before the prescribed due date, it may still be validly paid within six months of that date, provided the prescribed surcharge is paid within that period.

Rights conferred by a patent.

27. (1) Where the patent concerns a product, the proprietor of the patent shall have the right to prevent third parties from performing, without his authorisation, the following acts:

(a) the making of a product incorporating the subject-matter of the patent;

(b) the offering or the putting on the market of a product incorporating the subject-matter of the patent, the use of such product, or the importation or stocking of such product for such offering or putting on the market or for such use;

(c) the inducing of third parties to perform any of the above acts.

(2) Where the patent concerns a process, the proprietor of the patent shall have the right to prevent third parties from performing without his authorisation, the following acts:

(a) the use of a process which is the subject matter of the patent;

(b) in respect of any product directly obtained by the use of the process, any of the acts referred to in subsection (1) (b), even where a patent cannot be obtained for the said product;

(c) the inducing of third parties to perform any of the above acts.

(3) Notwithstanding subsections (1) and (2), the proprietor of a patent shall have no right to prevent third parties from performing, without his authorisation, the acts referred to in subsections (1) and (2) in the following circumstances:

(a) where the act concerns a product which has been put on the market by the proprietor of the patent, or with his express consent, insofar as such an act is performed after that product has been so put on the market in Malta or in any territory as may be specified in the regulations;

(b) where the act is done privately and for non-commercial purposes, provided that it does not significantly prejudice the economic interests of the proprietor of the patent;

(c) where the act consists of making or using such product for purely experimental purposes or for scientific research;

(d) where the act consists of the extemporaneous preparation for individual cases, in a pharmacy or by a medical or veterinary doctor, of a medicine in accordance with a medical prescription or of acts concerning the medicine so prepared.

(4) (a) Subject to paragraph (b) hereof, a patent shall also confer on its proprietor the right to prevent third parties from supplying or offering to supply a person, other than a party entitled to exploit the patented invention, with means, relating to an element of that invention, essential for carrying out the invention, when the third party knows, or ought to know in the circumstances, that those means are suitable and intended for carrying out that invention. The provision of this paragraph shall not apply where such means are staple commercial products and the circumstances of the supply of such products do not constitute inducement to infringe the patent.

(b) Persons performing any acts referred to in subsection (3) (b), (c) and (d) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph (a).

Rights conferred by a patent application after publication.

28. (1) A patent application shall, where published under section 25, provisionally confer upon the applicant from the date of such publication the same rights in respect of the subject matter of the application as are conferred by section 27 in respect of the subject-matter of a patent.

(2) A patent application shall be deemed never to have had the effects set out in subsection (1) if it is withdrawn, or deemed to be withdrawn or finally refused.

Prior user.

29. (1) A patent shall have no effect against any person who in good faith, for the purposes of his enterprise or business, before the filing date, or, where priority is claimed, before the priority date of the application on which the patent is granted, and within Malta was using the invention or was making effective and serious preparations for such use. Any such person shall have the right, for the purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations.

(2) The right of the prior user may only be transferred or may only devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made.

Extent of protection.

30. (1) The extent of the protection conferred by the patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings so as to combine fair protection for the proprietor of the patent with a reasonable degree of certainty for third parties.

(2) For the purposes of determining the extent of protection and in accordance with such regulations as may be prescribed, due account shall be taken of elements which at the time of any alleged infringement are equivalent to the elements as expressed in the claims.

(3) For the period up to the grant of the patent, the extent of the protection conferred by a patent application shall be determined by the latest filed claims contained in the publication under section 25. However, the patent as granted or as amended in invalidation proceedings shall determine retroactively the protection conferred by the patent application, in so far as such protection is not thereby extended.

(4) In determining the extent of protection, due account shall be taken of any statement unambiguously limiting the scope of the claims made by the applicant or the proprietor of the patent during procedures concerning the grant or the validity of the patent.

(5) If the patent contains examples of the embodiment of the invention or examples of the functions or results of the invention, the claims shall not be interpreted as limited to those examples.

PART IX : ASSIGNMENT OF PATENTS

31. (1) Any contract assigning a patent application or a patent shall, on pain of nullity, be made in writing and shall be signed by the parties to the contract. Change in ownership of patent applications or patents.

