

## Patent Law

### **Law No. 84 for 2000 dated August 24, 2000, in respect of patents of inventions**

In the name of people  
After the consent of the parliament  
The president hereby issues the following law:

#### **Chapter One Patentable Inventions**

##### **Article 1**

Every invention in respect of a product or manufacturing method, may be protected by a document called patent of invention, granted by the Industrial Property Authority pursuant to the provisions of the law herein.

##### **Article 2**

The patents shall be granted to new inventions that resulted from creational activity, and that are industrially applicable.

The following shall not be deemed inventions pursuant to the first paragraph of this article:

- A. Mere decorative creations.
- B. Mathematics explorations, scientific theories and syllabus.
- C. Designs, principles and syllabus relating to:
  - Practicing intellectual activities.
  - Games.
  - Economic activities.
  - Computer programs.
- D. Methods of treatment and surgery for the human and animal bodies, and of disease diagnosis, used in inspecting the human and animal bodies, such provisions shall not apply on the preparations, particularly, the materials and compositions used for applying one of these methods.
- E. Providing information.
- F. All types of living organisms existing in nature.  
The exceptions of the second paragraph of this article in respect of granting the patent for the said items shall apply on the said items only.

##### **Article 3**

The patent of invention shall not be granted in respect of:

Plant varieties or animal species and the biological methods of obtaining plants or animals. Such provisions shall not apply on methods of medical biology or the products obtained by these methods.

The inventions, which if published or used may result in breaching of the morals, the public system, the public health or the environment protection.

The invention exploitation is not deemed violated or breached for being merely limited by legal provisions.

#### **Article 4**

The invention shall be novel unless being included in the present technology.

The present technology consists of every thing available to the public before the date of filing the application for a patent or the date of the legal claimed priority through oral or written description or through, the exploitation or any other means.

The present technology further include the enclosures of any application for obtaining a Tunisian patent, having the date of filing, or if necessary of priority before the date of the application for a patent mentioned herein above in paragraph 2 of this article, but being published on that date or subsequent date.

Pursuant to the first, second and third paragraphs of this article, the invention disclosure shall not be taken into consideration if being carried out within twelve months prior to the date of filing the patent application or if necessary of the priority, or resulting from direct or indirect prejudice against the applicant or his legal predecessor.

#### **Article 5**

The invention includes innovative activity unless being axiomatic for those skilled in the art in respect of the present technology at the date of filing the patent application or of the legally claimed priority.

The present technology should be considered in its entirety including its separate elements or of each part of these elements and the compositions of these elements or parts thereof if such compositions are axiomatic to those skilled in the art.

#### **Article 6**

The invention is industrially applicable, if the subject thereof is liable for industrialization or exploitation in any industrial or agrarian field.

### **Chapter Two The right in the patents of invention**

#### **Article 7**

Pursuant to the first article of the law herein, the right of the patent of invention shall be for the inventor or any party contributing therein.

The application is deemed the proprietor of the patent on carrying out the procedures at the Industrial Property Authority.

If number of persons separately achieved the same invention, the right in the patent shall be for the prior one in filing the application.

If number of persons participated in one invention, such persons shall jointly share the right in the patent.

### **Article 8**

If a person applied for an invention, embezzled from the proprietor or the person contributing therein or in order to violate a legal or contractual obligation, the injured person is entitled to claim the proprietorship of the application or patent that was granted by the competent court.

The right for filing the lawsuit mentioned hereinabove in article one shall lapse after three years of the date publishing the acknowledgment of granting the patent. However, if the male faith of the patent proprietor was proved on granting or acquiring the patent, the lapsed period for filing a lawsuit shall be three years as of the date of the termination of the patent as indicated in articles 36 and 60 of the law herein.

## **Chapter Three Employees Invention**

### **Article 9**

Pursuant to the law herein the following words shall indicate the corresponding meanings:

Employee: Assistant at the public and private sector.

Employer: The state, local company, corporations, public establishments, and every corporation complying to the private law.

### **Article 10**

The employer shall have the right in the invention, if the employee carried out an invention in the scope of his business including either creatational task conform with his actual jobs or studies and researches with which he was charged.

The employee shall have the right in the invention if carrying out an invention in the employer's field of business while using for this purpose the provisions and means under his own disposal according to his work where the scope of his business does not include creatational task, unless the employer notifies him about his intention for obtaining this invention pursuant to article 16 of the law herein.

**Article 11**

Pursuant to article 10 of the law herein the inventor employee should immediately declare his invention to the employer according to the requirements of articles 12 and 16 of the law herein.

In case of a number of inventors, the invention may be jointly declared by all the inventors or some of them only.

**Article 12**

Such declaration include the information in respect of:

- The invention subject and the applications to be achieved.
- The conditions of achieving the invention.
- The declaration should be supplied by the specifications of the invention.

Such specifications include:

- The problems treated by the employee, in consideration of the present Technology, if necessary.
- The solution that he reached.
- The Method of achieving the invention supplied, if necessary, by the drawings.

**Article 13**

If the employee declares his intention for obtaining the invention pursuant to article 10 of the law herein, he shall have to right in the invention as of the beginning of the inventing process. The inventor shall deserve fair compensation, in consideration of the economic value of the invention and the employer's interests from using the invention. The court shall determine the compensation value if not agreed upon by the parties.

