

ORGANISATION MONDIALE DU COMMERCE

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Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce

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NOTIFICATION DES LOIS ET REGLEMENTATIONS AU TITRE DE L'ARTICLE 63:2 DE L'ACCORD

Koweït

Révision

Par une communication de sa Mission permanente, datée du 29 janvier 1997, le Koweït a fait parvenir au Secrétariat la notification ci-après, présentée au titre de l'article 63:2 de l'Accord.

La Mission permanente de l'Etat du Koweït auprès de l'Office des Nations Unies et des autres organisations internationales à Genève présente ses compliments à l'Organisation mondiale du commerce et a l'honneur de se reporter à sa précédente notification au titre de l'article 63:2 de l'Accord sur les ADPIC, datée du 19 septembre 1996 et distribuée sous couvert du document IP/N/1/KWT/1, selon laquelle, conformément à l'article 70:8 dudit accord, l'Etat du Koweït souhaitait notifier que la protection juridique de l'ensemble des produits pharmaceutiques était assurée par la Loi n° 4 de 1964 concernant les brevets et les dessins et modèles industriels.¹

La Mission permanente de l'Etat du Koweït souhaite modifier sa déclaration en supprimant le membre de phrase "... de l'ensemble des produits pharmaceutiques ...".

La Mission permanente de l'Etat du Koweït informe le Conseil des ADPIC que le Ministère du commerce et de l'industrie de l'Etat du Koweït autorise le dépôt de demandes de brevets. Les demandes doivent être envoyées à l'adresse suivante:

Ministry of Commerce and Industry
Trade Registration and Administration
P.O. Box 2944
Safat-13030, Kuwait
Fax: (+ +965) 242 43 28

¹Le texte de cette loi était annexé à la notification du 29 janvier 1997 et est reproduit ci-après (en anglais seulement).

KUWAIT

LAW NO. 4 of 1962

RELATING TO PATENTS, DESIGNS AND INDUSTRIAL MODELS

PART ONE

CHAPTER I

Patents - General Provisions

Article 1. — Patents of invention shall, in conformity with the provisions of this Law, be granted for every new innovation liable to be industrially exploited, whether connected with new industrial products, or new industrial processes or means, or with the new application of known industrial means and processes.

Article 2. — A patent of invention shall not be granted in respect of the following:

1. inventions, the exploitation of which is against morality or public policy;
2. chemical discoveries connected with food-stuffs, or medicinal drugs, or pharmaceutical compositions, unless such products are produced by special chemical methods or processes, in which case the patent shall not be in respect of the products per se, but of the process of manufacture.

Article 3. — A patent is not considered to be new, in whole or in part, in the following two cases:

1. if during the 20 years preceding the date of submission of the application for a patent, the invention had already been publicly used in Kuwait, or its description or design had been advertised in publications in Kuwait, in such a manner as to render possible the exploitation thereof by experts;
2. if within the 20 years preceding the date of submission of the application for patent, a patent of the invention or a part thereof, had already been granted to persons other than the inventor or his assignees, or if within the said period an application for patent for the same invention or part thereof, had already been submitted by others.

Article 4. — There shall be established at the Control of Trade Marks, a register called «the Register of Patents of Invention», in which, patents and all descriptions relating thereto, shall be entered in conformity with the provisions of this Law and the Orders issued for the execution thereof.

Article 5. — The following persons are entitled to apply for patents of invention:

1. Kuwaitis;
2. foreigners residing in Kuwait, or possessing industrial or commercial organizations therein;
3. foreigners who are nationals of countries according Kuwait a reciprocity of treatment, or who reside or have real premises in such countries;
4. companies, associations, institutions, or groups of manufacturers, producers, traders or workers established in Kuwait or countries reciprocating the treatment for Kuwait, when such bodies enjoy juristic personality;
5. public establishments.

Article 6. — The right to the patent is vested in the inventor or his assignees.

Where the invention is the result of the collective work of several persons, they shall all have equal rights to the patent, except where they otherwise agree.

Where several persons make the invention independent of each other, the right to the patent shall be vested in the person who files his application before the others.

Article 7. — When a person charges another with the discovery of a certain invention, all the rights pertaining to such invention shall belong to the former. Similarly, the employer shall have all the rights pertaining to inventions discovered by the worker or employee in the carrying out of the work or employment, when the invention is within the scope of the contract, work or employment.

