

**Order No. 03-07 dated July 19, 2003 related to Patents
of Invention**

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Part One: Objective & Definitions

Article 1: This Order shall aim at determining the conditions of invention protection and the methods and effects thereof.

Article 2: The following words herein shall have the meanings indicated against each:

- Invention: an idea of an inventor that practically provides a solution for a specific problem in the technology field.

- Patent or Patent of Invention: a document delivered for the protection of an invention.

- Competent Authority: the National Algerian Institute for the Protection of Industrial Property.

Part Two : General Provisions

Chapter One : Patent Validity Requirements

Article 3: The new inventions resulting from an inventive activity and industrially applicable shall be protected by a patent of invention.

An invention may involve a product or a method.

Article 4: An invention shall be considered novel if not included in the state of art. This case includes all that is offered to the public by a written or oral description, by use or any other means around the world one day prior to filing the application for protection or the date of claiming priority thereof.

An invention shall not be considered publicly circulated once it is introduced within 12 months prior to the date of filing the patent or the priority date as a result of an act carried out by the applicant or his predecessor in right in accordance with Article 14 below, or an abusive act taken by a third party against the applicant or his predecessor in right.

Article 5: An invention shall be considered as resulting from an inventive activity if it is not recognized intuitively from the state of art.

Article 6: An invention shall be industrially applicable if its subject matter is liable to be manufactured or used in any type of industry.

Article 7: The following shall not be considered as inventions as provided herein:

- 1- Scientific principles, theories and discoveries, as well as the mathematical approaches.
- 2- Plans, principles and approaches purely designed to conduct cultural or entertaining work.

- 3- Curriculums and systems of education, organization, management or enforcement.
- 4- Methods of treatment for human or animal by surgery or medicine, and diagnosis curriculums.
- 5- Provision of information.
- 6- Computer software.
- 7- Inventions of purely decorative nature.

Article 8: Under this Order, patents of invention may not be obtained for the following:

- 1- Plant varieties or animal species, and the pure biological methods to produce plants or animals.
- 2- Inventions of which application in Algeria would be in contrary to the public order or morals.
- 3- Inventions of which use in Algeria would be detrimental to the health and life of people, animals and plants or represent a serious threat to the protection of environment.

Article 9: The period of a patent of invention shall be twenty (20) years as of the date of filing the application subject to paying the registration and validity maintenance fees in accordance with the applicable legislation.

Chapter Two : Granted Rights

Article 10: The right in a patent of invention shall be for the invention owner or his successors as determined in Articles from 3 to 8 above.

If two persons or more have collectively worked on an invention, the right of ownership thereof shall be shared by them or by their successors being partners in the invention.

An inventor or inventors may be mentioned as inventors in the patent of invention.

If the applicant(s) is not the inventor(s), the application shall be accompanied with a statement in which the applicant(s) proves his right in the patent of invention.

The above indicated statement shall not be required in case the application includes a priority claim for a past filing in the name of the applicant.

The form and methods to prepare the above indicated statement shall be determined through the regulation.

Article 11: Subject to Article 14 below, a patent of invention shall entitle its owner to the following exclusive rights:

1- In case the invention subject matter is a product, the right to prevent others from manufacturing, using, selling, offering for sale, or importing such product without his approval.

2- In case the invention subject matter is a method of manufacturing, the right to prevent others from using such method and using the product directly resulting from this method or selling, offering for sale or importing thereof for these purposes without his approval.

A patent owner shall have the right to assign such patent, transfer it to his successors or conclude licensing contracts in this regard.

Article 12: The rights protected through the patent of invention shall only include activities of industrial or commercial purposes.

These rights shall not include:

1- Activities conducted only for scientific research purposes.

2- Activities related to the product included in the patent after duly offering this product in the market.

3- Using means protected by a patent on board of ships and spaceships, or foreign air or land transportation apparatuses which enter the territorial waters, air domain or national land temporarily or due to an emergency.

Article 13: Unless an impersonation is judicially proved, the first applicant of a patent of invention or the first claimant of the priority thereof shall be considered the inventor. This capacity shall be transferred, when necessary, to his successors.