The contractual procedures of less advantage for the inventor employee than the provisions of such article shall be void and null.

Unless otherwise agreed upon by the parties the period granted to the employer for claiming his right in the invention shall be four months. In case of reaching an agreement in this respect, the agreement should be written and subsequent to the declaration.

**Article 14**

The employer shall acknowledge the employee with the information that should be completed if his declaration did not conform with article 12 of the law herein.

Such acknowledgement shall be within two months as of the date of receiving the employee's declaration, otherwise the declaration shall be accepted.

**Article 15**

The period granted to the employer for claiming his right in the invention provided for in article 13 of the law herein shall be in force as of the date of the employer receipt of the declaration of the

invention including the information provided for in article 12 of the law herein, or the date of completing the declaration in the form of a justified application for complementary instruction.

The claiming of the right in the invention shall be through an acknowledgement from the employer to the employee, stating therein the nature and scope of rights to be kept.

#### **Article 16**

Any declaration or acknowledgement by the employee or employer shall be through a registered letter with acknowledgement of receipt or any other mean proving the other party's receipt of such.

The terms of every declaration or acknowledgement by the employee or employer on filing a lawsuit shall be based upon the declaration veracity.

The terms shall be counted as of the date of notification of the final judiciary decision.

#### **Article 17**

The employer and the employee should exchange the useful information about the concerned invention and abstain the disclosure that may in whole or in part damage the performance of the right granted pursuant to the law herein.

#### **Article 18**

In case of disputes between the employer and employee that was not settled yet, each of them shall abstain from the disclosure of the invention.

Each party shall, in case of filing an application for a patent, for the purpose of maintaining his right, immediately direct a copy of the documents on file to the other party.

### **Chapter Three The Patent application**

#### **Article 19**

The patent application shall be submitted pursuant to the forms and conditions specified by this chapter.

#### **Section One Filing the application**

#### **Article 20**

Every application for a patent shall be filed with the Industrial Property Authority.

The application shall be attached to a power of attorney certified by a signature if the application is represented by an agent.

The applicant having his headquarters abroad should appoint an agent resident in Tunis.

The power of attorney should indicate the scope of authorization, unless otherwise stipulated, such power of attorney should include all the operations in connection with the patent including the acknowledgements provided for in the law herein, except in cases of reinstating the application or abandoning the patent which require exclusive power of attorney.

In case of filing the same application by number of applicants a common agent shall be appointed.

#### **Article 21**

The application should include:

- A memorandum.
- Specification of the invention in two theories
- The element or elements of novelty in the invention to be protected in two theories.
- One or more figures, if necessary for illustrating the invention.
- A descriptive abstract of the invention.

The memorandum should include the title of the invention, the applicant name and address, the inventor name and title, and if necessary, the agent name, title and address.

The specifications of the invention should be clear and general enough to enable any person skilled in the technical art to execute thereof.

The novelty elements subject of the application for protection should be based on the specification and the scope of the protection required by the patent.

The descriptive abstract should briefly indicate the most essential technical elements of the invention. Such abstract shall be used for technical knowledge only.

#### **Article 22**

The application shall be submitted in writing in one of the following three languages : Arabic, French or English.

Royalties shall be paid for the application and the amount thereof shall be determined by an order.

#### **Article 23**

The patent application shall be in respect of one invention only, or number of interrelated inventions that constitute in its entirety one invention.

#### **Article 24**

The application who claim the priority of a previous application filed in a country member in Paris

union or the world trade organization should attach his application to a written declaration including the filing date, the country in which it was filed and the applicant name and title.

The applicant should further pay the royalty of the priority which amount shall be fixed by an order.

The right in the priority shall lapse unless the applicant submits within three months as of the date of filing, a true copy of the previous application certified by the Industrial Property Authority in the country in which the application was filed, attached to the translation thereof to the same language of which application was filed, pursuant to article 22 of the law herein.

The applicant shall supply the Industrial Property Authority, as the Authority deems necessary, by all the other documents relating to the previous application, and if necessary, all the applications filed in other countries, particularly the following documents;

- A copy of each document relating to the applicant, in respect of the result of every research or inspection of the application, including the publications or any other documents indicating the present Technology.
- A copy of any application other than the previous one pertaining to the same invention or based on the same invention of which priority was claimed.
- A copy of any final decision of rejecting the application.

A number of priorities may be claimed in respect of one patent application even if being issued from different countries and, if necessary in respect of one of the elements of novelty in the invention. In both cases, the terms that start from the priority date shall be counted as of the date of the most prior application.

If the claim for one or more priorities is in respect of a patent application, the right in the patent shall only include the elements of the application claimed in the priority.

If some of the invention elements the subject matter of the priority application are not included in the elements of novelty of the previous application, the priority may be claimed by demonstrating such elements in detail in the documents of the previous application.

#### **Article 25**

The date of filing the patent application is the date in which the application was submitted by the applicant pursuant to the provisions of articles 20, 21 and 22 of the law herein.

The Industrial Property Authority may reject the filing in case of realizing that the application did not include all the documents provided for in articles 20, 21 and 22 of the law herein on the date of filing thereof.

#### **Article 26**

Before publishing the application, the applicant may amend it including the addition of new elements providing that such amendments shall not exceed the scope of the invention included in the original application.