The name of the inventor shall be mentioned in the patent, and he shall, in all cases, be entitled to a remuneration, but if no agreement is reached in respect of this remuneration, he is entitled to a fair compensation from the person by whom he had been charged to discover the invention, or from the employer.

Article 8. — In cases other than those mentioned in the preceding article, and when the invention falls within the scope of activities of the public or private establishment to which the inventor is attached, the employer shall have the option either of exploiting the in-

vention or purchasing the patent for a fair compensation to be paid to the inventor, provided the option is exercised within three months from the date of the notification of the grant of the patent.

Article 9. — The application to obtain a patent of invention, submitted by the inventor within a year from the date of his leaving the private or public establishment, shall be deemed to have been submitted during the period of enforcement of the contract, or work or employment, and both the inventor and employer shall, according to circumstances, have all the rights provided for in the preceding two articles.

Article 10. — The patent vests in the patentee, to the exclusion of others, the right of exploiting the invention by all means.

Article 11. — The rights created by a patent are not enforceable against a person who, before submitting the application for patent, had in good faith been industrially exploiting the invention or making the necessary efforts for its exploitation. Such person is entitled to exploit the invention for the needs of his establishment, without being capable of assigning such right independently of the establishment.

Article 12. — The duration of the patent shall be 15 years as from the date of application. The patentee is entitled to apply for one renewal thereof for a period not exceeding five years, provided the renewal is applied for, during the last year, and provided he proves that the invention is of special importance and no fructification commensurate with his efforts and expenses had been derived therefrom.

The decision of the Control of Trade Marks, in respect of renewal, is subject to appeal before the Kulliyah Court of Commerce.

The duration of patents granted under paragraph 2 of Article 2 hereof, shall be 10 years, not renewable.

Article 13. — A fee of 10 Dinars shall be paid on submission of the application for a patent of invention or for the renewal. These fees shall not be refunded in any case.

Article 14. — If the subject-matter of the invention is the introduction of modifications, improvements or additions to a previous invention to which a patent was granted, the proprietor of such patent may, in conformity with the provisions of Articles 15 and 16 hereof, apply for a patent of addition, the validity of which shall expire on the expiration of the original patent. A fee of three Dinars shall be paid on submission of the application.

If the original patent is cancelled or revoked, the patent of addition shall remain in force and becomes independent from the original patent, and the duration thereof shall be deemed from the date of this patent.

CHAPTER II

Procedure of Application for a Patent

Article 15. — The application for a patent shall be submitted by the inventor or his assigns, to the Control of Trade Marks in the Ministry of Finance and Economy, in conformity with the terms and conditions determined by the Implementing Regulations.

The application for a patent may not be in respect of more than one invention.

Article 16. — The patent application shall be accompanied by a detailed specification of the invention and the manner in which it is to be exploited. The specification must distinctly comprise the new elements for the protection of which the interested person applies, and when necessary the application shall be accompanied by a design of the invention, in the manner prescribed by the Implementing Regulations.

Article 17. — The applicant for a patent may exploit his invention from the date of submission of the application.

Article 18. — The Control of Trade Marks shall examine the application for the patent and enclosures, to ascertain:

1. that the application is submitted in conformity with Article 15 hereof;
2. that the specification and design give a picture of the invention as to allow the performance thereof by industrialists;
3. that the novelty elements, for the protection of which the interested person applies, are stated clearly and precisely in the application.

Article 19. — The Control of Trade Marks may require the applicant to make such amendments in the application as it may deem requisite in accordance with the provisions of the preceding article, within the period determined by the Implementing Regulations. If the applicant fails to do so, he shall be deemed to have renounced his application. The applicant may, within thirty days from the date he is notified of the decision, appeal against the decision of the Control of Trade Marks in respect of such amendments, to the Kulliyah Court, and the Court may approve, quash or amend the decision.

Article 20. — If the application for a patent fulfils the conditions laid down in Article 18 hereof, the Control of Trade Marks shall advertise the application in the manner determined by the Implementing Regulations.

Article 21. — Any interested person may file with the Control of Trade Marks, within the period determined by the Implementing

Regulations, a written notification of his objection to the grant of the patent, which must contain the supporting causes for such objection.

