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NEGARIT GAZETA OF THE TRANSITIONAL GOVERNMENT OF ETHIOPIA

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PROCLAMATION NO. 123/1995

A PROCLAMATION CONCERNING INVENTIONS, MINOR INVENTIONS AND INDUSTRIAL DESIGNS

WHEREAS, it is necessary to create favourable conditions in order to encourage local inventive and related activities thereby building up national technological capability.

WHEREAS, it has been found essential to encourage the transfer and adoption of foreign technology by creating conducive environment to assist the national development efforts of the country.

WHEREAS, the task of fulfilling the nation's multi-dimensional demand for a harmonious scientific and technological progress, to be used for the public benefits, shall be most effectively served when there exists an appropriate legal framework.

NOW THEREFORE, in accordance with the Resolution, on the Transition of the Constituent Assembly, it is hereby proclaimed as follows.

CHAPTER ONE General Provisions

1. Short Title

This Proclamation may be cited as the "Inventions, Minor Inventions and Industrial Designs, Proclamation, No. 123/1995."

2. *Definitions*

In this Proclamation, unless the context otherwise requires:

1. "Court" means the Central High Court.
2. "Industrial Design" means any composition of lines or colours or any three dimensional form whether or not associated with lines or colours, provided that such composition or form gives a special appearance to a product of industry or handicraft and can serve as a pattern for a product of industry or handicraft.
3. "Invention" means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology.
4. "Commission" means the Ethiopian Science and Technology Commission.
5. "Patent" means the title granted to protect inventions; the invention may relate to a product or a process.
6. "Patentee" means the owner of a patent or patent of introduction.
7. "Person" means physical or juridical person.
8. "Utility Model Certificate" means a certificate issued to a minor invention which is fit for practical use.
9. "Working of a Patented Invention" means the manufacture of a patented article or the application of a patented process, by an effective and serious establishment existing within Ethiopia.

CHAPTER TWO

PATENTS

Section 1

General

3. *Patentable Inventions*

1. An invention is patentable if it is new, involves an inventive step and is industrially applicable.
2. An invention shall be considered new if it is not anticipated by prior art. Prior art shall consist of everything disclosed to the public, any where in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filling or, where appropriate, the priority date, of the application claiming the invention.
3. Notwithstanding the provisions of sub-article (2) of this article the disclosure to the public of the invention shall not be taken into consideration if it occurred within 12 months preceding the filling date or, where applicable, the priority date, of the application, and if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or an abuse committed by a third party with regard to the applicant or his predecessor in title.

4. An invention shall be deemed as involving an inventive step if, having regard to the prior art relevant to the application and as defined in sub-article (2) herein above, it would not have been obvious to a person having ordinary skill in the art.
5. An invention shall be considered as industrially applicable where it can be made or used in handicraft, agriculture, fishery, social services and any other sectors.

4. *Non-Patentable Inventions*

1. The following shall not be patentable:
 - a) Inventions contrary to public order or morality
 - b) Plant or animal varieties or essentially biological processes for the production of plants or animals.
 - c) Schemes, rules or methods for playing games or performing commercial and industrial activities and computer programmes
 - d) Discoveries, scientific theories and mathematical methods.
 - e) Methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body.
 - f) Works not protected by copy right.
2. The provision of sub-article (1) (e) of this article shall not apply to products for use in any of the methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body.

5. *Rights of Foreign Nationals*

Subject to the principle of reciprocity or, where applicable, in accordance with any treaty that Ethiopia may be party to, foreign nationals shall have the same rights and obligations as Ethiopians.

6. *Transfer of Applications or Patents*

Any patent or application for a patent may be transferred by sale or inheritance or any other means in accordance with the law. Such transfer shall be recorded with the commission, upon payment of fees prescribed in the regulations.

Section 2

Right to a Patent and Naming of Inventor

7. *Right to a Patent*

1. The right to a patent shall belong to the inventor.
2. If two or more persons have jointly made an invention the right to the patent shall belong to them jointly.

3. In the absence of an agreement to the contrary, the right to a patent for an invention made in the execution of a contract of service or employment shall belong to the person having commissioned the work or the employer.
4. Invention made without any relation to an employment or service contract and without the use of the employer's resources, data, means, materials or equipment shall belong solely to the employee or the person commissioned.
5. In the absence of an express term to the contrary, inventions made by the employee or person commissioned which do not come within sub-article 3 of this article and which result from both the personal contribution of the author and the resources, data, means, materials or equipment of the employer shall be owned jointly in equal shares.

