

The Patent Law
(The Pyidaungsu Hluttaw Law No. 7, 2019)
The 6th Waxing Day of Tabaung, 1380 M.E.
(11th, March 2019)

The Pyidaungsu Hluttaw hereby enacts this Law.

Chapter I

Title, Enforcement and Definitions

1. (a) This Law shall be called **the Patent Law**
- (b) This Law shall come into force on the date prescribed, by notification, by the President.
2. The following expressions in this Law shall have the meanings given below:
 - (a) **State** means the Republic of the Union of Myanmar;
 - (b) **Central Committee** means the Central Committee on Intellectual Property formed under this Law;
 - (c) **Ministry** means the Ministry of Commerce of the Union Government;
 - (d) **Relevant Ministry** means the Ministry of Information, Ministry of Industry, Ministry of Agriculture, Livestock and Irrigation or Ministry of Education of the Union Government;
 - (e) **Agency** means the Intellectual Property Agency formed under this Law;
 - (f) **Department** means the Department assigned by the Ministry to carry out intellectual property matters;
 - (g) **Registrar** means the Director General of the Department who carries out the functions relating to the registration of intellectual property;
 - (h) **Examiner** means an officer from the Department who is at the level of assistant director or higher level thereof conducting examination of the registration process of intellectual property;

- (i) **Intellectual property rights** means the rights vested by law to protect the own intellectual creations. This expression includes copyright, patent, industrial design, trademark and other forms of intellectual property rights;
- (j) **Invention** means the creation of a product or a process that provides a solution to a specific problem in the field of technology. This expression also includes utility model;
- (k) **Patent** means the title granted by this Law to protect any invention;
- (l) **Utility model** means the technical creation that consists of a new shape or configuration of an object or of the component of an object that increases its functionality or utility;
- (m) **Patentee** means any person or legal entity recorded on the register of Department as the patentee;
- (n) **Inventor** means a person who makes any invention;
- (o) **Right holder** means the patentee and its legal person or legal entity that is entitled to exercise the rights of a patentee;
- (p) **A person having ordinary skill in the art** means a person who has general understanding and is not an expert in the field of technology of the invention or in the field of technology most closely connected with the invention;
- (q) **Employer** means any authorized person, government department, government organization or legal entity who carries out by hiring one or more employees on wages of mutual consent under the employment agreement, including a person who manages, supervises and administers directly or indirectly, and is responsible for paying wages to the workers and responsible for employing and terminating the employment of the employee. This expression includes the legal managerial agent of the employer and in private

business if the employer passed away, his heir and legal successor of shares are also included;

- (r) **Employee** means the person who earns his living by wages obtained by using his physical or mental capacity. In this expression, the services personnel of any government department, organization or any legal entity are also included under this Law;
- (s) **Member State** means any member State of the conventions, treaties or agreements or, of international organizations or regional organizations relating to intellectual property, of which the State is a member;
- (t) **Intellectual Property Court** means the court established by the Supreme Court of the Union under the Law to adjudicate intellectual property matters or the court conferred jurisdiction and authority of such court;
- (u) **Right of priority** means the right of priority in section 43;
- (v) **Right of exhibition priority** means the right of exhibition priority in section 44.

Chapter II

Objectives

- 3. The objectives of this Law are as follows:
 - (a) to protect the rights and interests of the patentee and inventor in accordance with this Law;
 - (b) to develop the production of the State by promoting technological innovations and the dissemination and transfer of technology;
 - (c) to be mutual advantage of technological knowledge and socio-economic welfare between inventors and users of invention;
 - (d) to support a balance of the rights and obligations of the inventors and users of invention;

- (e) to discourage being abusively exercised on the patent and controlling on unreasonably restrain trade by the patentee or right holder;
- (f) to encourage an environment of innovation.

Chapter III

Formation of the Central Committee and its Functions and Duties

4. The Union Government:

- (a) shall, to deal with intellectual property matters, form the Central Committee on Intellectual Property as follows:

(i)	Vice President	Chairperson
(ii)	Union Minister of the Ministry	Vice-Chairperson
(iii)	Deputy Ministers from the relevant Ministries	Members
(iv)	Deputy Ministers or Directors General from other appropriate Ministries	Members
(v)	No more than four intellectual property experts	Members
(vi)	Two representatives from non-governmental organizations	Members
(vii)	The person assigned by the President	Members
(viii)	Director General of the Department	Associate Secretary

- (b) may re-form the Central Committee under subsection (a), as may be necessary.

5. The functions and duties of the Central Committee are as follows:

- (a) adopting the intellectual property policies, strategies and action plans to develop the intellectual property matters in the State;
- (b) granting or refusing for issuing the compulsory licence submitted by the Agency;
- (c) supervising the implementation of intellectual property policies, strategies and action plans;

- (d) Guiding, through the intellectual property system, to encourage the development of national economy, foreign investment, and small and medium enterprises of the State;
- (e) Encouraging training and nurturing the necessary human resources for the development of the intellectual property matters;
- (f) Coordinating with the relevant government departments, government organizations, other organizations and private entrepreneurs to practise and develop the intellectual property system effectively;
- (g) Encouraging and promoting the coordination with local and foreign organizations for technical and other necessary assistance;
- (h) carrying out the functions and duties relating to intellectual property assigned by the Union Government from time to time.

Chapter IV

Formation of the Agency and its Functions and Duties

6. The Central Committee:

(a) shall form the Intellectual Property Agency with the approval of the Union Government as follows:

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| (i) Secretary of the Central Committee | Chairperson |
| (ii) Directors General who are concerned with the Agency from the Ministry and the relevant Ministries | Members |
| (iii) No more than eight intellectual property experts | Members |
| (iv) No more than five representatives from non-governmental organizations | Members |
| (v) Director General of the Department | Secretary |
| (vi) Division Heads of the Department | Associate Secretaries |

(b) may re-form the Agency under subsection (a), as may be necessary.

