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GLOBAL PRACTICE GUIDE

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# Patent Litigation

Switzerland  
Pestalozzi

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## Law and Practice

Contributed by Pestalozzi

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## 1. Types of Intellectual Property Rights & Grant Procedure

### 1.1 Types of Intellectual Property Rights

Under Swiss law, essentially inventions can be protected by:

- patents; or
- trade secrets (or know-how).

Patents are granted by for new inventions applicable in industry (Patent Act, Article 1, para 1). An invention is considered new if it does not form part of the state of the art. 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 (Patent Act, Article 7, paras 1 and 2).

Inventions may also qualify as know-how if:

- they are secret in the sense that they are not generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- have commercial value because they are secret; and
- have been subject to reasonable steps under the circumstances, by the person lawfully in control of the informa-

tion, to keep them secret (Article 39 II a of the TRIPs Agreement).

Know-how is capable of protection under the Penal Code, Article 162 and the Law against Unfair Competition, Article 6. Under Swiss law, no protection as a utility model is available for inventions. Also, according to Swiss judicial and administrative practice, no patent protection can be obtained for computer-implemented inventions, even if this issue is currently under discussion among Swiss authors.

### 1.2 Grant Procedure

The inventor, his or her successor in title, or a third party owning the invention under any other title has the right to the grant of a patent (Patent Act, Article 3 para 1, Article 49 et seq). A patent is granted upon application for examination before the Swiss Federal Institute of Intellectual Property (the Institute) (Patent Act, Article 4). Patent applications with protection for Switzerland may also be filed with the European Patent Office (EPO). European patent applications have the same effect in Switzerland as patent applications filed at the Institute (Patent Act, Article 110).

In contrast to the examination procedure with the EPO, the Institute does not examine whether the invention is new or whether it is obvious having regard to the state of the art

(Patent Act, Article 59, para 4). Know-how protection is granted by law, without any examination or registration by authorities, provided that the invention meets the conditions for protection, such as confidentiality and economic value. However, the know-how protection is only granted against an unlawful acquisition that qualifies in an act of unfair competition or a criminal act. The principles of EU Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets) are not reflected in applicable Swiss law.

### 1.3 Timeline for Grant Procedure

Patent examination by the Institute for the granting of a Swiss patent may last for one to two years, depending on whether the Institute is asked to provide a report on the state of the art or arrange an international-type search (Patent Act, Article 59, para 5). Patent granting proceedings by EPO usually take longer, as the novelty and obviousness requirements are examined. The average costs for the grant of a patent by the Institute amount to approximately EUR600 (without any search fees). It currently costs on average EUR8,000 and above to take a patent application through to the grant stage before the EPO (without any registration in the Swiss Patent Register). These costs do not contain the fees for the consultancy services of a patent lawyer. Swiss residents do not need any representation by a patent lawyer before the Institute, but inventors who do not have either a residence or a place of business in Switzerland are obliged to be represented by a local professional representative. Similar rules apply for residents of non-EPC (European Patent Convention) states before the EPO.

### 1.4 Term of Each Intellectual Property Right

For both Swiss and European patents registered for Switzerland, the term of protection is 20 years from the filing date of the patent application (Patent Act, Article 14). Inventions that qualify as know-how are protected as long as they remain secret and have a commercial value.

### 1.5 Rights and Obligations of Owner of Intellectual Property Right

After the granting and to maintain the patent (Swiss patents and European patents with protection for Switzerland), the patent-owner must register his or her patent in the Swiss Patent Register and pay the registration and annual renewal fees. The amount of the renewal fees varies, based on the years of protection requested. It is the responsibility of the patent-holder to enforce his or her exclusivity rights. Legal civil actions include:

- actions for injunction or remedy;
- actions for damages; and
- actions for declaratory judgment. Actions for injunction or remedy can also be requested as preliminary measures (Patent Act, Article 72 et seq).

Moreover, patent-holders can start legal penal proceedings against the infringement of their patents (Patent Act, Article 81 et seq). Assistance by the customs authorities is also available for any suspicion of the imminent import, export or transit of goods that infringe a patent (Patent Act, Article 86a et seq). Know-how enjoys protection under either Swiss criminal law (Penal Code, Article 162) or under unfair competition law (Law against Unfair Competition, Article 6). Unfair competition law provides for civil injunction, remedy and damages actions as well as for criminal sanctions.

