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# INDUSTRIAL PROPERTY RIGHTS AND THEIR ENFORCEMENT FOR THE SULTANATE OF OMAN

## Section 1 Definitions

For the purposes of this Act,

- **“Budapest Treaty”** means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977, and amended on September 26, 1980
- **“Certificate”** means the title granted to protect a utility model, an industrial design, a layout-design (topography) of integrated circuit, a mark or a geographical indication.
- **“Certification Marks”** means signs 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”** means any marks that belong to a collectivity, such as a cooperative or an association or federation of industrialists, producers and merchants.
- **“Compulsory License”** means an authorization given by the competent authority to a person, firm or a private or state-owned or state-controlled entity, to exploit a patent, a utility model, a layout-design or an industrial design in Oman without the approval of the right holder.
- **“Decision of the General Council of the WTO of August 30, 2003,”** means the Decision of the General Council of the WTO on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.
- **“Distinctive sign”** means a variety of designations and signs and slogans 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.
- **“Exclusive License”** means a license contract that confers on the licensee and, where it is established expressly therein, on the persons authorized by the licensee, the right to exploit the licensed industrial property right to the exclusion of all other persons (including the right owner).
- **“Geographical Indication”** means 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.
- **“Hague Agreement”** means the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, as adopted on July 2, 1999.

- **“Industrial Design”** means 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.
- **“Integrated Circuit”** means 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.
- **“International Classification”** means, as regards patents and utility models, the classification for patents for invention, inventors' certificates, utility models and utility certificates, industrial designs and marks.
- **“Invention”** means an idea of an inventor, which permits in practice the solution to a specific problem in the field of technology. An invention may be, or may relate to, a product or a process.
- **“Layout-Design”** is synonymous with “topography” and means 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.
- **“Madrid Protocol”** means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, as signed at Madrid on June 28, 1989.
- **“Mark”** means 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.
- **“Minister”** means the Minister of Commerce and Industry.
- **“Paris Convention”** means the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised.
- **“Patent”** means 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.
- **“Patent Cooperation Treaty”** means the Patent Cooperation 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”** means the Patent Law Treaty adopted at Geneva, on June 2, 2000.

- **“Priority Date”** means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention.
- **“Registrar”** means the Director of the Industrial Property Office, as established by this Law.
- **“Trade Name”** means the name or designation identifying and distinguishing an enterprise.
- **“Washington Treaty”** means the Treaty on Intellectual Property in Respect of Integrated Circuits in Washington, D.C., on May 26, 1989.
- **“WTO”** means the World Trade Organization.
- **“Utility Model”** means 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.

## TITLE I TECHNICAL CREATIONS

### PART I: PATENTS

#### Section 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 under Section 1;
  - 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 other public and morality; such exclusion shall not be made merely because the exploitation of those inventions is prohibited by law.

2. The provisions of subsection 1 shall not apply to the following inventions:
  - A. Process inventions which, in whole or in part, consist of steps that are performed by a computer and are directed by a computer program; and
  - B. Product inventions consisting of elements of a computer-implemented invention, including in particular:
    - (i) Machine-readable computer program code stored on a tangible medium such as a floppy disk, computer hard drive or computer memory; and
    - (ii) a general purpose computer whose novelty over the prior art arises primarily due to its combination with a specific computer program.

### Section 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.

For the purposes of Subsection 2 B, disclosure to the public of the invention shall not be taken into consideration if it occurred within twelve 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 of an abuse committed by a third party with regard to the applicant or his predecessor in title. It shall be understood that disclosure derived from the applicant or his predecessor in title is comprised by this paragraph.

2. An invention shall be considered as involving an inventive step if, having regard to the differences and similarities between the claimed invention and the prior art as defined in subsection (2)(b), the claimed invention as a whole would not have been obvious to a person skilled in the art at the filing date or, if applicable, 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. The term "industry" shall be understood in its broadest sense, as any human economic activity leading to the production of goods and services; it shall cover, in particular, handicraft, agriculture, fishery and services.

### Section 4

1. The right to a patent shall belong to the inventor. The right to a patent 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. In order to establish the right of preference the Registrar shall take into account the matter claimed in the applications.

5. 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 and the reasonable expectations of gain that the employer had from his employee's inventive output at the time he hired him, the employee shall be entitled to an equitable remuneration.

6. 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.

C. 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 and in other countries or territories does not exempt him from paying the remuneration.

