

**Act No. 2 of the Year A.D. 2011
relating to Patents, Utility Models, Integrated Circuit Layouts and Undisclosed
Information**

In the name of the people.

The President of the Republic,

having examined the Constitution of the Republic of Yemen, and with the agreement of
Parliament.

has issued the following Act:

**Chapter One
Name and Definitions**

Article 1

This Act shall be known as the "Patents, Utility Models, Integrated Circuit Layouts and
Undisclosed Information Act".

Article 2

For the purposes of applying the provisions of this Act, the following words and
expressions shall have the meanings given below, unless the context requires a different
meaning:

The Republic:	The Republic of Yemen
The Minister:	The Minister of Industry and Trade
The Regulations:	The Regulations implementing this Act
The Tribunal:	The competent commercial Tribunal
The competent Administration:	The general Administration within the Ministry with the function of protecting intellectual property
The Register:	The Register in which are recorded, either mechanically or by hand, data and information relative to patents, utility models and integrated circuit layouts
Invention	An innovative idea which resolves a specific problem in the field of technology.

Article 3

This Act aims to encourage:

1. Invention and innovation in the Republic.
2. The development of technological and scientific research.
3. Increased rates of trade and investment, both local and foreign.
4. Technology transfer to the Republic, in order to foment industrial activity and develop the
economy.

**Chapter Two
Patents and Utility Models
Section I
Patents**

Article 4

An invention may be granted a patent under the provisions of this Act, provided it is new, involves an innovative step and has an industrial application. The invention may be related to a product or to an industrial process.

Article 5

(a) An invention is new if it has no precedent in earlier technology. In this context and for the purposes of this Act, earlier technology refers to anything previously disclosed to the public anywhere, either in writing or orally, or by use, or by any means which have made the invention known before the date of filing a request for a patent, or of claiming priority.

(b) Disclosure of the invention shall not be taken into consideration if such disclosure takes place during the priority period. The Regulations define other cases in which the disclosure of an invention is not considered to come under the definition of earlier technology.

(c) An invention involves an innovative step if a person ordinarily versed in that discipline would not arrive at it easily and intuitively as a result of earlier technology related to the patent request.

(d) An invention is deemed to have an industrial application if it can be manufactured or used in any field of industry or agriculture, including handicrafts, fishing and services.

Article 6

Patents shall not be issued for the following:

1. Inventions the use of which would violate sharia law, public order or public morals, or the security of the Republic; or inventions harmful to the environment, or to the life or health of humans, animals or plants.
2. Mathematical discoveries, theories and procedures; the rules, regulations and procedures for carrying out commercial activity, for performing pure intellectual activity, or for playing games.
3. Methods of diagnosis, cure or surgery for either humans or animals.
4. Plants or animals, or the methods used to produce plants or animals with the exception of micro organisms, non-biological methods and microbiological processes.
5. Living organs, tissues and cells; natural biological materials, DNA, blood, hormones or genes.

Article 7

(a) The patent shall be a personal right of the party in whose name it was issued; it may be transferred by inheritance or ceded to a third party.

(b) If the invention is the result of joint efforts among a number of parties, the right to the patent shall be shared among them equally, unless they agree otherwise. A party whose efforts were limited to helping to create the invention shall not be considered to share therein.

(c) If more than one party independently creates the same invention, the patent shall be granted to the one who first presents a request to file the invention with the competent Administration.

Article 8

(a) A patent obtained by an employee shall belong by right to the employer if the invention involved was the outcome of implementing the contract of employment, or of an independent obligation to create that invention, or if the employer can show that the employee only created that invention by using the opportunities, means and data made available to him by the employer, unless the employment contract states otherwise.

- (b) The provisions of clause (a) of this article do not prejudice the employee's right to obtain financial reward, either agreed between the two parties or assessed by the Tribunal in the light of the conditions of the contract of employment and the economic importance of the invention.
- (c) A request to obtain a patent presented by an employee within a year of leaving his employment shall be considered to have been presented during the period he worked for the employer concerned.
- (d) The provisions of this article also apply to government employees.

