

Law No. 2000-84 of August 24, 2000, on Patents¹

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In the name of the people,

The Chamber of Deputies having adopted it,

The President of the Republic hereby promulgates the Law that reads as follows:

Chapter I **Patentable Inventions**

1. Any invention of a product or manufacturing process may be protected by a title, known as a patent, which is granted by the entity responsible for industrial property under the conditions specified by this Law.

2. The patent shall be granted for novel inventions that involve an inventive step and are capable of industrial application.

The following in particular shall not be considered inventions within the meaning of the first paragraph of this Article:

- (a) purely ornamental creations;
- (b) discoveries, scientific theories and mathematical methods;
- (c) schemes, rules and methods intended for use:
 - in the performance of purely mental acts,
 - in games,
 - in the field of economic activity,
 - in connection with software;
- (d) methods of therapeutic and surgical treatment of the human body or of animals and diagnostic methods applied to the human body or to animals; these provisions shall not apply to preparations or in particular to products and compositions used for the purposes of the application of any such method;
- (e) presentations of information;
- (f) all types of live substance existing in nature.

The exceptions to the provisions of the second paragraph of this Article with regard to the patentability of the subject matter listed shall apply only to that subject matter as such.

3. A patent may not be issued for:

- varieties of plants, animal breeds or essentially biological processes for the production of plants or animals, provided that this provision shall not apply to biological processes used in medicine or to products obtained using such processes;
- inventions the publication or implementation of which would be contrary to morality, public policy, public health or the protection of the environment.

The patent cannot be considered implemented by virtue of the mere fact that it is limited by a legal or regulatory provision.

4. An invention that is not included in the state of the art is novel.

The state of the art is constituted by everything that has been made accessible to the public, by written or oral description, by use or in any other way, prior to the filing date of the patent application or the priority date validly claimed for the application.

The state of the art shall also include the contents of any application for a Tunisian patent that has a filing date, or where applicable a priority date, earlier than the date of the patent application referred to in the second paragraph of this Article, and has not been published until that date or until a later date.

For the application of the first, second and third paragraphs of this Article, disclosure of the invention shall not be taken into consideration where it occurred within the 12 months preceding the filing date, or where applicable the priority date, of the patent application, and where it is the direct or indirect result of a manifest abuse practised on the applicant or on his legal predecessor.

5. An invention shall be deemed to involve an inventive step where it is not obvious to a person skilled in the field concerned in comparison with the state of the art on the filing date of the patent application, or where applicable on the priority date validly claimed for it.

The state of the art shall be considered as a whole, including not only the separate elements of the state of the art or parts of those elements considered separately, but also combinations of such elements or parts thereof where such combinations are obvious to a person skilled in the field concerned.

6. An invention shall be considered capable of industrial application where its subject matter may be manufactured or used in any kind of industry or in agriculture.

Chapter II **Right to the Patent**

Section 1 *General Provisions*

7. The right to a patent within the meaning of Article 1 of this Law shall belong to the inventor or to his successors in title. In the procedure to be observed in dealings with the entity responsible for industrial property, the party filing the patent application shall be deemed entitled to the patent.

Where two or more persons have made the same invention independently of each other, the right to the patent shall belong to the first to file an application.

Where two or more persons have made an invention jointly, the right to the patent shall belong to them jointly.

8. If a patent has been applied for, either for an invention unlawfully taken from the inventor or from his successors in title or in violation of a legal or treaty obligation, the aggrieved party may apply to the competent court to claim ownership of the patent application or granted patent.

The action claiming ownership provided for in the first paragraph shall be statute-barred after three years following publication of the notice of grant of the patent. However, where the bad faith of the owner of the patent at the time of the grant or acquisition of the patent is proved, the statute-barring period shall be three years following the expiry of the patent provided for in Articles 36 and 60 of this Law.

Section 2 *Inventions of Salaried Employees*

9. For the purposes of this Law:

— “employee” means both an agent in the private sector and an agent in the public sector;

— “employer” means the State, local communities, public corporations and companies and any corporation under private law.

10. The invention made in the course of employment relations by an employee whose specific duties require him to engage in inventive activity or design or research work expressly entrusted to him shall belong to the employer.

An invention made within the area of activity of the employer by an employee who is not obliged as part of his work to engage in inventive activity, and who has done so by using information or means accessible to him by reason of his employment, shall belong to the employee, except where the employer informs him of his interest in the invention in accordance with the provisions of Article 16 of this Law.

11. The employee who makes an invention within the meaning of Article 10 of this Law shall immediately declare it to the employer in accordance with the provisions of Articles 12 and 16 of this Law.

Where there are two or more inventors, a joint declaration may be made by all or only some of them.

12. This declaration shall include information concerning:

- the subject matter of the invention and planned applications,
- the circumstances in which the invention was made.

The declaration shall be accompanied by a description of the invention. That description shall give an account of:

- the problem that the employee set himself, due regard being had where applicable of the prior art;
- the solution reached by him;
- the manner in which the invention was made, accompanied where appropriate by drawings.

13. Where the employer declares his interest in accordance with the provisions of Article 10 of this Law, the right to the patent shall be regarded as having belonged to him from the outset. The employee-inventor shall be entitled to equitable compensation, due regard being had to the economic value of the invention and any profit accruing to the employer from its exploitation. In the absence of agreement between the parties on the amount, the compensation shall be set by the competent court.

Any contractual clause less favourable to the employee inventor than the provisions of this Article shall be null and void.

