

# **LAW ON INDUSTRIAL PROPERTY RIGHTS**

## **Royal Decree 67/2008: Promulgating the Law on Industrial Property Rights**

We, Qaboos bin Sa'id, Sultan of Oman,

After perusal of the Basic Law of the State promulgated by Royal Decree 101/96;  
the law on Trade Marks, data, and Secrets, and Protection against illegal competition promulgated by Royal Decree 38/2000;  
the law on Industrial fees and specimens, promulgated by Royal Decree 39/2000;  
the law on the protection of geographical data (indices) promulgated by Royal Decree 40/2000;  
the law on the protection of topographic designs of integrated circuits promulgated by Royal Decree 41/2000;  
the Patents law, promulgated by Royal Decree 82/2000,

And according to the exigencies of public interest,

*we decree the following:*

**Article I:** The attached law shall apply on the Industrial Property Rights.

**Article II:** The Minister of Commerce and Industry shall issue the bylaws and regulations necessary for the enforcement of the provisions of the attached law. Pending the issuance of the bylaws and regulations, prevailing acts shall remain in force provided they do not contradict with its provisions

**Article III:** Referred royal decrees 38/2000, 39/2000, 40/2000, 41/2000, and 82/2000 shall be rendered null and void, together with anything that contradicts or contravenes with the attached law.

**Article IV:** The Royal Decree shall be published in the Official Gazette and shall come into effect from the day following the date of its publication.

**Qaboos bin Sa'id  
Sultan of Oman**

**Issued on May 12, 2008**

# LAW ON INDUSTRIAL PROPERTY RIGHTS

## Definitions

**Article (1):** For the purposes of the application of the provisions of this Law, the following words and expressions shall have the meanings given below, unless otherwise required by the context:

**The Minister:** The Minister of Commerce and Industry

**The Registrar:** The Director of the Directorate of Intellectual Property at the Ministry of Commerce and Industry

**The Invention:** The innovator's idea that provides for a practical solution of a technological problem, whether the innovation is a product or relates to a product, or an industrial processing.

**The Patent:** The title granted to protect an invention. It establishes a rebuttable presumption of the validity and enforceability of the right to prevent others from exploiting the claimed invention in Oman.

**Utility Model:** A technical creation that consists of a new shape or configuration of an object or of a component of an object that increases its functionality or utility.

**Industrial Design:** Any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors, 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, and appeals to and is judged by the eye.

**Layout-Design "Topography":** The three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture.

**Integrated Circuit:** A product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.

**Exclusive License:** A license contract that confers on the licensee and to whom he authorizes the right to exploit the licensed industrial property right to the exclusion of all other persons.

**Compulsory License:** An authorization given by the Minister to a natural or legal person, a private or public entity, to exploit a patent, a utility model, a layout-design or an industrial design in the Sultanate without the approval of the right holder.

**Distinctive Sign:** A variety of designations and signs used by an enterprise to convey, in the course of industrial or commercial activities, a certain identity with respect to the enterprise and the products produced or the services rendered by that enterprise.

**Mark:** Any sign susceptible of being specifically represented graphically that is capable of distinguishing goods ("trademark") or services ("service mark") of one undertaking from those of other undertakings. A mark may, in particular, consist of words (including personal names), designs, letters, colors or combinations of colors, numerals or the shape of goods or their packaging, holograms, geographical indications, sounds, scents and tastes. Slogans, where they are not long enough to be protected by copyright, shall be protected as marks.

**Certification Marks:** Any sign or combination of signs capable of designating any specific characteristic, including quality, origin or methods of production of goods and services and which are used by other persons under the control of the owner of the mark.

**Collective Mark:** Any marks that belong to a collectivity, such as a cooperative or an association or federation of industrialists, producers and merchants.

**Trade Name:** The name or designation identifying and distinguishing an enterprise.

**Geographical Indication:** An indication that identifies a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

**Certificate:** The title granted to protect a utility model, an industrial design, a layout-design (topography) of integrated circuit, a mark or a geographical indication.

**Priority Date:** The date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention.

**Budapest Treaty:** The treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done in 1977.

**Patent Cooperation Treaty:** The treaty, done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984, and October 3, 2001.

**Patent Law Treaty:** The treaty adopted at Geneva, on June 2, 2000.

**Washington Treaty:** The treaty on Intellectual Property in Respect of Integrated Circuits approved in Washington, D.C., on May 26, 1989.

**Paris Convention:** The Paris Convention for the Protection of Industrial Property signed on March 20, 1883, and its amendments.

**The Hague Agreement:** The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, as adopted on July 2, 1999.

**Madrid Protocol:** The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, as signed at Madrid on June 28, 1989.

**International Classification:** The classification of patents, inventors' certificates, utility models and utility certificates, industrial sketches and designs and marks, as established by international agreements on this regard.

**Nice Classification:** The Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957.

**Decision of the General Council of the WTO:** The decision issued on August 30, 2003, on the Implementation of Paragraph (6) of the Doha Declaration on the TRIPS Agreement and Public Health.

## **PART I: TECHNICAL INVENTIONS**

### **CHAPTER ONE: PATENTS**

**Article (2):** 1 - The following shall be excluded from patent protection:

- A) Discoveries, scientific theories and mathematical methods;
- B) Schemes, rules or methods for doing business, performing purely mental acts or playing games;
- C) Natural substances; this provision shall not apply to the processes of isolating those natural substances from their original environment;
- D) Known substances for which a new use has been discovered; this provision shall not apply to the use itself, where it constitutes an invention
- E) Animals other than micro-organisms, and essentially biological processes for the production of animals and their parts, other than non-biological and microbiological processes;
- F) Inventions, the prevention within the territory of Oman of the commercial exploitation of which is necessary to protect *ordre public* and morality

2 - The provisions of the previous paragraph shall not apply to the following inventions:

- A) Industrial processes which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program.
- B) Product inventions consisting of elements of a computer-implemented invention, including in particular:
  - 1 - Machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; and
  - 2 - A general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.

**Article (3):**

1 - An invention is patentable if it is new, involves an inventive step and is industrially applicable.

An invention is new if it is not anticipated by prior art. Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate, the priority date, of the application claiming the invention.

Disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve months preceding the filing date or, 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 of an abuse committed by a third party with regard to the applicant or his predecessor in title.

2 - An invention shall be considered as involving an inventive step if it would not have been obvious to a person skilled in the art at the filing date or at priority date of the claimed invention.

3 - An invention shall be considered industrially applicable if it can be made or used in any kind of industry or if it has specific, substantial and credible utility in all economic, agricultural, handicrafts, fisheries and services fields.

#### **Article (4):**

1 - The right to a patent shall belong to the inventor. It may be assigned, or may be transferred by succession.

2 - If two or more persons have jointly made an invention, the right to the patent shall belong to them jointly. If two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date shall have the right to the patent, as long as the said application is not withdrawn, abandoned or rejected to establish priority right for others.

3 - Where an invention is made in execution of an employment contract the purpose of which is to invent, the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer. When the economic gains extracted by the employer are disproportionately high as compared to the employee's salary at the time he hired him, the employee shall be entitled to an equitable remuneration.

4 - Where an invention is made by an employee but not in execution of an employment contract, and when for making that invention the employee used materials, data and/or know-how of the employer, the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer. The employee shall be entitled to a remuneration that is at least equivalent to one third of the net direct and indirect gains obtained by the employer from exploiting the invention.

5 - The obligation to pay the remuneration arises from the making and the exploitation of a patentable invention. The failure or the negligence of the employer in successfully procuring a patent in Oman, or abroad, does not exempt him from paying the remuneration.

6 - The employer may, within 60 (sixty) days from receipt of the communication on the making of the invention give notice to the employee that he is not interested in the invention. In this event, the employee may procure patent rights exclusively. Where the employee carries out the commercial exploitation of the invention, the employer shall be entitled to a remuneration that is proportionate to the economic value of the materials, data and/or know-how used by the employee in making the invention.

7 - When the employer neglects to file for a patent application within one year from the date on which the employee communicated him the invention, the employee shall have the right to the patent, including the right to assign that right to any interested party and to license or transfer the patent, if granted.

The exploitation, industrial or commercial, of the patented invention by the employee shall not constitute an act of unfair competition provided that exploitation does not entail the unauthorized use or communication of trade secrets that belong to the employer.

8 - Any invention claimed in a patent application filed by the employee within one year after the expiry of the employment contract and that falls within the scope of the former employer's main business, shall be presumed to have been made under the expired contract, unless the employee produces evidence to the contrary.

9 - Any anticipated promise or undertaking by the inventor made to his employer to the effect that he will waive any remuneration he is entitled to under this Section shall be without legal effect.

10 - The inventor shall name the invention after him in the patent, unless in a special written declaration signed by him and addressed to the Registrar he indicates that he wishes not to be named. Any promise or undertaking by the inventor made to any person to the effect that he will make such a declaration shall be without legal effect.

11 - Rights cited in this article shall be enjoyed by employees in the State's Administrative Apparatus as well as by persons who offer services on special contracts.

**Article (5):** Anyone submitting an application claiming patent right should abide by the following:

1 - The application for a patent shall be filed with the Registrar and shall contain a request, a description, one or more claims, one or more drawings (where required), and an abstract. It shall be subject to the payment of the prescribed application fee.

2 - 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 request shall be accompanied by a statement justifying the applicant's right to the patent.

3 - The description shall disclose the invention in a manner sufficiently clear and complete by providing the information that enables a person having ordinary skill in the art to execute, and use the invention without unnecessary experimentations.

4 - To submit a written undertaking declaring that the micro-organisms to which the application relates have been deposited with an international depositary authority, in accordance with the Budapest Treaty and its Regulations, provided that the applicant provides a copy of the receipt of the deposit issued by the international depositary authority.

5 - The description of plant varieties shall be deemed sufficient when they are as complete as is reasonably possible.

6 - Defining the claim or claims for which protection is sought, in a clear and precise manner even through the use of description and the drawings in order to make the invention reasonably understood by a person of skill in the art that the applicant was in possession of the claimed invention as of the filing date.

7 - The abstract, which must be concise and precise, shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the scope of the protection. Unless it is necessary otherwise, the abstract shall have no more than three hundred words.

8 - The applicant may withdraw the application at any before its being processed.

9 - A subsequent application can be filed in Oman in respect of the same invention, if the first withdrawn application has never been examined and no priority claims have ever been claimed, nor there were undecided on rights in the Sultanate. Such subsequent application shall be regarded as the first application in Oman in respect of that invention. No priority rights shall be claimed on the withdrawn application after the lodging of the subsequent application.

**Article (6):**

1 - The application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

2 - The applicant may amend the application, provided that the amendment shall not go beyond the matter claimed in the initial application.

3 - The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications, provided that each divisional application shall not go beyond the matter disclosed in the initial application. Each divisional application shall be entitled to the filing date and the priority date of the initial application.

4 - A patent that has been granted may not be invalidated if it has been revealed later that the applicant did not comply with the requirement of unity of invention.

