



BAHRAIN

Law no. 1 of 2004 on the Protection of Patents and Utility Models

PART I: PATENTS

Chapter I: General Provisions

Article (1)

A patent shall be granted, in accordance with the provisions of this Law, to any new invention, which involves an inventive step and industrially applicable, whether pertaining to new industrial products imported or locally produced, new industrial processes, or a new application of known industrial processes.

The patent shall be granted, independently, for any modification, improvement or addition to a previously patented invention, in which case the patent shall be granted, under the provisions of this Law, to the owner of the modification, improvement or addition.

Article (2)

A. An invention is new if it does not form part of the state of the prior art, which comprises everything disclosed to the public in or outside the Kingdom of Bahrain by means of written or oral disclosure, by use, or by any other way by which the subject matter of the invention is realized before the relevant filing date of the patent application.

According to the provisions of this Article, disclosure shall not include displaying the invention in national or international exhibitions in accordance with the conditions and rules prescribed by the Regulations, and within the twelve months preceding the filing date of the application. Disclosure, if occurred within the prescribed period, shall not count if it results from an action taken by the applicant or his predecessor, or as a result of evident abuse or unfair act of others.

B. An invention is deemed to involve an inventive step if, with regard to prior art related to the subject matter of the invention, it is not obvious to a person of ordinary skill in the art.

C. An invention is deemed industrially applicable if it can be applied in agriculture, fishing, services, handicrafts or in any type of industry in its full sense.

Article (3)

Patents shall not be granted for:

- A. Inventions whose commercial exploitation in the Kingdom of Bahrain is likely to be contrary to public order or morality, or harmful to life, to human, animal or plant health, or seriously prejudicial to the environment.
- B. Discoveries, scientific theories and mathematical methods.
- C. Plants and animals - other than microorganisms - and essentially biological processes for the production of plants or animals.
- D. Diagnostic, therapeutic and surgical methods necessary for the treatment of humans and animals, with the exception of products used in any of these methods.

Article (4)

The competent authority of the Ministry of Commerce shall maintain a register to be called "Patent Register" to record patent applications, and all related data, exploitation and application thereof, in conformity with the provisions of this Law and its Regulations, as well as the implementing decisions thereof

Article (5)

Without prejudice to the provisions of the international conventions in force in the Kingdom of Bahrain, any natural person or legal entity who is a citizen of the Kingdom of Bahrain or a foreigner of a country member in the World Trade Organization or that applies reciprocity to the Kingdom, shall have the right to apply for a patent in conformity with the provisions of this Law.

Article (6)

If a patent application is filed in a country member of the World Trade Organization or a country that applies reciprocity to the Kingdom, the person concerned or the successor of his rights shall be entitled to file an application of the same invention within a year from the filing date of the application in the foreign country, in conformity with the procedures, terms and conditions provided for in this Law. In such case, the date of the first application shall be considered as the basis of the right of priority.

Article (7)

The right to the patent shall belong to the inventor or his successor in title. If two or more persons have jointly made an invention, the right to the patent shall belong to them jointly and equally, unless they have agreed otherwise. No person shall be deemed a joint inventor if his efforts are only confined to assistance in its execution.

If more than one person have made the same invention independently, the right to the patent shall belong to the person who was first to file the

application.

Article (8)

Without prejudice to the provisions of Article (631) of the Civil Law, the employer shall be the owner of the patent, if the invention results from execution of a contract providing for exerting efforts to develop an invention, provided that the name of the inventor shall be stated in the patent.

Article (9)

If an employee —uncommissioned to make inventions under a work contract —develops an invention in the field of activity of the employer utilizing expertise, documents, implements or prime materials made available by the employer, he shall be required to inform the employer of the patent immediately after the grant thereof by a registered letter with acknowledgement of receipt. The employer shall have the choice either to exploit the invention or to acquire the patent, against a fair compensation paid to the employee, provided that the choice is made within three months from the notification date of the grant of the patent.

The employer right to choose shall lapse if the period prescribed in the foregoing paragraph lapses without informing the employee, by a registered letter with acknowledgement of receipt, of his choice.

