

LEGISLATIVE DECREE NO. (14) OF 2006
AMENDING CERTAIN PROVISIONS
OF DECREE NO.1 OF 2004

We, Hamad Bin Isa Al Khalifa, King of the Kingdom of Bahrain,

In accordance with the Constitution,

Legislative Decree No. 1 of 2004 with respect to Patent and Utility Models;

Legislative Decree No. (19) of 2005 with respect to the Ratification of the Patent Law Treaty and its implementing regulations;

Legislative Decree No. (44) of 2005 with respect to the Ratification of the Patent Cooperation Treaty and its implementing regulations;

The Shura Council and the Council of Deputies have agreed to the following Law, which we hereby approve and ratify and promulgate.

Article One

The provisions of Articles (2), (3), (4), (5), (6), (13), (14), (16), (19), (21), (24), (25C), (25G), (26), (29), (31), (32), (34), (36), (37), (38), (39), (40), (41) and (42) of the Legislative Decree No. 1 of 2004 with respect to Patent and Utility Models shall be replaced by the following:

Article (2)

- A. An invention is new if it does not form part of the state of the prior art.
- B. An invention is deemed to involve an inventive step if it is not obvious to a person skilled in the art related to the subject matter of the invention.
- C. An invention is deemed industrially applicable if it can be applied in agriculture, fishing, services, handicrafts or in any type of industry in its full sense.

- D. A patent shall not be granted if the subject matter of the invention is disclosed to the public in or outside the Kingdom of Bahrain by means of written or oral disclosure, by use, or by any other way by which the subject matter of the invention is realized prior to the filing date of the patent application or the claimed priority date.
- E. For the purposes of paragraphs (A),(B) and (D) of this Article, disclosure shall not include the following:
 - 1. Exhibition of the invention at official or officially recognized international exhibitions, provided that the patent application shall include all the details relating to such exhibition.
 - 2. Disclosure which was not carried out by the patent applicant or with his authorization, if has occurred within the twelve months preceding the filing date of the application or the claimed priority date.

Article (3)

- A. Patents shall not be granted for:
 - 1. Inventions the prevention within the Kingdom of Bahrain of the commercial exploitation of which is necessary to protect the public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment.
 - 2. Animals.
 - 3. Diagnostic, therapeutic and surgical methods necessary for the treatment of humans and animals, with the exception of products used in any of these methods.
- B. Without prejudice to the provisions of the foregoing paragraph and Article (2) of this Law, a patent may be granted to any use or method of use of a well-known product, including products used in certain medical cases.

Article (4)

- A. The administrative authority responsible for industrial property shall maintain a register to be called < Patent Register > to record the granted patents and all details relating thereto, in addition to

whatever action affecting such patents in accordance with the provisions of this Law ,and the implementing Regulations and Orders thereof.

- B. The present Patent Register shall be incorporated ,upon the entry into force of this Law, in the Register provided for in the foregoing paragraph and shall be considered as integral part thereof.

Article (5)

Subject to the provisions of Chapter VI of this Law, any natural person or legal entity shall have the right to apply for a patent in conformity with the provisions of this Law, if the person is a citizen of the Kingdom of Bahrain or a foreigner of a country member in the Paris Union for the Protection of Industrial Property or a country whose nationals enjoy National Treatment under bilateral or international agreements adopted by the Kingdom, or if he has real and effective industrial or commercial establishments in the territories of such countries.

Article (6)

If an application for the registration of a patent is filed in a country member in the Paris Union for the Protection of Industrial Property or a country whose nationals enjoy National Treatment under a bilateral or international agreement adopted by the Kingdom, the applicant or the successor of his rights shall be entitled to file an application of the same invention at the Administrative Authority responsible for industrial property within 6 months from the filing date thereof in the foreign country, according to the terms and conditions and procedures provided for in this Law ,and the implementing Regulations and Orders thereof.

In such case, the applicant or the successor of his rights shall enjoy the priority right in accordance with the Paris Convention for the Protection of Industrial Property , in conformity with the provisions of Article 4(D) of the Convention.

