



THE MALTESE PATENT

Explanatory Notes on Malta's Patents Legislation

This article offers basic information on some aspects of Patents. It is not a reference document and carries no authority. The Industrial Property Registrations Directorate does not undertake to give legal advice or opinion about Patents or Inventions other than in the course of formal proceedings – but sets out to answer some of the more basic questions.

Patentable Inventions

An invention shall be patentable if it is novel, involves an inventive step and is susceptible to industrial application. Biological inventions may also be patentable subject to certain ethical and moral exceptions.

What may not be patented?

- 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;
- e. 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;
- f. an invention the exploitation of which would be contrary to public order or morality.

Requirements of application

An application for a patent shall be accompanied by:

- 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.

Disclosure of the Invention

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 area.

Inspection of Files

After a patent application or the patent granted thereon has been published, any person may inspect the files of the application.

Rights of Priority

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. The term for filing a patent application with a claim of priority is of one (1) year from the date of the first filing.

Examination and Grant or Refusal

The application shall be examined in order to determine whether the application complies with the requirements laid down in the Act and in the regulations. The applicant shall be given the opportunity to amend the application in order to comply with the requirements. If the applicant fails to make such amendments the Comptroller may refuse the application.

If the application as originally filed or as amended complies with all the formal requirements the Comptroller shall grant a patent on the application.

Terms of Patents

The term of a patent shall be 20 years from the filing date of the application. The maintenance of a patent shall be subject to the payment of the prescribed fee in respect of the beginning of the third year and each subsequent year thereafter; calculated from the filing date of the application.

Rights conferred by a Patent

The proprietor of the patent shall have the right to prevent third parties from performing without his authorisation:

- a. the making of a product or the use of a process, which is the subject-matter of the patent;
- b. the offering on the market of a product incorporating the subject-matter of a patent; and
- c. the inducing of third parties to perform any of these acts.

A patent application, which has been published, shall provisionally confer upon the applicant the same rights as mentioned above.

Assignment of Patents

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.

Licence Contract

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.

Non-voluntary Licences

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. Also the First Hall Civil Court, may by writ of summons filled by the owner of a patent (second patent) which cannot be exploited without infringing the first patent, direct the Comptroller to grant a non-exclusive, non-voluntary licence provided certain conditions are met.

Exploitation by Government or by Third Parties authorised by Government

Where the national security or public safety so requires, the Minister 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.

Right of Appeal

An appeal shall lie from any decision of the Comptroller refusing the grant of a patent, an application for the re-establishment of rights or any other request of the applicant for, or proprietor of, a patent.

Notice of appeal and a statement setting out the grounds of appeal shall be filed in writing at the Office of the Comptroller by the applicant or the 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.

Criminal offences

Whoever puts into circulation or sells any article falsely representing that it is a patented article shall, on conviction, be liable to a fine of not less than € 232.94 and not more than € 11,646.87.

Transition of Old Law to New Law

Any patent registered under the Industrial Property (Protection) Ordinance before the coming into force of the Patents & Designs Act 2000, 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.

Provided that in the case of a patent which has been registered, by virtue of the Industrial Property (Protection) Ordinance, before the coming into force of this Act and which has been granted an extension of not more than five years in accordance with the provisions of Title II of Part I of the same Ordinance, that patent shall enjoy, from the date of the filing of application for the patent, 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.

Provided that in the case of a patent which has been registered, by virtue of the Industrial Property (Protection) Ordinance, before the coming into force of this Act and which has been granted an extension of not less than seven years and not more than fourteen years, in accordance with the provisions of Title II of Part I of the same Ordinance, that patent shall still benefit from the extension granted and shall benefit from any rights granted in respect of patents under this Act.



Information Supplied by the

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