

BANGLADESH
Patent Act 2023
Act No. 53 of 2023
Dhaka, 13 November 2023

TABLE OF CONTENTS

Chapter I PRELIMINARY

1. Short title and introduction
2. definition

Chapter II Patents, Designs and Trademarks Directorate, Patent Applications, etc.

3. Department
4. A person entitled to apply for a patent
5. Priority date of complete specification

Chapter III Patent disqualified inventions

6. Matters outside of patent protection
7. Inventions related to atomic energy are not patentable

Chapter IV Application for patent grant

8. Procedure for patent application
9. Application related to Microorganism
10. Withdrawal and reapplication of patent applications
11. Application amendment and unity of innovation
12. Amendment of application, specification or any document submitted to the Director General
13. Amendment of specification filed in the Court of the District Judge
14. Powers of Director General regarding division of applications
15. Documentary information on foreign patent applications
16. Date of filing of patent application
17. Publication of application
18. Patent applications related to national security
19. Opposition to the application before approval
20. Opposition to patent
21. Patent application examination request
22. Application Test
23. Searching during patent examination (Patent Searching)

24 Granting, Refusal and Modification of Patents

Chapter V Patent Rights, Ownership and Cancellation

- 25. Rights of Patent Owners
- 26. Date of patent
- 27. Patent Form, Extent and Effect
- 28. Patent term, annual fee and patent restoration
- 29. Patent granted subject to special conditions
- 30. Transfer of patent in case of illegal use of biological resources
- 31. Ownership change or assignment, license agreement, etc.
- 32. Patent Cancellation

Chapter VI Patent Revocation

- 33. Patent cancellation
- 34. Revocation of patent in public interest

Chapter VII Patent enforcement, compulsory licensing and use by governments

- 35. General principles applicable to the enforcement of patent inventions
- 36. Compulsory licensing
- 37. Procedure for Grant of Compulsory License
- 38. Compulsory license by notification
- 39. Compulsory license for export of patented pharmaceutical products
- 40. Ability to use inventions by government
- 41. Additional provision regarding compulsory license

Chapter VIII Utility model patent

- 42. Definition of utility model patent and matters outside its protection
- 43. Other Terms of Utility Model Patents

Chapter IX Enforcement of patent rights

- 44. Enforcement of patent rights
- 45. Jurisdiction
- 46. Burden of proof
- 47. Injunction
- 48. Limitation of Court's power to grant injunction

- 49. Court remedy
- 50. Defense in cases of infringement
- 51. Scientific adviser
- 52. Appeals against administrative orders, etc.

Chapter X Litigation, Procedure and Penalty

- 53. Application of Civil Procedure Code
- 54. Compensation
- 55. Special court, appeal, etc.

Chapter XI Powers of the Director General

- 56. The Director General has some powers similar to those of a civil court
- 57. Correction of clerical error and extension of time
- 58. Attestation procedures and powers of the regulator
- 59. Exercise of power

Chapter XII Exceptions

- 60. Parallel importation of patented products
- 61. Patent Special Provisions
- 62. Exemption and other limitation due to research exception

Chapter XIII Misc

- 63. the register book and online publication
- 64. Patent Agent
- 65. Disclosure of information
- 66. Powers of Director General to seek information from patent proprietor
- 67. Unregistered patent agent
- 68. Issuance of orders or formulation of strategies
- 69. Removal of difficulties
- 70. Power to make rules
- 71. Revocation and Custody
- 72. Text translated into English

Chapter I PRELIMINARY

1. Short title and introduction

(1) The Act will be deemed as Bangladesh Patent Act 2023

(2) It will be effective immediately from the date to be declared by notification in government gazette by the government. Provided that if necessary, government can set separate date to effect any rule.

2. definition

Unless there is anything contrary to the subject or context, in this Act:

1) "priority date" means the earliest date of filing of a patent application in any country of the world;

2) "priority claim" means a priority claim declared under section 5 of this Act;

3) "Department" means the Department of Patents, Industrial Designs and Trademarks;

4) "Court" means the Court referred to in section 3 of the Civil Courts Act, 1887 (Act No. XII of 1887);

5) "exclusive license" means any license granted by a proprietor conferring on the licensee, and any person so authorized, an exclusive right in respect of the patented invention;

6) "invention" means a new product or process which involves an inventive step and is applicable to an industrial field;

7) "innovative step" means any feature of an invention which constitutes a technological advance over existing knowledge and is beyond the scope of prior knowledge and the claimed invention would not be obvious to a person having knowledge and experience in that particular technology;

8) "prior art" means prior to the date of priority of the relevant invention disclosed in any part of the world by visible or indirect publication, display, or use by any means, public or otherwise, written, oral or otherwise;

9) "Civil Procedure" means the Code of Civil Procedure, 1908 (Act No. V of 1908);

10) "Novelty" means any invention by disclosure, use, demonstration, written, oral or otherwise by indication or public notice anywhere in the world, not being visibly in a place open to the public and not forming part of prior knowledge and the invention, granted

patent, or non-receipt of one or more elements of already published prior art, including published patent applications;

11) "patent" means a right granted for an invention under section 25 of this Act;

12) "patent representative" means any person registered as a patent representative under this Act;

13) "patent proprietor" means a person entitled to a patent under this Act;

14) "person" includes any natural person, Government, any company, association or association whether incorporated or not;

15) "object" includes objects of a general nature and biological resources;

16) "rules" means rules made under this Act;

17) "Director General" means the Director General of the Directorate of Patents, Industrial Designs and Trademarks;

18) "licensee" means any person licensed to use a patent granted under this Act;

19) "suitable for application in industry" means any such invention (a) by which it is possible to manufacture the product or to apply any technical method in accordance with the patent claim;

(b) which has a known utility, it would have practical application;

(c) having technical characteristics, which would be related to the industry; and

(d) which is disclosed in such a way that a person of ordinary skill could have invented it without engaging in any inventive step;

20) "Assignee" shall mean an assignee appointed by an assignor and also the legal representative of a deceased assignor and, where an assignee of a person is mentioned, includes the assignee of the legal representative, or the assignee of the said person;

21) "Interested person" means any person who is directly or indirectly affected by the grant of a patent of invention.

Chapter II Patents, Designs and Trademarks Directorate, Patent Applications, etc.

3. Department

For the purposes of this Act, the Department of Patents, Industrial Designs and Trademarks established under Section 3 of the Bangladesh Industrial Designs Act, 2023 (Act No. 22 of 2023) as the Department of Patents, Industrial Designs and Trademarks (Department of Patents, Industrial Designs and Trademarks) shall mean.

4. A person entitled to apply for a patent

The following persons may apply for a patent, namely:

- (a) any person claiming by application to be the proper and first inventor of the invention;
- (b) any person claiming by application to be the proper and first ownership of the invention;
- (c) the legal representative of a deceased person who was entitled to make such application immediately before the person's death;
- (d) if 2 (two) or more persons have jointly invented any patentable subject matter, they shall all have patentable rights;
- (e) if 2 (two) or more persons independently make the same invention, the person who first applies for the patent shall be entitled to the said patent and in case of priority claim, the date of priority claim shall be deemed to be the date of patent application;
- (f) the patent rights are assignable or transferable;
- (g) where an invention is made by a person employed pursuant to a contract executed for the purpose of employment, the patent rights shall vest in the employer, unless the contract expressly provides otherwise;
- (h) In cases where, without the agreement executed for the purpose of invention, the employed person invents something by using the employer's equipment, data, practical knowledge and other materials used in the invention, in that case, unless there is anything to the contrary in the employment agreement, the patent right of the said invention shall be given to the employer.

5. Priority date of complete specification

Every claim to full privilege shall have the following priority dates, namely:

- (a) if a complete specification is filed pursuant to a provisional

application, the priority date shall be the date of application of the provisional patent;

(b) If a complete patent is based on an application previously filed in Bangladesh filed within 12 (twelve) months of such application, and if the claim is properly based on subject matter disclosed in the earlier filed application, the date of first publication of the earlier filed application shall have priority. The date shall be;

(c) if the complete patent is filed in terms of a refiled application and the claim is based on matter properly disclosed in an earlier patent, whether provisional or complete, as the case may be, the date of filing of the patent in which the matter was first disclosed shall be the priority date;

(d) if any complete specification under this clause, except as provided in this clause, has 2 (two) or more priority dates, the earliest of those dates shall be the priority date;

(e) The priority period shall be 12 (twelve) months and the said period shall be counted from the first date of submission of the application;

(f) if any declaration is made on an application filed under this section, the Director General may, within the time prescribed by rule, direct the applicant to file a certificate to that effect issued by the Intellectual Property Office where the application was previously filed;

(g) To carry out the purposes of this section, such other matters as may be necessary shall be prescribed by rule.