Article 14: If a person, at the time of filing the patent of invention application or the date of the legally claimed priority, has conducted the following in good faith:

- 1- Manufacturing the product or using the method of manufacturing subject matter of the patented invention.
- 2- Serious preparations to initiate such manufacturing or use, he may proceed his work in spite of the said patent of invention.

The right of prior user may only be transferred to the institution, the company, or the branches thereof in which the use or preparation for use has taken place.

Chapter Three : Certificate of Addition

Article 15: The owner of a patent or holder of rights thereof may, as long as the patent is valid, make changes, improvements or additions to his invention while meeting the required procedures to file the application determined in Articles from 20 to 25 below.

These changes, improvements or additions shall be evidenced by certificates to be delivered in the same form of the main patent and have the same effect.

The application for a certificate of addition shall require the payment of the fees determined in accordance with the applicable legislation.

Certificates of addition shall expire when the term of main patent expires.

Article 16: As long as the certificate of addition has not been delivered, the applicant of such certificate may transform his application into a patent of invention application of which filing date shall be on the same day of filing the application for a certificate of addition.

The patent acquired as a result of the said transfer in the first Paragraph above shall require the payment of the validity maintenance fees as of the date of filing the application for the certificate of addition.

Chapter Four : Service Inventions

Article 17: An invention created by one person or more during the execution of an employment contract that includes an inventive assignment explicitly entrusted to them shall be considered a service invention.

In this case, if a special agreement is not concluded between the user body called "the Body" and the inventor, such Body shall have the right of invention property.

If the Body has explicitly expressed its abandonment of this right, it shall be the right of the inventor.

However, the invention owner shall have the right to be qualified as inventor in accordance with Paragraph 3 of Article 10 above.

The methods to implement the provisions of this Article shall be determined through the regulation.

Article 18: A service invention shall be the invention created by one person or more using the technologies and/or the tools of the Body under an agreement other than the agreement provided for in Article 17 above.

The methods to implement the provisions of this Article shall be determined through the regulation.

Chapter Five : Confidential Inventions

Article 19: The inventions of interest to the national security or of special influence on the public interest shall be considered confidential without prejudice to the material and moral rights of the inventor.

The methods to implement the provisions of this Article shall be determined through the regulation.

Part Three : Filing, Examination, & Issuance

Chapter One : Filing

Article 20: Each person who wishes to obtain a patent of invention shall file a written application to the competent authority.

A patent of invention application shall include the following:

- Application form, description of the invention, request or a number of requests, a drawing or a number of drawings, when necessary, and a brief description.
- Documents proving the payment of determined fees.

Unless otherwise is mutually agreed, the applicants residing abroad shall be represented before the competent authority.

The methods to implement the provisions of this Article shall be determined through the regulation.

Article 21: Regardless of the Provisions of Article 20 above, the date of filing the patent of invention application shall be the date in which the competent authority receives at least the following:

- a- A written application form introducing the applicant and expressing his wish to obtain a patent of invention.
- b- A description of the invention enclosed with one request at least.

However, the international application that has obtained an international filing date under the Patent Cooperation Treaty, which covers Algeria as a country interested in obtaining patents, shall be considered as a patent application filed on its international filing date.

Article 22: The patent of invention application shall not include more than one invention or a number of interrelated inventions consisting, as a whole, one comprehensive invention.

Such application shall not also include any restrictions, conditions, reservations, limitations or rights entitlement.

An invention shall be sufficiently described in a clear and complete manner that an expert would be able to put it into operation.

The claim or claims included in the invention shall determine the scope of required protection. They should be clear, concise and entirely based on description. The concise description shall be used only for the purposes of benefiting from the technological information.

Article 23: Each person who wishes to claim the priority of a previous filing for the same invention shall submit a priority statement and a copy of the previous application as per the conditions and dates determined by the regulation.

Article 24: Each person, who has exhibited an invention in an official international or officially recognized exhibition, may request the protection of this invention and claim priority as from the date of exhibiting the subject matter thereof within the twelve months following the date of closing the exhibition,.