A royalty shall be paid for each amendment in the elements of novelty determined by an order.

**Article 27**

The applicant may divide the application before publishing it, providing that such division shall not exceed, the scope of invention included in the original application.

Each partial application is considered separated, but availing of the date of filing the original application, and if necessary the date of the claimed priority.

The partial application shall be filed pursuant to the procedures and terms provided for in articles 20 and 21 of the law herein. The royalties provided for in paragraph 2 of article 22 of the law herein shall be paid for such application.

**Article 28**

Before the date of granting the patent, the applicant may submit a justified application for rectifying the errors of expression or the figure, and the errors learned through the filed documents.

If the application for rectification is concerned with the specification, the elements of novelty or the figures, it shall not be accepted unless being clear in order not to cause confusion with another text or figure.

The application for rectification shall be submitted in writing including the propound amendment, and shall not be accepted unless being associated by an evidence for the payment of royalty determined by a decision.

**Section Two  
Examining the application****Article 29**

The Industrial Property Authority shall examine whether the application comply in form with the provisions of articles 20, 21 and 22 of the law herein or not.

The Industrial Property Authority shall reject the patent application if considering it inconsistent with the provisions of the first paragraph of this article after demanding the applicant to avoid the registered contradictions, within three months as of the date of notifying him in this respect. The rejection decision should be justified and served to the applicant or his agent through a registered letter with acknowledgement receipt.

**Article 30**

The Industrial Property Authority shall prove the following:

- The invention for which protection was claimed was not excluded from the patentable inventions pursuant to article 2 and article 3 of the law herein.

- The invention for which protection was claimed shall comply with the definition included in article 6 of the law herein.
- The specification shall comply with the provisions provided for in paragraph 3 of article 21 of the law herein.
- The elements of novelty comply with the provisions provided for in paragraph 4 of article 21 of the law herein.
- The application shall comply with the provisions provided for in article 23 of the law herein.
- The partial application does not surpass the scope of the invention included in the first application.
- All the required documents pursuant to the third paragraph of article 24 of the law herein were submitted.

If it appears to the Industrial Property Authority that the conditions provided for in the first paragraph of this article were not fulfilled, such Authority shall notify the applicant or his agent in this respect and demand the amendment of his application or the presentation of remarks within three months as of the date of his notification.

In case of the applicant response to the request of the Industrial Property Authority within the said period the examination of the application shall be continued provided that a royalty determined by an order was paid. Otherwise the Industrial Property Authority shall reject the application.

If it appears to the Industrial Property Authority that the conditions provided for in the first paragraph of this article were fulfilled as a result of presenting the required remarks or amendments pursuant to the second paragraph herein, the examination of the application shall be continued. In case of the insufficiency of the remarks, the Industrial Property Authority shall re-notify the applicant in this respect and grant him another period of three months as of the date of notifying him in respect of the fulfilment of the required conditions.

If it appears to the Industrial Property Authority that the application did not fulfil these conditions after the termination of the prescribed period, such Authority shall reject the application.

Each rejection decision shall be justified and notified to the applicant or his agent through a registered letter with acknowledgement receipt.

### **Article 31**

If the application complies with the provisions of this section the publishing of the application in the official register of the Industrial Property Authority shall be determined after 18 months as of the date of filing.

## **Section Three Reinstating the application**

### **Article 32**

The patent application may be reinstated at any time before granting thereof through a written notice. A royalty determined by an order shall be paid for reinstating the application.

The notice of reinstatement shall apply on one application only. The applicant or his agent shall submit the notice. The notice submitted by the agent shall be attached to an authorization in respect of the reinstatement.

In case of filing a patent application in the name of a number of persons, it shall not be reinstated unless the notice was submitted by all of them or through a common agent.

If mortgage rights or licensing rights were indicated in the patents register provided in article 37 of the law herein, the reinstatement notice shall not be accepted unless being attached to a written consent from the owners of such rights.

If the application was reinstated after being published in the official bulletin of the Industrial Property Authority, the reinstatement shall be registered in the patents register.

In all cases of reinstatement the Industrial Property Authority shall maintain a copy of the patent application.

#### **Chapter 4 Granting the Patents**

##### **Article 33**

Unless a memorandum was submitted pursuant to article 34 of this law within two months as of the date of the publishing indicated in article 31 of the law herein, the patent shall be granted under the name of the applicant or applicants as per the decision of the legal representative of the Industrial Property Authority.

The granting of the patent shall be notified to the patentee or his agent, registered in the patent register and published in the official bulletin of the Industrial Property Authority.

The date of granting the patent is the date of signing thereof. The granted patent shall be effective as of the date of filing the application.

##### **Article 34**

The procedures of granting the patent shall be held if a person proved to the Industrial Property Authority that he submitted a memorandum to the court competent for the disputes in respect of the ability of the application to obtain a patent pursuant to articles 2, 3, 4, 5 and 6 of the law herein, or to claim the proprietorship thereof within two months as of the date of the publishing mentioned in article 31 of this law.

The procedures of granting a patent shall be continued when the decision of the court is final.

However, In case of claiming the proprietorship of the application subject the procedures of granting the patent shall be continued pursuant to a final written consent from the person who filed a claim for the proprietorship before the court.

Unless the parties agree, the applicant may not reinstate the patent application as of the date of filing the claim.