Chapter III Patent disqualified inventions

6. Matters outside of patent protection

- (1) The following subjects are outside of patent protection:
- (a) discoveries, scientific theories and mathematical methods;
 - (b) business methods, rules or methods of performing purely mental tasks or sports and any computer programs or algorithms relating thereto;
 - (c) methods of treatment of human or animal bodies by surgery or therapy and methods of diagnosis of human or animal diseases;
 - (d) the use in whole or in part of any known product or naturally occurring biological material, any new use or method of use thereof (including sequencing);
 - (e) plants and animals, whole or in part, whether modified or not, (including seeds, varieties, species) and biological processes and microbiological processes necessary for the production of plants and animals or any material, organism or biological resource obtained in nature (whether in whole or in part, even if purified or isolated or modified therefrom), including its genome, germplasm, gene, cell, protein, sequence, cell line, cell samples or any other material, but excluding man-made micro-organisms;
 - (f) any such invention the primary or prospective use or commercial use of which is contrary to public order and morality or which is seriously injurious to human, animal or plant or health or the environment;
 - (g) any invention which is frivolous or any process which is contrary to established and manifest natural laws;
 - (h) any substance or structure obtained by simple combination resulting in the combination of the properties of its constituents and any process for the production of such substance;
 - (i) adaptations or reproductions of known inventions (devices) which, prior to adaptation, have their own characteristics independently effective;
 - (j) agricultural or horticultural practices;
 - (k) literary, dramatic, musical or artistic works or any film works and programs broadcast on radio or television;
 - (l) simply describe any information;
 - (m) detailed description of integrated circuits consisting of various components;
 - (n) any invention which is practically traditional knowledge or

which combines or combines the known qualities of any traditionally known material or materials;

(o) to discover a known substance in a new form and to discover only new properties or new uses of a known substance or to discover only a new use of a known process or instrument or apparatus unless all such known processes result in a new product or reaction other than a new substance; by;

Explanation: For the purposes of this clause, salts, esters, ethers, polymers, metabolites, pure forms, particle sizes, isomers, mixtures of isomers, compounds, structures and other substances derived from known substances shall be treated as similar substances;

(p) Claims that describe alternatives, are identified by common formulae, and have common functions or qualities, or inventions including selection of one or more shapes, including distinct elements, subsets, or sub-ranges within a larger known set or range disclosed in the prior art.

(2) Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) hereinafter referred to as TRIPS Council, according to its decision, pharmaceutical and agricultural chemical products (Agrochemical products) shall remain outside the scope of patent protection as long as the period of exemption from patent protection remains in force:

Provided that the Government may, if necessary, by notification in the Official Gazette, extend or reduce such period.

7. Inventions related to atomic energy are not patentable

No patent shall be granted for such inventions relating to the production, control, use or extraction of atomic energy, or the exploration, mining, extraction, production, natural and chemical treatment, construction, improvement, conservation or use of any specified substance or radioactive material or the management of atomic energy which ensures safety in case.

Chapter IV Application for patent grant

8. Procedure for patent application

(1) For a patent against an invention, only one application shall be made in the prescribed form and the said application shall be filed with the Directorate.

(2) An application filed under sub-section (1) shall state whether the invention is in the possession of the applicant and the name of the true and first claimant of the invention, and if the claimant is not the applicant himself or one of several applicants, the application shall contain a declaration to the effect that, the applicant believes the said named person to be the proper and first inventor.

(3) The following documents shall be attached with the patent application, namely:

(a) if the applicant has submitted the application through a representative, a copy of the power of attorney granted under the Power of Attorney Act, 2012 (Act No. 35 of 2012) in favor of the said representative;

(b) if the patent applicant is not the inventor himself, a certificate or assignment explaining the justification of his rights;

(c) in the case of priority claims, certified copy under section 5 (f) of this Act.

(4) A person claiming an invention, singly or jointly or his legal representative, may apply to the Director General for a patent in the form and manner prescribed by the rules and with the prescribed fee, subject to the following conditions, with a complete specification or a provisional specification, namely:

(a) The full license shall be submitted by the applicant within 12 (twelve) months of the filing of the provisional license;

(b) The provisional patent shall contain the usual features of the invention and shall be consistent with the later filed complete patent.

(5) The form submitted under sub-section (1) shall include the following items, Namely:

- (a) full particulars of name and identity of applicant and inventor;
- (b) the proper title of the invention relating to the subject matter of the invention;
- (c) a clear and self-contained description of the patent sought;
- (d) If in a particular case it appears to the Director General that it is necessary to attach to the application any particular model or specimen illustrating the invention or constituting the invention, he may direct that such model or specimen be filed before the application for a patent, provided that the said model or specimen shall not be deemed to form part of the specification;
- (e) summary of the invention;
- (f) the number and date of the priority claim, if any;
- (g) Insertion of the written information of the invention in the complete specification.

(6) Every complete specification shall contain the following matters, namely:

- (a) complete or entirely clear, concise and complete description of each element of the invention for evaluation, execution, cultivation, execution or implementation by a person skilled in related or similar art;
- (b) a detailed description of each step or method, including the best method of effecting or implementing the invention known to the applicant at the time of filing or priority date;
- (c) one or more claims specifying the features of the invention claimed for protection;
- (d) insert the technical information of the invention in the abstract;
- (e) The abstract shall not exceed 300 (three hundred) words unless specifically required:
Provided, however, that the Director General may amend the summary to provide additional information to third parties;
- (f) The invention shall be explained by means of one or more drawing diagrams in view of the requirement for clear disclosure or as directed by the Director General.

(7) Subject matter of invention

- (a) The claim form shall be clear and concise and to be fully supported by description,
- (b) The invention shall be illustrated by means of drawings and

illustrations.

(8) If stated in the application or in any other way, disclose to the Director General all important information known by the applicant to make the invention patentable, including all related prior knowledge at the time of application or priority date.

(9) If the invention relates to a pharmaceutical product, the applicant shall disclose the International Non-proprietary Name (INN) of the product, if available on the priority date, and if the International Non-proprietary Name is not available, the applicant shall disclose the said name within 30 (thirty) days. After knowing the name, inform the Director General, but if the patent application is rejected or the patent expires, the said name need not be notified.

(10) The scope of protection of a patent shall be limited only to the uses, purposes or activities disclosed and expressly claimed in the patent.

(11) One or more claims of a complete specification shall relate to an individual invention and shall relate to a group of inventions so interconnected as to constitute the concept of a single invention and shall be based on appropriate subject matter clearly and concisely disclosed in the specification.

(12) If at the time of receiving the application it appears to the Director General that the conditions mentioned in sub-sections (5), (6), (8), (9), (10) and (11) are not fulfilled, the applicant shall be instructed to bring the necessary amendments within a specified time and if the application is not amended within the specified time as per the instructions, the application shall be deemed to have been abandoned.

(13) The source and geographical origin of the biological resources and the elements of traditional knowledge associated with them which have been directly or indirectly used in the claimed invention should be mentioned in the description of the invention.

(14) The Director General may, before granting a patent, direct a

foreign patent applicant to adapt the description of his patent to suit the general skill of the citizens of Bangladesh, with a view to promoting the use of the patented technology in Bangladesh.

(15) A declaration relating to the ownership of the invention shall be attached to the complete patent, in the prescribed form, in the prescribed case or within the prescribed period after the filing of the said patent.

9. Application related to Microorganism

(1) If the invention relates to micro-organisms, the applicant shall deposit the product thereof in a specific depository institution in Bangladesh before filing the application, provided that it is possible to enable a Bangladeshi person with general knowledge of technology to handle the invention relating to micro-organisms and if the said product is not available to the public. If it is readily available, that party may use the product provided that the product is used in accordance with law.

(2) The application under sub-section (1) shall be submitted subject to compliance with the following conditions, namely:

(a) Before filing the patent application in Bangladesh, the product shall be registered and the matter shall be mentioned in the specification within the prescribed period;

(b) all existing features necessary to correctly identify or indicate the product, including the name, address, date and number of the depository institution in which it is deposited shall be included in the particulars;

(c) only after the date of filing of the patent application in Bangladesh, or after the priority date if priority is claimed, the product shall be obtainable at the depository institution;

(d) The source and geographical origin of the biological resources and associated traditional knowledge elements used in the claimed invention shall be mentioned in the specification.

10. Withdrawal and reapplication of patent applications

(1) The applicant may withdraw the application filed at any time before the application is approved.

(2) In which case

(a) any application is withdrawn without opening it for inspection;
(b) no priority is claimed;
(c) in Bangladesh where no proceedings relating to the rights claimed with the said application are pending, the said invention shall be re-applied for.

(3) An application filed in Bangladesh shall be deemed to be the first application and if a re-application is filed under clause (c) of sub-section (2), no priority shall be claimed for the application first filed.

11. Application amendment and unity of innovation

(1) No application or amendment of the complete specification or any document relating thereto shall be made except by way of disclaimer, amendment or clarification and no amendment shall be granted for any purpose other than to include genuine matter.

(2) No such amendment shall be allowed in the complete specification which results in the amended specification claims or describes any matter not disclosed or shown in the specification prior to the amendment.

(3) If after the date of grant of the patent an application for amendment of the patent or any document relating thereto is granted by the Director General or, as the case may be, by the Court,

(a) the amendment shall for all purposes be deemed to form part of the license and related documents;

(b) the specifications and related documents shall be published as soon as practicable; And

(c) As to the patent applicant's or proprietor's right to amend, no question shall be raised, except on the basis of fraud.

