

KINGDOM OF CAMBODIA
Nation – Religion – King

Draft

- (i) discoveries, scientific theories and mathematical methods;
- (ii) schemes, rules or methods for doing bus

Article 11: If two or more persons have jointly made an invention, the right to the patent shall belong to them jointly.

Article 12: If and to the extent to which two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date shall have the right to the patent, as long as the said application is not withdrawn, abandoned or rejected.

Article 13: The right to a patent may be assigned, or may be transferred by succession.

Article 14: Where an invention is made in execution of an employment contract, the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer.

Article 15: The inventor shall be named as such in the patent, unless in a special written declaration signed by him and addressed to the Registrar he indicates that he wishes not to be named. Any promise or undertaking by the inventor made to any person to the effect that he will make such a declaration shall be without legal effect.

SECTION 3 **Application for a Patent**

Article 16: The application for a patent shall be filed with the Ministry in charge of industry and shall contain a request, a description, one or more claims, one or more drawings (where required), and an abstract. It shall be subject to the payment of the prescribed application fee as provided under Article 130 of this Law.

Article 17: The request shall contain a petition to the effect that a patent be granted, the name of and other prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention.

Where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent.

Article 18: The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate the best mode known to the applicant for carrying out the invention, at the filing date or, where priority is claimed, at the priority date of the application.

Article 19: The claim or claims shall define the matter for which protection is sought. The description and the drawings may be used to interpret the claims.

Claims shall be clear and concise. They shall be fully supported by the description.

Article 20: Drawings shall be required when they are necessary for the understanding of the invention.

Article 21: The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the scope of the protection.

Article 22: The applicant may, up to the time when the application is in order for grant, withdraw the application at any time during its pendency.

SECTION 4: Unity of Invention; Amendment and Division of Application

Article 23: The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Article 24: The applicant may, up to the time when the application is in order for grant, amend the application, provided that the amendment shall not go beyond the disclosure in the initial application.

Article 25: The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications ("divisional applications"), provided that each divisional application shall not go beyond the disclosure in the initial application.

Each divisional application shall be entitled to the filing date and, where applicable, the priority date of the initial application.

Article 26: The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention under Article 23 of this Law shall not be a ground for the invalidation of the patent.

SECTION 5: Right of Priority

Article 27: The application may contain a declaration claiming the priority, as provided for in the Paris Convention, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any State party to the said Convention or any Member of the World Trade Organization.

Article 28: Where the application contains a declaration under Article 27 of this Law, the Registrar may request that the applicant furnish, within the prescribed time limit, a copy of the earlier application certified as correct by the Office with which it was filed.

Article 29: The effect of the said declaration shall be as provided in the Paris Convention.

If the Registrar finds that the requirements under this Section and the Regulations pertaining thereto have not been fulfilled, the said declaration shall be considered not to have been made.

SECTION 6: Information Concerning Corresponding Foreign Applications and Patents

Article 30: The applicant shall, at the request of the Registrar, furnish him with the date and number of any application for a patent filed by him abroad ("foreign application") relating to the same or essentially the same invention as that claimed in the application filed with the Ministry in charge of industry.

Article 31: The applicant shall, at the request of the Registrar, furnish him with the following documents relating to one or more of the foreign applications referred to in Article 30 of this Law:

- (i) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;
- (ii) a copy of the patent granted on the basis of the foreign application;
- (iii) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

The applicant shall, at the request of the Registrar, furnish him with a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in the 1st paragraph of this Article.

Article 32: Items (i) and (iii) of the 1st paragraph of Article 31 of this Law shall not apply in respect of information relating to the examination of the same international application in another elected Office where the Registration Department is an elected Office in the meaning of Article 83 of this Law.

SECTION 7: Filing Date; Examination

Article 33.

The Registrar shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains:

- (i) an express or implicit indication that the granting of a patent is sought;
- (ii) indications allowing the identity of the applicant to be established;
- (iii) a part which, on the face of it, appears to be a description of an invention.