The decision of holding and continuing the procedures of granting the patent shall be registered in the patent register.

In case of filing a claim for the proprietorship of the application of the invention the person appointed by the court shall be deemed the owner of the application.

**Article 35**

Patents shall be granted under the applicants responsibility without the state collateral either in respect of the nature, novelty or advantages of the invention or the veracity of the specification.

**Article 36**

The patent protection period shall be twenty years as of the date of filing the application.

**Article 37**

The Industrial property Authority shall maintain the patent register. The manner of maintaining the register and of registering shall be determined by an order.

The patent applications, patents and the amended documents shall be registered in the register. The registration in the patents register shall be after the patent application filing was published.

In case of the non conformity of the patent application with the registration terms, the Industrial Property Authority shall serve a justified notification to the applicant or his agent for this purpose through a registered letter with acknowledgement receipt or any other mean that may be acknowledged in writing by the receiver.

The Industrial Property Authority shall grant the applicant a period of one month as of the notification date in order to complete his application or present his remarks. In case of not completing the application or non-presentation of the remarks, the registration application shall be rejected pursuant to the decision of the legal representative of the Industrial Property Authority.

A royalty shall be paid for the registration applications, the value of which shall be determined by an order.

Any person may read the patent register and obtain copies thereof in return for a royalty determined by an order.

**Article 38**

Any person may read any file related to a patent or patent application and obtain a copy thereof in return for a royalty determined by an order.

However, unpublished patent applications may not be read and a copy thereof may not be obtained unless through a written permission legally signed by the applicant or his agent.

**Chapter Five  
Appeals**

#### **Article 39**

The decisions issued by the legal representative of the Industrial Property Authority in respect of granting or rejecting the patents before the competent court.

#### **Article 40**

The period determined for the appeals against the decision mentioned hereinabove in article 39 of this law shall be one month as of the date of the notification of the decision appealed against.

#### **Article 41**

The appeal shall be through a written memorandum directed or submitted to the competent court clerks.

The memorandum should include the following data, otherwise, it shall be rejected:

- If the claimant is a natural person, his name, title, profession, address, nationality, date and place of birth.
- If the claimant is a corporate person, its legal form, name and head-quarters and the name of the representative.
- The date and subject of the decision appealed against.
- If the claimant is not a natural person or a corporate person, the name, title and address of the patent owner or applicant.

The claim memorandum should be attached to a copy of the decision appealed against.

If the memorandum does not include a statement of the claim evidences, the claimant shall file this statement with the court clerks at least seven days before the date of holding the first session otherwise his claim shall be rejected.

#### **Article 42**

The applicant shall direct a copy of the appealing memorandum and if necessary of the said statement of the claim evidences to the Industrial Property Authority through an executive body.

The Industrial Property Authority shall send the file of the decision appealed against to the court clerk within one month as of the date of the notification by a copy of the memorandum.

#### **Article 43**

If any person other than the proprietor of the patent or the applicant, filed an appeal, such person should summon the persons of the aforementioned capacities through an executive body.

#### **Article 44**

The appellant may appoint an agent before the court.

#### **Article 45**

The interested party shall notify the rest of the lawsuit parties pursuant to a court decision.

**Chapter Six**  
**The rights and obligations resulting from the patent**

**Section One**  
**The rights resulting from the patent**

**Article 46**

The patent shall grant the proprietor or the owner of the patent rights an exclusive right for using it.

Unless the patent proprietor or the owner of the patent rights approve, other persons shall be prevented from:

- Manufacturing, exposing, trading in, using, importing the product of the invention or otherwise keeping it for such purpose.
- Using the method of manufacturing the patent subject.
- Exposing, trading in, using, importing the direct product of the method of manufacturing subject of the patent, or otherwise keep it for such purposes.

**Article 47**

The Patent rights shall not include:

- (A) The private non-commercial business.
- (B) Experimental activities relating to the patent granted invention.
- (C) Preparing the medicines in the pharmacies instantly and separately according to medical prescription and the activities related to the medicines prepared in the same manner.
- (D) Exposing, trading in, using, importing the patent protected invention or otherwise legally keeping it for such purposes in Tunisia, after legally exposing such product in the markets of any country by the patentee or his clear approval thereto.
- (E) The necessary activities for preparing the sexual medicine. However, the product of such activities may not be used for commercial purposes unless after the patent protection period.
- (F) Using objects on board of foreign land, air, or sea vehicles temporarily or accidentally entering the Tunisian regional sea, land or air.

**Article 48**

Every person exploiting the invention in bona fide in Tunis in the date of filing the application or in the date of the claimed priority, may continue exploiting it individually in spite of the existence of the patent. The person who has taken serious steps for exploiting the invention in Tunis shall have the right for such exploiting under the same terms, such right for exploiting may not be transferred unless being associated by the commercial origin, the firm or the part of the firm with which this rights is concerned.

**Article 49**

In spite of granting the patent, the Minister of Industry may decide to import the implementations, elementary parts and space parts related to the patent of invention for the protection of public interest and for non commercial purposes, pursuant to the proposition of the concerned bodies.

**Article 50**

Subject to the provisions of article 67 of the law herein, the owner of a patent for rectifying a patent granted invention may not use his invention without having a license from the patentee. The latter may not use the rectifying patent unless after its owners approval.