Article 9

- (a) The party presenting the request for a patent must describe the invention clearly and fully enough to enable the invention to be realised by someone possessing specialised knowledge in that field. The description of the invention must include the innovative elements for which the applicant is seeking protection. If the invention regards biological, plant or animal materials, or traditional knowledge, the applicant must provide evidence that that he obtained them from legitimate sources.
- (b) The request to obtain a patent shall be presented to the competent Administration in the form prescribed. The Regulations explain what information must be included in the request, the way it is to be entered in the registers, the rules, procedures and deadlines for the request to be examined and a decision taken thereon, as well as the documents which must accompany the request.
- (c) Any changes the applicant for the patent wishes to introduce into his request must be made in accordance with the rules and procedures defined in the Regulations.

Article 10

A party making a request to obtain a patent shall benefit from right of priority if he has filed a previous request in a State which is linked to the Republic by an international agreement on intellectual property, or which has relations of reciprocity with the Republic, on condition that the party files a request before the competent Administration within twelve months, calculated from the day following the filing of the first request. The party concerned must present an official copy testifying to the filing of the first request before the authorities in the other State within ninety days of the date of filing the request to obtain a patent before the competent Administration. In this case, the date of filing the request for a patent before the competent Administration is considered as being the date of presentation of the original request for the same invention in the other country.

Article 11

- (a) If the request to obtain a patent is accepted, the competent Administration shall undertake to announce as much, using means of mass communication as defined in the Regulations.
- (b) Any interested party can present a written objection to the competent Administration concerning a request to file a patent. This must include reasons for the objection to continuing the procedure to grant a patent, and must be presented within ninety days of the date of the announcement of the request pursuant to clause (a) of this article. The competent Administration shall supply the patent applicant with a copy of the objection, and it is up to the applicant to respond in writing within thirty days of the date of receiving notification thereof, otherwise he is deemed to have relinquished the request for registration.
- (c) The competent Administration shall issue its decision, including reasons, either accepting or rejecting an objection presented within the legal deadlines against a request to file a patent.
- (d) The applicant making the request to obtain a patent and the party objecting thereto both have the right to appeal to the Tribunal against the decision made by the competent Administration under clause (c) of this article, within thirty days of their receiving a copy of that decision. An appeal against a decision to reject the objection shall not halt the request procedure, unless the Tribunal decides otherwise.

Article 12

The applicant making the request to obtain a patent is granted a period of twelve months from the expiry of the objection period defined in article 11 (b) of this Act, if no objection against the request to obtain a patent has been lodged, or from the date of issue of a final decision concerning the objection, or of the judgement of the Tribunal, in order to complete the registration procedures, otherwise he is deemed to have relinquished the request for registration.

Article 13

The invention is granted protection for a period of twenty years, beginning from the date of the presentation of the request. The protection period cannot be renewed.

Article 14

- (a) If the holder of the patent makes any improvements or modifications to his original invention, he may obtain an additional patent granting protection for the outstanding period of protection for the original invention.
- (b) The additional patent is subject to the same provisions as the original patent, pursuant to this Act.

Article 15

Temporary protection is granted to inventions exhibited at national or international trade fairs which take place in the Republic. Such temporary protection shall not lead to an extension of the period of protection stipulated under article 13 of this Act. The Regulations define the rules and procedures which regulate the granting of such protection.

Article 16

Following the issue of a patent all interested parties, having paid the necessary fees, have the right to examine the Register and to obtain an extract of the information contained therein.

Article 17

The holder of a patent acquires the following rights:

1. The right to prevent third parties from manufacturing products covered by the patent, exploiting them, using them, offering them for sale, selling them or importing them without the patent holder's consent.
2. The right to prevent third parties from using manufacturing processes, or using products directly manufactured in that way, offering them for sale, selling them or importing them without the patent holder's consent.
3. The right to hypothecate the patent or cede it to others.
4. The right to grant a contracting licence to third parties to use the invention, in part or in whole. Such a licence does not deprive the patent holder from the right to exploit the protected invention himself. The Regulations define the rules and procedure for registering and publishing the licence.

Article 18

The patent holder's right to prevent others from importing, using, selling or distributing products protected by that patent, shall expire if the holder markets those products in another State or licenses another party to do so.

