

Draft – April 24, 2013

Draft Amendments are in track changes

Patent Law

Decree of President of Government of Islamic Republic of Afghanistan regarding signing the Patent Law

Number: 64
Date: 31-4-1387

Article 1:

I am signing the Patent Law pursuant to the Article 79 of Constitution of Afghanistan, which is confirmed in 6 chapters and 50 articles based on approval # 19 dated 24/4/1387 of The Ministerial Council.

Article 2:

Minister of Justices and Government Minister in parliamentary affairs are held responsible to present this decree within 30 days from the date of first National Assembly meeting.

Article 3:

The decree from the date of signature shall be enforced and be published along the law in the Official Gazette.

President Hamed Karzai

President of Islamic Republic of Afghanistan

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In the Name of Allah, the Beneficent, the Merciful

The Patent Law

Chapter 1 General Provisions

Basis

Article 1:

This Law has been enacted pursuant to Article 47 of the Constitution of Afghanistan to protect material and intellectual rights of the inventor and discoverer and to regulate other related affairs.

Objectives

Article 2:

The following are the objectives of this Law:

- 1- To protect and guarantee the intellectual property rights of the inventor and discoverer.
- 2- To support and encourage scientific research in the fields of science and technology (invention and discovery).
- 3- To register internal and external patent rights.

Expressions

Article 3:

The expressions used in this Law imply the following concepts:

- 1- Invention: Inventing a new phenomenon through the application of the existing means by a new method to achieve an unprecedented result or an industrial, agricultural and/ or a service product.
- 2- Discovery: Disclosure of the existing phenomenon hitherto undiscovered and inaccessible.

- 3- Patent Rights: A privilege granted to the inventor or discoverer in accordance with the provisions of this Law.
- 4- Office of Intellectual Property: An office within the Afghanistan Central Business Registry, Ministry of Commerce and Industry.
- 5- Patent Certificate: A document provided to the patentee by the Office of Intellectual Property as a reference.
- 6- Capable of Industrial Application: A claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used in any kind of industry. "Industry" shall be understood in its broadest sense.
- 7- Compulsory License: A written document issued by the Office of Intellectual Property and on the basis of which a third party makes use of a patented work without the consent of the patentee.

Exclusive Rights

Article 4:

An invention or discovery shall be the exclusive right of the person who invents or discovers and shall be supported and protected if it has been registered in accordance with the provisions of this Law.

Implementer of Law

Article 5:

The Ministry of Commerce and Industries shall be the real source of implementing this Law.

Chapter 2

Registration of Patents

Criteria of Eligibility for Registration; Ineligibility for Registration

Article 6:

- 1) The inventor, discoverer or their legal representative shall submit an application for registration of their patent to the Office of Intellectual Property.
- 2) Patent protection shall be available for inventions or discoveries, whether products or processes, in all fields of technology, which are new, involve an inventive step and are capable of industrial application.

Non-registration

Article 7:

Notwithstanding Article 6(2) of this Law, the following inventions and discoveries are not eligible for patent protection:

- 1- A financial chart.
- 2- An invention or discovery whose commercial exploitation in Afghanistan would pose a danger to the public order or morality; to human, animal or plant life or health; or to the environment.

Application for Registration

Article 8:

- 1) An application for the registration of an invention or discovery shall contain the following:
 - 1- Full name, citizenship, occupation and address of the inventor, discoverer or their legal representative.
 - 2- A synopsis of the subject of the invention or discovery.
 - 3- Indication of the term of validity of the application taking into consideration the validity period of the patent certificate.
 - 4- Mentioning of the date, place of issue and patent registration number from abroad in case the registration form for that invention or discovery is being issued outside Afghanistan.
 - 5- Full name and address of the person residing in respect of the invention or authorized to obtain complete information in respect of the invention or discovery for the registration of which the application has been submitted.
- 2) The application for registration shall be submitted in one of the official languages of the country and shall bear a signature and date.

3) Rights of priority for any applicant who has duly filed an application for a patent in a country with which Afghanistan has concluded a relevant treaty shall be established in accordance with Article 4 of the Paris Convention for the Protection of Industrial Property.