#### **Article (7):**

1 - The application may contain a declaration claiming the priority, as provided for in the Paris Convention, of one or more earlier national or regional applications filed by the applicant or his predecessor in title in or for any State party to the said Convention and any Member of the World Trade Organization. The period of priority is of twelve (12) months and shall be counted in accordance with the provisions of Article 4 of the Paris Convention. The priority right shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention and such acts cannot give rise to any third-party right or any right of personal possession.

2 - The Registrar may request that the applicant furnish a copy of the earlier application certified as correct by the Industrial Property Office with which it was filed. The Registrar shall accept the copy as determined by the certifying authority.

3 - If the requirements under the two previous paragraphs have not been fulfilled, the said priority right declaration shall be considered not to have been made.

#### **Article (8):**

If the Applicant filed, by himself or by his predecessor, a patent application out side the Sultanate, for the same or essentially the same invention as that claimed in the application filed in Oman, the Registrar may request the applicant to furnish him with the following documents:

1 - Date and number of any application filed abroad;

2 – A copy of any communication concerning the date of any search or examination carried out in respect of the foreign application;

3 - A copy of the patent granted on the basis of the foreign application;

4 - A copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application; and

5 – A copy of any final decision invalidating the patent granted on the basis of the foreign application.

#### **Article (9):**

A) The Registrar shall accord as the filing date the date of receipt of the application, provided that the application contains all of the following elements:

1 - An express or implicit indication, written in the Arabic language, to the effect that the elements are intended to be an application;

2 - Indications, written in Arabic language, allowing the identity of the applicant to be established and information allowing the applicant to be contacted by the Office;

3 - A part which, on the face of it, appears to be a description, written in any language, of an invention;

4 - A reference, written in Arabic language, to the previously filed application if appropriate.

B) If the Registrar finds that the application did not fulfill the requirements he shall notify 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.

C) 1 - Where, in establishing the filing date, the Registrar notices that the application refers to drawings which are not included in the application, the Registrar shall promptly invite the applicant to furnish the missing drawings. The Registrar shall accord as the filing date the date of receipt of the missing drawings. Otherwise, the Registrar 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.

2 - Where, in establishing the filing date, the Registrar notices that a part of the description appears to be missing; the Registrar shall promptly invite the applicant to furnish the missing part of the description. The Registrar shall accord as the filing date the date of receipt of the missing part. Otherwise, the Registrar shall accord as the filing date the date of receipt of the application and shall treat any reference to the said part as non-existent.

3 - After according a filing date, and having the invention classified according to the International Classification, the Registrar shall examine whether the application complies with the requirements prescribed in this law and its executive regulations.

4 - A - Immediately after eighteen months from the filing date, the Registrar shall open the patent application for public inspection. Public notice of that act shall be given by means of the publication in the Official Gazette of the following elements:

- 1) the number and the filing date of the application;
- 2) the title of the invention;
- 3) the name of the applicant(s) and of the inventor(s);
- 4) the priority date;
- 5) the international classification;
- 6) one drawing, if any, that depicts the main element(s) of the invention;
- 7) the abstract.

B - Any interested person shall receive a copy of the full contents of patent applications opened for public inspection, provided the prescribed fees are paid.

C - The Registrar shall not give access to or information about the contents of the patent application to third persons until the notice is published in the official gazette.

D - Upon payment of the prescribed fee, at any time between the filing date and the end of the eighteen-month period, the applicant may request the Registrar to open the application for public inspection and to publish the notice in the official gazette.

5 - A - Within (36) thirty six months from the filing date, the patent applicant or any other interested person may request the Registrar that the patent application be examined as to its



compliance with the conditions under this law, provided that the request be accompanied by payment of the prescribed fee which shall take into account the number of claims. The Registrar shall publish in the Official Gazette the request for examination.

B - If the request that the previous paragraph refers to is not submitted within the prescribed term the application shall be deemed abandoned.

C - Within one hundred twenty (120) days from the publication in the Official Gazette of the notice of the request for substantive examination any interested party may file with the Registrar information relevant to patentability as well as relevant evidences.

6 - For the purposes of the examination of the patent application under the previous paragraph, the Registrar shall take into account

- A) the results of any international search report and any international preliminary examination report established under the Patent Cooperation Treaty in relation to the application; and/or
- B) any search and examination report or a final decision submitted under Article 8(2) and 8(4) on the refusal to grant a patent on, a corresponding foreign application; and/or
- C) any search and examination report which was carried out upon his request by an external search and examination authority or by a specialized agency of the Government of Oman.

#### **Article (10):**

1 - Where the Registrar is of the opinion that the application complies with the conditions of this law and its executive regulations pertaining thereto he shall grant a patent. Otherwise, he shall refuse the application and notify the applicant of that decision.

2 - When he grants a patent, the Registrar shall:

- a) publish a reference to the grant of the patent;
- b) issue to the applicant a certificate of the grant of the patent and a copy of the patent;
- c) record the patent;
- d) make available copies of the patent to the public, on payment of the prescribed fee.

3 - The Registrar 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. In no event can the change result in the matter claimed in the patent going beyond the matter claimed in the initial application on the basis of which the patent was granted, otherwise it shall be without effect.

#### **Article (11):**

1 - A patent shall confer on its owner the right to prevent third parties from exploiting the patented invention in Oman.

2 - Exploiting a patented invention means any of the following acts:

- A - when the patent has been granted in respect of a product:

- 1 - making, importing, offering for sale, selling and using the product;
  - 2 - stocking such product for the purposes of offering for sale, selling or using;
- B - when the patent has been granted in respect of a process:
- 1 - using the process;
  - 2 - doing any of the acts referred to in paragraph (a) in respect of a product obtained directly by means of the process;
- C - when the patent has been granted in respect of a plant or plant variety:
- 1 - producing or reproducing (multiplying);
  - 2 - conditioning for the purpose of propagation;
  - 3 - offering for sale;
  - 4 - selling or other marketing;
  - 5 - exporting;
  - 6 - importing;
  - 7 - stocking for any of the purposes mentioned in (i) to (vi), above;
- D - The provisions of the previous paragraph shall also apply in relation to:
- 1 - varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
  - 2 - varieties which are not clearly distinguishable from the protected variety and
  - 3 - varieties whose production requires the repeated use of the protected variety.
  - 4 - a variety shall be deemed to be essentially derived from another variety ("the initial variety") when:
    - A - it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
    - B - it is clearly distinguishable from the initial variety; and
    - C - except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- 3 - The owner of the patent shall, in addition to any other rights, remedies or actions available to him, have the right to institute court proceedings against any person who infringes the patent by performing, without his agreement, any of the acts referred to in paragraph (2) of this article or who performs acts which make it likely that infringement will occur.
- 4 - The rights under the patent shall not extend:

- A) to acts in respect of articles which have been put on the market in Oman by the owner of the patent or with his consent, consequently exhausting the patent owner's rights; or
- B) to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Oman; or
- C) to acts done only for experimental purposes relating to a patented invention; or
- D) to acts performed by any person who in good faith, before the filing or, where priority is claimed, was using the invention or was making effective and serious preparations for such use in Oman (the "prior user"); Other than that this exception does not apply
- E) to the acts of making, constructing, using, or selling the patented invention solely for uses reasonably related to the development and submission of information required under any law of Oman or a country other than Oman that regulates the manufacture, construction, use or sale of any product, provided that any product produced under such authority shall not be made, used, or sold in Oman other than for referred purposes, and that the product shall only be exported outside Oman for purposes of meeting marketing approval requirements of Oman.

With respect of patents granted for plants and plant varieties, the rights under those patents shall not extend to:

- a) acts done privately and for non-commercial purposes;
  - b) acts done for experimental purposes; and
  - c) acts done for the purpose of breeding other varieties, including essentially derived varieties;
- F) subject to the safeguarding of the legitimate interests of the patent owner, any acts practiced by farmers to use for propagating purposes, the product of the harvest which they have obtained by planting the patented variety or an essentially derived variety.

5 - Without prejudice to the provisions of subsection 4(a) of this article, the Minister shall have the authority, ex officio or at the request of any interested party, of declaring the patent rights exhausted, and thus of authorizing others to import the patented product or a product manufactured directly or indirectly by means of the patented invention from another territory when that product is not available in Oman or is available in Oman with unreasonably low quality standards or in a quantity that is not sufficient to meet the local demand or at prices that the Minister deems abusive or for any other reason of public interest, including anticompetitive practices, provided that:

- a) the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the patent or with his consent; and
- b) a patent claiming the product or the process for its manufacture is in force in the territory from which the product will be imported and is owned by the same person who owns the patent in Oman or by a person under his control.

6 - The Minister shall, ex officio, or at the request of the patent owner, shall cancel the authorization referred in the previous paragraph, in either of the two cases:

- A - If the importer fails to fulfill the purpose that justified the Minister's decision to consider the patent rights exhausted;
- B - If the conditions that gave rise to the Minister's decision to consider the patent exhausted cease to exist, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

7 - The right of the prior user referred to in subsection (4)(d) of this article may be transferred or devolve 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.

#### **Article (12):**

1 - (A) Subject to Subsection (2), a patent shall expire 20 years after the filing date of the application for the patent.

(B) - In the event a patent is granted more than four years after the filing date, or two years from the request for examination, whichever is later, and for reasons outside the applicant's control, the term of protection of that patent shall be extended so as to compensate for any period of time in excess of four years from the filing date, but shall not exceed five years from the normal expiry date. Extensions shall be granted upon request by the patent owner and the payment of the prescribed fee.

(C) - An adjustment of the patent term shall be available, upon the patent owner's request and the payment of the prescribed fee, if the marketing approval process related to the first commercial use of the product in Oman takes longer than 24 (twenty four months) from the date of application of marketing approval, provided that the delay is not attributable to actions of the patent applicant or patent owner.

2 - In order to maintain the patent or patent application, the patent owner shall pay a progressively increasing annual fee in advance 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, otherwise, the patent application shall be deemed to have been withdrawn.

The Registrar may restore the lapsed patent at any time before the end of a period of one year after the period in which the payment should have been made, if he is satisfied that the non-payment of fees was justifiable and that rights of third parties that may have arisen in the meantime are not unreasonably harmed.

#### **Article (13):**

1 - A) Compulsory licenses are granted where:

- 1) If the public interest implied that;
- 2) If a judicial or administrative body has determined that the manner of exploitation, by the owner of the patent or his licensee, is anti-competitive, and the Minister is satisfied that the exploitation of the invention would remedy such practice. Before issuing granting decision, he may listen to the patent owner or anyone of interest;
- 3) If the owner of the patent is abusively exercising his exclusive rights and/or neglecting in taking measures to prevent his licensee(s) from abusively exercising the licensed exclusive rights;
- 4) If the invention is not available in sufficient quantities or quality or at predetermined reasonable prices in Oman, either through manufacture in Oman or through importation;

5) If there were another patent application (the "second patent") claiming an invention that involves an important technical advance of considerable economic significance in relation to an invention claimed in the first patent without infringing which the second patent cannot be exploited.