D. The employer may, within 60 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 be named as such 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. This Section shall apply to public civil servants as well as to persons whose services are hired in accordance with the Civil Code.

## Section 5

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. (A) 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.  
  
(B) 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 for the invention to be carried out by a person having ordinary skill in the art.

(D) As regards patent applications concerning micro-organisms, the Registrar shall consider the requirements of paragraph A of this Subsection complied with when the applicant, together with the application, submits a declaration that the micro-organism or micro-organisms to which the application relates has (have) been deposited with an international depositary authority, in accordance with the Budapest Treaty and its Regulations. The Registrar shall recognize the deposit and its date of the deposit as indicated by the international depositary authority, provided that the applicant provides him with a copy of the receipt of the deposit issued by the international depositary authority.

(E) The description of plant varieties shall be deemed sufficient when they are as complete as is reasonably possible.

4. 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.
5. (A) The applicant may withdraw the application at any time during its pendency.

## Section 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 as published in accordance with Section 9(4).
3. (A) The applicant may, up to the time when the application is in order for grant, divide the application into two or more applications ("divisional applications"), provided that each divisional application shall not go beyond the matter disclosed in the initial application.

(B) Each divisional application shall be entitled to the filing date and, where applicable, the priority date of the initial application.

4. The fact that a patent has been granted on an application that did not comply with the requirement of unity of invention under subsection (1) shall not be a ground for the invalidation of the patent.

#### Section 7

1. (A) 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. Consequently, the filing in Oman of that application before the expiration of the periods referred to in paragraph B of this subsection 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.

(B) The period of priority under subsection A is of 12 months and shall be counted in accordance with the provisions of Article 4 of the Paris Convention.

2. Where the application contains a declaration under subsection (1), the Registrar may request that the applicant furnish, within the prescribed time limit, a copy of the earlier application certified as correct by the Industrial Property Office with which it was filed.
3. If the Registrar finds that the requirements under this Section and the Regulations pertaining thereto have not been fulfilled, the said declaration shall be considered not to have been made.

#### Section 8

The applicant shall, at the request of the Registrar, furnish him with the date and number of any application for a patent filed by him or by his predecessor abroad ("foreign application") relating to the same or essentially the same invention as that claimed in the application filed in Oman :

1. The applicant shall, at the request of the Registrar, furnish him with the following documents relating to one of the foreign applications referred to in subsection 1:
  2. a copy of any communication received by the applicant concerning the results 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.



5. The applicant shall, at the request of the Registrar, furnish him with a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in paragraph (a) of this subsection.

## Section 9

1. (A) 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 all of the following elements:

- (i) an express or implicit indication to the effect that the elements are intended to be an application;
- (ii) indications allowing the identity of the applicant to be established and information allowing the applicant to be contacted by the Office;
- (iii) a part which, on the face of it, appears to be a description of an invention.

(B) A reference, made upon the filing of the application, in Arabic, to a previously filed application shall, for the purposes of the filing date of the application, replace the description of the invention referred to in proviso (iii) of paragraph A and, if drawings are included in the referenced application, shall also replace any drawings.

(C) The elements referred to in provisos (i) and (ii) of paragraph (a) must be submitted in Arabic. The element referred to in proviso (iii) of paragraph A may, for the purposes of the filing date, be filed in any language.

(D) If the Registrar finds that the application did not, at the time of receipt, fulfill the requirements referred to in paragraph A, he shall invite the applicant to file the required correction and shall accord as the filing date the date of receipt of the required correction, unless paragraph B applies, but if no correction is made, the application shall be treated as if it had not been filed.

2. (A) 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. If the applicant complies with the said invitation, 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.

(B) 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. If the applicant complies with the said invitation, the Registrar shall accord as the filing date the date of receipt of the missing part, unless paragraph (b) of subsection (1) applies. 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 of Section 5 and the Regulations pertaining thereto as well as with other requirements which are

designated by the Regulations as formal requirements for the purposes of this Act and whether information requested under Section 8, if any, has been provided.

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:

- (i) the number and the filing date of the application;
- (ii) the title of the invention;
- (iii) the name of the applicant(s) and of the inventor(s);
- (iv) the priority date(s);
- (v) the international classification;
- (vi) one drawing, if any, that depicts the main element(s) of the invention;
- (vii) the abstract.

(B) The fee corresponding to the filing of the application shall be in an adequate amount to cover the costs of the publication of the notice of the laying open of the application for public inspection.