Article 25: The applicant may, fully or partially, withdraw his application prior to the issuance of the patent of invention.

Article 26: Prior to issuing the patent of invention and after paying the determined fees, the applicant may correct, if necessary, the material mistakes legally proved in the filed documents.

In case of not paying the required fee or not making the amendments within the determined period, which may be extended when necessary, the patent shall be delivered as it is.

Chapter Two : Examination

Article 27: After filing is made, the competent authority shall make sure that all conditions related to the filing procedures determined in Section One of Part Three above and in the adopted provisions for implementation are fulfilled.

If the application does not fulfill such conditions, the applicant or his representative shall be called to correct the file within a period of two months. Such period may be extended when necessary upon the request thereof.

The corrected application shall be dated on the first filing date.

In case of not correcting the application file within the determined period, the application shall be deemed as being withdrawn.

Article 28: The competent authority shall also make sure that the subject matter of the application is not listed in the fields provided for in Article 7, and not naturally excluded from the protection under Articles from 3 to 6 & 8.

The competent authority shall inform the applicant, when necessary, that his application is not patentable.

Article 29: If it is clear that any application does not comply with the Provisions of Paragraph One of Article 22 above, such application may be divided into several applications where each one of them is dated on the filing date of the original application according to the periods determined by the regulation.

The subject matter of each divided application shall not exceed the content of the original application.

Article 30: The competent authority may require the applicant, prior to issuing the patent of invention, to provide any information related to any protection document he has requested or obtained in other countries for the same invention he applied for therein.

Chapter Three: Issuance

Article 31: The patents with proper applications shall be issued without prior inspection or guarantee at the applicants' responsibility, whether related to the invention fact, novelty, merit or the description faithfulness or accuracy. The competent authority shall give the applicant a certificate proving the application's correctness and representing the patent of invention.

The above-indicated certificate shall be attached with a copy of the description, claims and designs after assuring their conformity with the originals thereof, when necessary.

Part Four: Registration & Publication

Chapter One: Patents Register

Article 32: The competent authority shall keep a register in which all patents of invention mentioned in Article 31 are registered by their issuance sequence, as well as all processes required to be registered under this Order and the adopted provisions for its implementation.

The methods to keep the register shall be determined through the regulation, and the competent authority shall keep an extract of the numbered and initiated register.

Any person may access the register of invention patents and obtain extracts thereof after paying the determined fee.

Chapter Two: Publication

Article 33: The competent authority shall issue an official release for patents.

Article 34: Subject to the provisions of Article 19 above, the competent authority shall periodically publish the patents and work provided for in Article 32 above in the its official release.

Article 35: The competent authority shall keep the documents of patent description, claims and designs after being published in the release indicated in Article 33 above. Such documents shall be informed on upon any legal order. Each person shall have the right to access such documents and obtain copies thereof after paying the relevant entitlements. The provisions of the previous two paragraphs shall be applicable to the official copies delivered by the applicants who claim the priority of previous filing.

The patent applicant, who claims the priority of filing outside the country, may get an official copy of his application prior to receiving the patent.

Part Five: Transfer of Rights

Chapter One: Transfer

Article 36: The rights resulting from the patent's application, patent and/or the related potential certificates of addition shall be wholly or partially transferable.

All details shall be recorded in the contracts comprising ownership transfer, right of use assignment, forfeiture thereof, mortgage or demortgage related to the patent's application or patent in accordance with the law regulating this contract. These contracts shall be recorded in the patent's register.

The contracts mentioned in the above paragraph shall not be effective towards third party unless they are registered.

Chapter Two: Contractual Licenses

Article 37: The patent's owner or applicant may grant a third party the license to use his invention under a contract.

The items included in contracts related to the license shall be considered void if they impose on the license purchaser, in the industrial or commercial field, limitations that represent abusive use of the patented rights in a manner that causes detrimental effects on the competition in the national market.

Chapter Three: Compulsory License for Invention Non-Use or Defect

Article 38: Each person, in anytime after four year from the patent filing date or three years from the patent issuance date, may obtain from the competent authority a use license as a result of not using the invention or a defect therein.