### 1.6 Further Protection After Lapse of Maximum Term

Patented inventions for medicinal and plant protection products requiring authorisation for the Swiss market may obtain additional protection with a Supplementary Protection Certificate (SPC). The period of protection with the SPC begins as soon as protection for the active ingredients of the invention expires after the maximum term of protection (ie, after 20 years) and prolongs it for a maximum of five more years (Patent Act, Article 140a et seq). Requirements for an SPC are a valid patent and regulatory authorisation.

### 1.7 Third-Party Rights to Participate in Grant Proceedings

Third parties currently do not have any right to participate in the grant proceedings for a Swiss patent, eg, by filing third-party observations. However, any person may file a challenge to a Swiss patent issued by the Institute. The challenge must be filed with the Institute within nine months of the granting (Patent Act, Article 59c). The ground for the challenge is that the patent contains inventions that are excluded from patenting (Patent Act, Articles 1a, 1b and 2). In proceedings before the EPO, reference is made to EPC, Article 115 for observations concerning the patentability of the invention and to EPC, Article 100 for opposition to the patent-granting.

### 1.8 Remedies Against Refusal to Grant Intellectual Property Right

An appeal may be filed with the Federal Administrative Court against a refusal by the Institute to grant patent protection (Administrative Court Act, Article 31).

### 1.9 Consequences of Failure to Pay Annual Fees

A patent registered in the Swiss Patent Register is cancelled if the renewal fees are not paid on time (Patent Ordinance, Article 18 para 1). Where the patent-holder has not complied with a time limit, he or she may file a request with the Institute for further processing. The request must be made within two months after receiving notification of the missed time-limit or within six months after the deadline has expired. Within this timeframe, whatever action has been omitted must be executed and, if necessary, the patent application supplemented and the extra fee for further processing paid. If the request for further handling is approved, the situation

that would have resulted from executing the act on time will be restored (Patent Act, Article 46a).

## 2. Initiating a Lawsuit

### 2.1 Actions Available Against Infringement

Under Swiss patent law, civil action against the infringement of patent rights includes:

- actions for injunction or remedy; and
- actions for damages.

Actions for injunction or remedy may also be requested as preliminary measures (Patent Act, Article 72 et seq). Moreover, patent-holders can start legal penal proceedings against the infringement of their patents (Patent Act, Article 81 et seq). Civil and criminal actions are available under Swiss criminal law against the infringement of know-how (Penal Code, Article 162) or under unfair competition law (Law against Unfair Competition Article 6).

### 2.2 Third-Party Remedies to Remove Effects of Intellectual Property Right

Third parties with proven interest can claim the nullity or partial nullity of a patent if the invention is obvious, not novel or not disclosed in a way that a person skilled in the art could understand it based on the patent (Patent Act, Article 26). In addition to that, when an applicant who was not entitled has filed the patent, the entitled person may apply for assignment of the patent application (Patent Act, Article 29). Also, any third parties, without any need to demonstrate proven interest, may bring opposition claims against patents covering inventions, for example, on the human body at all phases of formation and development, or naturally occurring sequences or partial sequences of genes. A challenge may also be filed against inventions that are contrary to human dignity or disregard the dignity of a creature, or are in any way contrary to public convention or morality (Patent Act, Article 59c).

In respect of patents not sufficiently exploited in Switzerland and for which such failure cannot be justified, third parties with a legitimate interest may request:

- (i) the grant of a non-exclusive licence – three years from the date of the grant of the patent, or at the earliest four years after filing the patent application (Patent Act, Article 37); or
- (ii) the cancellation of the patent after a period of two years from the grant of the first licence (Patent Act, Article 38). This remedy is very rare, as is the grant of compulsory licences (Patent Act, Article 40-40d).

### 2.3 Courts with Jurisdiction

The Federal Patent Court rules on civil law disputes concerning patents at first instance. It rules, on litigation over patent validity for instance, as well as patent infringement, also in respect of preliminary measures (Patent Court Act, Article 26). The Federal Patent Court also has jurisdiction in other civil actions that have a factual connection to patents, in particular concerning the contractual rights to patents (ownership and licensing) or their assignment. In such cases, jurisdiction of the Federal Patent Court does not preclude that of the cantonal courts as sole cantonal civil instances (Civil Procedure Code, Article 5, para 1 lit. a and Patent Court Act, Article 26, para. 2). An appeal against the decisions of the Federal Patent Court or of the cantonal civil instances can be lodged with the Federal Supreme Court at second instance (Patent Court Act, Article 1 and Supreme Court Act, Article 90). The decision of the Federal Supreme Court is final.