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

(D) The Registrar shall not give access to or information about the contents of the patent application to third persons until the notice mentioned in paragraph (a) of this subsection is published.

(E) 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 mentioned in paragraph

5. (A) Within 36 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 Sections 2, 3 and 5(3)(A) and 5(3)(B). The request shall 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 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 evidence.

6. For the purposes of the examination of the patent application under subsection 5, 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) a search and examination report submitted under Section 8(2)(A)(i) relating to, or a final decision submitted under Section 8(2)(A)(iii) on the refusal to grant a patent on, a corresponding foreign application; and or/
  - (C) a 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.

#### Section 10

1. Where the Registrar is of the opinion that the application complies with the conditions of Sections 2, 3, 5(3)(A) and 5(3)(B) and the Regulations pertaining thereto he shall grant a patent. Otherwise, he shall refuse the application and notify the applicant.
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.

#### Section 11

1. A patent shall confer on its owner the right to prevent third parties from exploiting the patented invention in Oman. The right of the patent owner is defined by the claims.
2. For the purposes of this Act, "exploiting" a patented invention means any of the following acts:
  - (A) when the patent has been granted in respect of a product:
    - (i) making, importing, offering for sale, selling and using the product;
    - (ii) 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:
    - (i) using the process;

- (ii) 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:

- (i) producing or reproducing (multiplying);
- (ii) conditioning for the purpose of propagation;
- (iii) offering for sale;
- (iv) selling or other marketing;
- (v) exporting;
- (vi) importing;
- (vii) stocking for any of the purposes mentioned in (i) to (vi), above;

(D) The provisions of paragraph C shall also apply in relation to

- (i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- (ii) varieties which are not clearly distinguishable from the protected variety and
- (iii) varieties whose production requires the repeated use of the protected variety.

(iv) a variety shall be deemed to be essentially derived from another variety (“the initial variety”) when :

- 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;
- it is clearly distinguishable from the initial variety; and
- 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, subject to subsection 4 hereof and Section 13, and in accordance with the provisions of Title IV, to institute court proceedings against any person who infringes the patent by performing, without his agreement, any of the acts referred to in Subsection 2 or who performs acts which make it likely that infringement will occur.

4. (A) The rights under the patent shall not extend:

- (i) 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
- (ii) 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
- (iii) to acts done only for experimental purposes relating to a patented invention; or
- (iv) to acts performed by any person who in good faith, before the filing or, where priority is claimed, the priority date of the application on which the patent is granted, was using the invention or was making effective and serious preparations for such use in Oman (the "prior user");
- (v) 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 purposes related to generating such information, and that the product shall only be exported outside Oman for purposes of meeting marketing approval requirements of Oman.

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

- (i) acts done privately and for non-commercial purposes;
- (ii) acts done for experimental purposes; and
- (iii) acts done for the purpose of breeding other varieties, including essentially derived varieties;
- (iv) within reasonable limits and subject to the safeguarding of the legitimate interests of the patent owner, any acts practiced by farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the patented variety or an essentially derived variety.

5. Without prejudice to the provisions of subsection 4(a) of this Section, 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 ("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:

- (i) 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
- (ii) 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:

(A) If the importer fails to fulfill the purpose that justified the Minister's decision to consider the patent rights exhausted, the Minister shall, ex officio, or at the request of the patent owner, cancel the authorization.

(B) If the conditions that gave rise to the Minister's decision to consider the patent exhausted cease to exist, the Minister may, ex officio or at the request of the patent owner, cancel the authorization, 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.

(6) The right of the prior user referred to in subsection (4)(a)(iv) of this Section 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.

## Section 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, 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. Extensions shall be granted upon request by the patent owner and the payment of the prescribed fee. No extension longer than five (5) years beyond the normal expiry date shall be granted. Periods attributable to actions of the patent applicant shall not be included in the determination of such delays.

(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, a progressively increasing annual fee shall be paid in advance to the Registrar 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. If an annual fee is not paid in accordance with the provisions of this subsection, the patent application shall be deemed to have been withdrawn or the patent shall lapse. 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.

### Section 13

1. (A) Where

- (i) the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy so requires; or
- (ii) 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 in accordance with this subsection would remedy such practice; or
- (iii) 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; or
- (iv) 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; or
- (v) when a patent (the “second patent”) claiming an invention that involves an important technical advance of considerable economic significance in relation to an invention claimed in a patent (the “first patent”) without infringing which the second patent cannot be exploited.