B) The Minister may decide that, even without the agreement of the owner of the patent, a Government agency or a third person designated by the Minister may exploit the invention. The exploitation of the invention shall be limited to the purpose for which it was licensed, provided that an adequate remuneration be paid to the patent owner in the circumstances of each case, taking into account the economic value of the Minister's decision, and the provisions of the WTO General Council, when applicable with regard to the determined remuneration on granting a compulsory license of a patent claiming a pharmaceutical product or a process of making such a pharmaceutical product.

2 - A compulsory license 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 established in subsection (1)(a)(4), of this article before the expiration of a 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 periods expires last; it shall be refused if the patentee justifies his inaction or insufficient action by legitimate reasons.

3 - Upon request of the owner of the patent, or of the Government agency or of the third person authorized to exploit the patented invention, the Minister may, after hearing both parties, if either or both wish to be heard, vary the terms of the decision authorizing the exploitation of the patented invention to the extent that changed circumstances justify such variation.

4 - A) Upon the request of the owner of the patent, the Minister shall terminate the compulsory license if he is satisfied, after hearing both parties, if either or both wish to be heard, that the circumstances which led to his decision have ceased to exist and are unlikely to recur or that the compulsory licensed person has failed to comply with the terms of the decision.

B) - The Minister may decide not to terminate the compulsory license if he is satisfied that the need for adequate protection of the legitimate interests of the compulsory-licensed justifies the maintenance of the decision or, if the compulsory license was granted to remedy an anti-competitive practice under subsection (1)(a)(2) of this article, if and when the conditions which led to such compulsory license are likely to recur.

5 - The compulsory license may only be transferred with the enterprise or business of that person or with the part of the enterprise or business within which the patented invention is being exploited.

6 - The compulsory license shall always be non-exclusive. Therefore, it shall not exclude:

- a) the exploitation of the invention by the patent owner himself, either through manufacture in Oman or through importation or both; and
- b) the conclusion of license contracts by the owner of the patent; and
- c) the continued exercise, by the owner of the patent, of his rights under the provisions of this law.

7 - A) A request for the compulsory license shall be addressed to the Minister. It shall be accompanied by evidence that the owner of the patent has received, from the person seeking the compulsory license, a request for a contractual license, but that that person has been unable to obtain such a license on reasonable commercial terms and conditions and within a reasonable time not

exceeding six months from the date of filing the voluntary license application to the patent owner, unless the particular circumstances of the case show otherwise.

B) Evidence concerning a previous attempt of obtaining a voluntary license, under previous paragraph, 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 license is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, provided, however, that in such cases the owner of the patent shall be notified of the Minister's decision as soon as reasonably practicable.

8 - The exploitation of the invention for which a compulsory license has been issued shall be predominantly for the export of a pharmaceutical product or a process to make such a protected pharmaceutical product for supply of the market in Oman or for a foreign territory or country with no or with insufficient manufacturing capacity of this pharmaceutical product or the process to make it, in accordance with the terms and conditions of the Decision of the General Council of the WTO.

9 - Compulsory licenses of inventions in the field of semi-conductor technology shall only be granted for public non-commercial use or where a judicial or administrative body has determined that the manner of exploitation of the patented inventions, by the owner of the patents or his licensees, is anti-competitive and if the Minister is satisfied that the issuance of the non-voluntary license would remedy such practice.

10 - Where a compulsory license is granted under subsection (1)(A)(5):

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

11 - The provisions of this article shall apply, where appropriate and *mutatis mutandis*, to pending patent applications, except in the case of insufficient availability of the patented product or of the product manufactured with the patented process.

#### **Article (14):**

1 - Any interested person may request the competent Court to invalidate a patent.

2 - The Court shall have the authority to invalidate the patent if the person requesting the invalidation proves that any of the requirements of this law are not fulfilled or if the owner of the patent is not the inventor or his successor in title. The Court shall also have the authority to invalidate the patent if the patent owner is found to have engaged in inequitable conduct during the procurement of the patent letter, such as omission that aims at suppressing information on the application that would be material for the decision of granting or refusing the patent.

3 - The lack of compliance with any formal requirements shall not be ground for the invalidation of the patent unless the non-compliance in question occurred as a result of a fraudulent intention.

4 - When the grounds for invalidation are established with respect only to a part of the invention, only the corresponding claim or claims shall be invalidated.

5 - Any invalidated patent or claim shall be regarded as null and void from the date of the grant of the patent, and shall be deemed as if it had never been granted.

6 - In the event of a dispute over the right to the patent, the interested person may ask the Court to transfer the title to him instead of invalidating it.

7 - The Court shall notify the Registrar of the final decision issued according to the provisions of this article so that the Registrar records the decision and publish a reference thereto according to the Regulations.

## CHAPTER TWO: UTILITY MODEL CERTIFICATES

### Article (15):

Without prejudice to the following provisions, the provisions of Chapter One of Part I shall apply *mutatis mutandis* to utility model certificates.

- 1 - An invention is registrable as a utility model if it is new, involves a sufficiently inventive step and is industrially applicable.
- 2 - A utility model shall be considered as involving a sufficiently inventive step if, having regard to the differences and similarities between the claimed utility model and the prior art, the utility model does not result in a common manner from the prior art relevant to a person having ordinary skill in the art.
- 3 - 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.
- 4 - The examination by the Registrar of the application for a certificate of utility model shall be in accordance with the provisions of this law.

### Article (16):

- 1 - The owner of the certificate shall, according to the provisions of this law, have the right to institute court proceedings, against any person who infringes the certificate without his agreement or performs any of the acts which make it likely that infringement will occur.

Upon receipt of the action, the Court shall order the Registrar to examine the utility model certificate as to compliance with the provisions of this law. The Registrar shall transmit the result of such examination to the Court in no more than 120 (one hundred and twenty) days. That result shall have the value of a rebuttable presumption as regards the validity or invalidity of the certificate.

- 2 - During the period in which the Registrar examines the utility model, the Court may order provisional measures to prevent an infringement from occurring and/or to preserve relevant evidence in regard to the alleged infringement.

### Article (17):

Subject to Article (12/2) of this law, a certificate shall expire 10 years after the filing date of the application for the certificate.

### Article (18):

- 1 - (A) At any time before the examination of a patent application under Article (9/5) of this law or in any case before the grant or refusal of a patent or of an industrial design certificate, an applicant for a patent or for an industrial design certificate 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.

(B) 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 or an industrial designs certificate application, which shall be accorded the filing date of the initial application.

- (C) An application shall not be converted under Subsection (1) more than once.



## **CHAPTER THREE: INDUSTRIAL DESIGNS**

### **Article (19):**

The protection under this Chapter does not extend to anything in an industrial design which serves solely to obtain a technical result or improving a practical function.

### **Article (20):**

- 1 - An industrial design is registrable if it has never been disclosed to the public.
- 2 - An industrial design shall be new if it does not significantly differ from designs that have been disclosed to the public, anywhere in the world, by publication in tangible form or by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration.
- 3 - The provisions of articles (3) and (7) of this law shall apply to registrable industrial designs, except that the period determined in Article (7) shall be of six months. Consequently, the filing of the application in Oman before the expiration of the period referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing or the putting on sale of copies of the design and such acts cannot give rise to any third-party right.
- 4 - Industrial designs that are contrary to public order or morality shall not be registrable.

### **Article (21):**

The provisions of Article (4) of this law shall apply *mutatis mutandis* to the right of registering and naming industrial designs.

### **Article (22):**

- 1 - The application for registration of an industrial design shall be filed with the Registrar and shall contain a request, drawings, photographs or other adequate graphic representations of the article embodying the industrial design and an indication of the kind of products for which the industrial design is to be used. It may be accompanied by a specimen of the article embodying the industrial design, where the industrial design is two-dimensional. The application shall be subject to the payment of the prescribed application fee.
- 2 - Where the applicant is not the creator, the request shall be accompanied by a statement justifying the applicant's right to the registration of the industrial design.
- 3 - Two or more, up to a maximum of one hundred (100), industrial designs may be the subject of the same application, provided they relate to the same class of the International Classification or to the same set or composition of articles.
- 4 - The application, at the time of filing, may contain a request that the publication of the industrial design, upon registration, be deferred for a period not exceeding 12 months from the date of filing or, if priority is claimed, from the date of priority, of the application.
- 5 - The applicant may withdraw the application at any time during its pendency.

### **Article (23):**

1 - The Registrar shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contains indications allowing the identity of the applicant to be established and the required graphic representation of the article embodying the industrial design. The provision of article (9/A) shall apply.

2 - Where the Registrar finds that the conditions referred to in this law and its executive regulations are fulfilled, he shall publish in the Official Gazette a notice that he is ready to register the industrial design, publish a reference to the registration and issue to the applicant a certificate of registration of the industrial design, after the payment of the prescribed fee within ninety (90) days from the publication of the notice, which shall cover the costs of registration, publication and issuance of the certificate of registration, as well as a period of five years of the term of protection. If the fee is not paid timely, the Registrar may concede an extension of ninety (90) days if he is satisfied that the applicant was able to justify the failure to pay the fee timely. Otherwise, the applicant shall be cancelled by the Registrar. There shall be no restoration of cancelled designs.

3 - A) Where a request has been made for deferment of publication, upon registration of the industrial design, neither the representation of the design nor any file relating to the application shall be open to public inspection. In this case, the Registrar shall publish a mention of the deferment of the publication of the industrial design and information identifying the registered owner, and indicating the filing date of the application, the length of the period for which deferment has been requested and any other prescribed particulars.

At the expiry of the period of deferment, the Registrar shall publish the registered industrial design.

B) The institution of legal proceedings on the basis of a registered industrial design during the period of deferment of publication shall be subject to the condition that the information contained in the Register and in the file relating to the application has been communicated to the person against whom the action is brought.

### **Article (24):**

1 - An industrial design certificate shall confer on its owner the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2 - Provisions of Article (11) of this law shall apply *mutatis mutandis* to registered industrial designs.

3 - The registered owner of an industrial design shall have the right to institute court proceedings against any person who infringes the industrial design by performing, without his agreement, any of the acts referred to in subsection (1) or who performs acts which make it likely that infringement will occur.

4 - The registration of an industrial design shall be for a period of five (5) years from the filing date of the application for registration. If the owner so requests, according to the Regulations, and upon the payment of the prescribed fee, the registration shall be renewed for two further consecutive periods of five years. A period of grace of six (6) months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge, otherwise the registered industrial design shall lapse. There shall be no restoration of lapsed registered industrial designs.

**Article (25):**

The provisions of Article (13) of this law shall apply *mutatis mutandis* to compulsory licenses of industrial designs.

**Article (26):**

The provisions of Article (14) of this law shall apply *mutatis mutandis* to the procedures on invalidating compulsory licenses of industrial designs.