The provisions provided for in this article and the foregoing article shall apply to civil employees of the government and the like.

Article (10)

The patent application filed by an inventor within a year from the termination of his employment in a private or public establishment, shall be considered as filed during the period of employment. Both the inventor and the employer shall be entitled to all rights provided for in the two preceding Articles, as the case may be.

Article (11)

A. The name of the inventor shall be stated in the patent, unless he requests in writing otherwise.

B. A patent shall confer on its owner the right to prevent third parties, not having the owner's consent, from the following:

(1) Manufacturing, exploiting, using, marketing, selling or importing a product subject of a patent, if the subject matter of the invention is a product.

(2) Using a process of manufacture or the product directly obtained thereby, as well as marketing or selling such a product or importing it for such purposes, if the subject matter of the invention is a process of manufacture.

Article (12)

Taking into account the legitimate interest of the defendant in protecting his manufacturing and business secrets, the civil court may require the

burden of proof to be on the defendant in an action against using a patented use process —without the consent of the patent owner- to produce an identical product, if the plaintiff, though he has exerted reasonable efforts, fails to determine the process actually used in the production, and if it appears to the court that the identical product subject of the dispute was made by the patented process

Article (13)

The rights conferred by a patent shall not extend to:

- A. the private use of invention for non-industrial or non-commercial purposes, or the use thereof for scientific research purposes
- B. where a third party, in the Kingdom of Balirain, proceeded, in good faith, with exploiting the invention industrially or made serious preparations for such activities prior to the date of filing the patent application, the former shall, notwithstanding the issue of patent, have the right to continue to exploit the invention only within his enterprise and without extending the scope of those activities. Such right shall not be assigned or transferred independently from such enterprise
- C. use of the invention on a land vehicle, vessel or aircraft belonging to a country member of the International Union for the Protection of Industrial Property, when such a land vehicle, vessel or aircraft is temporarily or accidentally present in the Kingdom of Balwain
- D. where a third party proceeds with manufacturing or composing a pharmaceutical product during the protection period thereof, with a view to obtain an official marketing license, provided that the marketing starts after the expiry of such a protection period.

Article (14)

The protection period of a patent shall be 20 years as of the date of filing the application in the Kingdom of Balirain.

Article (15)

Fees shall be paid on filing a patent application. Progressive annual fees shall also be paid as of the second year of the grant of the patent until the expiration of the patent protection period.

Additional fees shall be paid in case of failure to pay the annual fees within a maximum of 6 months.

Chapter II: Filing Procedures of Patent Applications

Article (16)

The patent application shall be filed by the inventor or his successor in title, according to the form prescribed for such purpose, with the competent authority of the Ministry of Commerce, in accordance with the provisions provided for in this Law and the terms, conditions and procedures prescribed by the Regulations. An application may not contain more than one invention. A group of inventions so linked as to form an integrated inventive concept shall be considered as one invention.

The patent application in particular shall be accompanied by a detailed description of the invention, including a full statement of the subject matter and of the best way to enable a person skilled in the art to implement it. The description shall also include the novel elements for which the person concerned seeks protection, accompanied by illustrative drawings of the invention where necessary.

The applicant shall, in all cases, provide full data of any application relating to the same invention or its subject matter previously filed elsewhere, as well as any decision relating to such applications.

Article (17)

The patent applicant may exploit his invention from the filing date thereof

Article (18)

The applicant may - at any time before the publication of the application acceptance - withdraw his application or introduce any amendments he deems fit to the description or the drawings of the invention, provided that such amendment shall not effect the substance of the invention.

Article (19)

The competent authority of the Ministry of Commerce shall examine the patent application and its annexes to ascertain that all the necessary conditions are satisfied, and may require the applicant to introduce any amendments or complements it deems necessary to decide on the application.

Where the invention satisfies the prescribed conditions, the competent authority shall publish the application acceptance, in the time and manner prescribed by the Regulations.

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

Any concerned party may lodge a written opposition with the competent body to the grant of the patent, within 60 days from the publication of the application acceptance, provided that the opposition shall be motivated.

Such an opposition shall be subject to the payment of a fee.

The Regulations shall determine the conditions of opposition and the procedures governing the decision thereon.