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)(iv), 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 the 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 the 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 Government agency or third person designated by him has failed to comply with the terms of the decision.

(B) Notwithstanding paragraph A, the Minister shall not terminate the compulsory license if he is satisfied that the need for adequate protection of the legitimate interests of the Government agency or third person designated by him justifies the maintenance of the decision or, if the compulsory license was granted to remedy an anti-competitive practice under subsection (1)(A)(ii), 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:
  - (i) the exploitation of the invention by the patent owner himself, either through manufacture in Oman or through importation or both; and
  - (ii) the conclusion of license contracts by the owner of the patent; and
  - (ii) the continued exercise, by the owner of the patent, of his rights under Section 11 (1), (2) and (3).
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. Unless the particular circumstances of the case show otherwise, a period of up to a maximum of six months between the date on which the patent owner was informed by the proponent of the request and the proposed conditions for a voluntary license and the date on which the proponent of the voluntary license was informed by the patent owner on his final decision to refuse the proposal shall be deemed a reasonable time.

(B) Evidence concerning a previous attempt of obtaining a voluntary license, under paragraph (a), 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 by the Government agency or third person licensed by the Minister shall be predominantly for the supply of the market in Oman except when the compulsory license concerns a patent claiming a pharmaceutical product or a process of making a pharmaceutical product, and the purpose of the license is to export the patented products or the products manufactured by the patented process for a foreign territory or country with no or with insufficient manufacturing capacity, in accordance with the terms and conditions of the Decision of the General Council of the WTO of August 30, 2003.
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)(v),

(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 Section 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.

#### Section 14

1. Any interested person may request the 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 Sections 2, 3, 4 and 5(3)(A) and (B), is 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. For the purposes of this Subsection, inequitable conduct is an act or 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 or part of a 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 final decision of the Court shall be notified to the Registrar who shall record it and publish a reference thereto according to the Regulations.

## PART II UTILITY MODEL CERTIFICATES

### Section 15

Without prejudice to the following provisions, the provisions of Part I of Title I as well as other provisions that apply to patents and patent applications 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 limited to the compliance, mutatis mutandis, of the provisions of Sections 5 and 9 as well as those of this Section

### Section 16

1. The owner of the certificate shall, in addition to any other rights, remedies or actions available to him, have the right, to institute court proceedings, in accordance with Title IV, against any person who infringes the certificate by performing, without his agreement, any of the acts referred to in Section 11(2)(A) or who performs acts which make it likely that infringement will occur.
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.

### Section 17

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

## Section 18

1. (A) At any time before the examination of a patent application under Section 9(5) 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.

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

## **PART III INDUSTRIAL DESIGNS**

## Section 19

The protection under this Part does not extend to anything in an industrial design which serves solely to obtain a technical result and to the extent that it leaves no freedom as regards arbitrary features of appearance.

## Section 20

1. An industrial design is registrable if it is new.
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 ("known designs") or from combinations of features of known designs.
3. Sections 3(2)(C) and 7 shall apply mutatis mutandis to industrial designs, except that the period determined in Section 7(1)(B) 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 or any right of personal possession.
4. Industrial designs that are contrary to public order or morality shall not be registrable.

## Section 21

Section 4 shall apply mutatis mutandis to industrial designs.

## Section 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 (2) 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.

## Section 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. Section 9(1)(C) shall apply mutatis mutandis.
2. (A) Where the Registrar finds that the conditions referred to in Subsection 2 hereof 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; otherwise, he shall refuse the application.  
  
(B) Within 90 days from the publication of the notice referred to in paragraph A of this Subsection, the applicant shall pay the prescribed fee, which shall be prescribed in a manner as to 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 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) Notwithstanding Subsection 3, where a request has been made under Section 23 (4) 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.  
  
(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.

#### Section 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. Section 11(4)(A)(i) and (5) shall apply mutatis mutandis to registered industrial designs.
3. In accordance with Title IV, the registered owner of an industrial design 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 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 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 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.

#### Section 25

The provisions of Section 13 shall apply for mutatis mutandis to industrial designs.

#### Section 26

The provisions of Section 14 shall apply mutatis mutandis to industrial designs.

## **PART IV**

### **LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS**

#### Section 27

1. Protection under this Part may be obtained for layout-designs of integrated circuits if and to the extent that they are original and has not yet been commercially exploited, or has been commercially exploited for not more than two years, anywhere in the world.
2. A layout-design shall be 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 of subsection 1.