7. The Chairperson of the Agency shall be considered to be a person who is at the level of the Deputy Minister.

8. The functions and duties of the Agency are as follows:

- (a) coordinating the functions relating to the patent;
- (b) implementing patent policies, strategies, action plans adopted by the Central Committee, and training and nurturing human resources for the development of the patent system;
- (c) observing the conventions, treaties and agreements relating to the patent and giving suggestion that the State should accede to them to be a member, to the Central Committee;
- (d) implementing the functions of the patent in line with the provisions of the conventions, treaties and agreements relating to patent of which the State is a member;
- (e) cooperating with the relevant local, international and regional organizations relating to the patent and member states;
- (f) forming necessary working groups and prescribing their functions and duties with the approval of the Central Committee to take action on infringement of patent;
- (g) forming necessary working groups to implement functions relating to the patent and prescribing their functions and duties with the approval of the Central Committee;
- (h) performing to develop the technology by promoting the use of patent information;
- (i) carrying out the compulsory licence matters, submitted by the Registrar, in accordance with the decision of the Central Committee;
- (j) making a decision on an appeal against the decision of the Registrar;
- (k) prescribing the fees to be collected in accordance with this Law with the approval of the Union Government through the Central Committee;
- (l) approving the seal to be used in granting registration of the patent;

- (m) submitting the task reports and other necessary reports to the Central Committee;
- (n) submitting the annual patent report to the Central Committee;
- (o) carrying out the functions and duties relating to intellectual property assigned by the Central Committee from time to time.

Chapter V

Functions and Duties of the Department

- 9. The functions and duties of the Department are as follows:
 - (a) publishing the matters on registration of the patent;
 - (b) maintaining the registers of the patent;
 - (c) supervising the performance of the divisions formed in the respective field of intellectual property;
 - (d) carrying out the functions and duties relating to the patent assigned by the Agency from time to time.

Chapter VI

Appointing Registrar and Examiners and Prescribing their

Functions and Duties

- 10. The Ministry may appoint the Registrar and necessary Examiners in the Department according to the submission of the Agency to carry out the functions relating to intellectual property.
- 11. The duties of the Registrar are as follows:
 - (a) supervising the functions relating to the patent application and examination;
 - (b) coordinating upon the submission of the Examiner's report in carrying out functions and duties of the patent;
 - (c) making a decision on the registration of the patent;
 - (d) carrying out the functions and duties relating to intellectual property assigned by the Central Committee and the Agency.

12. The duties of the Examiner are as follows:

- (a) examining the application of the patent;
- (b) submitting the finding with remarks to the Registrar after examining the opposition and counter-statement in respect of the patent;
- (c) summoning and examining the necessary persons and calling for the documents with the approval of the Registrar in carrying out the registration of patent;
- (d) submitting the remarks to the Registrar whether the patent should be granted or not after examining the patent application;
- (e) carrying out the functions and duties relating to intellectual property assigned by the Agency, Department and Registrar.

Chapter VII

Patentable Invention

13. The invention is patentable if it is in conformity with the following conditions and not contrary to the provisions of section 14:

- (a) the invention is new:

Explanation: The invention is new, if it has not already existed as prior art. Prior art shall consist of everything made available or disclosed to the public, anywhere in the world, by publication or by oral disclosure, by use or in any other ways, prior to the filing date or, where appropriate, the priority date, of the application claiming the invention.

- (b) it involves an inventive step:

Explanation: The invention filed for patent shall be considered as involving an inventive step if it would not have been obvious to a person skilled in the relevant art.

(c) it is capable of using in any industry:

Explanation: The invention is capable of industrial application means it can be made or used in any industry. The term “industry” shall be understood in its broadest sense, as any socioeconomic activities leading to the production and services especially handicraft, agriculture, livestock, fishery, commerce and services.

Chapter VIII

Non-patentable Invention

14. (a) The following inventions are non-patentable inventions:

- (i) discoveries, scientific theories and mathematical methods;
- (ii) schemes, rules and regulations or methods relating to conducting business, performing purely mental acts or playing games;
- (iii) computer programs per se;
- (iv) essentially biological processes for the production of plants or animals other than non-biological and microbiological processes;
- (v) plants and animals, including animal races and plant varieties and including the whole or part of natural living beings and biological materials found in nature other than artificially created microorganisms, DNA (including

complementary DNA sequences), cells, cell lines, cell cultures and seeds;

- (vi) methods for treatment of the human or animal body by surgery or therapy, and diagnostic methods practiced on human or animal body;
 - (vii) invention in relation to the natural substances, known substances including new uses and new forms of known substances or chemical products prescribed from time to time;
 - (viii) invention which are seriously prejudice to public order or morality, human beings, animals or plants, health or the natural environment, and invention for which its exploitation is prohibited by any existing law within the territory of the State.
- (b) Pharmaceutical products or processes are non-patentable invention until 1 January 2033 unless specified otherwise by the Union Government according to the policy of Trade-Related Aspect of Intellectual Property Rights (TRIPS) Council under World Trade Organization (WTO).
- (c) The following are non-patentable invention for protection relating to the patent until 1 July 2021 unless specified otherwise by the Union Government according to the policy of Trade-Related Aspect of Intellectual Property Rights (TRIPS) Council under World Trade Organization (WTO):
- (i) agricultural chemical products;
 - (ii) food products;
 - (iii) microorganisms.
- (d) The Union Government may amend the terms of non-patentable mentioned in subsections (b) and (c) with the approval of Trade-Related Aspect of Intellectual Property Rights (TRIPS) Council under World Trade Organization (WTO).

Chapter IX

Persons Entitled to Apply for the Patent

15. (a) The inventor shall have the right to apply for the patent and to be named as such in the patent. In addition, the assignee or transferee of the inventor has the right to apply for the patent.
 - (b) If more than one person has made the same invention independently of each other, the person submitting application in the earliest filing date or, if priority right is claimed, the applicant who validly obtained the earliest filing date of priority shall be entitled to the patent.
16. If more than one person has jointly made any invention, they have the right to apply for the patent jointly.
17. When any invention is made under the employment agreement between the employer and employee or as a consequence of the said agreement:
 - (a) only the employer has the right to apply for the patent for any invention made by the employee if there is no contrary to the employment agreement;
 - (b) if the employer has failed to apply for the patent within six months after the employee has informed him in writing that the invention has been completed, it shall be presumed that the employer has abandoned any claim to the invention and the employee has the right to apply for the patent for the said invention;
 - (c) in case of applying for the patent for invention made within one year after the expiration of the employment agreement, if the invention was made by the employee in the field of the former employer, it shall be regarded as invention made under the expired employment agreement and the employer is eligible to apply for the patent, provided that this does not contradict the employment agreement and the employee has failed to prove the contradiction

of them. However, only the employee has the right to apply for the patent under the following conditions:

- (i) the former employer agreed that he has not applied for that invention;
 - (ii) the former employer is unable to refute the evidence submitted by the employee;
 - (iii) the employee files the application, as the former employer has failed to apply for the patent according to subsection (b);
- (d) where any invention is made by an employee not under the assignment of the employer, and when for making that invention, the employee used materials, data or know-how of the employer, and the invention is related to the business of the employer, if there is no contrary to the employment agreement, only the employee has the right to apply for the patent;
- (e) if the employee made any other invention except the invention mentioned in subsections (a), (c) and (d), he shall have the right to apply for the patent for that invention if there is no contrary to the employment agreement.