Article 19

The patent and its associated rights expire in any of the following circumstances:

- (a) Expiry of the protection period for the invention, pursuant to article 13 of this Act.
- (b) Failure to pay the annual fee to maintain the protection for the invention.
- (c) Issue of a definitive judicial sentence stipulating the invalidity or cancellation of the registration of the patent.

Section II Utility Models

Article 20

A utility model shall be granted in accordance with the provisions of this Act if it incorporates a technical solution that is new in form, composition, methods or instruments, or parts thereof, or anything else which may have a commercial use.

Article 21

A request to obtain a utility model may be turned into a request to obtain a patent if it satisfies the necessary conditions, just as a request to obtain a patent may be turned into a request to obtain a utility model. In all cases, the protection period is calculated from the date of presentation of the original request.

Article 22

The protection accorded to utility models extends for seven years and cannot be renewed. It begins from the date of payment of the fee for the request to obtain a utility model.

Article 23

The Regulations stipulate the rules and procedures for presenting a request to obtain a utility model, the documents which must accompany the request, the deadlines for the request to be examined, decided on and published, the ways to complain against any decisions issued concerning the request, and the amount of the fees.

Chapter Three Integrated Circuit Layouts

Article 24

- (a) For the purposes of implementing the provisions of this Act, integrated circuit layout means any three-dimensional array of an integrated circuit, intended for manufacturing purposes. Integrated circuit means any product, in its final or intermediate form, which includes a group of components, at least one of which is active, fixed to a sheet of insulating material and forming, with all or some of its connections, an integrated unit which has the purpose of performing a specific electronic function.
- (b) An integrated circuit layout may be granted protection if it is new, the outcome of an intellectual effort, and if it is not commonly and widely known among experts in the industrial sector concerned.

Article 25

An integrated circuit layout is granted protection for a period of ten years, beginning from the date of the presentation of the request for protection before the competent Administration, or from the date of the first use of the layout anywhere in the world. The Regulations specify the rules and procedures for registering integrated circuit layouts.

Article 26

With the exception of any reproductions of integrated circuit layouts carried out for personal or academic purposes, the holder of a layout protected by this Act has the right to request the Tribunal to forbid third parties from using that layout without his consent. Any of the following actions shall be considered as unlawful use of integrated circuit layouts:

- (a) Reproducing the integrated circuit layout, wholly or any original part thereof, either by incorporating it into another integrated circuit or by any other method.
- (b) Importing, selling or distributing the integrated circuit layout, or any other integrated circuit which incorporates the protected layout; or undertaking any of those actions for any item containing an integrated circuit if that circuit contains an unlawfully copied layout.

Article 27

The rights afforded to the holder of the integrated circuit layout shall be restricted to actions carried out for commercial purposes. The holder cannot exercise those rights in relation to an original layout resembling his own but invented independently by another party, nor in relation to another layout invented on the basis of the analysis or evaluation of the protected layout, or to any integrated circuit incorporating the other layout.

Article 28

The actions listed under article 26 (b) of this Act shall not be considered as violations if the party who carried them out, or ordered them to be carried out, did not know, or had no reasonable grounds to know, when coming into possession of the integrated circuit, or the item containing that circuit, that it incorporated an unlawfully copied integrated circuit layout. That party may undertake those actions in relation to goods he possessed, or which were ordered, before receiving explicit notice that the design was unlawfully reproduced, on condition that he pay the holder of the layout fair compensation, either agreed between the parties or established by the Tribunal.

Chapter Four Undisclosed Information

Article 29

Undisclosed information shall enjoy legal protection under the following conditions:

- (a) If characterised by secrecy; in other words, if the information, as a whole or in the composition of its parts, is not generally known or in circulation among practitioners of the industrial activity in the scope of which the information falls.
- (b) If its commercial value derives from the fact of its being secret.
- (c) If its secrecy depends upon effective measures made by its legal holder to maintain that secrecy.

Article 30

The protection afforded by this Act extends to undisclosed hard-won information, presented to the competent authorities in order to obtain permission to market agricultural products which employ new chemical materials. The authorities receiving such information have the obligation to protect it from disclosure and from unfair commercial use, from the date the

information is presented until it ceases to be secret. However if, in the course of carrying out their duties, the competent authorities are compelled to disclose the information in order to protect the public, such disclosure shall not be considered to violate the rights of the holder of the information.

