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## **Federal Act on the Federal Patent Court (Patent Court Act, PatCA)**

of 20 March 2009 (Status as of 1 August 2018)

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*The Federal Assembly of the Swiss Confederation,*

on the basis of Article 191a paragraph 3 of the Federal Constitution<sup>1</sup>, and having considered the Federal Council Dispatch dated 7 December 2007<sup>2</sup>,

*decrees:*

### **Chapter 1 Status**

#### **Art. 1** General principles

<sup>1</sup> The Federal Patent Court is the patent court of first instance of the Swiss Confederation.

<sup>2</sup> It issues its decisions as a lower court of the Federal Supreme Court.

#### **Art. 2** Independence

The Federal Patent Court is independent in its adjudication and is bound only by the law.

#### **Art. 3** Supervision

<sup>1</sup> The Federal Supreme Court exercises supervision over the administration of the Federal Patent Court.

<sup>2</sup> The Federal Assembly exercises ultimate supervision over the Federal Patent Court.

<sup>3</sup> The Federal Patent Court shall submit its annual draft budget, annual accounts and annual report to the Federal Supreme Court for the attention of the Federal Assembly.

AS 2010 513

<sup>1</sup> SR 101

<sup>2</sup> BBl 2008 455

**Art. 4** Financing

The Federal Patent Court is financed by court fees and contributions from the Swiss Federal Institute of Intellectual Property (IPI) taken from the patent fees annually collected by the IPI.

**Art. 5** Infrastructure and staff for administrative assistance services

<sup>1</sup> The Federal Administrative Court shall make available its infrastructure to the Federal Patent Court at cost and provide the staff required to provide administrative services to the Federal Patent Court.

<sup>2</sup> In its work for the Federal Patent Court, the administrative staff reports to the Administrative Committee<sup>3</sup>.

**Art. 5a<sup>4</sup>** Data protection when using electronic infrastructure

<sup>1</sup> The use of the electronic infrastructure of the Federal Administrative Court by the Federal Patent Court for its administrative activities is governed *mutatis mutandis* by Articles 57i–57q of the Government and Administration Organisation Act of 21 March 1997<sup>5</sup>.

<sup>2</sup> The Federal Patent Court shall issue the implementing provisions.

**Art. 6** Location and place of employment

The Federal Patent Court sits at the seat of the Federal Administrative Court. This location also serves as the place of employment of the permanent judges, court clerks and the administrative staff.

**Art. 7** Special location

Where justified by the circumstances, the Federal Patent Court may sit at another location. The cantons shall provide the required infrastructure free of charge.

**Chapter 2** Judges**Art. 8** Composition

<sup>1</sup> The Federal Patent Court is composed of judges with legal training and judges with technical training. The judges must have proven knowledge of patent law.

<sup>3</sup> Term in accordance with No I of the FA of 16 March 2018, in force since 1 Aug. 2018 (AS 2018 2753; BBl 2017 7527 7539). This amendment has been made throughout the text.

<sup>4</sup> Inserted by No II 4 of the FA of 1 Oct. 2010 (Data protection when using electronic infrastructure), in force since 1 April 2012 (AS 2012 941; BBl 2009 8513).

<sup>5</sup> SR 172.010

<sup>2</sup> The Federal Patent Court is composed of two permanent judges and a sufficient number of non-permanent judges. The majority of non-permanent judges must possess technical training.

**Art. 9** Election

<sup>1</sup> The judges are elected by the Federal Assembly.

<sup>2</sup> Persons who are eligible to vote on federal matters are eligible for election.

<sup>3</sup> When electing judges to serve in the Court, it shall be ensured that technical fields of expertise and Switzerland's official languages are appropriately represented.

<sup>4</sup> During the preparatory phase for the election, the IPI as well as professional organisations and interested groups involved with patents may be heard.

**Art. 10** Incompatibility of activities

<sup>1</sup> The judges of the Court may not be members of the Federal Assembly, the Federal Council or a federal court.

<sup>2</sup> They may not engage in any activity that impairs their ability to fulfil the duties of their office, their independence, or is injurious to the reputation of the Court.

<sup>3</sup> They may not serve in any official capacity on behalf of a foreign state.

<sup>4</sup> Permanent judges may not act as professional representatives of third parties before the Court.

<sup>5</sup> Permanent judges on a full time basis may not hold office in a canton or engage in any other gainful activity. They may not be a member of the management board, board of directors, advisory board or serve as an auditor of a commercial enterprise.