The period accorded to the employer within which to claim ownership of the invention shall be four months, unless otherwise agreed by the parties. Any agreement shall be in writing and shall follow the declaration.

14. Where the employee's declaration does not conform to the provisions of Article 12 of this Law, the employer shall notify the person concerned of the additional information that has to be provided.

That notification shall occur within two months following the date of receipt of the employee's declaration, failing which the declaration shall be considered accepted.

15. The period for the employer's declaration claiming ownership of the invention as provided in Article 13 of this Law shall run from the date of receipt by the employer of the invention declaration containing the information specified in Article 12 of this Law or, in the event of a justified request for additional information, from the date on which the requested additional information is provided.

Ownership of the invention shall be claimed by the sending to the employee of a notice specifying the nature and scope of the rights that the employer intends to reserve for himself.

16. Any declaration or notification from either the employee or the employer shall be made by registered letter with advice of receipt, or by any other means whereby its receipt by the other party may be proved. The time limits for any declaration or notification from the employer or employee shall be suspended by the bringing of an action challenging the regularity of the declaration.

The periods shall continue to run as from the date of notification of a judgment that has become *res judicata*.

17. The employee and employer shall share with each other any useful information on the invention concerned. They shall abstain from making any disclosure that would be liable to compromise either entirely or partly the rights conferred by this Law.

18. In the event of a dispute, the employee and employer shall abstain from any disclosure of the invention until the case has been ruled upon.

Where one of the parties files a patent application in order to preserve his rights, he shall without delay convey copies of the documents constituting the filing to the other party.

Chapter III **The Patent Application**

19. The patent application shall be filed in the form and on the conditions specified in this Chapter.

Section 1 *Filing of the Application*

20. Any application for the grant of a patent shall be filed with the entity responsible for industrial property.

Where the applicant is represented by an agent, a power of attorney executed under private seal shall be enclosed with the application.

An applicant domiciled abroad shall appoint an agent established in Tunisia.

The agent's power of attorney shall specify the scope of his mandate. Unless otherwise specified, the power of attorney shall extend to all acts relating to the patent, including the notifications provided for in this Law but with the exception of cases of withdrawal or renunciation, which require a special power of attorney.

Where there are two or more persons filing the same application, a joint agent shall be appointed.

21. The application shall comprise:

- a request;
- a description of the invention in duplicate;
- one or more claims in duplicate specifying the novel feature or features of the invention;

- one or more drawings if required for the understanding of the description;
- a descriptive abstract of the invention.

The request shall specify the title of the invention, the surname and forename of the applicant and his address, the surname and forename of the inventor and, where applicable, the surname, forename and address of the agent.

The description of the invention shall be sufficiently clear and complete for a person skilled in the corresponding field of technology to carry it out.

The claims shall be based on the description and shall specify the extent of the patent protection sought.

The descriptive abstract shall briefly set forth the main technical features of the invention. It shall serve the purposes of technical information alone.

22. The application shall be filed in writing in one of the three languages Arabic, French or English.

The application shall be subject to the payment of royalties, the amount of which shall be set by decree.

23. A patent application may not apply to more than one invention or to one set of inventions so connected between themselves that they constitute a single general inventive concept.

24. The applicant who wishes to avail himself of the priority of an earlier application filed in a foreign country that is a member of the Paris Union or of the World Trade Organization is obliged to file a written statement with his application that specifies the filing date, the country in which the filing was made and the surname and forename of the applicant, and to pay the priority fee the amount of which shall be set by decree.

The applicant is also obliged, on pain of forfeiture of the right of priority, to produce, within three months of the filing date, a copy of the earlier application, certified as being true to the original by the entity responsible for industrial property of the country in which that application was filed, accompanied by a translation thereof in the language in which the application referred to in Article 22 of this Law was filed.

The applicant is obliged, at the request of the entity responsible for industrial property, to provide it with any other document concerning the earlier application and, where applicable, concerning any other application filed in another country. Those documents shall include the following in particular:

- a copy of any document received by the applicant and pertaining to the findings of any search or examination carried out in relation to the application in which the publications or other documents establishing the state of the art are mentioned;
- a copy of any application other than the earlier application that relates to the same invention, or essentially to the same invention, and the priority of which is claimed;
- a copy of any final judgment rejecting the application.

Two or more priorities may be claimed for one patent application, even if they originate in different countries. Where applicable, two or more priorities may be claimed for one

claim. In both cases periods that have the priority date as their starting point shall be calculated as from the earliest priority date.

Where one or more priorities have been claimed for one and the same patent application, the patent rights shall cover only those elements of the application the priority of which is claimed.

Where certain elements of the invention for which priority has been claimed do not feature among the claims formulated in the earlier application, it shall be sufficient, for priority to be granted, that all the documents constituting the earlier application disclose those elements in a precise manner.

25. The date of the patent application shall be that on which the applicant filed the application in accordance with the provisions of Articles 20, 21 and 22 of this Law.

The entity responsible for industrial property shall refuse to entertain the application if it finds that, at the time of the filing thereof, the requirements of Articles 20, 21 and 22 were not met.

26. Until such time as it is published the applicant may amend his application, including the formulation of new claims, provided that the disclosure of the initial application is not thereby exceeded.

Any amendment of a claim shall be subject to payment of a fee the amount of which shall be fixed by decree.

27. Until such time as it is published the applicant may effect the division of his application, provided that the disclosure of the initial application is not thereby exceeded.

Every divisional application shall be considered separate but shall retain the filing date of, and where applicable the priority date claimed for, the initial application.

