

ABBOZZ TA' LIĠI
msejjah

ATT biex jemenda l-Att dwar il-Privattivi Industrijali u d-Disinni, Kap. 417, u biex jipprovi dwar materji ancillari jew li għandhom x'jaqsmu miegħu.

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

1. (1) It-titolu fil-qosor ta' dan Att huwa l-Att tal-2014 li jemenda l-Att dwar il-Privattivi Industrijali u d-Disinni, u dan l-Att għandu jinqara u jftiehem haġa waħda mal-Att dwar il-Privattivi Industrijali u d-Disinni, hawnhekk iżjed 'il quddiem f'dan l-Att imsejjah "l-Att prinċipali".

Titolu fil-qosor u bidu fis-seħh. Kap. 417.

(2) Id-dispożizzjonijiet ta' dan l-Att jidhlu fis-seħh f'dik id-data li l-Ministru responsabbli għall-protezzjoni tal-proprjeta industrijali jista', b'avviż fil-Gazzetta, jistabbilixxi u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew għal għanijiet differenti ta' dan l-Att.

2. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 2 tal-Att prinċipali.

(a) minnufih qabel it-tifsira "il-Kontrollur" għandha tizzied din it-tifsira ġdida li ġejja:

"invenzjoni skedata" tfisser invenzjoni tax-xorta elenkata f'regolamenti li l-Ministru jista' jagħmel minn żmien għal żmien;"

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(b) minnufih wara t-tifsira "il-Kontrollur" għandha tiżdied din it-tifsira ġdida li ġejja:

" "Konvenzjoni dwar il-Privattivi Ewropea" tfisser il-Konvenzjoni dwar l-Għoti ta' Privattivi Ewropej, magħmula f'Munich fil-5 ta' Ottubru 1973, kif riveduta u emendata minn żmien għal żmien;"

(ċ) minnufih wara t-tifsira ġdida "Konvenzjoni dwar il-Privattivi Ewropea" għandha tiżdied din it-tifsira ġdida li ġejja:

" "Il-Konvenzjoni ta' Pariġi" tfisser il-Konvenzjoni ta' Pariġi għall-Protezzjoni tal-Proprjetà Industrijali, magħmula f'Pariġi fl-20 ta' Marzu 1883, kif riveduta u emendata minn żmien għal żmien;"

(d) minnufih wara t-tifsira "Trattat ta' Budapest" għandha tiżdied din it-tifsira ġdida li ġejja:

" "Trattat fuq Ko-operazzjoni dwar Privattivi" tfisser it-Trattat magħmul f'Washington fid-19 ta' Ġunju 1970, kif rivedut u emendat minn żmien għal żmien;"

(e) minnufih wara t-tifsira ġdida "Trattat fuq Ko-operazzjoni dwar Privattivi" għandha tiżdied din it-tifsira ġdida li ġejja:

" "l-Uffiċċju" tfisser l-Uffiċċju mmexxi mill-Kontrollur tal-Proprjetà Industrijali;" u

(f) minnufih wara t-tifsira ġdida "l-Uffiċċju" għandha tiżdied din it-tifsira ġdida li ġejja:

" "Uffiċċju Ewropew dwar il-Privattivi" jew "EPO" tfisser l-Uffiċċju tal-Organizzazzjoni Ewropea dwar il-Privattivi mwaqqaf bil-Konvenzjoni dwar l-Għoti ta' Privattivi Ewropej tal-5 ta' Ottubru 1973, kif riveduta u emendata minn żmien għal żmien;"

Emenda tal-artikolu 5 tal-Att prinċipali.

3. Is-subartikolu (2) tal-artikolu 5 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"(2) L-arti prijuri tfisser dak kollu li kien disponibbli għall-pubbliku f'għamla miktuba jew xort'ohra grafika b'deskrizzjoni orali, b'uzu jew b'kull mod ieħor x'imkien ieħor fid-dinja qabel id-data tal-prezentata jew, meta tiġi vantata l-prijorità, qabel id-data tal-prijorità tal-applikazzjoni:

Iżda hija biss id-data tal-preżentata li għandha titqies bil-għan li tiġi determinata l-arti prijuri, meta t-talba għal prijorità tkun giet irtirata jew miċhuda jew revokata."

4. Is-subartikolu (2) tal-artikolu 10 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Emenda tal-artikolu 10 tal-Att prinċipali.

"(2) Meta żewġ applikazzjonijiet jew aktar ikunu ġew ippreżentati minn persuni differenti dwar l-istess invenzjoni u l-inventuri involuti jkunu għamli l-invenzjoni indipendentement minn xulxin, id-dritt għal privattiva għal dik l-invenzjoni għandu jappartjeni lill-applikant li l-applikazzjoni tiegħu jkollha l-iktar data tal-preżentata kmieni jew, meta tiġi vantata l-prijorità, l-iktar data ta' prijorità li tiġi kmieni:

Iżda -

(a) l-ewwel applikazzjoni għandha tkun giet pubblikata; u

(b) id-data tal-prijorità ta' applikazzjoni m'għandhiex titqies mill-Kontrollur meta jkun qiegħed iqis l-applikazzjonijiet involuti jekk:

(i) it-talba għal prijorità tiġi irtirata;

(ii) it-talba għal prijorità tiġi miċhuda jew revokata mill-Kontrollur jew mit-Tribunal dwar il-Privattivi jew mill-Qorti tal-Appell, kif jista' jkun il-każ."

5. Fil-paragrafu (e) tas-subartikolu (1) tal-artikolu 13 tal-Att prinċipali, minflok il-kliem "tal-invenzjoni." għandhom jidhlu l-kliem "tal-invenzjoni:" u minnufih wara dan għandu jizded dan il-paragrafu ġdid li ġej:

Emenda tal-artikolu 13 tal-Att prinċipali.

"(f) it-titolu tal-invenzjoni, li għandu b'mod ċar u preċiż jiddikjara xi tkun it-tismija teknika tal-invenzjoni, iżda l-htigiet imsemmija fil-paragrafi (a) sa (f) għandhom ikunu ukoll japplikaw għal applikazzjonijiet li jkunu għadhom pendenti meta dan il-paragrafu jibda jsehħ."

6. L-artikolu 23 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 23 tal-Att prinċipali.

"23. (1) Meta tkun giet ippreżentata applikazzjoni għal privattiva u din ma tkunx giet irtirata, l-Uffiċċju għandu jiddeċiedi jekk l-applikazzjoni tkunx konformi mal-htigiet ta'

dawn l-artikoli u ma' kull regolament kif jista' jigi stipulat.

(2) Jekk l-Uffiċċju jirriżultalu li mhux il-htigiet formali kollha jkunu ġew imħarsa, l-Uffiċċju għandu jitlob lill-applikant jemenda l-applikazzjoni hekk kif jista' jigi ordnat jagħmel sabiex jikkonforma ruħu ma' dawk il-htigiet.

(3) Jekk l-applikant jonqos milli jagħmel dawk l-emendi fiż-żmien mogħti lilu mid-data tal-ħruġ tat-talba mill-Uffiċċju, il-Kontrollur għandu jiċhad l-applikazzjoni u jgħarraf b'dan lill-applikant.

(4) Wara tmintax-il xahar mid-data tal-prezentata l-Uffiċċju għandu jippubblika l-applikazzjoni kif stipulat:

Iżda meta tiġi vantata l-prijorità, l-Uffiċċju għandu jippubblika l-applikazzjoni tmintax-il xahar mid-data tal-prijorità kemm-il darba t-talba għall-prijorità ma tkunx giet fil-frattemp irtirata jew miċhuda:

Iżda wkoll l-Uffiċċju m'għandux jippubblika l-applikazzjoni jekk l-applikazzjoni tiġi rtirata jew miċhuda qabel ma jgħaddu sbatax-il xahar mid-data tal-prezentata."

Żjieda tal-artikolu 23A ġdid mal-Att prinċipali.

7. Minnufih wara l-artikolu 23 tal-Att prinċipali, għandhom jiżdiedu dawn l-artikoli godda li ġejjin:

"Prezentata tar-rapport ta' riċerka u tal-opinjoni motivata.

23A. (1) Il-Kontrollur ikun jista' jitlob lill-applikant għal privattiva biex jipprezenta rapport ta' riċerka flimkien ma' opinjoni motivata mahruġa minn awtorità ta' riċerka internazzjonali rikonoxxuta mill-Organizzazzjoni Dinjija għall-Proprietà Intellettuali, hekk kif jista' jigi stabbilit mill-Kontrollur.