## **CHAPTER FOUR: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS**

### **Article (27):**

- 1 - The right owner may file an application to register layout-design of integrated circuits if they are original and have never been commercially exploited for a period exceeding two (2) years in any part of the world.
- 2 - The layout-design of an integrated circuit is considered to be original if it is the result of its creator's own intellectual effort and is not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of its creation.
- 3 - A layout-design consisting of a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole, is original within the meaning cited in the previous paragraph.

### **Article (28):**

- 1 - The right to layout-design protection shall be limited to the creator of the layout-design. It may be assigned or transferred by succession. Where several persons have jointly created a layout-design, the right shall belong to them jointly.
- 2 - Provisions of Article (4) of this law shall apply, *mutatis mutandis*, to the protection prescribed to layout-designs.

### **Article (29):**

- 1 - Protection under this law shall not depend upon whether or not the integrated circuit which incorporates the protected layout-design is itself incorporated in an article. Subject to subsection (2), the protection shall have the effect that the following acts shall be unlawful if performed without the authorization of the right holder:
  - a) reproducing, whether by incorporation in an integrated circuit or otherwise, the protected layout-design in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality referred to in Article (27);
  - b) importing, selling or otherwise distributing for commercial purposes the protected layout-design, an integrated circuit in which the protected layout-design is incorporated or an article incorporating such an integrated circuit in so far as it continues to contain an unlawfully reproduced layout-design.
- 2 - The effect of protection of a layout-design under this law shall not extend to:
  - a) reproduction of the protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching; or
  - c) the incorporation in an integrated circuit of a layout-design if the original layout design is created on the basis of such analysis or evaluation; or
  - d) the performance of any of the acts referred to in subsection (1)(b) of this article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such an act did not know and had no reasonable ground to know, that it incorporated an unlawfully reproduced layout-design.

however, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the said acts only with respect to the stock on hand or ordered before such time and shall be liable to pay to the right holder a sum equivalent to a reasonable and negotiated royalty; or

e) the performance of any of the acts referred to in subsections (1) (2) of this article act is performed in respect of an identical layout-design which is original and has been created independently by a third party.

#### **Article (30):**

1 - Without prejudice to the provisions of the previous article, the Minister shall have the authority, ex officio or at the request of any interested party, of declaring the layout-design certificate rights exhausted, and thus of authorizing others to import the acquiring the registered integrated circuit or the article incorporating such an integrated circuit ("the product") from another territory when that product is not available in the territory of Oman or is available in the territory of Oman with unreasonably low quality standards or in a quantity that is not sufficient to meet the local demand or at prices that the Minister deems abusive or for any other reason of public interest, including anticompetitive practices, provided that:

A) the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the layout-design certificate or with his consent; and

B) the layout-design in question is protected in the territory from which the product will be imported and is owned by the same person who owns the layout-design certificate in Oman.

2 - The Minister may, ex officio or at the request of the right holder, cancel the authorization referred to in the previous paragraph of this article if either of the following two circumstances prevail:

a) If the importer fails to fulfill the purpose that justified the Minister's decision to consider the right holder's rights exhausted;

b) If the conditions that gave rise to the Minister's decision to consider the right holder's rights exhausted cease to exist, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

#### **Article (31):**

Under this law, the protection of the layout-design shall commence:

1 - on the date of the first commercial exploitation, anywhere in the world, of the layout-design by, or with the consent of, the right holder, provided an application for protection is filed by the right holder with the Registrar's Office within the time limit referred to in article (27), or

2 - on the filing date accorded to the application for the registration of the layout-design filed by the right holder, if the layout-design has not been previously exploited commercially anywhere in the world.

Protection of a layout-design under the provisions of this law shall terminate at the end of the tenth calendar year after the date of commencement of protection.

**Article (32):**

1 - Applications for the registration of layout-designs shall be in writing and shall be filed with the Registrar's Office. A separate application shall be filed for each layout-design, provided that the application includes the following:

A) Specimen for the registration of the layout-design in the Register of Layout-Designs and a detailed and precise designation thereof;

B) Indicate the name, address, nationality and, if different from the address, the habitual residence of the applicant;

C) Be accompanied by the power of attorney appointing the representative of the applicant, if any, and by a copy or drawing of the layout-design along with information defining the electronic function which the integrated circuit is intended to perform; however, the application may omit such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout-design;

D) Specify the date of first commercial exploitation of the layout-design anywhere in the world or indicate that such exploitation has not commenced; and

E) Provide particulars establishing the right to protection under Article (29) of this law.

2 - Where the application does not duly comply with the requirements of the previous paragraph, the Registrar shall notify the applicant of the defects and invite him to correct them within Sixty (60) days from the date of notification. If the defects are corrected within the time limit, the Registrar shall accord as the filing date the date of receipt of the application, provided that, at the time of receipt, the application contained an express or implicit indication that the registration of a layout-design is requested and indications allowing the identity of the applicant to be established and was accompanied by a copy or drawing of the layout-design, otherwise the date of receipt of the required correction shall be deemed to be the filing date of the application. The Registrar shall confirm the filing date and communicate it to the applicant. If the defects are not corrected within the time limit, the application shall be deemed not to have been filed.

3 - Each application for protection of a layout-design shall be subject to the payment of the prescribed fee. If the fee is not paid within Sixty (60) days from the date of notifying the applicant, the application shall be deemed not to have been filed.

**Article (33):**

1 - Where the application complies with the requirements under this law, the Registrar shall register the layout-design in the Register of Layout-Designs without examination of the originality of the layout-design, the applicant's entitlement to protection or the correctness of the facts stated in the application.

2 - Any person may consult the Register of Layout-Designs and obtain extracts therefrom, subject to the payment of the prescribed fee.

3 - The registration of a layout-design shall be published in the Official Gazette, subject to the payment of the prescribed fee..

**Article (34):**

The provisions of Article (13) of this law shall apply, *mutatis mutandis*, to Compulsory licenses of registered layout-designs.

**Article (35):**

The provisions of Article (14) of this law shall apply, *mutatis mutandis*, to the applications to invalidate compulsory licenses of registered layout-designs.

## **PART II: TRADE MARKS**

### **CHAPTER ONE:**

#### **SERVICE MARKS, COLLECTIVE MARKS, CERTIFICATION MARKS AND TRADE NAMES**

##### **Article (36):**

- 1 - The exclusive right to a mark shall be acquired by registration in accordance with the provisions of this law.
- 2 - It cannot be considered a trade mark, and cannot be validly registered:
  - a) if it is incapable of distinguishing the goods or services of one enterprise from those of other enterprises; the scent or taste or other material characteristic of goods shall not be deemed capable of distinguishing the goods when they result normally from the common composition of those goods;
  - b) if it is contrary to public order or morality; it shall be understood, however, that the nature of the goods or services to which a mark is to be applied shall in no case form an obstacle to registration of the mark;
  - c) if it is likely to mislead the public or trade circles, in particular as regards the geographical origin of the goods or services concerned or that contain false information as to the origin of the products, their other nature or characteristics, and also the marks that contain illusive trade name;
  - d) if it is identical with, or is an imitation of or contains as an element, an armorial bearing, flag and other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organization or organization created by an international convention, unless authorized by the competent authority of that State or organization;
  - e) if it is identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in Oman for identical or similar goods or services of another enterprise, or if it is well-known in Oman for goods or services which are not identical or similar to those in respect of which registration is applied for, provided, in the latter case, that use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use;
  - f) if it is identical with or similar to a mark belonging to a different proprietor and already on the Register, or with an earlier filing or priority date, in respect of identical or similar goods or services or closely related goods or services, or if it so nearly resembles such a mark as to be likely to deceive or cause confusion;
  - g) if the application has been made in bad faith or meant to cause damage to an already registered mark.
- 3 - Notwithstanding the provisions of paragraph (2/a) of this article, the Registrar or the Court shall have the authority to decide whether a mark has acquired secondary meaning or distinctiveness through continued use. In that event the mark shall be registrable.
- 4 - In case of honest concurrent use, or of other special circumstances which in the opinion of the Court or the Registrar make it proper to do so, the Court or the Registrar may permit the registration of marks that are identical or nearly resemble each other in respect of the same goods or services or



description of goods or services by more than one proprietor subject to such conditions and limitations, as the Court or the Registrar, as the case may be, may think it right to impose.

5 - Where separate applications are made by two or more different persons to be registered as proprietors respectively of trade marks that are identical or nearly resemble each other in respect of the same, similar or related goods or services or description of goods or services, the Registrar may refuse to register any of them until their rights have been determined by the Court.

6 - Words or expressions of common use by consumers and technical words or expressions that pertain to the field to which the goods and services belong shall be deemed as not having distinctive capability for the purposes of paragraph (2/a) of this article. However, any legal or regulatory measures mandating the use of the term customary in common language as the common name for a good or service, shall not impair the use or effectiveness of trademarks used in relation to such good or service.

7 - The mark shall be considered famous if it is known in the relevant sector to which the good or service belongs, or as a result of the promotion of the mark.

8 - In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed according to paragraph (2/f) of this article.

9 - The prior user of a mark which is not in the Register or which is not subject to a pending application, may oppose an application for a registration by another person of a similar or identical mark for similar or identical goods, provided he:

A - submits evidence that he has used that mark in good faith for at least six months prior to the filing date or the priority date, if applicable;

B - submits evidence that he has acquired clientele and that clientele attributes some reputation to the mark; and

C - he files an application for registration of his own mark prior to sending the Registrar the notice of opposition.

10 - The registration by a third person of a similar or identical mark to one that has lapsed for similar or identical goods or services shall be admitted only after a period of at least three (3) years has passed from the date on which notice of the termination of the mark was published in the Official Gazette. This paragraph does not apply to the licensee of the mark that is licensed and abandoned.

11 - Goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification.

#### **Article (37):**

1 - (A) The application for registration of a mark shall be filed with the Registrar, in accordance with the situations and conditions as specified by the regulations, and shall contain a request, a reproduction of the mark and a list of the goods or services for which registration of the mark is requested, listed under the applicable class or classes of the International Classification. It shall be subject to the payment of the prescribed application fee.

(B) When the mark consists of a distinctive sign that is not visually perceptible, the application shall contain a graphical reproduction of the mark.

(C) Where the applicant wishes to claim color as a distinctive feature of the mark, he shall submit a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color.

(D) Where the applicant wishes to apply for a three-dimensional mark, he shall submit a statement to that effect.

2 - (a) The application may contain a declaration claiming the priority of an earlier national or regional application filed by the applicant or his predecessor in title, in which case, the Registrar may require that the applicant furnish, within the period of Six (6) months, a copy of the earlier application, certified as correct by the Registry with which it was filed. In case the declaration of priority does not fulfill the prescribed conditions and requirements, it shall be considered not to have been made..

(b) The period of priority referred to in the previous paragraph is of six months from the date of filing the earlier application.

3 - The applicant may at any time withdraw his application or restrict the goods or services covered by the application.

#### **Article (38):**

1 - A) The Registrar shall examine whether the application complies with the prescribed requirements.