(2) Any change in the ownership of a patent application or a patent shall be recorded in the patent register on payment of the prescribed fee. The new proprietor of the application or patent shall be entitled to institute any legal proceedings concerning the patent only if he has been recorded in the patent register as the new proprietor.

(3) The transfer or assignment of a patent application or patent shall not affect rights acquired by third parties before the date of such transfer or assignment and shall have effect vis-à-vis third parties only after entry thereof is made in the patent register, unless such third parties having acquired rights after the date of the transfer or assignment but before its entry into the register knew of the transfer or assignment at the date on which such rights were acquired.

Provided that where there is a judicial assignment of a patent by order of the Court under section 32 all licences and other rights shall lapse upon the registration of the person entitled to the patent in the patent register except where the former proprietor of the patent or his licensee, before the institution of the legal proceedings, acting in good faith, had used the invention or made effective and serious preparations to do so in which case the former proprietor of the patent or his licensee may continue to use the invention provided he requests within the prescribed time a non-exclusive licence of the patent from the new proprietor whose name is entered in the patent register.

The non-exclusive licence referred to above shall be granted for a reasonable period and upon reasonable terms.

32. If a patent application is filed or a patent is granted to a person who is not entitled to the patent under section 10 or 11, the person entitled to it may request the Civil Court, First Hall, within two years Judicial assignment of patent application or patent.

from the date of publication of such application or patent to order the assignment to him of the patent application or patent.

Provided that if the person who is not entitled to a patent knew at the time when the patent application was filed or granted to him that he was not entitled to the patent, such period of limitation shall not apply in his regard.

Joint ownership of patent application or patent.

33. (1) Where there are joint applicants of a patent application, each of them may with or without the agreement of the others separately assign or transfer by succession his share of the application, but the joint applicants may only act jointly to withdraw the application or conclude licence contracts with third parties under the application.

(2) Where there are joint proprietors of a patent, each of them may with or without the agreement of the others separately assign or transfer by succession his share of the patent or institute court proceedings for an infringement of the patent, but the joint owners may only act jointly to surrender the patent or conclude licence contracts with third parties under the patent.

(3) The provisions of this section shall be applicable only in the absence of an agreement to the contrary between the joint applicants or owners.

Patent register.

34. (1) The Comptroller shall maintain a patent register in which patent applications and patents granted shall be recorded.

(2) The patent register shall include such matters constituting or relating to the patent application or patent as may be prescribed and entries of all corrections, amendments, change in ownership or other matters that he is empowered or required by or under this Act to record. No entry shall be made in the register prior to the publication of the application.

(3) The patent register shall be *prima facie* evidence of all matters directed or authorised by or under this law to be entered therein.

(4) The patent register shall, subject to such regulations as may be prescribed, be open to public inspection.

PART X : CONTRACTUAL LICENCES AND LICENCES OF
RIGHT

35. (1) A patent application or patent may be licensed in whole or in part for the whole or part of Malta. A licence may be exclusive or non-exclusive. For the purposes of this law, "licence contract" means any contract by which a party ("the licensor") allows the other party ("the licensee") to perform any of the acts referred to in section 27 in respect of an invention claimed in a patent or a patent application. Licence contract.

(2) A licence contract shall in pain of nullity be made in writing and shall be signed by the parties to the contract.

(3) A licence may be recorded in the patent register on payment of the prescribed fee. Subsection (3) of section 31 shall apply *mutatis mutandis* to the grant or transfer of a licence.

36. (1) In the absence of any provision to the contrary in the licence contract, the agreement given by the licensor to the licensee shall extend to the performance in respect of the invention of all the acts referred to in section 27 without limitation as to time, in the entire territory of Malta, and through any application of the invention. Rights of licensee.

(2) In the absence of any provisions to the contrary in the licence contract, the licensee may not allow a third person to perform in respect of the invention any of the acts referred to in section 27.

37. (1) In the absence of any provision to the contrary in the licence contract, the licensor may allow a third person to perform in respect of the invention any of the acts referred to in section 27 and shall not be prevented from performing them himself. Rights of licensor.

(2) If the licence contract provides that the licence is exclusive, and unless it is expressly provided otherwise in the licence contract, the licensor may neither allow a third party to perform nor perform himself in respect of the invention any of the acts referred to in section 27 which are covered by the said contract.

