

Protocol on Patents and Industrial Designs Within the Framework of the African Regional Intellectual Property Organisation (Aripo)

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Preamble

The Contracting States of this Protocol,

Having regard to the Agreement on the Creation of an African Regional Intellectual Property Organization (ARIPO) then known as the Industrial Property Organization for English-Speaking Africa, concluded in Lusaka (Zambia) on December 9, 1976, and in particular to its Article III(c), in accordance with which the objectives of the Organization include the establishment of such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the intellectual property activities affecting its members.

Considering the advantages to be gained by the pooling of resources in respect of intellectual property administration,

Hereby agree as follows:

Section 1

General

The African Regional Intellectual Property Organization (ARIPO) is empowered to grant patents and to register utility models and industrial designs and to administer such patents, utility models and industrial designs on behalf of Contracting States in accordance with the provisions of the Protocol, through its Secretariat (hereinafter referred to as "the Office").

Section 2

Filing and Transmittal of Applications

(1) Applications for the grant of patents or the registration of utility models and industrial designs by the Office shall be filed by the authorized representative of the applicant or by the applicant with either the Office or, where the law of a Contracting State so permits, the industrial property office of a Contracting State.

(2) An application filed with the industrial property office of a Contracting State under the provisions of paragraph (1) of this Section shall have the same effect as if it had been filed on the same date at the Office.

(3) The provisions of paragraphs (1) and (2) of this Section shall not preclude the application of legislative provisions which, in any Contracting State

(a) govern inventions which, owing to the nature of their subject-matter, may not be communicated abroad without the prior authorization of the competent authority of that State, or

(b) prescribe that each application is to be filed initially with the industrial property office of the Contracting State or make direct filing with another authority subject to prior authorization.

(4) An applicant may be represented by an attorney, agent or legal practitioner who has the right to represent applicants before the industrial property office of any Contracting State. Where

(a) an application is filed directly with the Office but the applicant's ordinary residence or principal

place of business is not situated in the host country of the Office; or

(b) an application is filed with the industrial property office of a Contracting State by an applicant whose ordinary residence or principal place of business is not situated in a Contracting State, the applicant shall be represented.

(5) Where the application is filed with the industrial property office of a Contracting State, such office shall within one month of receiving the application, transmit that application to the Office.

Section 3

Patents

(1) A patent application shall:

(i) identify the applicant;

(ii) contain, as prescribed, a description of the invention, a claim or claims, a drawing or drawings, where necessary and an abstract;

(iii) designate the Contracting States for which the patent is requested to be granted;

(iv) be subject to the payment of the prescribed fees.

(1A) Where the patent application describes or claims as an invention a micro-biological process on a product thereof, and requires for the performance of the invention the use of a microorganism which is not available to the public on the filing date of the application and which cannot be made or obtained on the basis of the description in the application, the micro-organism shall before the acceptance of the application be dealt with in the manner prescribed in the Regulations.

(2) (a) The Office shall examine whether the formal requirements for applications have been complied with and shall accord the appropriate filing date to the application.

(b) If the Office finds that the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements within the prescribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.

(c) The Office shall notify each designated State of the fact that a patent application has been filed which complies with the prescribed formal requirements.

(3) The Office shall undertake, or arrange for, the substantive examination of the patent application. If it finds that the invention claimed in the application does not comply with the requirements of patentability

referred to in sub-section (10), it shall refuse the application.

(4) Where under

(a) sub-section (2)(b) or (3) of this Section;

(b) any other Protocol within the framework of ARIPO

the Office refuses any application, the applicant may, within the prescribed period, request the Office to reconsider the matter.

(5) If after the Office has reconsidered the application, the Office is still of the view that the application shall be refused, the applicant may lodge an appeal against the decision of the Office to the Board of Appeal established in terms of Section 4bis of the Protocol.

