

**Decree of President of Government of Islamic Republic of Afghanistan regarding signing The Law on Support the Rights of Inventors and Discoverers**

**Number: 64**

**Date: 31 July, 2008**

Article 1:

I am signing The Law on Support the Rights of Inventors and Discoverers 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 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.

Hamed Karzai

President of Islamic Republic of Afghanistan

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In the Name of Allah, the Beneficent, the Merciful

# The Law on support the rights of inventors and discoverers.

## Chapter 1 General Provisions

### **Basis**

#### **Article 1:**

This Law has been enacted pursuant to the 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 t this law:

- 1- To protect and guarantee the intellectual property rights of the inventor and discoverer.
- 2- To support and encourage scientific researches 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- Patent Form: A document delivered to the inventor or discoverer by the office of intellectual property as a reference.

- 5- Industry: Means human economic activity as the result of which natural substances are converted into manufactured goods and services.
- 6- Compulsory License: A written document issued by the registration office and on the basis of which a third person makes use of the invention and discovery 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 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**

#### **Terms and Conditions of Registration**

#### **Article 6:**

- 1) The inventor, discoverer or their legal representative may submit an application for registration of their patent to the office of intellectual property of the Ministry of Commerce and Industries.
- 2) The inventor, discoverer or their legal representative shall, after the application for registration has been confirmed, deposit an amount of money as registration fee in the revenue account of the state with the bank, which shall not be refundable.

#### **Non-registration**

#### **Article 7:**

The following inventions and discoveries are not registrable:

- 1- A financial chart.

- 2- An invention or Discovery complementing another invention or discovery which is repugnant to chastity, public order or is in contradiction to the public hygiene or environment.
- 3- Drug formulae.

### **Application for Registration**

#### **Article 8:**

- 1) An application for the registration of invention or Discovery contains the followings:
  - 1- Full name, citizenship, occupation and address of the inventor, discoverer or their legal representative.
  - 2- A synopsis of the subject of the Inventions or Discovery.
  - 3- Indication of the term of validity of the application taking into consideration the validity period of the patent Form.
  - 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.

### **Annexes to Application for Registration**

#### **Article 9:**

The application for registration shall have the following annexes:

- 1- Description of the Invention or Discovery, in three copies.
- 2- Documents or drawings for a thorough understanding of the invention or Discovery, in three copies.
- 3- Registration document of the office of intellectual property based on payment of the registration fee.
- 4- Power of attorney where the application for registration is submitted by their legal representative.

### **Review of the Application**

#### **Article 10:**

- 1) The relevant office shall, after receiving the application, evaluate the accuracy of the documents taking into consideration the provision set forth under article 24 of the present Law, and shall return a copy thereof to the applicant after being signed and sealed by the relevant office by recording the date, time, month and year in words on the application which is received by the afore mentioned office.

2) The registration office shall, within 15 days of receiving the application and the annexes thereof, be required to check compliance thereof with the pertinent law and regulation and shall make a decision, and shall apprise the applicant in writing in case of defects being observed therein.

3) An applicant if a citizen of Afghanistan shall decide within two months and if an alien shall decide within six months to correct the defects being observed in the documents, and where reasons have given, this period can be extended for one more period.

4) Where the applicants fail to take action to correct the defects within the time limit set forth in paragraph (2) of the present article, the relevant office shall, by giving reasons, reject the application and shall communicate the issue to the applicants in writing. In this case the applicant may resort to the competent court according to the provision set forth under paragraph (2) of the present Article.

### **Registration of the Patent**

#### **Article 11:**

1) A Patent shall be registered taking into consideration the following points:

- 1- Registration number of the application.
- 2- File number of the application.
- 3- Date on which the application is 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 Form.
- 7- Registration number and term of validity of the Patent Form in abroad.
- 8- Registration date of the Patent.
- 9- Signature of the in charge of the office.
- 10- Signature of the inventor, discoverer, or their legal representative.

2) Any alteration or complementation of the invention or discovery, total or partial conveyance thereof with due observance of the provision set forth under paragraph (1) of the present Article shall also be registered with the relevant office.

### **Form of the Registered Invention or Discovery:**

#### **Article 12:**

1) The Invention or Discovery form containing the following points shall be submitted after being registered in the name of the inventor, discoverer or in the name of their legal representative:

- 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 Form.
- 8- Registration number of the term of validity of the invention or discovery outside Afghanistan.
- 9- Signature of the head of the office.
- 10- Number and issue date of the Patent Form.

2) Copy of a summary description of the invention or discovery and the relevant drawings shall be sealed and attached to the Patent Form.