Article 22. — Every decision issued by the Control of Trade Marks in respect of opposition, may be appealed against to the Court, within a period of thirty days from the date of notification thereof to the interested person, and the court shall speedily decide on the case.

Article 23. — Grant of the patent to the rightful proprietor shall be by Order of the Minister of Finance and Economy, and shall be advertised in the manner prescribed by the Implementing Regulations.

Article 24. — If it appears to the Control of Trade Marks that the invention pertains to defence affairs or is of military value, it shall immediately refer the application for patent and its accompanying documents, to the General Command of the Armed Forces who shall, within three months from the date of filing the application for patent, oppose the grant of a patent to the applicant, in consideration for purchase of the invention or agreeing with him on the exploitation thereof.

Article 25. — The applicant for a patent or the patentee may submit, at any time, an application to modify the specifications or design of the invention showing, at the same time, the nature of and causes for the modification, provided that the modification does not affect the invention itself.

The proceedings to be adopted in respect of such application shall be the same as those pertaining to the application for a patent.

Article 26. — Every person is entitled to obtain copies of the applications for patents and the documents pertaining thereto, as well as extracts from the Register of Patents of Invention. He may equally peruse the applications, documents and the Register, in the manner specified in the Regulations.

CHAPTER III

Transfer of Ownership, Pledge and Attachment of Patent

Article 27. — Inheritance transfers the right in a patent and all the rights arising therefrom. Ownership of the patent of invention may also be wholly or partly transferred for or without consideration and may also be mortgaged.

The transfer of ownership or mortgage of the patent may not be used in evidence against third parties, except from the date it is entered in the Register of Patents.

Advertisement in respect of the transfer of ownership or mortgage of the patent, shall be made in the manner prescribed by the Regulations.

Article 28. — Creditors may attach patents of invention pertaining to their debtor, in conformity with what is laid down in the Law of Prosecution for the Attachment of Movable Property or whatever the debtor may have with third parties. The Control of Trade Marks is exempt from the provisions relating to the declaration of the garnishee as to his indebtedness to the distrainee.

The creditor is required to notify the attachment and the report (procès-verbal) of the adjudication to the Control of Trade Marks for inscription in the Register. They are not valid against third parties except from the date of the said inscription. Advertisement in respect of attachment shall be made in the manner prescribed by the Regulations.

CHAPTER IV

Compulsory Licensing for the Exploitation of Inventions and Expropriation thereof for Public Interest

Article 29. — If the invention is not exploited in Kuwait within three years from the date of the grant of the patent, or if the proprietor thereof fails to exploit it fully to satisfy the needs of the country, or if the exploitation of the invention ceases for at least two consecutive years, the Control of Trade Marks may grant a compulsory licence for the exploitation of the invention to any person in favour of whom the patentee refused to concede the right of exploitation, or stipulated exorbitant pecuniary terms with regard to such concession.

A compulsory licence shall not be granted unless the applicant therefor is capable of exploiting the invention seriously, and the patentee shall be entitled to a suitable compensation. The Control of Trade Marks shall notify the patentee by serving upon him a copy of the said application, and the patentee shall submit to the Control of Trade Marks, within the period prescribed by the Regulations, a written reply to the said application. If the reply fails to reach within the fixed time, the Control of Trade Marks shall decide to accept or refuse the application.

The Control of Trade Marks may subject the acceptance to the conditions that it deems necessary. The decision of the Control may be appealed against to the Court within 30 days from the date of its notification to the person concerned.

Article 30. — If the Control of Trade Marks finds, notwithstanding the expiration of the prescribed periods mentioned in paragraph one

of the preceding article, that the failure to exploit the invention is due to causes beyond the control of the patentee, it may grant him a delay, not exceeding two years, for an effective exploitation of the invention.

Article 31. — If the exploitation of the invention is of great importance to the national industry, and such exploitation necessitates the utilization of another invention in respect of which a patent had already been granted, the Control of Trade Marks may grant the proprietor of the invention a compulsory licence to exploit the previous invention, in case the proprietor thereof refuses to agree to such exploitation on reasonable terms. On the other hand, the proprietor of the previous invention may be granted a compulsory licence to exploit the subsequent invention, if his invention is of greater importance.