(4) In the interpretation of the amended specification, the accepted specification shall be mentioned first.

12. Amendment of application, specification or any document submitted to the Director General

(1) The Director General may, subject to the provisions of section 11, grant permission to amend the patent application or patent or any other document relating thereto, upon application in the

prescribed form, under this section:

Provided that if any suit for infringement of the said patent is pending in any Court or any proceeding for revocation of the said patent is pending in the District Court, whether such a suit or proceeding is commenced before or after the filing of the said application, the Director General, under this section, does not issue any order granting or rejecting any application for rectification of any patent application or patent or any document concerned.

(2) An application for amendment of a patent or complete specification or any document relating to it under this section shall state the nature of the proposed amendment and the detailed reasons for such application.

(3) If an application is published, any interested person may, within the prescribed period after its publication, give notice to the Director General opposing it, and if such notice is given within this period, the Director General shall inform the applicant thereof and, before disposing of the matter, provide an opportunity for hearing both the applicant and the opposing party.

(4) Where an opposition under sub-section (3) is published, any interested person may, within the prescribed period after its publication, serve notice to the Director General on the opposition, and where such notice is given within the aforesaid period, the Director General shall file the notice under this section, and inform the person of the matter and give an opportunity of hearing to the person and the other party before deciding to file the case.

(5) The provisions of this section shall not prejudice any right to comply with any directions issued by the Director General before the grant of a patent in favor of the applicant on the basis of the amendment of the patent or any other relevant document.

13. Amendment of specification filed in the Court of the District Judge

(1) In any proceedings before the Court of the District Judge, subject to the provisions of section 11, as the case may be, to the patentee, in such manner and subject to costs, advertisement or any

other conditions as the Court may think necessary. , may grant permission to amend his patent and, if the court declares the patent invalid, may grant an opportunity to amend the patent under this section instead of cancelling the patent.

(2) If any application is made to the Court for any order, the applicant shall give notice of the application to the Director General, and in such case he shall have the right to appear before the Director General and be heard.

(3) The Court of District Judge shall forward to the Director General a copy of the order of amendment passed on the patent proprietor and the Director General shall, on receipt thereof, record and enter the same in the register.

14. Powers of Director General regarding division of applications

(1) Where a person applies for a patent under this Act, or for the purpose of redressing a complaint raised by the Director General in relation to a patent with more than one invention, for an invention disclosed in a provisional or patent filed in terms of the first application. Divisional Application can be done:
Provided, however, that such second application shall be filed within 3 (three) years of the filing of the first application and in such case not more than 3 (three) applications shall be filed.

(2) A re-application under sub-section (1) shall be accompanied by a complete specification, provided that no new matter is disclosed in the complete specification filed in terms of such specification.

(3) In the case of amendment of a complete specification in respect of a first or re-application, the Director General may direct that no such claim in any of the complete specifications is contained in the other.

(4) A re-application under sub-section (1) shall be deemed to have been filed on the date of filing of the first application and, as the case may be, the priority date of the first application shall be deemed to be the priority date of the divisional application.

(5) The split application shall be treated as the original

application and shall be examined if applied for examination within the prescribed period.

15. Documentary information on foreign patent applications

(1) If an applicant, singly or jointly with any other person, applies in a country other than Bangladesh, in the case of a similar application or if an application is filed by any other person through whom the inventor claims the patent or an application is filed by the person who obtains the right from the inventor, then he shall submit the following documents related to the above application with his application or within the next 90 (ninety) days, namely:

- (a) a statement containing particulars of the said application;
- (b) a copy of any letter issued to the applicant relating to the results of the foreign application examination and finding information;
- (c) a copy of the grant of the patent granted on the basis of the foreign application;
- (d) a copy concerning the rejection of the foreign application;
- (e) where applicable, a copy of the notice of revocation or abandonment of the granted patent;
- (f) Cancellation, invalidation, amendment or any other order relating to the patent or patent application, including court orders.

(2) The Director General may extend the period mentioned in sub-section (1) to a maximum of 60 (sixty) days if time is requested by the applicant for translation of documents.

(3) The applicant shall submit to the Director General the information relating to the application referred to in sub-section (1) every 6 (six) months until the patent is granted or rejected.

(4) After receiving the information under sub-section (3), the Director General shall publish the information on the official website.

(5) If the applicant fails to comply with the conditions of sub-sections (1) and (3), except for any reason beyond his control, the application shall be deemed to have been rejected.

16. Date of filing of patent application

The Director General shall treat the date of receipt of the patent application as the date of filing of the patent application.

17. Publication of application

(1) The Director General shall, after the expiration of eighteen (18) months from the filing of the application, open the patent application to public inspection.

(2) The contents of the patent application under sub-section (1) shall be notified to the public by publishing the following matters by publication on the website or by notification in the usual manner, namely:-

- (a) title of invention;
- (b) the name, address and nationality of the patent applicant and inventor;
- (c) date and number of submission of application;
- (d) priority number and date, if any;
- (e) classification of patents;
- (f) drawings of the invention, where applicable;
- (g) Summary of Content.

(3) Until the patent application is published on the official website or by gazette notification, the Director General shall not allow any third party to inspect the application or disclose any information relating to the patent application.

(4) The Director General may, at the request of the applicant, open the patent application to public inspection at any time before the expiry of the eighteen (18) month period, on payment of such fee as may be prescribed by rule.

(5) The applicant shall not institute any proceedings for infringement until the patent has been granted.

18. Patent applications related to national security

(1) Any patent application related to national security shall be kept confidential and the Director General shall, if he considers any application related to national security, refer it to the competent authority concerned with national security for

verification.

(2) The competent authority shall notify the Director General whether the claimed invention relates to national security or not within 90 (ninety) days of the receipt of the application and if the matter is not notified to the Director General within the said period, the patent application shall be published.

(3) The applicant shall not file any patent application abroad until the Director General has notified the patent concerned of national security or, as the case may be, the period under sub-section (2) has expired.

(4) No invention related to national security shall be used, licensed and transferred without the approval of the competent authority.

19. Opposition to the application before approval

(1) After publication of a patent application under sub-section (2) of section 17 of this Act and before the grant of a patent any person may oppose the said patent:

Provided that the said patent shall not be granted for a period of 06 (six) months from the said publication.

(2) In the statement of opposition, the objected patent application shall be identified and sufficient information and evidence shall be submitted in support of the objection stating the reasons for the objection.

(3) A person opposing a patent application may raise the following matters, namely:

(a) the invention claimed in the complete specification has been claimed in another complete specification and an application for the patent has been filed in Bangladesh and the priority date of that claim is earlier than the priority date of the applicant's claim;

(b) the invention claimed in the complete specification was known or used by the public in Bangladesh or elsewhere before the priority date of the claim, or if the provisions of clause (10) of section 2 have not been complied with;

(c) the invention claimed in the complete specification is clearly

proved in respect of published subject matter in accordance with clause (8) of section 2 or in respect of subject matter used in Bangladesh or elsewhere and does not involve an inventive step in accordance with clause (7) of section 2 before the priority date;

(d) the subject-matter of the claim in the complete specification is not in accordance with the provisions of clause (19) of section 2 or it is not applicable;

(e) the matter claimed in the complete specification is not an invention under this Act, or is not patentable under clause (6) of section 2 of this Act;

(f) the subject-matter claimed in the complete specification is not an invention under this Act, or is not patentable under section 6 of this Act;

(g) the complete specification does not fully and clearly describe the invention or the method of its use in accordance with the provisions of sub-sections (5), (6), (8), (9), (10) and (11) of section 8 of this Act;

(h) the applicant has failed to disclose information to the Director General in accordance with section 15 or the information submitted is false or incomplete in material matters to his knowledge;

(i) the source and geographical origin of the biological resources used in the invention in complete specification and such traditional knowledge associated therewith is not disclosed or misrepresented;

(j) It is presumed, on account of oral or otherwise acquired knowledge that the claimed invention exists in full exclusivity in the local or general community of Bangladesh or elsewhere.

(4) The Director General shall publish the notice of objection on the website or through any other official medium.

(5) The applicant may file a counter-statement rebutting the complaint within the specified period.

(6) The Director General may hear the applicant and the opposing party and shall give an opportunity to both the parties to rebut the arguments.

(7) On the basis of the written statement and evidence filed by the patent applicant and the contention and evidence filed by the opponent and the statements presented by both the parties, and after

hearing both parties, the Director General shall

- (a) reject the dispute; or
- (b) may direct the amendment of the complete specification and other documents before the patent is granted; or
- (c) may refuse to grant the patent application.

(8) The Director General shall, under this section, issue a written order stating the reasons therefore and notify the entire matter within 1 (one) month of the settlement of the dispute.

20. Opposition to patent

(1) After the grant of patent under sub-section (2) of section 24 of this Act, any interested person, within 24 (twenty-four) months of publication of the matter on the official website, may submit a notice of opposition to the Director General with evidence.