(2) L-ispejjeż kollha li jkollhom x'jaqsmu mal-ksib tar-rapport ta' riċerka u mal-opinjoni motivata għandhom jithallsu minn min japplika."

Thassir tal-artikolu 25 tal-Att prinċipali.

8. L-artikolu 25 tal-Att prinċipali għandu jithassar.

Żjieda tat-Taqsima VIIA ġdida u l-artikoli 25 sa 25B fl-Att prinċipali.

9. Minnufih wara t-Taqsima VII tal-Att prinċipali għandha tiżdied din it-Taqsima u l-artikoli godda li ġejjin:

**"TAQSIMA VIIA
INVENZJONIJIET SKEDATI**

Kif tapplika t-Taqsima għall-invenzjonijiet skedati kollha..

25. Id-dispożizzjonijiet ta' din it-Taqsima għandhom ikunu japplikaw għall-invenzjonijiet skedati li dwarhom ikun qiegħed jiġi mitlub il-harsien tagħhom permezz ta' privattiva f'Malta.

Din it-Taqsima tissupera d-dispożizzjonijiet tat-Taqsimiet VI u VII.

25A. Minkejja d-dispożizzjonijiet tat-Taqsimiet VI u VII fil-każ ta' invenzjoni skedata għandhom japplikaw id-dispożizzjonijiet ta' din it-Taqsima.

Harsien permezz ta' privattiva għal invenzjoni skedata.

25B. Il-harsien permezz ta' privattiva f'Malta għal invenzjoni skedata għandu jkun biss possibbli permezz ta' privattiva li tingħata wara applikazzjoni pprezentata u pprocessata taħt it-Trattat fuq Ko-operazzjoni dwar Privattivi jew taħt il-Konvenzjoni dwar il-Privattivi Ewropea."

10. Fis-subartikolu (1) tal-artikolu 28 tal-Att prinċipali, minflok il-kliem "taħt l-artikolu 25" għandhom jidhlu l-kliem "taħt l-artikolu 23".

Emenda tal-artikolu 28 tal-Att prinċipali.

11. L-artikolu 44 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 44 tal-Att prinċipali.

"Revoka ta' privattiva.

44. (1) Kull min ikun irid li privattiva tiġi revokata jista' wara l-pubblikazzjoni li tkun ingħatat il-privattiva jipprezenta avviż għal revoka jew quddiem il-Kontrollur jew quddiem it-Tribunal dwar il-Privattivi.

(2) Avviż għal revoka ta' privattiva pprezentat quddiem il-Kontrollur jista' jsir biss:

(a) meta l-privattiva tkun tirrigwarda invenzjoni li qabel id-data tal-prezentata jew, meta tiġi vantata l-prijorità, qabel id-data tal-prijorità tal-applikazzjoni ta' dik il-privattiva, dwarha diġà teżisti privattiva pubblikata; jew

(b) dwar privattiva meta jkun hemm talba għall-prijorità, minhabba f'illi -

(i) l-applikazzjoni għal privattiva li abbażi tagħha tkun intalbet prijorità kienet giet oriġinarjament ippreżentata f'xi ufficċju tal-privattivi ieħor aktar minn sena qabel id-data tal-preżentata tal-applikazzjoni tal-privattiva li dwarha ikun gie preżentat avviż għal revoka quddiem il-Kontrollur; u

(ii) l-applikazzjoni li abbażi tagħha tkun intalbet prijorità jew il-privattiva li tirriżulta gew pubblikati mill-ufficċju tal-privattivi l-ieħor imsemmi fis-subparagrafu (i) qabel id-data tal-preżentata tal-applikazzjoni tal-privattiva li dwarha ikun gie preżentat avviż għal revoka quddiem il-Kontrollur:

Izda għandha ssir riferenza għaż-żewġ motivazzjonijiet fis-subparagrafu (i) u fis-subparagrafu (ii) fil-każ ta' avviż għal revoka ppreżentat taht il-paragrafu (b).

(3) Avviż għal revoka abbażi tal-motivazzjonijiet hawn qabel imsemmija ma jistax jiġi ppreżentat quddiem it-Tribunal dwar il-Privattivi jekk dan ikun digà gie ppreżentat quddiem il-Kontrollur u viċi versa.

(4) Avviż għal revoka ppreżentat direttament quddiem it-Tribunal dwar il-Privattivi jista' jissejjes biss fuq dawn il-motivazzjonijiet li ġejjin:

(a) li dwar dik il-materja tal-privattiva ma tistax tinhareg privattiva dwarha taht il-kundizzjonijiet tal-artikoli 4 sa 7;

(b) li l-privattiva ma tiżvelax l-invenzjoni b'mod biżżejjed ċar u sħiħ biex din tkun tista' titwettag minn persuna li jkollha sengħa f'dik l-arti kif stipulat fl-artikolu 15;

(ċ) li d-dritt għall-privattiva ma jkunx jappartjeni lill-persuna li tkun inghatatilha l-privattiva taht il-kundizzjonijiet tal-artikoli 10 u 11;

(d) li l-materja tal-privattiva tkun testendi lil hinn mill-kontenut tal-applikazzjoni kif ipprezentata jew, jekk il-privattiva ngħatat abbażi ta' applikazzjoni diviżjonali, lil hinn mill-kontenut tal-applikazzjoni pprezentata aktar kmieni bla ħsara għal kull azzjoni li titwettaq taħt l-artikoli 20 u 41; u

(e) li l-harsien mogħti mill-privattiva ikun ġie estiż b'emenda li ma jkunx imissha thalliet issir.

(5) Avviż ta' revoka għandu jkun jinkludi:

(a) motivazzjonijiet dettaljati li abbażi tagħhom tkun qegħda tiġi vantata r-revoka tal-privattiva;

(b) talba biex il-privattiva tkun revokata.

(6) Avviż għal revoka quddiem il-Kontrollur jew it-Tribunal għandha tiġi pprezentata flimkien mad-dritt stabbilit meta dak id-dritt ikun ġie stipulat u -

(a) fil-każ ta' avviż ta' revoka pprezentat abbażi tas-subartikolu (2)(a), dan għandu wkoll jkollu miegħu kopja ċertifikata tal-privattiva pubblikata msemmija f'dak il-paragrafu;

(b) fil-każ ta' avviż ta' revoka pprezentat abbażi tas-subartikoli (2)(b) u (4)(a) sa (e), kopji ċertifikati ta' dokumentazzjoni li fuqhom ikunu msejsa l-motivazzjonijiet imsemmija f'dawk il-paragrafi.

(7) Meta ma jitharsux il-htigiet hawn qabel imsemmija, dawn jagħmlu l-avviż għal revoka wieħed inammissibli.

(8) Jekk il-motivazzjonijiet għar-revoka jkunu jolqtu l-privattiva biss f'parti minnha, kull revoka dikjarata għandha tkun fil-forma ta' limitazzjoni korrispondenti tal-privattiva.

(9) Privattiva u l-applikazzjoni li tkun imsejsa fuqha għandhom, sal-limitu li l-privattiva tkun giet revokata, jitqiesu li jkunu ġew invalidati u li qatt ma kellhom l-effetti msemmija fl-artikoli 27 u 28:

Izda dan m'għandu jkun jolqot:

(a) ebda deċiżjoni fuq xi kontravvenzjoni li tkun saret waħda finali u kienet infurzata qabel id-deċiżjoni ta' revoka; jew

(b) ebda kuntratt magħmul qabel id-deċiżjoni ta' revoka, sakemm dan ikun twettaq qabel li deċiżjoni, bla hsara għad-dritt, minhabba f'motivazzjonijiet ta' ekwità, ta' hlas lura sa limitu ġustifikat biċ-ċirkostanzi, ta' ammonti mħallsa taht il-kuntratt rilevanti."

Żjieda tal-artikoli 44A sa 44D godda fl-Att prinċipali.

12. Minnufih wara l-artikolu 44 tal-Att prinċipali għandhom jiżdiedu dawn l-artikoli godda li ġejjin:

"Proċedura wara li jiġi irċevut avviz ta' revoka.