B) The Registrar shall examine the mark to determine whether it is a registrable mark according to the provisions of this law.

2 - a) Where the Registrar finds that all the prescribed conditions are fulfilled, he shall forthwith cause the application, as accepted, to be published in the prescribed manner, after the payment of prescribed fee.

b) Any interested person may, within the period of ninety (90) days from the date of publishing in the official gazette, give a written notice to the Registrar of opposition to registration, after the payment of prescribed fee.

c) Within the period of ninety (90) days from the date of his receiving the Registration's notification of the opposition, the applicant may submit a written counter-statement of the grounds on which he relies for his application.

d) The Registrar shall furnish a copy thereof to the person giving notice of opposition and, after hearing the parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the mark should, or should not be registered.

3 - A) Where the Registrar finds that the application to register the mark satisfies all conditions and none has not been opposed; or that it has been opposed and the opposition has been decided in the applicant's favor, he shall register the mark, publish a reference to the registration and issue to the applicant a certificate of registration.

B) The Registrar may refuse the application to register the mark, if it does not fulfill the conditions. He shall notify the applicant on the decision and reasons for refusal.

The applicant may contest the refusal, by means of a reasoned statement in writing, within sixty (60) days from the receipt of the notice of refusal. If he so wishes, the appellant may appeal from the refusal directly to the competent Court, without the need for contesting it.

4 - (a) The country of origin is a Member of the Paris Union or of the World Trade Organization or that maintains a relation of reciprocity with Oman, and where the applicant has a real and effective industrial or commercial establishment, or the country where he has his domicile, or the country of which he is a national applicant if he has no domicile in the country of origin.

(b) Accept the filing of each and every registered mark according to the regulations prevailing in the territory or country of origin which is a member of the Paris Union or the World Trade Organization, or that maintains a relation of reciprocity with Oman, and shall be protected in Oman. Before concluding final registration, the Registrar may ask submitting a certificate – without legalization – to register the mark at the country of origin and issued by the competent authorities thereof.

(c) Trademarks covered by this article may be neither denied registration nor invalidated except in the following cases:

1 - when they are of such a nature as to infringe rights acquired by third parties in Oman;

2 - when they are devoid of any distinctive character, or consist exclusively of names given by the public to goods or services, or customary drawing and ordinary photos associated with goods and services.

3 - when they are contrary to morality or public order and/or of such a nature as to deceive the public.

(d) The provisions of Part III (Protection against illegal competition) shall apply to paragraph (4/c) of this article.

(e) In determining whether a mark is eligible for protection, all the factual circumstances must be taken into consideration, particularly the length of time the mark has been in use.

(f) The Registrar shall not refuse the registration of a mark under this Subsection for the sole reason that it differs from the mark protected in the country of origin only in respect of elements that do not alter its distinctive character and do not affect its identity in the form in which it has been registered in the said country of origin.

(g) No person may benefit from the provisions of this article if the mark for which he claims protection is not registered in the country of origin.

(h) The benefit of priority shall remain unaffected for applications for the registration of marks filed within the period of Six (6) months, even if registration in the country of origin is effected after the expiration of such period.

#### **Article (39):**

1 - The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including trade names and geographical indications, for goods or services related to those in respect of which the mark is registered, where such use would result in a likelihood of confusion, without prejudice to the provisions of this law.

2 - In accordance with Part IV of this law, the owner of a registered mark shall have the right to institute court proceedings against any person who infringes the mark by using, without his consent, the mark as aforesaid or who performs acts which make it likely that infringement will occur.

3 - The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in Oman by the registered owner or with his consent, and therefore shall be exhausted.

#### **Article (40):**

1 - Without prejudice to the provisions of paragraph (3) of the previous article, the Minister shall have the authority, ex officio or at the request of any interested party, of declaring the trademark rights exhausted and thus of authorizing others to import the product identified by or bearing a registered or otherwise protected trademark from another territory when that product is not available in the territory of Oman or is available in the territory of Oman with unreasonably low quality standards or in a quantity that is not sufficient to meet the local demand or at abusive prices or for any other reason of public interest, provided that:

a) the product has been put in the channels of commerce in the territory from which it will be imported by the owner of the trademark or with his consent; and

b) a similar or identical trademark is registered or otherwise protected in the territory from which the product will be imported and is owned by the same person who owns the registered or otherwise protected trademark in Oman or by a person under his control.

2 - The Minister shall, ex officio, or at the request of the trademark owner, cancel the authorization referred to in the previous paragraph of this article in the following two cases:

A - If the importer fails to fulfill the purpose that justified the Minister's decision to consider the trademark rights exhausted;

B - If the conditions that gave rise to the Minister's decision to consider the trademark rights exhausted cease to exist, provided that the legitimate interests of the importer are taken into account, including but not exclusively that the importer will retain the right to commercialize the products that remain on stock.

3 - The provision of article (39/1) of this law shall not apply to the use of the registered mark by a third person with informative purposes, such as to promote sales or engage in comparative advertisement, provided such use is not made in a manner that deceives the public or constitutes unfair competition.

4 - The Minister of Health may take measures to limit the use of marks with the purpose of facilitating the prescription of and the access to generic pharmaceutical products and medical devices, or with the purpose of discouraging the public consumption of goods that are deemed prejudicial to health provided such measures do not impair the use or effectiveness of trademarks used in relation to such good or service to distinguish goods of one undertaking from those of other undertaking.

#### **Article (41):**

The period of protection of registration of a mark shall be ten (10) years from the filing date of the application for registration. The registration of a mark may, upon request, be renewed for consecutive similar terms, subject to the payment of the prescribed fee.

A period of grace of six (6) months shall be allowed for the late payment of the renewal fee on payment of the prescribed surcharge, otherwise the registered mark shall lapse. There shall be no restoration of lapsed registered marks.

**Article (42):**

1 - (A) Any interested person may request the Court to invalidate the registration of a mark, within a period of five (5) years from the date of issuance of the registration certificate, or at any time if the registration was obtained in bad faith or on the purpose of harming a registered mark.

(B) The Court shall invalidate the registration if it is proved that it has been issued in violation of the provisions of this law. As such, the Registrar shall accord the invalidation and publishes it in the Official Gazette.

2 - Any interested person may request the Registrar to remove a mark from the Register, in respect of any of the goods or services in respect of which it is registered, on the ground that up to one month prior to filing the request the mark had, after its registration, not been used by the registered owner or a licensee during a continuous period of three (3) years or longer, provided that a mark shall not be removed if it is shown that special circumstances prevented the use of the mark, such as import restrictions or other government or market impediments to commercialization, and that there was no intention not to use or to abandon the same in respect of those goods or services.

**Article (43):**

1 - The provisions of this law shall apply to collective marks.

It shall not be required that the applicant of the registration of a collective mark possesses and industrial or commercial establishment anywhere in a Member of the Paris Union or a Member of the WTO.

2 - An application for registration of a collective mark shall designate the mark as a collective mark and shall be accompanied by a copy of the Rules, if any, governing the use of the collective mark. Any changes made in respect of these rules shall be communicated to the Registrar.

**Article (44):**

1 - The provisions of this law shall apply to certification marks.

The application for the registration of a certification mark must designate the sign as a certification mark and shall be accompanied by the Rules governing its use. These provisions apply to all certification marks, including those that are owned by governmental agencies.

2 - The use of certification marks shall be limited to the goods and services for which they been issued.

3 - The Registrar, the Attorney General, any interested person, owner competitors, and producers of approved goods and services, and also the unions and organization legitimately representing concerned customers, may request the invalidation of certification marks. The Court may decide to invalidate the registration of these marks if it is proved that the owner of the certification mark uses it, or that he permits its use in contravention of the Rules of this law or that he permits its use in a manner liable to deceive trade circles or the public as to the origin or any other common characteristics of the goods or services concerned.

**Article (45):**

1 - Any license contract concerning the registration of a mark, or an application therefor, shall provide for effective control by the licensor of the quality of the goods or services of the licensee in connection with which the mark is used. If the license contract does not provide for such quality control or if such quality control is not effectively carried out, the license contract shall not be valid, and the Court may declare the mark as abandoned by its owner. Abandonment shall come into effect

on the date of enforcing the contract. This shall be recorded and a notification thereof shall be published in the Official gazette.

2 - The registration of a collective mark, or an application thereof, may not be the subject of a license contract.

3 - The owner of a registered mark shall have the right to assign it without the transfer of the business to which the mark belongs. this provision shall not apply to certification marks.

**Article (46):**

Any person, who has proved to comply with the technical standards and other conditions for registering a certification mark, shall have the right to use the certification sign in the same conditions established in this law.

**Article (47):**

1 - A name or designation may not be used as a trade name if by its nature or the use to which it may be put, it is contrary to public order or morality and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

2 - A) Trade names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

B) Any subsequent use of the trade name, trademark, or collective mark by a third party, that likely to mislead the public, shall be deemed unlawful.

## **CHAPTER TWO: GEOGRAPHICAL INDICATIONS**

### **Article (48):**

For the purposes of this Chapter the term "good" means any natural or agricultural product or any product of handicraft or industry; and the term "producer" means any producer of agricultural products or any other person exploiting natural products, any manufacturer of products of handicraft, or industry, and any trader dealing in the said products.

### **Article (49):**

1 - Availability of protection against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

2 - Availability of protection against a geographical indication that is identical or similar to a trademark, for related goods or services, if the use of that geographical indication is likely to cause confusion, or to cause mistake, or to deceive or risk associating the geographical indication with the owner of the trademark, or constitutes unfair exploitation of the reputation of the trademark.

### **Article (50):**

In the case of homonymous geographical indications for goods, protection shall be accorded to each indication, subject to previous article. The Registrar, in cases of permitted concurrent use of such indications, shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

### **Article (51):**

The following shall not be protected as geographical indications:

- A) indications which do not correspond to the definition in Article (1);
- B) indications which are contrary to public order or morality;
- C) indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country;
- D) indications with respect to goods that are identical with the term customary in common language as the common name for such goods in Oman;
- E) indications that may be confusingly similar to a mark currently registered or pending registration in good faith; and
- F) indications that may be confusingly similar to a mark in Oman and for which rights have been acquired in accordance with national law.

### **Article (52):**

1 - The application for registration of a geographical indication shall be filed with the Registrar by natural persons or legal entities carrying on an activity as a producer in the geographical area specified in the application, with respect to the goods specified in the application;

2 - The Registrar may, ex officio or per request of any of the persons designated in the previous paragraph, file an application to register a geographical indication with respect to goods where the

producers of those goods are not formally organized or associated and therefore may not apply for and obtain the registration of the geographical indication. The geographical indication, referred to in the previous paragraph, shall enjoy the protection governed by the provisions of this law, and the Registrar shall be the custodian of those geographical indications until he or the Court is satisfied that the persons or entities entitled to own and enforce rights in geographical indications are organized under the provisions of this law.

