

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: 31-4-1387

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

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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**

#### **Criteria of Eligibility for Registration; Ineligibility for Registration 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.
- 3) 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 paragraph 1 of this Article, the following inventions and discoveries are not eligible for



- 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 be coextensive with the term of the patent, as set forth in Article 34 of this Law.

~~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, within the period mentioned in the paragraph 1 of this article, have the exclusive rights specified in Article 33(2) of this Law. ~~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-

- 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

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.

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

### **Article 28:**

Where the application for registration of an Invention 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 appl Tw[Ita W

the exclusive authorization, he may apply for the registration in Afghanistan of the exclusive right respecting

~~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.

3- Fixing the amount of money payable to the owner of the exclusive right and payment conditions





## **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



## **Precautionary Measures**

### **Article 47:**

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.

~~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, procedures, enforcement measures and remedies for implementation of the provisions of the present Law.  
~~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.