Supporting Materials to Application for Registration

Article 9:

The application for registration shall include the following:

- 1- Description of the invention or discovery in accord with Article 21 of this Law, in three copies.
- 2- Documents or drawings for a thorough understanding of the invention or discovery, in three copies.
- 3- The registration fee as established in the regulations.
- 4- Power of attorney where the application for registration is submitted by the applicant's legal representative.

Review of the Application

Article 10:

1) The relevant Office of Intellectual Property shall, within 15 working days of receiving the application, evaluate the completeness of the application, taking into consideration the provisions set forth under Articles 8 and 9 of this Law, and return a copy thereof to the applicant after being signed and sealed by that Office by recording the date, time, month and year in words on the application which is received by the aforementioned office. An application found incomplete by the Office of Intellectual Property shall be rejected and returned to the applicant in accord with the applicable regulations.

2) The Office of Intellectual Property shall, within 15 working days of informing the applicant of a positive finding under the previous paragraph, conduct an examination of the application and the supporting materials thereto, in order to verify their formal compliance with the pertinent law and regulations, and shall notify the applicant in writing in case of any formal defects being observed therein.

3) An applicant, if a citizen of Afghanistan shall decide within 45 working days, and if a foreign national shall decide within 130 working days, to correct the formal defects being observed in the documents, and where compelling reasons

are given, this period can be extended for one more period specified above by the Office of Intellectual Property if deemed necessary. Where an applicant fails to file a response within the applicable period, the Office of Intellectual Property shall deem the application abandoned, and shall communicate that determination to the applicant in writing.

4) Where the applicant has, within the time limit set forth in paragraph (3) of this Article, filed a response to a notification of formal defects but has failed, in the judgment of the Office of Intellectual Property, to correct those defects, the Office of Intellectual Property shall, by giving reasons, reject the application and shall communicate the rejection to the applicant in writing. In this case the applicant may appeal to the competent court.

5) Where the Office of Intellectual Property, upon conducting the examination required under paragraph (2) of this Article, determines that the application and the supporting materials thereto are in formal compliance with the pertinent law and regulations, the Office shall grant the application preliminary approval and shall, within the period stated at paragraph (2) of this Article, inform the applicant thereof in writing.

Publication of Preliminary Approval

Article 10B:

The Office of Intellectual Property shall, within 21 working days of the grant of a preliminary approval under Article 10(5) of this law, publish a notice of the preliminary approval in the Official Gazette. Such notice, which shall be at the expense of the applicant, shall include the following points:

- 1- Subject matter and synopsis of the application for registration.
- 2- Full name and address of the applicant.
- 3- Filing date and date of preliminary approval of the application.
- 4- The time and manner for asserting an objection to registration pursuant to the regulations.

Objection

Article 10C:

1) Any interested person may file with the Office of Intellectual Property a written objection to the registration of an invention or discovery for which an application has received preliminary approval, on the following grounds:

- 1- The invention or discovery is not eligible for registration under this law; or
 - 2- The applicant is not entitled to register the invention or discovery.
- 2) An objection shall be filed within 6 months from the date of publication of the preliminary approval in the Official Gazette.
- 3) An objection shall include the following:
- 1- Full name and address of the objecting party in the country.
 - 2- Evidence supporting the objection.
 - 3- Such other supporting documents and evidence as the regulations shall require.
- 4) Procedures, requirements and notifications related to objections, as well as cases in which objection periods may be extended, shall be stipulated in the regulations.

Patent Registration

Article 11:

- 1) If no objection is submitted against a registration application which has received preliminary approval, or if any objections thereto were duly rejected, the Office of Intellectual Property shall issue a decision to grant a patent on the invention or discovery, and register the patent accordingly.
- 2) A patent registration shall include the following elements:
 - 1- Registration number of the application.
 - 2- File number of the application.
 - 3- Date on which the application was received, with the indication of time, day, month and year.
 - 4- Full name and address of the inventor, discoverer or their legal representative.
 - 5- Subject of the invention or discovery.
 - 6- Term of validity of the patent certificate.
 - 7- Registration number and term of validity of the patent certificate abroad, if applicable.
 - 8- Registration date of the patent.
 - 9- Signature of the head of the office.
 - 10- Signature of the inventor, discoverer, or their legal representative.