44A. (1) Fil-każ ta' avviz ta' revoka pprezentat quddiem il-Kontrollur, dan l-aħħar imsemmi għandu kemm jista' jkun malajr meta jirċievi dak l-avviz u d-dritt preskritt, jekk ikun japplika dritt bħal dak, jgħaddi l-avviz lis-sid tal-privattiva inkwistjoni fl-indirizz fejn għandu jiġi notifikat f'Malta u għandu jgħarrfu li fi żmien disghin ġurnata mid-data meta jiġi notifikat bl-avviz ta' revoka huwa għandu jipprezenta risposta li fiha jindika b'mod ċar jekk ikunx qiegħed jaċċetta li l-privattiva tiegħu tiġi revokata:

Izda, jekk ikun jidher li s-sid tal-privattiva li lilu dak l-avviz ta' revoka ikun ser jiġi notifikat, ikun jinsab imsiefer, jew li ma jkunx jista' jintlaħaq aċċess għal fejn ikollu jiġi notifikat f'Malta, jew li ma jkunx magħruf fejn ikollu jiġi notifikat f'Malta, il-Kontrollur jista' jgħieghel li minghajr dewmien tiġi pubblikata, kif jista' jkun preskritt, taqsira tal-

avviż ta' revoka. In-notifika titqies li tkun saret fit-tielet ġurnata tax-xogħol wara d-data tal-pubblikazzjoni. Il-Kontrollur jista' wkoll jadotta dawk il-miżuri l-oħra kollha li jista' jqis li jkunu xierqa biex jinnotifika lis-sid tal-privattiva bl-avviż ta' revoka.

(2) Ir-risposta lill-Kontrollur għandha tkun tinkludi:

(a) indikazzjoni ċara dwar jekk is-sid tal-privattiva jkunx jaqbel jew le mal-avviż għal revoka;

(b) jekk s-sid tal-privattiva ma jkunx jaqbel mal-avviż għal revoka, il-motivazzjonijiet dettaljati li fuqhom ikun qiegħed isejjes in-nuqqas ta' qbil tiegħu flimkien ma' kopji ċertifikati ta' dokumentazzjoni li tkun qegħda ssir riferenza għaliha.

(3) Meta ma jitharisx it-terminu mogħti mill-Kontrollur jew il-htigiet hawn qabel imsemmija, dawn jagħmlu r-risposta waħda inammissibli.

(4) Il-Kontrollur għandu jibda proċedimenti quddiem arbitru biex jiddeċiedi l-każ li jkollu quddiemu wara disgħin ġurnata mid-data meta huwa jkun gie notifikat bl-avviż għal revoka lis-sid tal-privattiva:

Iżda jekk is-sid tal-privattiva jgħarraf lill-Kontrollur bil-miktub li huwa jaċċetta l-avviż għal revoka, il-Kontrollur għandu jirrevoka l-applikazzjoni għall-privattiva.

(5) Meta l-arbitru jasal għal deċiżjoni, il-Kontrollur għandu jgħarraf lill-parti li tkun qegħda titlob ir-revoka u lil sid-il privattiva kif dovut.

(6) (a) Il-Kontrollur għandu mbagħad jirreġistra d-deċiżjoni tal-arbitru kif imiss u għandu kemm jista' jkun malajr jippubblika avviż ta' dik id-deċiżjoni kif jista' jkun preskritt.

(b) Parti li tappella mid-deċiżjoni tal-arbitru għandha fi żmien għaxart ijiem minn meta jiġi pprezentat dak l-appell tgħarraf lill-arbitru li jkun sar dan.

(ċ) L-avviż imsemmi fil-paragrafu (a) għandu jkun minghajr preġudizzju għal kull dritt ta' appell mid-deċiżjoni tal-arbitru. Meta tinghata deċiżjoni finali fl-appell li tkun tibdel jew tirrevoka d-deċiżjoni tal-arbitru, il-Kontrollur għandu jirreġistra dik id-deċiżjoni kif imiss u jipubblikaha kif jista' jkun preskritt.

Proċedura li għandha tiġi adottata mit-Tribunal dwar il-Privattivi.

44B. (1) Fil-każ ta' avviż għal revoka pprezentat direttament quddiem it-Tribunal dwar il-Privattivi, it-Tribunal għandu, kemm jista' jkun malajr malli jirċievi l-avviż għal revoka ta' privattiva, jinnotifika lis-sid tal-privattiva li għandu fi żmien disgħin gurnata mid-data tan-notifika jipprezenta r-risposta tiegħu.

(2) It-Tribunal dwar il-Privattivi għandu jisma' u jiddeċiedi l-każ dwar irrevoka kemm jista' jkun possibbli fi żmien disa' xhur mid-data meta jinbeda l-każ.

(3) It-Tribunal dwar il-Privattivi għandu jirregola l-proċedura tiegħu nnifsu.

Revoka ta' talba għall-prijorità.

44Ċ. (1) Kull min ikun irid li tiġi revokata talba għall-prijorità jista', wara l-pubblikazzjoni tal-għoti tal-privattiva, jipprezenta avviż għal revoka quddiem il-Kontrollur.

(2) Avviż ta' revoka ta' talba għall-prijorità jista' jiġi biss ipprezentat abbazi li l-applikazzjoni għal privattiva li dwarha tkun intalbet priyorità, kienet giet originarjament ipprezentata aktar minn sena qabel id-data tal-prezentata tal-applikazzjoni tal-privattiva li dwarha ikun gie prezentat avviż għal revoka quddiem il-Kontrollur:

Iżda avviż ta' revoka tat-talba għall-prijorità jista' jiġi pprezentat biss quddiem il-Kontrollur.

(3) Avviż għal revoka ta' talba għall-prijorità għandu jkun jinkludi:

(a) motivazzjonijiet dettaljati li abbazi tagħhom tkun qegħda tiġi vantata r-revoka tat-talba għall-prijorità, li tkun tinkorpora riferenzi għal kull dokumentazzjoni rilevanti; u

(b) pretenzjoni li t-talba għall-prijorità tiġi miċhuda.

(4) Avviż għal revoka ta' talba għall-prijorità għandu jiġi ppreżentat flimkien mad-dritt preskritt, meta dak id-dritt ikun gie stipulat, u kopji ċertifikati ta' kull dokumentazzjoni li tkun saret riferenza għaliha kif hemm fis-subartikolu (3)(a).

(5) Meta ma jiġiharsux il-htigiet hawn qabel imsemmija, dawn jagħmlu l-avviż għal revoka ta' talba għall-prijorità wiehed inammissibli.

Dmirijiet tal-Kontrollur wara li jirċievi l-avviż.

44D. (1) Meta jirċievi avviż għal revoka ta' talba għall-prijorità il-Kontrollur għandu, kemm jista' jkun malajr meta jirċievi dak l-avviż u, meta jkun japplika wkoll id-dritt preskritt, jgħaddi l-avviż lill-proprjetarju tal-privattiva inkwistjoni fl-indirizz fejn għandu jiġi notifikat f'Malta u għandu jgħarrfu li fi żmien disgħin ġurnata mid-data meta jiġi notifikat bl-avviż għal revoka ta' talba għall-prijorità huwa jista' jippreżenta risposta li fiha jindika b'mod ċar jekk ikunx jaċċetta jew le li t-talba għall-prijorità involuta tiġi revokata:

Iżda jekk ikun jidher li l-proprjetarju tal-privattiva li lilu jkun ser jiġi notifikat dak l-avviż għal revoka ta' talba għall-prijorità ikun jinsab imsiefer, jew li ma jkunx jista' jintlaħaq aċċess għal fejn ikollu jiġi notifikat f'Malta, jew ma jkunx magħruf fejn ikollu jiġi notifikat f'Malta, il-Kontrollur jista' jgħiegħel li mingħajr dewmien tiġi pubblikata, kif jista' jkun preskritt, taqsira tal-avviż għal revoka ta' talba għall-prijorità. F'dawk il-kazijiet, in-notifika titqies li tkun saret fit-tielet ġurnata tax-xogħol wara l-pubblikazzjoni. Il-Kontrollur jista' wkoll jadotta dawk il-miżuri l-oħra kollha li jista' jqis li jkunu xierqa biex jinnotifika lill-proprjetarju tal-privattiva bl-avviż għal revoka ta' talba għall-prijorità.

(2) Ir-risposta lill-Kontrollur għandha tkun tinkludi:

(a) indikazzjoni ċara dwar jekk is-sid tal-privattiva jkunx jaqbel jew le mal-avviż għal revoka;

(b) jekk l-proprjetarju ma jkunx jaqbel mal-avviż għal revoka, il-motivazzjonijiet dettaljati li fuqhom ikun qiegħed isejjes in-nuqqas ta' qbil tiegħu flimkien ma' kopji ċertifikati ta' dokumentazzjoni li tkun qegħda ssir riferenza għaliha.

(3) Meta ma jitharisx it-terminu mogħti mill-Kontrollur, jew il-ħtiġiet hawn qabel imsemmija, dan jagħmel ir-risposta waħda inammissibli.