If the Registrar finds that the application did not, at the time of receipt, fulfill the requirements referred to in the 1st paragraph of this Article, he shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it had not been filed.

Article 34: Where the application refers to drawings which in fact are not included in the application, the Registrar shall invite the applicant to furnish the missing drawings. If the applicant complies with the said invitation, the Registrar shall accord as the filing date the date of receipt of the missing drawings. Otherwise, the Registrar shall accord as the filing

date the date of receipt of the application and shall treat any reference to the said drawings as non-existent.

Article 35: After according a filing date, the Registrar shall examine whether the application complies with the requirements of Articles 16 and 17 of this Law and the Regulations pertaining thereto and those requirements of this Law and the Regulations which are designated by the Regulations as formal requirements for the purposes of this Law and whether information requested under Articles 30, 31 and 32 of this Law, if any, has been provided.

Article 36: Where the Registrar is of the opinion that the application complies with the requirements indicated in the Article 35, the Registrar shall take a decision as to whether the requirements of the 2nd and 3rd paragraph of Article 3, Articles 4 to 9, Articles 18 to 20 and Articles 23 to 26 of this Law and the Regulations pertaining thereto are fulfilled.

Article 37: The Registrar shall take into account, for the purposes of Article 36 of this Law, as following:

- (i) the results of any international search report and any international preliminary examination report established under the PCT in relation to the application; and/or
- (ii) a search and examination report submitted under item (i) of the 1st paragraph of Article 31 of this Law relating to, or a final decision submitted under item (iii) of the 1st paragraph of Article 31 of this Law on the refusal to grant a patent on, a corresponding foreign application; and/or
- (iii) a search and examination report which was carried out upon his request by an external search and examination authority.

SECTION 8: Grant of Patent; Changes in Patents

Article 38: Where the Registrar finds that the conditions referred to in Articles 35 and 36 of this Law are fulfilled, he shall grant the patent. Otherwise, he shall refuse the application and notify the applicant of that decision.

Article 39: When he grants a patent, the Registrar shall:

- (i) publish a reference to the grant of the patent;
- (ii) issue to the applicant a certificate of the grant of the patent and a copy of the patent;
- (iii) record the patent;
- (iv) make available copies of the patent to the public, on payment of the prescribed fee.

Article 40: The Registrar shall, upon request of the owner of the patent, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred thereby, provided that the change would not result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent was granted.

SECTION 9: Rights Conferred by Patent

Article 41: The exploitation of the patented invention in the Kingdom of Cambodia by persons other than the owner of the patent shall require the latter's agreement.

Article 42: For the purposes of this Law "exploitation" of a patented invention means any of the following acts:

- (i) when the patent has been granted in respect of a product:
 - (a) making, importing, offering for sale, selling and using the product;
 - (b) stocking such product for the purposes of offering for sale, selling or using.
- (ii) when the patent has been granted in respect of a process:
 - (a) using the process;
 - (b) doing any of the acts referred to in items (a) and (b) in the 1st paragraph of this Article in respect of a product obtained directly by means of the process.

Article 43: The owner of the patent shall, in addition to any other rights, remedies or actions available to him, have the right, subject to Article 44 and Articles 47 to 55 of this Law, to institute court proceedings against any person who infringes the patent by performing, without his agreement, any of the acts referred to in Article 42 of this Law or who performs acts which make it likely that infringement will occur.

Article 44: The rights under the patent shall not extend:

- (i) to acts in respect of articles which have been put on the market in the Kingdom of Cambodia by the owner of the patent or with his consent; or
- (ii) to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of the Kingdom of Cambodia, or
- (iii) to acts done only for experimental purposes relating to a patented invention; or
- (iv) to acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is

granted and in the Kingdom of Cambodia, was using the invention or was making effective and serious preparations for such use.

The right of prior user referred to in item (iv) of the 1st paragraph of this Article may be transferred or devolve only together with the enterprise or business, or with that part of the enterprise or business, in which the use or preparations for use have been made.