The divisional application shall be filed in the form and under the conditions specified in Articles 20 et 21 of this Law. It shall give rise to the payment of the fees referred to in the second paragraph of Article 22 of this Law.

28. Up to the date of patent grant the applicant may on request, which request shall be duly justified, seek the correction of mistakes in expression or transcription and also errors detected in the documents filed.

Where the request relates to the description, claims or drawings, the correction shall be accepted only where it is so clearly called for that no other wording or image could have been intended by the applicant.

The request shall be submitted in writing and shall include the changes proposed. It shall be entertained only if accompanied by proof of payment of a fee the amount of which shall be fixed by decree.

Section 2

Examination of the Application

29. The entity responsible for industrial property shall examine whether the application is consistent in terms of form with the provisions of Articles 20, 21 and 22 of this Law.

The entity responsible for industrial property shall reject the patent application if it finds that the provisions referred to in the first paragraph of this Article have not been respected

after the applicant has been invited to remedy the shortcomings within a period of three months from the date of the notice served on him to that end.

The rejection decision shall be accompanied by a statement of reasons, and shall be notified to the applicant or his agent by registered letter with advice of receipt.

30. The entity responsible for industrial property shall ascertain whether, in terms of substance:

- the subject matter claimed is not manifestly excluded from patentability under the second paragraph of Article 2 and Article 3 of this Law;
- the subject matter claimed corresponds to the definition given in Article 6 of this Law;
- the description satisfies the requirements specified in the third paragraph of Article 21 of this Law;
- the claims meet the requirements specified in the fourth paragraph of Article 21 of this Law;
- the application meets the requirements specified in Article 23 of this Law;
- the divisional application does not extend beyond the disclosure of the initial application;
- all the documents required under the third paragraph of Article 24 of this Law have been supplied.

Where the entity responsible for industrial property considers that the conditions set forth in the first paragraph of this Article have not been met, it shall inform the applicant or his agent accordingly and invite him to amend his application or to make comments within a period of three months of the notice served on him to that end.

If in the course of that period the applicant rectifies his application in accordance with the notice from the entity responsible for industrial property, the examination of the application shall resume on payment of a fee the amount of which shall be fixed by decree, failing which the entity responsible for industrial property shall reject the application.

Where the entity responsible for industrial property considers, in the light of either the comments or the amendments made by the applicant under the second paragraph of this Article, that the conditions set forth in the first paragraph have been met, the application shall be entertained. Otherwise the entity responsible for industrial property shall inform the applicant and invite him to meet the said conditions within three months of notice having been served on him to that end.

If at the end of the period set the entity responsible for industrial property considers that the said conditions have still not been met, it shall reject the application.

Any rejection decision shall be accompanied by a statement of reasons and be notified in writing to the applicant or his agent by registered letter with advice of receipt.

31. Where the application conforms to the provisions of this Section, a mention of its filing shall be published in the official bulletin of the entity responsible for industrial property within 18 months of the filing date.

Section 3
Withdrawal of the Application

32. The patent application may be withdrawn by written declaration at any time before the grant of the patent. The withdrawal shall be subject to payment of a fee the amount of which shall be fixed by decree.

The withdrawal declaration may relate to one application only, it shall be made by the applicant or his agent. A special withdrawal power shall be enclosed with the agent's declaration.

Where the patent application has been filed in the names of two or more persons, its withdrawal may not be effected unless it is requested by all of those persons or by a joint agent.

Where encumbrances or licenses have been entered in the National Register of Patents provided for in Article 37 of this Law, the withdrawal declaration shall be entertained only if it is accompanied by the written consent of the owners of the rights concerned.

Where the application is withdrawn after its publication in the official bulletin of the entity responsible for industrial property, the withdrawal shall be entered *ex officio* in the National Register of Patents.

In all cases of withdrawal of the application, a copy of the application shall be retained by the entity responsible for industrial property.

Chapter IV
Grant of the Patent

33. The patent shall be issued in the name of the applicant or applicants by decision of the legal representative of the entity responsible for industrial property provided that, within the two months following the publication referred to in Article 31 of this Law, no action under Article 34 of this Law has been brought.

The grant of the patent shall be notified to the owner or his agent. It shall be entered in the National Register of Patents and published in the official bulletin of the entity responsible for industrial property.

The date of grant of the patent shall be that of its signature. The patent granted shall come into effect as of the filing date of the application.

34. The patent grant procedure shall be suspended where a person supplies proof to the entity responsible for industrial property, within the two months of its publication under Article 31 of this Law, of having instituted a legal action before the competent court either challenging the patentability of the application under Articles 2, 3, 4, 5 and 6 of this Law or claiming ownership of the said application.

The patent grant procedure shall resume as soon as the ruling of the competent court has become *res judicata*.

However, in the case of an action claiming ownership of the application, the patent grant procedure may resume at any time with the written consent of the person who brought the action. That consent shall be irrevocable.

As from the day on which a person provides proof of having instituted legal proceedings, the applicant may not withdraw the patent application without the agreement of both parties. The suspension and resumption of the patent grant procedure shall be recorded in the National Register of Patents.

At the end of an action claiming ownership of the application in respect of the invention, the owner of the application shall be the person designated by the court.

35. Patents shall be issued at the applicants' own risk and without any State guarantee either of the genuineness, novelty and merit of the invention or of the accuracy of the description.

36. The term of protection of the patent shall be 20 years from the filing date of the application.

37. The entity responsible for industrial property shall keep a register called the National Register of Patents. The procedure for the keeping of the register and for entries in the register shall be laid down by decree.