(6) Before the expiration of six months from the date of the notification referred to in sub-section (5), a designated State may make a written communication to the Office that, if a patent is granted by the Office, that patent shall have no effect in its territory for the reason

(i) that the invention is not patentable in accordance with the provisions of this Protocol, or

(ii) that, because of the nature of the invention, a patent cannot be registered or granted or has no effect under the national law of that State.

(7) After the expiration of the said six months, the Office shall grant the patent, which shall have effect in those designated States which have not made the communication referred to in sub-section (6). The Office shall publish the patent granted.

(8) If the Office refuses the application notwithstanding a request for reconsideration under subsection (4), the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.

(9) At any time before the grant or refusal of a patent an applicant for a patent may, upon payment of the prescribed fees, convert the application into an application for a utility model, which shall be accorded the filing date of the initial application. An application may not be converted under this subsection more than once.

(10) Inventions for which patents are granted by the Office shall be new, shall involve an inventive step and shall be industrially applicable. An invention is new if it is not anticipated by prior art. Everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) or by use or exhibition shall be considered prior art provided that such making available occurred before the date of filing of the application or, if priority is claimed, before the priority date validly claimed in respect thereof and further provided that a disclosure of the invention at an official or officially recognized exhibition shall not be taken into consideration if it occurred not more than six months before the date of filing of the application or, if priority is claimed, before the priority

date validly claimed in respect thereof.

(11) On each anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fees, part of which shall be distributed among the designated States concerned. The amount of the fees shall depend on the number of States in respect of which the application or patent is maintained. Provided it is maintained, a patent granted by the Office shall in each designated State have the same effect as a patent registered, granted or otherwise having effect under the applicable national law. The duration of the patent shall be twenty years from the filing date.

(12) A patent granted by the Office shall in each designated State be subject to provisions of the applicable national law on compulsory licenses, forfeiture or the use of patented inventions in the public interest.

Section 3bis

International Applications under the Patent Cooperation Treaty (PCT)

(1) In this Section:

"Patent Cooperation Treaty" means the Patent Cooperation Treaty done at Washington on June 19, 1970, including the Regulations and Administrative Instructions under the Treaty, as last revised;

"international application" means a patent application filed under the Patent Cooperation Treaty.

(2) An international application in which a Contracting State which is also bound by the Patent Cooperation Treaty is designated for the purposes of obtaining a patent under the provisions of this Protocol shall be considered to be an application for the grant of a patent under this Protocol. The provisions of the Patent Cooperation Treaty shall apply to such international application in addition to the provisions of this Protocol and the Regulations under this Protocol; in case of conflict, the provisions of the Patent Cooperation Treaty shall apply.

(3) The ARIPO Office may act as receiving Office under Article 2 (xv) of the Patent Cooperation Treaty in relation to an international application filed by an applicant who is a resident or national of a Contracting State which is also bound by the Patent Cooperation Treaty.

(4) The ARIPO Office shall act as designated Office under Article 2 (xiii) of the Patent Cooperation Treaty in relation to an international application referred to in subsection (2).

(5) The ARIPO Office shall act as elected Office under Article 2 (xiv) of the Patent Cooperation Treaty in relation to an international application referred to in subsection (2) where a Contracting State is

elected for the purposes of international preliminary examination under Article 31 (4) of the Patent Cooperation Treaty.

(6) In relation to an international application referred to in subsection (2), without limiting the generality of that subsection:

(i) Section 2 and 3 (2) shall not apply;

(ii) any annual maintenance fee which falls due under Section 3 (11) need not be paid until the expiration of the applicable time limit under Article 22 or 39 (1)(a) of the Patent Cooperation Treaty.

Section 3ter

Utility Models

(1) In this Section, "utility model" means any form, configuration or disposition of elements of some appliance, working tools and implements as articles of everyday use, electrical and electronic circuitry, instrument, handicraft, mechanism or other object or any part thereof in so far as they are capable of contributing some benefit or new effect or saving in time, energy and labour or allowing a better or different functioning, use, processing or manufacture of the subject matter or that gives utility advantages, environmental benefit, and includes micro-organism or other self-replicable material, products of genetic resources, herbal as well as nutritional formulations which give new effects.

