

WORLD TRADE ORGANIZATION

ORGANISATION MONDIALE DU COMMERCE

ORGANIZACIÓN MUNDIAL DEL COMERCIO

IP/N/1/AUT/P/6

15 November 1996

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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

Austria

By means of a communication from the Permanent Mission of Austria to the WTO, dated 9 August 1996, Austria has notified the text of the Federal Law¹, BGBl. 181/1996, under Article 63.2 of the Agreement. This Law amends both the Patent Law (document IP/N/1/AUT/P/1) and the Law Introducing Patent Treaties (document IP/N/1/AUT/P/2).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES
A LA PROPRIETE INTELLECTUELLE NOTIFIEES
AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD**

Autriche

Par une communication de la Mission permanente de l'Autriche auprès de l'OMC datée du 9 août 1996, l'Autriche a notifié le texte¹ de la Loi fédérale BGBl. n° 181/1996 au titre de l'article 63:2 de l'Accord. Cette loi modifie à la fois la Loi sur les brevets (document IP/N/1/AUT/P/1) et la Loi concernant les traités en matière de brevets (document IP/N/1/AUT/P/2).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

Austria

Según lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo, Austria ha notificado el texto de la Ley Federal¹ BGBl. 181/1996 mediante una comunicación de la Misión Permanente de Austria ante la OMC, de fecha 9 de agosto de 1996. Esta Ley modifica la Ley de Patentes (documento IP/N/1/AUT/P/1) y la Ley de Incorporación de los Tratados sobre Patentes (documento IP/N/1/AUT/P/2).

¹English only/anglais seulement/inglés solamente.

181st Federal Law by which the 1970 Patent Law and the Law Introducing Patent Treaties are amended

The National Council decided:

Article I

The 1970 Patent Law, Federal Law Gazette No 259 in the latest amended version as published in Federal Law Gazette No 634/1994, shall be amended as follows:

1: § 22 shall read:

"§ 22. (1) The patent shall entitle the patent holder to exclude others from the latter, to produce the subject matter of the invention commercially, put it on the market, offer or use it or import or possess it for the purposes as stated.

(2) If the patent was granted for a technical process the validity of the patent shall encompass also products directly manufactured by means of this process."

2: § § 24 and 25 shall lapse.

3: § 28, para 1 shall read:

"(1) The maximum period of validity of the patent shall be 20 years from the day of application."

4. § 29 shall lapse inclusive of its heading.

5. § 36 shall read:

"§ 36. (1) If a patented invention cannot be utilised without infringing a patented invention (earlier patent) with a prior ranking, the holder of the later patent shall be entitled to a non-exclusive license under the earlier patent if the invention which is protected by the later patent represents an essential technological progress of vital economic importance. In the event of a license being granted also the holder of the earlier patent shall be entitled to a non-exclusive license under the later patent.

(2) If a patented invention is not made use of to a reasonable extent within the country, the use being possible also by way of imports, and if the patent holder did not make best efforts in order to make use of the invention, anyone shall be entitled to a non-exclusive license under the patent for his/her enterprise, unless the patent holder furnishes evidence that making use of the invention within the country cannot be expected or not be expected to a greater extent than was done because of the difficulties such an activity meets with.

(3) If the granting of a license under a patented invention lies within the public interest, anyone shall be entitled to a non-exclusive license under the invention for his/her enterprise. The respective title of the federal administration, however, shall not be subject to an enterprise.

(4) If the person entitled to grant a license in accordance with paras 1 to 3 refuses to do so although the applicant for the license did his best to obtain such consent within a reasonable time at equitable commercial conditions, the patent office shall decide upon application of the applicant for the license in a procedure as provided for with regard to the avoidance of a patent. If a license is granted, an equitable remuneration shall be fixed, taking into account the economic value of the license. The possibly required security and all other exploitation conditions shall be fixed by taking into consideration the nature of the invention and the circumstances of the case. Scope and

duration of the license in accordance with paras 1 to 3 shall be permitted primarily for supplying the domestic market and shall be limited to the purpose necessitating the license.

(5) The granting of a license in accordance with para 2 can be applied for at the earliest four years after the filing of the patent or three years after the announcement of the making out of the patent under which the license is desired; the date expiring last shall apply.

(6) The requirement of having to obtain the consent of the person entitled to grant a license can be waived in the case of para 3 in the event of a national emergency or other circumstances of utmost urgency. In such a case a temporary permission for the exploitation of the invention shall be passed by means of an interim decision.

(7) A license granted in accordance with para 4 shall be canceled upon request subject to adequate protection of the legitimate interests of the entitled person, if and when the circumstances having brought about such permission have ceased to exist and are unlikely to crop up again. The patent office shall decide in respect of such an application in a procedure as provided for with regard to the avoidance of patents."

6. § 37 shall read:

"§ 37. Licenses in accordance with §§ 35 and 36, paras 2 and 3, as well as licenses under a later patent in accordance with § 36, para 1 may, without the consent of the patent holder, be transferred inter vivos only jointly with the party of an enterprise or business entitled to the license and shall, upon death, pass on to the legal successor only if the latter continues as the party of the enterprise or business entitled to the license. A license granted according to § 36, para 1 under an earlier patent shall not be transferable unless this is done simultaneously with the transfer of the later patent."

7. The headings of § 38 and § § 38 to 42 shall be canceled.

8. § 47, para 1 shall read:

"(1) A patent may be revoked in part or in full if the granting of an obligatory license (§ 36, para 2) did not suffice to secure the exploitation of the invention to a reasonable extent within the country. The revoking shall become effective with the entering into force of the decision."

9. § 47, para 3 shall be canceled.