Article (20)

If it appears to the competent authority of the Ministry of Commerce that the invention relates to significant defense or security matters, it shall immediately and in a confidential manner disclose the application and the annexes thereof to the Ministry of Defense or the Ministry of Interior, as the case may be.

Within 90 days from the date of submitting the documents, the Minister of Defense or the Minister of Interior—as the case may be—shall be authorized to oppose the granting of the patent by acquiring the patent against a fair compensation, exploiting it in agreement, or requiring the

application of the compulsory license provisions according to the provisions of this Law.

Article (21)

The competent authority of the Ministry of Commerce shall issue a decision to grant a patent after 60 days from the publication of the application acceptance with no opposition thereto , or after a period not exceeding 30 days from the date of the decision on the opposition.

In case a decision is issued to grant a patent , the patent shall be recorded in the Patent Register , and such a decision shall be published in the manner prescribed by the Regulations.

The person concerned shall be granted a certificate , according to the form prescribed for such purpose, stamped with the Stamp of the Ministry of Commerce indicating the patent data.

Chapter III: Patent Transfer of Ownership , Licensing, Mortgaging and Seizure

Article (22)

The ownership of a patent may be transferred wholly or partly with or without compensation, as well as by inheritance. It may be subject to mortgage, exploitation license, or right of disposal.

Without prejudice to the provisions pertaining to the sale and mortgage of commercial establishments, the ownership of a patent may not be transferred, mortgaged or disposed of to a third party before the date on which such transfer, mortgage or disposal is recorded in the Patent Register, and published in the manner prescribed by the Regulations.

Article (23)

A creditor may seize patents belonging to his debtor in conformity with the provisions concerning seizure of movable garnished assets or the debtor assets in possession of a third party, as the case may be . The competent authority of the Ministry of Commerce shall be exempt from the provisions relating to the declaration by the garnishee of the amount in his possession due to the garnisher.

The creditor shall notify the competent authority of the seizure and the results of the public auction to be recorded in the Patent Register. The said seizure and results of the public auction shall not be invoked against a third party before being duly recorded, in the manner prescribed by the Regulations.

Fees shall be paid on recording in the Patent Register.

Chapter IV: Patent Compulsory License

Article (24)

The Minister of Commerce may grant nonexclusive compulsory licenses for the exploitation of a patent, in any of the following cases:

A. national emergency, extreme urgency, or public lion- commercial

interest, provided that the patent owner shall be notified thereof —if possible- after the grant of the license.

B. Failure to exploit the invention by the patent owner in a manner sufficient to satisfy the requirements of the local markets- at the Kingdom of Bahrain - in fair prices — taken into account the current prices in other countries- within 3 years since the grant of the patent or 4 years from the filing date of the patent application, whichever comes later.

Nevertheless, where the Ministry of Commerce finds that, despite the expiration of the time limits provided for in this item, such failure to exploit the invention was due to reasons beyond the power of the patent owner, it may decide to afford him a period of grace not exceeding two years to exploit the patent in a perfect manner; otherwise , it may issue a compulsory license to any third party the patent owner refuses to grant an exploitation license thereto or offers it under unfair commercial conditions.

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

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

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

Article (25)

Where a compulsory license is to be issued, the following shall be taken into account:

A. The request for the grant of the license shall—after the payment of the prescribed application fees - be considered on the merits of each case.

B. The license shall mainly seek to satisfy the needs of the local market.

C. The party requesting the grant of a compulsory license must have the capacity to efficiently exploit the invention through an establishment located in the Kingdom of Bahrain.

D. The requesting party shall have made serious attempts , during a reasonable period of time, to obtain a voluntary license from the patent owner against fair commercial conditions and compensation, to no avail. This condition shall not extend to the case provided for in item (A) of the foregoing Article.

E. The licensee shall exploit the patent according to the purpose for which it is granted , and abide by the scope, terms and period prescribed by the decision granting such a license.

F. If the compulsory license application pertains to semiconductor technology, it shall be granted only for public non-commercial purposes, or to remedy the consequences of any unfair competition practices.