Article (13)

The following shall not be considered as prejudice to rights of the patent holder:

- A. using a patented invention for non-industrial or non-commercial purposes;
- B. where a third party , in good faith , proceeded with exploiting a patented invention industrially ,or made serious preparations for such activities prior to the date of filing the patent application, the former shall, notwithstanding the grant of patent, have the right to continue to exploit the invention only within his enterprise and without extending the scope of those activities. Such right shall not be assigned or transferred independently from such enterprise;
- C. the use on board vessels of any country of the Paris Union of devices forming the subject of the patent in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of the Kingdom of Bahrain, provided that such devices are used there exclusively for the needs of the vessel;
- D. the use of devices forming the subject of the patent in the construction or operation of aircraft or land vehicles of countries members of the Paris Union, or of accessories of such aircraft or land vehicles, when those aircraft or land vehicles temporarily or accidentally enter the Kingdom of Bahrain;
- E. the use of the subject of the patent to support an application to obtain a marketing license for a pharmaceutical product, provided that what is produced shall not be manufactured, used or sold in the Kingdom ,except where undertaken to satisfy the conditions for obtaining a marketing license for a pharmaceutical product after the lapse of the protection period thereof. In such a case, it shall not be permitted to export the product outside the kingdom, except where undertaken to satisfy the conditions for obtaining a marketing license in the Kingdom.

Article (14)

- A. The protection period of a patent shall be 20 years as from the date of filing the application in the Kingdom or from the priority date, as the case may be.
- B. The patent protection period shall be extended , upon a request from patent holder, to a time period sufficient to compensate for any unjustified delay in granting the patent for reasons he has

nothing to do with, provided that such delay is for a period exceeding 4 years from the date of filing the application in the Kingdom, or 2 years from requiring the examination of the application, whichever comes later. The delay time shall not include the time period resulting from an act carried out by the applicant.

- C. The protection period of a pharmaceutical product shall be extended to a time period sufficient to compensate the patent holder for any unjustified reduction in the actual protection period , due to marketing procedures for the first commercial use of the product in the Kingdom.
- D. The protection period of a new pharmaceutical product -approved to be marked upon information of safety and efficacy of the same product or a similar product in another country, including the proof of obtaining a previous marketing license- shall be extended to a time period sufficient to compensate the patent holder for any unjustified reduction in the actual protection period, due to marketing procedures either in the Kingdom or in the that other country.
- E. For the purpose of paragraphs (C) and (D) of this Article, "G" shall mean the actual time period, whereas "O" shall mean the period from the acceptance of the product until the original time of the lapse of the protection

The patent protection period shall be extended ,upon a request from the patent holder, in case the patent is granted on the basis of a patent granted by another country under the provision of Article 19bis of this Law , for a period equals the protect period extended by the other country, if any.

Article (16)

The patent application shall be filed by the inventor or his successor in title with The administrative authority responsible for industrial property, according to the form prescribed for such purpose and accompanied by the prescribed fees, in accordance with the provisions provided for in this Law and the terms ,conditions and procedures prescribed by the Regulations. The patent application shall include the description of the

invention, claim or more, and any drawings mentioned in the description or the claims. The disclosure of the patent description shall be sufficiently clear and complete, and it shall be supported adequately.

For the purpose of the foregoing paragraph, the disclosure shall be considered clear and complete if it enables a person skilled in the art to implement the invention at the time of its filing without the need to carry out unnecessary experiments. The disclosure of the patent description shall be considered adequately supported, if it clearly shows the person skilled in the art that the applicant holds the claimed invention at the filing date thereof.

The claim or claims shall explain the claimed subject matter, and shall be clear and concise , and shall be supported by the necessary details. Further ,they shall relate to one invention ,or to a group of inventions so linked as to form an integrated inventive concept.

The applicant shall provide full data of any application previously filed elsewhere relating to the same claimed subject matter, and the decision thereon.

Article (19)

The administrative authority responsible for industrial property shall examine the patent application and its annexes to ascertain that all the necessary conditions are satisfied , and may ,within 30 days of the filing date, require the applicant to introduce any amendments or complements it deems necessary to decide on the application, providing that it shall determine the appropriate time thereof , of which the applicant shall be notified.