(2) In the following cases, in the prescribed manner, notice of dispute shall be served, namely:

- (a) the invention claimed in the complete specification has been claimed in another complete specification and an application for the patent has been filed in Bangladesh and the priority date of that claim is earlier than the priority date of the applicant's claim;
- (b) the invention claimed in the complete specification was known or used by the public in Bangladesh or elsewhere before the priority date of the claim, or if the provisions of clause (10) of section 2 have not been complied with;
- (c) the invention claimed in the complete specification is clearly proved in respect of published subject matter in accordance with clause (8) of section 2 or in respect of subject matter used in Bangladesh or elsewhere and does not involve an inventive step in accordance with clause (7) of section 2 before the priority date;
- (d) the subject-matter of the claim in the complete specification is not in accordance with the provisions of clause (19) of section 2 or it is not applicable;
- (e) the matter claimed in the complete specification is not an invention under this Act, or is not patentable under clause (6) of section 2 of this Act;
- (f) the subject-matter claimed in the complete specification is not an invention under this Act, or is not patentable under section 6 of this Act;

(g) the complete specification does not fully and clearly describe the invention or the method of its use in accordance with the provisions of sub-sections (5), (6), (8), (9), (10) and (11) of section 8 of this Act;

(h) the applicant has failed to disclose information to the Director General in accordance with section 15 or the information submitted is false or incomplete in material matters to his knowledge;

(i) the source and geographical origin of the biological resources used in the invention in complete specification and such traditional knowledge associated therewith is not disclosed or misrepresented;

(j) It is presumed, on account of oral or otherwise acquired knowledge that the claimed invention exists in full exclusivity in the local or general community of Bangladesh or elsewhere.

(3) The Director General shall serve a notice of dispute on the patent proprietor and publish the same in the e-Gazette or on the official website.

(4) The patentee may file a counter-statement rebutting the notice of opposition within the specified period.

(5) The Director General shall hold a hearing and at the hearing both the patentee and the opposing parties may present oral and written evidence together with their arguments or counter-arguments, after which the Director General shall settle the dispute by ordering the patent to be maintained, amended or revoked and the settlement 1 (1) Within one month, both parties shall be notified of their decision with reasons.

21. Patent application examination request

(1) The applicant may, within 36 (thirty-six) months from the date of filing of the patent application, upon payment of the prescribed fee, request the Director General to examine his patent application.

(2) If no application requesting a patent examination is filed, the said application shall be deemed to have been abandoned.

(3) If a request for extension of the period with the prescribed fee is submitted to the Director General before the expiry of the said period, the period mentioned in sub-section (1) shall be extended by

3 (three) months.

(4) The Director General shall, in accordance with the provisions of this Act, undertake the examination of patent applications.

22. Application examination

(1) If the examination of any patent application is requested in the manner described in sub-section (1) of section 21, the application and specification and other documents relating thereto shall, as soon as possible, be forwarded to the examiner so that he may prepare a report on the following matters , namely:

- (a) whether the application and certificate and other documents relating thereto are in accordance with this Act and the rules made thereunder;
- (b) whether there is any legal ground for objection to the grant of a patent under this Act on the basis of the application;
- (c) the result of an inquiry conducted under section 23;
- (d) any other matter prescribed.

(2) If the examiner's report received by the Director General in respect of any patent application is adverse to the applicant and the application and patent and other documents relating thereto are necessary to ensure compliance with the proceedings in disposing of the application in accordance with the said provisions, the Director General shall, as soon as possible, sum up the objection. Inform the applicant of the summary and give him an opportunity of hearing if the applicant so desires within the prescribed time.

23. Searching during patent examination (Patent Searching)

(1) The person to whom a patent application is forwarded under section 22 shall conduct a search to ascertain the following matters in respect of the invention claimed in any complete patent claim, namely:

- (a) whether it passes the criteria of invention, novelty, innovative step, industrial applicability as described in Section 2;
- (b) fulfils the conditions of sub-section (1) of section 6 of this Act;
- (c) Whether the patent is adequately supported by evidence and comparative data to prove inventive step.

(2) In addition to conducting the investigation under sub-section (1), conduct examination to ascertain whether the said invention has been disclosed in any document in Bangladesh or any other place prior to the date of submission of the complete specification of the applicant.

(3) If an entire specification or any claim is amended before a patent is granted under this Act, the amended specification or amended claim shall be examined in the same manner as the original patent or claim.

(4) Examinations and inquiries conducted under section 22 and this section shall not in any way be deemed to validate any patent, and the Government or any servant of the Government shall bear no liability in respect of or in connection with such examination or inquiry or any report or any proceedings arising there from.

24 Granting, Refusal and Modification of Patents

(1) If, after examination of the patent application, it appears to the Director General that any invention meets the conditions for the grant of a patent, subject to compliance with the provisions of section 19, he shall order to grant a patent for the invention and reject the application if the said conditions are not fulfilled, but in either case, he shall inform the applicant in writing of the decision taken as soon as possible.

(2) The Director General shall take the following steps in granting patents, namely:

- (a) publication of the grant of patent on the website or by notification in the usual manner;
- (b) issue a certificate of grant of patent to the applicant subject to payment of the fee at such time as may be prescribed by the rules;
- (c) Registration of the patent application in the Register.

Chapter V Patent Rights, Ownership and Cancellation

25. Rights of Patent Owners

Subject to other provisions of this Act, the proprietor of any patent granted under this Act shall have the following rights, namely:

- (a) when the subject matter of the patent is a product, the exclusive right to prevent any third party from manufacturing, using, offering for sale, selling or importing the product into Bangladesh for such purpose, without the permission of the proprietor of the patent;
- (b) When the subject matter of the patent is a process, the exclusive right to prevent third parties from applying and using, offering for sale, selling or importing the process for that purpose without the permission of the patentee.

26. Date of patent

(1) Subject to the other provisions of this Act, the date of every patent shall be the date of filing of the application for the patent or, as the case may be, the priority date.

(2) The date of every patent shall be entered in the register.

27. Patent Form, Extent and Effect

(1) Every patent shall be in the prescribed form and shall be effective throughout Bangladesh.

(2) Only one patent shall be granted for an invention.

28. Patent term, annual fee and patent restoration

(1) Subject to the other provisions of this section, any patent, unless it has expired or lost its effectiveness, shall remain in force for twenty (twenty) years from the date of filing of the patent application or, as the case may be, from the date of priority.

(2) The patent shall be renewed for the next year on payment of the annual fee of the previous year.

(3) In case of delay in payment of annual fee, the period for payment of annual fee shall be extended by up to 3 (three) months,

subject to submission of application for extension of time of renewal and payment of late fee.

(4) Notwithstanding anything contained in the patent or in this Act, if the period for payment of renewal fee has expired and the said fee is not paid within the prescribed period or within such extended period, the patent shall cease to be in force.

(5) Notwithstanding anything contained in any other law for the time being in force, if the validity of a patent is revoked by reason of the expiry of the period for payment of renewal fee and non-payment of such fee within the prescribed period or within such extended period, the protection of the subject-matter of the said patentee shall have no rights.

(6) If the Director General is satisfied that it is not possible to pay the renewal fee within the prescribed period for reasonable reasons, the payment of the prescribed renewal fee and patent restoration fee at any time within 2 (two) years of the expiry of the period prescribed for payment of the renewal fee. You can apply for patent restoration.

29. Patent granted subject to special conditions

A patent under this Act shall be granted on the condition that, in the case of a patent for a pharmaceutical product which shall be imported by the Government only for its own use or for distribution to any dispensary, hospital or medical institution operated by the Government, the Government may by notification in the Government Gazette determine that the said dispensary, hospital or medical institution renders public services on behalf of the Government.

30. Transfer of patent in case of illegal use of biological resources

(1) In the case of a patent related to a biological resource filed or accepted, any party having an interest in the said patent may claim a share of ownership of the patent.

(2) An application shall be made to the Director General for the transfer of ownership of the patent by mentioning the name of the concerned agency or entity.

(3) For the purposes of this section, the ownership share of the patentee shall be at least twenty (twenty) per cent.

31. Ownership change or assignment, license agreement, etc.

(1) Any change of the ownership of the patent mentioned in the application thereof shall be in writing and shall be recorded in the office of the Director General on the application of the interested person of the patent, unless an application to the contrary is made, the said change shall be published by the Director General by notification on the website or in the usual manner, such change shall not be effective against any third party prior to registration.

(2) Any license agreement or application relating to patents shall be submitted to the Director General.

(3) The Director General shall record the application received under sub-sections (1) and (2), but shall keep the contents thereof confidential and shall not publish any comments thereon and the license agreement shall not be enforceable against third parties before such a record is made.