Patent Certificate

Article 12:

1) Upon registration, the Office of Intellectual Property shall issue a patent certificate containing the following elements:

- 1- Date of the invention or discovery.
- 2- Registration number and date of the invention or discovery.
- 3- File number of the inventor or discoverer.
- 4- Subject matter of the invention or discovery.
- 5- Submission date of the application.
- 6- Full name and address of the inventor, discoverer or their legal representative.
- 7- Term of validity of the patent certificate.
- 8- Registration number of the term of validity of the invention or discovery outside Afghanistan, if applicable.
- 9- Signature of the head of the office.
- 10- Number and issue date of the patent certificate.

2) A copy of a summary description of the invention or discovery and the relevant drawings shall be sealed and attached to the patent certificate.

Term of Validity of the Patent Certificate

Article 13:

The term of validity of the patent certificate shall be coextensive with the term of the patent, as set forth in Article 28 of this Law.

Publication of the Registration

Article 14:

The Office of Intellectual Property shall, within 21 working days of the registration of the patent, publish a notice of the registration in the Official Gazette. Such notice, which shall be at the expense of the applicant, shall include the following points:

- 1- Subject matter and synopsis of the patented invention or discovery.

- 2- Full name and address of the inventor or discoverer, and of the patentee, if different.
- 3- Registration number of the inventor or discoverer.
- 4- Term of validity of the patent certificate.

New Invention or Discovery

Article 15:

Any invention or discovery complementing the existing invention or discovery which has already been published in the mass media and/or used prior to the date of application for registration inside or outside Afghanistan shall be deemed as a new invention or discovery.

License or Transfer of Patent Rights

Article 16:

- 1) The patentee may, in accordance with the provisions of this Law license or otherwise transfer his exclusive right in respect of a patent which has been registered in Afghanistan to a third party.
- 2) A license or other transfer of rights shall be registered with the Office of Intellectual Property and published in the Official Gazette in accordance with the regulations, and shall not be valid against third parties until such registration and publication is effected.
- 3) Where a patent right is transferred by way of inheritance, the new patentee may only enjoy the rights thereof in accordance with the provisions of the present Law once he has reregistered it.
- 4) Where a patent right is licensed or otherwise transferred in accordance with the provisions of this Law, the application for registration of the same shall contain the following information:
 - 1- Previous registration number in Afghanistan
 - 2- Full name, address and citizenship of the transferee.
 - 3- Full name and address of the legal representative of the patentee in Afghanistan, if any.
 - 4- Where a patent is transferred from outside the country, the Office of Intellectual Property shall register the said transference; the same document shall be accepted as evidence of the transfer.

Using Complementary Invention or Discovery in Lieu of the Original Invention or Discovery

Article 17:

Where the application for the complementary invention or discovery is a person other than the patentee, he cannot register the complementary invention or discovery for using the original invention or discovery.

Referral to Registration Documents

Article 18:

Any person can, upon payment of a fixed amount, obtain a copy of the documents relating to an invention or discovery and/or the licensing or other transfer thereof after registration.

Registration of Alteration in a Patent

Article 19:

1) Changing the name and address of the representative of the patentee in Afghanistan shall not be effective against third parties unless the change has been registered.

2) Registration of changes that have occurred shall be arranged in three copies on the basis of a written application of the patentee or his or her legal representative and shall take place in accordance with the provisions of the present Law.

Registration of Invention or Discovery Registered Abroad

Article 20:

Where the invention or discovery has already been registered outside Afghanistan, the inventor, discoverer or their legal representative may, on the basis of the original patent certificate or on the basis of the complementary patent certificate, submit to the Office of Intellectual Property an application for the registration of the invention or discovery.

Description of a Patent

Article 21:

1) A description of invention or discovery shall, with due observance of the provision set forth in Article 20 of the present Law, be supplemented to the application and shall be prepared in one of the official languages of the country, and a summary of the invention or discovery, as well as the method of its use shall be added at the end thereof.

Where the description of the invention or discovery is not available in official languages of the country its full description shall be prepared in the English language and its summary in one of the official languages of the country shall be supplemented thereto.

2) A description of the invention or discovery shall be readable, and shall be arranged in such a way as to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art. The description of an invention or discovery shall be without crossings and insertion of words between the lines thereof shall be prohibited.