#### Section 28

1. The right to layout-design protection shall belong 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. Section 4 shall apply, mutatis mutandis, to layout-designs.

#### Section 29

1. Protection under this Act 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:
  - (i) 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 Section 29;
  - (ii) 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 Act shall not extend to:
  - (i) reproduction of the protected layout-design for private purposes or for the sole purpose of evaluation, analysis, research or teaching; or
  - (ii) the incorporation in an integrated circuit of a layout-design created on the basis of such analysis or evaluation and which is itself original in the meaning of Section 37 or the performance of any of the acts referred to in subsection (1) in respect of that layout-design; or
  - (iii) the performance of any of the acts referred to in subsection (1)(ii) where the act is performed in respect of a protected layout-design, or in respect of an integrated circuit in which such a layout-design is incorporated, that has been put on the market in Oman by, or with the consent of, the right holder, and consequently exhausting the rights of the right holder; or
  - (iv) the performance of any of the acts referred to in subsection (1)(ii) 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, when acquiring the integrated circuit or the article incorporating such an integrated circuit, 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 royalty such as would be payable under a freely negotiated license in respect of such a layout-design; or
  - (v) the performance of any of the acts referred to in Subsection (1)(ii) where the act is performed in respect of an identical layout-design which is original and has been created independently by a third party.

#### Section 30

1. Without prejudice to the provisions of Subsection 2(iii) of this Section, 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:
  - (i) 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

- (ii) 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 or by a person under his control.
2. The Minister shall, ex officio, or at the request of the right holder, cancel the authorization.
- (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, the Minister may, ex officio or at the request of the right holder, cancel the authorization, 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.

### Section 31

Protection of a layout-design under this Act 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 Section 28(2), 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.

### Section 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. The application shall:
  - (i) contain a request for registration of the layout-design in the Register of Layout-Designs and a brief and precise designation thereof;
  - (ii) indicate the name, address, nationality and, if different from the address, the habitual residence of the applicant;
  - (iii) 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;



- (iv) specify the date of first commercial exploitation of the layout-design anywhere in the world or indicate that such exploitation has not commenced; and
  - (v) provide particulars establishing the right to protection under Section 30.
2. Where the application does not duly comply with the requirements of subsection (2), the Registrar shall notify the applicant of the defects and invite him to correct them within two (2) months. 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. Where the latter requirements were not complied with at the date of receipt of the application but are corrected within the time limit, 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, the Registrar's Office shall notify the applicant that the application will be deemed not to have been filed unless payment is made within two (2) months from the date of the notification. If the application fee is not paid within that time limit, the application shall be deemed not to have been filed.

### Section 33

1. Where the application complies with the requirements of Section 33, 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 there from, subject to the payment of the prescribed fee.
3. The registration of a layout-design shall be published in the Official Gazette.

### Section 34

The provisions of Section 13 shall apply for mutatis mutandis to layout-designs.

### Section 35

The provisions of Section 14 shall apply mutatis mutandis to layout-designs.

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

#### Section 60

1. The provisions of this Title 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) In addition to the acts and practices referred to in Articles 61 to 65, 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 Title, 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.

An act or practice that is contrary to honest practices, for the purposes of this Title, shall also mean acts of breach of legal duties in general when their purpose or their consequence is to obtain 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 Title IV.

#### Section 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

- (i) a trademark, whether registered or not or a trade name.
- (ii) any distinctive sign other than a trademark or a trade name
- (iii) the appearance of a product or the presentation of products or services as well as of the place of business

#### Section 62

1. 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's enterprise shall constitute an act of unfair competition, regardless of whether such act or practice causes confusion.

2. (A) Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to

- (i) a trademark, whether registered or not;
- (ii) a trade name;
- (iii) any distinctive sign other than a trademark or a trade name;
- (iv) the appearance of a product;
- (v) the presentation of products or services as well as of the place of business;
- (vi) a celebrity or a well-known fictional character.

(B) For the purposes of these provisions, "dilution of goodwill or reputation" means the lessening of 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.

#### Section 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

- (i) the manufacturing process of a product;
- (ii) the suitability of a product or service for a particular purpose;
- (iii) the quality or quantity or other characteristics of products or services;
- (iv) the geographical origin of products or services;
- (v) the conditions on which products or services are offered or provided;
- (vi) the price of products or services or the manner in which it is calculated.