3 - The rights conferred by the registration of geographical indications shall be without prejudice of the protection of geographical indications as trademarks, collective marks or certification marks as well as under the provisions relating to the repression of unfair competition, under this Law.

#### **Article (53):**

1 - If the Registrar has examined and accepted an application for registering a geographical indication, he should publish that in the Official Gazette, after the payment of prescribed fee.

2 - A) Any interested person or competent authority may, within the period of Sixty (60) days from the date of publication in the Official Gazette, give notice to the Registrar of opposition

B) The Registrar shall give notice of the opposition to the applicant, who, within the period of ninety (90) days from receiving that notice, shall send to the Registrar a counter-statement, in writing; if he does not do so, he shall be deemed to have abandoned the application.

C) The Registrar shall furnish a copy thereof to the person giving notice of opposition and, after hearing the two parties, if either or both wish to be heard, and considering the merits of the case, shall decide whether the geographical indication should be registered.

3 - Where the Registrar finds that the application for geographical indication fulfills the conditions and that it has not been opposed within the period prescribed in paragraph (2/A) of this article; or that the geographical indication has been opposed and the opposition has been decided in the applicant's favor, he shall register the geographical indication, publish a reference to the registration and issue to the applicant a certificate of registration.

4 - Any interested person may appeal to the competent court on the Registrar's decision whether accepting or refusing an application to register geographical indication, in accordance with the provisions of this law.

#### **Article (54):**

1 - Producers carrying on their activity in a specified geographical area shall have the right to prevent all third parties from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the geographical indication is registered.

2 - The provisions of Article (39) apply *mutatis mutandis* to geographical indications.

#### **Article (55):**

1 - Any interested person or any competent authority may request the Court to order:

A - the invalidation of a registration of a geographical indication on the ground that it does not qualify for protection as such;

B - the rectification of a registration of an geographical indication on the ground that the geographical area specified in the registration does not correspond to the geographical indication, or that the indication of the products for which the geographical indication is used



or the indication of the quality, reputation or other characteristic of such products is missing or unsatisfactory.

2 - The person who filed the application for registration of the geographical indication shall provide notice of the request for invalidation or rectification submitted to the Court in accordance with the provisions of the previous paragraph of this article. Also persons having rights to using the geographical indication shall also be notified according to the provisions of Article (54) of this Law, through publication in the Official Gazette. Those persons, and anyone of interest apply to join the proceedings within a period of thirty (30) days from the date of notifying them.

**Article (56):**

The Court shall, *ex officio* or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in Oman is of such a nature as to mislead the public as to the true place of origin.

**Article (57):**

The Registrar or the Court shall, *ex officio* or at the request of an interested party, refuse or invalidate the registration of a trademark with respect to goods that contain or consist of a geographical indication with respect to goods not having this origin.

**Article (58):**

The followings are exempted from the provisions of this Law:

1 - Where a distinctive sign has been applied for or registered in good faith in Oman, or where rights to a distinctive sign have been acquired through use in good faith in Oman either through its having become well-known in Oman before November 9, 2000, or before the geographical indication gained protection in the country of origin, this law does not violate the registrability of, or the validity of the registration of a distinctive sign, or the right to use a distinctive sign, on the basis that such a distinctive sign is identical with, or similar to, a geographical indication.

2 - The geographical indication of any country with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in Oman or in respect of a geographical indication of any other country with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in Oman as of January 1, 1995. (Date of enforcing the WTO agreement.)

3 - Any request for relief made under Part IV of this Law in connection with the use or registration of a distinctive sign must be presented within five years after the adverse use of the protected indication has become generally known in Oman or after the date of registration of the trademark in Oman, provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in Oman and provided that the geographical indication is not used or registered in bad faith.

4 - The right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

**Article (59):**

Without prejudices to the provisions of Part IV of this Law, any interested person, or group of producers or consumers, may institute court proceedings to prevent the following:

- a) The use of any means in naming or offering any good while hinting that the subject good originated in a geographical region different from the true country of origin, in a manner that misleads the public with regard to the geographic origin of the good.
- b) Any use that constitutes an act of unfair competition according to the provisions of Article (10/II), of Paris Accord.

### **PART III: PROTECTION AGAINST UNFAIR COMPETITION**

#### **Article (60):**

1 - The provisions of this Part shall apply independently of, and in addition to, any legislative provisions protecting inventions, utility models, industrial designs, layout-designs, distinctive signs, literary and artistic works and other intellectual property subject matter.

2 - A) Any act or practice, in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition.

B) An act or practice that is contrary to honest practices, for the purposes of this Part, shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition of undisclosed information. Also the acts of breach of legal duties in a manner that leads to obtaining illicit advantages over competitors, such as the breach of environmental or labor law.

C) Any natural person or legal entity damaged or likely to be damaged by an act of unfair competition shall be entitled to the remedies referred to in Part IV.

#### **Article (61):**

1 - Any act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

2 - Confusion may, in particular, be caused with respect to:

(A) a trademark, whether registered or not, or trade name;

(B) a distinctive sign other than a trademark or trade name;

(C) the appearance of a product, the presentation of products or services as well as of the place of business;

#### **Article (62):**

Shall be considered an act of unfair competition any act or practice, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of another competitor's. Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to the distinctive character or advertising value of a trademark, trade name or other business identifier, the appearance of a product or the presentation of products or services or of a celebrity or well-known fictional character, regardless of whether such act or practice causes confusion.

#### **Article (63):**

1 - Any act or practice, in the course of industrial or commercial activities, that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

2 - Misleading may arise out of advertising or promotion and may, in particular, occur with respect to:

- a) the manufacturing process of a product;
- b) the suitability of a product or service for a particular purpose;
- c) the quality or quantity or other characteristics of products or services;
- d) the geographical origin of products or services;
- e) the conditions on which products or services are offered or provided;
- f) the price of products or services or the manner in which it is calculated.

**Article (64):**

1 - Any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, another's competitor enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

2 - Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to:

- A – the manufacturing process of a product;
- B – the suitability of a product or service for a particular purpose;
- C – the quality or quantity or other characteristics of products or services;
- D – the conditions on which products or services are offered or provided;
- E - the price of products or services or the manner in which it is calculated.

**Article (65):**

1 - Shall be considered an act of unfair competition any act or practice, in the course of industrial or commercial activities, that results in the disclosure, acquisition or use by others of undisclosed information without the consent of the person lawfully in control of that information "the rightful holder" and in a manner contrary to honest commercial practices, such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

2 - The information shall be considered "undisclosed information" if it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; it has commercial value because it is secret; and it has been subject to reasonable steps under the circumstances by the person lawfully in control of the information to keep it secret.

3 - A) Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists or results in:

- 1- an unfair commercial use by a governmental authority of undisclosed test or other data concerning safety and efficacy of the product which have been submitted to that authority as a condition of obtaining approval of the marketing of new pharmaceutical

products for at least five (5) years or agricultural chemical products for at least ten (10) years, and the governmental authority did not obtain the approval of the person lawfully in control of the information for its commercial use.

2- the disclosure of such data, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

B) a pharmaceutical product shall be considered new if it contains a chemical entity that has not been previously approved in the territory of Oman for use in a pharmaceutical product; a new agricultural chemical shall be considered new if it contains a chemical entity that has not been previously approved in the territory of Oman for use in an agricultural chemical product.

4 - a) The provisions of paragraph (3) of this article shall apply, *mutatis mutandis*, in the event Oman adopts the practice of granting marketing approval based on evidence of marketing approval granted in another territory.

b) Where the competent authority of Oman requires or permits, as a condition of granting marketing approval for a pharmaceutical product that includes a chemical entity that has been previously approved for marketing in another pharmaceutical product, the submission of new clinical information that is essential to the approval of a pharmaceutical product, other than information related to bioequivalency, that competent authority shall not, without the consent of the originator, authorize another to market a same or a similar product based on the new clinical information submitted in support of the marketing approval; or evidence of the marketing approval based on the new clinical information, for at least three (3) years from the date of marketing approval in Oman.

c) The provisions of the previous paragraph of this article shall apply, *mutatis mutandis*, in the event Oman adopts the practice of granting marketing approval based on evidence concerning new clinical information for a product that was previously approved based on that new clinical information in another territory.

d) Where the originator's product is covered by a patent in force in the territory of Oman, the competent authority shall not approve another product without the prior consent of the patent owner. The competent authority shall inform the patent owner about the request submitted by another person during the term of a patent, for approving the marketing of the same product based on the patent owner's information.

## **PART IV: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

### **CHAPTER ONE: INFRINGEMENT PROCEEDINGS AND REMEDIES**

#### **Article (66):**

1 - Subject to the provisions of articles (11), (13), and (17) of this Law an infringement of a patent or a utility model shall consist of the performance of any act referred to in article (11/2) in Oman by a person other than the owner of the patent and without the agreement of the latter.

2 - On the request of the owner of the patent or of the utility model, or of an exclusive licensee, or of a non-exclusive licensee, or of a compulsory licensee, if he has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so within ninety (90) days, the Court may grant an injunction to prevent infringement or an imminent infringement and, where the infringer acted knowingly or with reasonable grounds to know, award damages and grant any other remedy provided for according to the provisions of this Law.

3 - The legal remedies provided to owners of patents in Oman shall be also available, whenever appropriate, to the owners of foreign patents that have been the subject of a compulsory license for the purposes of supplying the market of Oman of pharmaceutical products, under the scheme established by the Decision of the WTO General Council, in order to prevent or remedy the unauthorized importation as well as the re-exportation or deviation of the products in question. Customs authorities shall have the authority to take border measures for the purposes of the provisions of this article ex officio. In this event, they shall notify the right holder of the suspension of release who shall have ten (10) days for providing adequate evidence that the retained products prima facie correspond to the claims of the patent in question.

4 - Without prejudice to the provisions of paragraph (3) of this article, the same border measures that are available under this Law for the suspension by the customs authorities of the release into free circulation of counterfeit trademark and pirated copyright goods shall also apply to prevent the unauthorized importation or re-exportation of the products that have actually been imported into the territory of Oman under the scheme referred to in paragraph (3) of this article.

5 - Courts may refuse to grant provisional or definitive injunctions, without prejudice to the payment of damages, when:

A - after the expiration of a period of four (4) years from the date of filing of the patent application or three (3) years from the date of the grant of the patent, the plaintiff or a person with his authorization is not, or has not taken serious preparations for, or has no serious intention to start, commercially exploiting the invention in a manner that meets the demands of the market as to quantity, or at any time if the invention is exploited in a manner that does not meet the demands of the market as to quality;

B - the injunction causes serious harm to the public interest;

C - the patented products or the products manufactured by a patented process are sold by the plaintiff or by a third party with the plaintiff's consent at prices that are deemed excessive taking into account the average purchase power of consumers and the specific nature of the needs the products aim at meeting, and there is no competing product on the market;

D - the patent owner has engaged in anti-competitive acts or practices, as determined by the Court or by a competent administrative authority;

E - the patent owner is found to have engaged in inequitable conduct during the procurement of the patent letter; this paragraph applies without prejudice to the provisions of article (14) of this Law.