### **Term of Validity of the Form**

#### **Article 13:**

- 1) The term of validity of the Invention or Discovery form shall, as requested by the inventor or discoverer, be up to (20) years.
- 2) The inventor, discoverer or his or her legal representative shall have the exclusive right to use, manufacture or vend his or her Invention or Discovery within the period mentioned in the paragraph 1 of this article

### **Publication of the Invention or Discovery**

#### **Article 14:**

The relevant office shall, within one month at a maximum following registration of an Invention or Discovery, be required to publish a notice containing the following points in the official Gazette at the cost of the Invention or Discovery.

- 1- Subject of the Invention or Discovery.
- 2- Full name and address of the inventor or discoverer.
- 3- Registration number of the inventor or discoverer.
- 4- Term of validity of the invention or discovery form.

### **Rights of Claim against Registration of the Invention or Discovery**

#### **Article 15:**

Registration of an Invention or discovery set forth in Article six of the present law shall not bar actions by the patentees on account of the novelty, originality and usability of the invention, discovery and the like, before a competent court.

## **New Invention or Discovery**

### **Article 16:**

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.

## **Transfer of Patent Rights**

### **Article 17:**

- 1) The patentee may, in accordance with the provisions of the present law, transfer his exclusive right in respect of a patent which has been registered in Afghanistan to a third person.
- 2) Where the Patent Form is transferred by way of inheritance, the new patentee may only enjoy the rights thereof in accordance with the provisions of the present Act provided he has reregistered it. The registration office shall record the said registration on the relevant page of the Invention or Discovery and shall publish it in the official Gazette.
- 3) Where a Patent is transferred in accordance with the provision of the present Act, the application for re-registration 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 inventor or discoverer in Afghanistan.
  - 4- Where a patent is transferred from outside the country, the local office shall register the said transference which document shall be accepted as the deed of conveyance.

## **Submission of the Permit for Making use of the Patent**

### **Article 18:**

The relevant office shall, after thoroughly scrutinizing the application for registration and ensuring its conformity to the provisions of the present Act and the pertinent regulation, take action concerning the registration thereof, and shall publish the registration number of the invention or discovery, as well as a summary of the contents of the permit and deliver the document to the transferee.

## **Using complementary Invention or Discovery in lieu of the Original Invention or Discovery**

### **Article 19:**

Where the application for the complementary Invention or Discovery is a person other than the inventor or discoverer, he cannot register the complementary Invention or Discovery for using the original Invention or Discovery.

## **Transfer to Third Parties**

### **Article 20:**

The exclusive right of the inventor or discoverer being transferred on the basis of an official deed of conveyance shall be registered with the relevant office; otherwise it shall not be valid for a third person.

## **Referral to Registration Documents**

### **Article 21:**

Any person can, upon payment of a fixed amount, obtain a certified copy of the documents relating to an Invention or Discovery and / or a conveyance thereof after registration.

## **Registration of Alteration in a Patent**

### **Article 22:**

1) An inventor or discoverer may make entry of a change in the term of validity of his/her Invention or Discovery form, and shall be obligated to register it in accordance with the provisions of the present Law upon payment of the fixed registration fee.

- 2) Changing the name, address and citizenship of the representative of the inventor or discoverer in Afghanistan shall not be permitted unless the change has been registered.  
Registration of changes that have occurred shall be arranged in three copies on the basis of a written application of the inventor, discoverer or his or her legal representative and shall take place in accordance with the provisions of the present Law.

## **Original Subject of a Patent**

### **Article 23:**

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 Invention or Discovery form or on the basis of the

complementary Invention or Discovery form, submit to the relevant office an application for the registration of the unit.

### **Description of a Patent**

#### **Article 24:**

1) A description of Invention or Discovery shall, with due observance of the provision set forth in Article (23) 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 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 enable a professional or technical person to ascertain its freshness upon a perusal thereof. 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 25:**

1) Any alteration or complementation of an Invention or Discovery taking place in the term of validity of the Invention or Discovery form shall be subject to the provisions of Article 10 and 24 of the present Law.

2) For alteration or complementation of an Invention or Discovery, an Invention or Discovery form shall be issued for the complementation of the original form. The complementary invention form shall be subject to the provisions of articles foreseen in the original form, but the term of validity of the complementary form shall not exceed the term of validity of the original form.

### **Asking for the Original Form in lieu of the Complementary Form**

#### **Article 26:**

Where the owner of the Invention or Discovery form submits a separate original form in lieu of the complementary form 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.

### **Conveyance Documents and Supplements Thereof**

#### **Article 27:**

Conveyance documents, power of attorney and a registration form of Invention or Discovery shall be supplemented to the application. The Invention or Discovery form shall, following registration of transference, be returned to the owner thereof.