G. The assignee shall not assign the exploitation license except with the enterprise or the part related to the exploitation of the patent , and subject to the approval of the Ministry of Commerce.

H. The patent owner shall be entitled to a fair compensation fixed on the basis of the economic value of the license.

I. The assessment of such compensation shall take into consideration the necessity to remedy the consequences of any unfair competition practices, if have occurred.

J. The conditions provided for in items (B) and (C) of this Article shall not extend to a license granted to remedy practices restricting fair competition.

K. The Minister of Commerce ,on his own initiative or upon a request from any interested party, shall have the right to amend the license terms if the conditions tinder which the license is granted are changed.

Article (26)

The competent authority of the Ministry of Commerce shall inform the patent owner with a copy of the license application — except in the case provided for in Article 24(A) of this Law — and he shall be entitled for a written reply to the application, according to the procedures and time limits prescribed by the Regulations. In all cases , the Minister shall issue a decision to accept the application or to reject it, or to suspend the acceptance thereof tinder conditions he determines. The Ministry shall in all cases notifi the patent owner and the license applicant of the decision issued with respect to the application within 30 days from the issue date thereof Such a decision shall be recorded in the Patent Register, and published in the maimer prescribed by the Regulations.

Article (27)

The Minister of Commerce shall ,on his own initiative or upon a request from the patent owner, terminate the license in the following cases:

A. if the reasons which led to its grant cease to exist and are unlikely to reoccur , in such a case sufficient protection shall be granted for the legitimate interests of the licensee, in which case, the procedure prescribed by the Regulations shall apply.

B. If the licensee fails to exploit the subject matter of the license within two years from the grant thereof

C. If the licensee fails to satisfi any condition upon which the license is based , or fails to meet the obligations provided for in this Law and the Orders issued for the implementation thereof

Chapter V: Lapse and Forfeiture of Rights Conferred by a Patent

Article (28)

Rights conferred by a patent shall lapse under any of the following cases:

A. Expiration of the protection period provided for in Article 14 of this Law.

B. Relinquishment by the patent holder of his rights without prejudice to the rights of third parties.

C. Failure to pay the due fees , for a period exceeding one year , in violation of the provisions of Article 15 of this Law , and in spite of a warning by a registered letter with acknowledgement of receipt stating the

due date, , in the time period prescribed by the Regulations.

D. A final decision is issued revoking the patent.

The lapsed patent shall be recorded in the Patent Register, and shall be published in the manner prescribed by the Regulations.

Article (29)

At any time , the Ministry of Commerce or any concerned party may request nullity of a patent unlawfully granted from the supreme civil court.

PART II: UTILITY MODELS

Article (30)

A utility model patent shall be granted, under this Law for any new technical addition in the structure or composition of devices, tools, equipment or their components, or products, processes or means of manufacturing thereof, and the like that is in current use.

Any person concerned may convert the utility model application into a patent application where the conditions are fulfilled. Further, the patent applicant may also convert his application to a utility model application. In both cases the date of the original application shall prevail.

Article (31)

The competent authority of the Ministry of Commerce shall maintain a register to be called "Utility Model Register" to record utility model applications, and all related data, exploitation and application thereof, in conformity with the provisions of this Law and its Regulations as well as the implementing decisions thereof

Article (32)

The protection period a utility model shall be 10 years as of the date of filing the application in the Kingdom of Bahrain.

Article (33)

The provisions applicable to patents provided for in Articles 2 , 3 5-11 , 13 , and 15-29 of this Law shall apply to utility models.

PART III: GENERAL PROVISIONS

Article (34)

Patents and utility models , satisfying the registration conditions provided for in this Law, shall enjoy temporary protection during the display thereof at exhibitions designated by a decision issued by the Minister, held in or outside the territory of the kingdom of Bahrain.

The Regulations shall prescribe the terms, conditions and procedures for the grant of such protection.

Article (35)

Any person may request to consult the Patent Register or the Utility Model

Register , provided for in Articles 4 and 31 of this Law and obtain extracts ,copies, or details therefrom, according to the rules and procedures and in the manner prescribed by the Regulations, and after the payment of the prescribed fees.