Chapter X

Application

18. The person who is entitled to registration of the patent under this Law shall, if he wishes to obtain the patent, file the application to grant the patent to the Registrar, in the prescribed manner.

19. The patent applicant:

- (a) may make the patent application either in Myanmar or English;
- (b) shall translate the application from Myanmar into English or English into Myanmar if requested by the Registrar;

(c) shall certify the translation under subsection (b).

20. (a) The patent applicant shall mention the following facts in the application:

- (i) a request for grant of the patent;
- (ii) name, nationality and address of the applicant or legal entity and inventor;
- (iii) name, citizenship scrutiny card number and address of the representative where the application is filed by the representative;
- (iv) full description of invention;
- (v) title and abstract of the invention;
- (vi) one or more claim to grant the patent as prescribed.

(b) In addition the facts contained in subsection (a), the following facts shall be attached, if necessary:

- (i) address and name of the State in which the applicant has an effective industrial or commercial establishment if any;
- (ii) where the application is filed for a legal entity, registration number, type and name of the country of that legal entity;
- (iii) drawings for the understanding of the invention, if any;
- (iv) where the applicant wants to take advantage of the priority of the earlier application, a declaration claiming the priority of that earlier application, together with indications and evidence in support of that declaration;
- (v) where the applicant wants to take advantage of the priority resulting from the display of the invention in an exhibition, a declaration to that effect, together with indications and evidence in support of that declaration;

- (vi) where one of the joint applicants signs the application on behalf of all joint applicants, written agreement by all the remaining joint applicants;
- (vii) the statement of legal access and use to genetic or biological resources and to traditional knowledge associated or not with those resources, and that was directly or indirectly used in the making of the claimed invention;
- (viii) the request for the earlier publication, if applicable;
- (ix) any other elements prescribed by the Agency and Department from time to time.

21. The date on which the patent application in accordance with subsection (a) of section 20 received by the Department, shall be presumed to be the filing date of the application in the State subject to the payment of fees.

22. (a) The description of the invention shall be disclosed in writing to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate the best mode to be carried out the invention known to the inventor at the filing date or at the priority date of the application where priority is claimed.

(b) The disclosure of the claimed invention under subsection (a) shall be considered enabling if it provides information which is sufficiently clear to allow that invention to be made and used by a person having ordinary skill in the art on the filing date, without undue experimentation.

(c) The description shall contain a clear identification of the origin of genetic or biological resources that collected in the territory of the State, and that were directly or indirectly used in the making of the claimed invention as well as of any element of traditional knowledge associated or not with those resources and that was

directly or indirectly used in the making of claimed invention without the prior consent of its individual or collective creators.

23. (a) The matter for which the protection is sought shall be described in the claim or claims for the patent.
- (b) The claim or claims for the patent shall be clear and concise. The description and the drawings may be used to explain them.
24. (a) If disputes arise, in case of more than one person submit the application on different dates for identical invention that was separately invented by each other, only the earliest applicant submitting the application consistent with the requirement for registration shall be allowed to register.
- (b) If disputes arise, in case of each applicant claims the right of priority or the right of exhibition priority under subsection (a), only the applicant submitting the application that has earliest filing date and conforms with the requirements of registration shall be allowed to register.
25. Where more than one applicant have filed the application for grant of the patent with respect to the identical invention that was separately invented on the same date or have requested for the same priority date:
 - (a) the Registrar shall direct all applicants to submit the name of a person whom they want to prescribe as the patent applicant after consultation among themselves, within the prescribed period;
 - (b) the applicants shall, in accordance with the direction of the Registrar, re-submit the name of the applicant whom they have agreed to specify as the patent applicant after consultation among themselves, or if they want to prescribe as joint applicants, such point to the Registrar;

- (c) although the Registrar directs all applicants under subsection (a), if no agreement is reached among them, the applicant shall follow the Registrar's decision, in the prescribed manner.
26. (a) The patent applicant shall request to the Registrar to make a substantive examination of the patent application within 36 months from the filing date by subscribing the prescribed fee. The Registrar shall publish such request in the prescribed manner.
- (b) If the request mentioned in subsection (a) is not submitted within the prescribed period, the patent application shall be considered as abandonment.
27. The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.
28. The patent applicant:
- (a) may file with the Registrar to correct clerical errors and other mistakes that may be permitted to correct in the application, translation and document after subscribing the prescribed fee, before the Registrar makes the decision on grant of or refusal of the patent or before the Agency makes the decision on the appeal against the decision of the Registrar;
 - (b) may amend the application before the patent is granted, without going beyond the matters contained in the initial application;
 - (c) (i) may apply to the Registrar to divide the application which is not consistent with section 27 into more than one application by subscribing the prescribed fees until the patent is granted without going beyond the matters contained in the initial application;
 - (ii) shall recognize the filing date or priority date, where the priority is claimed, of the initial application as the filing date for each divisional application.

(d) may apply to the Registrar to withdraw a patent application.

29. The Registrar may amend the application under section 28 in accordance with the stipulation after examining.

Chapter XI

Examination, Opposition and Registration

30. With regard to the patent application, the Examiner shall:

(a) classify the invention according to the International Classification and submit the application which conforms to the stipulations to the Registrar together with remarks after examining whether the patent application complies with the requirements in sections 19 and 20;

(b) notify the applicant to amend the application which does not conform to the stipulations after examining whether the patent application complies with the requirements in sections 19 and 20 with the permission of the Registrar. If the applicant fails to amend the application within 60 days from the date of receipt of the notice, the application shall be considered as withdrawn;

(c) submit the application to the Registrar together with remarks after examining, if the amendments in accordance with the provisions of subsection (b) has been received.