Article 49: Upon request of the owner of the patent, the Minister shall terminate the authorization if he is satisfied, after hearing the parties, if either or both wish to be heard, that the circumstances of items (i) and (ii) in the 1st paragraph of Article 47 of this Law which led to his decision have ceased to exist and are unlikely to recur or that the Government agency or third person designated by him has failed to comply with the terms of the decision.

Notwithstanding the 1st paragraph of this Article, the Minister shall not terminate the authorization if he is satisfied that the need for adequate protection of the legitimate interests of the Government agency or third person designated by him justifies the maintenance of the decision.

Article 50: Where a third person has been designated by the Minister, the authorization may only be transferred with the enterprise or business of that person or with the part of the enterprise or business within which the patented invention is being exploited.

Article 51: The authorization shall not exclude:

- (i) the conclusion of license contracts by the owner of the patent or the continued exercise, by the owner of the patent, of his rights under Article 42 of this Law; or

the issuance of a non-voluntary license under Section 12 of this Chapter.

the owner of the patent shall be notified of the Minister's decision as soon as reasonably practicable.

Article 53: The exploitation of the invention by the Government agency or third person designated by the Minister shall be predominantly for the supply of the market in the Kingdom of Cambodia.

Article 54: The exploitation of a patented invention in the field of semi-conductor technology shall only be authorized for public non-commercial use or where a judicial or administrative body has determined that the manner of exploitation of the patented invention, by the owner of the patent or his licensee, is anti-competitive and if the Minister is satisfied that the issuance of the non-voluntary license would remedy such practice.

Article 55: The decisions of the Minister under this Section may be the subject of an appeal before the competent Court.

SECTION 12: Non-Voluntary Licenses

Article 56: On the request, made to the Minister after the expiration of 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 Minister may issue a non-voluntary license if he is satisfied that the patented invention is not exploited or is insufficiently exploited, by working the invention locally or by importation, in the Kingdom of Cambodia.

Notwithstanding the 1st paragraph of this Article, a non-voluntary license shall not be issued if the owner of the patent satisfies the Minister that circumstances exist which justifies the non-exploitation or insufficient exploitation of the patented invention in the Kingdom of Cambodia.

Article 57: The decision issuing the non-voluntary license shall fix:

- (i) the scope and the function of the license,
- (ii) the time limit within which the licensee must begin to exploit the patented invention, and
- (iii) the amount of the adequate remuneration to be paid to the owner of the patent and the conditions of payment.

Article 58: The beneficiary of the non-voluntary license shall have the right to exploit the patented invention in the Kingdom of Cambodia according to the term set out in the decision issuing the license, shall commence the exploitation of the patented invention within the time limit fixed in the said decision and, thereafter, shall exploit the patented invention sufficiently.

Article 59: If the invention claimed in a patent called ("later patent") cannot be exploited in the country without infringing a patent granted on the basis of an application benefiting from an earlier filing or, where appropriate, priority date called ("earlier patent"), and provided that the invention claimed in the later patent involves an important technical advance of considerable economic importance in relation to the invention claimed in the earlier patent, the Minister, upon the request of the owner of the later patent, may issue a non-voluntary license to the extent necessary to avoid infringement of the earlier patent.

Article 60: Where a non-voluntary license is issued under Article 59 of this Law, the Minister, upon the request of the owner of the earlier patent, shall issue a non-voluntary license in respect of the later patent.

Article 61: In the case of a request for the issuance of non-voluntary license under Articles 59 and 60, Article 57 of this Law shall apply *mutatis mutandis* with the proviso that no time limit needs to be fixed.

Article 62: In the case of a non-voluntary license issued under Article 59 of this Law, the transfer may be made only with the later patent, or, in the case of a non-voluntary license issued under Article 60 of this Law, only with the earlier patent.

Article 63: The request for the issuance of a non-voluntary license shall be subject to payment of the prescribed fee as provided under the Article 130 of this Law.