3) Description sheets of the invention or discovery shall be signed and marked by the inventor, discoverer or his legal representative, and every sentence thereof shall be underlined and the number of sentences shall be fixed at the end thereof.

4) A description of the invention or discovery and the supplements thereof, drawings and other documents shall be arranged on a standard A4 sheet of paper in such a way as to bear the signature of the inventor, discoverer or their legal representative on the blank back of the sheet.

5) Description sheets of invention or discovery shall be stapled and shall be numbered serially. The drawings, too, shall be arranged on special drawing paper, and shall be stapled and shall be numbered serially.

Chapter 3

Alteration or Complementation of Invention or Discovery

Alteration or Complementation

Article 22:

1) Any alteration or complementation of a patented invention or discovery taking place in the term of validity of the patent certificate shall be subject to the provisions of Articles 10 and 21 of this Law.

2) For alteration or complementation of a patented invention or discovery, a patent certificate shall be issued for the complementation of the original certificate. The complementary patent certificate shall be subject to the provisions of articles foreseen in the original certificate, but the term of validity of the complementary certificate shall not exceed the term of validity of the original certificate.

Requesting the Patent Certificate in Lieu of the Complementary Certificate

Article 23:

Where the owner of the patent certificate submits a separate original certificate in lieu of the complementary certificate for the purpose of the alteration or complementation, he shall, in accordance with the provisions of the present Law, be required to pay the fixed registration fee and other costs.

Chapter 4

Patent Rights; Limitations

Continued Prior Use

Article 24:

Any natural or legal person who, before the filing date or priority date of a patent was, in good faith, using within the territory of Afghanistan an invention which is the subject matter of that patent, may, despite the existence of the patent, continue to use that invention, provided that the scope or scale of such use is not increased. The right afforded by this Article may only be transferred together with the business, the enterprise or the part of the enterprise to which it belongs.

Address

Article 25:

1) Where the person applying for registration does not reside in Afghanistan, he shall be required to designate his address for being served in Afghanistan, or an agent who is a resident of Afghanistan to furnish information and documents related to the invention or discovery.

2) The provision set forth in paragraph (1) of the present Article shall also be applicable to the person objecting to or moving to cancel a patent registration.

Effect of Patent Registration

Article 26:

A patent registration shall not bear the guarantee of the Office of Intellectual Property as to the novelty, inventiveness or industrial applicability of the subject invention or discovery, or its conformity with the synopsis of the invention or discovery.

Patent Rights

Article 27:

1) The person applying for registration shall be presumed the owner of the right of the invention or discovery unless ownership of the same has been assigned or transferred to a third party in accordance with the provisions of the present law, and/or on the basis of the court order it has been determined that the owner is someone else other than the applicant.

2) A patentee shall enjoy the following exclusive rights.

1- Where the subject of the patent is a product, in that case the making, use, offering for sale, or sale of the product, or the importation of the product for those purposes, shall be prohibited unless a written agreement of the owner is obtained in advance.

2- Where the subject of the patent is a method or procedure, in that case the use of the procedure, as well as the use, offer for sale, sale, or importation for those purposes of the product obtained directly by the

patented procedure shall be prohibited unless a written agreement of the owner is obtained in advance.

3) Using spare parts of aircrafts, road vehicles or ships belonging to other countries which enter temporarily or coincidentally the air space or territorial waters of Afghanistan, shall be an exception to the provision set forth under paragraph (2) of the present articles.

Commencement and Continuance of Rights

Article 28:

Rights set forth under paragraph (2) of Article 27 of this law shall commence beginning with the date on which a valid application for the registration of the exclusive right in respect of the patent has been submitted in Afghanistan and shall be valid for a duration of 20 years following the date on which the original exclusive right in respect of the patent has been registered.

Compulsory Licensing

Article 29:

1) Where a registered invention or discovery is not worked, or insufficiently worked, in Afghanistan during a period of four years from the date of filing of the patent application, or three years from the date of the grant of the patent, whichever period expires last, the Office of Intellectual Property may issue a compulsory license to a new applicant who has met the requirements set out in this Article. Importation of the patented product shall constitute working for purposes of this Article.