**Section Two  
The Obligations based on the patent****Article 51**

The patentee should use the patent granted invention within four years as of the date of filing the application or within three years as of the date of granting the patent. In all cases the longer period shall be ratified. If the product of the invention was previously licensed by an administrative license for marketing thereof, the longer period shall be extended for two years.

**Article 52**

A royalty shall be paid for every filing of a patent application, including the filing and the first annual instalment.

The royalty of filing and the first annual instalment shall be acquired on filing the application even in case of rejecting thereof.

If the patent application includes more than ten elements of novelty in the invention, an additional royalty shall be paid for each element beginning from the eleventh element.

An annual royalty should be paid through out the protection period for the continuance of the patent or the patent application.

Such royalty shall be annually paid, and shall be due at the last day of the month of filing the patent application.

In case of non-payment of the annual royalty in the date specified by paragraph 4 of this article, the patentee shall be granted additional six months for the payment of the royalty of delay.

The royalty of filing, the first annual instalment, the annual royalties, the royalty of delay and the additional royalty for each element of novelty beginning from the eleventh element, shall be determined by an order.

**Article 53**

Upon the request of the proprietor of the rectifying patent, the court may grant him a license for

exploiting the original patent, if it was necessary to the public interest, provided that the application was submitted after the termination of the period mentioned hereinabove in article 69 of the law herein.

This license shall not be granted unless being necessary for the exploitation of the rectifying patent granted invention and constituting technical development for the original patent and a significant economic interest.

The license granted to the proprietor of the rectifying patent may not be transferred unless with this patent.

The proprietor of the original patent may obtain a license for using the rectifying patent by submitting a memorandum to the court.

The conditions stated in this article shall be governed by the provisions of articles 70, 75 and 76.

## **Chapter Seven Abandonment, Nullity, and lapse of right**

### **Section One Abandonment**

#### **Article 54**

The patentee may abandon his patent in whole or in part by submitting a signed memorandum to the Industrial Property Authority.

In case of submitting the abandonment memorandum through an agent, the memorandum should be attached to an exclusive authorization of agent for the abandonment signed by the patentee.

The memorandum of abandonment of a joint ownership patent shall be rejected unless being attached to a written consent from every patentee.

The memorandum of abandonment of a mortgaged or licensed patent that is registered in the patent register shall be rejected unless being attached to a written consent from the persons who have rights therein.

The abandonment shall be registered after being approved by the Industrial Property Authority, in the patent register and shall be effective as of the date of such registration. In addition, the abandonment shall be published in the official bulletin of the Industrial Property Authority.

A royalty shall be paid for the abandonment determined by an order.

### **Section Two Nullity**

#### **Article 55**

The patent shall be deemed void and null pursuant to judicial decision:

- (A) If the subject thereof is not patentable pursuant to articles 2, 3, 4, 5 and 6 of the law herein.
- (B) If the specification of the invention was not clear and inclusive enough to enable a person skilled in the art to execute it.
- (C) If its subject surpasses the scope of the disclosure of the application as being filed, or if the patent is based on a partial application which disclosure surpasses the original application as being filed.

#### **Article 56**

If the nullity reasons partially affects the patent, the authorized nullity shall be concerned with the elements of novelty only.

#### **Article 57**

The nullity claim shall be filed by the concerned person.

The public prosecution may file any claim which subject is the nullity of the patent of invention or intervene therein.

#### **Article 58**

The patent nullity decision shall have absolute effect. The Patent or the part thereof in respect of which the decision of nullity was issued shall be deemed void and null.

#### **Article 59**

The final judiciary decisions of nullity shall be notified to the Industrial Property Authority by the interested party and shall be registered in the patent register.

### **Section 3 Lapse of the Right**

#### **Article 60**

All rights of the patent owner or applicant lapses due to not paying the due annual fees according to the stipulations of article 52 of the law herein. The reconsideration of the lapsing of the right is decided by the legal representative of the Industrial Property Authority based on a written request from the patent owner or from third parties. The decision thereof shall be issued and served to the requestor within three months from patent rights lapse.

The patent owner or his representative shall be informed of the lapse. The lapse decision shall be registered in the patents register and published in the official bulletin of the Industrial Property Authority.

The lapse shall be effective as of the due date of the unpaid annual fees.

#### **Article 61**

The patent owner may request reinstatement of the rights within three months following being

officially informed of the lapse decision provided the non-paying of the due annual fees is justified.

The request of the rights reinstating shall be presented to The Industrial Property Authority in writing together with an evidence of paying reinstatement request fees, the value of such fees shall be determined.

The reinstatement of the rights shall be issued by the legal representative of the Industrial Property Authority, the decision shall be served to the patent owner and registered in the National Register of patents and published in the official bulletin of the Industrial Property Authority.

The reinstatement decision shall not be in effect unless the patent owner pays the due fees within three months of being notified of the decision. The date of fees payment shall be registered in the National Register of Patents.

The relevant courts shall decide in appeals filed against the decisions of the Industrial Property Authority legal representative related to lapsing or reinstatement of patent rights.

Appeals shall be filed according to the procedures and in the manner stipulated in chapter five of the law herein.

All appeals, litigation and decisions for reinstatement of rights shall be registered in the National Register of Patents.

