

## **CERTAIN ASPECTS OF NATIONAL PATENT LAW – ZAMBIA**

### **Comments on documents SCP/12/3 Rev.2 and SCP//18/2**

#### **Prior Art**

1. All knowledge that exist before the relevant filing or effective date of a patent application, whether it existed by way or written or oral disclosure.
2. For the purpose of deciding novelty, everything made available to the public and a document shall be deemed to be published if it can be inspected as of right by members of the public, whether upon payment of a fee or otherwise

#### **Novelty**

1. The invention must not be anticipated by the prior art at the effective date of the patent application. The prior art consists of everything made accessible to the public by way or written or oral disclosure before the relevant filing or effective date of a patent application including regional and international applications designating Zambia. The invention is new if on or before the effective date of patent application is not:
  - (a) known or used anywhere;
  - (b) worked anywhere other than by way of reasonable technical trial or experiment by the applicant or any person or persons from or through whom such applicant has derived his right or title;
  - (c) described in a patent specification available to public inspection and bearing a date less than fifty years prior to such effective date;
  - (d) described in writing in any publication of which there was a copy anywhere at the effective date of the application, or in a publication printed and published less than fifty years prior to such date; and
  - (e) claimed in any complete specification for a patent which was lodged in, though not available to public inspection at the effective date of the application, which may be granted in respect of the said invention.

#### **Inventive Step (Obviousness)**

The invention is not obvious to a person skilled in the art having regard to the state of the art. The prior art consists of everything made accessible to the public by way or written or oral disclosure before the relevant filing or effective date of a patent application.

## **Grace Period**

1. Exceptions to allow the novelty requirement of a patent not to be destroyed either because the patent has been made available to the public or has been disclosed or used:

(a) where a patent is worked or used by way of reasonable technical trial or experiment by the applicant or any person or persons from or through whom such applicant has derived his right or title;

(b) application for the patent relating to the Paris Convention for the protection of industrial property if lodged in Zambia within twelve months after the effective or priority date of the first application in the first convention country;

(c) where the invention is communicated through any agreement or arrangement made by or on behalf of the government of Zambia with the government of any country for the supply or mutual exchange of information or articles relating to the invention, and as a result of such agreement or arrangement the invention is published, made, used, exercised or vended, or an application for a patent has been granted on such an application;

(d) where the invention applied for was published, used or known prior to the effective or priority date of the application and the applicant proves that the publication or use was made without his knowledge or consent, and that the matter published or used was derived or obtained from him

## **Sufficiency of Disclosure**

The description or specification of the application shall:

(a) fully describe the invention and the manner in which it is to be performed;

(b) disclose the best method of performing the invention known to the applicant at the time when the specification is lodged at the Patent Office; and

(c) end with a claim or claims defining the subject-matter for which protection is claimed.

## **Exclusions from Patentable Subject matter**

1. Discoveries of materials or substances already existing in nature, scientific theories and mathematical methods

2. Schemes, rule and methods for performing a mental act or playing games or for doing business, or computer programs

3. Literary, dramatic, musical or artistic works

4. Aesthetic creations

5. The presentation of information

6. Therapeutic and surgical methods for treating humans or animals, and diagnostic methods practiced on the human or animal body

7. Inventions contrary to law , public policy or morality
8. Plant and animal varieties or any biological process for the production of animals or plants, not being a microbiological process or the product of such process
9. Substances capable of being used as food or medicine which is a mere admixture of known ingredients possessing only the aggregate of known properties of the ingredients

### **Exceptions and Limitations of the Rights**

1. Prior use;
2. Use of articles on foreign vessels, aircrafts and land vehicles;
3. Exhaustion of patent rights;
4. Acts for obtaining regulatory approval from authorities; and
5. Compulsory licensing and/or government use by any government department or any person authorised in writing by the relevant Minister