38. (1) Where the proprietor of a patent files a written statement with the Office of the Comptroller that he is prepared to allow any person to use the invention as a licensee in return for appropriate compensation, the maintenance fees which fall due after receipt of the statement shall be reduced as may by regulations be prescribed. Licences of right.

(2) Provided that if no one has informed the proprietor of the patent of his intention to use the invention, the statement may be withdrawn at any time upon written notification to this effect to the Office of the Comptroller:

Provided further that the statement shall be deemed to be withdrawn when following a judicial assignment of a patent by order of the Court under section 32 the name of the person entitled to the patent is entered in the patent register.

(3) The statement may not be filed as long as an exclusive licence is recorded in the patent register.

(4) On the basis of the statement, any person shall be entitled to use the invention as a licensee under such conditions as may by regulations be laid down. Any licence so obtained shall be treated as a contractual licence.

(5) No request for recording an exclusive licence in the patent register shall be admissible after the statement has been filed, unless the said statement is withdrawn or be deemed to be withdrawn.

PART XI : NON-VOLUNTARY LICENCES AND GOVERNMENT EXPLOITATION

Non-voluntary licences.

39. (1) The Civil Court, First Hall, may, on a writ of summons filed by any person who proves his ability to work the patented invention in Malta, made after the expiration of a period of four years from the date of filing the application for the patent or three years from the grant of the patent, whichever is later, direct the Comptroller to grant a non-exclusive, non-voluntary licence if the patented invention is not worked or is insufficiently worked in Malta.

(2) The grant of the non-voluntary licence shall be subject to the payment of such equitable remuneration to the proprietor of the patent as may be determined by the Civil Court, First Hall, and may be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and if such efforts have not been successful within a reasonable period of time.

(3) Notwithstanding subsection (1), a non-voluntary licence shall not be granted if the Court is convinced that circumstances exist which justify the non-working or insufficient working of the patented invention in Malta. Importation shall not constitute such a circumstance.

(4) In deciding whether to grant a non-voluntary licence, the Court shall give both the proprietor of the patent and the person requesting the non-voluntary licence an adequate opportunity to present arguments.

(5) Any non-voluntary licence shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the proprietor of the patent and of the licensee. The continued existence of these circumstances shall be reviewed upon the request of the proprietor of the patent by writ of summons before the Civil Court, First Hall.

(6) Paragraph (a) of subsection 3 of section 27 of this Act shall be interpreted in the sense that if the patented product is put on the market by a licensee pursuant to a non-voluntary licence, it will not be deemed to have been put on the market with the express consent of the proprietor of the patent.

40. (1) Where the national security or public safety so requires, the Minister responsible for the Industrial Property Office may authorise, even without the agreement of the proprietor of the patent or the patent application, by notice published in the prescribed form, a Government agency or a person designated in the said notice to make, use or sell an invention to which a patent or an application for a patent relates, subject to payment of equitable remuneration to the proprietor of the patent or the application for the patent.

Exploitation by government or by third parties authorised by government.

(2) The scope and duration of such authorisation shall be limited to the purpose for which it was given and shall be:

(a) non-exclusive,

(b) non-assignable, except with that part of the enterprise or goodwill which enjoys such authorisation,

(c) terminated if and when the circumstances which led to it cease to exist and are unlikely to recur.

(3) Any decision taken by the Minister under this section may be the subject of an appeal in an action by writ of summons before the Civil Court, First Hall.

PART XII : AMENDMENTS, SURRENDER AND INVALIDATION

41. (1) The proprietor of a patent shall, in accordance with such regulations as may be prescribed, have the right to request the Comptroller to make changes in the patent in order to limit the extent of the protection conferred by it.

Changes in patents.

(2) The proprietor of a patent shall have the right to request the Comptroller to make changes in the patent in order to correct mistakes or clerical errors, made in good faith.

(3) No such change in the patent may go beyond what has been disclosed in the application as filed.

(4) Where the Comptroller makes changes in a patent he shall publish the changes and the extent thereof and shall record them in the patent register.

Surrender.

42. (1) The proprietor of a patent may surrender the patent in its entirety by written declaration submitted to the Office of the Comptroller. Such surrender shall not have effect until it is entered in the patent register.

(2) A surrender will be entered in the patent register only with the agreement of any third party who has a right in rem recorded in the register or has instituted proceedings under section 32. If a licence is recorded in the register such surrender will only be entered if the proprietor of the patent proves to the satisfaction of the Comptroller that he has previously informed the licensee of his intention to surrender.