## **Chapter Eight Assignment, Transfer and Exploitation of Patent**

### **Article 62**

Rights ensuing from a patent or patent application may be assigned or transferred in part or in full.

If more than one individual share one patent or patent application, each individual may assign or transfer his share.

The assignment or transference shall be in writing otherwise it shall be deemed null and void.

The exploitation of patent applications shall be conducted according to civil and commercial procedures. The party exploiting the patent shall notify the patent owner and the Industrial Property Authority and all parties entitled to rights on the patent of such exploitation otherwise such exploitation shall be deemed illegal.

Any assignment, transfer or exploitation of a patent shall be deemed illegal unless such procedure is registered in the National Register of Patents after payment of the fees.

## **Chapter Nine Contractual Licensing**

### **Article 63**

The patent applicant or patent owner may license any natural or artificial person to exploit the patent or patent application.

Any partner in a patent ownership may grant an exploitation license provided the rest of the partners approve of such.

The license shall be deemed invalid unless handwritten.

The license shall not be deemed valid and may be renewed or amended unless registered in the National Register of Patents after payment of the applicable fees.

#### **Article 64**

Unless otherwise stipulated the licensor may grant licenses to other parties to exploit the same invention or exploit such personally.

If the license agreement is exclusive the licensor may not execute in person the actions mentioned in the agreement and stipulated in Article 46 herein nor may he approve others to do such in the Tunisian territories.

#### **Article 65**

Unless otherwise stipulated the licensor's approval for the licensee to exploit the patent/patent application shall include all actions mentioned in Article 46 herein in the Tunisian territories in any form of the invention applications.

#### **Article 66**

The licensee may not grant third parties his approval for executing actions subjects of the license and stipulated in Article 46 herein in the Tunisian territories unless otherwise stipulated in the license agreement.

#### **Article 67**

The licensee shall not be required to pay the fees stipulated in the license agreement to exploit the patent in the following cases if such occur before contract termination. The waiver of such payment shall be calculated from the date of the case occurrence:

- Reinstatement of patent application.
- Final rejection of patent application.
- Final cancellation of patent.
- Termination of legal patent protection period.

#### **Article 68**

In all cases mentioned in the article hereinabove the licensee may recuperate the sums paid to the licensor if the license agreement was not utilized by the licensee or if such utilization was insignificant unless otherwise agreed in the agreement.

### **Chapter Ten**

## **Compulsory Licensing**

### **Article 69**

All interested parties may after the term stipulated in article 51 herein acquire a compulsory license in the following cases:

- If industrial exploitation of the invention subject of the patent did not commence or no practical and serious preparations for exploitation in Tunisian territories within the term stipulated in Article 51 of the law herein.
- If commercial exploitation of the product subject of the invention in quantities that are sufficient for the needs of the Tunisian market.
- If industrial or commercial exploitation of the invention subject of the patent was abandoned for over than three years in the Tunisian territories.

### **Article 70**

Applications for compulsory licensing shall be submitted to the relevant court.

The applicant for the compulsory license shall demonstrate that he failed to acquire such license from the patent owner under reasonable conditions and within a reasonable time frame after requesting such from the owner via registered notification, acknowledgement requested. The applicant shall demonstrate his capability to exploit the invention practically and seriously.

The compulsory license may not be granted due to non exploitation or insufficient exploitation if the patent owner justifies his non doing such.

The compulsory license is non exclusive and exploitation rights of such may not be passed to third parties unless with the commercial origin, establishment or related part thereof.

### **Article 71**

Application for compulsory licensing shall be rejected if a copy of such is not sent to the Industrial Property Authority via registered mail, acknowledgement requested, within fifteen days of presenting such to the competent court.

### **Article 72**

The legal representative of the Industrial Property Authority may present to the court a memorandum including his remarks related to the compulsory licensing application.

### **Article 73**

Stipulations of Articles 71 and 72 of the law herein apply for the appeals.

### **Article 74**

The court decides for the compulsory application after hearing the relevant parties or their representatives.

The court states the conditions of the compulsory license, its duration, its scope of application and the sum to be paid to the patent owner appropriate to the importance of the patent exploitation.

Conditions of the compulsory license may be amended by a court decision upon a request from the patent owner or from the party beneficent from the compulsory license if new incidents justify such.

#### **Article 75**

All compulsory license transferences are subject to the court's authorization, otherwise they will be deemed null and void.

#### **Article 76**

If the usufructuary of a compulsory license violates any of the conditions of the licensing agreement, then the patent owner or the licensee may request reinstatement of the compulsory license from the relevant court.

#### **Article 77**

The usufructuary of a compulsory license shall notify the Industrial Property Authority immediately of all judiciary decisions related to the compulsory license. Final decisions shall be registered in the National Register of patents without delay.

### **Chapter Eleventh Non-Voluntary Licensing**

#### **Article 78**

The Minister in charge of the industry may direct patent owners for exploitation of such in a manner that responds to the needs of National economy or environment protection.

If such direction does not yield a positive response within a year or if non exploitation or insufficient exploitation in quantity or quality result in serious damages to the economic growth and the general interest, then the patent subject to the direction may be non-voluntarily licensed according to a decision issued by the Minister in charge of the industry.

The Minister in charge of the industry may extend the period of time as stipulated in the second paragraph of the Article herein if the patent owner presents a legal excuse that is dictated by needs of the National economy.