6 - a) Provisions of this Part shall not apply to medical practitioners' performance of a medical activity that constitutes an infringement of a patent for a diagnostic, therapeutic and surgical methods for the treatment of humans or animals. These provisions also shall not apply to medical institutions related to medical activity.

b) For the purposes of the provisions of this article:

1- the term "medical activity" means the performance of a medical or surgical procedure on a body, but shall not include:

(a) the use of a patented machine, manufacture, or composition of matter in violation of such patent;

(b) the practice of a patented use of a composition of matter in violation of such patent, or

(c) the practice of a process in violation of a biotechnology patent;

2- the term "medical practitioner" means any natural person who is licensed by a State to provide the medical activity or who is acting under the direction of such person in the performance of the medical activity;

3- the term "related health care entity" shall mean an entity with which a medical practitioner has a professional affiliation under which the medical practitioner performs the medical activity, including but not limited to a nursing home, hospital, university, medical school, health maintenance organization, group medical practice, or a medical clinic.

#### **Article (67):**

1 - Subject to the provisions of article (40/3) of this Law, an infringement of a registered mark, or a registered collective mark, or a registered certification mark, or of a trade name shall consist of the performance of any act referred to in the two articles (40/1) and (46) of this Law in Oman by a person other than the owner of the mark or of the trade name and without the agreement of the latter.

2 - An infringement of a well-known mark shall consist of the use of a sign identical with or confusingly similar to the well-known mark, whether registered in Oman or not, without the agreement of the owner of the well-known mark provided that the sign is used:

a) in relation to goods or services identical with or similar to the goods or services for which the well-known mark has been registered, or

b) in relation to goods or services which are not identical with or similar to those in respect of the well-known mark provided that the use of the sign in relation to those goods or services would indicate a connection between those goods or services and the owner of the well-known mark and that the interests of the owner of the well-known mark are likely to be damaged by such use.

3 - On the request of the owner of a registered mark or of a well-known mark, even if unregistered, or of an exclusive licensee, or of a non-exclusive licensee if he has requested the owner of the mark to institute court proceedings for a specific relief and the owner of the mark has refused or failed to do so within ninety (90) days, the Court may grant an injunction to prevent infringement, or an imminent infringement, and grant appropriate remedies to cover for damages resulting from such infringements.

The same injunction by the court applies if the request is submitted to the Court by any competent authority or any interested person, group association or syndicate, including producers, manufacturers, or traders.

**Article (68):**

1 - An infringement of a registered industrial design shall consist of the performance of any act referred to in article (24/2) of this Law by a person other than the owner of the industrial design and without his agreement.

2 - On the request of the owner of the industrial design, or of an exclusive licensee, or of a non-exclusive licensee if he has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so within ninety (90) days, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant appropriate remedies to cover damages resulting from such infringements.

**Article (69):**

1 - An infringement of a geographical indication protected under this Law shall consist of the performance of any act referred to in article (54) of this Law or any use of a geographical indication without the consent of the owner.

2 - On the request of any interested person or of any interested group of producers or consumers, or any competent authority under Article (52) of this Law, the Court may grant an injunction to prevent the unlawful use of the geographical indication, award damages and grant appropriate remedies to cover damages resulting from such infringements.

**Article (70):**

1 - An infringement of a layout-design (topography) of an integrated circuit protected under this Act shall consist of the performance of any act referred to in article (31/1) by a person other than the owner of the layout-design (topography) and without his agreement.

2 - On the request of the owner of the layout-design (topography) of an integrated circuit, or of an exclusive licensee, or of a compulsory licensee, or of a non-exclusive licensee if he has requested the owner to institute court proceedings for a specific relief and the owner has refused or failed to do so within ninety (90) days, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant appropriate remedies to cover damages resulting from such infringements.

**Article (71):**

Where an act under Article (65) of this Law is considered by the Court to constitute an act of unfair competition, the Court shall order the government authority to cancel the marketing approval; the competitor of the undisclosed data holder not to market or to cease to market the products the registration of which has constituted an act of unfair competition because it was based on an authorized reliance of protected undisclosed test data or other data. The Court shall oblige the government authority to pay adequate damages for the unauthorized disclosure of the data, and oblige the competitor of the undisclosed data holder to pay adequate damages for the marketing of the products the registration of which has constituted an act of unfair competition.

**Article (72):**

The civil proceedings under articles (66 through 71) of this Law can be initiated within five (5) years from the date on which the right holder knew or had reasons to know the infringing acts, except in case of infringing use of distinctive signs in bad faith or for unfair competition purposes, for which there will be no time limits to initiate the proceedings.



## **CHAPTER TWO: PROVISIONAL MEASURES**

### **Article (73):**

1 - The Court shall order, in accordance with the procedure prescribed in the Code of Civil Procedure or similar statute prompt and effective provisional measures to prevent an infringement or unlawful use of a right protected under the provisions of this Law or to preserve relevant evidence in regard to an alleged infringement.

2 - Where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed, the Court shall order provisional measures without giving the other party an opportunity of being heard provided that the applicant has furnished:

a) any reasonably available evidence satisfying the Court that the applicant is the right holder and that the applicant's rights are being infringed or that such infringement is imminent, and

b) any security or equivalent assurance required by the Court to protect the defendant and to prevent abuse; such security or equivalent assurance shall be reasonable in view of the circumstances and shall be set so as not to unreasonably deter recourse to such procedures.

3 - A) Where provisional measures have been ordered without having given the other party an opportunity of being heard, the Court shall give the parties affected notice of the decision, at the earliest after the execution of the measures.

B) Requests for provisional measures, referred to in the previous paragraph are executed once they are issued, except in exceptional cases within a maximum period of ten (10) days.

4 - The defendant may file a request to the Court to review the ordered provisional measures, within two (2) weeks from the notification of the decision. The Court shall give the parties concerned an opportunity of being heard and shall and taking a decision.

5 - Where the applicant does not initiate court proceedings leading to a decision on the merits of the case within 20 working days or 31 calendar days, whichever is the longer, from the notification of the decision ordering provisional measures or within any other reasonable period determined by the Court in the decision, the Court shall revoke the provisional measures upon the request of the defendant.

6 - Where the provisional measures are revoked or where the Court decides that there has been no infringement or threat of an infringement, the Court shall order the applicant to provide the defendant appropriate compensation for any injury caused by the execution of the provisional measures.

7 - If requested, the Court shall order the provisional measures referred to in this article, aiming at preserving relevant evidence, even before the granting of the pending registration, if the Court so deems necessary, within (20) working days or (31) calendar days, whichever is the longer, from the publication of the grant of the pending registration.

## **CHAPTER THREE: EVIDENCE; BURDEN OF PROOF**

### **Article (74):**

- 1 - The Court may, where a party has presented reasonably available evidence sufficient to support the claims and has specified evidence relevant to substantiation of the claims which lies in the control of the opposing party, order that this evidence be produced by the opposing party, subject, in appropriate cases, to conditions which ensure the protection of confidential information.
- 2 - In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, the Court, after listening to parties, may issue its decision, on the basis of the information presented to it.
- 3 -
  - a) For the purposes of civil proceedings in respect of the infringement of rights of the patent owner, if the subject matter of a patent is a process for obtaining a product, the Court may order the defendant to prove that the process used to obtain an identical product is different from the patented process.
  - b) Any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process in either of the following circumstances:
    - 1 - if the product obtained by the patented process is new, or
    - 2 - if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.
- 4 - In civil judicial proceedings concerning trademark counterfeiting, the Court shall have the authority to order the seizure of suspected infringing goods, any related materials and implements, and documentary evidence relevant to the infringement.
- 5 - The competent Civil Court shall estimate the expenditure and remuneration, of the technical or other experts it appoints in civil proceedings, in a manner proportionate with the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

## CHAPTER FOUR: DAMAGES; OTHER REMEDIES

### Article (75):

1 - A) Where the Court awards damages in accordance with Articles (66 through 71) of this Law, the Court's decision should include an adequate compensation to the right holder for the infringement of his intellectual property right.

B) - 1) Without prejudices to any other compensations prescribed by any other law, the Court shall oblige any person who proves to have violated trademarks or patents, to compensate the right holder as follows:

a) Compensations sufficient enough to cover for the damage to the right holder that is attributable to the infringement.

b) The amount of profits gained by the infringer attributable to the infringement, and which were not accounted for when estimating the award of damages stated in the previous paragraph.

2 - Upon the request of the right holder, and instead of the remedies stated in paragraphs (1,2) of this article, the Court shall award the previously estimated compensation provided such compensation does not exceed Rials Ten Thousands for each act of infringement and be sufficient to cover for the damages caused.

3 - While estimating the compensation cited in the article, the Court shall take into consideration the court charges and lawyers fees spent and demanded by the right holder, except in exceptional circumstances as believed by the Court in view of the compensations demanded by the right holder.

C) - In determining damages for infringement of the rights established in this Act, the Court shall consider, *inter alia*, the value of the infringed-on good or service, measured by the suggested retail price or other legitimate measure of value submitted by the right holder.

D) - In civil judicial proceedings concerning patent infringement, the Court shall have the authority to increase damages to an amount that is up to three times the amount of the injury found or assessed.

2 - The Court may order the infringer to pay for damages relating to acts of infringement practiced, on the date or subsequent to the date on which public notice, if any, of the application of the registration was given through the Official Gazette; or on the date or subsequent to the date on which the applicant of the registration gave notice to the alleged infringer of the contents of the application; or on the date or subsequent to the date on which the alleged infringer acquired knowledge of the contents of the application. The request for the Court to order the payment of damages cited above, may be filed only after the title of industrial property right in question is granted.

### Article (76):

1 - Where goods have been found to be infringing, the Court shall order, without compensation of any sort, that these goods be destroyed, except in exceptional circumstances.

2 - In respect of counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, to permit release of the goods into the channels of commerce.

3 - The Court should order the confiscation of any assets traceable to the infringing activity and the original materials used in the infringement. The Court should also order, except in exceptional circumstances, the confiscation and destruction of all infringing goods, materials, and equipment used

in the manufacture or production of infringing goods, without compensation of any sort to the Defendant.

The Court shall have the power to maintain a list of goods and other materials that will be destroyed, and may temporarily exempt such materials from the destruction order in order to facilitate preserving evidence, upon the request of the right holder wishing to file a civil or administrative motion demanding remedies.

**Article (77):**

In civil judicial proceedings concerning the enforcement of the rights protected by this Law, the Court shall have the authority to order the infringer to provide any information that the infringer possesses regarding the identity of any person or persons involved in any aspect of the infringement and regarding the production or distribution of such goods or services. The Infringer shall provide such information to the right holder.

**Article (78):**

The Court shall order an applicant at whose request measures were taken and who has abused enforcement procedures to provide to a defendant an adequate compensation for the injury suffered by virtue of such abuse.