(4) Certain conditions imposing limitations shall be waived in the following cases, namely:

(a) the sale or lease of any patented product or any product manufactured by a patented process or any contract relating thereto; or

(b) a license to manufacture or use any patented product; or

(c) it shall not be lawful to include in a license to use any process protected by a patent such subject matter which

(i) instructing the buyer, lessee or licensee not to accept or accept from the seller, lessor or licensor or nominee any goods other than patented goods or manufactured by patented processes, or to accept from any person in any manner or in any amount;

(ii) prohibiting the buyer, lessee or licensee to receive from the seller, lessor or licensor or nominee any product other than the patented product or product produced by the patented process, or from any person in any manner or in any amount;

(iii) instructing the buyer, lessee or licensee not to use any product from the seller, lesser or licensor or nominee other than

the patented product or product produced by the patented process, or not to take from any person in any manner or in any amount;

(iv) prohibit the buyer, lessee or licensee from using any process other than the patented process or limit the manner or extent of use of any product other than the patented product;

(5) It shall be a defense in any suit for infringement of a patent right to prove that any such contract relating to the patent was in force at the time of the infringement which contained any term declared invalid under sub-section (4): Provided that if the plaintiff is not a party to the contract and is able to prove to the satisfaction of the court that the restrictive term was inserted without his knowledge or consent, whether express or implied, sub-section (4) shall not apply.

(6) If the Director General is satisfied that the conditions referred to in sub-section (4) exist in the rights agreement or in any legal instrument referred to therein, he may refuse to record the change of ownership of the patent or the license agreement, if any party or if both parties request a hearing, he shall hear the parties concerned to the agreement and in such case, subject to the submission of relevant evidence relating to the agreement by the parties to the agreement, the Director General shall dispose of such matter within the prescribed time, in the prescribed manner.

(7) Either party or both parties may appeal against such decision within 2 (two) months from the date of delivery of the decision by the Director General refusing to record the agreement.

(8) Any restriction imposed on the proprietor or licensee, which is not arising from the registration of the licensed right or is not necessary for the protection of the right, shall be deemed to be abusive or be unfairly competitive.

(9) Unless otherwise provided, the application of the following conditions or clauses shall be deemed to be unlawful unless the circumstances, reasons or rationale of application require scrutiny, namely:-

(a) delegation by the Licensee to the Licensor of any development or modified use of the Licensed Invention by the Licensee, unless such

delegation is made on the same terms under the License Agreement;

- (b) other Intellectual Assets of the Licensor, i.e., patents, designs, trademarks etc. or acquired by trade secrets, additional remuneration thereof or imposition of obligations on the Licensee or Proprietor to acquire the same;
- (c) hindering the licensee or assignee in raising objections to the validity of the licensed rights or assigned rights;
- (d) impose an obligation on the licensee for use after the expiration of the term of protection of the licensed or transferred invention or for the use of such material not acquired by patent;
- (e) the acquisition by the Licensee or Proprietor of the Licensor or Proprietor, or any other person designated by the Licensor or Proprietor, of materials, raw materials or any other goods or services necessary for the use of the invention and which are not supported by the claims of the Licensed Invention; imposition of obligations;
- (f) imposing any conditions limiting or prohibiting the development or use of any other technology, whether or not covered by intellectual property rights.

(10) Notwithstanding anything contained in any other provision of this section, the following provisions shall be inserted in the lease and license agreement, namely:-

- (a) the scope, geographical area and term of use of the patent;
- (b) conditions necessary to ensure adequacy of quality of goods and services;
- (c) Licensee's Obligation to Abstain from All Activities Injurious to Ownership or Reputation of Patented Content.

(11) Where the terms of an agreement relating to the assignment of ownership of a patent or the granting of a license are terminated after the execution of the agreement, the agreement shall terminate forthwith and the parties shall forfeit all or part of the money or facilities granted to each other under the said agreement, can recover, unless the party in favour of which the said money or facility was granted, the said party has benefited by it in good faith by reason of the contract and the said facility has not been cancelled by reason of the cancellation of the contract.

(12) The provisions of sub-section (9) shall, with necessary

modifications and extensions, also apply to agreements for the grant of licenses and the transfer of pending patent applications.

32. Patent Cancellation

(1) Any interested person may apply to the Court for cancellation of any patent.

(2) If the person applying for cancellation of the patent is able to prove that any of the conditions required under sub-sections (3) and (4) of section 8 are not fulfilled or that the proprietor of the patent is not its inventor or successor in title, The competent court invalidated the said patent.

(3) Only in cases where the context of invalidation of part of the invention arises, the corresponding claim or claims shall be invalidated.

(4) Any patent or any claim or part of a claim which is declared invalid shall be invalid from the date of grant of the patent and shall be deemed never to have been granted.

(5) In case of dispute regarding patent rights, the person concerned may apply to the competent court for transfer of patent rights to him instead of cancelling the patent.

(6) The final decision of the Court shall be communicated to the Director General and after notification of the said decision he shall record the same and publish a memorandum thereof in accordance with the rules.

(7) In view of the application by the patent proprietor to the Director General, the patent shall be cancelled in accordance with the existing rules relating to patents.

(8) In view of the application by the patent owner to the Director General, the patent will be relinquished and the patent revoked in accordance with the existing regulations relating to patents.

Chapter VI Patent Revocation

33. Patent Revocation

(1) Subject to the provisions of this Act, whether before or after coming into force of this Act, any patent shall be revoked by the District Court on a petition filed by any person or Government or on a counter-claim in a suit for infringement of the said patent, on the following grounds, namely:

- (a) if the invention claimed in the complete specification is already claimed in a valid claim in the complete specification of another patent in Bangladesh at an earlier priority date;
- (b) if the invention is granted in pursuance of an application by a person who is not entitled to apply under this Act;
- (c) if the invention has been wrongfully adopted in violation of the rights of any petitioner;
- (d) if the subject-matter of the invention claimed in the complete specification is not an invention within the meaning of clause (6) of section 2;
- (e) if the invention claimed in the complete patent, prior to the priority date of the claim, has been known to the public elsewhere or has been in use among the public or has been published in Bangladesh or elsewhere or in any document referred to in section 23 and in such consideration clause (2) of section (10) It is not new according to its meaning;
- (f) if the invention claimed in the complete specification is known to the public or used among the public in Bangladesh or elsewhere before the priority date of the claim or has been published in Bangladesh or elsewhere and it appears from the said consideration or clause (7) of section 2 According to the meaning does not relate to any innovative step;
- (g) if the invention claimed in the complete specification does not comply with the provisions of clause (2) of section 2 or is not applicable;
- (h) if the complete patent is to be executed in accordance with and in the manner provided for in sub-sections (5), (6), (8), (9), (10) and (11) of section 8, that is, in the complete patent for carrying out the invention; the methods or instructions described are not sufficient to enable a person of ordinary skill in the related or similar technology to carry out the invention or do not disclose the best method known to the inventor to carry out the invention and for

which he was entitled to protection;

(i) If the features of any claim in the complete specification are not fully or clearly explained or any claim in the complete specification is not properly based on the subject matter disclosed in the specification:

(j) if the patent was obtained by false or misleading or incomplete proposition or statement;

(k) if the subject-matter of the complete specification is not patentable under the provisions of section 6;

(l) if the source or geographical origin of the biological material used for the invention is not disclosed or is incorrectly disclosed in the complete specification;

(m) if the invention claimed in the complete specification is predicated on oral or otherwise acquired knowledge available in a local or customary society or tribe in Bangladesh or elsewhere.

(2) A notice of an application for the revocation of a patent under this section shall be given to all the proprietors of the said patent, or those having shares or interests therein, appearing to the Director General, and no such notice shall be required to be given to any other person.

34. Revocation of patent in public interest

If it appears to the Government that any patent or its practice is injurious to public health or public interest, the Government may, by notification in the Official Gazette, issue a declaration of revocation of the patent, after giving the patentee an opportunity of hearing, and the said patent shall be deemed to be revoked with such declaration. .

Chapter VII Patent enforcement, compulsory licensing and use by governments

35. General principles applicable to the enforcement of patent inventions

Without prejudice against any provision of this Act, in the exercise of the powers conferred by this Chapter, the following matters shall be taken into general consideration, namely:

- (a) Patents shall be granted to encourage innovation and to ensure that the invention is commercially viable in Bangladesh and is normally usable without undue delay;
- (b) the patent shall not be granted solely for the purpose of enabling the patentee to enjoy a monopoly over the importation of the patented product;
- (c) the protection and enforcement of patent rights promotes the advancement of new technology, the transfer and dissemination of technology, the mutual benefit of producers and consumers of technology, and the manner in which it is conducive to social and economic welfare and which balances rights and duties;
- (d) the granted patent does not impair the protection of public health and nutrition and serves as a regulator of progress in sectors vital to the advancement of public interest, particularly the socio-economic and technological development of Bangladesh;
- (e) the patent granted does not in any way impede the protection of public health;
- (f) no patent is misused by the proprietor of the patent or by any person having rights or interests in the patent and does not amount to a practice which unreasonably impedes trade or adversely affects the international exchange of technology; And
- (g) Patents are granted to bring the results of the patented invention to the public at an affordable cost.