#### Section 64

1. Any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, another's 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

- (i) the manufacturing process of a product;
- (ii) the suitability of a product or service for a particular purpose;
- (iii) the quality or quantity or other characteristics of products or services;
- (iv) the conditions on which products or services are offered or provided;
- (v) the price of products or services or the manner in which it is calculated.

## Section 65

1. 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 (hereinafter referred to as “the rightful holder”) and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.

For the purposes of this Section, “a manner contrary to honest commercial practices” 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.

2. For the purposes of this Section, information shall be considered “undisclosed information” if it has 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 or 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

- (i) 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 or agricultural chemical products, or
- (ii) 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) For the purposes of this Subsection, 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) Subsection (4)(a)(i) shall be construed as precluding any governmental agency, without the consent of the person or entity who first obtained marketing approval of a pharmaceutical or agricultural

chemical product in Oman (the originator) from relying on or referring to the undisclosed test data or other undisclosed data submitted by the originator, for the purposes of approving any other product, for at least five (5) years for pharmaceutical products, and ten (10) years for agricultural chemical products, from the date of marketing approval in Oman

(B) The provisions of paragraph (A) of this Subsection 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.

(C) 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 years from the date of marketing approval in Oman.

(D) The provisions of paragraph (C) of this Subsection 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.

(E) Where the originator's product is covered by a patent in force in the territory of Oman, the competent authority, notwithstanding the provisions of this Subsection, but without prejudice to the provisions of paragraph (e), shall not approve another product without the prior consent of the patent owner. If a request of marketing approval that requires or implies reliance on the originator's undisclosed data is submitted by another person during the term of a patent, the competent authority shall inform the patent owner of such a request.

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

### **PART I: INFRINGEMENT PROCEEDINGS**

#### Section 66

1. Subject to Sections 11, 13 and 17, an infringement of a patent or a utility model shall consist of the performance of any act referred to in Section 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 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 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 in the general law or under Chapter 4 of this Title.

3. The 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 of August 30, 2003, 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 this Subsection ex officio. In this event, they shall notify the right holder of the suspension of release who shall have ten 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 Subsection (3), the same border measures that are available under Section 83 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 Subsection (3). Border measures under Section 89 may also be determined for the same purpose.

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 years from the date of filing of the patent application or three 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 other abusive practices, including anti-competitive 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 Section 15(3).

6. (A) With respect to a medical practitioner's 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, the provisions of Title IV of this Act shall not apply against the medical practitioner or against a related health care entity with respect to such medical activity.

(B) For the purposes of this Subsection:

- (i) the term "medical activity" means the performance of a medical or surgical procedure on a body, but shall not include (i) the use of a patented machine, manufacture, or composition of matter in violation of such patent, (ii) the practice of a patented use of a composition of matter in violation of such patent, or (iii) the practice of a process in violation of a biotechnology patent;

(ii) the term “medical practitioner” means any natural person who is licensed by a State to provide the medical activity described in paragraph (b)(1) or who is acting under the direction of such person in the performance of the medical activity;

(iii) 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;

## Section 67

1. Subject to Section 40(3), 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 Sections 40(1) and 46 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:

(i) 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

(ii) 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-days, the Court may grant an injunction to prevent infringement, or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Title.

The Court may also, on the request of any competent authority or any interested person, group association or syndicate, including producers, manufacturers or traders, grant the same relief where it is satisfied that an act of infringement referred to in Section 40 has been committed or is imminent.

## Section 68

1. An infringement of an industrial design registered under this Act shall consist of the performance of any act referred to in Section 25(2) 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 days, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Title.

#### Section 69

1. An infringement of a geographical indication protected under this Act shall consist of the performance of any act referred to in Section 55 or any use of a geographical indication by a person who has no right to use the geographical indication in accordance with this Act.

2. On the request of any interested person or of any interested group of producers or consumers, or any competent authority under Section 52, the Court may grant an injunction to prevent the unlawful use of the geographical indication, award damages and grant any other remedy provided for in the general law or under this Title.

#### Section 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 Section 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 days, the Court may grant an injunction to prevent infringement or an imminent infringement, award damages and grant any other remedy provided for in the general law or under this Title.

#### Section 71

1. The provisions of this Title shall apply to prevent or to remedy any act of unfair competition subject to the provisions of Sections 60 to 65.

2. Where an act under Section 65(4) and (5) is considered by the Court to constitute an act of unfair competition, the Court shall order:

(a) the government authority to cancel the marketing approval;

(b) 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;

(c) the government authority to pay adequate damages for the unauthorized disclosure of the data;

(d) 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.