**Art. 11** Other gainful activities

In order to engage in gainful activities outside of the Court, permanent judges on a part time basis must obtain authorisation from the Administrative Committee.

**Art. 12** Incompatibility of persons

<sup>1</sup> The following persons may not serve simultaneously as judges of the Federal Patent Court where they are related to serving Court members in the following capacities:

- a. spouses, registered partners or domestic partners;
- b. spouses, registered partners and domestic partners of siblings;
- c. relatives in direct lineage and relatives in collateral lineage up to and including the third degree;
- d. relatives in-law in direct lineage and relatives in-law in collateral lineage up to and including the third degree;

<sup>2</sup> The provision of paragraph 1 letter d applies accordingly to domestic partnerships.

**Art. 13** Term of office

<sup>1</sup> The term of office of judges amounts to six years. Re-election is permitted.

<sup>2</sup> Judges leave office at the end of the year in which they reach 68 years of age.<sup>6</sup>

<sup>3</sup> Offices vacated in this manner shall be filled for the remaining term of office.

**Art. 14** Removal from office

The electoral authorities may remove a judge from office before he or she has completed his or her term where he or she:

- a. wilfully or through gross negligence commits serious breaches of his or her official duties; or
- b. has permanently lost the ability to perform his or her official duties.

**Art. 15** Oath of office

<sup>1</sup> Prior to taking office, judges shall take an oath pertaining to fulfilling their duties conscientiously.

<sup>2</sup> They are sworn in before the Plenary Court.

<sup>3</sup> A solemn promise may be made in lieu of swearing an oath.

**Art. 16<sup>7</sup>****Art. 17** Employment and remuneration

The Federal Assembly shall issue an ordinance on the employment and remuneration of judges.

**Chapter 3 Organisation and Administration****Art. 18** Presidency

<sup>1</sup> The Federal Assembly shall elect a permanent judge to be President of the Federal Patent Court.

<sup>2</sup> The President of the Federal Patent Court is elected for a full term of office. Re-election is permitted.

<sup>3</sup> The President of the Federal Patent Court must possess legal training.

<sup>6</sup> Amended by No 12 of the FA of 16 March 2012 (Change in the maximum age for judges), in force since 1 Dec. 2012 (AS 2012 5647; BBl 2011 8995 9013).

<sup>7</sup> Repealed by Annex No 5 of the FA of 17 June 2011 (Applications for Lifting Immunity), with effect from 5 Dec. 2011 (AS 2011 4627; BBl 2010 7345 7385).

<sup>4</sup> He or she presides over the Plenary Court and represents the Court in dealing with third parties.

<sup>5</sup> The Vice-President acts as the President's deputy.

**Art. 19<sup>8</sup>** Plenary Court

<sup>1</sup> The Plenary Court shall elect as Vice-President:

- a. the second permanent judge; or
- b. a non-permanent legally trained judge.

<sup>2</sup> If it elects the second permanent judge as Vice-President, it shall elect the third member of the Administrative Committee from the non-permanent judges. The appointment of a substitute may be provided for in regulations.

<sup>2</sup> Elections to the Plenary Court shall be valid where at least two-thirds of all judges take part in a session or a circular proceeding.

**Art. 20** Administrative Committee

<sup>1</sup> The Administrative Committee is responsible for the Court's administration.

<sup>2</sup> Its members are:

- a. the President of the Federal Patent Court;
- b. the Vice-President;
- c. the second permanent judge or, if that judge acts as Vice-President, a non-permanent judge.<sup>9</sup>

<sup>3</sup> The Administrative Committee is responsible for:

- a. enacting rules and regulations on the organisation and administration of the Court, allocation of duties, the composition of the panels, disclosure of information, court fees, and the compensation of parties to proceedings, official representatives, experts and witnesses;
- b. all tasks and duties that are not assigned to another body under this Act.

**Art. 21** Panels

<sup>1</sup> As a general rule, the Court makes its decisions as a three-member body (panel), of whom at least one member must possess technical training and one member legal training.

<sup>2</sup> On the order of the President, the Court shall make its decisions as a five-member panel, at least one member of which must possess technical training and one mem-

<sup>8</sup> Amended by No I of the FA of 16 March 2018, in force since 1 Aug. 2018 (AS 2018 2753; BBl 2017 7527 7539).

<sup>9</sup> Amended by No I of the FA of 16 March 2018, in force since 1 Aug. 2018 (AS 2018 2753; BBl 2017 7527 7539).