All patent applications and patents and all acts relating to them shall be entered in the Register. No entry may be made in the National Register of Patents prior to publication of the filing of the patent application.

Where a patent application does not conform to the conditions of registration, the entity responsible for industrial property shall serve a notice with a statement of reasons on the applicant or his agent by registered letter with advice of receipt or by any other means affording written proof that it has been dispatched by the sender.

The entity responsible for industrial property shall give the applicant a period of one month within which to rectify his application or make comments. That period shall run from the date of notification.

In the absence of rectification or comments, the application shall be rejected by decision of the legal representative of the entity responsible for industrial property.

Requests for entries in the Register shall be subject to payment of a fee the amount of which shall be fixed by decree.

Any person may consult the National Register of Patents. Any person may also obtain extracts from the Register against payment of a fee the amount of which shall be fixed by decree.

38. Any person has the right of access to a file concerning a patent or to a file concerning a patent application, and may obtain copies thereof against payment of a fee the amount of which shall be fixed by decree.

However, consultation or the obtaining of a copy of an unpublished patent application shall be possible only with the written and duly signed authorization of the patent applicant or his agent.

Chapter V

Appeals

39. Appeals against decisions of the legal representative of the entity responsible for industrial property regarding the grant or rejection of patents shall lie to the competent courts.

40. The period for appealing to the court against the decisions provided for in Article 39 of this Law shall be one month from the date of notification of the decision appealed against.

41. The appeal shall be brought in the form of a written request sent or handed to the clerk of the competent court.

The request shall contain the following information on pain of unacceptability:

— Where the appellant is a natural person, his surname, forename, profession, address, nationality, birthdate and birthplace;

— Where the appellant is a legal entity, its legal form, corporate name and registered office and the identity of its legal representative;

— The date and subject matter of the decision challenged;

— The surname, forename and address of the owner of the patent or of the application, where the appellant is neither the one nor the other.

A copy of the decision challenged shall be filed with the appeal.

Where the appeal does not contain an account of the legal arguments invoked, the appellant shall, on pain of dismissal of his appeal, file such an account with the clerk of the court at least seven days prior to the holding of the first hearing.

42. A copy of the appeal, and also where applicable a copy of the subsequently-filed account of the legal arguments, shall be conveyed by the appellant to the entity responsible for industrial property through the agency of a notarial officer.

The entity responsible for industrial property shall convey the file on the decision challenged to the clerk of the court within a period of one month from the date of notification of the copy of the appeal.

43. Where the appeal is filed by a person other than the owner of the patent, or the owner of the application, the latter shall be brought into the case by the appellant through the agency of a notarial officer.

44. The appellant may be represented before the court by an agent.

45. The court's judgment shall be notified to the other parties to the proceeding by the most diligent party.

Chapter VI **Rights and Obligations Under the Patent**

Section 1 *Rights Under the Patent*

46. The patent shall confer on its owner or on his successors in title an exclusive right of exploitation.

Third parties shall be prohibited from the following without the consent of the owner of the patent or of his successors in title:

(a) manufacture, advertising, marketing, use or import, or the holding in stock for those purposes, of the project to which the patent relates;

(b) use of the manufacturing process to which the patent relates;

(c) advertising, marketing, use or import, or the holding in stock for those purposes, of the product obtained directly using the process to which the patent relates.

47. The rights conferred by the patent shall not extend to the following:

(a) acts performed in a private circle for non-commercial purposes;

(b) acts performed experimentally that relate to the subject matter of the patented invention;

(c) the individual preparation of medically prescribed drugs by dispensing chemists, or acts relating to drugs so prepared;

(d) the advertising, import, stocking or use of the patented product or the product obtained using a patented process, done on Tunisian territory after the product has been lawfully brought on to the market in any country by the owner of the patent or with his express consent;

(e) acts necessary for the manufacture of generic drugs, provided that the commercial exploitation of the product of those acts may not be engaged in until the term of patent protection has expired;

(f) use of objects on board foreign aircraft, land vehicles or waterborne vessels that temporarily or accidentally penetrate the air space, territory or territorial waters of the Tunisian Republic.

48. Any person who, on the filing date of the patent application or the priority date claimed for it, was working the invention in good faith in Tunisia shall be entitled to continue to work the invention personally in spite of the existence of the patent. That right of working shall belong also, on the same terms, to a person who had made serious preparations for such working in Tunisia. That right may only be transferred to third parties with the business, the company or the part of the company to which it is attached.

49. The Minister responsible for industry may, on a proposal by the authorities concerned, rule that, notwithstanding the grant of a patent, capital goods, accessories and spare parts relating to the patent in question may be imported, for non-commercial purposes, in order that the public interest may be safeguarded.

50. Without prejudice to the provisions of Article 67 of this Law, the owner of a patent relating to an improvement made to an invention already patented may not work his invention without the authorization of the owner of the patent, who himself may not exploit the patented improvement without the authorization of the owner of the improvement patent.

Section 2

Obligations Under the Patent

51. The owner of the patent is obliged to work the patented invention within a period of four years from the filing of the application or three years from the grant of the patent, whichever period is longer, except where the product to which the invention relates is subject

to prior administrative marketing approval, in which case the period shall be extended by two years following the expiry of the periods mentioned.

52. Any filing of a patent application shall give rise to payment of an amount which shall cover the filing and the first annual fee.

The amount paid for the filing and the first annual fee shall be payable at the time of the filing of the application even where it is eventually rejected.

Where the patent application contains more than ten claims, an additional amount shall be payable for each claim as from the eleventh.