The administrative authority responsible for industrial property shall decide on the patent application within 60 days from the due filing thereof or the date of introducing amendments to satisfy the necessary requirements to decided thereon.

The issued decision shall be published in the Official Gazette. If the a decision is issued rejecting the grant of a patent , it shall be motivated and the applicant shall be notified thereof promptly by a registered letter with acknowledgement of receipt.

Any person ,after the publication of the acceptance of the patent application , may consult the application and its supporting documents, and any entries thereon in the patent register.

Article (21)

In case a decision is issued to grant a patent , the patent holder shall be granted a certificate ,according to the form prescribed for such purpose, stamped with the Stamp of the administrative authority responsible for industrial property indicating the patent data.

Article (24)

The Minister responsible for industrial property may grant nonexclusive compulsory licenses for the exploitation of a patented invention, in any of the following cases:

- C. national emergency , extreme urgency, or public non-commercial interest , provided that the patent owner shall be notified thereof –if possible- after the grant of the license.
- D. Failure to exploit the invention by the patent owner in a manner sufficient to satisfy the requirements of the local markets in fair prices – in comparison with current prices in other countries- within 3 years from the grant of the patent or 4 years from the filing date of the patent application, whichever comes later.

Nevertheless, the Minister responsible for industrial property may afford the patent holder a period of grace not exceeding 2 years to exploit the patent in the prescribed manner, where the failure to exploit the patent was due to reasons beyond his power; otherwise , the Minister may issue a compulsory license to any third party the patent owner refused to license ,or offers it under unfair commercial conditions.

- E. Where the exploitation of a patent, involving significant technical advance with considerable industrial importance, inevitably infringes another patent, the owner of the former patent shall be granted a compulsory license for the exploitation of the latter patent. The licensed exploitation may not be assigned without the assignment of the former patent.

The other patent holder shall –in return- have the right to obtain a compulsory license for the exploitation of the former patent.

F. If the patent owner exercised his rights in a manner contrary to fair competition.

Article (25)

The party requesting the grant of a compulsory license must have the capacity to efficiently use the patented invention through an establishment located in the Kingdom, either if the license is issued for the manufacture of the patent products or the importation thereof.

G. The assignee shall not assign the use license except with the enterprise or the part related to the use of the patent , and subject to the approval of the Minister responsible for industrial property.

Article (26)

The Administrative Authority responsible for industrial property shall inform the patent owner with a copy of the license application–except in the case provided for in Article 24(A) of this Law – and he shall be entitled to submit ,to the Authority, a written reply to the application, according to the procedures and in the time limit prescribed by the Regulations. In all cases , the Minister responsible for industrial property shall issue a decision to accept the application or to reject it, or to suspend the acceptance thereof under conditions he determines. The Administrative Authority responsible for industrial property shall in all cases notify the patent owner and the license applicant of the decision issued with respect to the application within 30 days from the issue date thereof. Such a decision shall be recorded in the Patent Register, and published in the manner prescribed by the Regulations.

Article (29)

Without prejudice to the provision of Article (36) of this Law, the Administrative Authority responsible for industrial property , upon a request from any concerned party, may issue a motivated decision to cancel the registration of a patent in cases where it is justified to reject the

grant of a patent , or if the patent was granted upon deceive , counterfeit , or unfair act.

Fees shall be due on filing the stated cancellation application, and the Regulation shall prescribe the procedures of filing such an application and deciding thereon.

Article (31)

A. The administrative authority responsible for industrial property shall maintain a register to be called (Utility Models Register) to record the granted utility models, and all related data, exploitation and application thereof, in conformity with the provisions of this Law and its Regulations , as well as the implementing decisions thereof.

G. The present Utility Models Register shall be incorporated ,upon the entry into force of this Law, in the Register provided for in the foregoing paragraph and shall be considered as integral part thereof.

Article (32)

The protection period a utility model shall be 10 years as from the date of filing the application in the Kingdom or from the priority date, as the case may be.