36. Compulsory licensing

(1) Any person may apply for a compulsory license at any time in the following cases, namely:

- (a) is necessary for the public interest, particularly national security, nutrition, health or development of the national economy;
- (b) a court or executive authority determines that the patentee's or licensee's use of the invention is unfairly competitive;

Explanation: For purposes of this clause, abuse of a dominant position in the sense of unfair competition shall include refusal to grant licenses on fair and equitable terms;

(c) abuse by the proprietor of the patent of his exclusive right;

Explanation: For the purposes of this clause, the meaning of abuse of exclusive right shall include the following matters, namely:

(i) the patented invention fails to satisfy a reasonable need of the public;

(ii) the patented invention is not readily available to the public at an affordable cost;

(d) the patented invention is not locally viable in Bangladesh without importation and the patentee fails to prove that it is economically or technically possible to manufacture it in whole or in part;

(e) a second patent application claims an invention which is economically important, advanced technical knowledge related to the invention claimed in the first patent and it is not possible to exploit the second patent without infringing the first patent;

(f) the patent proprietor refuses to grant the license within a period not exceeding 4 (four) months from the date of application without reasonable cause;

(g) Availability of any essential services (providing necessary physical infrastructure and other facilities), including manufacturing and marketing of fixed-dose combination medicines.

(2) On receipt of an application under sub-section (1), the Director General may, subject to necessary conditions, grant a compulsory license and shall consider and dispose of the application for a compulsory license within 6 (six) months from the date of application.

(3) If an application is made under sub-section (1), the applicant shall endeavour to obtain from the patentee a compulsory license subject to reasonable commercial terms and if such efforts fail within a reasonable time, the said provision shall— Clause (b) of clause (1) shall not apply to any decision.

(4) 4 (four) years from the date of filing of the patent application or 3 (three) years from the date of grant of the patent, whichever is later, on account of invalidity or insufficient efficacy of the patented product under clause (d) of sub-section (1), No compulsory license shall apply and the granting of a compulsory license shall not be refused, unless the patentee is able to show reasonable cause for such inaction or inadequate action.

(5) The compulsory license referred to in sub-section (4) shall not be exclusive and shall not be transferable, even by way of sub-license, but shall be transferable for such part of the business or reputation in respect of which the said license is exercised.

(6) The use of inventions under compulsory license shall apply mainly to supply in the domestic market of Bangladesh, unless the said compulsory license is granted under clause (b) of sub-sections (1) for the purpose of remedying unfair competition or is non-manufacturing under section 39 or the purpose of the license is to export to a foreign territory of insufficient production capacity.

(7) In the case of semi-conductor technology, a compulsory license of invention shall be granted only for non-commercial use by the government or where it is determined by a court or agency that the process of the use of the patented invention by the proprietor of the patent or licensee is unfairly competitive and the government is satisfied that the grant of any license which is not voluntary, may be an appropriate remedy as per such customary practice and in that case, the license shall be granted for such use.

(8) If a compulsory license is granted under clause (e) of sub-section (1)

(a) the proprietor of the first patent shall be entitled to a license on reasonable terms to use the invention claimed by the second patent; And

(b) The right to license the first patent shall not be assignable without granting the right to the second patent.

37. Procedure for Grant of Compulsory License

(1) The Director General shall, on receipt of an application under section 36, issue a notice with a copy of the said application to

the patent applicant or patentee.

(2) A patent applicant or patent proprietor may serve a notice of opposition said application within the prescribed period.

(3) If any notice of such an opposition is given, the Director General shall notify the applicant for compulsory license and shall give the applicant and the opponent an opportunity of hearing before deciding the matter within the period specified in sub-section (2) of section 36.

(4) Where a compulsory license is granted under sub-section (2) of section 36, the Director General shall prescribe an appropriate remuneration payable to the patentee, which shall not exceed 4%(four per cent) of the gross sales and such other conditions as may be necessary.

(5) If any decision is taken under clause (b) of sub-section (1) of section 36, the application for correction of unfair competitive use of the patent by the licensee shall be considered in determining the amount of remuneration.

(6) If, on the application of the patent proprietor, the Director General is satisfied that the conditions necessary to keep the compulsory license in force have been completed and are impossible to repeat, or that the compulsory licensee has failed to comply with the provisions of the license, the Director-General shall, subject to the conditions for the proper protection of the legal interests of the compulsory licensee, can cancel the compulsory license, but before taking the decision to cancel the license, the licensee has to be given an opportunity of hearing.

38. Compulsory license by notification

Notwithstanding anything contained in sub-section (2) of section 36, if the Government is satisfied that a national emergency or other extreme emergency exists or after the sealing of the said patent for non-commercial use by the Government, whenever it is necessary to grant a compulsory license, the Government may, by notification in the Official Gazette, issue a declaration to this effect and the following provisions shall come into force, namely:

(a) the Director General shall, at any time after the issue of the notification, on the application of any interested person, grant a license in favour of the applicant, on such terms and conditions as he may think fit;

(b) in granting a license under this section, the Director General shall endeavour to ensure that the goods produced under the said license are available to the public at an affordable price;

(c) For the purposes of this section, the provisions of the conditions set out in sub-section (3) of section 36 and the procedure in sub-sections (1), (2) and (3) of section 37 shall not apply to the grant of license under this section. ;

(d) An application filed under this section shall be disposed of within 60 (sixty) days and in such circumstances, as soon as possible, the licensee shall be informed of the decision of the Director General.

Explanation: For the purposes of this section, "situation" means an international public health emergency under the International Health Regulations, including a public health crisis, AIDS, HIV, tuberculosis, malaria or any other epidemic and non-communicable diseases, such as cancer, polyuria (Diabetes), Cardiovascular Disorder, or related diseases shall be considered in the licensing of drugs.

39. Compulsory license for export of patented pharmaceutical products

Compulsory license for export of pharmaceutical products shall be granted in the following cases, namely:

(a) Compulsory licenses for the manufacturing, marketing or export of patented pharmaceutical products shall be granted in countries where the production of pharmaceutical products is insufficient or where there is no production capacity:

Provided that such country shall grant a compulsory license or, as the case may be, by notification, permit the importation of patented pharmaceutical products from Bangladesh;

(b) the Director General shall, in the prescribed manner, grant compulsory licenses for the manufacture and export of the pharmaceutical products concerned only after receiving the application;

(c) Pharmaceutical products manufactured under a compulsory license

under the provisions of clauses (a) and (b) shall be exported in accordance with any other applicable provisions of this Act.

Explanation: For the purposes of this section, "pharmaceutical product" shall include any patented pharmaceutical product, or any pharmaceutical product produced by a patented process necessary to solve a public health problem, and the ingredients and diagnostic kits for the manufacture of such product.

(d) The provisions of sub-section 4 of section 40 shall apply.

40. Ability to use inventions by government

(1) Notwithstanding anything contained in this Act, after the filing of an application for a patent in the Office or after the grant of a patent, the Government or any person duly authorized by it may, at the Government Necessity, use the invention at any time in accordance with the provisions of this section.

Explanation: "Government Necessity" shall include supply of pharmaceutical products in public interest, public health, nutrition, environment, existing demand for the patented product, premium price of the patented product, any form of health care gazette by the Government.

(2) Notwithstanding the provisions of sub-section (1), any person may apply to the Government for the Government Necessity under sub-section (1), and in the case of such application, within 60 (sixty) days of the application, the applicant and the patentee after giving an opportunity of being heard, the decision with reasons shall be announced.

(3) The Government may, in respect of any invention, whether before or after the grant of a patent, authorize under this section any person, whether directly or indirectly authorized by the applicant or patentee, to manufacture, use, practice or sell the invention. For the importation of machinery, equipment or any other product or medicine or drug covered by the said patent, such power shall be granted.

(4) The Government shall pay to the patentee a royalty not exceeding

4% (four percent) of the fair sales for such use.

41. Additional provision regarding compulsory license

(1) If a compulsory license is issued under any of the sections 36, 37, 38, 39 or 40, the production, use, offer for sale, sale of the protected subject matter of the patent or patent application, the applicant or patentee may be directed to provide relevant information, equipment, necessary dossiers, test results or other data to the licensee for the purpose of import or export.

(2) If the patent applicant or patentee refuses to comply with any request under sub-section (1), any regulatory agency, any other public authority or institution in possession of such relevant information, equipment, necessary dossier, test results or other data. , may be directed to supply the same.

Chapter VIII Utility model patent

42. Definition of utility model patent and matters outside its protection

(1) "Utility model patent" means a patent right granted by the Government relating to the structure or shape of a product or accessory, suitable for industrial use, and which is characterized by an advance in technology and which is not subject to prior art and is registered under this Act.

(2) The following shall be excluded from protection as a utility model, namely:

- (a) any process or method of the device;
- (b) theories or discoveries;
- (c) standalone computer programs;
- (d) if the content claimed under biotechnology or microbiology or pharmaceutical or agro-chemical composition is prohibited under this Act;
- (e) if injurious to public health or contrary to public order and morality;
- (f) any composition or chemical compound or liquid ballast, non-uniform granular products which do not have a definite shape;
- (g) Naturally, Derived biological material, whether whole or in part, with a use including a new use of a known object;
- (h) the invention of any process or product prohibited under this Act;
- (i) plants and animals, whole or in part, whether modified or not, seeds, or any material, living thing or biological resource obtained wholly or in part from nature, whether purified or isolated or modified .
- (j) any addition or combination or any substance obtained by more than one addition or elements which result in the combination of the properties of its elements;
- (k) Adaptation or reproduction or replication of multiple known devices each of which operates independently in a known manner.