31. (a) Where an applicant or owner of patent has failed to comply with a time limit for an action in a procedure before the Registrar and that failure has the consequence of causing a loss of rights with respect to the patent or application, he may apply to the Registrar for reinstatement of the patent right if it meets the following requirements;

- (i) submitting a request within 60 days from the date of abandonment of the patent or application in respect of the cause of failure to comply with the time limit;
 - (ii) providing the requirements, information or explanations in respect of the cause of failure to comply with the time limit;
 - (iii) describing the reasonable grounds in the request for the failure to comply with the time limit;
 - (iv) fees which had been paid.
- (b) The Registrar shall suspend the reinstatement of rights under subsection (a) in the following situations:
- (i) submitting an appeal;
 - (ii) *inter partes* proceeding.

32. The Registrar shall examine the remarks of the Examiner with regard to the patent application and publish, in accordance with the prescribed manner, the application which conforms with the requirements on the expiration of a period of 18 months from the date of filing, or at the earlier date where the earlier publication is requested for public information and notice of opposition.

33. A person who wants to oppose the patent application may, within 90 days from the date of the publication under section 32, file an opposition to the Registrar by subscribing the prescribed fee, and stating any grounds mentioned in sections 13 and 14.

34. If the Registrar receives the opposition, he shall send a notice to the applicant for making a counter-statement within the prescribed period.

35. The Registrar may decide to proceed, amend or withdraw the patent application after examining the notice of opposition, the findings and remarks of the Examiner relating to the opposition for patent application and shall notify such decision to the patent applicant and opponent and publish it in the prescribed manner.

36. The Examiner shall examine whether the invention is patentable or not under sections 13, 14, 22, 23 and 27 and submit it together with his remarks to the Registrar with respect to the request for substantive examination of a patent application.

37. The Registrar, with respect to a patent application:

- (a) may grant or refuse the patent after examining the Examiner's remarks;
- (b) shall record such grant or refusal of the patent in the register and notify the applicant. In addition, he shall publish such grant or refusal in the prescribed manners;
- (c) shall issue a patent certificate to the applicant if the patent is granted.

38. The Registrar may notify the patent applicant to submit the following documents within the prescribed period for examining the patent application filed in the State where as it has been filed in a foreign country:

- (a) a copy of search and examination reports obtained by the applicant and which are performed by any relevant Intellectual Property Office of any foreign country;
- (b) a certified copy of the patent certificate obtained from foreign country by the applicant;
- (c) a copy of decision regarding the refusal of the patent application of the Intellectual Property Office of any foreign country, or refusal of the claim contained in such application or of invalidation or withdraw of any patent granted on such application.

39. The Registrar may request, with regard to the examination of a patent application, the government departments or organizations, international organizations or Foreign Patent Office to examine the patent application with the approval of the Agency.

40. The patentee may:

- (a) apply to the Registrar to issue the certified copy of the patent certificate after subscribing the prescribed fees if the original patent certificate is damaged or lost;
- (b) apply to the Registrar to correct clerical error or other mistakes that may be permitted to correct or to change nationality and address recorded in the register after subscribing the prescribed fees.

41. The Registrar:

- (a) shall issue the certified copy of a patent after examining the application under subsection (a) of section 40;
- (b) may amend the application after examining under subsection (b) of section 40.

42. (a) When the patent application is filed formally, in case where the Registrar considers matters in the patent application as prejudicial to the national security of the State and safety of the people, the application may be kept secret with the approval of the Agency without publication until remarks of clearance of the Ministries related to such patent application is received.

(b) After receiving the remarks, the relevant Ministry may take an action, provided that suitable compensation is paid to the applicant, for examining the unclear patent application or keeping the information secret or transferring any economic rights relating to the application to the relevant government department.

(c) With regard to the application considered that information in it is prejudicial to the national security of the State and safety of the people, any person residing in the State shall not apply for patents in another country without the permission of the Registrar, if no

remark has been given under subsection (a) or it has been cancelled.

- (d) The patent applicant may request adequate compensation to the relevant Ministry under subsection (b). If the applicant is not satisfied with the amount of compensation, he may apply to the Intellectual Property Court.
- (e) The Registrar may withdraw the secret under subsection (a), when it appears that the patent application is no longer necessary to be kept secret according to the remarks of the relevant Ministry.

Chapter XII

Right of Priority

43. If a patent applicant who has applied in a member State of the Paris Convention or the World Trade Organization or a successor of the said applicant files to the Department for registration of the same invention within one year from the date of the first application, he shall enjoy the right of priority to such filing date as the filing date.

44. If any person apply to register for the same invention to the Department within one year from the exhibition date which was displayed at the international exhibition held or recognized by the relevant government in a member of the Paris Convention or the World Trade Organization, he shall enjoy the right of exhibition priority to such exhibition date as the filing date.

45. The exhibition priority shall not extend the period of priority under section 43.

46. The applicant who does not submit the documents within the prescribed period may submit a request to the Registrar for retrieving the right of priority in accordance with subsection (a) of section 31.

Chapter XIII

Terms of the Patent and Annual Fees

47. The term of the patent is 20 years from the filing date of the patent application.

48. The owner of the patent or the applicant shall pay the annual fee prescribed periodically to the Department in order to maintain the patent or patent application as follows:

- (a) the prescribed fee shall be paid within six months before the date of payment of the annual fee;
- (b) the grace period of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge. When making such payment, the prescribed annual fees and the late fees shall be paid.

49. The Registrar:

- (a) shall record the payment of the annual fee in the register;
- (b) shall lapse the patent or patent application if the annual fee is not paid within the grace period of six months;
- (c) may restore the lapsed patent without publication before the end of the period of one year after the period in which the payment should have been made if he is satisfied that the non-payment of annual fees is justifiable and rights of third parties that may have arisen in the meantime are not unreasonably harmed.
- (d) shall publish the patent or patent application that has been lapsed in the prescribed manners after recording it in the register.