8. *Naming of Inventor*

The inventor shall be named as such in the application and the patent unless in a special written declaration addressed to the commission he indicates that he wishes not to be named, and any promise or undertaking by the inventor made to any person to the effect that he will make such declaration shall be without legal effect.

Section 3

Application and Examination of Patents

9. *Application*

1. The person having the right to a patent for an invention in accordance with Article 7 may, upon payment of the prescribed fees, apply to the commission for the grant of a patent for that invention.
2. Application shall be made in writing and shall relate to one invention only. However, two or more inventions, belonging to a single general concept, may be filed as one application.
3. The application shall contain a request for the grant of a patent and include a description of the invention, one or more claims, an abstract, and where necessary, drawings.
4. In accordance with sub-article (3) of this article:
 - a) the request shall contain a petition to the effect that a patent be granted, the name of and other prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention. Where the applicant is not the inventor, the application shall contain a statement justifying the applicant's right to the patent.

- b) the description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate at least one mode known to the applicant for carrying out the invention. The description may be used to interpret the claims;
 - e) the claim or claims shall define clearly and concisely the matter for which protection is sought. The claim or claims shall be fully supported by the description;
 - d) the abstract shall merely serve the purpose of technical information; however, it shall not be taken into account for the purpose of interpreting the scope of protection.
5. Drawings shall be required when they are deemed necessary for the understanding of the invention and may be used to interpret the claims.
 6. An applicant may withdraw his or its application at any time before a patent is granted.
 7. An applicant who is not domiciled or who has not established business in Ethiopia shall appoint an agent who is domiciled in Ethiopia.
 8. Application shall be accompanied by power of attorney when it is made by an agent.

10. Information Concerning Corresponding Foreign Application for Patents

1. The applicant shall, at the request of the Commission, furnish it with the date and number of any application for a patent filed by him abroad relating to the same or essentially the same invention as that claimed with the Commission.
2. The applicant shall, at the request of the Commission, furnish it with the following documents relating to the foreign applications referred to in sub-article (1) of this article:
 - a) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;
 - b) a copy of the patent granted on the basis of foreign patent application;
 - c) a copy of any final decision rejecting the foreign application or refusing the grant of the patent requested in the foreign application.
3. The applicant shall, at the request of the Commission, furnish it with a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in sub-article (2) of this article.

11. *First to File Rule and Right of Priority*

1. When two or more persons who have independently made the same invention separately file applications for patents on the same subject matter, the right to the patent shall belong to the person who filed the first application.
2. Subject to the principle of reciprocity or, where applicable, in accordance with any treaty which Ethiopia may be a party, where any foreign applicant files his application in Ethiopia within twelve months from the date which he first filed in a foreign country an application for the same invention, the date on which the application was first filed in the foreign country shall be regarded as the date of filing if the applicant claims the right of priority and furnishes within the prescribed time limit a copy of the earlier application certified as correct by the office with which it was filed and other documents and information as prescribed.

12. *Filing Date*

1. The Commission shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains:
 - a) an express or implicit indication that the granting of a patent is sought;
 - b) indications allowing the identity of the applicant to be established;
 - c) a part which, on the face of it, appears to be a description of an invention;
2. If the Commission finds that the application did not, at the time of receipt, fulfill the requirements referred to in sub-article (1), herein above it shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, but if no correction is made, the application shall be treated as if it had not been filed.
3. Where the application refers to drawings which in fact are not included in the application the Commission shall invite the applicant to furnish the missing drawings. If the applicant complies with the said invitation, the Commission shall accord as the filing date the date of receipt of the missing drawings. Otherwise, the Commission shall accord as the filing date the date of receipt of the application and shall treat any reference to the said drawings as non-existent.

13. *Examination of Application*

1. The Commission shall undertake a formal examination of the application.
2. When, upon formal examination, the application is not in conformity with the requirements laid down in this proclamation and in the regulations, the Commission shall call upon the applicant to amend the application. If the applicant fails to amend as required within a period of two months, the application shall be considered withdrawn.

3. Where the Commission determines that the application is acceptable, it shall undertake or cause to be undertaken a substantive examination of the invention.