Article (36)

Subject to the provisions of opposition provided for in Articles 19 and 20 of this Law , and without prejudice to Article 29 thereof, any concerned party may appeal any decision issued under the provisions of this Law to the Minister of Commerce within 30 days from the date of the decision thereon. The appeal shall be decided on within 30 day from its filing date and the person concerned shall be notified in writing of the decision issued with respect to his appeal within 30 days from the date of the decision thereon.

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

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

Article (37)

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

Article (38)

The Ministry of Commerce or any interested party may file a request with the Supreme Civil Court to add any data to the Patent Register or to the Utility Model Register which could have been omitted, or to modify or to omit any data included therein which is contrary to fact or unlawfully recorded therein

Article (39)

The officers authorized by the Minister of Justice ,in agreement with the Minister of Commerce , shall have judiciary powers in inspecting offences that fall under their jurisdiction and relate to their duties.

The statements issued with respect to such offences shall be referred to the public prosecutor by an order issued by the Minister of Commerce or his delegated official.

Article (40)

A. In case of infringement or to prevent an imminent infringement of any right provided for in the provisions of this Law, the owner of a patent or a utility model shall be entitled to obtain an order on the basis of a petition from the president of the competent court considering the merits of the case to adopt one or more appropriate precautionary measures:

(1) To draw up detailed description of the goods — including imported goods upon their arrival — materials, equipments and implements used or might be used in the infringement, and to preserve relevant evidence in regard to the infringement.

(2) To order the precautionary seizure of the articles stated in the foregoing paragraph.

(3) To desist the infringement.

B. The petition shall be accompanied by adequate evidence proving that the applicant is the right holder and the right is being infringed or that such infringement is imminent.

The President of the Court shall have the authority to require the applicant to provide any information necessary to enable the authority, which executes the precautionary measures, to identify the concerned goods, materials, equipments and implements.

C. The president of the court, when necessary, shall be authorized to issue the aforementioned decision expeditiously —without the summons of the other party- where any delay in the decision issue is likely to cause irreparable harm to the applicant, or if there is a risk of evidence being destroyed, provided that the other party shall be notified promptly of the decision after the issue date thereof

The order issued for the adoption of such procedures may involve delegation of one or more experts to assist in the execution, and shall require appropriate security or financial assurance to ensure the protection against any unlawful prejudice caused by such procedure.

The convicted person may appeal such an order before the Competent Court within 10 days following the date of the notification or issue thereof — as the case may be — in such a case, the Court may confirm or revoke the order, totally or partly.

The merits of the case shall be submitted within 15 days from the issue date of the order, otherwise such an order shall cease to have effect.

Article (41)

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

A. imitates an invention or a utility model patented in accordance with the provisions of this Law

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

C. manufactures, sells, offers for sale or trade, imports, or possesses with the intention to trade, a product protected in the Kingdom of Bahrain by a patent or a utility model.

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

In case of repetition, the penalty shall be a punishment of imprisonment

for a period of no less than six months and no more than two years and a fine of no less than 1,000 Baliraini Dinars and no more than 4,000 Baliraini Dinars, or by either punishment, along with the closure of the enterprise or project, or the suspension of the activity —as the case may be- for a period of no less than 15 days and no more than 6 months, with the publication of the judgment in a daily gazette once or more at the expense of the convicted party.

The Court , in the event of conviction, may order the seizure or destruction of all infringing articles, including imported goods upon their arrival, as well as the machines and implements used in committing the offense.

Further , the Court , in the event of acquittal, may order the seizure or destruction of the articles stated in the foregoing paragraph, if they have prejudice the rights of the patent holder ,or have been used in the infringement thereof

Article (42)

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

Article (43)

The provisions of this law shall apply to any application filed before the entry into force of this Law ,and has not been granted an industrial patent. The applicant may amend his application to conform with the provisions of this Law.

Article (44)

The provisions concerning industrial patents provided for in The Regulations with respect to industrial patents, Designs and Trade Mrks of 1955, as amended by Legislative Decree No.22 of 1977 shall be repealed.

Article (45)

The Minister of Commerce shall issue the Regulations and Orders necessary to implement the provisions of this Law.

Article (45)

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