(4) Il-Kontrollur għandu jibda proċedimenti quddiem arbitru biex jiddeċiedi l-każ li jkollu quddiemu wara disgħin ġurnata mid-data meta huwa jkun gie notifikat bl-avviż għal revoka ta' talba għall-prijorità lis-sid tal-privattiva:

Izda jekk l-proprjetarju jgħarraf lill-Kontrollur bil-miktub li huwa jaċċetta l-avviż ta' revoka, il-Kontrollur għandu jiċhad it-talba għall-prijorità.

(5) Meta l-Kontrollur jasal għal deċiżjoni huwa għandu jgħarraf lill-persuna li tkun ipprezentat l-avviż ta' revoka, u lis-sid tal-privattiva kif dovut.

(6) (a) Il-Kontrollur għandu mbagħad jirreġistra d-deċiżjoni tal-arbitru kif imiss u għandu kemm jista' jkun malajr jippubblika avviż ta' dik id-deċiżjoni kif jista' jkun preskritt.

(b) Parti li tappella mid-deċiżjoni tal-arbitru għandha fi żmien għaxart ijiem minn meta jiġi pprezentat dak l-appell tgħarraf lill-Kontrollur li jkun sar dan.

(ċ) L-avviż imsemmi fis-subparagrafu (a) għandu jkun mingħajr preġudizzju għall kull dritt ta' appell mid-deċiżjoni tal-arbitru. Meta tingħata deċiżjoni finali fl-appell li tkun tibdel jew tirrevoka d-deċiżjoni tal-arbitru, il-Kontrollur għandu jirreġistra dik id-deċiżjoni kif imiss u jippubblikaha kif jista' jkun preskritt."

13. L-artikolu 45 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 45 tal-Att prinċipali.

"45. (1) Tista' tittiehed azzjoni dwar ir-revoka ta' privattiva ukoll jekk il-privattiva tkun skadiet.

(2) Meta deċiżjoni dwar ir-revoka ta' privattiva, kollha kemm hi jew f'parti minnha, issir waħda finali quddiem it-Tribunal dwar il-Privattivi, it-Tribunal għandu javża lill-Uffiċċju tal-Kontrollur li għandu kemm jista' jkun malajr jirreġistra d-deċiżjoni fir-reġistru tal-privattivi u jippubblika dik id-deċiżjoni kif jista' jkun preskritt.

(3) Meta tittiehed deċiżjoni dwar ir-revoka ta' privattiva, kollha kemm hi jew f'parti minnha, mill-arbitru, il-Kontrollur għandu kemm jista' jkun malajr jirreġistra dik id-deċiżjoni fir-reġistru tal-privattivi u jippubblika dik id-deċiżjoni kif jista' jkun preskritt."

14. L-artikolu 47 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 47 tal-Att prinċipali.

(a) is-subartikolu (2) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(2) Rikors għal taħrika dwar id-danni taht is-subartikolu (1) jista' jsir quddiem it-Tribunal dwar il-Privattivi mingħajr preġudizzju għad-dritt ta' dik il-persuna li tapplika għall-ħruġ ta' mandat kawtelatorju kif previst fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili biex jiġiharsu d-drittijiet tagħha."; u

Kap. 12.

(b) fis-subartikolu (3) tiegħu, minflok il-kliem "Il-Qorti tista'," u "tordna" għandhom jidhlu l-kliem "It-Tribunal dwar il-Privattivi jista'," u "jordna" rispettivament.

15. L-artikolu 48 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 48 tal-Att prinċipali.

"48. (1) Il-proċedimenti dwar kontravvenzjoni għandhom jingiebu quddiem it-Tribunal dwar il-Privattivi u ma jistgħux jinbnew wara hames snin mid-data meta l-parti aggravata tkun saret taf bil-kontravvenzjoni u bl-identità tal-persuna li tkun qegħda tiġi allegata bil-kontravvenzjoni.

(2) Meta l-materja tal-privattiva jew l-applikazzjoni għal privattiva tkun proċess għall-ksib ta' prodott ġdid, meta l-istess prodott jiġi manifatturat minn xi parti oħra, dan għandu fl-assenza ta' prova kuntrarja jitqies li jkun inkiseb bil-proċess li johroġ mill-privattiva jew bil-proċess kontenut fl-applikazzjoni għal privattiva. Meta tkun qegħda tiġi evalwata prova kuntrarja mill-konvenut, għandha tingħata konsiderazzjoni għall-interessi legittimi tal-konvenut fil-harsien tas-sigriet ta' manifattura u kummerċjali tiegħu mit-Tribunal dwar il-Privattivi.

(3) It-Tribunal dwar il-Privattivi għandu jwaqqaf proċedimenti għal kontravvenzjoni dwar -

(a) applikazzjoni għal privattiva pprezentata quddiem il-Kontrollur sa wara li tkun ittiehdet deċiżjoni finali mill-Kontrollur li jagħti jew jiċhad privattiva wara applikazzjoni;

(b) applikazzjoni għal privattiva pprezentata fl-EPO sa wara li tkun ittiehdet deċiżjoni finali mill-EPO li tagħti jew tiċhad privattiva wara applikazzjoni.

(4) Il-konvenut fi proċedimenti msemmija f'dan l-artikolu jista', fl-istess proċedimenti, jitlob ir-revoka tal-privattiva minhabba f'xi motivazzjoni minn dawk imsemmija fl-artikolu 44. F'kull każ bħal dak, il-Kontrollur għandu jkun parti fil-proċedimenti."

Emenda tal-artikolu 49 tal-Att prinċipali.

16. L-artikolu 49 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu, minflok il-kliem "l-Prim'Awla tal-Qorti Ċivili tiddikjara" għandhom jidhlu l-kliem "t-Tribunal dwar il-Privattivi jiddikjara";

(b) fis-subartikolu (2) tiegħu, minflok il-kliem "il-Qorti għandha tagħti" għandhom jidhlu l-kliem "it-Tribunal għandu jagħti"; u

(ċ) is-subartikolu (5) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(5) Salv meta r-revoka tintalab taht l-artikolu 48(4), proċedimenti għal dikjarazzjoni ta' nuqqas ta' kontravvenzjoni jistgħu jinbdew flimkien ma' proċedimenti dwar ir-revoka tal-privattiva."

17. L-artikolu 58 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Sostituzzjoni tal-artikolu 58 tal-Att prinċipali.

"Dritt ta' appell.

58. (1) Appell, li għandu jkollu l-effett ta' sospensjoni, jista' jsir minn deċiżjoni tal-Kontrollur jew tal-arbitru, kif ikun il-każ, meta d-deċiżjoni tkun tikkonsisti:

(a) f'każ ta' privattiva, u f'dak il-każ l-appell jista' jsir biss mill-applikant;

(b) f'każ ta' avviż għal revoka ta' privattiva, u f'dak il-każ l-appell jista' jsir biss mill-persuna li tkun qegħda tippreżenta l-avviż;

(c) f'akċettazzjoni ta' avviż għal revoka ta' privattiva, u f'dak il-każ l-appell jista' jsir biss mill-proprjetarju tal-privattiva;

(d) f'każ ta' avviż ta' revoka ta' talba għall-prijorità, u f'dak il-każ l-appell jista' jsir biss mill-persuna li tkun qegħda tippreżenta l-avviż;

(e) f'akċettazzjoni ta' avviż ta' revoka ta' talba għall-prijorità, u f'dak il-każ l-appell jista' jsir biss mill-proprjetarju tal-privattiva;

(f) f'każ ta' applikazzjoni għat-twaqqif mill-ġdid ta' drittijiet, u f'dak il-każ l-appell jista' jsir biss mill-proprjetarju tal-privattiva;

(g) f'każ ta' kull talba oħra tal-applikant għal privattiva jew proprjetarju ta' privattiva, u f'dak il-każ l-appell jista' jsir biss mill-applikant għall-privattiva jew mill-proprjetarju tal-privattiva rispettivament.

(2) L-appell imsemmi fis-subartikolu (1) jista' jsir biss fil-Qorti tal-Appell fi żmien tletin ġurnata mid-data tan-notifika tad-deċiżjoni tal-Kontrollur.

(3) Fil-każ ta' proċedimenti ta' revoka mibdiġin direttament quddiem it-Tribunal dwar il-Privattivi kif hemm fl-artikolu 44, kull parti fil-proċedimenti li thoss ruhha aggravata bid-deċiżjoni tat-Tribunal dwar il-Privattivi, tista' tappella quddiem il-Qorti tal-Appell fuq punti ta' liġi biss permezz ta' rikors li jiġi ppreżentat fir-reġistru ta' dik il-qorti fi żmien tletin gurnata mid-data tad-deċiżjoni tat-Tribunal dwar il-Privattivi.