Section 4

Issuance, Contents and Duration of a Patent and Annual Fees

14. Grant of a Patent

1. A patent shall be granted to an applicant upon fulfilment of the requirements of this proclamation and the regulations issued thereunder.
2. When a patent is granted, the Commission shall:
 - a) publish a reference to the grant of the patent in an Official Gazette;
 - b) issue to the applicant a certificate of the grant of the patent and a copy of the patent;
 - c) record the patent; and
 - d) make available copies of the patent to any person on payment of the prescribed fees.
3. The Commission shall, upon request of the owner of the patent, make changes in the text or drawings of the patent in order to limit the extent of the protection conferred thereby, provided that the change may not result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent was granted.

15. Contents of A Patent

The patent shall certify the exclusive rights of the patentee over his invention and contain other particulars prescribed in the regulations.

16. Duration of A Patent

A patent shall be granted for an initial period of fifteen years commencing from the filing date of the application for protection. However, the validity of the patent may be extended for a further period of five years provided that proof is furnished that the invention is being properly worked in Ethiopia.

17. Annual Fees

1. In order to maintain the patent or the patent application, an annual fee shall be paid in advance to the Commission for each year, starting one year after the filing date of the application for grant of the patent. A period of grace of six months shall be allowed for the late payment of the annual fee on payment of the prescribed surcharge.
2. If an annual fee is not paid in accordance with the provisions of sub-article (1) of this article, the patent application shall be deemed to have been withdrawn or the patent shall lapse.

Section 5

Patent of Introduction

18. Issuance of a Patent of Introduction

A patent of introduction may be issued to an invention which has been patented abroad and not expired but has not been patented in Ethiopia following a declaration by the interested party for which he takes full responsibility.

19. Requirements and Conditions for a Patent of Introduction

1. The requirements and conditions for a patent of introduction shall be the same as those prescribed for a patent of invention and shall be subject to the same formalities.
2. Notwithstanding the provisions of sub-article (1) here in above, an applicant for a patent of introduction shall indicate on the application the number, date and origin of the foreign patent or the requisite source of information if he does not know the details.

20. Invalidation of a Patent of Introduction

1. A patent of introduction shall be considered null and void where the owner of the foreign patent files a corresponding application before the expiration of the period of one year as provided for in article 11 (2) of this proclamation or the owner of the patent of introduction fails to prove working of the invention or pay the annual fee as required under article 21 of this proclamation.
2. Invalidation of patent of introduction shall be declared by court upon request by an interested party in accordance with the provisions of Article 36 of this proclamation.

21. Duration of a Patent of Introduction

A patent of introduction may be valid for a period that may extend upto ten years and shall be coupled with the owner's obligation to prove the working of the invention each year as from the third year after it has been granted and to pay the relevant annual fees.

Section 6

Rights and Obligations

22. Rights of a Patentee

1. A patentee shall have the exclusive right to make, use or otherwise exploit the patented invention. A third party cannot exploit the patented invention without securing the patentee's consent.
2. The patentee shall not have import monopoly right over the products of the patented invention in Ethiopia.

23. Acquisition of Rights

Rights granted to a patentee shall be acquired and be binding on third parties upon the grant of a patent.

24. *Patentee's Course of Action Against Infringement*

The patentee shall, in addition to any other rights, remedies or actions available to him, have the right subject to Articles 25, 26, 29 to 33 to institute court proceedings against any person who infringes the patent by performing, without his agreement, any of the acts referred to in Article 22 (1) or who performs acts which make it likely that infringement will occur.

25. *Limitation of Rights*

1. The rights of the patentee shall not extend to:

- a) acts done for non-commercial purposes;
- b) the use of the patented invention solely for the purposes of scientific research & experimentation;
- c) acts in respect of patented Articles which have ~~been put on the market in Ethiopia~~, by the owner of the patent or with his consent, or
- d) the use of patented Articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter into the air space, territory, or waters of Ethiopia.

2. Where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires, the Commission may decide that, even without the agreement of the patentee, a government agency or a third person designated by the Commission to exploit the invention subject to the payment of an equitable remuneration to the patentee. The decision of the Commission with regard to the remuneration may be subject to appeal before the court.

26. *Prior Users*

1. Any person who in good faith, has been using the invention covered by an application for protection on or prior to the filing date or, where priority is claimed, the priority date of the application, has a personal right to continue to use that invention despite the existence of the patent.
2. The right of prior users referred to in sub-article (1) herein above may be transferred only together with the enterprise or business, or with that part of the enterprise or business, in which the use or preparations for use have been made.

27. *Duties of the Patentee*

1. The patentee shall have the duties to work the patented invention or to authorize other persons to do the same in Ethiopia.

2. The patentee shall work the invention in a scale which is adequate and reasonable in the circumstances.

28. *Reference*

The provisions of the section here in above shall apply, mutatis mutandis, to patents of introduction.