### 2.4 Specialised Bodies/Organisations for the Resolution of Disputes

Besides arbitral tribunals that may also take over the resolution of disputes on patents, there are no (non-statutory) specialised organisations that govern patent disputes.

### 2.5 Prerequisites to Filing a Lawsuit

In connection with intellectual property rights, civil action can be filed without any need to attempt at conciliation before a conciliation authority (Civil Procedure Code, Article 198). The issue of warning letters is also not required, but highly recommended to consolidate the legitimate interest of the plaintiff and to support the attribution of the procedural costs to defendant.

### 2.6 Legal Representation

Parties can decide, but do not have any obligation to be represented by a lawyer. Patent lawyers may also represent parties before the Federal Patent Court and in proceedings concerning the validity of a patent, provided they are engaged in independent practice and allow to practice in Switzerland (Patent Court Act, Article 29).

### 2.7 Interim Injunctions

Under Swiss law, interim injunctions within civil proceedings are available. The applicant must show credibly that:

- the right to which he or she is entitled has been violated or a violation is anticipated;
- violation threatens to cause not easily reparable harm; and
- the requested measure is urgent (Civil Procedure Code, Article 261 et seq).

The applicant may request:

- an injunction;

- an order to remedy an unlawful situation;
- an order to a register authority or to a third party; and
- performance in kind.

In cases of special urgency, and in particular where there is a risk that the enforcement of the measure will be frustrated, the court may order the interim measure immediately and without hearing the opposing party (ex parte interim measures) (Civil Procedure Code, Article 265).

## 2.8 Protection for Potential Opponents

Any potential opponent who has reason to believe that an ex parte interim measure will be applied against him or her may set out his or her position in advance by filing a protective letter. These must be filed with the Federal Patent Court and/or the cantonal courts that are likely to have jurisdiction for treating the ex-parte interim measure claims. The opposing party shall be served with the protective letter only if he or she initiates the relevant proceedings. The protective letter becomes ineffective six months after it is filed (Civil Procedure Code, Article 270).

## 2.9 Special Limitation Provisions

Monetary claims in patent infringement proceedings are time-barred after one year from the date on which the injured party became aware of the loss or damage and of the identity of the person liable for it, but in any event ten years after the date on which the loss or damage was caused. However, if the action for damages is derived from an offence for which criminal law envisages a longer limitation period, that longer period also applies to the civil law claim (Code of Obligations, Article 60). Claims for injunctive and declaratory relief are in principle not time-barred when the claimant has to give evidence to have an actual legitimate interest in obtaining the relief.

## 2.10 Mechanisms to Obtain Evidence and Information

Under Swiss patent law, a person with a legitimate interest – providing there is prima facie evidence that an existing claim has been infringed or an infringement is suspected – may request that the Federal Patent Court orders as an interim measure:

- the securing of evidence; and/or
- a precise description of the allegedly unlawful processes used and/or of the allegedly unlawful products manufactured as well as the means used to manufacture them.

The procedure for making the description, with or without seizure, shall be carried out by a member of the Federal Patent Court, who may call on the assistance of an expert or of the competent cantonal instances if necessary. Before the applicant party is notified of the description, the opposing party shall be given the opportunity to comment (Patent Act, Article 77). The Civil Procedure Code also allows a more

general right to ensure the preliminary taking of evidence without any need to start a civil litigation (Civil Procedure Code, Article 158). The cantonal courts where evidence must be secured will have jurisdiction. Moreover, the parties and third parties have a duty to co-operate in the taking of evidence and accordingly the court can order the parties or third parties to produce physical records (Civil Procedure Code, Article 160).

## 2.11 Initial Pleading Standards

The statement of claim must contain:

- the prayers for relief;
- a statement of the value in dispute;
- the allegations of fact;
- a notice of the evidence offered for each allegation of fact; and
- the date and signature. The statement of claim may include a statement of legal grounds (Article 221 of the Civil Procedure Code).

These initial requirements apply to all civil proceedings - not only to intellectual property proceedings - and are very strict. New facts and new evidence are admissible only if presented immediately after they become known and if they occurred after the submission of the initial brief (nova), or were discovered after the initial submission or could not have been submitted despite reasonable diligence (improper nova). In any event, new facts and new evidence are admitted only until the court begins its deliberations.