Kap. 12.

(4) Il-Qorti tal-Appell għandha tkun magħmula kif hemm fl-artikolu 41(6) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Kap. 12.

(5) Il-Bord tar-Regoli tal-Qrati mwaqqaf taht l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jista' jagħmel regoli li jkunu jirregolaw appelli quddiem il-Qorti tal-Appell taht dan l-Att.

Kap. 12.

(6) Il-Qorti tal-Appell tista', dwar spejjeż, tagħmel ordni kif hemm fid-dispożizzjonijiet tal-artikolu 223 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili."

Żjieda ta' Taqsima XVIIIA u l-artikoli 58A sa 58C godda mal-Att prinċipali.

18. Minnufih wara t-Taqsima XVII tal-Att prinċipali għandhom jiżdiedu t-Taqsima u l-artikoli godda li ġejjin:

"TAQSIMA XVIIIA

TRIBUNAL DWAR IL-PRIVATTIVI

Tribunal dwar il-Privattivi.

58A. (1) Għandu jkun hemm Tribunal li jkun magħruf bħala t-Tribunal dwar il-Privattivi, li jkollu ġurisdizzjoni li jisma' u jiddeċiedi talbiet li jirrigwardaw t-talbiet għar-revoka ta' privattiva, talbiet ċivili għal kontravvenzjonijiet, applikazzjonijiet għal dikjarazzjonijiet ta' nuqqas ta' kontravvenzjoni u azzjonijiet kawtelatorji li jkollhom x'jaqsmu ma' dak kollu hawn qabel imsemmi, iżda talbiet għal danni li jirriżultaw minn xi kontravvenzjoni għandhom jibqgħu jiġu deċiżi mill-Prim'Awla tal-Qorti Ċivili.

(2) It-Tribunal dwar il-Privattivi għandu jinħatar mill-Prim Ministru u jkun jikkonsisti fi president, li jkun Imħallef jew Maġistrat, u żewġ membri oħra.

(3) Id-deċiżjonijiet tat-Tribunal dwar il-Privattivi għandhom jingħataw mill-president u jkunu jeħtieġu l-qbil tiegħu magħhom.

(4) Il-president u l-membri tat-Tribunal dwar il-Privattivi għandhom jinhatru għal żmien tliet snin u għandhom ikunu eligibbli li jerggħu jiġu maħtura.

(5) It-Tribunal dwar il-Privattivi għandu jkun indipendenti u m'għandux jaġixxi taħt id-direzzjoni jew il-kontroll ta' ebda persuna oħra fit-twettiq tal-funzjonijiet tiegħu.

Kap.12.

(6) It-Tribunal dwar il-Privattivi għandu għall-finijiet li jmexxi l-proċedimenti tiegħu jkollu l-istess setgħat bħal dawk mogħtija lill-Prim'Awla tal-Qorti Ċivili, bil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jew taħtu. Meta jkun qed jittratta xi rikors ipprezentat quddiemu, it-Tribunal dwar il-Privattivi għandu jagħti opportunità lill-partijiet kollha involuti biex iġibu l-provi u jagħmlu s-sottomissjonijiet tagħhom u jista' wkoll jordna li tinstama' kull xhieda oħra addizzjonali ta' espert u li tiġi assikurata l-fehma ta' espert hekk kif it-Tribunal jista' jqis li jkun meħtieġ. Fid-deċiżjoni tiegħu, it-Tribunal dwar il-Privattivi għandu wkoll jiddeċiedi dwar ir-responsabbiltà għall-ħlas ta' spejjeż li jsiru waqt il-proċedimenti inklużi spejjeż li jsiru għax-xhieda tal-espert jew għal riċerki jew opinjonijiet.

Kap.12.

(7) Il-president u l-membri tat-Tribunal dwar il-Privattivi jista' jiġi rikuzat jew jastjeni għal kull raġuni minn dawk li mħallef jista' jkun rikuzat jew jastjeni dwarhom kif hemm fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili. F'dak il-każ, il-Prim Ministru għandu jahtar persuna li jkollha l-istess kwalifiki bħal dawk tal-president jew tal-membri rikuzat jew li jkun qiegħed jastjeni, biex joqgħod minfloku.

(8) Membru tal-Kamra tad-Deputati, jew tal-Parlament Ewropew, jew ta' kunsill lokali, għandu jkun skwalifikat milli jinhatar jew milli jkompli jkun membru tat-Tribunal dwar il-Privattivi tul dak iż-żmien li membru jibqa' f'dik il-kariga.

(9) Il-president jew membru tat-Tribunal dwar il-Privattivi jista' jiġi biss imneħhi mill-kariga mill-Prim Ministru minhabba f'motivazzjonijiet ta' negliġenza gravi, konflitt ta' interess, inkompetenza, jew atti jew ommissjonijiet li ma jixirqux lil membru tat-Tribunal dwar il-Privattivi. Meta jkun qed jagħmel dan, il-Prim Ministru għandu jqiegħed quddiem il-Kamra tad-Deputati dikjarazzjoni fejn jagħti r-raġunijiet għat-tneħhija ta' dak il-president jew membru.

(10) Il-president jew membru tat-Tribunal dwar il-Privattivi m'għandu għal żmien sena wara t-terminazzjoni, tkun xi tkun ir-raġuni tagħha, tal-kariga tiegħu jieħu sehem f'ebda attività li, minhabba f'konflitt ta' interess, kienet tkun inkompatibbli mal-eżercizzju tal-funzjonijiet tiegħu. Kull min jikser id-dispożizzjonijiet ta' dan is-subartikolu jkun hati ta' reat kontra dan l-Att u jehel, meta jinsab hati, multa ta' mhux iżjed minn elfejn u ħames mitt euro (€2,500) u għandu jiġi impedit milli jinhatar f'xi kariga oħra bħal dik għal żmien mhux inqas minn għaxar snin.

(11) Il-Prim Ministru għandu jahtar persuna biex jagħmilha ta' segretarju tat-Tribunal dwar il-Privattivi li għandu jservi f'dik il-kapaċità kif xieraq skont l-istandards ta' etika li jixirqu l-pożizzjoni tiegħu.

(12) Il-Prim Ministru għandu jahtar avukat jew prokuratur legali biex jassisti lit-Tribunal dwar il-Privattivi.

(13) Ir-registru tal-Prim'Awla tal-Qorti Ċivili għandu jkun ir-registru tat-Tribunal dwar il-Privattivi.

(14) Il-Ministru responsabbli għall-gustizzja jista', b'regolamenti taħt dan l-artikolu, jistabbilixxi d-drittijiet li għandhom jithallsu fir-reġistru tal-qorti għall-preżentata ta' atti ġudizzjarji li jkollhom x'jaqsmu ma' proċedimenti taħt dan l-artikolu u l-artikolu 23A:

Kap. 12. Izda sakemm daww id-drittijiet jiġu hekk stabbiliti, għandhom japplikaw id-drittijiet fl-iSkeda A tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

Kap. 12. (15) Il-Bord imwaqqaf taħt l-artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jista' jagħmel Regoli tal-Qrati li jkunu jirregolaw il-proċedimenti quddiem it-Tribunal dwar il-Privattivi.

L-arbitru. 58B. (1) Għall-finijiet ta' dan l-Att, il-Ministru jista' jahtar lil xi persuna waħda jew aktar biex dawn iservu bħala arbitri fil-każijiet li jistgħu jiġu mgħoddija lilhom minn żmien għal żmien, madankollu hekk li:

(a) fil-każijiet kollha l-persuna hekk mahtura kellha *warrant* biex teżercita l-professjoni ta' avukat f'Malta għal mill-inqas seba' snin; u

(b) il-hatra għandha tkun għal żmien tlett snin u din tista' tiġġedded.

(2) L-arbitru għandu, qabel ma jibda jaqdi dmirijietu, jiehu l-ġurament tal-kariga quddiem l-Avukat Ġenerali fil-forma approvata mill-Ministru.

(3) (a) L-arbitru jkun jista' jiehu parir espert meta jkun hekk meħtieġ fid-diskrezzjoni tiegħu, u li jharrek lil kull persuna biex tidher quddiemu biex tixhed bil-ġurament u, jew iġġib magħha dokumenti; u għal dawn il-finijiet huwa jkollu s-setgħat mogħtija bil-liġi lill-Prim'Awla tal-Qorti Ċivili.