Section 72  
Time Limits

Civil proceedings under Sections 66 to 71 can be initiated within five 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.

**PART II: PROVISIONAL MEASURES**

Section 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 referred to in Part I of this Title from occurring 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:

- (i) 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
- (ii) 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 without giving the other party an opportunity of being heard shall be acted upon expeditiously and shall, except in exceptional cases, generally be executed within ten days.

4. Where provisional measures have been ordered under Subsections (2) and (3), the defendant may file a request for review with the Court within two (2) weeks from the notification of the decision. In the review proceedings, the Court shall give the parties concerned an opportunity of being heard and shall confirm, modify or revoke the decision within a reasonable period after the notification of the 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 on the merits of the case in proceedings under Subsection (5) initiated by the applicant that there has been no infringement or threat of an infringement, the Court shall order the applicant, upon the request of the defendant, to provide the defendant appropriate compensation for any injury caused by the execution of the provisional measures.

7. The measures of this Section aiming at preserving relevant evidence shall also be available before the granting of the pending registration, if the Court so deems necessary. In that event, the applicant shall initiate Court proceedings leading to a decision on the merits of the case 20 working days or 31 calendar days, whichever is the longer, from the publication of the grant of the pending registration.

### **PART III: EVIDENCE; BURDEN OF PROOF**

#### Section 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 may make preliminary and final determinations, affirmative or negative, on the basis of the information presented to it, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

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:

- (i) if the product obtained by the patented process is new, or
- (ii) 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. In the event that the Court appoints technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation bear the costs of such experts, the Court shall seek to ensure that such costs are closely related, inter alia, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

## **PART IV: DAMAGES; OTHER REMEDIES**

### **Section 75**

1. (A) Where damages are awarded in accordance with Sections 66 to 71, the Court shall order the infringer to pay the right holder adequate compensation for the infringement of his intellectual property right.

(B) In the case of trademark infringement, the Court shall order the accounting of the profits of the infringer that are attributable to the infringement and that are not taken into account in computing the amount of the damages referred to in paragraph (a). In civil judicial proceedings concerning trademark infringement, the Court shall establish or maintain pre-established damages, which shall be available on the election of the right holder. Pre-established damages shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement.

(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:

- (i) 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
- (ii) 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
- (iii) on the date or subsequent to the date on which the alleged infringer acquired knowledge of the contents of the application.

3. The request for the Court to order the payment of damages under Subsection (2) may be filed only after the title of industrial property right in question is granted.

### **Section 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 shall order that materials or implements the predominant use of which has been the creation of infringing goods be destroyed or, in exceptional circumstances, be disposed of outside the channels of commerce without compensation of any sort in such a manner as to minimize the risks of further infringement.

#### Section 77

In civil judicial proceedings concerning the enforcement of the rights protected by this Act, the Court shall have the authority to order the infringer to provide any information that the infringer possesses regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder. The Court shall order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or rendering of services and of their channels of distribution.

#### Section 78

The Court shall order an applicant at whose request measures were taken and who has abused enforcement procedures to provide to a defendant wrongfully enjoined or restrained adequate compensation for the injury suffered by virtue of such abuse. Where this is considered adequate in view of the seriousness of the abuse, the Court shall also order the person having abused enforcement procedures to pay the other party expenses including appropriate attorney's fees.

## **TITLE V: GENERAL PROVISIONS**

#### Section 94

1. Any change in the ownership of a patent, or a utility model certificate, or the registration of an industrial design, or the registration of a layout-design, or the registration of a mark or collective mark or certification sign, or the registration of a geographical indication, or in the ownership of an application therefor, shall be in writing and shall, at the request of any interested party, to the Registrar, be recorded and, except in the case of an application, published by the Registrar. Except as regards trademarks, such change shall have no effect against third parties until such recording is effected.

2. 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.

3. 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, particularly in regard to the nature, origin, manufacturing process, characteristics, or suitability for their purpose, of the goods or services in relation to which the mark or collective mark is intended to be used or is being used.

4. Any license contract concerning a patent, or a utility model, or a registered industrial design, or a registered layout-design, or a registered mark, or an application therefor, 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.

5. 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 hear the allegations of the parties to the contract, if one or both so request. The parties to the contract may submit evidence that is pertinent. Any of the parties or both may appeal from the Registrar's decision to the Court within [two] months from the date on which the Parties were notified of the Registrar's decision to refuse to record the contract.