## 2.12 Representative or Collective Action

Under Swiss law, no class actions or other collective actions are permitted. However, joinder of parties in civil proceedings is permitted.

## 2.13 Restrictions on Assertion of Intellectual Property Right

Restrictions may apply to the enforcement of exclusivity patent rights, eg, in respect of the limitation of parallel imports that are not justified (Patent Act, Article 9a and Cartel Act, Article 3, para. 2).

# 3. Infringement

## 3.1 Necessary Parties to an Action for Infringement

The patent-holder who is under threat that his or her rights will be infringed or has already had them infringed may demand an injunction or that the unlawful situation is remedied within civil proceedings (Patent Act, Article 72). The exclusive licensee has the same rights and is entitled to bring an infringement action independently, provided this is not expressly excluded by the licence agreement (Patent Act, Article 75). Non-exclusive licensees, however, may only



join the infringement proceedings filed by the patent-holder or the exclusive licensee to claim their own loss or damages. An infringement claim can be raised against:

- any person who uses a patented invention unlawfully – imitation is also deemed to constitute use;
- any person who refuses to notify the authority concerned of the origin and quantity of products in his or her possession that have been unlawfully manufactured or placed on the market, and who refuses to name the recipients and disclose the extent of any distribution to commercial and industrial customers;
- any person who removes the patent mark from products or their packaging without authorisation from the proprietor of the patent or the licences; and
- any person who abets any of the said offences, participates in them or aids or facilitates the performance of any of these acts (Patent Act, Article 66).

Penal proceedings may be brought against these persons provided that they wilfully committed the patent infringement, on complaint by the patent-holder – the exclusive licensee does not have any penal active legitimation – or ex officio if he or she acts for commercial gain (Patent Act, Article 81).

### 3.2 Direct and Indirect Infringement

Within civil proceedings, there is no difference between direct or indirect patent infringement. Whoever commits an infringement as described Patent Act, in Article 66 et seq may be liable. An infringement claim may be brought against any person who uses a patented invention unlawfully. With regard to the criminal prosecution, an indirect patent infringement, either by an instigator or a accomplice, is only possible if the main infringer acts wilfully (Penal Code, Article 81).

### 3.3 Scope of Protection for an Intellectual Property Right

When assessing whether patent rights have been infringed, the Swiss Patent Court essentially applies the principles of civil procedure (Patent Court Act, Article 27). Accordingly, the Patent Court has to assess the extent of patent rights according to the prayers for reliefs, the circumstances described and the legal arguments filed by the parties. Furthermore, it is not entitled to grant injunction or other relief, or even to adjudicate damage compensation if the claimant does not request this. The Swiss Patent Court has full discretion in its legal assessment, but it is extremely strict when it comes to the substantiation of evidence; unambiguous and complete prayers for reliefs are a must. Arbitral tribunals sitting in Switzerland may apply a less rigorous standard.

### 3.4 Defences Against Infringement

Within patent infringement proceedings, the defendant can claim to have lawfully used the alleged infringed patent, eg, because a licence right was granted to him or her or the

rights of the patent-holder were exhausted, among other reasons (Patent Act, Article 9a, para. 1). The defendant may also argue that he or she has a prior-use right, ie, has used the invention commercially in good faith in Switzerland, or that he or she made special preparations for that purpose prior to the filing or priority date of the patent application (Patent Act, Article 35). In this instance, the defendant must offer to pay the patent-holder appropriate compensation. The court decides on the existence and on the extent of the rights claimed for prior use and on the amount of compensation to be paid (Patent Act, Article 48).

More often, the defendant pleads the nullity of the patent as a defence or as a counterclaim. The court may then allow him or her an appropriate time-limit within which to file a nullity action. Within interim measures proceedings, the court will examine the patent regarding novelty and inventive step as a preliminary question, and then decide about the infringement claim subsequently.

### 3.5 Role of Experts

As a rule, the Federal Patent Court makes its decisions as a three-member body (panel), of whom at least one member must possess technical training. Where a technically trained judge possesses specific expertise, the judge's expert opinion shall be entered in the court record. However, when a party or ex officio requests additional technical know-how, the court may obtain an opinion from one or more external experts appointed ad hoc (Article 183 of the Civil Procedure Code). Such experts shall submit their opinions in writing. The parties shall be afforded an opportunity to submit their position on the opinion in writing (Patent Court Act, Article 37). Reporting of experts appointed by the parties is considered to be the assertions of the parties only.