(b) Kull taħrika għandha tiġi ffirmata mill-arbitru u għandha jew tiġi notifikata jew personalment jew bil-posta reġistrata, u f'dan l-aħħar każ, biex issir prova tan-notifika, ikun biżżejjed li tingħata prova li it-taħrika kienet indirizzata sew u impustata.

(4) Il-kontrollur jew ir-rappreżentant tiegħu jkollhom jedd li jidhru u jinstemgħu fil-proċedimenti kollha li jsiru quddiem l-arbitru.

Kap. 12.

(5) L-arbitru għandu jastjeni milli jieħu konjizzjoni ta' xi każ jew jista' jiġi rikuzat f'xi waħda miċ-ċirkostanzi li fihom imħallef kien jastjeni jew jista' jiġi rikuzat skond id-dispożizzjonijiet tal-artikolu 734 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili u f'kull każ bħal dak id-dispożizzjonijiet tas-Sub-Titolu II tat-Titolu II tat-Tielet Ktieb ta' dak il-Kodiċi għandhom ikunu japplikaw safejn ikunu hekk applikabbli.

(6) L-arbitru għandu jkollu l-ġurisdizzjoni biex jisma' u jiddeċiedi talbiet li jsiru skond l-artikolu 44(2).

Responsabbiltà

58Ċ. Il-Kontrollur, l-arbitru u l-president u l-membri tat-Tribunal dwar il-Privattivi m'għandhomx jinżammu responsabbli għal xi att jew omissjoni mwettqa *bona fide* matul l-eżerċizzju tal-funzjonijiet tagħhom taħt dan l-Att."

Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz hu biex jipprovdi għall-introduzzjoni ta' skeda ta' invenzjonijiet li jistgħu jkunu protetti f'Malta jew taħt it-Trattat fuq Ko-operazzjoni dwar Privattivi jew taħt il-Konvenzjoni dwar il-Privattivi Ewropea, għat-twaqqif ta' Tribunal dwar il-Privattivi, il-kompożizzjoni u l-funzjonijiet tiegħu, kif ukoll għall-possibbiltà li wieħed japplika għal revoka ta' privattiva u talbiet għall-prijorità quddiem il-Kontrollur.

A BILL
entitled

AN ACT to amend the Patents and Designs Act (Cap. 417) and to make provision with respect to matters ancillary thereto or connected therewith.

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:-

1. (1) The short title of this Act is the Patents and Designs (Amendment) Act, 2014, and this Act shall be read and construed as one with the Patents and Designs Act, hereinafter referred to as "the principal Act".

Short title and commencement.
Cap. 417.

(2) The provisions of this Act shall come into force on such a 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 or different purposes of this Act.

2. Article 2 of the principal Act shall be amended as follows:

Amendment of article 2 of the principal Act.

(a) immediately after the definition "essential biological process for the production of plants and animals" there shall be added the following new definition:

" "European Patent Convention" means the Convention on the Grant of European Patents, done at Munich on 5th October 1973, as revised and amended from time to time;"

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(b) immediately after the new definition "European Patent Convention" there shall be added the following new definition:

" "European Patent Office" or "EPO" means the office of the European Patent Organisation established by the Convention on the Grant of European Patent of the 5th October 1973, as revised and amended from time to time;"

(c) immediately after the definition "Minister" there shall be added the following new definition:

" "the Office" means the Office headed by the Comptroller of Industrial Property;"

(d) immediately after the new definition "the Office" there shall be added the following new definition:

" "Paris Convention" means the Paris Convention for the Protection of Industrial Property, done at Paris on the 20th March 1883, as revised and amended from time to time;"

(e) immediately after the definition "patent" there shall be added the following new definition:

" "Patent Co-operation Treaty" means the Treaty done at Washington on 19th June 1970, as revised and amended from time to time;" and

(f) immediately after the definition "the register" there shall be added the following new definition:

" "scheduled invention" means an invention of a type listed in regulations as the Minister may from time to time prescribe;"

Amendment of article 5 of the principal Act.

3. Sub-article (2) of article 5 of the principal Act shall be substituted by the following:

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

Provided that only the filing date shall be taken into consideration for the purpose of determining prior art, when the

claim for priority had been withdrawn or refused or revoked."

4. Sub-article (2) of article 10 of the principal Act shall be substituted by the following: Amendment of article 10 of the principal Act.

"(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 -

- (a) the first application has been published; and
- (b) the priority date of an application shall be ignored by the Comptroller when considering the applications in question if:
 - (i) the claim for priority is withdrawn;
 - (ii) the claim for priority is refused or revoked by the Comptroller or the Patents Tribunal or the Court of Appeal, as the case may be."

5. In paragraph (e) of sub-article (1) of article 13 of the principal Act, for the words "of the invention." there shall be substituted the words "of the invention;" and immediately thereafter there shall be added the following new paragraph: Amendment of article 13 of the principal Act.

"(f) the title of the invention, which shall clearly and concisely state the technical designation of the invention, provided that the requirements stated in paragraphs (a) to (f) shall also apply to applications which are still pending at the time when this paragraph comes into force."

6. Article 23 of the principal Act shall be substituted by the following: Substitution of article 23 of the principal Act.

"23. (1) Where any application for a patent has been filed and not withdrawn, the Office shall determine whether the application complies with the requirements of these articles and any regulations as may be prescribed.

(2) If the Office finds that not all formal requirements have been complied with, the office shall request the applicant to amend the application as may be prescribed so as to comply

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with those requirements.

(3) If the applicant fails to make such amendments within the specified time from the date of issue of the request by the Office, the Comptroller shall refuse the application and inform the applicant accordingly.

(4) After eighteen months from the filing date the office shall publish the application as prescribed:

Provided that where priority is claimed, the Office shall publish the application eighteen months from the priority date unless the priority claim has in the meantime been withdrawn or rejected:

Provided further that the office shall not publish the application if the application is withdrawn or refused before the expiration of seventeen months from the filing date."

Addition of new article 23A to the principal Act.

7. Immediately after article 23 of the principal Act, there shall be added the following new article:

"Submission of search report and written opinion.

23A. (1) The Comptroller shall have the power to request the applicant for a patent to submit a search report accompanied by a reasoned opinion issued by an international search authority recognized by the World Intellectual Property Organisation, as may be determined by the Comptroller.

(2) All costs relating to the acquisition of the search report and reasoned opinion shall be borne by the applicant."

Deletion of article 25 of the principal Act.

8. Article 25 of the principal Act shall be deleted.

Addition of new Part VIIA and articles 25 to 25B in the principal Act.

9. Immediately after Part VII of the principal Act there shall be added the following new Part and articles:

"PART VIIA
SCHEDULED INVENTIONS

Applicability of this Part to all scheduled inventions.

25. The provisions of this Part shall apply to all scheduled inventions in respect of which patent protection is sought in Malta.

This Part
supersedes the
provisions of
Parts VI and
VII.

25A. Notwithstanding the provisions of Parts VI and VII in the case of a scheduled invention the provisions of this Part shall apply.

Patent
protection for
scheduled
invention.

25B. Patent protection in Malta for a scheduled invention shall only be possible through a patent granted following an application filed and processed under the Patent Co-operation Treaty or under the European Patent Convention."

10. In sub-article (1) of article 28 of the principal Act, for the words "under article 25" there shall be substituted the words "under article 23".

Amendment of
article 28 of the
principal Act.

11. Article 44 of the principal Act shall be substituted by the following:

Substitution of
article 44 of the
principal Act.

"Revocation of
a patent.

44. (1) Any person who wishes that a patent be revoked may, after publication of the grant of the patent, file a notice for revocation either with the Comptroller or before the Patents Tribunal.

(2) A notice for revocation of a patent filed with the Comptroller may only be made:

(a) where the patent concerns an invention in respect of which, before the filing date or, where priority is claimed, before the priority date of the application of said patent, there already exists a published patent; or

(b) in respect of a patent where there is a priority claim, on the grounds that -

(i) the application for a patent on the basis of which priority was claimed was originally filed at another Patent Office more than one year before the filing date of the application of the patent in respect of which a notice for revocation has been filed with the Comptroller; and

(ii) the application on the basis of which priority was claimed or the resulting patent were published by the other Patent Office referred to in sub-paragraph (i) before the filing date of the application of the patent in respect of which a notice for revocation has been filed with the Comptroller:

Provided that both the grounds in sub-paragraph (i) and sub-paragraph (ii) are cited in the case of a notice for revocation filed under paragraph (b).

