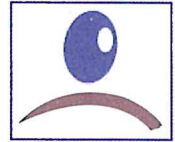




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FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
ETHIOPIAN INTELLECTUAL PROPERTY OFFICE



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Ref. No. WSPD/SSS.27-24

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Date 19 OCT 2021

To:

WIPO

Deputy Director General

Patents and Technology Sector

34, chemin des Colombettes

1211 Geneva 20

Switzerland

Subject: Ethiopian Patent Law and Procedures

The Ethiopian Intellectual Property Office (EIPO) has been requested on a letter dated September 10, 2021 to provide input for the Standing Committee on the Law of Patents on the Patent Law and Procedures of Ethiopia.

Therefore, here enclosed is Seven (7) pages of Document prepared based on the request.

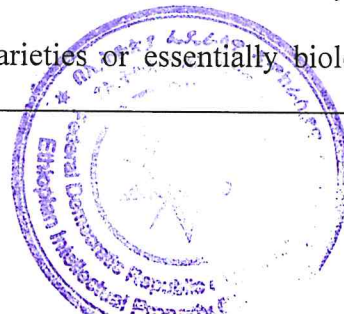
Kind regards!

Ermias Yemanebirhan
Director General

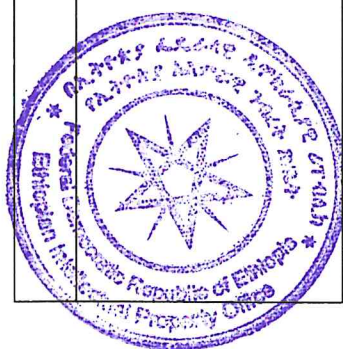


Ethiopian Patent Law Substantive Matters

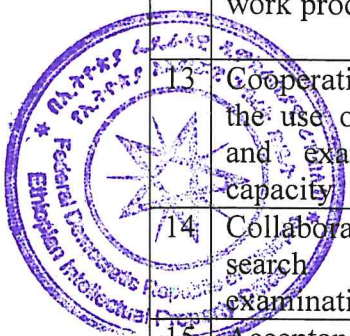
1	Prior Arts	Prior art shall consist of everything disclosed to the public, anywhere in the world, by publication in tangible form or by oral disclosure, by use or in any other way, prior to the filing or, where appropriate the priority date, of the application claiming the invention.
2	Novelty	An invention shall be considered new/novel if it is not anticipated by prior art.
3	Inventive Step	An invention shall be deemed as involving an inventive step if having regard to the prior art relevant to the application and as it would not have been obvious to a person having ordinary skill in the art.
4	Grace Period	Disclosure to the public of the invention shall not be taken into consideration if it occurred within 12 months preceding the filing date or, where applicable the priority date of the application and if it was by reason or in consequence of acts committed by the applicant or his predecessor in title or an abuse committed by a third party with regard to the applicant or his predecessor in title.
5	Sufficiency of Disclosure	<p>The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person having ordinary skill in the art, and shall, in particular, indicate at least one mode known to the applicant for carrying out the invention.</p> <p>The description may be used to interpret the claims.</p>
6	Exclusions from Patentable Subject Matter	<p>The following shall not be patentable:</p> <p>a) Inventions contrary to public order on morality</p> <p>b) Plant or animal varieties or essentially biological processes for the</p>



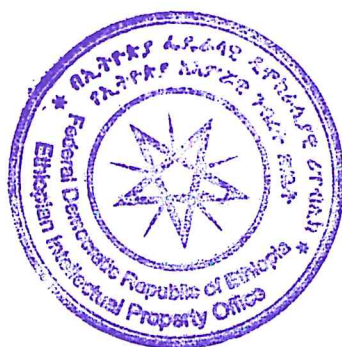
		<p>production of plants or animals.</p> <p>c) Schemes, rules or methods for playing games or performing commercial and industrial activities and computer programmes</p> <p>d) Discoveries, scientific theories and mathematical methods.</p> <p>e) Methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body.</p> <p>f) Works protected by Copyright.</p> <p>But, the provision of (e) mentioned above shall not apply to products for use in any of the methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body.</p>
7	Exceptions and Limitations of the Rights	<p>1. The patentee shall not have import monopoly right over the products of the patented invention in Ethiopia.</p> <p>2. The rights of the patentee shall not extend to:</p> <p>a) acts done for non-commercial purposes;</p> <p>b) the use of the patented invention solely for the purposes of scientific research & experimentation;</p> <p>c) acts in respect of patented Articles which have been put on the market</p> <p>in Ethiopia by the owner of the patentor with his own consent or,</p> <p>d) the use of patented Articles on air craft, land vehicles or vessels of other countries which temporarily or accidentally enter into the air space, territory, or waters of Ethiopia.</p> <p>e) for the public interest, in particular, national security, nutrition, health</p>