Article (34)

Patents and utility models ,satisfying the registration conditions pursuant to the provisions of this Law, shall enjoy temporary protection during the display thereof at official or officially recognized international exhibitions held in the territory of the kingdom of Bahrain. The Regulations shall prescribe the rules and procedures for the grant of such protection.

Article (36)

Without prejudice to Articles 20 and 38 of this Law , any concerned party may appeal in writing any decision issued under the provisions of this Law to the Minister responsible for industrial property , within 30 days from the notification date thereof. The appeal shall be decided on, and the person concerned shall be notified thereof ,within 30 day from its filing date.

Any party whose appeal is rejected may challenge the rejection decision before the Supreme Civil Court within 60 days from the notification date of the appeal rejection.

Challenging before the Court shall not be permitted unless an appeal is filed and it is decided thereon ,or if the period prescribed for deciding thereon lapses with no notification.

Article (37)

The Minister responsible for industrial property shall ,subject to the approval of the Ministers Council, issue an order prescribing such fees , and the terms and percentage of the increase and reduction thereof, as well as the cases for refund or waiver of these fees.

Article (38)

- A. Any interested party ,at any time, may request the administrative authority responsible for industrial property to add any data to the Patent Register or to the Utility Model Register which could have been omitted, or to omit any data contrary to fact or unlawfully recorded therein, in accordance to the rules and procedures and in the manner prescribed by the Regulations.
- B. The rules, procedures , and time periods provided for in Article 19 of this Law shall apply to the decision on the applications referred to in the foregoing paragraph.
- C. The Administrative Authority responsible for industrial property may , on its own initiative and at any time, issue a motivated decision to add any data to the Patent Register or to the Utility Model Register which could have been omitted, or to omit any data contrary to fact or unlawfully recorded therein, in accordance to the rules and procedures and in the manner prescribed by the Regulations.

Article (39)

- 1. The officers designated by the Minister responsible for industrial property to ascertain the implementation of the provisions of this law and the Orders for the implementation thereof shall have the power to inspect the relevant business premises.

2. The officers authorized by the Minister of Justice ,in agreement with the Minister responsible for industrial property , shall have judiciary powers in inspecting offences that fall under their jurisdiction and relate to their duties. The statements issued with respect to such offences shall be referred to the public prosecutor by an order issued by the Minister responsible for industrial property or his delegated official.

Article (40)

- (1) In case of infringement or to prevent an imminent infringement of any right prescribed by the provisions of this Law, the right holder shall be entitled to obtain an order on the basis of a petition from the President of the Competent Court considering the merits of the case to adopt one or more appropriate precautionary measures:
 - A. To draw up detailed description of the infringing goods materials, implements, and machines used or might be used in the infringement, and to preserve relevant evidence in regard to the infringement.
 - B. To order the seizure of the articles stated in the foregoing paragraph, as well as the royalties of the alleged infringement.
 - C. To prevent the entry of the goods that involve the alleged infringement into the channels of commerce as well as the exportation thereof, including imported goods immediately after their customs release.
 - D. To desist the infringement or prevent the occurrence thereof.
- (2) The president of the court shall have the authority to require the petition applicant to provide any reasonably available evidence that the right is likely infringed or that such infringement is imminent, and to require him to provide any information necessary to enable the competent authority executing the precautionary measures to identify the concerned goods.
3. The president of the court shall decide on the petition expeditiously within a period not exceeding 10 days of the filing date thereof, with the exception of the special cases he considers.

4. The president of the court ,when necessary shall be authorized to issue the aforementioned decision ,upon a request from the petition applicant and without the summons of the other party, in cases where any delay in the decision issuance is likely to cause irreparable harm to the applicant, or if there is a risk of evidence being disappeared or destroyed. In such case , the other party shall be notified of the decision promptly; and ,when necessary , the notification may be immediately after the execution of the decision.
5. If the president of the court orders to adopt a precautionary procedure –without the summons of the other party- the defendant may appeal such an order to the competent court within 10 days from the notification date. In such case , the court may confirm , modify or revoke the order.
6. The president of the court shall have the authority to require the petition applicant to provide an appropriate security or equivalent assurance sufficient to protect the defendant and to prevent abuse, and in a manner that shall not unreasonably deter recourse to the indicated precautionary procedure.
7. The right holder shall be required to submit the merits of the case within twenty days from the issuance date of the precautionary order or from the notification date of the rejection of the appeal provided for in Paragraph (5) of this Article , as the case maybe. Otherwise the order shall be revoked upon the request of the defendant.
8. for the purpose of this Article , the patent shall be effective unless approved otherwise.