Lapse.

43. (1) A patent shall lapse:

(a) at the end of the term laid down in section 26;

(b) if the proprietor of the patent surrenders it, on the date when surrender takes effect;

(c) if a maintenance fee and any surcharge have not been paid in due time, on the date when the maintenance fee was due;

(d) if the extent of the protection has been limited under section 41, to the extent that the patent is not maintained on the date when the limitation is entered in the patent register.

(2) The Office of the Comptroller shall record any lapse of the patent in the patent register.

Invalidation of patents.

44. (1) The Comptroller may, at the request of a third party, or save in the case referred to in paragraph (c) hereof of his own accord, invalidate a patent, in whole or in part, on any of the following and may not do so on any other ground -

(a) that the subject-matter of the patent is not patentable within the terms of sections 4 to 7;

(b) that the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art as stipulated in section 15;

(c) that the right to the patent does not belong to the person to whom the patent was granted within the terms of sections 10 and 11;

(d) that the subject matter of the patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application, beyond the content of the earlier application as filed subject to any action carried out under sections 20 and 41; and

(e) that the protection conferred by the patent has been extended by an amendment which should not have been allowed.

(2) If the grounds for invalidation affect the patent only in part, invalidation shall be pronounced in the form of a corresponding limitation of the patent.

(3) A patent and the application on which it is based shall, to the extent that the patent has been invalidated, be deemed never to have had the effects referred to in sections 27 and 28:

Provided that this shall not affect:

(a) any decision on infringement which has become final and has been enforced prior to the decision of invalidation; or

(b) any contract concluded prior to the decision of invalidation, in so far as it has been performed before that decision, subject to the right on grounds of equity of repayment to an extent justified by the circumstances, of sums paid under the relevant contract.

45. (1) An action to invalidate a patent may be taken even if ^{Proceedings.} the patent has lapsed.

(2) When a decision to invalidate a patent, in whole or in part, becomes final, the Comptroller shall record the decision in the patent register and shall publish any amendments to the patent in accordance with such regulations as may be prescribed.

PART XIII : RE-ESTABLISHMENT OF RIGHTS

Restitutio in
integrum.

46. (1) The applicant for or proprietor of a patent who, notwithstanding having taken all due care required by the circumstances, was unable to observe a time limit set by the Comptroller shall, upon his request, have his rights re-established if the non-observance in question has the direct consequence of causing the refusal of the patent application, or the refusal of a request, or the lapse of the patent, or the loss of any other right or means of redress.

(2) The request shall be filed in writing within two months from the removal of the cause of non-compliance with the time limit or within the year immediately following the expiry of the unobserved time limit, whichever is the earlier, after the omitted Act has been completed. In the case of non-payment of a maintenance fee, the period specified in subsection (3) of section 26 shall be deducted from the period of one year.

(3) The request shall state the grounds on which it is based, and shall set out the facts on which it relies. It shall not be deemed to have been filed until after the prescribed fee for the re-establishment of the rights in question has been paid.

(4) This section shall not apply to the time limits referred to in subsection (2) of this section and in section 22.

(5) The decision to re-establish any rights under subsection (1) shall be recorded in the patent register.

(6) Any person who in good faith has used or made effective and serious preparations for using an invention which is the subject of a published patent application or a patent in the course of the period between the loss of rights referred to in subsection (1) and the publication of the decision to re-establish such rights, may without payment continue such use in the course of his business or for the needs thereof.

PART XIV : INFRINGEMENT - CIVIL ACTIONS

Act of
infringement-
sanctions.

47. (1) Any person who in contravention to section 27 exploits an invention which is the subject-matter of a patent or patent application shall be liable in damages towards the proprietor of the patent or of a patent application or the licensee.

(2) The right to sue for damages under subsection (1) hereof shall be without prejudice to the right of such person to apply for the issue of any precautionary warrant as provided in the Code of Organization and Civil Procedure to protect his rights.

(3) The court may, moreover, on the demand of the plaintiff, order that the machinery or other industrial means or contrivances used in contravention of the patent, the infringing articles, and the apparatus destined for their production, be forfeited, wholly or partially, and delivered up to the proprietor of the patent, without prejudice to the relief mentioned in this section.