## CHAPTER FIVE: BORDER MEASURES

### Article (79):

1 - A) The right holder may request the Customs Service to suspend the customs clearance procedures and release into free circulation of infringing goods with counterfeit trademarks, provided that he shall provide sufficient *prima facie* evidence that the importation of counterfeit trademark goods is taking place or is imminent, and that there is *prima facie* an infringement of his intellectual property right, and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures.

B) The application to suspend the release of goods shall remain in force for a period of one year from the date of application, or the period that the good is protected by the relevant trademark registration, whichever is shorter.

2 - Where the release into free circulation was suspended on Customs own initiative, the Customs Department shall notify the right holder about the suspension of release into free circulation, and may require a security in accordance with the provisions of this Law and its regulations within three (3) working days from receipt of the notification, otherwise, the goods will be released into free circulation.

3 - Where the right holder requests the Customs Department to take action under paragraph (1) of this article, he should be committed with the procedures prescribed by this Law and its regulations *mutatis mutandis*.

### Article (80):

Where the Customs Department has suspended customs clearance in accordance with Article (79) of this Law, it shall notify the importer and, where known, the right holder of the alleged infringement and of the suspension.

### Article (81):

Without prejudice to the protection of confidential information, the Customs Department shall allow the right holder and the importer to examine the goods the clearance of which has been suspended, and to remove samples for examination, testing and analysis, in order to substantiate their respective claims.

### Article (82):

1 - Where the customs clearance of goods has been suspended by the Customs Department under article (79) of this Law, the Customs Department shall inform the right holder of the names and addresses of the importer, consignor, and consignee and of the quantity of the said goods, and any other information requested by the right holder.

2 - Upon request, the Customs Department shall also, without prejudice to the protection of confidential information, provide the right holder with copies of documents lodged in respect of such goods or with any information or documents relating to any previous importation of identical or similar goods in which the same importer, consignor or consignee were involved.

**Article (83):**

The Court may order border measures to prevent the importation of goods that infringe intellectual property rights, or which their production and/or marketing in Oman constitute an act of unfair competition, according to the provisions of this Law, where the conditions set out in this Chapter are met.

**Article (84):**

The holder of an intellectual property right, who has valid grounds for suspecting that the importation of goods that infringe his rights may take place, may file an application with the Court requesting it to order the Customs Department to suspend customs clearance of those goods.

**Article (85):**

In accordance with the provisions of Article (84) of this Law, and based on the request by the right holder, the Court may issue a decision to suspend the release into free circulation of goods alleged to be infringing goods may be rendered without giving the other party an opportunity of being heard. In its decision, the Court shall specify the period for which the Customs Department will have to take action, immediately after being notified by the Court.

The application to suspend the release of goods shall remain in force for a period of one year from the date of application, or the period that the good is protected by the relevant trademark registration, whichever is shorter.

**Article (86):**

The Court may order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the detention of goods in bad faith or through the detention of goods released by virtue of failure to initiate proceedings leading to a decision on the merits of the case in accordance with this Law.

**Article (87):**

If, within a period of ten (10) working days after the applicant has been notified of the suspension of the release into free circulation, no proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, the goods shall be released, provided that all other conditions for importation have been complied with.

The Customs Department may, where it considers an extension of the said period to be appropriate under the circumstances, extend the period of suspension by a period not exceeding another ten working days. The Court may also extend the period by any period it considers reasonable under the circumstances.

The right holder, the importer, or the consignee shall have the right to release the goods after sending a security, for an amount sufficient to protect the right holder, and when the period referred to, has elapsed without the Court ordering the release of the goods, and he honored all other conditions of importation.

**Article (88):**

1 - If the proceedings referred to in the previous article have been initiated, the Court or the Customs Department, whichever authority has taken the suspension decision, shall review, upon the request of the defendant, the decision with the view to determining whether the measures shall be modified, revoked or confirmed.

2 - Where the suspension of the release of goods is continued in accordance with a provisional measure ordered by the Court, the period of further suspension shall be determined by the Court. Where no such determination has been made, the said period shall not exceed twenty (20) working days or thirty one (31) calendar days, whichever is the longer.

**Article (89):**

It shall not be permitted to re-export the infringing goods; or place them under a different customs procedures.

**Article (90):**

Small quantities of goods of a non-commercial nature contained in the traveler's personal luggage or sent in small consignments may be excluded from the provisions of border measures.

**Article (91):**

The provisions on border measures cited in this Law shall apply to goods imported, exported, or in transit (under "Customs transit") or "transshipped."

**Article (92):**

Those concerned have the right to appeal before the competent Court against the decision by the Customs Administration on the suspension of release into free circulation of infringing goods, within sixty (60) days from the notification of the decision.

## **CHAPTER SIX**

### **CRIMINAL PENALTIES**

#### **Article (93):**

Without prejudices to more severe punishment prescribed by this, or any other Law:

A - Anyone who intentionally infringes, on a commercial scale, one of the industrial property rights shall be sentenced to imprisonment from a minimum of three months up to a maximum of three years as well as monetary fines from a minimum of Two Thousand Rials Omani up to a maximum of Ten Thousand Rials Omani, or either of the two punishments. The minimum and/or maximum punishment shall be doubled when violation is repeated.

B - Anyone of the rivals who violates an order issued by the Court regarding a procedures related to the enforcement of this Law shall be sentenced to imprisonment from a minimum of seven day up to a maximum of one month as well as monetary fines from a minimum of One Hundred Rials Omani up to a maximum of One Thousand Rials Omani, or either of the two punishments.

C - Anyone of the rivals, their Lawyers, Experts, or Judge Assistants who violates an order issued by the Court regarding the protection of confidential information submitted or exchanged during the proceedings, shall be sentenced to monetary fines from a minimum of One Hundred Rials Omani up to a maximum of One Thousand Rials Omani.



## **PART V:**

### **FINAL AND TRANSITIONAL PROVISIONS**

#### **Article (94):**

1 - The Public Prosecution Office may initiate legal action *ex officio* with respect to the offenses described in this Law, without the need for a formal complaint by the right holder or his representative, or based on a request by the concerned governmental authority.

2 - Any change in the ownership of a right protected according to this Law, or in the ownership of an application therefor, shall be in writing and shall be submitted to the Registrar to be recorded and published. With regards to trademarks, such change shall have no effect against third parties until such recording is effected.

3 - Any change in the ownership of a trade name must be made with the transfer of the enterprise or part thereof identified by that name and shall be in writing.

4 - A change in ownership of the registration of a mark or a collective mark shall, however, be invalid if it is likely to deceive or cause confusion to the public.

5 - Any license contract concerning a right protected in accordance with this Law shall be submitted to the Registrar who shall keep its contents confidential but shall record it and publish a reference thereto. Except as regards trademarks, the license contract shall have no effect against third parties until such recording is effected.

6 - The Registrar shall refuse to record a contract for the transfer of ownership (assignment) or a license contract when it decides that the contract concerning the right in question contains one or more clauses that are abusive or anti-competitive or in any manner restrain trade or are likely to have any of those effects.

The Registrar shall take a decision on the refusal to record a contract after hearing the allegations of the parties to the contract, if one or both so request. Any of the parties or both may appeal from the Registrar's decision to the Court within sixty (60) days from the date on which the Parties were notified of the Registrar's decision to refuse to record the contract.

7 - A) Any limitations imposed on the assignee or the licensee that do not derive from the rights conferred by the registration of the licensed right, and that are not necessary for the safeguard of that right shall be deemed abusive or anti-competitive.

B) Notwithstanding the provisions of the previous paragraph, the license contracts may provide for the following limitations:

1- delimitation of the scope, geographical area and period of use;

2- conditions required for the efficient control of the quality of goods and services, subject to the provisions of Article (45) of this Law;

3- obligation for the licensee to refrain from all acts that may cause damage to the reputation of the right owner or to the subject matter of the right.

8 - Where the right that is the subject of an assignment or a license contract is invalidated after the contract becomes effective, the contract will cease immediately to produce effects. The parties may recover totally or partially any payments or other benefits paid under the contract, unless the favored party has benefited in good faith.

9 - In civil lawsuits pertaining to forging of trademarks, the Public Prosecution shall assume the power of enforcement and seizure of goods suspected of infringement and all related materials and equipment, and documents proving the infringement."

**Article (95):**

1 - Where an applicant's ordinary residence or principal place of business is outside Oman, he shall be represented by an attorney resident and practicing in Oman. That agent shall have a licence to practice intellectual property activity and empowered to take any decisions in accordance with the provisions of this Law. The Regulations shall set out the prescribed fees and conditions.

2 - Any interested person may act himself before the Registrar to take any decision related to any application that he files subject to the provisions of this Law.

3 - Any fees prescribed under the provisions of this Law may be paid by any person.

**Article (96):**

1 - The Registry shall maintain separate Registers for each of the Industrial Property rights referred to in this Law, as well as all changes effected. Collective marks and certification signs shall be registered in a special Register.

2 - Right holder may signal ownership of the subject of protection under the provisions of this Law, by means of particular signs.

3 - Any person may obtain access to the records and obtain an official abstract thereof following the payment of the fee determined by the bylaws and regulations.

**Article (97):**

1 - The Registrar may, subject to the provisions of this Law, correct any none substantive error in any application or document filed with the Industrial Property Registry or in any recording effected pursuant to the provision of this Law. However, substantive errors that affect the rights conferred may only be modified by the competent Court.

2 - If the Registrar deemed as necessary to correct any of the errors referred to in the previous paragraph, he may, upon receiving a written request, extend the time for executing any procedures, upon a written notice filed by the concerned parties.

**Article (98):**

Any interested person may appeal against any decisions taken by the Minister, the Registrar, or any other authority, regarding any of the Industrial property rights, before the competent Court within sixty (60) days from the date he became aware of the decision.

**Article (99):**

The publication of final judicial decisions and administrative rulings of general application pertaining to the enforcement of industrial property rights shall be at the exigencies of public interest as defined by the regulations. Posting these rulings in the Internet shall be considered as publication.

**Article (100):**

1 - The enforcement of the provisions of this Law shall not violate or contradict with the provisions of any of the multilateral or bilateral international treaties in respect of industrial property, that govern and regulate the rights of citizens of member state, and those equivalent, and to which Oman is a party, or shall be a party to.

2 - Unless otherwise provided, the provisions of this Law shall be effective as from the date established and apply to all applications that are pending, exclusive of application on which final decisions have been issued by the Registrar and which have already produced effect relating to pending applications, such as the final examination of applications, shall be maintained.

These provisions shall also apply to all Court decisions, either final or interlocutory, that have produced effects relating to pending industrial property rights applications.

3 - Registered applications shall benefit from any right or privilege that arises from the enforcement of the provisions of this Law. Those applications shall not be affected by a reduction or elimination of a right acquired prior to the enforcement of the provisions of this law, except for the provisions of enforcement as cited in this Law.

4 - Where this Law provides for new systems of classification, existing registrations shall be reclassified only at the time of their renewal, if any. The procedures and the fees for the reclassification of existing registrations shall be established in the Regulations.

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