Article 64: The 2nd paragraph of Article 47 to Article 55 of this Law shall apply *mutatis mutandis*.

SECTION 13: Invalidation

Article 65: Any interested person may request the competent Court to invalidate a patent.

Article 66: The competent Court shall invalidate the patent if the person requesting the invalidation proves that any of the requirements of the 2nd and 3rd paragraph of Article 3, Articles 4 to 9 and Articles 18 to 20 of this Law is not fulfilled or if the owner of the patent is not the inventor or his successor in title.

Article 67: Any invalidated patent, or claim or part of a claim, shall be regarded as null and void from the date of the grant of the patent.

Article 68: The final decision of the competent Court shall be notified to the Registrar who shall record it and publish a reference thereto as soon as possible.

CHAPTER III: UTILITY MODEL CERTIFICATES

SECTION 1: Protectable Utility Model Certificate

Article 69: For the purposes of this Law, a utility model certificate means a certificate which is granted for the protection of a utility model.

Utility model means any invention which is new and industrially applicable and may be, or may relate to, a product or process.

SECTION 2: Applicability of Provisions Relating to Patents

Article 70: With the exclusion of Articles 71 to 74 of this Law, the provisions of Chapter II of this Law shall apply, *mutatis mutandis*, to utility model certificates or applications therefor, as the case may be.

Where the right to a patent conflicts with the right to a utility model certificate in the case referred to in Section 2 of Chapter II of this Law, the said provision shall apply as if the word "patent" were replaced by the words "patent or utility model certificate".

SECTION 3: Special Provisions Relating to Utility Model Certificates

Article 71: Articles 5 and 7 of this Law shall not apply in the case of inventions for which utility model certificates are requested.

Article 72: Articles 36 and 45 shall not apply in the case of applications for utility model certificates.

Article 73: A utility model certificate shall expire, without any possibility of renewal at the end of the seventh year after the date of the filing of the application.

Article 74: In proceedings under the Articles 65 to 67 of this Law, the Court shall invalidate the utility model certificate on any the following grounds:

- (i) that the claimed invention did not qualify for a utility model certificate, having regard to Articles 6, 8, 9 and 69 of this Law;
- (ii) that the description and the claim do not comply with requirements prescribed by Articles 18 and 19 of this Law and the Regulations pertaining thereto;
- (iii) that any drawing which is necessary for the understanding of the invention has not been furnished;
- (iv) that the owner of the utility model certificate is not the inventor or his successor in title.

complies with the requirements of that Article and files with the Registration Department an express (urgent) Tf1n

be an industrial design, provided that such composition, form or material gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft, and appeals to and is judged by the eye.

Article 90: The protection under this Law does not extend to anything in an industrial design which serves solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance.

SECTION 2: Registrable Industrial Designs

Article 91: An industrial design is registrable if it is new.

Article 92: An industrial design shall be considered as new if it has not been disclosed to the public, anywhere in the world, by publication in tangible form or by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration.

Article 97:

At the expiry of the period of deferment, the Registrar shall publish the registered industrial design.

The institution of legal proceedings on the basis of a registered industrial design during the period of deferment of publication shall be subject to the condition that the information contained in the Register and in the file relating to the application has been communicated to the person against whom the action is brought.

SECTION 7: Rights Conferred by Registration; Duration; Renewal

Article 105: The exploitation of a registered industrial design in the Kingdom of Cambodia
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CHAPTER VI: COMMON PROVISIONS

SECTION 1: Changes in Ownership; License Contracts

Article 114: Any change in the ownership of a patent or utility model certificate or the registration of an industrial design, or in the ownership of an application therefor, shall be in writing and shall, at the request of any interested party, to the Registrar, be recorded and, except in the case of an application, published by the Registrar. Such change shall have no effect against third parties until such recording is effected.

Article 115: Any license contract concerning a patent or utility model certificate or a registered industrial design, or an application therefor, shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference thereto. The license contract shall have no effect against third parties until such recording is effected.