50. In case of the deadlines mentioned in section 48 are not met, the applicant or titular may request the restoration of rights to the Registrar if the conditions in section 31 are fulfilled.

Chapter XIV

Patent Rights

51. The patent rights in this chapter shall be enjoyed within the period of the term of the patent by the patentee if he complies with the provisions in Chapter XIII.

52. Without prejudice to the provisions in section 54, a patentee is entitled:

(a) as an exclusive right:

- (i) if the patent has been granted with respect to a product, the right to prevent third parties in accordance with this Law from making, using, offering for sale, selling or importing such product to the country without his consent;
- (ii) if the patent has been granted with respect to a process, the right to prevent third parties in accordance with this Law from using such process without his consent or from performing a product by means of using directly such process in the way expressed in clause (i) of subsection (a).

(b) to sue the infringer of patent rights in civil action.

(c) to transfer or license patent rights to any other person in accordance with the provisions in Chapters XV and XVI.

53. The employer shall have a non-exclusive licence on the patent that only the employee is entitled to the patent under subsection (d) of section 17.

54. The patent rights shall not extend to the followings:

- (a) non-commercial or private use of the patented invention;
- (b) acts done for experimental or research purposes;

- (c) acts of using the articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter into the territory of the State;
- (d) acts performed by any person in good faith before the filing date or priority date was using the patented invention or was making effective and serious preparation for the use;
- (e) acts of selling, offering for sale, or importing the patented invention in the market by the patentee or with his agreement;
- (f) acts of making, constructing, using, selling or importing the patented invention solely for uses reasonably relating to the submission of information required under any law of the State, or any country other than the State, that regulates the manufacture, construction, use, sale or import of any product;
- (g) acts of extemporaneous preparation for an individual in a pharmacy in accordance with prescription given by a registered medical or dental practitioner.

55. Where the patent is owned jointly by more than one person and unless agreed otherwise among them:

- (a) the patentee shall have the right to enjoy an equal and undivided share in the patent rights;
- (b) the patentee may transfer or license his undivided share in the patent rights to any other person;
- (c) the patentee has the right to sue in civil action the infringer of patent rights without obtaining the consent of other joint-patentees;

- (d) the successor or legal entity shall have the right to enjoy the rights, of patentee mentioned in subsections (a), (b) and (c).

Chapter XV

Transfer of Rights of the Patent

56. (a) The patent applicant may apply to the Registrar to record the transfer of his patent application to any person or legal entity in the prescribed manners.
- (b) The patentee may apply to the Registrar to record the transfer of his patent rights to any person or legal entity in the prescribed manners.
57. The Registrar shall record and publish any change in ownership of the patent where the applicant of the patent or the transferee under subsection (a) of section 56 or the patent owner or the transferee under subsection (b) of section 56 requests to record in the prescribed manners by subscribing the prescribed fees.
58. The transfer of the ownership of the patent shall have no effect unless it is applied to record to the Registrar.
59. With respect to an invention that derives directly from genetic, biological resources or traditional knowledge in the State, the Agency:
- (a) may direct the patentee to transfer the proprietary interests of the patent to the relevant organization if it is found that the patent is granted as a consequence of the application mistaken and concealed by the applicant which is inconsistent with the provision of clause (vii) of subsection (b) of section 20;

- (b) shall withdraw the application or abandon the patent if the patent generates strong public concern or raises issues of morality and public order after receiving the transfer of the proprietary interests of the patent by the relevant organization under subsection (a).

Chapter XVI

Licence of the Patent

60. The patentee may license any person or legal entity to exploit the patent by determining the terms and conditions.

61. The patentee or his licensee may apply to the Registrar to record the licence together with the certified copy of licencing documents by subscribing the prescribed fees.

62. With respect to the application under section 61, if the Registrar finds that it has no abuse of patent rights and anti-competitive practices or it may not adversely affect the interests of the State directly or indirectly or it may not restrict or obstruct the skill and development of technology in general or it is not likely to have any those effect, he shall record the said licence and publish it in the prescribed manners.

63. The Registrar shall cancel the record of a licence and publish it in the prescribed manners if the patentee or his licensee applies for cancellation of the record of a licence in the prescribed manners.

64. The licence shall have no effect unless it is applied to record to the Registrar.

Chapter XVII

Compulsory Licence

65. (a) Any person or legal entity may apply to the Registrar for the compulsory licence of the patent in accordance with the specification on any of the following conditions:
- (i) national security for the public interest, nutrition, health or the development of other vital sectors of the national economy so requires;
 - (ii) a judicial or administrative body has determined that the manner of exploitation, by the patentee or his licensee, is anti-competitive, and the exploitation of the invention in accordance with this subsection would remedy such practice;
 - (iii) the patentee is abusively exercising his exclusive rights or neglecting in taking measures to prevent his licensee from abusively exercising the licensed exclusive rights;
 - (iv) the invention is not available in sufficient quantities or quality or at reasonable prices in the State, either through manufacture in the State or through importation;
 - (v) when a patent (the “second patent”) claiming an invention that involves an important technical advance of considerable economic significance in relation to any invention claimed in a patent (the “first patent”) without infringing which the second patent cannot be exploited.
- (b) After examining the application under subsection (a), the Registrar shall submit it to the Agency. The Agency shall grant or refuse it by determining the terms and conditions on the submission of the Registrar with the decision of the Central Committee.

66. (a) Upon the request of the patentee, the Agency shall terminate the compulsory licence if he is satisfied, after hearing the parties, if either or both wish to be heard, that it is not complied with the provisions of subsection (a) of section 65 or that person designated by him has failed to comply with the terms of such licence.
- (b) Although the termination of the compulsory licence under subsection (a), the Agency shall not terminate the compulsory licence if he is satisfied to be continued using it for adequate protection of the legitimate interests of the person designated by him justifies the maintenance of the decision or, if the compulsory licence was granted to remedy an anti-competitive practice under clause (ii) of subsection (a) of section 65, if and when the conditions which led to such compulsory licence are likely to recur.
67. As the compulsory licence is the non-exclusive licence, it shall exclude to the following matters:
- (a) the exploitation of the invention by the patentee himself, either manufacture in the State or through importation or both;
- (b) the conclusion of licence contract with the permission of the patentee;
- (c) the exercise of his right by the patentee under section 52.
68. Where the Agency issues a compulsory licence under section 65, it:
- (a) shall urgently inform the relevant patentee of the issuance of licence;
- (b) shall specify and express the date to be started to use the patented invention by the licensee, terms and conditions of the licensee such as terms of the licence and the compensation by the licensee to the patentee.