(3) A notice for revocation on the above grounds may not be filed with the Patents Tribunal if it has already been filed before the Comptroller and vice versa.

(4) A notice for revocation filed directly before the Patents Tribunal may only be based on the following grounds:

(a) that the subject matter of the patent is not patentable within the terms of articles 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 article 15;

(c) that the right to the patent does not belong to the person to whom the patent was granted within the terms of articles 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 articles 20 and 41; and

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

(5) A notice of revocation shall include:

(a) detailed grounds on the basis of which the revocation of the patent is being sought;

(b) a request for the patent to be revoked.

(6) A notice for revocation before the Comptroller or the Tribunal shall be accompanied by the prescribed fee where such a fee has been prescribed and -

(a) in the case of a notice of revocation filed on the basis of sub-article (2)(a), it shall also be accompanied by a certified copy of the published patent referred to in that paragraph;

(b) in the case of a notice of revocation filed on the basis of sub-articles (2)(b) and (4)(a) to (e), it is accompanied by certified copies of documentation substantiating the grounds referred to in the said paragraphs.

(7) Non-compliance with any of the above requirements shall render the notice for revocation inadmissible.

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

(9) A patent and the application on which it is based shall, to the extent that the patent has been revoked, be deemed to have been invalidated and never to have had the effects referred to in articles 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 revocation; or

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(b) any contract concluded prior to the decision of revocation, 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."

Addition of new articles 44A to 44D in the principal Act.

12. Immediately after article 44 of the principal Act there shall be added the following new articles:

"Procedure following receipt of notice of revocation.

44A. (1) In the case of a notice of revocation filed with the Comptroller, the latter shall as soon as possible on receipt of said notice and the prescribed fee, if such fee is applicable, forward the notice to the owner of the patent in question at the address of service in Malta and shall inform him that within ninety days from the date of service to him of the notice of revocation he is to file a reply indicating clearly whether he accepts that his patent be revoked:

Provided that, if it appears that the owner of the patent upon whom such a notice of revocation is to be served, is abroad, or that access to his place of service in Malta cannot be obtained, or that his place of service in Malta is not known, the Comptroller may cause without delay a summary of the notice of revocation to be published as may be prescribed. Service shall be deemed to have been made on the third working day after the date of publication. The Comptroller may also adopt such other measures as he may deem fit to serve the owner of the patent with the notice of revocation.

(2) The reply to the Comptroller shall include:

(a) a clear indication of whether or not the owner of the patent is in agreement with the notice for revocation;

(b) if the owner of the patent is not in agreement with the notice for revocation, detailed grounds upon which he is basing his disagreement accompanied by certified copies of documentation to which reference is being made.

(3) Non-compliance with the deadline given by the Comptroller or the above requirements shall render the reply inadmissible.

(4) The Comptroller shall initiate proceedings before an arbiter to determine the case brought before him after ninety days from the date of service by him of the notice for revocation to the owner of the patent:

Provided that if the owner of the patent informs the Comptroller in writing that he accepts the notice for revocation, the Comptroller shall revoke the application for the patent.

(5) On the arbiter reaching a decision the Comptroller shall inform the party requesting the revocation and the patent owner accordingly.

(6) (a) The Comptroller shall duly record the arbiter's decision and shall as soon as possible publish notice of the said decision as may be prescribed.

(b) Any party entering an appeal from the decision of the arbiter shall within ten days from the filing of the said appeal inform the arbiter of that fact.

(c) The notice referred in paragraph (a) shall be without prejudice to any right of appeal from the decision of the arbiter. Upon a final decision at appeal modifying or revoking the arbiter's decision, the Comptroller shall duly record such decision and publish it as may be prescribed.

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Procedure to be adopted by the Patents Tribunal.

44B. (1) In the case of a notice for revocation filed directly before the Patents Tribunal, the Tribunal shall, as soon as possible upon receiving a notice for revocation of a patent, notify the owner of the patent who shall within ninety days from the date of service file his reply.

(2) The Patents Tribunal shall hear and determine the case for revocation as far as possible within nine months from the date of the institution of the case.

(3) The Patents Tribunal shall regulate its own procedure.

Revocation of a priority claim.

44C. (1) Any person who wishes that a priority claim be revoked may, after publication of the grant of the patent, file a notice for revocation with the Comptroller.

(2) A notice of revocation of a priority claim may only be filed on the basis that the application for a patent on whose account priority was claimed, was originally filed more than one year before the filing date of the application of the patent in respect of which a notice for revocation has been filed with the Comptroller:

Provided that a notice of revocation of a priority claim may only be filed before the Comptroller.

(3) A notice for revocation of a priority claim shall include:

(a) detailed grounds on the basis of which the revocation of the priority claim is being sought, incorporating references to relevant documentation; and

(b) a request for the priority claim to be refused.

(4) A notice for revocation of a priority claim shall be accompanied by the prescribed fee, where such a fee has been prescribed, and certified copies of any documentation to which reference has been made pursuant to sub-article (3)(a).

(5) Non-compliance with any of the above requirements shall render the notice for revocation of a priority claim inadmissible.

Duties of the
Comptroller
after receiving
notice.

44D. (1) On receipt of a notice for revocation of a priority claim the Comptroller shall, as soon as possible on receipt of the said notice and, if applicable, the prescribed fee, forward the notice to the proprietor of the patent in question at his address of service in Malta and shall inform him that within ninety days from the date of service to him of the notice for revocation of a priority claim he may file a reply indicating clearly whether or not he accepts that the priority claim in question be revoked:

Provided that if it appears that the proprietor of the patent upon whom such a notice for revocation of a priority claim is to be served is abroad, or that access to his place of service in Malta cannot be obtained, or his place of service in Malta is not known, the Comptroller may cause without any delay a summary of the notice for revocation of a priority claim to be published as may be prescribed. In such cases, service shall be deemed to have been made on the third working day after publication. The Comptroller may also adopt such other measures as he may deem fit to serve the proprietor of the patent with the notice for revocation of a priority claim.

(2) The reply to the Comptroller shall include:

- (a) a clear indication of whether or not the owner of the patent is in agreement with the notice for revocation;
- (b) if the proprietor is not in agreement with the notice for revocation, detailed grounds upon which he is basing his disagreement accompanied by certified copies of documentation to which reference is being made.

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(3) Non-compliance with the deadline given by the Comptroller, or with the above requirements, shall render the reply inadmissible.

(4) The Comptroller shall initiate proceedings before an arbiter to determine the case brought before him after ninety days from the date of service by him of the notice for revocation of a priority claim to the owner of the patent:

Provided that if the proprietor informs the Comptroller in writing that he accepts the notice of revocation, the Comptroller shall refuse the priority claim.

(5) On reaching a decision the Comptroller shall inform the person who submitted the notice of revocation, and the owner of the patent accordingly.

(6) (a) The Comptroller shall duly record the arbiter's decision and shall as soon as possible publish notice of the said decision as may be prescribed.

(b) Any party entering an appeal from the decision of the arbiter shall within ten days from the filing of the said appeal inform the Comptroller of that fact.

(c) The notice referred in subparagraph (a) shall be without prejudice to any right of appeal from the decision of the arbiter. Upon a final decision at appeal modifying or revoking the arbiter's decision, the Comptroller shall duly record such decision and publish it as may be prescribed."

Substitution of article 45 of the principal Act.

13. Article 45 of the principal Act shall be substituted by the following:

"45. (1) An action to revoke a patent may be taken even if the patent has lapsed.

(2) When a decision to revoke a patent, in whole or in part, becomes final before the Patents Tribunal, the Tribunal shall notify the office of the Comptroller which shall as soon as possible record the decision in the patent register and publish such decision as may be prescribed.

(3) When a decision to revoke a patent, in whole or in part, is taken by the arbiter, the Comptroller shall as soon as possible record the decision in the patent register and publish such decision as may be prescribed."

14. Article 47 of the principal Act shall be amended as follows:

Amendment of article 47 of the principal Act.

(a) sub-article (2) thereof shall be substituted by the following:

Cap. 12. "(2) The application to sue for damages under sub-article (1) may be made before the Patents Tribunal without prejudice to the right of such person to apply for the issue of any precautionary warrant as provided in the Code of the Organization and Civil Procedure to protect his rights."; and

(b) in sub-article (3) thereof, for the words "The court" there shall be substituted the words "The Patents Tribunal".

15. Article 48 of the principal Act shall be substituted by the following:

Substitution of article 48 of the principal Act.