2) Where the right holder demonstrates to the Office of Intellectual Property that his failure to work, or insufficient working, of the invention or discovery registered in Afghanistan was due to legitimate reasons, a compulsory license may not be issued.

3) The compulsory license shall be issued with due observance of the following conditions:

1- The applicant demonstrates that he has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions, and that such efforts have not been successful within a reasonable period of time.

2- The Office of Intellectual Property considers the application for authorization on its individual merits.

4) The compulsory license shall be non-exclusive and non-assignable, and shall specify the following:

1- the scope and duration of the authorized use, which shall be limited to the purpose for which the use was authorized;

2- an authorization for use predominantly for the supply of the market inside Afghanistan;

3- the amount and payment conditions of fees payable to the right holder, which shall be adequate under the circumstances and shall take into account the economic value of the license.

5) A compulsory license issued under this Article shall be subject to termination, subject to adequate protection of the legitimate interests of the authorized party, when the circumstances justifying the license cease to exist and are unlikely to recur. The continued existence of such circumstances shall be subject to review by the pertinent authority upon request by any interested party.

6) Decisions on issuance of a compulsory license under this Article, including decisions relating to payments, shall be subject to appeal and review by the relevant court.

Chapter 5 Cancellation Proceedings

Application to Cancel

Article 30:

1) Any interested person may file with the Office of Intellectual Property a written application to cancel a registered patent one or more than one of the following grounds:

1- The invention or discovery was not eligible for registration under this law;

2- The applicant was not entitled to register the invention or discovery; or

3- Where the invention or discovery has not been worked for five years following issuance of the patent certificate, and where a compulsory license on the invention or discovery has been granted but has not been sufficient to remedy the failure to work. No proceedings may be instituted

under this subparagraph before the expiration of two years from the grant of the first compulsory license on the relevant invention or discovery.

2) The cancellation application shall include the following:

- 1- Full name and address of the cancellation applicant in the country.
- 2- Evidence supporting the application to cancel.
- 3- Such other supporting documents and evidence as the regulations shall require.

Forwarding of Cancellation Application

Article 31:

The Office of Intellectual Property shall, within (10) working days after receiving the cancellation application, send it to the address of the patentee or to his legal representative, along with instructions as to the time and manner for filing a response to the cancellation application pursuant to the regulations.

Additional Procedures

Article 32:

Procedures, requirements and notifications related to cancellation proceedings shall be stipulated in the regulations.

Maintenance of Patent Registration

Article 33:

If no cancellation application is submitted against a registered patent, or if any cancellation applications against it are duly rejected, the Office of Intellectual Property shall maintain the registration of the patent until the expiration of the protection period of the patent.

Grace Period

Article 34:

In accordance with the regulations, the Office of Intellectual Property may grant additional time for the submission of documents and information, and for the payment of the required fees under this law or the regulations.

Appeal

Article 35:

Final administrative decisions permitted under this law shall be subject to review by the competent court.

Chapter 6

Final Provisions

Precautionary Measures

Article 36:

The pertinent court shall have the authority to order, in accordance with applicable regulations, provisional measures to prevent an infringement of any rights under this Law, or to preserve evidence relevant to an alleged infringement. Where appropriate, such measures may be adopted without notice or hearing afforded to the defendant, in particular where any delay is likely to cause irreparable harm to a right holder, or where there is a demonstrable risk of destruction of evidence.

Fees

Article 37:

Fees for registration, compulsory licenses, and other matters within the authority of the Office of Intellectual Property shall be governed by a separate regulation.

Implementation of Law

Article 38:

1) For better implementation of the provisions of this law, the Ministry of Commerce and Industries may develop regulations and enact by-laws and procedures, including enforcement procedures.

2) For purposes of coordinating the implementation of the provisions of this Law, the Office of Intellectual Property shall form a Committee consisting one representative from each of the following organizations:

- 1- Attorney General's Office
- 2- Police Department
- 3- Competition Promotion & Consumer Protection Dept, MoCI
- 4- IP Dept, ACBR

3) The implementation responsibilities of this Committee shall be set forth in the regulations promulgated pursuant to this Law.

Date of Enforcement

Article 39:

The present Law shall come into force on the date which it is published in the Official Gazette.