

ROYAL DECREE

No...../2000

PROMULGATING THE PATENT LAW

We QABOOS BIN SAID, SULTAN OF OMAN

- After viewing the Basic Law of the Country, promulgated by Royal Decree No. 101/96,
- and The Patent Law for the Arab Gulf Cooperation Council, and The **WTO** Agreement on Trade-Related Aspects of Intellectual Property Rights,

For the public interest.
Decreed the following:

The enclosed patent law is to be implemented. Article 1:

Its provisions implement the WTO Agreement on Trade Related Aspects of Intellectual Property. Article 2:

Article 3: The Minister of Commerce and Industry shall be responsible for implementing the patent law.

Whatever contradicts this law, or is in conflict with its provisions is null and void. Article 4:

This Decree is to be published in the Official Gazette. Article 5:

DRAFT PATENT LAW OF THE SULTANATE OF OMAN

In implementation of the provisions of the WTO Agreement on Trade-Related Intellectual Property Rights.

The following provisions shall constitute the Patent Law of the Sultanate of Oman:

Article (1):

Patent means the document issued by the Patent Office in the Ministry of Commerce and Industry to the invention's owner to enable the invention to enjoy the protection according to the provisions of this Law.

Article (2):

2/1 - An invention is eligible for a patent according to the regulations of this Law if it is new and includes an innovative step, and is industrially applicable, not conflicting with the principles of the Islamic Shari`aa and public order either in regard to industrial products, or manufacturing methods or operations.

2/2 - The invention is regarded new if it had no precedence in terms of pre-existing industrial technology, meaning anything which has been revealed to the public at any place and time, in written or verbal description, by means of usage or any other means by which the invention could have been known prior to the date of application for a patent or priority according to the Law. In implementation of this article, no revealing of the invention to the public is acknowledged if it occurred a year prior to the submission of application or the date of priority, if the revealing came as a result of an abusive act by others against the applicant or his/her predecessor or as a result of that. The revealing of the invention to the public is not acknowledged if done in an official exhibition during the six months prior to the submission of the application.

2/3 - The invention is considered innovative if it did not involve an obvious idea in the opinion of the ordinary man of profession, relative to the previous technical status pre-existing prior to the invention.

2/4 - The invention is regarded as industrially applicable if it is possible to manufacture and use in any kind of industry, agriculture, fisheries or services. Industries being understood in their wider terms including handicraft.

2/5 - Applications for registering a patent which touches the security of Oman are considered in accordance to procedures to be prescribed by Ministerial orders.

2/6 - In the case of more than one application, the patent is granted to the first application, bearing priority in date.

2/7/1 - If the invention was the result of a joint work of several persons, the patent is granted for all of them equally if they had not agreed otherwise. Anyone who has not participated in the invention but whose efforts have only been limited to the implementation of ideas, is not regarded as a participant in the patent.

2/7/2 - The patent's ownership is for the employer if the invention was a result of the implementation of an agreement or commitment for the exercise of efforts in innovating, or if the employer gave evidence that the employee could not have achieved this invention if not for the use of capabilities and aides or data available to him/her at work.

This does not jeopardize the right of the employee to a special award specified by the concerned body where the invention took place in respect to the agreement or commitment's circumstances, and the economic significance of the invention. Any agreement depriving the employee from this right is considered void. The above regulations also apply for government employees.

An application for patent from an innovative employee two years from leaving service is regarded as if he was still at work.

This provision does not apply to inventions not made in Oman .

Article (3):

3/1 - The following are not regarded as inventions according to the regulations of this Law:

3/1/1 - Scientific discoveries and theories and mathematical methods.

3/1/2 - Pure mental activities and playing games.

3/1/3 - Methods of treatment of human and animal bodies, surgically or medically, and methods for diagnosis of illnesses applied to humans or animals, with the exemption of products used in any of these methods.

3/2 - This charter does not protect plant and animal types.

Article (4):

The Minister of Commerce and Industry has the right to exempt some inventions from their eligibility for a patent if considered necessary for the protection of public order and moral values including the protection of the life and health of humans, animals and plants, or the avoidance of seriously harming the environment.

Article (5):

5/1/1 - Patent applications are submitted to the Patent Office by the inventor or his accredited agent or by one to whom the rights for invention have been transferred, including a request for the issuance of a patent and the appropriate fees.

5/1/2 - The application has to include the name of the applicant, the inventor, and an accredited agent (if applicable) and an affirmation stating the justification of the applicant's right to the invention if he was not the inventor.

5/1/3 - An application should only include one invention or a group of interrelated parts that form one general innovative item.

5/2/1 - An application should include the name of the invention, a description, one or more scopes of protection, clarifying drawings or more (if available) and a summary of the invention.

5/2/2 - The description should clearly and fully reveal the invention so as to enable a man of profession to implement it.