The annual fee for the maintenance of the patent application and of the patent shall be payable for every year of the patent's life. Payment shall be made annually and shall be payable on the last day of the month of the anniversary date of the filing of the patent application.

Where payment of an annual fee has not been made on the date provided for in the fourth paragraph of this Article, the person concerned shall have a period of six months within which to pay the amount, which in that case shall be increased by a late-payment charge.

The amounts of the application and first annual fee, the subsequent annual fees, the late-payment charge and the additional fee for claims as from the eleventh shall be fixed by decree.

53. The court may, at the request of the owner of the improvement patent, grant an exploitation license under the main patent where the public interest dictates and after expiry of the period provided for in Article 69 of this Law.

Such a license shall be granted only in so far as it is necessary for the working of the improvement patent and the subject matter of that patent represents substantial technical progress in relation to the main patent and is of considerable economic interest.

The license granted to the owner of the improvement patent may only be transferred with the said patent.

The owner of the first patent may, on a request filed with the court, be granted a license under the improvement patent.

The provisions of Article 70, 75 and 76 of this Law shall be applicable to the cases provided for in this Article.

Chapter VII **Renunciation, Invalidity and Forfeiture**

Section 1 *Renunciation*

54. The owner of the patent may renounce his patent either entirely or partly in a signed request filed with the entity responsible for industrial property.

Where the renunciation is effected by an agent, a special power of attorney for renunciation, duly signed by the owner of the patent, shall be filed with the request.

Where the patent belongs to two or more persons, the renunciation request shall, on pain of unacceptability, be accompanied by the written consent of all the owners of the patent.

Where licenses or other encumbrances have been entered in the National Register of Patents, the request shall, on pain of unacceptability, be accompanied by the written consent of the owners of the rights concerned.

On acceptance by the entity responsible for industrial property, the renunciation shall be entered in the National Register of Patents and shall come into effect on the date of such entry. It shall likewise be published in the official bulletin of the entity responsible for industrial property.

Renunciation shall be subject to payment of a fee the amount of which shall be fixed by decree.

Section 2 *Invalidity*

55. The patent shall be declared null and void by judicial decision:

- where its subject matter is not patentable under Articles 2, 3, 4, 5 or 6 of this Law;
- where the invention cannot be described clearly and completely enough for a person skilled in the art to be able to carry it out;
- where its subject matter extends beyond the contents of the application as filed or, if the patent has been granted on the basis of a divisional application, where its subject matter extends beyond the content of the initial application as filed.

56. Where the grounds for invalidity affect the patent only partly, the invalidity pronounced shall relate only to the claims so affected.

57. The invalidity action shall be brought before the court by any interested party.

The Public Prosecution Service may be party to any action where the invalidation of a patent is at issue. It may also act *ex officio* to invalidate a patent.

58. The decision invalidating a patent shall have absolute effect; the invalidated patent or invalidated parts of the patent shall be deemed never to have had effect.

59. Invalidation decisions that have become *res judicata* shall be notified to the entity responsible for industrial property by one of the parties concerned. They shall be entered in the National Register of Patents.

Section 3 *Forfeiture*

60. The owner of a patent or of a patent application who has not paid an annual fee that has fallen due under the provisions of Article 52 of this Law shall forfeit all his rights.

Forfeiture shall be recorded by decision of the legal representative of the entity responsible for industrial property at the request of the patentee or a third party. The request shall be filed in writing. It shall be ruled upon by a decision with a statement of reasons. The decision shall be notified to the requester within a period of three months from the date of forfeiture of the patent.

The forfeiture decision shall be notified to the owner of the patent or to his agent. It shall be entered in the National Register of Patents and published in the official bulletin of the entity responsible for industrial property.

Forfeiture shall come into effect on the due date of the unpaid annual fee.

61. The owner of the patent may, within three months following notification of the forfeiture decision, file an appeal for reinstatement of his rights if he can provide a legitimate excuse for the non-payment of the annual fee.

The appeal for reinstatement shall be sent in writing to the entity responsible for industrial property together with proof of payment of the reinstatement fee, the amount of which shall be fixed by decree.

Reinstatement shall be granted by a decision with a statement of reasons issued by the legal representative of the entity responsible for industrial property. It shall be notified to the owner of the patent, entered in the National Register of Patents and published in the official bulletin of the entity responsible for industrial property.

The decision reinstating the rights of the owner of the patent shall be without effect where the fees due are not paid within three months following the notification of the decision to the owner of the patent. A mention of the date of payment shall be entered in the National Register of Patents.

Appeals against decisions of the legal representative of the entity responsible for industrial property regarding forfeiture or reinstatement shall be brought before the competent courts.

Such appeals shall be subject to the forms and procedures provided for in Chapter V of this Law.

Entries shall be made in the National Register of Patents concerning appeals and reinstatement actions and the decisions taken concerning them.

Chapter VIII

Transfer, Assignment and Seizure of Rights

62. The rights deriving from a patent or patent application may be assigned or transferred in their entirety or in part.

Where two or more persons are applicants for or joint owners of the same patent, each of them may assign or transfer his quota of the patent application or patent separately.

The assignment or transfer shall be evidenced in writing, on pain of invalidity.

The seizure of a patent shall be effected according to the provisions of the Civil and Commercial Procedure Code, provided that the party applying for it shall, on pain of invalidity of the seizure, serve the instrument of seizure on the owner of the patent, on the entity responsible for industrial property and on persons holding rights in the patent.