48. (1) Infringement proceedings shall be brought before the Civil Court, First Hall, and may not be instituted after five years from the date when the injured party has obtained knowledge of the infringement and of the identity of the alleged infringer. **Infringement proceedings.**

(2) Where the subject-matter of the patent is a process for obtaining a new product, the same product when produced by any other party shall in the absence of proof to the contrary be deemed to have been obtained by the patented process. In the assessment of any proof to the contrary by the defendant, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account by the Court.

(3) The Court may stay proceedings for infringement in respect of a patent application until after a final decision has been made by the Comptroller to grant or refuse a patent on that application.

(4) The defendant in any proceedings referred to in this section may request in the same proceedings the invalidation of any of the grounds referred to in section 44. In any such case the Comptroller shall be made a party to the proceedings.

49. (1) Subject to subsection (4), any interested person shall have the right to request, by instituting proceedings against the proprietor of the patent, that the Civil Court, First Hall, declare that the performance of a specific act does not constitute an infringement of the patent. **Declaration of non-infringement.**

(2) If the person making the request proves that the act in question does not constitute an infringement of the patent, the Court shall grant a declaration of non-infringement.

(3) The proprietor of the patent shall notify any licensees of the proceedings. The licensees shall have the right to join in the proceedings in the absence of any provision to the contrary in the licence contract.

(4) If the act in question is already the subject of infringement proceedings, the defendant in the infringement proceedings may not institute proceedings for a declaration of non-infringement.

(5) Save where invalidation is requested under subsection (5) of section 48, proceedings for a declaration of non-infringement may be instituted together with proceedings to invalidate the patent.

PART XV : INFRINGEMENTS - CRIMINAL ACTIONS

Offences.

50. (1) Whoever puts into circulation, or sells any article, falsely representing that it is a patented article shall, on conviction, be liable to a fine (multa) of not less than one hundred liri and not more than five thousand liri.

(2) If any person puts into circulation or sells an article having stamped, engraved or impressed thereon or otherwise applied thereto the word "patent", "patented", or any other word expressing or implying that a patent has been obtained for the article, he shall be deemed for the purpose of this section to represent that the article is a patented article.

Where owner of goods is unknown.

51. If the owner of any goods or things, which, if he were convicted of any of the offences referred to in this Part, would be liable to forfeiture, is unknown or cannot be found, any Magistrate if he is satisfied on information on oath that such goods or things by means of which an offence under this Part has been committed are in any house or premises, and that the offender is unknown or cannot be found, may by warrant under his hand direct any officer of the Executive Police to be named in the warrant, to enter any house, premises or place so named therein, and there to search for, seize and remove such goods or things.

Forfeiture of things seized.

52. The goods and things so seized shall be produced before the Court of Magistrates sitting as a Court of criminal judicature, and such Court shall determine whether they are liable to forfeiture under this Act.

Procedure where owner is unknown.

53. (1) In the case referred to in section 51 the Court shall order the issue of banns which shall be published twice, with an interval for at least eight days, in the Government Gazette, and posted up at the entrance of the building wherein the court sits, and in any other place which the court may deem fit, stating that the goods or things seized shall be forfeited, unless at the time and place named in the banns the proprietor of such goods or things or other person interested in such goods or things attends before the court and shows cause to the contrary.

(2) If the owner or any person on his behalf, or other person interested in the said goods or things, fails to attend at the time and place named in the banns to show cause to the contrary, it shall be lawful for the Court to direct that such goods or things or any of them be forfeited.

54. The Court may direct that the goods or things so forfeited be destroyed or disposed of, and may also direct that, out of the net proceeds which may be realised by the disposal of such goods or things and up to the amount thereof, any persons who, being in good faith, were injured by the forfeiture, be awarded compensation for any loss caused to them.

Award of compensation to parties in good faith.

55. Criminal actions under this Act shall be barred by the lapse of three years from the day on which the act constituting the offence was committed, if the person to whose prejudice the act was committed, had no previous knowledge thereof; in all other cases the period of limitation shall be one year from the day on which such person became aware of that act.

Limitation of criminal actions.

56. The provisions of section 50 to section 55 shall apply without prejudice to the payment of damages to persons entitled thereto.

Right to damages not effected.

57. No proceedings shall be instituted against any person in the service of another person, if, in good faith, he has acted in obedience to the instructions of his employer, and, on being questioned by Police, gives full information as to his employer and all other particulars of the case.

Employer and employee.