To estimate the term mentioned in the above paragraph, the competent authority shall apply the maximum terms.

The compulsory license shall not be granted unless the competent authority verifies the invention non use or defect and non-existence of circumstances justify thereof.

Article 39: Each person who applies for a compulsory license shall, in accordance with Articles 38 and 47 herein, prove the submission of an application to the patent owner to get a contractual license that he could not obtain under equitable conditions.

Article 40: The compulsory license, mentioned in Article 38 above, shall only be granted to the applicant who provides the necessary guarantees regarding a use that will avoid the defect which has led to the compulsory license.

Article 41: The compulsory license shall be granted in return for appropriate compensation, as may be the case, subject to the economic value thereof.

Article 42: The compulsory license may be transferred only with a part of the utilized institution or commercial shop. The transfer shall not occur without the approval of the competent authority.

Article 43: The compulsory license or its transfer shall be registered with the competent authority against specified fee.

Article 44: The competent authority may amend the decision to grant the compulsory license upon the request of the patent's owner or the beneficiary of compulsory license, and if new events arise that justify such amendment, particularly, if the patent's owner grants contractual licenses with more privileged conditions to the licensor.

Article 45: Without prejudice to the provisions of the last paragraph of this Article, the competent authority may withdraw the compulsory license upon the request of the patent's owner in the following cases:

- 1) If the conditions that justify granting the compulsory license are no longer exist.
- 2) If the specified conditions are not fulfilled by the beneficiary of the compulsory license.

The competent authority shall not withdraw the compulsory license if convinced of circumstances that justify the continuation thereof, particularly, in the case mentioned in the first point above, where the licensee is using the invention industrially protected by the patent or he has made serious preparations thereof.

Article 46: The application of patent compulsory license shall be submitted to the competent authority supported by evidences mentioned in Article 39 above.

The competent authority shall invite the patent's owner and the applicant or their representatives to hear from them. If the competent authority has granted the compulsory license, it shall identify its conditions, term and the required compensation to the patent's owner, unless both parties reach an agreement, without prejudice to the objection before the relevant judicial party that initially and finally decides upon this issue.

The provisions of this Article shall be applicable in case of the transfer of the patent compulsory license in accordance with Article 42 herein.

Article 47: If the use of patented invention is not possible without prejudice to the rights protected by prior patent, a compulsory license shall be granted to the owner of subsequent patent upon his request.

Such patent shall be granted within the necessary limitations to use the invention, provided that this invention constitutes an apparent technological progress and significant economic interest regarding the invention subject matter of the prior patent.

The owner of prior patent shall have the right in the reciprocal license as per reasonable terms to use the invention subject matter of the subsequent patent.

Article 48: The compulsory license mentioned in Article 38 shall not be exclusive and shall basically aims at supplying the national market.

Chapter Four: Compulsory License for Public Benefit

Article 49: The Minister of the Industrial Property may, in any time, grant the compulsory license to a state department or to others nominated by him, for patent application or patent of invention, in the following cases:

1) When necessitated by the public interest, in particular, the national security, nutrition, health or developing other national economic sectors, especially, when the prices of patented pharmaceutical articles are different from and higher than the market average prices.

2) If a legal or administrative entity considers that the patent's owner or licensee is using the patent in contrary to the competitive rules. If the Minister of the Industrial Property decides that using the patent in implementation of this paragraph permits refraining from this act.

Article 50: The Articles 43 to 46 and Article 48 shall be applicable in addition to the necessary change to the compulsory license for public benefit.

Part Six: Rights Forfeiture

Chapter One: Rights Assignment

Article 51: The patent's owner may wholly or partially, in anytime, assign one or more claims related to his patent by submitting a written statement to the competent authority.

The methods to implement this Article shall be determined through the regulation.

Article 52: If one of the patents mentioned in the first and second sections of chapter five above has been registered in the patent's register, the patent assignment shall not be registered unless the licensee submits a statement in which he accepts such assignment.