Any assignment or transfer of a seizure and any entry concerning a seizure or the validation or lifting of a seizure shall, on pain of their not being binding on third parties, be entered in the National Register of Patents after payment of a fee the amount of which shall be fixed by decree.

Chapter IX

Contractual Licenses

63. The owner of the patent application or patent may, by contract, grant any natural person or legal entity a license to work the invention to which the said patent application or patent relates.

Each of the joint owners of a patent application or patent has the right to grant a license to work the invention by common consent with the other joint owners.

The license contract shall be drawn up in writing and signed by the joint owners, on pain of invalidity.

Any license contract and any amendment to the said contract or renewal thereof shall, on pain of their not being binding on third parties, be entered in the National Register of Patents after payment of a fee the amount of which shall be fixed by decree.

64. In the absence of clauses to the contrary in the license contract, the grant of a license shall not preclude the licensor from granting other licenses to other persons for the working of the same invention, or from working the said invention himself.

Where the license contract provides that the license is exclusive, the licensor may neither give his agreement to a third party for the performance in Tunisia of the acts referred to in Article 46 of this Law that are covered by the said contract nor perform them himself in Tunisia.

65. In the absence of clauses to the contrary in the license contract, the agreement given by the licensor to the licensee shall extend to the performance of any of the acts referred to in Article 46 of this Law anywhere on Tunisian territory and by means of any application of the invention.

66. In the absence of clauses to the contrary in the license contract, the licensee may not give his agreement to a third party for the performance in Tunisia of the acts to which his license relates and which are referred to in Article 46 of this Law.

67. If, prior to the expiry of the license contract, one of the following events occurs:

- withdrawal of the patent application;
- final rejection of the patent application;
- final invalidation of the patent;
- forfeiture of the ownership of the patent;
- expiry of the term of protection of the patent,

the licensee is no longer obliged, as from the date of the said event, to make the payments provided for in the license contract for the use of the patent.

68. In all the cases referred to in Article 67 of this Law the licensee who has not or has practically not benefited from the license is entitled to the refunding of any payments already made to the licensor, except where there are clauses in the license contract that provide to the contrary.

Chapter X

Compulsory Licenses

69. Any interested party may, after the expiry of the period provided for in Article 51 of this Law, obtain a compulsory license at any time in any of the following cases:

— where the invention to which the patent relates has not started to be worked industrially in Tunisia, or where no real and effective preparations have been made for such working, within the period provided for in Article 51 of this Law;

— where the product which is the subject matter of the invention has not been marketed in sufficient quantities to meet the needs of the Tunisian market;

— where the industrial or commercial exploitation of the invention to which the patent relates has been abandoned for more than three years in Tunisia.

70. Any application for the grant of the compulsory license shall be filed with the competent court.

The applicant for a compulsory license shall provide proof that he has already sent the owner of the patent a registered letter with advice of receipt to request a contractual license, but has not been able to obtain such a license on reasonable terms and conditions or within a reasonable period. He shall also supply proof that he is capable of exploiting the invention effectively and conscientiously.

In no event shall a compulsory license for non-working or insufficient working be granted if the owner of the patent provides evidence of a legitimate excuse.

The compulsory license shall be non-exclusive. The rights deriving from the license may only be transferred together with the business, the company or the part of the company to which they are attached.

71. The applicant for a compulsory license shall, on pain of unacceptability of his application, convey a copy of the writ of summons by registered letter with advice of receipt to the entity responsible for industrial property within a period of 15 days from the date of the summons to appear before the competent court.

72. The legal representative of the entity responsible for industrial property may submit to the court a memorandum containing his observations on the application for a compulsory license.

73. The provisions of Article 71 and 72 of this Law shall be applicable in the case of an appeal.

74. The court shall rule on the application for a compulsory license after having heard the parties or their representatives.

The court shall lay down the conditions governing the compulsory license, including in particular its duration, its scope and the amount payable to the owner of the patent, which shall be proportionate to the importance of the working of the invention.

These conditions may be amended by order of the court at the request of the owner of the patent or the beneficiary of the compulsory license where new circumstances dictate.

75. Any assignment of a compulsory license shall, on the pain of invalidity, be subject to authorization by the court.

76. If the beneficiary of a compulsory license does not meet the conditions on which the license has been granted, the owner of the patent and, where applicable, the other licensees may effect withdrawal of the license by filing a petition with the court.

77. Any legal decision taken in connection with compulsory licenses shall be immediately notified to the entity responsible for industrial property by the licensee. Final decisions shall be entered directly in the National Register of Patents.

Chapter XI ***Ex Officio Licenses***

78. The minister responsible for industry may formally call upon the owners of patents to undertake the working thereof in such a way as to meet the needs of the national economy or the need to safeguard the environment.

Where the formal notice has not been acceded to within a period of one year, and where the non-working or the qualitative or quantitative inadequacy of the working undertaken seriously prejudices economic development and the public interest, the patents to which the notice relates may be made subject to the *ex officio* license regime by order of the minister responsible for industry.

The minister responsible for industry may extend the period provided for in the second paragraph of this Article where the owner of the patent provides proof of legitimate reasons attributable to the demands of the national economy.

Where public health interests dictate, patents granted for drugs, for the products necessary for the production of such drugs or for processes for the manufacture of such products may, where the drugs are made available to the public at levels of quality or quantity that are inadequate or at abnormally high prices, be made subject, at the request of the minister responsible for public health, to the *ex officio* license regime by order of the minister responsible for industry.