69. (a) In deciding the compensation for granting compulsory licence of a patent which claims a pharmaceutical product or a process of making a pharmaceutical product, when an alternative process of making the same product is not known or not available, the terms and conditions of the decision of the General Council of the World Trade Organization of August 30, 2003 may be considered.
- (b) A compulsory licence may not be applied for on the ground of insufficient availability of the patented product or of the product manufactured with the patented process as expressed in clause (iv) of subsection (a) of section 65 before the expiration of the period of four years from the date of filing of the patent application or three years from the date of the grant of the patent whichever period is later. In addition, such application shall be refused if the patentee justifies his inaction or insufficient action by with reasonable grounds.
- (c) Upon the request of the patentee or of the third person authorized to exploit the patented invention, the Agency may vary the terms of the decision authorizing the exploitation of the patented invention to the extent that changed circumstances justify such variation after hearing the parties, if either or both wish to be heard.
- (d) The compulsory licence may only be transferred with the part of business of that person.
70. (a) Where the compulsory licence is applied under section 65, it shall be accompanied by evidence that the patentee has received, a request for a voluntary licence from the person seeking the compulsory licence, but that person has been unable to obtain such licence on reasonable commercial terms and conditions within a reasonable time.

- (b) Evidence concerning an attempt of obtaining a licence granted under subsection (a) shall not be required in cases of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use or when the licence is granted to remedy a practice of anti-competitive determined by judicial or administrative process.

71. The exploitation of the invention by the organization or third person licensed by the Agency shall be predominantly for the supply of the market in the State, except when it is permitted to remedy a practice determined to be anti-competitive according to clause (ii) of subsection (a) of section 65 or when the compulsory licence concerns a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, and the purpose of the licence is to export such product for a foreign territory or country with no or with insufficient manufacturing capacity, in accordance with the terms and conditions of the decision of the General Council of the World Trade Organization of August 30, 2003.

72. Where a compulsory licence is granted under clause (v) of subsection (a) of section 65:

- (a) the patentee of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent;
- (b) the licence of the first patent shall be non-assignable except with the assignment of the second patent.

73. Any person who is dissatisfied with any decision in respect of a compulsory licence including a request for a compulsory licence or the decision on compensation may apply to the Intellectual Property Court under section 94.

Chapter XVIII

Surrender and Revocation of the Patent

74. The patentee may:

- (a) surrender the patent to the Registrar according to his desire;
- (b) where the patent is jointly owned by more than one person and unless agreed otherwise among themselves, surrender the patent to the Registrar with the consent of all joint patentees.

75. The Registrar shall, after examining the surrender of the patent, record the surrender in the register and publish it in accordance with the prescribed manners.

76. Any interested person or legal entity may apply to the Registrar to revoke the whole or part of the patent if it is found that the patent is contrary to any provision contained in section 77.

77. The Registrar shall revoke the whole or part of the patent if he finds that the patent is contrary to any of the following facts under the application of any interested person or legal entity:

- (a) appearing that the invention is not a patentable invention under sections 13 and 14;
- (b) appearing the reasonable grounds of evidence that the patentee is not entitled to the patent;
- (c) finding that amendments of patent application extend beyond matters claimed in the initial application as published;

- (d) appearing that the patent is obtained by fraud or misrepresentation or concealment of any prescribed significant information;
- (e) using secretly the claimed invention, in requesting the patent, before the priority date;
- (f) being failure to describe required information or falsely describing the information by the applicant to the Registrar;
- (g) obtaining the final decision or judgment of the Intellectual Property Court with respect to the cancellation of the patent.

78. The Registrar shall cancel a patent or a patent application from the register if any of the following facts has occurred:

- (a) infringing the secret under subsection (a) of section 42 or filing the patent application in any foreign country by infringing subsection (c) of section 42 by the applicant;
- (b) lapsing without subscribing the annual fees under subsection (b) of section 49;
- (c) not describing or falsely describing the genetic or biological resources that are used in the invention or the invention derived from traditional knowledge in accordance with clause (vii) of subsection (b) of section 20.

79. The Registrar shall, if the patent is revoked, record such revocation in the register and notify it to the relevant patentee and publish it in the prescribed manners.

Chapter XIX

Utility Model

80. (a) A utility model may be applied for registration as a utility certificate if it is new and is industrially applicable.

- (b) The following are excluded from utility model protection:
 - (i) procedures;
 - (ii) chemical, pharmaceutical, biological, metallurgical of or any other kind of substances or compounds;
 - (iii) items excluded from patent protection in accordance with this Law;
 - (iv) sculptures, architectures or ornaments existing in nature.
- (c) The description of the utility model shall disclose it in a manner sufficiently clear and complete for the utility model to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate how the claimed utility model enhances the utility or functionality of the object.
- (d) Without prejudice to the provisions of this Chapter, the provisions that apply to patents and patent application shall apply *mutatis mutandis* to utility model certificates.

81. The term of utility model certificate shall be 10 years from the filing date of the utility model application.

82. The Examiner shall, with respect to the application of the utility model:

- (a) submit the application which conforms with specification with his remarks to the Registrar after examining whether the application conforms with the definition contained in subsection (l) of section 2 and examining it in accordance with the provisions contained in sections 19 and 20, and subsection (b) of section 80.
- (b) inform the applicant with the permission of the Registrar to amend the application which does not conform with specifications after examining it in accordance with the provisions contained in subsection (a). If any amendment is not made within 30 days of the notice received, such application shall be considered as abandoned and withdrawn by submitting it to the Registrar;

- (c) submit the application with his remarks to the Registrar after examining the amendment if he receives it in accordance with the provision of subsection (b).

83. The Registrar shall publish the application which conforms to specifications for public information and notice of opposition if necessary, after examining the remarks submitted under section 82.

84. (a) Any person who wishes to oppose the utility model shall submit the notice of opposition with credible evidence to the Registrar by subscribing the prescribed fee within 60 days from the date of the publication.