### 3.6 Procedure for Construing the Terms of the Patent's Claim

Defence and other arguments against the infringement of patent's claims must be raised within the same proceedings.

## 4. Revocation/Cancellation

### 4.1 Reasons and Remedies for Revocation/Cancellation

There are several reasons for a revocation or cancellation of a patent. Often, a patent registered in the Swiss Patent Register is cancelled because the renewal fees are not paid on time (Article 18, para 1 of the Patent Ordinance). An action for the cancellation is occasionally brought by a person with a proven interest if the grant of licences is not sufficient to meet the demand of the domestic market after a period of two years from the grant of the first compulsory licence (Patent Act, Article 38, corresponding to EPO, Article 5a(2)). Based on the prohibition of double patenting, a Swiss patent is revoked in favour of a European patent for the same

invention with effect in Switzerland, and granted to the same inventor or to his or her successor in title with the same filing or priority date (Patent Act, Article 125, para 1).

Finally, patents are cancelled from the Patent Register if an action for nullity of the patent is successful. The cancellation is done by the Institute upon the provision of full official copies of the final judgments.

### 4.2 Partial Revocation/Cancellation

Partial cancellation is available if the successful nullity claims relate only to certain patent claims.

### 4.3 Amendments in Revocation/Cancellation Proceedings

Amendments in cancellation proceedings are very limited because new evidence and facts may be filed under strict circumstances only.

### 4.4 Revocation/Cancellation and Infringement

Where a nullity claim is raised as a defence within patent infringement proceedings, the nullity claim is heard at the same time and within the same proceedings.

## 5. Trial & Settlement

### 5.1 Special Procedural Provisions for Intellectual Property Rights

There are essentially no special provisions for proceedings involving intellectual property rights

### 5.2 Decision Makers

The Federal Patent Court makes its decisions as a three-member body (panel), of which at least one member must possess technical training. Also, in proceedings ruled before civil cantonal courts, technical experts are highly important and are frequently appointed *ex officio* (Civil Procedure Code, Article 183).

### 5.3 Settling the Case

Settlements can be agreed at any time during civil proceedings, with mediation by the judge or through negotiations between the parties. Here, the content of the settlements may be disclosed to the judge, but it is not mandatory.

### 5.4 Other Court Proceedings

In respect of contractual rights relating to patents, such as ownership and licence rights, a legal action may also be filed before cantonal courts (Patent Court Act, Article 26, para 2). Where the nullity or infringement of a patent is to be adjudicated before a cantonal court on a preliminary question or on a defence basis, the court grants the parties a reasonable period of time to file the validity or infringement action before the Federal Patent Court. The cantonal court shall stay the proceedings until a final and absolute decision has

been made. Where no action is filed before the Federal Patent Court within the specified time limit, the cantonal court will resume the proceedings and the preliminary question or defence will be disregarded (Patent Court Act, Article 26, para. 3). Similar rules apply when nullity is claimed as a defence within penal proceedings (Patent Act, Article 86). However, considering that claims before cantonal courts (either in civil or penal proceedings) regarding patents have decreased since the establishment of the Federal Patent Court in 2014, an influence of cantonal proceedings on other proceedings is quite rare. Also, in respect of provisional proceedings, infringement and nullity actions before the Federal Patent Court are generally ruled at the same time.

## 6. Remedies

### 6.1 Remedies for the Patentee

Civil remedies for patent-holders include:

- an injunction or reparatory remedy;
- damages (including court fees and lawyers' costs); and
- declaratory judgments.

Injunctive relief is granted within provisional proceedings and during or before ordinary patent proceedings. Moreover, patent-holders may commence legal penal proceedings against the infringement of their patents and request the conviction or the fine of the patent infringer (Patent Act, Article 81 et seq).

### 6.2 Rights of Prevailing Defendants

A prevailing defendant may claim the reimbursement of court fees and well as compensation for the lawyer's fees. Moreover, if the damage to him or her has arisen due to patent proceedings, he or she may also claim damage-compensation. Within proceedings for interim measures, the court may make the interim measure conditional on the payment of a security by the applicant, if it is anticipated that the measures may cause loss or damage to the opposing party. The applicant is liable for any loss or damage caused by unjustified interim measures. If the applicant proves, however, that he or she applied for the measures in good faith, the court may reduce the damages or release the applicant entirely from liability (Civil Procedure Code, Article 264).