The State may at any time, for the purposes of national defense or national security, obtain an *ex officio* license for the exploitation of an invention covered by a patent application or patent, whether that exploitation is engaged in by itself or through a third party.

The *ex officio* license shall be granted at the request of the minister concerned by order of the minister responsible for industry.

79. As from the day of publication of the order making the patent subject to the *ex officio* license regime, any person apply to the minister responsible for industry for the grant of a license for the working of the patent.

That license shall be granted by order of the said minister on specific conditions, notably regarding its duration and scope, but to the exclusion of the financial remuneration payable to the owner of the invention. In the absence of amicable agreement, that remuneration shall be fixed by the court.

The order referred to in the first paragraph of this Article shall be published in the Official Journal of the Tunisian Republic. The *ex officio* license shall come into effect on the date of such publication.

80. The *ex officio* license shall be non-exclusive. The rights deriving from that license may only be transferred together with the business or the company or part of the company to which they are attached.

81. Amendments to the conditions of the license that are requested either by the owner of the patent or by the licensee shall be decided upon and published according to the procedure laid down for the grant of the said license. Where they relate to the financial remuneration payable to the owner of the patent, they shall be decided upon according to the procedure laid down for the original fixing of that remuneration.

The owner of the patent may apply for the withdrawal of the *ex officio* license for failure to comply with the obligations imposed on the licensee.

The procedure applicable to the withdrawal of the *ex officio* license shall be that relating to the grant thereof.

Chapter XII

Infringement and Sanctions

82. Any infringement of the rights of the owner of the patent as specified in Article 46 of this Law shall constitute the offense of infringement..

Infringement shall incur the civil and criminal liability of the infringer.

However, the offering for sale, marketing, use, stocking with a view to use or marketing of an infringing product shall not, where the acts are committed by a person other than the manufacturer of the infringing article, incur the liability of the infringer unless they are performed in full knowledge of the facts.

Acts performed prior to the publication of the patent application shall not constitute the offense of infringement and shall not give rise even to an adverse civil judgment except where they occur subsequently to the serving on the presumed infringer of an official copy of the patent application.

83. Subject to the penalties provided for in special enactments, the offense of infringement shall be punished with a fine of 5,000 to 50,000 dinars.

In the event of a second or subsequent offense, imprisonment for a term of one to six months may be ordered in addition to the fine, which shall be doubled.

The Public Prosecution Service may only initiate prosecution on the basis of a complaint filed by the aggrieved party.

84. The civil action for infringement shall be instituted by the owner of the patent or of the patent application.

The joint owner of a patent application or patent has the right to bring an infringement action for his own benefit alone. He shall convey a copy of the writ of summons to the other joint owners.

The owner of an exclusive contractual license may bring the infringement action, unless the contract provides otherwise, if the owner of the patent fails to bring such action after having been called upon to do so.

The owner of a compulsory or *ex officio* license may bring the infringement action where the owner of the patent fails to bring such action after having been called upon to do so.

The owner of the patent is entitled to intervene in an infringement action brought by a licensee under the third and fourth paragraphs of this Article.

Any licensee may intervene in infringement proceedings brought by the owner of the patent in order to secure indemnification for any prejudice specific to him.

85. The owner of a patent application or patent shall be allowed to use any means of proving the infringement to which the legal action relates.

However, where the subject matter of the patent is the manufacturing process of a product, the court shall be authorized to order the defendant to prove that the process used to produce an identical product is different from the patented process. Where the defendant fails to provide such proof, any identical product manufactured without the consent of the owner of the patent shall be presumed to have been made using the patented process where the said product is new.

Where proof to the contrary is provided, the legitimate interests of the defendant shall be taken into consideration with a view to the protection of his manufacturing and trading secrets.

86. Persons entitled to bring infringement actions under Article 84 of this Law may, by virtue of an order of the president of the court handed down on request, cause a detailed description, with or without actual seizure, of allegedly infringing goods or processes to be conducted by a notarial officer assisted by an expert.

Where actual seizure is authorized, it shall be confined to the placing in judicial custody of only such samples as are necessary to prove the infringement.

Where actual seizure is performed, the order may require the petitioner to provide security, which he shall be obliged to do before the seizure takes place.

The notarial officer shall, before conducting the seizure, on pain of invalidation of the measure and the award of damages against him, hand a copy of the writ to the holders of the material seized or described and, where applicable, of the document evidencing the provision of security. A copy of the record of the seizure shall likewise be handed to them.

Where the petitioner fails to institute legal proceedings within 15 days, the seizure or description shall be considered null as of right, without prejudice to the award of damages.

The period of 15 days shall run from the day on which the seizure or description occurs.

87. Where an action alleging infringement of an invention covered by a patent is brought before the court, the president thereof, ruling according to a summary procedure, may prohibit, provisionally and subject to a coercive fine, the continuation of the alleged infringing acts, or make such continuation subject to the provision of guarantees to ensure indemnification of the owner of the patent.

The request for prohibition or for the provision of guarantees referred to in the first paragraph of this Article shall be entertained only where the action appears to be well founded, and where it has been brought within a period of one month from the day of which the owner of the patent became aware of the circumstances on which it is based.

The court may make the prohibition subject to the provision by the plaintiff of guarantees to indemnify the defendant for any prejudice suffered where the infringement action is subsequently judged to be unfounded.

88. The infringement actions provided for in this Law shall be statute-barred after three years following the occurrence of the events on which they are based.

89. The provisions of Chapter XII of this Law shall not prevent recourse to arbitration under the conditions provided for in the Code of Arbitration.

