

Switzerland

Legislature speeds up pace to keep up with IP developments

The Swiss IP sector has been rapidly changing during 2007 and 2008. In response, the Swiss government and Parliament have approved and brought into force an unusual number of amendments to both the national IP laws and international treaties in order to keep the country at the forefront of IP developments.

Patents

The Patent Law Act was amended five times during 2007. The most fundamental of these amendments was passed on June 22 2007 and came into force on July 1 2008. The resulting changes are as follows:

- The human body and its parts in their natural surroundings are now excluded from patent protection, as are natural gene sequences (Articles 1a and 1b).
- Moral limits to patentability have been introduced (Article 2).
- Novelty has been redefined (Articles 7, 7c and 7d).
- The scope of protection has been redefined (Articles 8, 8a, 8b, 8c, 9 and 9a).
- A right of use for inventions for research and compulsory licensing for diagnostica and export of pharmaceutical products has been introduced (Articles 40b, 40c, 40d and 40e).
- The required description and the deposit of biological material has been further regulated (Articles 49, 49a, 50a, 58a and 59).
- An opposition procedure based on the claim of absence of patentability has been introduced (Article 59c).
- Exclusive licensees have been granted an independent right to sue (Article 75).
- The provisions concerning the enforcement of patents have been strengthened.
- The customs authorities are now required to provide assistance.

The other four amendments were as follows:

- In connection with the ratification of the Patent Law Treaty of June 1 2000 and its ordinance, on June 22 2007 certain provisions concerning patent applications were modified (Articles 13, 46a, 56, 57 and 58).
 - The ratification of an amendment to the European Patent Convention required:
 - changes to the national definition of 'protectable inventions' (Articles 1, 1a, 7c, 7d, 17, 24, 26, 28 and 46a); and
 - amendments to the provisions concerning the impact of European patents included in the national patent law (Articles 110a, 113, 121, 127 and 128).
- In addition, priority was extended to all countries that are party to the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (Article 17). These amendments entered into force on December 13 2007.
- The introduction of a Swiss Federal Administrative Court on January 1 2007 required some formal amendments to the Patent Law Act (in Articles 46a, 59c, 76, 87, 106, 106a and 141).
 - The ratification of the 1991 Convention for the Protection of new Varieties of Plants on October 5 2007 resulted in amendments concerning the use of protected seeds (Article 35a) and dependent rights in plant varieties (Article 36a).

Furthermore, two international treaties concerning patents were ratified. On July 1 2008 the Patent Law Treaty 2000 and its ordinance entered into force. In addition, the revised European Patent Convention 2000 entered into force in Switzerland on December 13 2007.

Copyright

The Copyright Law Act was amended four times in 2007, with the changes entering into force on July 1 2008:

- In connection with the ratification on October 5 2007 of the World Intellectual Property Organisation (WIPO) Copyright Treaty 1996 and the WIPO Performances and Phonograms Treaty 1996, the definition of 'performance' in the Copyright Law Act (Articles 10, 33, 33a, 36, 37 and 39) was amended and a clause concerning the technical measures for the protection of works was introduced (Articles 39a and 39c). At the same time, corresponding enforcement provisions were added (Articles 67, 69 and 69a).
- A separate amendment of the Copyright Law Act was passed on October 5 2007. It amended the provisions on private use and copying of works (Article 19) and admitted special forms of restricted use or use under special circumstances (Articles 22a, 22b and 22c). Temporary recording and recording for the purposes of broadcasting are now permitted (Articles 24a and 24b). In addition, copies for disabled persons receive special treatment (Article 24).
- The amendment of Article 74 of the Copyright Law Act in connection with the introduction of the Federal Administrative Court on January 1 2007 was of a purely formal nature.
- Parliament approved further amendments to the Copyright Law Act in the form of an appendix to the amendment of the Patent Law Act (June 22 2007). The appendix concerned important improvements in the enforcement of copyright, including that:
 - the exclusive licensee now has the right to sue (Article 62);
 - refusal to disclose the source of infringing material is now a criminal offence (Articles 62, 67 and 69); and
 - the power of the customs authorities to seize goods at the border is now regulated in detail (Articles 75 to 77h). This also applies also to goods in transit.

The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty 1996, which were approved on October 5 2007, entered into force in Switzerland on July 1 2008.

Trademarks and designs

The Trademark Law, the Design Law and the Law on the Protection of Topographies were amended in connection with the amendment of the Patent Law Act in the form of an annex to that amendment. The changes concerned:

- the extension of protection to goods in transit (for private use);

- the enforcement of the obligation to disclose the source of goods through criminal law provisions;
- the right of an exclusive licensee to sue; and
- further regulation regarding cooperation with the customs authorities.

The amendments entered into force on July 1 2008.

Other laws

The Law on the Protection of Plant Varieties was amended on October 5 2007 in connection with the ratification of the 1991 version of the International Convention for the Protection of New Varieties of Plants. The amendment:

- redefined the varieties that may be protected (Article 8b) and the scope of that protection (Articles 5, 6, 7, 8 and 8a);
- overhauled the provisions concerning the protection of indications of new plant varieties and the enforcement of the rights in plant varieties (Articles 12 to 17);
- introduced regulations relating to compulsory licences (Articles 22, 22a and 22b); and
- amended the provisions on examination and provisional measures (Articles 29, 30, 31a and 43).

The Law on the Protection of Plant Varieties was not included in the partial harmonisation of IP enforcement provisions carried out in connection with the amendment of the Patent Law Act in June 2007. The revised law entered into force on September 1 2008.

Article 3 of the Unfair Competition Law Act declares spam emails to be illegal. It entered into force on April 1 2007.

Also on April 1 2007, the new Radio and Television Law entered into force together with a corresponding ordinance. Any party can now provide television or radio programmes in Switzerland, provided that it can find a way to distribute the programme by cable or over the air. However, advertising during radio and television programmes is more restricted than in the European Union. Although in principle the rules relating to sponsorship and product placement are more liberal, they are subject to crippling restrictions in practice. The most effective instrument for the enforcement of restrictions under the Radio and Television Law is the regularly applied right to sequester all income generated in connection with illegal acts.

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