### 6.3 Types of Remedies

Essentially, the same types of remedies are available for civil proceedings involving inventions protected as patents or as know-how. However, and since know-how does not qualify as an absolute intellectual property right, declaratory judgments are unlikely to be obtained as a remedy.

### 6.4 Injunctions Pending Appeal

If a patent is declared valid and infringed at first instance, usually an injunction will be not be granted during appeal



proceedings filed by the infringer. However, the judge has full discretion in this respect and he or she may decide that a balance of interests is best guaranteed by an injunction, eg, by ordering the procuring of additional evidence.

## 7. Appeal

### 7.1 Special Provisions for Intellectual Property Proceedings

Appeals to the Swiss Supreme Court against the decisions of both the Federal Patent Court and the civil cantonal courts as a unique instance follow the same rules as appeals in civil matters. No additional or specific rules apply to intellectual property rights proceedings.

### 7.2 Type of Review

When reviewing final decisions of prior instances on their merits, the Swiss Supreme Court has full discretion with regard to legal reasoning; in contrast, a review of the facts of a case may only be requested if at the prior instance an abuse of the law had occurred (Supreme Court Act, Article 90). Concerning decisions on interim measures, the discretion of the Swiss Supreme Court is limited to a review of the legal reasons (Supreme Court Act, Article 98).

## 8. Costs

### 8.1 Costs Before Filing a Lawsuit

Before filing a lawsuit on a patent, important costs may arise in respect of the technical assessment of a patent validity, as a common defence for the defendant will be the filing of a nullity claim against the patent. Moreover, additional costs may arise for the issue of warning letters.

### 8.2 Calculation of Court Fees

Before filing a lawsuit on a patent, important costs may arise in respect of the technical assessment of a patent validity, as a common defence for the defendant will be the filing of a nullity claim against the patent. Moreover, additional costs may arise for the issue of warning letters.

### 8.3 Responsibility for Paying Costs of Litigation

The costs of a patent litigation, such as court fees, expenses and lawyers' fees (patent and legal lawyers) must be borne by the losing party. A proportionate split of costs and expenses in order to better reflect the result of the court decision is also possible.

## 9. Alternative Dispute Resolution

### 9.1 Type of Actions for Intellectual Property

In Switzerland, alternative dispute resolution, more specifically arbitration, is an important way of settling intellectual property disputes, particularly in international circumstances where a single decision is sought. Alternative dispute resolution is becoming increasingly attractive for patent disputes, too, as Switzerland provides for experts in most fields of technology. Arbitration is permitted for both contractual issues related to patents as well as being strongly supported in validity and registration claims (see Supreme Court Decision 71 III 198).

## 10. Assignment and Licensing

### 10.1 Requirements or Restrictions for Assignment of Intellectual Property Rights

The assignment of patent or patent application rights must be in writing, but no approval of the Institute is required. The assignment may take place both in segments or as a whole. The assignment recordal in the Swiss Patent Register has only a declaratory effect. However, assignments to third parties not recorded in the Swiss Patent Register are invalid against persons who have acquired the rights to the patent in good faith (Patent Act, Article 33, para. 2bis). For the recordal of the assignment of the patent and patent application rights, the Institute requests the written consent of both the assignor and the assignee.

### 10.2 Procedure for Assigning an Intellectual Property Right

See above **10.1 Requirements or Restrictions for Assignment of Intellectual Property Rights**.

### 10.3 Requirements or Restrictions to License an Intellectual Property Right

The patent applicant or the proprietor of the patent may grant third parties the right to use the invention (the grant of a licence). The agreement may be concluded orally and no approval of the Institute is required. Where two or more persons own the patent application or the patent, a licence may not be granted without the consent of all entitled persons. Licences of third parties not recorded in the Swiss Patent Register are invalid against persons who have acquired the rights to the patent in good faith (Patent Law, Article 34). The same rules apply to the licence of any absolute intellec-

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tual property rights, such as trade marks, designs and copyright. For the recordal of licence rights, the Institute requests the written consent of the licensor (for trade marks, of the Trademark Ordinance, Article 29, para 1 lit. a).

### **10.4 Procedure for Licensing an Intellectual Property Right**

See above **10.3 Requirements or Restrictions to License an Intellectual Property Rights.**