90. Any person who improperly avails himself of the status of owner of a patent application or patent shall be punished with a fine of 1,000 to 5,000 dinars.

In the event of a second or subsequent offense, the fine shall be doubled.

Chapter XIII Border Measures

91. The owner of a patent or his successors in title may, if they have serious grounds for suspecting an operation involving the import of infringing goods, submit to the customs authorities a written request to have the import of the goods suspended at the time of customs clearance.

The requester shall be bound to inform the customs authorities in cases where his rights are not validly registered or have expired.

92. The request provided for in Article 91 of this Law shall contain the following:

— the surname and forename or corporate name of the requester, his home address or the address of his registered office;

— a form of proof that the requester is the owner of rights in the goods to which the dispute relates;

— a description of the goods that is sufficiently precise for the customs authorities to recognize them.

In addition, the requester shall provide such other useful information as he has in his possession so that the customs authorities may take a decision in full knowledge of the facts, provided that the provision of such information shall not be a condition of acceptability of the request.

The information shall relate in particular to:

— the place in which the goods are located or their intended destination;

— the identity of the consignment or packages;

— the intended date for the delivery or deposit of the goods;

— the mode of transport used;

— the identify of the importer, exporter or holder of the goods.

93. Customs authorities in receipt of a request drawn up under the provisions of Article 92 of this Law shall examine the said request and inform the requester without delay, in writing, of the decision taken. That decision shall be duly supported by a statement of reasons.

The customs authorities may require the requester, where his request has been entertained or where measures of intervention have been taken pursuant to the provisions of

Article 94 of this Law, to provide security to cover the expenses incurred in detaining the goods at the customs.

94. Should the customs authorities establish, where appropriate after consultation with the requester, that the goods do indeed correspond to those specified in his request, they shall proceed to detain the goods.

The customs authorities shall immediately inform the requester and the importer of the detention, and shall give them the opportunity of examining the goods that have been detained and to take such samples therefrom as may be necessary for the analysis and testing that will allow a pronouncement to be made on the truth of the infringement, in accordance with the provisions of the Customs Code and without prejudice to the principle of the confidentiality of information.

In the light of an order issued on request and for the purposes of the bringing of legal actions, the customs authorities shall inform the requester of the names and addresses of the exporter, importer and consignee of the goods, if known to them, and of the quantity of the goods to which the request relates.

95. Provided that all customs formalities have been completed, the detention of the goods shall be lifted as of right where the requester, within ten working days following notification of the detention of the goods, fails to prove to the customs authorities that he has taken civil or correctional action, that provisional measures have been ordered by the president of the competent court, and where he fails to provide sufficient security to cover his liability towards the persons concerned.

The amount of the security shall be fixed by the court.

In appropriate cases, the period mentioned in the first paragraph of this Article may be extended by a maximum of ten working days.

The owner, importer or consignee of the goods shall have the right to have the detention of the goods concerned lifted subject to the provision of security the amount of which shall be fixed by the court and which shall be sufficient to protect the interests of the requester, on condition that all customs formalities have been completed.

The owner, the importer and the consignee, and also the requester, shall be informed by the customs authorities without delay of the lifting of the detention of the goods.

96. Where it proves, by virtue of a ruling that has become *res judicata*, that the goods are indeed infringing goods, the court shall decide on the action to be taken regarding them, namely:

- either their destruction under customs supervision;
- or their removal from trade circuits, provided that the rights of the owner of the patent are not thereby prejudiced.

97. The customs authorities may on their own initiative suspend the customs clearance of purportedly infringing goods.

In that case:

- the customs authorities shall immediately inform the owner of the patent or his successors in title.

— the provisions of the articles of this Chapter shall apply as of right.

98. The customs authorities may not be held liable if they do not succeed in recognizing the purportedly infringing goods.

99. The provisions of the articles of this Chapter shall not apply to goods without commercial character contained in the personal baggage of travellers within the limit of the quantities specified in the laws and regulations in force.

Chapter XIV Miscellaneous Provisions

100. Patent applications filed before the entry into force of this Law shall remain subject to the rules applicable on the filing date of the applications, except as far as the exercise of rights is concerned and subject to such rights as may have been acquired prior to the entry into force of this Law.

Notwithstanding the repeal of the Decree of December 26, 1888, on Patents and the texts that completed or amended it, patents granted under those texts shall remain valid and shall be regarded as having been issued or registered under the provisions of this Law.

The patents referred to in the second paragraph of this Article shall remain valid throughout the term of protection that remains to run under the provisions of this Law, subject to payment of the annual fees for keeping them in force.

The period on the expiry of which compulsory licenses may be requested for the working of the subject matter of patent applications or granted patents prior to the entry into force of this Law shall be three years from the date of its promulgation.

101. Foreigners whose residence or whose registered office is located outside Tunisia shall enjoy the benefits of this Law provided that Tunisians enjoy the same protection in the countries of which those foreigners are nationals.

102. All provisions contrary to this Law, and in particular the Decree of December 26, 1888, on Patents, are repealed.

103. The procedure for the grant of patents in response to applications relating to pharmaceutical products or to chemical products for agriculture shall not be applicable until after the period of grace fixed by the Convention Establishing the World Trade Organization, ratified by the Tunisian Republic, has expired.

This Law shall be published in the Official Journal of the Tunisian Republic and implemented as a Law of the State.

Tunis, August 24, 2000.
Zine El Abidine Ben Ali

Note: Translation by the International Bureau of WIPO.

¹ Preparatory work: Discussion and adoption by the Chamber of Deputies at its session on July 31, 2000.