"48. (1) Infringement proceedings shall be brought before the Patents Tribunal 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.

(2) Where the subject-matter of the patent or the patent application 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 or the process contained in the patent application. 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 Patents Tribunal.

(3) The Patents Tribunal shall stay any proceedings for infringement in respect of -

(a) a patent application filed with the Comptroller until after a final decision has been made by the Comptroller to grant or refuse a patent on the application;

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(b) a patent application filed at the EPO until after a final decision has been made by the EPO to grant or refuse a patent on the application.

(4) The defendant in any proceedings referred to in this article may, in the same proceedings, request the revocation of the patent on any of the grounds referred to in article 44. In any such case, the Comptroller shall be made a party to the proceedings."

Amendment of article 49 of the principal Act.

16. Article 49 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "the Civil Court, First Hall," there shall be substituted the words "the Patents Tribunal";

(b) in sub-article (2) thereof, for the words "the Court" there shall be substituted the words "the Tribunal"; and

(c) sub-article (5) thereof shall be substituted by the following:

"(5) Save where revocation is requested under article 48(4), proceedings for a declaration of non-infringement may be instituted together with proceedings to revoke the patent."

Substitution of article 58 of the principal Act.

17. Article 58 of the principal Act shall be substituted by the following:

"Right of appeal.

58. (1) An appeal, which shall have suspensive effect, may be made from a decision of the Comptroller or the arbiter, as applicable, where the decision consists of:

(a) a refusal of a patent, in which case the appeal may be made only by the applicant;

(b) a refusal of a notice for revocation of a patent, in which case the appeal may be made only by the person filing the notice;

(c) an acceptance of a notice for revocation of a patent, in which case the appeal may be made only by the proprietor of the patent;

(d) a refusal of a notice of revocation of a priority claim, in which case the appeal may be made only by the person filing the notice;

(e) an acceptance of a notice of revocation of a priority claim, in which case the appeal may be made only by the proprietor of the patent;

(f) a refusal of an application for the re-establishment of rights, in which case the appeal may be made only by the proprietor of the patent;

(g) a refusal of any other request of the patent applicant or patent proprietor, in which case the appeal may be made only by the patent applicant or patent proprietor respectively.

(2) The appeal referred to in sub-article (1) may only be made in the Court of Appeal within thirty days of the date of service of the decision of the Comptroller.

(3) In the case of revocation proceedings initiated directly with the Patents Tribunal in accordance with article 44, any party to the proceedings that feels aggrieved by the decision of the Patents Tribunal may appeal to the Court of Appeal on points of law only by means of an application filed in the registry of that court within thirty days from the date of the decision of the Patents Tribunal.

Cap. 12. (4) The Court of Appeal shall be constituted in accordance with article 41(6) of the Code of Organization and Civil Procedure.

Cap. 12. (5) The Rule-Making Board established under article 29 of the Code of Organization and Civil Procedure may make rules governing appeals to the Court of Appeal under this Act.

Cap. 12. (6) The Court of Appeal may, in regard to costs, make an order in accordance with the provisions of article 223 of the Code of Organization and Civil Procedure."

18. Immediately after Part XVII of the principal Act there shall be added the following new Part and articles:

Addition of new Part XVIIA and articles 58A to 58C to the principal Act.

"PART XVIII
THE PATENTS TRIBUNAL

The Patents
Tribunal.

58A. (1) There shall be a Tribunal to be known as the Patents Tribunal, which shall have jurisdiction to hear and determine claims concerning claims for the revocation of a patent, civil claims for infringement, applications for declarations of non-infringement and precautionary actions related to the above, provided that claims for damages arising from any infringement shall continue to be determined by the Civil Court, First Hall.

(2) The Patents Tribunal shall be appointed by the Prime Minister and shall consist of a chairman, who shall be a Judge or a Magistrate, and two other members.

(3) Decisions of the Patents Tribunal shall be delivered by the chairman and shall require his agreement.

(4) The chairman and members of the Patents Tribunal shall be appointed for a term of three years and shall be eligible for re-appointment.

(5) The Patents Tribunal shall be independent and shall not act under the direction or control of any other person in the performance of its functions.

Cap.12.

(6) The Patents Tribunal shall for the purposes of conducting its proceedings have the same powers as are granted to the Civil Court, First Hall, by or under the Code of Organization and Civil Procedure. In determining any application filed before it, the Patents Tribunal shall give an opportunity to all parties concerned to put forward their evidence and submissions and it may also order the production of any additional expert evidence and secure expert opinion as it may consider necessary. In its decision, the Patents Tribunal shall also decide upon responsibility for the payment of any costs incurred in the proceedings, including the cost of expert evidence or searches or opinions.

Cap.12.

(7) The chairman and members of the Patents Tribunal may be challenged or abstain for any of the reasons for which a judge may be challenged or may abstain in accordance with the Code of Organization and Civil Procedure. In such case, the Prime Minister shall appoint a person having the same qualifications as those of the chairman or member challenged or abstaining, to sit in substitution.

(8) A member of the House of Representatives, or of the European Parliament, or of a local council, shall be disqualified from being appointed or continuing to be a member of the Patents Tribunal for as long as such member holds that office.

(9) The chairman or member of the Patents Tribunal may only be removed from office by the Prime Minister on grounds of gross negligence, conflict of interest, incompetence, or acts or omissions unbecoming of a member of the Patents Tribunal. In doing so, the Prime Minister shall lay before the House of Representatives a statement giving the reasons for the removal of the said chairman or member.

(10) The chairman or a member of the Patents Tribunal shall, for a period of one year following the termination, for whatever reason, of his appointment, not engage in any activity which, because of conflict of interest, would have been incompatible with the exercise of his functions. Any person who acts in breach of the provisions of this sub-article shall be guilty of an offence against this Act and shall, on conviction, be liable to a fine (*multa*) of not more than two thousand and five hundred euro (€2,500) and shall be barred from being appointed to any similar posts for a period of not less than ten years.

(11) The Prime Minister shall designate a person to serve as secretary to the Patents Tribunal, who shall serve in such capacity in accordance with the ethical standards appropriate to his position.

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(12) The Prime Minister shall appoint an advocate or a legal procurator to assist the Patents Tribunal.

(13) The registry of the Civil Court, First Hall, shall be the registry of the Patents Tribunal.

(14) The Minister responsible for justice may, by regulations under this article, establish the fees payable in the registry of the court in relation to the filing of judicial acts in connection with proceedings under this article and article 23A:

Cap. 12. Provided that until such fees are so established, the fees in Schedule A of the Code of Organization and Civil Procedure shall apply.

Cap. 12. (15) The Board established under article 29 of the Code of Organization and Civil Procedure may make Rules of Court governing proceedings before the Patents Tribunal.

The arbiter. 58B. (1) For the purposes of this Act, the Minister may appoint one or more persons to serve as arbiters in cases that may be referred to them from time to time, so however that:

(a) in all cases the person so appointed shall have held a warrant to practise the profession of advocate in Malta for at least seven years; and

(b) the appointment shall be for a period of three years and may be renewed.

(2) The arbiter shall, before entering upon his duties, take an oath of office before the Attorney General in the form approved by the Minister.

(3) (a) The arbiter shall have the power to take expert advice when necessary, at his discretion, and to summon any person to appear before him to give evidence on oath and, or to produce documents; and for these purposes he shall have the powers which are conferred by law on the First Hall of the Civil Court.

(b) Every summons shall be signed by the arbiter and shall be served either personally or by registered post, and in the latter case, in proving service, it shall be sufficient to prove that the summons was properly addressed and posted.

(4) The Comptroller or his representative shall be entitled to appear and be heard in any proceedings before the arbiter.

Cap. 12. (5) The arbiter shall abstain from taking cognizance of a case or may be challenged in any of the circumstances in which a judge would abstain or can be challenged in accordance with the provisions of article 734 of the Code of Organization and Civil Procedure and in every such case the provisions of Sub-Title II of Title II of Book Third of that Code shall apply so far as applicable.

(6) The arbiter shall have jurisdiction to hear and determine claims made in terms of article 44(2).

Liability. 58C. The Comptroller, the arbiter and the chairman and members of the Patents Tribunal shall not be held liable for any act or omission done in good faith in the course of the exercise of their functions under this Act."

Objects and Reasons

The object of this Bill is to provide for the introduction of a schedule of inventions which may be protected in Malta either under the Patent Co-operation Treaty or the European Patent Convention, for the setting up of a Patents Tribunal, the composition and functions thereof, as well as for the possibility of applying for a revocation of a patent and priority claims before the Comptroller.