- (b) If the Registrar receives the notice of opposition, he shall send a notice to the applicant for making a counter-statement within the prescribed period.

- (c) The Examiner shall submit the findings to the Registrar accompanied with his remarks after examining the opposition and counter-statement with respect to the application of the utility model.

85. The Registrar with respect to the utility model application:

- (a) may grant the utility model application if the notice of opposition is not submitted within 60 days from the date of publication;
- (b) may grant or refuse the utility model application after examining the opposition and Examiner's findings and remarks, if the opposition is filed;
- (c) shall record such grant or refusal in the register and inform the applicant. In addition, he shall publish it in the prescribed manners;
- (d) shall issue the utility model certificate to the applicant if the utility model is granted.

86. The Registrar, on the application of any interested person or legal entity, may revoke the utility model certificate if he finds out that it is contrary to any of the following grounds:

- (a) not conforming with the provisions prescribed in subsections (a) and (b) of section 80;
- (b) appearing the reasonable grounds of evidence that the owner of the utility model certificate is not entitled to the utility model.

87. (a) At any time before the grant or refusal of a patent application, an applicant for a patent may convert his patent application into an application for a utility model certificate by subscribing prescribed fees and considering the filing date of the initial application as the filing date of the application.

- (b) At any time before the grant or refusal of a utility model certificate, an applicant for a utility model certificate may convert his application for a utility model certificate into a patent by subscribing prescribed fees and considering the filing date of the initial application as the filing date of the application.

- (c) An application under subsection (a) shall not be converted more than once.

88. The applicant shall not apply for the patent and the utility model certificate for the same invention in parallel or for each one.

Chapter XX

Application for International Registration

89. The patent applicants from Myanmar or foreign country may file with the Registrar in the prescribed manner if they want to exercise the international registration system after the State has become a member of the Patent Cooperation Treaty.

90. The Registrar shall treat an international application designating the State as an application for a patent filed under this Law by considering the

international filing date accorded under the Patent Cooperation Treaty to be the actual filing date in the State.

91. The Department shall act as a receiving office in respect of an international application filed by a Myanmar citizen or a resident of Myanmar.

92. The Department shall act as a designated office in respect of an international application in which the State is designated for the purpose of obtaining a national patent or utility model protection under this Law.

Chapter XXI

Appeal

93. (a) Any person who is dissatisfied with any decision made by the Registrar under this Law may appeal to the Agency within 60 days from the date of publication of such decision.

(b) The Agency may confirm, cancel or revise the decision of the Registrar, or direct that further evidence shall be produced in the appeal under subsection (a).

(c) The Agency may confirm, cancel or revise the decision of the Registrar if further evidence is produced under subsection (b).

94. Any person who is dissatisfied with the decision made by the Agency may file a case in the Intellectual Property Court which is vested the jurisdiction by the Supreme Court of the Union for this purpose, within 90 days from the date of receiving the notice of such decision.

Chapter XXII

Establishment of the Intellectual Property Courts

95. The Supreme Court of the Union:

(a) may establish the Intellectual Property Courts in any appropriate place and appoint judges to adjudicate on the criminal or civil cases with respect to the intellectual property matters;

- (b) may confer the jurisdiction and authority to the judges appointed under subsection (a) to adjudicate on the intellectual property matters;
- (c) may confer the jurisdiction and authority of the Intellectual Property Courts to the appropriate courts to adjudicate on the intellectual property matters before establishment of the Intellectual Property Courts under subsection (a);
- (d) shall confer the jurisdiction and authority to the Intellectual Property Courts that have jurisdiction over appeal and revision cases against any judgment, order and decision made by the Intellectual Property Courts;
- (e) shall confer the jurisdiction and authority to the appropriate Intellectual Property Courts to adjudicate on the cases under section 94.

Chapter XXIII

Authority of Intellectual Property Court on Infringement of Patent

- 96. (a) The right holder may file a civil miscellaneous case for his grievance in the Intellectual Property Court to order provisional measures under sections 97 and 98.
 - (b) The right holder may file a civil case in the Intellectual Property Court.
97. (a) The Intellectual Property Court may order the following one or more provisional measures where it is applied for the allegations of infringement of patent under subsection (a) of section 96:
- (i) an order as it thinks fit to prevent the infringement of patent and to prevent the entry into the channels of commerce of the State of patent infringing goods including imported goods after paying leviable duties to the Customs Department and customs clearance;

- (ii) an order as it thinks fit to preserve relevant evidence in regard to the alleged infringement of patent.
- (b) The Intellectual Property Court may direct the applicant to provide the following to take provisional measures:
 - (i) valid evidence that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent;
 - (ii) sufficient assurance to prevent the abuse of provisional measures.
- (c) The Intellectual Property Court may further direct the applicant to supply additional information necessary for the identification of the alleged infringing goods, when ordering the provisional measures under subsection (a).
- (d) The Intellectual Property Court shall revoke or cease to have effect provisional measures ordered under subsection (a) of section 97 and subsection (a) of section 98 upon request of the respondent without prejudice to subsection (b) of section 98, if the civil proceeding is not initiated within the reasonable period determined by the Intellectual Property Court or in the absence of such determination, within 30 days from the date of ordering the provisional measures, to decide on merits of the case for the injury commencing from the date of execution of the requested provisional measures.
- (e) where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or probability of infringement of patent, the Intellectual Property Court may order the applicant, upon request of the respondent, to provide the respondent appropriate compensation for any injury caused by these measures.

98. (a) The Intellectual Property Court may make an *ex parte* order of provisional measures in any of the following conditions:

- (i) where any delay is likely to cause irreparable harm to the right holder;
- (ii) where there is a demonstrable risk of evidence being destroyed.

(b) Where making an *ex parte* order of provisional measures, the Intellectual Property Court shall:

- (i) notify the respondent of the provisional measures, without delay, after the execution of the measures.
- (ii) execute the provisional measures within the period determined by the Intellectual Property Court or in the absence of such determination, within 30 days from the date of notification, if the respondent does not follow the notification.
- (iii) review the provisional measures, upon request of the respondent, by hearing both sides within the reasonable period, in order to make decision on whether these measures to be modified, revoked or confirmed.