Article 31

The legal holder of the undisclosed information must take the measures necessary to protect that information and prevent it circulating among other parties. The holder's responsibility to prevent third parties accessing that information does not cease unless he shows that he made sufficient and reasonable efforts to protect it. The information retains its secret character and its associated rights preventing third parties from violating it, if it remains undisclosed pursuant to article 29 of this Act. The rights of the legal holder of the undisclosed information include the right to prevent others from disclosing that information to third parties, from obtaining it themselves, or from using it without his consent in a way that conflicts with transparent commercial practice.

Article 32

The following actions are not considered to conflict with transparent commercial practice:

- (a) Obtaining information from publicly available sources such as offices (including patent offices), open government archives and published research, studies and reports.
- (b) Arriving at the same information as a result of spontaneous and independent efforts involving testing, experimentation and analysis of products which circulate on the market and which incorporate the undisclosed information.
- (c) Obtaining information as a result of independent research, innovation, invention, development, modification or enhancement.
- (d) Possessing and using information which is known and available, and which circulates among practitioners of the industrial activity in the scope of which the information falls.

Chapter Five Mandatory Licences

Article 33

On the basis of a proposal from the competent Administration, or of a decision issued by a competent authority, the Minister may grant a mandatory licence to use an invention protected by patent, by a utility model or by an integrated circuit layout certificate. He must examine each licence in the light of its substantive merits and take account of the following:

- (a) Whether four years have passed since the request to obtain a patent was submitted, or three years since the patent was granted, whichever comes later, without the holder of the patent having used the invention, or having used it insufficiently, unless justified by a legitimate excuse.
- (b) Whether, following legal or administrative measures, it is proved that the holder of the patent committed an abuse or practised the rights deriving from the patent in a way that conflicts with transparent commercial practice.
- (c) Whether the applicant for a mandatory licence can show that he sought to obtain a licence from the rightful holder of the patent, in accordance with reasonable commercial conditions and for a reasonable material recompense, and that his efforts met with no success over a reasonable period of time. However neither these conditions, nor the conditions under clause (a) of this article, apply if a national emergency or highly compelling circumstances exist, or when the usage is for non-commercial public purposes. In this latter case the rightful holder of the patent shall be immediately informed.
- (d) Whether the mandatory licence is being granted to make the patent, integrated circuit layout, or utility model available on local markets.

(e) Whether the decision granting a licence defines the licence's scope and term, as required by the purpose for which the licence is being granted. The license shall be terminated if the conditions for which it was granted cease to exist and are unlikely to recur, giving due consideration to the lawful interests of the licensee. It is the function of the competent authorities, following a request from interested parties, to see whether those conditions persist.

(f) That the licence not be exclusive to the person to whom it was granted, and that he does not cede it to others unless accompanied by the project or the part thereof that relates to the use of the invention.

(g) That each request be decided independently.

(h) That the holder of the patent, utility model, or integrated circuit layout certificate be fairly compensated, giving due consideration to the economic value of the licence. The body which issued the decision shall be responsible for determining the amount of compensation, and the licensee must honour that amount. The decision establishing the compensation to the holder of the patent, utility model, or integrated circuit layout certificate, as regards the use of a mandatory licence, is subject to examination before the judiciary or to independent review by a neutral authority.

Article 34

A mandatory licence to use a patent related to semiconductor technology shall only be granted for public non-commercial purposes, or to rectify practices which, following judicial or administrative review, are declared to be non-competitive.

Article 35

If a certain patent involves an important technological advance possessing great economic value, but it cannot be used without using another patent (the original patent), the holder of that patent may be granted a mandatory licence to use the original patent. In this case, the mandatory licence may not be ceded unless the second patent is also ceded. The holder of the original patent has the right to obtain a similar licence from the holder of the mandatory licence, in accordance with reasonable conditions. The Regulations define the circumstances, conditions and procedures for registering, modifying and terminating mandatory licences.

Chapter Six Penalties

Article 36

A fine of up to 1 million rial shall be imposed upon anyone who:

1. Undertakes, for commercial purposes, to counterfeit any patent, utility model, or integrated circuit layout registered and protected under this Act.
2. Sells, puts on display for sale or circulation, imports, or possesses for commercial purposes products which he knows counterfeit an invention.
3. Unwarrantedly places on products, publicity, packaging instruments, etc. information which would lead people to believe he had obtained a patent or utility model.