Article (41)

Without prejudice to any more sever punishment stipulated in another law, a punishment of imprisonment for a period of no less than three months and no more than a year and a fine of no less than 500 Bahraini Dinars and no more than 2,000 Bahraini Dinars, or by either punishment , shall be inflicted upon any person who unlawfully and knowingly:

- A. manufactures, uses a method of manufactures, sells, offers for sale or trade, imports, or possesses with the intention to trade products that

involve infringement of the rights prescribed under the provisions of this Law.

- B. affixes on products, advertisements, marks, packaging implements or the like, indications that may lead to believe that such a person has been granted a patent or a utility model certificate;

The Court may order the publication of the judgment in a daily gazette once or more at the expense of the convicted party.

In case of repetition, the penalty with its minimum and maximum limits may be doubled, along with the closure of the enterprise or project, or the suspension of the activity –as the case may be- for a period of no less than 15 days and no more than 6 months, with the publication of the judgment in a daily gazette once or more at the expense of the convicted party.

Article (42)

Without prejudice to the provisions of the bilateral and international agreements effective in the Kingdom, industrial patents granted in accordance with the provisions of Laws and Decrees effective until the date of entry into force of this Law, shall enjoy the protection prescribed for therein , and shall be considered as if registered in accordance with the provisions thereof, provided that the protection period lapsed shall be deducted from the protection period provided for in this Law, according to the procedures and in the manner prescribed by the Regulations.

Article Two

The phrase <the Administrative Authority responsible for industrial property > shall be replaced by the phrase <the competent authority at the Ministry of Commerce > and the phrase <the Minister responsible for industrial property > shall be replaced by the phrase <The Minister of Commerce> whenever such phrases occur in the Legislative decree No. 1 of 2004 with respect to Patent and Utility Models.

Article Three

There shall be added to the Legislative decree No. 1 of 2004 with respect to Patent and Utility Models: A new item (E) to Article 28, new Articles (19bis, 40bis and 41bis), And a new Chapter (VI), to (Part I) titled "International Registration" the Articles thereof are from Article 29bis to Article 29bis(7), which shall read as follows:

Article 28

- E. where a decision is issued for the cancellation of the registration of a patent without filing any petition against it within the prescribed period provided for in Article 36 of this Law, or if a decision is issued rejecting the appeal against the decision of the cancellation of the registration of the patent.

Article 19bis

A patent may be granted on the basis of patent granted for the same invention in another country, in accordance with the conditions and procedures prescribed by a decision issued by the Minister responsible for industrial property.

Article 40bis

- A. Any party who has suffered direct injury because of an infringement of any rights conferred by the provisions of this Law, shall be entitled to file a case with the Competent Court to order:

- 1. the payment of damages adequate to compensate for the injury he has suffered because of the infringement
- 2. the payment of royalties gained by the infringer which were not taken into count at the assessment of the damages.

The Court shall determine the amount of damages it deems adequate to compensate for the injury pursuant to Articles 161 and 162(A) of the Civil Law, provided that the Court shall take into account the value of the goods or services –subject of the infringement- according to experience or what the applicant determines with regard to the retail price or any other legitimate criteria he requests to be applied.

- B. The Court shall be authorized to order the defended found to carry out infringement to inform the Court or the right holder of any person or entity involved in any aspect of the infringement and of the methods of production or the channels of distribution of such goods or services , including the determination of the identity of all persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 41bis

Without prejudice to any more sever punishment stipulated in another law:

- A. A punishment of imprisonment for a period not exceeding a month or a fine of no more than 300 Bahraini Dinars, shall be inflicted upon any person who does not comply with an order issued by the Court in conformity with the provisions provided for in paragraph B of Article 40bis of this Law.
- B. A punishment of a fine not exceeding 2,000 Bahraini Dinars , shall be inflicted upon any proceeding party, judicial assistant, expert , or any other person who does not comply with an order issued by the Court with respect to the protection of secret information disclosed or circulated in the context of any legal proceeding.