Chapter Two: Nullification

Article 53: The competent judicial authority shall announce the complete or partial nullification of a claim or more related to the patent upon the request of the concerned person in the following cases:

- 1) If the subject matter of the patent has not been in compliance with the provisions included in Articles 3 to 8 above.
- 2) If the description of the invention has not been in compliance with the provisions of Article 22 (paragraph 3) above, and if the patent requirements have not identified the required protection.
- 3) If the invention itself has been a subject matter of a patent in Algeria based on prior application or has benefited from prior filing.

When the nullification decision becomes final, the party who has interest in the expedition shall by the force of the law notify thereof to the competent authority for registration and publication.

Chapter Three: Forfeiture

Article 54: The patent shall forfeit if the annual validity maintenance fees are not paid in the date corresponding to the date of filing thereof and provided for in Article 9 above.

However, the patent's owner or applicant shall have a period of six months from this date to pay the due fees in addition to a delay fine.

In addition, and upon a justified request from the patent owner to be submitted within no later than (6) months after the expiry of legal term, the competent authority may decide to requalify the patent after paying the due fees and the requalification fee.

Article 55: If two years expire after granting the compulsory license without discovering the non-use or defect of the patented invention for reasons attributed to the owner, the competent judicial authority may, upon a request from the concerned Minister and after consultation with the Minister of Industrial Property, pass a ruling of the patent forfeiture.

Part Seven : Rights & Penalties Infringement

Chapter One: Civil Actions

Article 56: Subject to Articles 12 and 14 above, all acts set forth in Article 11

above that occur without the approval of the patents owner shall be considered an infringement of the patent's rights.

Article 57: All occurrences prior to the registration of a patent application shall not be considered as infringing the patent rights and shall not entail a conviction even a civil one, except for the occurrences that occur after notifying the suspected counterfeiter with an official copy of the patent description attached to the patent application.

Article 58: The owner of the patent or his successor may file a lawsuit against any person who has performed or is performing one of the acts in accordance with Article 56 above.

If the plaintiff proves the occurrence of an act mentioned in the paragraph above, the competent judicial authority shall decide awarding the civil compensations. It may also order the prohibition of such acts and take any other procedure provided for in the valid legislation.

Article 59: Notwithstanding the provisions of paragraph 2 of Article 58 above, and until proving the contrary, every identical product manufactured without the approval of the patent's owner shall be considered a product obtained by a patented method, at least in one of the following two cases:

- 1) When the patent subject matter is a method to obtain a new product.
- 2) When there is a large possibility that the identical product has been obtained by the patented method and the patent's owner could not, despite the exerted efforts, explain the used method.

In this case, the judicial authority may order the defendant to provide the evidences to prove that the used method to obtain an identical product is different from the patented method.

Moreover, the competent judicial authority shall take into consideration the legal interests of the defendant when approving any required evidences through non disclosure of his commercial and industrial secrets.

Article 60: The defendant may in any case provided for in Articles 58 & 59 above file a lawsuit of patent nullification through the same proceeding.

Chapter Two: Penal Actions

Article 61: Every intentional act committed in accordance with the provision of Article 56 above shall be considered a counterfeit misdemeanor.

The counterfeiter shall be penalized by imprisonment for not less than six months and not more than two years and shall be fined for not less than A.D. (2.500.000) and not more than A.D. (10.000.000) or only one of these penalties.

Article 62: Each person who intentionally hides a counterfeit article or many counterfeit articles, sell thereof, offer for sale or import into the country shall be penalized similar to the counterfeiter.

Part Eight: Transitional Provision

Article 63: The patents issued under the Legislative Decree No. 17-93 dated 23 Jumada II 1414 corresponding to December 7, 1993 with regard to the protection of inventions and the related certificates of addition shall remain subject to the provisions of the same Legislative Decree.

Part Nine: Closing Provisions

Article 64: The provisions of the Legislative Decree No. 17-93 dated 23 Jumada II 1414 corresponding to December 7, 1993 related to the protection of inventions shall be cancelled, subject to the provisions of Articles 61 & 62 above.

Article 65: This Order shall be published in the Official Gazette in the People's Democratic Republic of Algeria.