### **Rejection of the Application and Supplements Thereof**

#### **Article 28:**

Where the application for registration of an Inventory or Discovery has been rejected, the following documents shall also be supplemented thereto:

- 1- The original or copy of the decision by virtue of which the registration application has been rejected.
- 2- Objections raised by the applicant concerning rejection of the application.
- 3- A power of attorney where the application has been submitted by the legal representative of the inventor or Discoverer.

## **Chapter 4**

### **Registration of Invention or Discovery Made by Aliens**

#### **Registration Terms and Condition**

**Article 29:**

An alien inventor or discoverer may, in accordance with the provisions of the present law, apply for the registration of the remaining duration of his/her Invention or Discovery in Afghanistan, provided the term of validity of the Invention or Discovery form has not expired in his / her country of origin.

Where an Invention or Discovery is used by a person or institution partially or in its entirety prior to applying for registration thereof in Afghanistan, or the grounds for the use thereof have been provided, the inventor or discoverer cannot prevent a person or institution instituting actions.

**Address****Article 30:**

1) Where the person applying for registration does not reside in Afghanistan, he shall be required to specify his address in Afghanistan, or shall provide another authorized person who is a citizen 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 the Invention or Discovery form.

**Registration of the Right of Conveyance or Assignment****Article 31:**

1) Where the assignee of the exclusive right of Invention or Discovery is an alien, or real and juristic persons derive a right from the assignor by way of conveyance or by legal order may, as the owner or as the bearer of the exclusive authorization, he may apply for the registration in Afghanistan of the exclusive right respecting an Invention or Discovery. An application for registration shall be delivered to the original country within 2 years of granting the exclusive right in respect of the Invention or Discovery.

2) An application for registration set forth in paragraph (1) of the present Article shall contain the following;

- 1- Full name and address of the applicant.
- 2- Subject of the Invention or Discovery.
- 3- Number and date of the previous registration.
- 4- Name of the country where the Invention or Discovery has already been registered.

**Review of the Exclusive Right in Respect of Patent****Article 32:**

A Patent Right the registration of which has been applied for shall be registered without investigation as the responsibility of the applicant and without guarantee with an explanation that it has been registered without investigation, provided it does not result in limitation of rights of third parties.

## **Certification of Patent Right**

### **Article 33:**

1) The person applying for registration shall be deemed as the owner of the exclusive right of the registered patent unless ownership of the exclusive right has been assigned or transferred to a third person 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) The owner of the Exclusive right referred to under paragraph (1) of the present Article shall, after registration, enjoy the following exclusive rights.

1- Where the subject of the exclusive right of patent is manufacturing, in that case its use, provision, sale or import shall be prohibited unless a written agreement of the owner is obtained in advance.

2- Where the subject of the exclusive right of the patent is a method or procedure, in that case the use, provision, sale or import thereof 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 34:**

Rights set forth under paragraph (2) of Article 33 of the present law shall commence beginning with the date on which 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.

## **Modus Operandi**

### **Article 35:**

1) Where the registered Invention or Discovery is not used generally or specifically with the modus operandi thereof in its place of origin or in Afghanistan after being imported, the pertinent office may, after a lapse of 4 years following submission of an application for registration or upon a lapse of 3 years following the date on which it has been registered, issue a Compulsory License.

2) The Compulsory License shall be issued with due observance of the following conditions:

- 1- Determining limits of the use of the license.
- 2- Determining the duration within which the holder of the license will commence use of the invention or discovery.
- 3- Fixing the amount of money payable to the owner of the exclusive right and payment conditions thereof.

3) Where the owner of exclusive right in respect of a patent convinces the relevant office by giving reasons by non-use or insufficient use of the invention or Discovery being registered in Afghanistan, in that case the Compulsory License shall not be issued.

4) The user of the Compulsory License shall, in accordance with the terms set forth in the permit, have the right to use the invention or Discovery being registered in Afghanistan.

5) The Compulsory License provided for under paragraph (2) of the present Article shall be issued upon payment of a fixed fee.

### **Supplement to Application**

#### **Article 36:**

A certified copy of the exclusive right in respect of the patent and its pertinent specifications shall be attached to the application for registration with due observance of the provision set forth under Article 9 of the present Act. Where the certified copy is in the English language, its precise translation in one of the official languages of the country shall, after being certified, also be attached.

### **Publication of the Application**

#### **Article 37:**

The relevant office shall, after confirming the application for registration of the exclusive right in respect of a foreign Invention, be required to publish information pertaining to the exclusive right in the media prior to registration thereof.

## **Chapter 5**

### **Judicial Decisions**

#### **Protest**

##### **Article 38:**

Any protest based on the ownership right concerning the application for registration of a patent shall only be accepted when the person filing the protest also applies for registration of the patent in his own name in accordance with the provisions of the present Law.

