



**PERMANENT MISSION OF THE
UNITED REPUBLIC OF TANZANIA
GENEVA**

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5 October, 2015

**Director General,
WIPO,
1211 Geneva 20,
SWITZERLAND**

**RE: INFORMATION ON EXPERIENCE AND CASE STUDIES ON THE EFFECTIVENES OF
THE EXCEPTIONS AND LIMITATIONS TO PATENT RIGHTS**

We are referring to your letter with Ref. No. C. 8481 dated September 4, 2015 regarding the above heading.

We have attached herewith, the requested information from the Tanzania perspectives.

We thank you for your continued cooperation.

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INFORMATION ON EXPERIENCES AND CASE STUDIES ON THE EFFECTIVENESS OF THE EXCEPTIONS AND LIMITATIONS TO PATENT RIGHTS

BACKGROUND

The united Republic of Tanzania administers the Patents Registration Act Cap 217 R.E.2002 and the Industrial Property Act of 2008 of Tanzania- Zanzibar that enjoys an independent jurisdiction including intellectual property matters. The information as given hereunder, treated brief as it is, may not necessarily be construed an exhaustive analysis of the specific exceptions and or limitations as provided for under each of the cited laws. The same case applies to any reference that ought to have been made to any specific study or studies as the case may be, conducted in Tanzania pertaining to the subject matter under inquiry.

Even though, the illustrations as portrayed herein, make reference to the provisions of the Patents Registration Act, Cap 217 R.E.2002. Moreover, the information on the subject under reference is, in particular, focused on how such limitations and or exceptions are or capable of being linked to the relevant national development concerns cum endeavours.

Our experience is to the effect that the terms “exception” and “limitation” are seldom used with distinct and with different connotations as in certain circumstances the two terms are used interchangeably.

SELECTED PROVISIONS OF THE PATENTS REGISTRATION ACT CAP 217 R.E. 2002.

Section 12 of the Patents Registration Act Cap.217 provides that “ *A patent may be obtained even in respect of an invention the exploitation of which is prohibited by law except where public order or morality prohibits the exploitation of the invention*”. So far, neither decided case cum precedent nor a pending matter in the High court of Tanzania where the said provisions have been invoked.

Even though, the strict interpretation of what amounts to public order or morality are not explicitly provided for under the cited legislation and therefore, *in the case of any dispute capable of being instituted or otherwise in the cause of defending patent rights challenged on the grounds of public order or morality as the case may be*, is subject to determination or disposal by the court.

The provisions of section 13 of the cited law states that, inventions which concerns certain kinds of products, or processes for the manufacture of such products, may, by statutory instrument be temporarily excluded from

patentability or extended for further periods, each such period not exceeding ten years(*emphasis supplied*).

It would appear from the cited provisions that, in certain pre-determined development concerns, which for practical reasons, cannot be realized in the event of an exercise of existing patent rights, the Government(*through the Minister for the time being responsible for patent matters*) may by the said statutory instrument, temporarily prevent the patentee from exercising such patent rights for the period prescribed under the instrument in question, in favour of such desired development concerns to take effect of which otherwise, inhibited in absence of the instrument .

The provisions of section 16(1) states that ---“*the right to a patent for an invention made in execution of a commission or of an employment contract shall belong to the person having commissioned the work or to the employer-----*”.Some of the institutions of higher learning in Tanzania in particular, the University of Dar es Salaam (UDSM) and Sokoine University of Agriculture (SUA), have published their respective institutional intellectual property policies which amply provide guidelines on research and or research results that fall under the subject of patent right hence the relation between the students cum researchers, with regard to sharing of any accrued benefits derived and emanating from the exercise of patent rights.

Section 37 of the Patents Registration Act provides that the scope of protection under the patent shall be determined by the terms of the claims; nevertheless, the description and the drawings included in the patent may be used to interpret the claims.

In essence, the elasticity of the extent to which the scope of protection is capable of being stretched under the law, is subject to determination by the Registrar of Patents, which is appealable to the court as preferred at the instance and by any person affected or likely to be affected by such determination pertaining to the scope of protection (*emphasis supplied*).

Section 38 of the cited law provides that, the rights under the patent shall extend only to acts done for industrial or commercial purposes and in particular not acts done for scientific research. It is apparent therefore that, scientific research activities are capable of being carried out and or conducted free from and of any obligation that falls in the exercise of patent rights except for industrial or commercial purposes (*paraphrased*).

Despite the fact that the strict interpretation of the foregoing provisions exonerate scientific researchers from any liability arising from an exercise of entitlement or

enforcement of patent rights, there is no show case, to demonstrate where a researcher or researchers that had been caused to the test, in terms of any set parameters or a yard stick used for measuring the demarcation line between the scientific research for industrial and or commercial purposes and the vice-versa; within the meaning of the foregoing provisions.

In essence, any such scientific research conducted, say, to meet educational interests, unless disputed, shall constitute a scientific research conducted for non-industrial or commercial purpose hence free from an exercise or enforcement of existing patent rights at the time of conducting any such scientific research.

Section 62 of the cited law provides that *where the a vital public interest (in particular, national security, health or the development of vital sectors of the public economy) so demand interference with patent rights otherwise granted to the patentee, such patent shall be exploited by or through the Government subject to payment of remuneration as fixed and or determined by the Registrar of patents (Paraphrased and emphasis supplied).*

THE HARARE PROTOCOL OF 1982

Tanzania is a member country, indeed, one of the founder members of the African Regional Intellectual Property Organization (ARIPO), based in Harare -Zimbabwe. The Harare Protocol of 1982 which entered into force in 1984 empowers the ARIPO Secretariat, which is by design the ARIPO Office, to grant regional patent application and designate such patent for protection in desired member states as preferred at the instance of the applicant.

Unless within six (6) months from the receipt of the designated patent or an industrial design application as the case may be, make an official communication to ARIPO, in the manner prescribed, to the effect that the patentee shall not enjoy, if so desirable, in the territory providing such information, the benefit of grant of the patent application so designated, otherwise sought for protection, say, in Tanzania, the sought protection is considered accorded.

This position portrays an exception to the general rule that where such regional application has been granted, then the patentee would be entitled to exercise patent rights in all member states that its protection has been sought. In other words, the protection of any patent granted by ARIPO is not automatic or does not guarantee protection in the territories of member states; notwithstanding the fact that the patentee had sought such protection in all or such specified member states depending on the prevailing circumstances as characterized by the choice /choices of the

applicant including comparable competitive advantage or potential commercial value as the case may be.

However, failure to make an official communication to ARIPO and in the prescribed manner shall be construed that the member states that remained silent, have accepted to be bound by the said Protocol hence bound to accord protection to the extent of the patent so granted at the instance of ARIPO.