(2) A utility model shall be protected under the Protocol if it is new and industrially applicable.

(3) An application for registration of a utility model shall:

(i) identify the applicant;

(ii) contain, as prescribed, a description of the utility model, a claim or claims, a drawing or drawings or a model, and an abstract;

(iii) designate the Contracting States for which the utility model is requested to be registered;

(iv) be subject to payment of the prescribed fees.

(4) (a) The Office shall examine whether the formal requirements for applications have been complied with and shall accord the appropriate filing date to the application.

(b) If the Office finds that the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements within the prescribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.

(c) The Office shall notify each Designated State of the fact that an application for the registration of a utility model has been filed which complies with the prescribed formal requirements.

(5) The Office shall undertake, or arrange for, the substantive examination of the application for the utility model. If it finds that the application does not comply with the requirements for a utility model referred to in subsection (2), it shall refuse the application.

(6) Where under:

(a) sub-section 4(b) or (5) of this section;

(b) any other Protocol within the Framework of ARIPO

the Office refuses any application, the applicant may, within the prescribed period, request the Office to reconsider the matter.

(7) If after the Office has reconsidered the application, the Office is still of the view that the application shall be refused, the applicant may lodge an appeal against the decision of the Office to the Board of Appeal.

(8) Before the expiration of six months from the date of the notification referred to in sub-section 4(c), a designated State may make a written communication to the Office that, if a utility model is registered by the Office, that registration shall have no effect in its territory for the reason:

(i) that the utility model is not registrable under the provisions of the Protocol, or

(ii) that, because of the nature of the utility model, such utility model cannot be registered or has no effect under the national law of that State.

(9) If the Office refuses the application notwithstanding a request for reconsideration under subsection (7), the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.

(9) If the Office refuses the application notwithstanding a request for reconsideration under subsection (7), the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.

(10) On each anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fees, part of which shall be distributed among designated States concerned. The amount of fees shall depend on the number of States in respect of which the application or registration is maintained. Provided it is maintained, a utility model registered by the Office shall have a duration of 10 years from the filing date.

(11) At any time before the refusal of an application for, or the registration of, a utility model, an applicant for a utility model may, upon payment of the prescribed fees, convert his application into a

patent application, which shall be accorded the filing date of the initial application.

(12) A utility model registered by the Office shall in each designated State be subject to provisions of the applicable national law on compulsory licenses, forfeiture or the use of utility models in the public interest State.

Section 4

Industrial Designs

(1) An application for the registration of an industrial design filed shall:

- (i) identify the applicant;
- (ii) contain a reproduction of the industrial designs;
- (iii) designate the Contracting States for which the registration is requested to have effect;
- (iv) be subject to the payment of the prescribed fees.

(2) (a) The Office shall examine whether the formal requirements for applications have been complied with and shall accord the appropriate filing date to the application.

(b) If the Office finds that the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements within the prescribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.

(c) The Office shall notify each designated State of the fact that an application for the registration of an industrial design has been filed which complies with the prescribed formal requirements.

(3) Before the expiration of six months from the date of the notification referred to in sub-section (2)(c), each designated State may make a written communication to the Office that, if the industrial design is registered by the Office, that registration shall have no effect in its territory for the reason

- (i) that the industrial design is not new,
- (ii) that, because of the nature of the industrial design, it cannot be registered or a registration has no effect under the national law of that State, or
- (iii) that, in the case of a textile design, it is the subject of a special register.

(4) After the expiration of the said six months, the Office shall effect the registration of the industrial design, which shall have effect in those designated States which have not made the communication referred to in sub-section (3). The Office shall publish the registration.

(5) If the Office refuses the application, the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.