43. Other Terms of Utility Model Patents

- (1) Any person or inventor may apply for a utility model patent.
- (2) Duly filled request along with fee shall be submitted in

prescribed form containing statement.

(3) An application for a utility model patent shall be in the form of a claim and the said claim or claims shall be supported by a clear, concise and complete description.

(4) Any application complying with the general and technical conditions shall be published on the website of the Directorate or in the usual manner.

(5) Where priority is claimed for a utility model patent, the priority date shall be effective.

(6) Examinations related to novelty, applicability in industry and whether it is non-registrable utility model patent and compliance with all matters and conditions described in this Act and the rules made thereunder shall be completed. The application will be amended in a manner prescribed by the rules based on the request of the applicant or examination report. The application will be registered or rejected as per the examination report.

(7) In cases where the registration of utility model patent is opposed by a third party, the said party or parties shall submit sufficient information and evidence in support of the opposition. On the basis of the report prepared in the light of the information and evidence received, an appropriate decision shall be made at the discretion of the Director General after taking the hearing on the applicable case.

(8) The term of utility model patent registration shall be 8 (eight) years subject to renewal and shall be effective from the date of filing of the application or the priority date as the case may be.

(9) Other matters relating to utility model patents shall be determined by the rules.

Chapter IX Enforcement of patent rights

44. Enforcement of patent rights

(1) If any person, subject to the provisions of this Act, without entering into an agreement with the proprietor of the patent, infringes any right declared under section 25, the proprietor of the patent may institute proceedings against such a person for infringement of that right.

(2) If

(a) if the proprietor of a patent, whether exclusive licensee, compulsory licensee or non-exclusive licensee, fails to perform the specific performance of any such licensing agreement, such licensee may file a suit in court against the proprietor of the patent for specific performance of any agreement;

(b) any licensee, whether an exclusive licensee, a compulsory licensee or a non-exclusive licensee, violates the terms of such license, the proprietor of the patent may file a suit in court against such licensee for specific performance of the agreement;

(c) in case of breach of the conditions mentioned in clauses (a) and (b), the court may grant injunction to preserve the rights of the licensee or patentee;

(d) If the court is satisfied that a party has breached the conditions of the license, and that the other party has been injured by such breach of condition, the court may order the party aggrieved by the breach of condition to pay compensation.

(3) A court under the Code of Civil Procedure or any other law relating to the subject-matter of the case may make an order for contravening the provisions of section 25. Provided, however, that if any counterclaim for revocation of the patent is raised by the defendant, the court shall hear both the infringement suit and the counterclaim together.

45. Jurisdiction

Any suit under section 44 shall be filed in any competent court, not only subordinate to the District Court.

46. Burden of proof

(1) If the subject-matter of the infringement of the rights of the

proprietor of the patent is a method of obtaining a product, the court may order the infringer to prove that the method used for the production of the identical product subsequently invented differs from the patented method.

(2) If an identical product is produced without the consent of the proprietor of the patent, it shall be deemed to have been obtained by the patented process until the contrary is proved, unless such product obtained by the patented process is new.

(3) In considering whether a party has complied with an order made on him under sub-section (1), the Court shall not order him to disclose any manufacturing or trade secret, if it appears to the Court to order it unreasonable.

47. Injunction

(1) If any suit for breach of contract or specific performance is for breach of the provisions of section 44, the Court shall not issue any ex-parte interim injunction or temporary injunction.

(2) The court shall give the other party an opportunity of being heard before trying any suit relating to infringement of patent rights or specific performance of contract.

(3) The Court may grant interim injunction or temporary injunction on the following grounds, namely:-

(a) if prima facie evidence, balance of benefits, irreparable harm is in favor of applicant or patent proprietor;

(b) in the case of litigation relating to pharmaceutical products or processes, the effect of such interim injunction or temporary injunction on the availability of the medicinal product shall be considered;

(c) non-compliance with or failure to provide security or equivalent security to protect the rights of the other party against:

Provided that the Court shall not, without giving the other party an opportunity of being heard, grant an interim injunction.

(4) Application for temporary injunction filed by any party shall be disposed of within 30 (thirty) days.

(5) The aggrieved party may, within 14 (fourteen) days of being notified of the temporary injunction, file an application for reconsideration thereof.

(6) If the Court, after issuing the temporary injunction, comes to the conclusion that no term of the patent has been infringed by the opposing party and is not likely to be infringed, the court may, on the application of the opposing party, award suitable compensation for the loss caused by the temporary injunction. The order may be passed on the applicant party.

(7) The Court shall not, without prejudice to an order for compensation, grant temporary injunction or specific relief for breach of the conditions mentioned in section 44 in the following cases, namely:

(a) after the grant of the patent, the plaintiff or any person so authorized, if

(i) does not undertake the necessary preparations for the production of said goods in Bangladesh; or

(ii) not use the patented invention commercially; or

(iii) uses the patented invention in a manner that is incapable of satisfying market needs in a standard manner;

(b) when public interest is likely to be seriously affected;

(c) the patented product or product produced by the patented process is sold by the plaintiff or any person with the consent of the plaintiff at a price in excess of the average purchasing power of the consumer;

(d) the patented product or the product produced by the patented process fails to meet the specific needs of the consumer;

(e) the existence or non-existence of a competitive product in the market for the patented product is selling at a premium;

(f) if the plaintiff obtained the patent in contravention of any provision of this Act.

(8) If a patent right is infringed by a public body or by reason of the provision of a public service, the Court shall, without prejudice to the assessment of damages, make no order of injunction except as may be necessary to obtain evidence under the control of the infringer of the patent right.

48. Limitation of Court's power to grant injunction

No temporary, injunction or permanent injunction shall be issued against any act under sections 29, 36, 37, 38, 39, 40 and 41 of this Act.

49. Court remedy

(1) In case of breach of condition, Court may grant permanent injunction and compensation or profitable account as remedies.

(2) Subject to the provisions of sub-section (1), in cases of infringement of patent rights the court shall determine the amount of compensation in discretion.

(3) In awarding compensation for infringement of patent rights the court may consider the following matters, namely:-

- (a) on which date the registration was published in the official notice, on the website or by notification in the usual manner;
- (b) the date on which the applicant for registration gave notice to the infringer of the patent rights of the application;
- (c) the date on which the content of the application infringing the patent rights became known;
- (d) whether the patented product is available at a fair price;
- (e) whether the patented product is manufactured in Bangladesh or not;
- (f) whether irreparable damage has been caused to the patent proprietor;
- (g) Whether there is adverse effect on local industry or products.

(4) If the defendant in a suit for infringement of patent rights is willing and ready to accept a license on the terms and conditions determined by the court, then no permanent injunction can be issued against him, the court shall determine suitable remuneration and other necessary conditions for the license.

(5) Unless otherwise proved, the court shall take other measures to protect the legal rights of the infringer of patent rights and his trade secrets.

50. Defense in cases of infringement

(1) In cases of infringement of patent rights, the grounds for revocation of patent under section 33 shall be used in defense.

(2) A defense in a suit for infringement of a patent right by the manufacture, use or importation of any machine, apparatus or by the use of any method or by the importation, use or distribution of any medical device or medicine shall be that such manufacture, use, import or distribution is made subject to one or more of the conditions set out in Sections 29, 36, 37, 38, 39, 40, 41 and 43 of this Act.

51. Scientific adviser

(1) The Court, at any time, and whether or not an application for such purpose is filed, in a suit for infringement of patent rights or in any proceeding under this Act, to assist the Court or to investigate or any such Independent or independent counsel may be appointed to report on questions or opinions, other than those involving questions of interpretation of law.

(2) The Court shall fix the remuneration of the Scientific Adviser and shall include the cost of preparing the report and the appropriate daily fee for the Scientific Adviser to appear before it on any day directed by the Court.

52. Appeals against administrative orders, etc.

Under this Act, an appeal shall be filed in the High Court Division of the Supreme Court within 2 (two) months from the date of the decision, against any decision given by the Director General, particularly the decision regarding grant of compulsory license and payment of remuneration for compulsory license.

Chapter X Litigation, Procedure and Penalty

53. Application of Civil Procedure Code

Subject to other provisions of this Act, the provisions of the Code of Civil Procedure shall apply to the filing of suits and legal proceedings and court proceedings under this Act.

54. Compensation

(1) If any person fails to comply with any order made under this Act, the Court may, in the facts and circumstances of the case, levy damages or make such an order as it thinks fit.

(2) If any person makes, or causes to be made, a false entry in any register kept under this Act, or makes any entry therein with the intent of being a copy of such off-register entry, it shall be a contravention of this Act and he shall be liable to a fine not exceeding 50 (Fifty) thousand compensation will be ordered.