Patents related to pharmaceuticals or materials essential to produce such or methods to produce such may be subject to non-voluntary licensing if the general interest demands such procedure if such is not available to the public in sufficient quantity or quality or if such was offered to the public in abnormal high prices. Such action shall be based according to a decision issued by the

Minister in charge of the Industry in response to a request from the Minister in charge of the public health.

The state may at its discretion receive a non- voluntary license for exploitation of the invention subject to a patent application or patent to fulfil the national defence requirements or security needs whether the state exploits such license directly or through third parties.

The Minister in charge for the industry grants the non-voluntary license in response to a request from the Minister in charge of Industry.

#### **Article 79**

All parties may request licensing of a patent from the Minister in charge of the industry effective the date a decision was issued for non-voluntary license of the relevant patent.

Such license is issued according to the Minister in charge of the industry decision according to certain conditions related to the period and application scope regardless of the financial compensation payable to the patent owner. If an agreement is not amicably reached the court decides the financial compensation.

The decision referred to in paragraph two herein shall be published in the official gazette of the Tunisian Republic, the non-voluntary license shall be valid as of the date of publication.

#### **Article 80**

The non-voluntary licence is non exclusive, and the exploitation rights of such may not be passed to third parties unless with the commercial origin, establishment or related part thereof.

#### **Article 81**

Amendments of the patent owner or the usufructuary to the conditions of the license shall be approved and published according to the procedures of granting the license. If such amendments are related to the financial compensation payable to the invention owner, such shall be decided according to the same procedures as previously done in the original estimation of such compensation.

The patent owner may request reinstatement of the non-voluntary license due to violation of the usufractory to the conditions.

Measures of withdrawal of non-voluntary license are similar to the measures of granting such.

### **Chapter Twelve Counterfeit and Penalties**

#### **Article 82**

Any infringement to the patent owner rights as stipulated in Article 46 of the law herein shall be deemed a crime of counterfeit.

The counterfeiter shall be liable to civil and criminal responsibility.

Yet if a party other than the producer of a counterfeited product offer such for sale or trade or use or holds for use or trade, such party shall not be liable to such responsibility unless such party is aware of the counterfeit.

Actions previous to publication of the patent application shall not be construed a counterfeit crime and shall not be liable to penalty nor civil penalty unless such actions were conducted after serving the counterfeiter with an official copy of the patent application.

### **Article 83**

While considering penalties stipulated in special provisions the counterfeiter is penalized by paying a fine ranging between five and fifty thousand Dinars.

In case of recidivism the sentence may be imprisonment from one up to six months together with the fine that is doubled in such a case.

The public prosecutor shall take no official action unless a complaint is issued from the harmed party.

### **Article 84**

The civil action relevant to the counterfeit shall be filed by the patent owner or patent applicant.

The partner in a patent or patent application is entitled to file a counterfeit action for his own benefit provided copies of the petition are communicated to the rest of the partners.

Unless otherwise stipulated in the licensing agreement the proprietor of the exclusive contractual license may file a counterfeit action if the patent owner does not file such after being legally served.

The usufructuary of compulsory or non-voluntary licenses may file a counterfeit action if the patent owner does not file such after being legally served.

The patent owner may intervene in the counterfeit action filed by the licensee according to the provisions of paragraphs three and four of the article herein.

All licensees may intervene in the counterfeit action filed by the patent owner claiming compensation for the indemnities thereof.

### **Article 85**

The counterfeit subject of the legal action may be proved by the patent owner or applicant using all possible means.

Yet if the subject of the patent is a method of production the court shall rule that the respondent proves that the production method utilized for the same product is different than the production method protected by a patent. In case such could not be proved by the respondent then each similar product manufactured without the approval of the patent owner shall be deemed to be manufactured in the method stated in the protected patent if such product is novel.

Consideration shall be given to legitimate interests of the respondent while presenting the proofs of difference with the intention of protecting manufacture and trade secrets.

**Article 86**

Usufructuaries of the counterfeit legal actions according to article 84 of the law herein may request detailed description together with or without confiscation of the claimed counterfeit products or methods through an executive body aided by an expert appointed by the relevant court by serving an official notice.

The confiscation of materials when ruled shall be confined to essential samples to prove the counterfeit before the court.

If the confiscation of material deemed to be essential, the requestor of such action may be demanded to secure a financial security before the confiscation action.

The executive body shall communicate a copy of the ruling before the confiscation to the holders of the confiscated materials together with a copy of the paid security whenever necessary in addition to a copy of the confiscation procedures otherwise such measures shall be considered invalid and the executive body shall be fined.

The confiscation shall be deemed illegal if the requestor does not file a lawsuit within fifteen days regardless of the harm.

The fifteen days grace period shall be calculated from the date of confiscation.

**Article 87**

The head of the court undertaking the counterfeit case of a patented invention referred to the summary jurisdiction, may temporality ban the claimed counterfeit actions by ruling the payment of a fine or allowing resumption of such actions provided securing sufficient means of compensation to the patent owner.

The request for banning the actions or providing the securities stipulated in paragraph one of the article herein shall not be accepted unless the case is demonstrated to be serious in principal and was filed within one month from the day the patent owner was communicated of the facts upon which the case is based.

The head of the court before ruling the temporary ban may demand the claimant to present the securities to compensate the damages caused to the respondent if the case is proved to be of no grounds.