(6) On the anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fees, part of which shall be distributed among the designated States concerned. The amount of the fees shall depend on number of States in respect of which the application or registration is maintained. Provided it is maintained, the registration of an industrial design effected by the Office shall in each designated State have the same effect as a registration effected or otherwise in force under the applicable national law. The duration of such a registration shall be ten years from the filing date.

(7) An industrial design registered by the Office shall in each designated State be subject to the provisions of the applicable national law on compulsory licenses or the use of registered industrial designs in the public interest.

Section 4bis

The Board of Appeal

(1) There is hereby established a Board to be known as the Board of Appeal (hereinafter referred to as "the Board").

(2) The Board shall consist of five (5) members who are experienced in intellectual property matters two of whom shall be examiners.

(3) At all sittings of the Board, at least one examiner shall be present.

(4) The members of the Board shall be appointed by the Administrative Council of the Organization

(a) for a period of two years renewable once for another term of two years;

(b) from the member states of the Organization; and

(c) on such other terms and conditions as the Council may determine.

(5) The functions of the Board are

(a) to consider and decide on any appeal lodged by the applicant in terms of Section 3(4) of this Protocol;

(b) to review any final administrative decision of the Office in relation to the implementation of the provisions of this Protocol, the Banjul Protocol on Marks or any other Protocol within the framework of ARIPO;

- (c) to decide on any other matter related to or incidental to the exercise of the Board's powers.
- (6) Three members of the Board shall form a quorum.
- (7) The decisions of the Board shall be final.
- (8) The Board shall have power to make and adopt its own rules of procedure.

Section 5

Regulations

- (1) The Administrative Council of ARIPO shall make Regulations for the implementation of this Protocol and may amend them, where necessary.
- (2) The Regulations shall in particular relate to
 - (i) any administrative requirements, matters of procedure, or any details necessary for the implementation of the provisions of this Protocol and any relevant international treaties;
 - (ii) the fees to be charged by the Office and the details of the distribution of part of those fees among the Contracting States.

Section 6

Entry into Force and Final Provisions

- (1)(a) Any State which is a member of the Organization or any State to which membership of the Organization is open in accordance with Article IV(1) of the Agreement on the Creation of the African Regional Intellectual Property Organization may become party to this Protocol by:
 - (i) signature followed by the deposit of an instrument of ratification, or
 - (ii) deposit of an instrument of accession.
- (b) Instruments of ratification or accession shall be deposited with the Government of the Republic of Zimbabwe.
- (c) This Protocol shall enter into force three months after three States have deposited their instruments of

ratification or accession.

(d) Any State which is not party to this Protocol upon its entry into force under sub-section (1)(c) of this Section shall become bound by this Protocol three months after the date on which such State deposits its instrument of ratification or accession.

(2)(a) Ratification of, or accession to, this Protocol shall entail acceptance of the Agreement on the Creation of an African Regional Intellectual Property Organization.

(b) The deposit of an instrument of ratification of, or accession to, this Protocol by a State which is not a party to the Agreement referred to in paragraph (a) of this sub-section shall have the effect that the said State shall become party to the said Agreement on the date on which it deposits its instrument of ratification of, or accession to, this Protocol.

(3)(a) Any Contracting State may denounce this Protocol by notification addressed to the Government of the Republic of Zimbabwe.

(b) Denunciation shall take effect six months after receipt of the said notification by the Government of the Republic of Zimbabwe. It shall not affect any patent application or application for the registration of an industrial design filed with the Office prior to the expiration of the said six-month period or any patent granted or registration of an industrial design effected upon such as application.

(4)(a) This Protocol shall be signed in a single copy and shall be deposited with the Government of the Republic of Zimbabwe.

(b) The Government of the Republic of Zimbabwe shall transmit certified copies of this Protocol to the Contracting States, other States members of the African Regional Intellectual Property Organization and the States to which membership of the Organization is open in accordance with Article IV (1) of the Agreement on the Creation of an African Regional Intellectual Property Organization, the World Intellectual Property Organization and the United Nations Economic Commission for Africa.

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