5/2/3 - The scopes of protection should show the area of protection requested. Description and clarifying drawings can be made to describe that when necessary.

5/2/4 - Scopes of protection should be clear and summarized and should entirely depend on description.

5/2/5 - The summary is used for technical information only and should not be relied on for the application's explanation.

5/3 - The applicant should provide the Patent Office with additional required information and data relating to the application.

5/4 - The applicant can include any amendments he sees fit on his/her application as long as they are not essential changes on the information included in the original application.

Article (6):

If applicant is not a resident of Oman, he is required to assign an accredited agent resident in Oman to undertake activities authorized by the applicant with the Office.

Article (7):

7/1 - The application for patent may include a declaration claiming, as provided for in the Paris Convention, the desire to consider priority for an application previously submitted by the applicant or his predecessor in title for any State party to the Paris Convention, to any Member of the World

Trade Organization, or at the GCC Patent Office. In this case, the date and number of the previous application should be stated along with necessary evidence.

The effect of the declaration shall be as provided in the Paris 7/2 - Convention.

7/3 - Priority period is 12 calendar months.

Article (8):

An applicant can withdraw his/her application at any time if not finally settled. Withdrawal does not imply the right to have application documents, fees or costs refunded.

Article (9):

If the application meets the requirements, the Patent Office records the date of the application's submission and visually examines it. Then the Office examines it subjectively or refers it to any another concerned body to do so, after collection of subjective examination fees.

Article (10):

If it appeared from the visual examination that some legal conditions were not met, the Patent Office can request the applicant to do what is necessary for the completion of the application in a period of three months at most from the day of informing him/her. If that was not undertaken during the aforementioned period, the application is canceled.

Article (11):

If the subjective examination shows that the application has met the requirements of this Law, the Patent Office issues a decision on granting the patent and it is recorded and announced. The document is submitted to the applicant three months from announcement if no objection is presented by a person of interest.

However, if the subjective examination shows the non-eligibility of the applicant for the offer of a patent, the Office issues its refusal clarifying the reasons of refusal. The applicant is informed with a copy and the decision is announced.

Article (12):

12/1 - The patent gives its owner the right to exclude use of the invention without the permission of the patent owner. This is regarded as usage of the invention: the manufacturing of the product, usage, sale, and stocking such products for the purposes of usage, sale and exhibit for sale. If the invention was an industrial operation or a method for the manufacturing of a specific

product, the owner has the same right over what is produced utilizing this operation or method. Local working is considered to be satisfied by importation.

12/2 - The owner of the patent has the right to prohibit others, not acquiring his/her permission, from manufacturing, utilizing, exhibiting for sale, selling or importing that product for these purposes if the patented is a product. If the patent is for a manufacturing operation, he can prohibit others, who have not acquired his/her permission, from actively utilizing the method and from utilizing, exhibiting for sale, selling or importing the product directly acquired using this method.

12/3 - If an establishment is, unintentionally, manufacturing a product or using a manufacturing operation or method of a product or by undertaking serious preparations for that before the date of submission of an application by a different party or before the date of priority of an application for the same product or method of production, the establishment has the right, despite the issuance of a patent, in continuing to undertake those actions. This right is cannot be disposed of or transferred to others outside members of the establishment.

Article (13):

The owner of the patent has to fully make use of the invention in Oman within four years from the date of filing or three years of the date of issue, whichever is longer, unless the patentee justifies his lack of exploitation by legitimate reasons. In case of expiration of this period without making proper use, the 19th article is applied. However, local working is considered to be satisfied by importation.

Article (14):

Rights sanctioned by the patent do not apply to the following, with the proviso that these exceptions do not unreasonably conflict with a normal exploitation of the patent and, not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

14/1 – Activities relating to scientific research purposes.

14/2 – Usage of the patent subject in transportation means entering Oman, temporarily or occasionally, either on the body of the transportation means, its tools, equipment and/or on other accessories, unless usage is only limited to the needs of these means.

Article (15):

The period of patent protection shall be at least twenty years, starting from the date of submitting the application to obtain the patent.

Article (16):

An annual fee to be prescribed by the Minister is charged on an invention patent, which should be paid at the beginning of each year as of the year following the submission of the patent application. If the patent owner fails to pay the annual fee within a maximum period of three months from the beginning of the year, he may pay it during the following three months period that starts on the lapsing of the previous period, in addition to paying an extra fee.

In all cases, annual fees may be paid in advance for part of, or the whole patent period. If the Patent owner does not pay the annual fee during the past regular grace period (six months from the due date) the patent shall be void. Further, by terms of this article whatever applies to the patent application also applies to the patent itself. If three years have passed during which the Patent Office did not process the application, the applicant may stop paying the fee until the Office issues a decision granting the patent. Therefore, in this case he should pay all the annual fees which he did not pay.