SECTION 2: Agents

Article 116: Where an applicant's ordinary residence or principal place of business is outside the Kingdom of Cambodia, he shall be represented by a legal practitioner residing and practicing in the Kingdom of Cambodia and who fulfils the prescribed requirements.

SECTION 3: Organization of the Registration Department

Article 117: The Registration Department shall be established within the Ministry in charge of industry.

The Ministry in charge of industry shall be entrusted with all functions relating to the procedure for:

- (i) the grant of patents and utility model certificates and the registration of industrial designs,
- (ii) the administration of granted patents and utility model certificates and registered industrial designs as specified in this Law and the Regulations.

SECTION 4: Registers; Official Bulletin

Article 118: The Ministry in charge of industry shall maintain two separate Registers: one for patents and utility model certificates and another for industrial designs. All the recordings provided for in this Law shall be effected in the said Registers.

The Registers may be consulted by any person, and any person may obtain extracts therefrom, under the conditions prescribed in the Regulations.

Article 119: The Ministry in charge of industry shall publish in the Official Bulletin all the publications provided for in this Law.

SECTION 5: Corrections of Errors; Extension of Time

Article 120: The Registrar may, subject to any provision in the Regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Registration Department or in any recording effected pursuant to this Law or the Regulations.

Article 121: If the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Law and the Regulations, upon notice to the parties concerned and upon such terms as he may direct. The extension may be granted though the time for doing the act or taking the proceeding has expired.

SECTION 6: Exercise of Discretionary Powers

Article 122: The Registrar shall give any party to a proceeding before him an opportunity of being heard before exercising adversely to that party any discretionary power vested in him by this Law or the Regulations.

SECTION 7: Competence of Court; Appeals

Article 123: The competent Court shall have jurisdiction in cases of dispute relating to the application of this Law and the Regulations and in matters which under this Law and the Regulations are to be referred to the competent Court.

Article 124: Any decision of the Ministry in charge of industry under this Law, in particular the grant of a patent or the grant of a utility model certificate or the registration of an industrial design, or the refusal of an application for such a grant or registration, may be the subject of an appeal by any interested party before the competent Court and such appeal shall be filed within three months of the date of the decision.

SECTION 8: Infringement; Unlawful Acts

Article 125: An infringement shall consist of the performance of any act referred to in Section 9 of Chapter II and Section 7 of Chapter V of this Law in the Kingdom of Cambodia by the person other than the owner of the title of protection and without agreement of the latter.

Article 126: On the request of the owner of the title of protection, or of a licensee if he has requested the owner to institute competent Court proceedings for a specific relief and the owner has refused or failed to do so, the owner of the title of protection or a licensee may directly institute the competent Court. The competent Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law.

"Registrar" means the Director of the Registration Department;

"Registration Department" means the Department of Industrial Property established within the Ministry in charge of industry;

"Regulation" means the proclamation or instruction issued by the Ministry in charge of industry.

CHAPTER VII: OFFENSES

Article 132: Whoever makes a false statement to the Registrar in any document filed under the provisions of this Law, shall be guilty of an offense punishable by a fine not exceeding five million riels or by imprisonment for a term not exceeding six months, or by both.

Article 133: Any person who knowingly performs an act which constitutes an infringement as defined in Article 125 of this Law hereof shall be guilty of an offense punishable by a fine not exceeding twenty million riels or by imprisonment for a term not exceeding thirty-six months, or by both.

Article 134: Where a person is found guilty of an offense under this Law, the Court may order the seizure, forfeiture and destruction of the infringing goods and of any materials and implement the predominant use of which has been in the commission of the crime.

Article 135: The maximum penalty for an offense under this Law, committed within five years from the date of conviction for a similar offense under this Law, shall be doubled.

CHAPTER VIII: FINAL PROVISION

Article 136: Any provisions that contradict to this Law shall be considered as null and void.

*This Law has been ratified by the National Assembly
of the Kingdom of Cambodia on..... 2001 in
the..... plenary session of second mandatory.
Chairman of the National Assembly*