**Article 88**

The counterfeit cases shall be non-suit after three years of the occurrence of the actions constituting such.

**Article 89**

The stipulations of chapter twelve of the law herein shall not prevent resorting to arbitration according to the conditions of arbitration.

**Article 90**

Any party illegally claiming the rights of a patent or patent application shall be penalized by a fine ranging from one thousand up to five thousand dinars, in case of recidivism, the penalty shall be doubled.

**Chapter Thirteen  
Borderline Measures****Article 91**

Once evidence is available to the patent owner or any party owner of patent rights of an importation process of counterfeit product, the patent owner or patent rights owner may apply a written request to the customs authority for the abeyance of the importation.

The requester shall inform such authority if his rights are no longer valid or of the termination of the validity period thereof.

**Article 92**

The request mentioned in the previous article shall include the following:

- Name, title and address of the requester or the known name and place of business.
- Evidence of entitlement of rights of the products subject of the dispute.
- Detailed description of the products to allow the customs authority to identify such products.

The requester shall provide all the guidance necessary for the customs authority to make a decision, such guidance shall not constitute a prerequisite to accept the request.

Such guidance shall include:

- Place or destination of the products.
- Information necessary to recognize the products or the package.
- Expected date of arrival or date of storage of the products.
- Means of transportation.
- Information necessary to identify the importer, exporter or holder of the products.

**Article 93**

The customs authority shall examine the requests presented according to article 92 of the law herein and immediately inform in writing the requester of the decision made, such decision shall be justified.

If the customs authority accepts the request or decides to take the necessary measures for intervention according to stipulations of article 94 herein, the customs authority may demand that the requester pays a security equivalent to expenditures of holding the products under the custody of the customs authority.

**Article 94**

The Customs Authority shall confiscate the products if the authority realizes that it complies to the requesters complain.

The Customs Authority shall inform the importer and the requester of the confiscation immediately, and allow both to take samples for the necessary testing and analysis to prove the counterfeit of the products according to the Customs Authority regulations without revealing the secrecy of information.

In order to allow the requester to file a lawsuit the Customs Authority may communicate to the requester the names and addresses of the exporter and importer and consignee if available, and the amount of the products through an official server.

**Article 95**

The confiscation of the products is legally uplifted conditional to conclusion of all customs measures if the requester fails to demonstrate to the customs authority within 10 days from being notified of the confiscation that a civil or criminal case has been filed before the relevant court, provisional juridical measures taken and provided sufficient securities to cover his responsibilities towards relevant parties are paid.

The amount of the securities is determined by the court. The said period may be extended for an additional period not to exceed ten days, if the situation stipulates such extension.

The owner, supplier or consignee of the product may request uplifting of the confiscation of the products subject of the lawsuit in return for a security the value of which is determined by the court and sufficient to satisfy protection of the requester interests provided all customs measures are taken.

The Customs Authority shall notify the owner, supplier, consignee and requester immediately of the uplifting of the confiscated product.

**Article 96**

If the judiciary rules that the products are counterfeit the judiciary may also rule that the products:

- Be destroyed under the supervision of the Customs Authority.
- Prohibit the marketing and sale of such provided that such decision does not harm the interests of the patent owner.

#### **Article 97**

The Customs Authority may, on its own account, hold in abeyance the custom measures related to products supposed to be counterfeit.

In such case the following shall be done:

- The Customs Authority shall immediately inform the patent owner or owner of patent rights of such action.
- The Customs Authority shall necessarily apply articles of the chapter herein.

#### **Article 98**

The Customs Authority shall not be held responsible if such authority could not identify the products supposed to be counterfeit.

#### **Article 99**

Stipulations of the articles in the chapter herein shall not be applied to non commercial products in the personal luggage of passengers within the number or quantities defined in the related laws and procedures.

### **Chapter Fourteen Miscellaneous**

#### **Article 100**

Patent applications filed before the law herein being into effect shall be bound to the applicable provisions on the date the applications are filed except the provisions related to the practising of rights and in compliance with the rights acquired before the law herein being into effect.

The patents granted according to the provisions of the order of December 26, 1888 related to patents of inventions and amendments thereof without consideration of the cancellation thereto.

Such patents shall be considered granted according to the stipulations of the laws herein.

Patents mentioned in the previous paragraph shall remain valid throughout the remaining protection period according to the stipulations of the law herein provided that the annual fees for maintaining such in effect are paid.

The time period after which compulsory licensing may be claimed to exploit a patent or patent application granted before the law herein is into effect, is three years effective the date the law herein is into effect.

#### **Article 101**

Foreigners and establishments related thereof residing outside the Tunisian territories may advantage from the stipulations of the law herein provided Tunisians take advantage of the same rights in the countries thereof.



**Article 102**

All provisions previous to this law and in contradiction therewith shall be null and void particularly the order of December 26, 1888 related to patents.

**Article 103**

Procedures for patenting of pharmaceuticals or agrarian chemical products shall be in effect after the termination of the grace period as stipulated in the agreement with the World Trade Organization and approved by the Tunisian Republic.

The present law herein shall be published in the Official Gazette of the Tunisian Republic and shall be construed as a state law.

Zein El-Abedeem Ben Ali  
Tunisia  
August 24, 2000