Section 7

Compulsory License

29. *Application for a Compulsory License*

1. The patentee whose invention cannot be worked effectively without the invention patented earlier may apply for a compulsory license to use the earlier invention.
2. The earlier patentee whose invention cannot be worked effectively without the later invention may apply for a compulsory license to use the later invention.
3. Any person who is capable of working a patented invention may apply for a compulsory license, where the patentee fails, without legitimate reason to justify his inaction, to work his invention in Ethiopia, after the expiration of a period of three years from the date of grant of the patent or four years from the date of filing of the patent application which ever expires last.

30. *Grant of Compulsory License*

1. Where the Commission finds the request to be satisfactory, it shall grant a compulsory license.
2. The grant of a compulsory license shall not exclude the exploitation of the invention, the conclusion of license contracts by the owner of the patent or the grant of other compulsory licenses.
3. The decision made by the Commission to grant a compulsory license shall be registered and announced in the official gazette.

31. *Proof Required of the Applicant*

The person requesting for a compulsory license to exploit an invention shall furnish proof that he has not been able to conclude a license contract with the patentee for the exploitation of the invention on reasonable terms.

32. *Limitation of Rights of Licensee*

1. Any person who is granted compulsory license for the exploitation of a patented invention shall not have an exclusive right of over the invention and shall not have a right to authorize exploitation by any other person.
2. The licensee shall have the right to exploit the patented invention in Ethiopia according to the terms set out in the decision granting the license, and shall commence the working of the patented invention within the time limit fixed in the said decision.

33. *Exploitation Fee*

1. Any person who is granted a compulsory license shall pay the patentee a reasonable exploitation fee, the amount of which shall be fixed by both parties.
2. Where the parties disagree on the amount of fee, it shall be fixed by the Commission.

Section 8

Termination, Surrender and Invalidation of a Patent

34. *Termination of a Patent*

A patent shall terminate if:

1. the patentee surrenders it by a written declaration to the Commission, or
2. the annual fee is not paid in due time.

35. *Surrender of a Patent*

Surrender of a patent:

1. may be limited to one or more claims of the patent,
2. shall be immediately registered and published by the Commission, and
3. which has been subjected to a license shall only take effect upon the submission of a declaration by which the registered licensee consents to the surrender.

36. *Invalidation of a Patent*

1. A patent shall be invalidated in whole or in part by the court upon request by an interested party if it is proved that:
 - a) the subject matter of the patent is not patentable according to Articles 3 and 4 of this proclamation;
 - b) the description does not disclose the invention in a manner sufficiently clear & complete for it to be carried out by a person skilled in the art.
2. Any invalidated patent in whole or in part shall be deemed void from the date of grant of the patent.

37. *References*

The provisions of Articles 34 — 36 shall apply mutatis mutandis to the termination, surrender and invalidation of patents of introduction.

CHAPTER THREE

UTILITY MODELS CERTIFICATES

38. *Protection of Minor Inventions*

1. A minor invention that possesses novelty & industrial applicability shall give rise to a right to protection in favour of the author thereof.

2. the right shall be evidenced by a utility model certificate issued by the Commission.
3. The grant of the certificate shall confer the exclusive right to exploit the minor invention and prevent third parties from exploiting the minor invention without the authorization of the holder of the certificate.

39. *Non-existence of Novelty*

1. A minor invention shall not be considered new if, at the time of filing the application, it has already been described in printed publications, made available to the public or has already been publicly used in Ethiopia.
2. Any description or use, within six months prior to the filing of the application, shall not destroy novelty if it is based on the work of the applicant.

40. *Things not Protected by Utility Model Certificate*

The following shall not be protected by utility model certificate:

1. Changes in the shape, proportions or material of a patented object or of one that is public property, except where such a change alters the qualities or functions of the object thereby producing an improvement in its use or the effects of its intended functions;
2. The mere replacement of elements in a known combination by other known elements having an equivalent function, which does not thereby produce an improvement in its use or the effect of its intended functions;
or
3. Minor inventions that are contrary to public order or morality.

41. *Examination*

The Commission shall undertake a formal examination of the application and decide to allow or refuse the grant of utility model certificate.

42. *Issuance of Utility Model Certificate*

Where the Commission decides to grant utility model certificate it shall issue a utility model certificate to the applicant.