PART XVI : RIGHT OF APPEAL

58. (1) An appeal shall lie from any decision of the Comptroller refusing the grant of a patent, an application for re-establishment of rights or any other request of the applicant for, or proprietor of, a patent. Such appeal shall have suspensive effect.

Right of appeal.

(2) Notice of appeal and a statement setting out the grounds of appeal shall be filed in writing at the Office of the Comptroller by applicant or proprietor of a patent, within two months of being informed of the decision and if the Comptroller considers the appeal to be admissible and well founded, he shall rectify his decision within three months from receiving the appeal.

(3) If within the said period of three months the Comptroller has not informed the applicant or the proprietor that he has rectified his decision an appeal may be entered by the applicant or the proprietor by application before the Court of Appeal within two months from the receipt from the Comptroller of notification that he has not rectified his decision, or from the lapse of the two-month period referred to in subsection (2), whichever is the earlier.

(4) Any appeal as is mentioned in subsection (2) and (3) of this section shall be brought before the Court of Appeal composed in the manner provided in subsection (6) of section 41 of the Code of Organization and Civil Procedure by application within fifteen days after the expiry of the said period of three months from when the Comptroller would have rectified his decision or not informed the applicant that he has rectified his decision, whichever is the earlier.

(5) The Minister may make rules governing appeals to the Court of Appeal under this Act, and prescribing a scale of costs and fees in relation to such appeals.

(6) The Court of Appeal may, in regard to costs, make an order in accordance with the provisions of section 223 of the Code of Organization and Civil Procedure.

PART XVII : MISCELLANEOUS

Regulations.

59. (1) The Minister may from time to time make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or desirable to be prescribed for carrying out or giving effect to this Act, or for the conduct of any business relating to the Office of the Comptroller including the fees payable to the Government as may be prescribed under this Act.

(2) The Minister may also make regulations giving effect in Malta to the provisions of an international or regional patent registration instrument or any related agreements to which Malta becomes a party.

Costs.
Cap. 12.

60. In any proceedings under this Act the costs shall be taxed and levied according to the tariffs in Schedule A annexed to the Code of Organization and Civil Procedure.

Agents.

61. (1) Where by this Act any act has to be done by or to any person in connection with any proceeding or matter under this Act, the act may under and in accordance with the regulations be done by or to an agent of that person duly authorised in the prescribed manner.

(2) If an applicant does not have his ordinary residence or principal place of business in Malta, he shall authorise in the prescribed manner an agent in Malta to represent him.

62. (1) Part I of the Industrial Property (Protection) Ordinance (hereinafter in this section called “the repealed law”) and every reference to patents in Part IV, Part V and Part VI thereof are hereby repealed. Repeal and transitional provisions. Provided section 17 shall remain in force in respect of designs and trademarks until such time that the provisions contained in Part II and Part III are repealed.

(2) Any patent the term of which, upon the coming into force of this Act, has expired under the Industrial Property (Protection) Ordinance shall not be reactivated under or by virtue of the provisions of this Act;

(3) Where an application for the registration of a patent has been filed before the coming into force of the Act, the provisions of the Industrial Property (Protection) Ordinance shall, notwithstanding the repeal of the same by this Act, continue to apply thereto. Provided that upon the granting of any such patent the provisions of this Act shall apply thereto.

(4) Where an application for the registration of a patent has been filed before the coming into force of this Act any registration of a patent granted pursuant to such an application shall, notwithstanding any other of the provisions of this Act, be subject to being deemed null or to being annulled only in accordance with the provisions of Title V of Part I of the Industrial Property (Protection) Ordinance as in force before the coming into force of the Act.

(5) Any patent registered under the Industrial Property (Protection) Ordinance before the coming into force of this Act, the term of which has not upon the coming into force of this Act, lapsed, shall enjoy the term of protection of the duration stipulated under this Act and shall benefit from any rights granted in respect of patents under this Act.

(6) Any regulation, order, requirement, certificate, notice, decision, direction, authorisation, consent, application, request or thing made, issued, given or done under the repealed law shall, if in force at

the commencement of this Act, insofar as they could have been made, issued, given or done under this Act, continue in force and have effect as if made, issued, given or done under the corresponding provision of this Act.

Objects and Reasons

The object of the Bill is to make new provision with respect to patents in lieu of the provisions of the Industrial Property (Protection) Ordinance, Cap.29.