99. The Intellectual Property Court may, in case of infringement of patent, pass any one or more of the following orders without prejudice to the Civil Law and the Code of Civil Procedure in the proceedings under subsection (b) of section 96:

- (a) an injunction against the infringement of patent, including the prevention of the entry into the channels of the commerce of the State of imported patent infringing goods after paying leviable duties to the Customs Department and customs clearance;
- (b) an order to pay the right holder sufficient damages for the injury that the right holder has suffered due to the infringement of patent

by the infringer or an order to pay the right holder pre-established damages or profits obtained by the infringer or both, in appropriate cases;

- (c) an order to pay the right holder appropriate expenses including legal costs and attorney's fees.

100. (a) When making the final decision on the infringement upon request of the right holder, the Intellectual Property Court may pass the following orders regarding exhibits in accordance with the Code of Civil Procedure:

- (i) destroying the infringing goods or preventing such goods from entering into the channels of commerce;
- (ii) preventing the materials or implements used in creating the infringing goods, without compensation of any sort, entry into the channels of commerce to minimize the risks of further infringement.

(b) The Intellectual Property Court shall take into account the following facts in exercising under subsection (a):

- (i) the deterrent effects of issuing the injunction;
- (ii) that destruction must be proportional to the seriousness of the infringement;
- (iii) the effect on the environment of the manner of destruction;
- (iv) negative effect on the legitimate interests of third parties.

101. The Intellectual Property Court may order the applicant to pay the respondent compensation and legal costs including attorney's fees and other expenses of the respondent who has been wrongfully restrained by the complaint where the complaint about the infringement of patent is appeared incorrect and dishonest.

102. (a) In a civil suit concerning the infringement of the patentee's rights, if the subject matter of a patent is a process for obtaining a product,

the Intellectual Property Court may order the respondent to prove that the process used to obtain an identical product is different from the patented process.

- (b) In cases where the product obtained by the patented process is new, any identical product that is produced without the consent of the patentee shall be considered as being produced by the patented process if there is no proof to the contrary.
- (c) In summoning to produce the evidence under subsection (a), the Intellectual Property Court shall take into account the legitimate interests of the alleged infringer if he conceals his manufacturing and business secrets.

103. (a) The Intellectual Property Court may order the adverse party to produce evidence, by ensuring the protection of confidential information in appropriate cases, without prejudice to the provisions of existing laws, for the following conditions:

- (i) when the right holder has produced the valid evidence to support his claims sufficiently;
- (ii) when the right holder has specified that the valid evidence relevant to his claim are in the hand of the adverse party.

(b) The Intellectual Property Court may, in voluntary infringement without valid reason, make preliminary and final determinations such as affirmation or rejection based on the information including allegation and declination, subject to providing the parties an opportunity to be heard on allegations or evidence in the following situations:

- (i) refusing to provide necessary information;

- (ii) not providing necessary information within a reasonable period;
- (iii) significantly impeding the procedure relating to an enforcement action.

104. The Intellectual Property Court may apply the provisions in the Evidence Act, the Code of Civil Procedure and other relevant existing laws if it is not provided expressly in this Law in respect of the enforcement action for infringement of patent.

Chapter XXIV

Penalties

105. Whoever commits any of the following acts shall, on conviction, be punished with imprisonment for a term not exceeding one year or with a fine not exceeding two million kyats or with both:

- (a) issuing or causing to issue the certificate of the patent or utility model fraudulently;
- (b) entering or causing to enter in the register fraudulently;
- (c) giving, without permission, the application of the patent together with documents in relation to the specifications of invention to the irrelevant person, disclosing it to the public or giving permission to use it by the public within the prescribed period prior to publication;
- (d) giving the specifications of invention without permission to the irrelevant person, disclosing it to the public or giving permission to use it by the public.

106. With regard to a product, whoever expresses incorrectly in any manner, that the patent application has been filed without filing the application or after the filed application has been refused or the patent has been granted without being granted shall, on conviction, be punished with imprisonment

for a term not exceeding six months or within a fine not exceeding two million kyats or with both.

Chapter XXV

Miscellaneous

107. Notwithstanding anything in any other existing laws, action shall be taken only under this Law for any offence related to the patent.

108. Where any party is adversely affected, the Registrar shall give him an opportunity to be heard in accordance with the stipulations in the exercise of any power vested in him by this Law.

109. The copy of the patent certificate and document certified and sealed by the Registrar may be presented as evidence in the relevant Intellectual Property Court.

110. Where the applicant's residence or principal place of business is outside the territory of the State, the patent application may be applied through the representative or patent agent who is registered in the prescribed manners by the Department in accordance with the provisions of this Law.

111. The product and process of the invention shall be considered as movable property in any form whether corporeal or incorporeal and whether tangible or intangible.

112. The infringement of patent in this Law shall not apply to the use of any goods bearing a patent by any government department and legal entity, provided that such use is not made on the commercial purposes and is limited to specific cases of the national emergency or public disaster.

113. The disputes on the patent between the two parties may be settled by means of mutual consultation, amicably or arbitration or judicial proceedings.

114. The Ministry shall be responsible for office works of the Central Committee and the Agency and bear their expenses to implement the provisions of this Law.

115. The Ministry shall fix honorarium and allowance for the members of the Central Committee, the Agency and Working Group who are non-civil service personnel with the approval of the Union Government.

116. The term of the person at the union level under this Law is normally the same as that of the President.

117. The Ministry may form and assign the Department and its divisions in the respective field of intellectual property to carry out the functions and duties of the Agency.

118. The Central Committee and Agency established under this Law shall be considered to encompass all intellectual property laws.

119. In implementing the provisions of this Law:

- (a) the Supreme Court of the Union may issue rules, regulations, bye-laws, notifications, orders, directives and procedures relating to judiciary.
- (b) the Ministry and relevant Ministries may:
 - (i) issue rules, regulations and bye-laws with the approval of the Union Government.
 - (ii) issue notifications, orders, directives and procedures.
- (c) the Agency and the Department may issue notifications, orders, directives and procedures with the approval of the Ministry.

I hereby sign in accordance with the Constitution of the Republic of the Union of Myanmar.

Sd./ Win Myint

President

Republic of the Union of Myanmar