(3) If any person falsely represents that the product sold or the process used by him has been patented in Bangladesh or applied for in Bangladesh, it shall be a contravention of this Act and he shall be ordered to pay compensation not exceeding fifty (fifty) thousand BDT.

(4) If any person uses in his place of business or in any document sent by him or otherwise the expression or words "Patents, Designs and Trade Marks Office" or any other words which may lead to the belief that his business and place of business is the authority for registering patents, If so, it will be a violation of this law and for that, an order to pay compensation of 50 (fifty) thousand BDT will be issued against him.

(5) If any company contravenes any such provision, every person in charge of the company and any person engaged in carrying on the affairs of the company for such contravention shall be deemed to have contravened the provisions of this Act, and legal proceedings shall be instituted against them accordingly.

55. Special court, appeal, etc.

(1) In carrying out the purposes of this Act, the Government may, by

notification in the Official Gazette, constitute special courts relating to patents and until such courts are constituted, to dispose of suits or legal proceedings instituted under the Patents and Designs Act, 1911, for infringement of patent rights. The court having jurisdiction shall be deemed to be the competent court.

(2) Against the judgment passed by the Special Court constituted under sub-section (1) or the competent court, an appeal shall be filed within 2 (two) months from the date of delivery of the said judgment.

Chapter XI Powers of the Director General

56. The Director General has some powers similar to those of a civil court

Subject to the rules made for this purpose, the Director General shall have the power, like a civil court, to proceed in the following matters, namely:

- (a) issue summons to any person, compel his attendance and examine him on oath;
- (b) directing the discovery and production of documents;
- (c) taking evidence by way of affidavit;
- (d) issuing commissions for the purpose of examining witnesses or documents;
- (e) making orders for the payment of costs;
- (f) reconsider its own decision, on application within the prescribed time and in the prescribed manner;
- (g) if applied within the prescribed period and in the prescribed manner, any unilateral cancellation of orders;
- (h) any other matter prescribed.

57. Correction of clerical error and extension of time

(1) The Director General, without prejudice to anything relating to the correction of a patent application or complete specification or any other document relating thereto as described in sections 11 and 12 of this Act, shall, on the application of the applicant, as prescribed by rules, upon payment of a fee, in accordance with law, correct the Patent Register any clerical error or mistake, or any translation or translation error, in any application filed by the applicant for a patent.

(2) The Director General may, subject to the provisions of this Act and the rules made thereunder, extend the time for the performance of any function or legal proceedings on written application.

(3) The Director General shall give notice and conditions to the parties concerned and may, on application of any party, grant additional time in case the prescribed time is exceeded, on payment of such fee as may be prescribed by the rules.

58. Attestation procedures and powers of the regulator

Subject to the provisions of any rules made on this behalf, in any proceedings brought before the Director General under this Act, evidence shall, unless otherwise directed, be given by affidavit, but in any case, if the Director General thinks fit, instead of giving evidence by affidavit, oral evidence may also be taken, or a party may be cross-examined as to the contents of the affidavit.

59. Exercise of power

The Director General may, in accordance with the provisions of this Act or the rules made thereunder, exercise the powers vested in him, but unless otherwise provided in this Act, before making any adverse decision against any party under such powers, the said party shall be given an opportunity of hearing.

Chapter XII Exceptions

60. Parallel importation of patented products

(1) In the case of Bangladesh, the international exhaustion policy shall be applicable.

(2) Parallel importation of patented products introduced into the market of any country by any person shall not be considered as a violation of the Patent Act in Bangladesh.

61. Patent Special Provisions

In connection with the development or any act relating to the manufacture, manufacture, use, sale, import or export of any patented product in connection with submission of information prescribed under any law governing the manufacture, use, sale, import or export of any product enforceable in Bangladesh or any other country, this Act The rights provided in section 25 shall not apply.

62. Exemption and other limitation due to research exception

No right under a patent shall apply in the following cases, namely:

- (a) any activities carried out for personal or non-commercial purposes;
- (b) any activities carried out for educational, testing or research purposes;
- (c) any act for the preparation in private practice, which is done in a pharmacy, or any act in connection with any treatment or medicine prepared or any other treatment by a medical practitioner;
- (d) before the filing of the application or, if a priority date is claimed, on the date of filing of the application for which the patent is granted, any act done in good faith by a person who was producing or using any such product or process as claimed by the application; has been made or was being forcibly prepared for the production or use of said goods in Bangladesh;
- (e) Temporary use of the patented invention in any foreign ship, aircraft or land vehicle in Bangladesh.

Chapter XIII Misc

63. the register book and online publication

(1) the register book called Patent Register shall be kept in the Directorate.

(2) Any person may inspect the register book and any person shall be entitled to obtain a citation of the register book from the Department, subject to the provisions of this Act and the rules made thereunder, and the said register book shall be open to the public at convenient times.

(3) To carry out the purposes of this Act, the Directorate shall publish all its publications on the website or by notification in the usual manner.

(4) A certified copy or extract of the relevant part out of registration, with the seal of the Directorate, shall be supplied to the applicant, subject to payment of the fee prescribed by the rules.

(5) The register book shall be prima facie evidence of any matter authorized or required under this Act and the certificates shall be signed by the Registrar and certified to the effect that any entry for which he is empowered by this Act or rules made thereunder, whether said certificate was made accordingly or not, or whether he has done or has not done anything else for which he was empowered to do, shall be prima facie evidence.

64. Patent Agent

(1) Where the applicant's ordinary residence or place of business is outside Bangladesh, he shall be represented by a suitable Bangladeshi person who resides in Bangladesh.

(2) Eligibility and other conditions for registration as a patent agent shall be prescribed by rules.

65. Disclosure of information

All information relating to the enforcement of the patent shall be open to public inspection without charge and such information shall include the following, namely:

- (a) Complete patent application including complete specifications, claims, drawings, and other documents by the applicant;
- (b) information relating to the filing of a full license under a provisional license or if any application is deemed to have been abandoned;
- (c) all information filed under section 15;
- (d) particulars regarding the publication of an application filed under section 17;
- (e) particulars of withdrawal or re-application under section 10;
- (f) particulars of any application made for examination under section 21;
- (g) the detailed report of the examination and other information relating to the proceedings issued under section 22;
- (h) particulars of inquiry for the purpose of examination under section 23;
- (i) information relating to the grant or refusal of any application for a patent under section 24;
- (j) if payment of renewal fee, particulars thereof;
- (k) if any patent has expired or is about to expire, particulars thereof;
- (l) if anything is entered in the register or an application is made for such entry, the particulars thereof;
- (i) the subject of information provided under section 43;
- (ii) the particulars furnished under sub-sections (4), (5) and (6) of section 31;
- (m) the address of all communications, including oral and written communications, between the Patent Office and the applicant.

66. Powers of Director General to seek information from patent proprietor

- (1) The Director General may notice in writing, at any time while the patent is in force, to the patentee or licensee (whether exclusive or not) within 2 (two) months of such notice or such additional period as may be allowed by the Director General, that the patented product specified in the notice is commercially viable or not in Bangladesh, and may direct for submission of relevant information or temporary statement to the Director General.
- (2) Without prejudice to the provisions of sub-section (1), every patentee and licensee, whether exclusive or not, shall, in the

prescribed manner and form and at the prescribed intervals, submit to the Director General information or periodic statements relating to the commercial operation of the patented product in Bangladesh. Provided that such intervals shall not be less than 1 (one) year.

67. Unregistered patent agent

The Director General shall maintain in his office a register called the Register of Patent Agents.

68. Issuance of orders or formulation of strategies

The Government may, without prejudice to the integrity of this Act and to carry out its objectives, issue necessary orders or frame policy papers.

69. Removal of difficulties

If any difficulty arises in carrying out the provisions of this Act, the Government may, by notification in the Official Gazette, take necessary measures to remove such difficulty.

70. Power to make rules

To carry out the purposes of this Act, the Government may, by notification in the Official Gazette, make rules.

71. Revocation and Custody

(1) The provisions of the Bangladesh Patent Act, 2022 (Act No. 05 of 2022), hereinafter referred to as the said Act, are hereby repealed.

(2) Notwithstanding such repeal, any application pending under the said Act shall be disposed of under this Act.

(3) The provisions of sub-section (2) shall come into force with necessary modifications and additions and the decision given by the Court before coming into force of this Act shall be preserved.

(4) Where this Act increases or creates new rights in any way, the existing registration shall authorize the taking of benefits from such increase or creation, including the extension of the terms of reservation, but where this Act diminishes or abolishes the rights, the existing registration shall not be effective; and Existing registrations shall remain in force as if this Act had not come into

force:

Provided that this shall not apply to the decision referred to in sub-section (3).

(5) The functions performed by the Director General shall be preserved as if they had been performed under this Act.

(6) Until rules are made under section 70 of this Act and the Patents and Designs Rules, 1933 granted custody under the said Act, shall, subject to the provisions not inconsistent with this Act, remain in force.

72. Text translated into English.

After promulgation of this Act the Government can publish an authentic English Text of this Act by notification in the Official Gazette.

Provided, however, that in case of conflict between the Bengali and English texts, the law enacted in Bengal shall prevail.