#### **Addressing of the Protest**

##### **Article 39:**

Where the notice of the Protest is filed in respect of the Patent Form before or after the registration thereof, the person filing the notice of Protest shall be required to deposit an amount to be determined by a competent court as a guarantee into a special account with the bank and shall attach the voucher thereof to the notice of the protest.

Where the Protester fails to prove his claim, the damages incurred as the result thereof shall be compensated from the guarantee amount, and if not so, he shall be required to compensate the defendant for the entire amount of damages. And where the protest is proved, the protester shall be eligible for compensation of the damages that he incurred.

#### **Pre-registration Protest**

##### **Article 40:**

1) A written protest concerning an unregistered patent shall, taking in consideration the following points, be filed with the relevant office:

- 1- Full name and address of the protester in the country.
- 2- A statement of reasons and proof why the protester considers himself eligible.
- 3- Copies of the documents to prove the claim of the protester.

2) The relevant office shall be required to furnish the protester with a receipt for the protest bearing the date on which the protest has been received.

#### **Post-registration Protest**

##### **Article 41:**

An applicant for rebuttal of the registered patent to the following attachments shall be submitted to the relevant office:

- 1- A document certified by the office pertaining to the patent Form the rebuttal of which has been requested
- 2- The original or copy of the substantiating documents pertaining to the claim of the protester.
- 3- A power of attorney where proceedings of the case have been submitted by the legal representative of the inventor or discoverer.

### **Communicating the Protest**

#### **Article 42:**

- 1) The relevant office shall, within (10) days after receiving the protest, send it to the address of the person applying for registration or to his legal representative, and where the protest has been proved, the application for registration of the patent shall be rejected.
- 2) Unless the circumstance set forth in paragraph (1) of the present Article where the patent has already been registered, in this case the previous registration shall be rendered null and void and the patent shall be registered in the name of the protester.

### **Rebuttal**

#### **Article 43:**

- 1) Where the person applying for registration deems the protest of the protester to be justified, he shall communicate the issue to the protester in writing and his application shall be rejected.
- 2) Where the disputed patent has not already been registered, it shall, in accordance with the provision set forth under Article 40 of the present Law, be registered taking in account the protestor's application being submitted at the time of making the protest.
- 3) Where the disputed patent having already been registered, in this case actions shall be taken in accordance with the provision set forth under paragraph (1) of the present Article.

### **Expiration of Time**

#### **Article 44:**

1) The protester may, within 60 days following the date on which the protest against the person applying for registration has been communicated, resort to the court unless the person applying for registration has served him with a rebuttal prior to expiration of this time in accordance with the provision set forth under Article 43 of the present Law.

2) Where the plaintiff did not resort to the court within the time provided for under paragraph (1) of the present Article, the registration office shall, taking into account the decision of the court, register the patent in the name of the respondent. In this case the amount which he had paid for registration of the patent shall be deposited into the state's revenues account.

### **Moratorium**

#### **Article 45:**

1) Where the plaintiff has failed to attach his documents and papers to proceedings of the case, the court may, on the basis of his request after hearing, and if necessary, grant him a moratorium not exceeding 3 months.

2) A moratorium provided for under paragraph (1) of the present Article can also be granted to the person applying for registration in order to submit documents necessary for his defense.

### **Referral to the Court**

#### **Article 46:**

Any beneficiary may submit an application to a competent court to issue an order concerning nullification of the patent Form under the following instances:

- 1- Where the Invention or Discovery is not new.
- 2- Where the Patent Form has not been issued in accordance with the provisions set forth under Article 7 of the present Law.
- 3- Where the purpose of the Invention or Discovery is mainly scientific research and has no practical applicability for industrial, agricultural or service purposes.
- 4- Where the Invention or Discovery has not been put in practical use for five years following issuance of the Patent Form.

### **Precautionary Measures**

#### **Article 47:**

- 1) A plaintiff may, concerning the exclusive right in respect of his Invention or Discovery ask the competent court at any time to issue an order for sequestration of forged or imitative products, or may ask the court to issue an interim order for non-production, sale or entry of forged or imitative goods.
- 2) The court shall, in order to compensate for damages incurred by the respondent, require the plaintiff to provide an appropriate guarantee prior to issuing an interim order for sequestration of products or for non-production, sale or entry of goods.
- 3) Where the plaintiff fails to file a case within 10 days following the issuance of the court's order, he shall be required to compensate for damages incurred by the respondent,

## **Chapter 6**

### **Final Provision**

#### **Amount of the Registration Fee**

##### **Article 48:**

The amount of the registration, conveyance or assignment fee as well as the fee of Compulsory License of the Patent shall be determined by a separate regulation.

#### **Enactment of Regulations and Procedures**

##### **Article 49:**

The ministry of Commerce and Industries may process regulations and adopt by-laws and procedures for better implementation of the provisions of the present Law.

#### **Date of Enforcement**

##### **Article 50:**

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