If any of the offences stipulated by this article is repeated the penalty shall be redoubled. In all cases, the Tribunal may rule to confiscate the counterfeited items involved in the offence, and the instruments used to practise the counterfeit. The sentence shall be made public as the Tribunal sees fit.

Article 37

Anyone violating any other provision of this Act shall be punished by a fine of up to 500,000 rial.

Article 38

Anyone who has suffered damages as a result of any of the offences stipulated in articles 36 and 37 of this Act may file a case before the Tribunal demanding compensation from the perpetrators.

Chapter Seven General and Concluding Provisions

Article 39

The holder of a patent, utility model, or integrated circuit layout may, having deposited a monetary surety evaluated by the Tribunal, request the Tribunal to emit a precautionary order regarding products or goods which allegedly counterfeit the product protected by patent under this Act. The precautionary order shall be issued before a case is brought and expires if no case is filed within eight days of its issue.

Article 40

An identical product will be considered to have been obtained by an industrial process covered by the patent if the plaintiff can make a case to show that the identical product was obtained by direct use of that process, or that reasonable efforts were made to discover the process used in such production. In these circumstances, the Tribunal may order the accused to show that the process used to obtain the identical product was, in fact, different from the industrial process covered by the patent belonging to the plaintiff. In doing so the Tribunal must take account of the defendant's right to protect his own trade or industrial secrets.

Article 41

The following activities by a third party shall not be considered to infringe the rights of the holder of a patent, utility model, or integrated circuit layout:

1. Performing activities related to scientific research.
2. Undertaking, in good faith, to manufacture a product or to use a manufacturing process for a specific product, or making serious arrangements to do so, before the other party presents the request for a patent, utility model, or integrated circuit layout for the same product, or for the process to manufacture it.
3. Indirectly using a production process which involves the invention, in order to obtain other products.
4. Using the invention on means of transportation (by land, sea or air) belonging to a State which is a member of an international agreement to which the Republic is a party, or which has relations of reciprocity with the Republic, should that means of transportation temporarily or accidentally find itself in the Republic.
5. Manufacturing, arranging, using or selling the product during the period it is under protection, with the aim of obtaining a licence to market it, provided such marketing only takes place after the protection period has expired.
6. Acts performed by a third party during any of the above activities, provided such acts do not unreasonably conflict with the ordinary use of the patent, or unreasonably damage the lawful interests of the patent holder, while also taking into consideration the lawful interests of the third party.

Article 42

Any natural or juridical person, whether Yemeni or foreigner, who chooses to base their effective activities in the Republic, or in a State or entity which is linked to the Republic by an international agreement on intellectual property, or which has relations of reciprocity with the

Republic, has the right to request protection for an invention in accordance with the provisions of this Act.

Article 43

The Minister, in coordination with other Ministers concerned, shall take the necessary measures to protect public health, food supplies and the development of vital sectors of the economy. This must be done in accordance with this Act and includes the procedures necessary should the patent holders harm the rights of the public, or in the case of practices which lead to an unwarranted restriction on trade or have a negative influence on technology transfer.

Article 44

It is the task of the Tribunal to examine all cases and disputes arising from the implementation of the provisions of this Act.

Article 45

The fees for presenting a request are stipulated in the Regulations, as are the examination costs, the remuneration of the experts consulted by the competent Administration, and the annual monetary fee which the patent holder must pay to ensure continuing protection. The Regulations also contain the rules governing the reduction of fees, and the exemption therefrom.

Article 46

The Regulations implementing this Act shall be issued by decision of the Prime Minister, having obtained the agreement of the Council of Ministers and following a proposal from the Minister.

Article 47

The provisions relating to the right of the inventor contained in Presidential Decree No. 19 of the Year A.D. 1994 in respect of Intellectual Property, and everything which violates the provisions of this Act, shall be cancelled.

Article 48

This Act shall be published in the Official Gazette and will come into force after three months from the date of its issue.

**Issued by the Presidency of the Republic in Sana'a
on 8 Safar A.H. 1432 (12 January A.D. 2011)**

Ali Abdullah Saleh

President of the Republic