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Federal Act on Patents for Inventions

(Patents Act, PatA)[1]

of 25 June 1954 (Status as of 1 April 2019)

The Federal Assembly of the Swiss Confederation,

on the basis of Article 122 of the Federal Constitution[2,3]
and having considered the Dispatch of the Federal Council dated 25 April 1950[4]
and a Supplementary Dispatch dated 28 December 1951[5],

decrees:

First Title General Provisions

Section 1 Requirements for Obtaining a Patent and Effects of the Patent

Art. 1

A. Patentable inventions
I. Principle[6]

1 Patents for inventions are granted for new inventions applicable in industry.

2 Anything that is obvious having regard to the state of the art (Art. 7 para. 2) is not patentable as an invention.[7]

3 Patents are granted without the guarantee of the State.[8]

AS **1955** 871

1 Amended by No I of the FA of 3 Feb. 1995, in force since 1 Sept. 1995 (AS **1995** 2879; BBl **1993** III 706).
2 SR **101**
3 Amended by Annex No 6 of the FA of 21 June 2013, in force since 1 Jan. 2017 (AS **2015** 3631; BBl **2009** 8533).
4 BBl **1950** I 977
5 BBl **1952** I 1
6 Amended by Art. 2 of the FD of 16 Dec. 2005 on the approval of the Act revising the European Patent Convention and on the amendment of the Patents Act, in force since 13 Dec. 2007 (AS **2007** 6479; BBl **2005** 3773).
7 Amended by Art. 2 of the FD of 16 Dec. 2005 on the approval of the Act revising the European Patent Convention and on the amendment of the Patents Act, in force since 13 Dec. 2007 (AS **2007** 6479; BBl **2005** 3773).
8 Amended by No I of the FA of 17 Dec. 1976, in force since 1 Jan. 1978 (AS **1977** 1997; BBl **1976** II 1).

Art. 1*a*[9]

II. The human body and its elements

1 The human body as such, at all stages of its formation and development, including the embryo, is not patentable.

2 Elements of the human body in their natural environment are not patentable. An element of the human body is, however, patentable as an invention if it is produced by means of a technical process, a beneficial technical effect is indicated and the further requirements of Article 1 are fulfilled; Article 2 remains reserved.

Art. 1*b*[10]

III. Gene sequences

1 A naturally occurring sequence or partial sequence of a gene is not patentable as such.

2 Sequences that are derived from a naturally occurring sequence or partial sequence of a gene may, however, be patented as an invention if they are produced by means of a technical process, their function is specifically indicated, and the further requirements of Article 1 are fulfilled; Article 2 remains reserved.

Art. 2[11]

B. Exclusion from patentability

1 Inventions whose exploitation is contrary to human dignity or that disregard the integrity of living organisms or that are in any other way contrary to public policy or morality are not patentable. In particular, no patent may be granted for:

a. processes for cloning human beings and the clones obtained thereby;

b. processes for forming hybrid organisms by using human germ cells, human totipotent cells or human embryonic stem cells and the entities obtained thereby;

c. processes of parthenogenesis by using human germinal material and the parthenogenetic entities obtained thereby;

d. processes for modifying the germ line genetic identity of human beings and the germ line cells obtained thereby;

e. unmodified human embryonic stem cells and stem cell lines;

f. the use of human embryos for non-medical purposes;

9 Inserted by No I of the FA of 17 Dec. 1976 (AS **1977** 1997; BBl **1976** II 1). Amended by No I of the FA of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

10 Inserted by No I of the FA of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

11 Amended by No I of the FA of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

g. processes for modifying the genetic identity of animals which are likely to cause them suffering without being justified by overriding interests worthy of protection, and also animals resulting from such processes.

2 Also excluded from patentability are:

a. methods for treatment by surgery or therapy and diagnostic methods practised on the human or animal body;

b. plant varieties and animal varieties or essentially biological processes for the production of plants or animals; however, subject to the reservation of paragraph 1, microbiological or other technical processes and the products obtained thereby as well as inventions that concern plants or animals are patentable provided that their application is not technically confined to a single plant or animal variety.

Art. 3

C. Right to the grant of a patent
I. Principle

1 The inventor, his successor in title, or a third party owning the invention under any other title has the right to the grant of the patent.

2 Where several inventors have made an invention jointly, they have this right jointly.

3 Where two or more inventors have made the invention independently of each other, the person who makes the earlier application or whose application has the earliest priority date has this right.

Art. 4

II. In the examination procedure

In the procedure before the Swiss Federal Institute of Intellectual Property[12] (IPI)[13], the patent applicant is deemed entitled to request the grant of the patent.