43. *Conversion of Patent Applications to Applications for Utility Model Certificates and Vice-Versa*

1. At any time before the grant or refusal of a patent an applicant for a patent may, upon payment of the prescribed fee, convert his application into an application for a utility model certificate, which shall be accorded the filing date of the initial application.
2. At any time before the grant or refusal of a utility model certificate, an applicant for a utility model certificate may, upon payment of the prescribed fee convert his application into a patent application, which shall be accorded the filing date of the initial application.

3. An application may not be converted more than once under the provisions of sub-article (1) and (2) of this article.

44. *Duration of a Utility Model Certificate*

1. A utility model certificate is granted for a period of five years, which may be renewed for a further five years period provided that proof is furnished that the minor invention is being worked in Ethiopia.
2. Application for renewal of the certificate shall be filed, with the Commission within 90 days prior to the expiration of the period of protection upon payment of the prescribed fees.

45. *Reference*

The relevant provisions in chapter two of this proclamation shall apply mutatis mutandis to utility models certificates.

CHAPTER FOUR
INDUSTRIAL DESIGNS

46. *Protection of Industrial Designs*

1. An industrial design shall be protected under this proclamation if it is new and possesses practical applicability.
2. In accordance with the provisions of sub-article (1) of this article an industrial design shall be:
 - a) considered new when the sum total of its essential features is different from that of another design known either in Ethiopia or abroad and has not been disclosed for more than one year before the date of filing of the application for registration or, where appropriate, before the priority date. Designs shall be deemed to be identical if their specific features differ only in immaterial details.
 - b) deemed to possess practical applicability if it is capable of serving as a model for repeated manufacture of products.
3. An industrial design that is contrary to public order or morality shall not be registered.
4. The protection under this chapter shall not extend to any thing in an industrial design which serves solely to obtain a technical result.

47. *Application*

1. An application for registration of an industrial design shall be filed with the Commission.
2. The application shall contain a request, a specimen of the article embodying the industrial design or a pictorial presentation thereof and an indication of the kind of products for which the industrial design is to be used.

3. The application shall relate to one design incorporated in one product or two or more designs incorporated in products belonging to the same class and sold or used in sets.
4. The application shall be accompanied by payment of the prescribed fees.

48. *Examination and Registration*

1. The Commission shall examine whether the application complies with the requirements of Articles 2 (2) and 47 of this proclamation and the regulations issued thereunder.
2. When the Commission is satisfied that the requirements of the above sub-article (1) are fulfilled, a certificate of registration of an industrial design shall be issued and shall certify:
 - a) the recognition of the design as an industrial design,
 - b) the priority of the industrial design,
 - c) the authorship of the industrial design and the exclusive right of the owner of the certificate thereof.

49. *Rights Conferred by Registration*

The owner of a certificate of registration of an industrial design shall have the exclusive right to make, use or otherwise exploit the industrial design.

50. *Duration of Industrial Design Protection*

1. The protection granted to an industrial design shall be valid for a period of five years from the filing date of the application for registration. Such period may be extended for two extensions of five years each if proof is furnished that the industrial design is being used in Ethiopia.
2. Application for renewal of protection shall be filed with the Commission within 90 days prior to the expiration of the period of protection upon payment of the prescribed fees.

51. *Reference*

The relevant provisions in Chapter Two of this proclamation shall apply, mutatis mutandis, to industrial designs.

CHAPTER FIVE
MISCELLANEOUS

52. *Extension of Time*

If the Commission is satisfied that the circumstances justify it, it may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this proclamation and the regulations issued thereunder, upon notice to the parties concerned and upon such terms as it may direct. The extension may be granted though the time for doing the act or taking the proceeding has expired.

53. *Issuance of Regulations*

1. Regulations and directives may be issued for the implementation of this proclamation.
2. The regulations shall, in particular, provide for the payment of fees in connection with applications for the grant of patents and utility model certificates and for the registration of industrial designs and matters related thereto.

54. *Appeal Against the Decision of the Commission*

1. Without prejudice to the relevant provisions of this proclamation a party aggrieved by any decision of the Commission made pursuant to this proclamation and the regulations issued thereunder may appeal to the court.
2. An appeal against the decision of the Commission in accordance with the provisions of sub-article (1) of this article shall be submitted within 60 days from the date of receipt of the decision by the aggrieved party.

55. *Effective Date*

This proclamation shall come into force on the date of its proclamation in the Negarit Gazeta.

Done at Addis Ababa, this 10th day of May 1995.

MELES ZENAWI
PRESIDENT OF
THE TRANSITIONAL GOVERNMENT
OF ETHIOPIA