Article (17):

17/1 – The owner of the patent who enjoys prescribed protection as per this system, may authorize another person to conduct all or some of the utilization activities cited in article twelve (1). The authorization license should be written and signed by both parties and should be authenticated by an official of the Ministry of Commerce and Industry. The license contract shall not be accredited unless it is registered in the Patent Office logbooks following the payment of the due registration of application fee, and the fee for registration of the license contract.

17/2 – Granting the contractual license does not imply depriving the patent owner from utilizing the patent himself or granting another license on the same patent, unless the first license contract states otherwise.

17/3 – Contractual licenses imply the right of the licensee to pursue all activities of utilizing the invention prescribed in the contract. The contractual licensee may not dispose of the rights and privileges authorized to him by the patent owner unless his right of disposition is clearly stated in the license contract.

Article (18):

The license contract of utilizing or disposing the patent is subject to supervision by the Patent Office. Subject to Articles 20 and 21, the Office may ask the contracting parties to amend the contract in order to avoid the misuse of the patent rights. If the contracting parties do not respond, the Patent Office can deny approving the contract and can refuse registering it in the logbook.

Article (19):

The Minister of Commerce and Industry may authorize a compulsory license for use of the subject matter of a patent by an applicant, by the government or by parties authorized by the government. However, a compulsory license shall not be authorized unless failure to work or insufficient working by the patentee for a period of three years from the date of grant of the patent has been established. A compulsory license shall be refused if the patentee justifies his inaction by legitimate reasons.

Article (20):

The following conditions shall govern the grant of a compulsory licence:

Authorization of such use shall be considered on its individual merits; (One)

Such use may only be permitted if, prior to such use, the proposed user 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. However, this requirement may be waived by the Minister in case of a national emergency or other circumstances of extreme urgency. In situations of national emergency or other circumstances of extreme urgency, the right holder shall nevertheless; be notified as soon as reasonably practicable. In the case of public non – commercial use, where the government or contractor, without making patent search, knows or has demonstrated grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly; (Two)

The scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive; (Three)

Such use shall be non-exclusive; (Four)

Such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use; (Five)

Any such use shall be authorized predominantly for the supply of the domestic market of Oman. (Six)

Authorization for such use shall be liable, subject to the adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur; (Seven)

The right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization; (Eight)

The legal validity of any decision relating to the authorization of such use shall be subject to judicial review by the Commercial Court. (Nine)

Any decision relating to the remuneration provided in respect of such use shall be subject to judicial review by the Commercial Court. (Ten)

Where such use is authorized to permit the exploitation of a patent (the second patent) which cannot be exploited without infringing another patent (the first patent), the following additional conditions shall apply: (Eleven)

- (a) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
- (b) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and
- (c) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article (21):

The compulsory license is canceled in the following cases:

21/1 – If the beneficiary does not utilize the license sufficiently in Oman during two years from granting the license, renewable to another period of two years, if it is proved that there was a legitimate reason for delay.

21/2 – If the compulsory license beneficiary fails to pay the outstanding amounts and any amounts prescribed in the bylaws, within three months of the due date.

21/3 – If the compulsory licensee does not abide by any other condition stated in the license granting decision.

21/4 – If the circumstances that led to granting the license have terminated and are not likely to be repeated, while observing licensee's legal interests.

Article (22):

22/1 – Ownership of a patent and all accrued rights are transferred through inheritance. Similarly, all or part of the ownership of a patent can be transferred with or without compensation.

22/2 – Whoever is concerned may submit an application to the Office for amending any data in the patent ownership or the application, supported by necessary documentation. Patent ownership shall not be transferred, neither does the alteration of its data become valid prior to the date of registering the amendment decision in the records and its announcement.

Article (23):

It is possible to file grievances with the Minister against any decision issued by the Patent Office within three months from the date of receipt or announcing the decision, as per circumstances.

Article (24):

It is possible to file appeals against the Minister's decisions before the Commercial Court.

Article (25):

The Minister shall review all disputes related to violation or potential violation of patents. Such disputes are settled according to the provisions of this Law.

Article (26):

26/1 – The Patent Office keeps a record where patents and relevant data are registered according to the provisions of this Law.

26/2 – The Patent Office issues an official bulletin showing all announcements prescribed in the regulations and acts.

Article (27):

The Patent Office collects money fees from beneficiaries in the following cases:

Application for patent.

Granting and promulgation of the patent.

Annual Fees.

Amendment or addition to the patent application.

Additional fee due to delaying payment of the patent annual fee.

Transferring rights in the application or transferring patent ownership.

Obtaining a copy of the application or of the registration of either the application or patent.

Application for the compulsory license.

Granting the compulsory license.

Application for the license registration.

Registration of the license contract.

Registration of the grievance before the committee.

Renewal of the grievance before the committee.

Application to obtain a culture sample.

Application to permit the display of the invention in an exhibition.

Conduct search in the Office documents.

Subjective examination.

Separate decisions shall determine the amount of these fees.