In granting the licences and in fixing the amount of the compensation due to either of the proprietors of the inventions from the other, due regard shall be given to the conditions and requirements referred to in Article 30* of this Law. The decision of the Control of Trade Marks, in this respect, is subject to appeal before the Court, within 30 days from the date of notification of the person concerned.

Article 32. — By an order of the Minister of Finance and Economy, the inventions may be expropriated for reasons relating to public interest or national defence.

The expropriation may include all the rights arising from the patent or from the application submitted therefor, or may be restricted to the right of exploiting the invention for the needs of the Country.

In this case the patentee is entitled to a fair compensation.

Assessment of the compensation shall be made by a committee formed by an order of the Minister of Finance and Economy. Complaints of the Committee's decision shall be made to the competent court, within 30 days from the date of notifying the complainant of the Committee's decision.

CHAPTER V

Expiry of the Patent of Invention and Its Nullification

Article 33. — Rights arising from the patent of invention are extinguished in the following cases:

- a) the expiration of the protection period conferred by the patent of invention in accordance with the provisions of Article 12 of this Law;

* Presumably should read «29».

b) where the patentee relinquishes his right thereto;

c) delivery of a final judgement revoking the patent.

Article 34. — The Control of Trade Marks, and every interested person, are entitled to apply to the Court, for the revocation of the patents which may have been granted in contravention of the provisions of articles 2 and 3 hereof. The Control of Trade Marks shall cancel these patents on the production of a final judgement to that effect.

The Court may, in pursuance of an application from the Control of Trade Marks or from the interested persons, order the addition of any statement in the Register the recording of which had been erroneously omitted therefrom, or the amendment of any statement contained therein which is inconsistent with the facts, or the striking out of any statement recorded without right.

PART TWO

Designs and Industrial Models

Article 35. — For the purposes connected with the application of this Law, it shall be deemed a design or industrial model, every arrangement of lines or every shape of body, with or without colours, for use in industrial production, by mechanical, manual or chemical means.

Article 36. — There shall be established at the Control of Trade Marks, a register called «The Register of Designs and Industrial Models», in which, designs and industrial models and all descriptions relating thereto, shall be registered in conformity with the provisions of this Law and the Orders issued for the execution thereof.

Article 37. — The application for the registration of the design or model, shall be submitted to the Control of Trade Marks, in accordance with the terms and conditions set forth in the Implementing Regulations to this Law.

The application may contain a number of designs or models not exceeding fifty, provided they form in their totality a homogeneous unit.

Article 38. — The application for registration may only be rejected for non-fulfilment of the terms and conditions referred to in the preceding article.

The applicant for registration may petition against the decision of the Control of Trade Marks to the Kulliyah Court, within 30 days from the date of being notified of the decision of the Control.

Article 39. — On registration, the Control of Trade Marks shall give the applicant, a certificate comprising the following particulars:

- First: the serial number and date of the application;
- Secondly: the number of the designs and models comprised in the application, and an indication of the industrial products for which they are appropriated;
- Thirdly: the name, surname, nationality and domicile of the applicant.

The effects of registration shall commence from the date of submission of the application, if the application had fulfilled the legal requirements.

The registration shall be advertised in the manner prescribed by the Implementing Regulations of this Law.

Article 40. — Every person is entitled to apply for extracts or copies from the Register.

Article 41. — The transfer of ownership of the design or model may not be used in evidence against third parties, except after its inscription in the Register and publication in the manner specified by the Implementing Regulations.

Article 42. — The period of legal protection secured by the registration of the design or model is five years, commencing from the date of the application for registration.

The protection may continue for two new consecutive periods, if the proprietor of the design or model applies for renewal within the last year of each period, in the manner prescribed by the Regulations to this Law.

The Control of Trade Marks shall, during the month following the expiration of the period of protection, notify the proprietor in writing of the expiration of the period. If within the three months following the date of expiry of the protection period, the proprietor fails to submit an application for renewal, the Control of Trade Marks shall strike out the registration.

Article 43. — A fee of ten Dinars shall be paid on submission of the application for registration of the design or model, and also on submission of the application for renewal.

This fee shall not be refunded in any case.

Article 44. — The Control of Trade Marks shall strike out the registration made in the name of a person other than the real proprietor of the design or model, when a final judgement to that effect is issued by the Court.