		<p>or the development of other vital sectors of the national economy so requires, the office may decide that, even without the agreement of the patentee, a government agency or a third person designated by the office to exploit the invention subject to the payment of an equitable remuneration to the patentee.</p> <p>f) Compulsory licenses.</p>
8	Opposition System	An opposition can be lodged after the grant of a patent (post-grant opposition) within two months by mentioning the grounds for opposition among those that are listed in the law.
9	Invalidation	<p>A patent shall be invalidated in whole or in part by the court upon request by an interested party if it is proved that:</p> <p>a) the subject matter of the patent is not patentable according to patent law;</p> <p>b) the description does not disclose the invention in a manner sufficiently clear & complete for it to be carried out by a person skilled in the art.</p>
10	Re-examination Systems	No re-examination process supported by the patent law.
11	Submission of information by third parties	There is no such a process supported by the patent law.
12	Sharing search and examination work products	The office shares the search and examination work products of IP Five (USPTO, EPO, JPO, KIPO & CNIPA)
13	Cooperation on the use of search and examination capacity	There is on-going collaboration with EPO.
14	Collaborative search and examination	There is on-going collaboration with EPO.
15	Acceptance of equivalent search	Ethiopian Intellectual Property Office (EIPO) has signed a reinforced



	and examination by other offices	<p>bilateral partnership agreement with the European Patent Office(EPO) which entails the reuse of work products of EPO in the examination of patents at EIPO</p>
16	Examination by a regional patent office	The office has no such a system.



Patent Invalidation in Ethiopia

The Ethiopian Intellectual Property Tribunal was established based on Proclamation 872 Article 44(1) and Federal Supreme Court Cassation Decision No. 71216 to provide an administrative procedure for appeal against decisions issued by Patent Directorate on limitation of rights and Invalidation of Patents.

The Intellectual Property Tribunal provides a mechanism for invalidation request on patent procedures which can be instituted by any person having a legitimate interest at any time after the grant of the patent following the procedures of Civil Procedure Code Article 33 sub-articles 2.

The Invalidation proceedings can be instituted on any of the following grounds according to Article 36 of the Patent Proclamation 123/1995:-

- (i) the legal requirements on patentability were not satisfied;
- (ii) the granted patent falls under the non-patentable subject matter;
- (iii) the specifications and claims did not comply with requirements of sufficient disclosure and enablement;

After acceptance of the invalidation request following the procedures set in the Civil Procedural Code, the patent holder is notified to that effect and requested to submit comments in relation to the invalidation question raised against his patent within a reasonable period from the date of receipt of such notification. The patentee can request extension of time for submitting the requested response. The copy of the response of patentee will be notified to the applicant and oral proceedings will take place among both parties. Based on the documents submitted and arguments in the oral proceeding the Tribunal will give its judgment and prepare a proposed decision to be approved by the Director General of Ethiopian Intellectual Property Office (EIPO).

If all procedures set in the Civil Procedural Code are followed and the time limit allowed for response has lapsed, even if no response have been submitted, the case is decided by the Director General upon the results of technical and legal reports submitted to the Director General by the Tribunal which examined the case.

The decision of the Director General is final at the Office level and could be appealable to the High Court.



Confidentiality of Communications between Clients and their Patent Advisors

Ethiopia

In Ethiopia, a client-patent advisor privilege applies to lawyers but not to Intellectual Property (IP) advisors unless the IP advisors are also lawyers and provide legal advice. Although the Constitution (Ethiopian Federal Democratic Republic Constitution No.1995) appears to suggest the implicit creation of the recognition of a right to privilege as provided in different provisions of its part.

Article 37 of the Constitution establishes the Right of Access to Justice; Article 21(2) recognizes the right to assistance of counsel and Article 26 creates the general right to privacy, which includes the right not to have the privacy of communications infringed.

Thus, right of access to a legal advisor, which includes the right to consult with such an advisor privately and confidentially is enshrined in the Constitution.

On the other hand, although Inventions, Minor Inventions and Industrial Design Proclamation No.123/1995 governs the applications for Patents, Utility Models and Industrial Designs and other related matters with respect to intellectual property rights, provisions dealing with client-patent advisors relationship haven't been provided for in the Proclamation. Thus, whenever clients are represented by patent advisors in court proceedings, their relationship is governed by the Federal Advocacy Service Licensing and Administration Proclamation No.1249/2021.

Article 23(1) of the Proclamation stipulates that any advocate or law firm is obliged to make, in writing, the advocacy service contract which he or it makes with his client except legal advice given for a short period of time. Thus, contract of advocacy Service and Related Obligations are required to be in writing.

Of course, prohibition of disclosure of confidentiality haven't been specifically and clearly addressed in the Proclamation. However, reading Article 24(1) in conjunction with Article 55(3) gives clear indication that Confidentiality of communications between clients and their advocates is a legal obligation to be maintained.



Article 24(1) states any advocate or law firm has the obligations to perform his or its advocacy service honestly and in a manner that ensures loyalty to justice; while Article 55(3) imposes an obligation on a law firm that it shall Keep the confidential information of its clients.

It indicates that it is a privilege against disclosure which is the right to privacy as provided for in Article 26 of the Constitution, ensuring clients know that certain documents and information provided to advocates cannot be disclosed at all. It recognizes the client's right of privacy safeguarding the relationship with his advocate, without fear of later disclosure of confidential information.

Failure to keep the confidentiality of client's information is one Type of Serious Disciplinary Violations as provided under Article 85(6) of the Proclamation No.1249/2021. Consequently, an advocate or a law firm who is proved to have violated such disciplinary rule shall be fined from Birr Seven Thousand Five Hundred to Fifteen Thousand as provided under Article 86(1) of the Proclamation.

However, the punishment to be imposed on the advocate or a law firm is not restricted to disciplinary measure. Thus, according to Article 89 of the Proclamation, an advocate or a law firm which has committed an act under the provisions of the Proclamation shall be punished by the relevant criminal law provided that such acts fulfill the ingredients of the crime.