10. § 80, para 1 shall read:

"(1) The patent office shall keep a patent register which shall contain the number, the title, the day of application and possibly also the priority of a patent made out as well as the name and place of residence of the patent holders or their representatives. The register shall furthermore list the beginning, the expiry, the revocation, the deprivation of the patent, the title as inventor, the independent character of an additional patent, the dependency declarations and assignments of the patent, licenses granted, liens and other real rights to the patent, the right of utilization on the part of the employer in accordance with § 7, para 2, pre-utilization rights (§ 23), reinstatement to former status quo (§ 133), declaratory decisions (§ 163), explanatory remarks on disputes and indications according to § 156, para 2."

11. § 81, para 7 shall read:

"(7) Minutes drafted in respect of consultations and documents only referring to internal business matters shall be excluded from public inspection. Upon request also documents not requiring a laying open to public inspection for information purposes may also be excluded if they refer to a business or otherwise operational secret or if there is another good reason therefor."

12. § 110, para 1 shall read:

If the invention is filed by the federal administration in the interest of the federal government the patent shall be made out upon request of the latter without any announcement. In such a case the laying out to public inspection of the application (§ 101, para 3), the printing of the patent

specification and the entering of the subject matter of the invention into the public patent register shall be omitted. The announcement and a complete entry may subsequently be requested at any time by the federal administration however."

13. § 110, para 2 shall be canceled; the previous paras 3 and 4 shall be designated "(2)" and "(3)".

14. § 112, para 2 shall read:

"(2) The applicant who does not have his place of residence in a country in which the decision by which the repayment of costs by the applicant is requested would be enforced, shall have to give a security for the costs of the proceedings to the person held responsible upon his/her request. Such a request shall have to be filed within 14 days after delivery of the application or the claim to security shall be forfeited."

15. In § 137, para 2, last sentence the quotation shall read: "§ 168, para 3".

16. § 155 shall read:

"§ 155. In respect of a patent for a manufacturing technique of a new product each product of the same kind shall be considered as manufactured according to the patented technique until proof of the contrary is furnished."

17. § 164 inclusive of the signature shall be canceled.

18. § 166, para 3 shall read:

"(3) The annual fee shall amount to:
for the first year.....ATS 900

plus ATS 350 for the sixth and every subsequent page of the description and patent claims as laid open, and ATS 350 for the third and every subsequent page of the drawings attached,

for the second year..... ATS 900
for the third year..... ATS 1 000
for the fourth year ATS 1 300
for the fifth year..... ATS 1 400
for the sixth year ATS 1 900
for the seventh year..... ATS 2 400
for the eighth year..... ATS 3 400
for the ninth year..... ATS 4 200
for the tenth year..... ATS 5 100
for the eleventh year..... ATS 6 400
for the twelfth year..... ATS 7 200
for the thirteenth year..... ATS 8 000
for the fourteenth year..... ATS 11 700
for the fifteenth year..... ATS 14 700
for the sixteenth year..... ATS 16 000
for the seventeenth year..... ATS 20 000
for the eighteenth year..... ATS 24 000
for the nineteenth year..... ATS 24 000
for the twentieth year..... ATS 24 000."

19. § 172 shall be canceled.

20. § 173, Z 2 shall read:

"2. ... as regards § § 18 and 49, para 4, § § 147 to 156, 158 to 162 and 165 the Federal Minister of Justice,"

21. § 173, Z 3 shall be canceled; the previous Z 4 to 8 shall be designated "Z 3 to 7".

22. § 173 a shall be designated "§ 173 a (1)"; the following para 2 shall be added:

"(2) For the duration and expiry of patents based on patent applications filed prior to December 1st, 1984, article VI of the 1984 patent law amendment, Federal Law Gazette No 234/1984 shall continue to apply, but the duration of these patents shall be at least 20 years after application. For patents for which the due date for paying of the annual fee for the 19th year falls between January 1st, 1996 and June 30th 1996 no extra fee shall be payable upon payment after the due date. Rights to which claims were made by the military and monopoly administrations according to § § 24 and 25 prior to January 1st, 1996, § § 24, 25 and 173 Z 3 shall be applied in the version effective prior to January 1st, 1996."

23. The following paras 4 and 5 shall be added to § 174:

"(4) § § 22 and 28, para 1, § § 36, 37 and 47, para 1, § 80, para 1, § 81, para 7, § § 110 and 112, para 2, § 137, para 2, § § 155 and 166, para 3, § 173, Z 2 to 7 and § 173 a in the version as published in Federal Law Gazette No 181/1996 shall enter into force as at January 1st, 1996.

(5) § 24, 25, the heading of § 29, the headings of § 38, § § 38 to 42 and 47, para 3, § 110, para 2, the headings of § 164 and § § 164, 172 and § 173, Z 3 shall be abrogated as at December 31st, 1995."

Article II

The Law Introducing Patent Treaties, Federal Law Gazette No 52/1970, in the latest amended version as published in Federal Law Gazette No 418/1992, shall be amended as follows:

1. § 8, para 2 shall read:

"(2) The amount of the annual fees to be paid in accordance with para 1 to the Austrian Patent Office shall be determined according to § 166, para 3 of the Patent Law."

2. The following para 3 shall be added to § 25:

"(3) § 8, para 2 and § 26, para 4, in the version as published in Federal Law Gazette No 181/1996 shall enter into force at the beginning of the third month following the announcement of the Federal Law as published in Federal Law Gazette No 181/1996."

3. The following para 4 shall be added to § 26:

"(4) § 8, para 2 in the previously valid version shall continue to be applicable to European patents made out prior to the entering into force of the Federal Law as published in Federal Law Gazette No 181/1996."