

**Federal Act
on Patents for Inventions
(Patents Act, PatA)**

Amendment of 22 June 2007

Art. 1a

II. The human
body and its
elements

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

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

Art. 1b

III. Genetic
sequences

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

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

Art. 2

B. Exclusion
from
patentability

¹ Inventions whose exploitation is contrary to ordre public or morality, in particular to human dignity or the integrity of living organisms, are excluded from patentability. In particular, no patent may be granted for:

- a. processes for cloning human beings and the clones obtained thereby;
- b. processes for forming hybrid organisms by using human germ cells, human totipotent cells or human embryonic stem cells and the entities obtained thereby;
- c. processes of parthenogenesis using human germ cells and the parthenotes produced thereby;
- d. processes for modifying the genetic reproductive identity of human beings and the germinative cells obtained thereby;
- e. unmodified human embryonic stem cells and stem cell lines;

- f. the use of human embryos for non-medical purposes;
- g. processes for modifying the genetic identity of animals that are likely to cause suffering without being justified by reason of overriding interests that are worthy of protection, as well as the animals resulting from such processes.

² Also excluded from patentability are:

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

Art. 8

F. Protection conferred by the patent
I. Right of exclusivity

¹ The patent confers on its owner the right to prohibit others from using the invention for professional purposes.

² Use includes in particular manufacturing, storing, offering, placing on the market, importing, exporting and carrying in transit, and possession for any of these purposes.

³ Carrying in transit may not be prohibited if the patent owner is not permitted to prohibit importation into the country of destination.

Art. 8a

II. Production process

¹ If the invention relates to a manufacturing process, the protection conferred by the patent also extends to the products directly obtained by that process.

² If the product directly obtained is biological material, the protection conferred by the patent also extends to products obtained by propagating the biological material and which demonstrate the same characteristics.

Art. 8b

III. Genetic information

If the invention relates to a product that consists of or contains genetic information, the protection conferred by the patent extends to any material in which the product is incorporated and in which the genetic information is contained and performs its function. Article 1a paragraph 1 is reserved.

Art. 8c

IV. Nucleotide sequences

The protection conferred by a claim to a nucleotide sequence that is derived from a naturally occurring sequence or partial sequence of a gene is limited to the sequence segments that perform the function specifically described in the patent.

Art. 9

G. Exceptions to the protection conferred by the patent
I. General

- ¹ The scope of protection conferred by the patent does not extend to:
- a. acts undertaken in the private sphere for non-commercial purposes;
 - b. acts undertaken for experimental and research purposes in order to obtain knowledge about the subject of the invention, including its possible uses; in particular all scientific research concerning the subject of the invention is permitted;
 - c. acts necessary to obtain a marketing authorisation for a pharmaceutical product in Switzerland or in countries with comparable regulation for pharmaceutical products;
 - d. the use of the invention for teaching purposes at educational institutions;
 - e. the use of biological material for the purpose of the production or the discovery and development of a plant variety;
 - f. biological material that is obtained in the field of agriculture by chance or through an unavoidable technical process.

² Agreements which limit or exclude the exceptions contained in paragraph 1 are null and void.

Art. 40b

F. Research tools

Whoever intends to use a patented biotechnological invention as an instrument or means in research, is entitled to a non-exclusive licence.

Art. 40c

G. Compulsory licences for diagnostic products and processes

In the case of an invention concerning a diagnostic product or process in the human field, a non-exclusive licence is available to remedy a practice held to be anti-competitive in judicial or administrative proceedings.

Art. 40d

H. Compulsory licences for the export of pharmaceutical products

¹ Anyone may apply to the courts to be granted a non-exclusive licence for the manufacture of pharmaceutical products protected by patents and for their export to a country that has insufficient or no production capacity of its own in the pharmaceutical sector and which

requires these products to combat public health problems, in particular those related to HIV/Aids, tuberculosis, malaria and other epidemics (beneficiary country).

² Countries that have declared in the World Trade Organization (WTO) that they wholly or partly waive their claim to a licence in accordance with paragraph 1 are excluded from being beneficiary countries, in accordance with the terms of their declarations. All other countries that fulfil the requirements of paragraph 1 may be beneficiary countries.

³ The licence in accordance with paragraph 1 is limited to the production of the pharmaceutical product in the quantity that meets the requirements of the beneficiary country; the total quantity must be exported to the beneficiary country.

⁴ The owner of the licence in accordance with paragraph 1 as well as any manufacturer that produces products under licence must ensure that they are clearly identified as products that have been produced under a licence in accordance with paragraph 1, and that the products are distinguished by their special packaging and/or colouring or shaping from patent-protected products, provided this does not have a significant impact on the price of the products in the beneficiary country.

⁵ The Federal Council shall regulate the requirements for granting licences in accordance with paragraph 1. In particular, it shall stipulate the information or notifications the responsible courts must have in order to be able to decide on granting the licence in accordance with paragraph 1, and shall regulate the measures in accordance with paragraph 4.

Art. 40e

I. General provisions on Articles 36–40d

¹ The licences provided for in Articles 36–40d are granted only if efforts by the Applicant to obtain a contractual licence on appropriate market terms within a reasonable period have been unsuccessful; in the case of a licence in terms of Article 40d, a period of 30 working days is regarded as reasonable. Such efforts are not required in situations of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.

² The scope and term of the licence are limited to the purpose for which it has been granted.

³ The licence may only be transferred with that part of the enterprise which uses it. This also applies to subsidiary licences.

⁴ The licence is primarily granted for supplying the domestic market. Article 40d is reserved.

⁵ The patent owner has the right to appropriate remuneration. In assessing the remuneration, the circumstances of the individual case and the economic value of the licence are taken into account. In the case of a licence under Article 40*d*, the remuneration is determined taking account of the economic value of the licence in the importing country, its level of development, and the urgency in public health and humanitarian terms. The Federal Council shall specify the method of calculation.

⁶ The courts decide on the granting and cancellation of licences, on their extent and duration as well as on the remuneration payable. In particular, they shall cancel a licence on request if the circumstances that led to its being granted no longer apply and it is not expected that they will arise again, subject to the appropriate protection of the lawful interests of the licensee. Where a licence is granted under Article 40*d*, legal remedies have no suspensive effect.