Chapter VI

International Registration

Article 29bis

The following terms and phrases, wherever mentioned in this Law, shall have the meanings expressed next to them, unless the context requires otherwise:

Treaty: the Patent Cooperation Treaty;

International union: the International Patent Cooperation Union constituted by States party to the Treaty;

Article 29bis(1)

Any natural person or legal entity shall have the right to file an international application with the Administrative Authority responsible for industrial property , and shall be conferred the rights provided for in the Treaty and the Regulations thereof, where the applicant is:

1. a national or a resident of the Kingdom; or
2. a foreigner or a resident of a country member in the International Union; or
3. a foreigner or a resident of a country member in the Paris Union for the Protection of Industrial Property ,if such a country is not party to the Treaty, and where allowed by the assembly of the International Union.

Article 29bis(2)

A. Subject to the provisions of Article 29bis(1) of this Law, an international application may be filed with the Administrative Authority responsible for industrial property as a receiving Office of international applications.

The international application shall be in Arabic. It might be in English , provided that it shall be accompanied by Arabic translation.

- B. Fees shall be due for international applications, and It shall be paid within a period not exceeding 12 months from the filing date of the application.
- C. The Administrative Authority responsible for industrial property shall examine the international application to ascertain the fulfillment of the requirements provided for in Article 11 of the Treaty. It may require the applicant to introduce any amendments it deems necessary to the application and to fulfill whatever it deems important to decide thereon , provided that it shall determine the appropriate time for notifying the applicant thereof.
- D. If the applicant fails to carry out whatever required by the Administrative Authority responsible for industrial property or fails to pay the due fees for international applications within the prescribed time , the international application would be considered as if it had never been filed and the applicant shall be notified thereof in writing.

Article 29bis(3)

- A. If the international application satisfies all the necessary requirements , the Administrative Authority responsible for industrial property shall transmit such application to both the International Bureau and the International Searching Authority provided for in Article 16 of the Treaty, and a copy of the international application shall be kept.
- B. The filing date of an international application filed with the Administrative Authority responsible for industrial property , where satisfying all the necessary requirements , or the filing date of the necessary amendments ,as the case may be, shall be considered as the international filing date of the application and shall have the effect of a regular national application in accordance with the provisions of this Law.

Article 29bis(4)

If the Kingdom of Bahrain has been designated by an international application as a designated State in which protection for the invention is desired or as an elected State, the applicant shall submit a copy of the international application translated in Arabic to the Administrative Authority responsible for industrial property; fees shall be due in both cases , and shall be paid within 30 months of the priority date.

Article 29bis(5)

The Administrative Authority responsible for industrial property shall not:

- A. Allow third parties to , unless requested or authorized by the applicant, access the international application prior to any of the following, whichever comes first:
 - 1. the international publication date of the international application according to the provision of Article 21 of the Treaty;
 - 2. the receiving date of a communication of the international application according to the provision of Article 20 of the Treaty;

3. the receiving date of a copy of the international application according to the provision of Article 22 of the Treaty;
- B. publish an international application or its translation before the international publication thereof or before the expiration of 20 months from the priority date, if international publication has not taken place within this period.

Article 29bis(6)

The international application would be considered as if it had never been filed in any of the cases provided for in Article 24 of the Treaty.

Article 29bis(7)

The provisions provided for in the Treaty and the Regulations thereof with respect to the international registration of patents shall apply to any matter which is not specifically provided for in this Chapter.

Article Four

The Ministers - each in their respective capacity - shall implement this Law , which shall come into effect the day following the date of its publication in the Official Gazette.

Hamad Bin Isa Al Khalifa
King of the Kingdom of Bahrain

Issued at Al-Riffa Palace
On: 1 Jumada I 1427 H
Corresponding to: 28 May 2006 A.D.