

The Swiss Patents Act

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The Federal Act on Patents for Inventions of 25 June 1954 is the basis of the Swiss patent system, although it has been revised many times since its adoption.¹ A patent is granted for new inventions that are applicable in industry and involve an inventive step, with a maximum term of twenty years from the filing date. The Swiss Federal Institute of Intellectual Property in Bern grants national patents, but it does not examine them for novelty and inventive step. This system of registration without substantive examination means that a Swiss national patent is a weaker title than a European patent granted after examination by the European Patent Office in Munich. For this reason the pharmaceutical industry relies almost entirely on the European route for its Swiss protection.²

Parliament has repeatedly discussed the introduction of a full examination procedure. A revision adopted in 2023 provided for an optional full examination at the request of the applicant or a third party, together with a new utility model without examination. Its entry into force has since been prepared by the institute.³ For the pharmaceutical groups the reform matters less than for small inventors, because their key patents are European patents that take effect in Switzerland through the designation of Switzerland in the European application.

Some features of the Swiss act are of particular importance for medicines. Methods of surgical or therapeutic treatment and diagnostic methods practised on the human or animal body are excluded from patentability, although substances for use in such methods are patentable.⁴ The act also contains a research exemption for acts done for experimental purposes in relation to the patented invention. A so-called Bolar exemption permits the acts necessary to obtain a marketing authorisation for a medicinal product before the patent expires.⁵ The Bolar exemption is the legal hinge between the originator industry and the generics industry, since it allows a

generic manufacturer to prepare its dossier during the term of protection. The generic can then enter the market on the day after expiry.

The 2008 revision of the act also addressed biotechnology directly. It defined the conditions under which inventions relating to biological material, including human genes and sequences, may be patented. It also excluded the human body and processes for cloning human beings as such.⁶ The Swiss approach follows the European Biotechnology Directive in substance, although Switzerland is not bound by it, because a divergence would have isolated Swiss patent practice from the European patents that dominate the market.

1 Notes

1. Bundesgesetz über die Erfindungspatente (Patentgesetz, PatG) of 25 June 1954, SR 232.14, as amended. To be verified. ↩
2. On the Swiss Federal Institute of Intellectual Property (Eidgenössisches Institut für Geistiges Eigentum, IGE) and the absence of substantive examination for novelty and inventive step in the national procedure, see the institute's publications and the commentaries on Art. 59 PatG. To be verified. ↩
3. Revision of the Patents Act adopted by the Federal Assembly in 2023 concerning a modernised examination procedure (optional full examination, utility model); date of entry into force pending. Status to be verified. ↩
4. Art. 2 para. 1 lit. b PatG on the exclusion of methods of treatment and diagnosis, and Art. 7c and 7d PatG on the patentability of known substances for a first or further medical use. To be verified. ↩
5. Art. 9 para. 1 lit. b and c PatG on the research exemption and the exemption for acts necessary to obtain marketing authorisation for medicinal products, introduced by the revision in force since 1 July 2008. To be verified. ↩

6. Revision of the Patents Act in force on 1 July 2008 on biotechnological inventions, in particular Art. 1a, 1b and 2 PatG, adopted in parallel to Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions. To be verified. ↩

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