The Control of Trade Marks shall, of its own accord or upon the application of the interested persons, effect such striking out.

Article 45. — The striking out of the registration or its renewal must be published in accordance with the requirements specified by the Implementing Regulations.

PART THREE

Common Provisions.... Offences and Penalties

Article 46. — There shall be punished with imprisonment not exceeding two years, and a fine of not less than ten Dinars and not exceeding 225 Dinars, or with either such penalty:

1. any person who imitates the subject-matter of an invention in respect of which a patent had been granted in accordance with this Law;
2. any person who imitates the subject-matter of a design or an industrial model duly registered in accordance with this Law;
3. any person who knowingly sells or offers for sale or circulation, or imports from abroad or acquires with intent to trade, imitated products or materials bearing an imitated design or industrial model, if the invention, design or model is registered in Kuwait;
4. any person who, without right, places on products, notices, trade marks, or packing articles, etc., particulars leading to the belief of his having obtained a patent of invention, or a registration of a design or industrial model.

Article 47. — The patentee of an invention, design or model may, during the hearing of the civil or criminal action, obtain from the President of the Kulliyah Court, an order to take all precautionary measures, and in particular the seizure of the imitated products or goods, as well as the machines and tools that were or may be used in the commission of the offence, and of the goods imported from abroad on their arrival.

The interested person shall support his application, for adoption of these measures, by an official certificate proving the registration of the invention, design or industrial model.

Where necessary, the order issued for adoption of such measures, may cover the calling upon one or more experts to assist in its execution.

Article 48. — The Civil Court and the Criminal Court may order the confiscation of the things seized or to be seized, for deducting the price thereof from the fines or compensations, or the disposal thereof in any other way as may be deemed fit by the Court.

The Court may further order the publication of the judgement in one or more newspapers, at the expense of the convicted person.

Article 49. — The Implementing Regulations to this Law shall provide for the temporary protection of inventions, designs and industrial models, exhibited at national or international exhibitions, held in Kuwait or in one of the countries according Kuwait a reciprocity of treatment.

The Minister of Finance and Economy shall issue an order specifying these exhibitions.

Article 50. — If an application for a patent of invention is submitted in one of the countries according Kuwait a reciprocity of treatment, the interested persons or their assignees may apply to the Control of Trade Marks in respect of such invention in conformity with the terms and conditions laid down in this Law, within a year from the date of submission of the application in the foreign country.

In exception to the provisions of Article 3 hereof, the publication of the description of the invention, its utilization or the submission of another application in respect thereof, within the period provided for in the preceding paragraph, shall have no effect on the application for patent.

The provisions of this article apply to designs and industrial models, provided that the period is six months from the date of submission of the application for registration in the foreign country, without prejudice to the provisions of Article 11.

Article 51. — The rights of a patentee are not derogated by the utilization of the invention in land, sea and air means of transport, belonging to one of the countries according Kuwait a reciprocity of treatment, when they are casually or temporarily in Kuwait.

Article 52. — The provisions of this Law are applicable to the inventions, designs and industrial models which enjoy legal protection at the time this law comes into operation, provided that the application for patent of invention or application for registration of the design and model is submitted within two years from the said date. The duration of the preceding protection shall be included in the duration of the protection conferred by this Law.

Article 53. — The employees of the Commercial Section in the Ministry of Finance and Economy may not, either personally or through a third party, apply to obtain patents of invention or to register designs or industrial models, except after the lapse of at least two years from the date of their leaving the service.

Article 54. — The Minister of Finance and Economy shall issue Implementing Regulations specifying the provisions relating to the application of this Law, and in particular:

1. regulating the keeping of registers of patents of invention, designs and industrial models;
2. terms, conditions and intervals connected with the administrative proceedings;
3. terms and conditions connected with publicity and advertisement provided for in this Law;
4. fees relating to the delivery of copies and certificates and to various acts and inscriptions.

Article 55. — The Minister of Finance and Economy and the Minister of Justice are charged, every one within his jurisdiction, with the enforcement of this Law which comes into operation after three months from the date of its promulgation in the Official Gazette.

(Sgd) Prince of the State of Kuwait

Abdulla As Salim As Sabah

Issued in Seef Palace, on 5th Dhul Qi'da 1381, corresponding to 9th April, 1962.