Art. 5

D. Mention of the inventor
I. Right of the inventor

1 The patent applicant must provide the IPI with written confirmation of the name of the inventor.[14]

2 The person named by the patent applicant shall be mentioned as the inventor in the Patent Register, in the publication of the patent appli-

12 Name in accordance with No I of the FA of 9 Oct. 1998, in force since 1 May 1999 (AS **1999** 1363; BBl **1998** 1633).
13 Abbreviation in accordance with Annex No 3 of the FA of 21 June 2013, in force since 1 Jan. 2017 (AS **2015** 3631; BBl **2009** 8533).
14 Amended by No I of the FA of 17 Dec. 1976, in force since 1 Jan. 1978 (AS **1977** 1997; BBl **1976** II 1).

cation and in the grant of the patent, as well as in the patent specification.[15]

3 Paragraph 2 applies by analogy if a third party produces an enforceable judgment establishing that he and not the person named by the patent applicant is the inventor.

Art. 6

II. Waiver of mention

1 If the inventor named by the patent applicant waives his right to the measures provided for in Article 5 paragraph 2, these measures shall not be taken.

2 A declaration made beforehand by the inventor waiving the right to be mentioned as such has no legal effect.

Art. 7[16]

E. Novelty of the invention
I. State of the art

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

2 The state of the art comprises everything made available to the public by means of a written or oral description, by use, or in any other way prior to the filing or priority date.

3 With regard to novelty, the state of the art also includes the content of an earlier application or application with earlier priority designating Switzerland in the version originally filed, and with a filing or priority date that precedes the date mentioned in paragraph 2, and which was only made available to the public on or after that date, provided that:

a. in the case of an international application, the requirements of Article 138 are fulfilled;

b. in the case of a European application based on an international application, the requirements of Article 153 paragraph 5 of the European Patent Convention of 5 October 1973 in its revised version of 29 November 2000[17] are fulfilled;

c. in the case of a European application, the fees for the valid designation of Switzerland as per Article 79 paragraph 2 of the European Patent Convention of 5 October 1973 in its revised version of 29 November 2000 have been paid.[18]

15 Amended by No I of the FA of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).
16 Amended by No I of the FA of 17 Dec. 1976, in force since 1 Jan. 1978 (AS **1977** 1997; BBl **1976** II 1).
17 SR **0.232.142.2**
18 Inserted by No I of the FA of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

Art. 7*a*[19]

II. …

Art. 7*b*[20]

III. Non-prejudicial disclosures

Where the invention has been made available to the public in the six months prior to the application date or priority date, this disclosure does not form part of the state of the art when it is due to, or a consequence of:[21]

a. an evident abuse in relation to the patent applicant or his legal predecessor; or

b. the fact that the patent applicant or his legal predecessor has displayed the invention at an official or officially recognised international exhibition falling within the terms of the Convention on International Exhibitions of 22 November 1928[22], and he has declared the fact at the time of filing and has produced sufficient supporting evidence in due time.

Art. 7*c*[23]

IV. New use of known substances

a. First medical use

Any substance or composition that forms part of the state of the art as such, but not in relation to its use in a surgical, therapeutic or diagnostic method specified in Article 2 paragraph 2 letter a[24] is deemed to be new provided it is intended solely for such use.

Art. 7*d*[25]

b. Further medical uses

Any substance or composition that forms part of the state of the art as such, but not in relation to a specific use in a surgical, therapeutic or diagnostic method specified in Article 2 paragraph 2 letter a[26] that is distinct from the first medical use specified in Article 7*c* is deemed to

19 Inserted by No I of the FA of 17 Dec. 1976 (AS **1977** 1997; BBl **1976** II 1). Repealed by No I of the FA of 22 June 2007, with effect from 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

20 Inserted by No I of the FA of 17 Dec. 1976, in force since 1 Jan. 1978 (AS **1977** 1997; BBl **1976** II 1).

21 Amended by No I of the FA of 3 Feb. 1995, in force since 1 Sept. 1995 (AS **1995** 2879; BBl **1993** III 706).

22 SR **0.945.11**

23 Inserted by No I of the FA of 17 Dec. 1976 (AS **1977** 1997; BBl **1976** II 1). Amended by No I of the FA of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

24 Rectified by the Editorial Commission of the Federal Assembly (Art. 58 para. 1 ParlA – SR **171.10**).

25 Inserted by Art. 2 of the FD of 16 Dec. 2005 on the approval of the Act revising the European Patent Convention and on the amendment of the Patents Act (AS **2007** 6479; BBl **2005** 3773). Amended by No I of the FA of 22 June 2007, in force since 1 July 2008 (AS **2008** 2551; BBl **2006** 1).

26 Rectified by the Editorial Commission of the Federal Assembly (Art. 58 para. 1 ParlA – SR **171.10**).