6. (A) For the purposes of subsection (5), 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, in the event that they have anti-competitive effects, anti-competitive.

(B) Notwithstanding the provisions of paragraph (a) of this subsection, the license contracts may provide for the following limitations:

- (i) delimitation of the scope, geographical area and period of use;
- (ii) conditions required for the efficient control of the quality of goods and services, subject to the provisions of Section 44;
- (iii) 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.

7. 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 party in favor of whom those payments or other benefits were paid has benefited in good faith from the contract and the invalidation does not impair or annul those benefits.

8. The Public Prosecution Office may initiate legal action ex officio with respect to the offenses described in this Title, without the need for a formal complaint by a private party or right holder.

## Section 95

1. Where an applicant's ordinary residence or principal place of business is outside Oman, he shall be represented by a legal practitioner resident and practicing in Oman. That agent shall receive powers to receive communications and service as regards any process or proceeding, either judicial or other, in Oman, under this Act, relating to the application or title in question.

2. (A) An assignee of an application, an applicant, owner or other interested person may act himself before the Registrar for the following procedures:

- (i) the filing of an application for the purposes of the filing date;

- (ii) the mere payment of a fee;
- (iii) any other procedure as prescribed in the Regulations;
- (iv) the issue of a receipt or notification by the Registrar in respect of any procedure referred to in provisos (i) to (iii).

3. A maintenance fee may be paid by any person.

#### Section 96

1. The Industrial Property Registry shall maintain separate Registers for patents, utility models, industrial designs, layout designs, marks, collective marks, certification marks and geographical indications. Collective marks and certification signs shall be registered in a special section of the Register of Marks. All the recordings provided for in this Act shall be effected in the said Registers.

The Registers may be consulted by any person, and any person may obtain extracts therefrom, under the conditions prescribed in the Regulations.

2. Right holders may signal ownership of the subject of protection under this Act by means of particular signs.

#### Section 97

1. The Registrar may, subject to any provision in the Regulations, correct any error of translation or transcription, clerical error or mistake in any application or document filed with the Industrial Property Registry or in any recording effected pursuant to this Act or the Regulations. Substantive errors, however, may only be modified by the Court, under due process. Substantive errors are those that, if modified, will affect the rights conferred.

2. Unless otherwise provided in this Act, if the Registrar is satisfied that the circumstances justify it, he may, upon receiving a written request, extend the time for doing any act or taking any proceeding under this Act and the Regulations, upon notice to the parties concerned and upon such terms as he may direct. The extension may be granted though the time for doing the act or taking the proceeding has expired.

#### Section 98

Any decision taken by the Registrar under this Act, in particular the grant of a patent or a utility model certificate or the registration of an industrial design or of a layout-design or of a mark or collective mark or certification sign or of a geographical indication, or the refusal of an application for such a grant or registration, may be the subject of an appeal by any interested party before the Court and such appeal shall be filed within sixty (60) days of the date of the decision.

Any decision taken by the Minister under this Act, in particular the grant of a compulsory license, and his decision relating to the remuneration provided in respect of a compulsory license, under Sections 13, 27 and 36, as well as the transfer of title, under Section 14, may be the subject of an appeal by any interested party before the Court and such appeal shall be filed within sixty (60) days of the date of the decision. These provisions also apply to all final decisions made by the competent authority under Section 65(4), (5) and (6).

## SECTION 99

(A) Final judicial decisions and administrative rulings of general application pertaining to the enforcement of industrial property rights shall be in writing and shall state any relevant findings of fact and the reasoning or the legal basis on which the decisions or rulings are based.

(B) Such decisions or rulings shall be published.

## Section 100

1. Unless otherwise provided, the provisions of this Act shall be effective as from the date established in accordance with the Royal Decree promulgating this Act and apply to all applications that are pending on the date of their entry into force. However, any acts definitively performed by the Registrar relating to pending applications, such as the final examination of applications, and which have already produced effects, shall be maintained.

2. The provisions of subsection (1) shall apply mutatis mutandis to enforcement. All decisions by the Court, whether final or interlocutory, that have produced effects, shall be maintained.

3. Where this Act in any way expands rights or creates new rights, including extension of terms of protection, existing registrations shall benefit from such expansion or creation. But where this Act reduces or eliminates rights, existing registrations shall not be affected and shall continue existing as if this Act had not been enacted, except for the provisions on enforcement, which shall apply in accordance with subsection (2).

4. Where this Act 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.