

Patent

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Rationale to protect PR

- To encourage local inventive and related activities thereby building up national technological capability
- To encourage the transfer and adoption of foreign technology
- To fulfill the national demand of multidimensional scientific and technological progress

Patent

- **Patent** means the **title granted** to protect inventions and includes (Art.2 of proclmn. 123/95)
- **patent of introduction,**
- **utility model certificate and**
- **industrial design registration certificate** granted to inventions, minor inventions and industrial designs in accordance with the Proclamation Concerning Inventions, Minor Inventions and –Industrial Designs, **Proclamation No. 123/1995**
- **Patent** means the **title granted** to protect inventions;
- the invention may refer to **a product or a process.**

Right to a patent (Art.7)

- 1. The right to a patent shall belong to the **inventor**.
- 2. If **two or more** persons have jointly made an invention the right to the patent shall belong to **them jointly**.
- 3. In the absence of an agreement to the contrary, the right to a patent for an invention made in the execution of a contract of service or employment shall belong to the person having **commissioned the work or the employer**.
- 4. Invention made without any relation to an employment or service contract and without the use of the employer's resources, data, means, materials or equipment shall belong **solely to the employee or the person commissioned**.

Patent application process in Ethiopia(Art.9-13)

- Should pass 2 steps
 - Formality examinations step(pesonal data,fee,document etc..)
 - Substantive examination steps(Art.3)
 - **Novelty**
 - **Inventive step**
 - **Industrial applicability**

Patent application process in Ethiopia

- Applicant who file his/her patent application in one of any foreign national patent office can file the same application within twelve months at EIPO;
- Application can be filed at EIPO in **any language** but shall be translated **to Amharic or English**

Patent

- Patent is an **exclusive right granted for an invention**, which is a product or a process that provides a new way of doing something, or **offers a new technical solution to a problem**.
- **The limited monopoly right** granted by the state enables an inventor to prohibit another person from **manufacturing, using or selling the patented product or from using the patented process**, without permission.
- Period of Patents - **20 Years (Art 16)**

Cont'd

- Right to ***exclude others from making, using***, selling, offering for sale or importing the claimed invention
- Limited term (**15 years which may be extended for a further period of five years** if proof is furnished that the invention is properly worked in Ethiopia)
- **Territorial**: protection only in territory that granted patent; NO world-wide patent
- Exclusive rights
- Forbid others commercially to:
 - produce, sell, work, use,
 - import, possess the invention

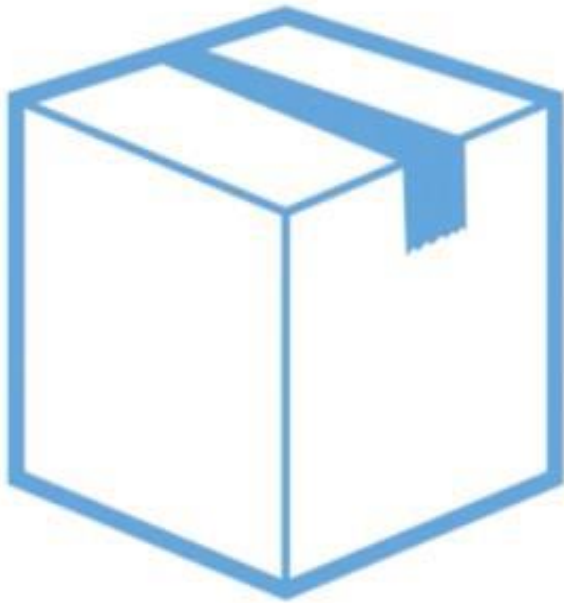
The exclusive right does not extend to:

- acts performed for **non-commercial purposes**
- acts performed for **experimental purposes**

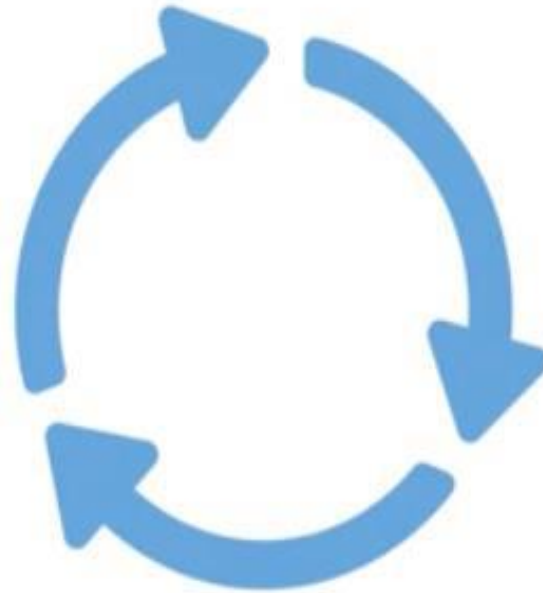
What are the conditions of patentability?(Art.3)

- **Novelty**: Invention not known to public prior to claim by inventor
- **Inventive Step**: Invention would not be obvious to a person with ordinary skill in the art
- **Industrial Application**: Invention can be made or used in any useful, practical activity as distinct from purely intellectual or aesthetic one
- Patent

Two Categories for Patentable Inventions ?



Products

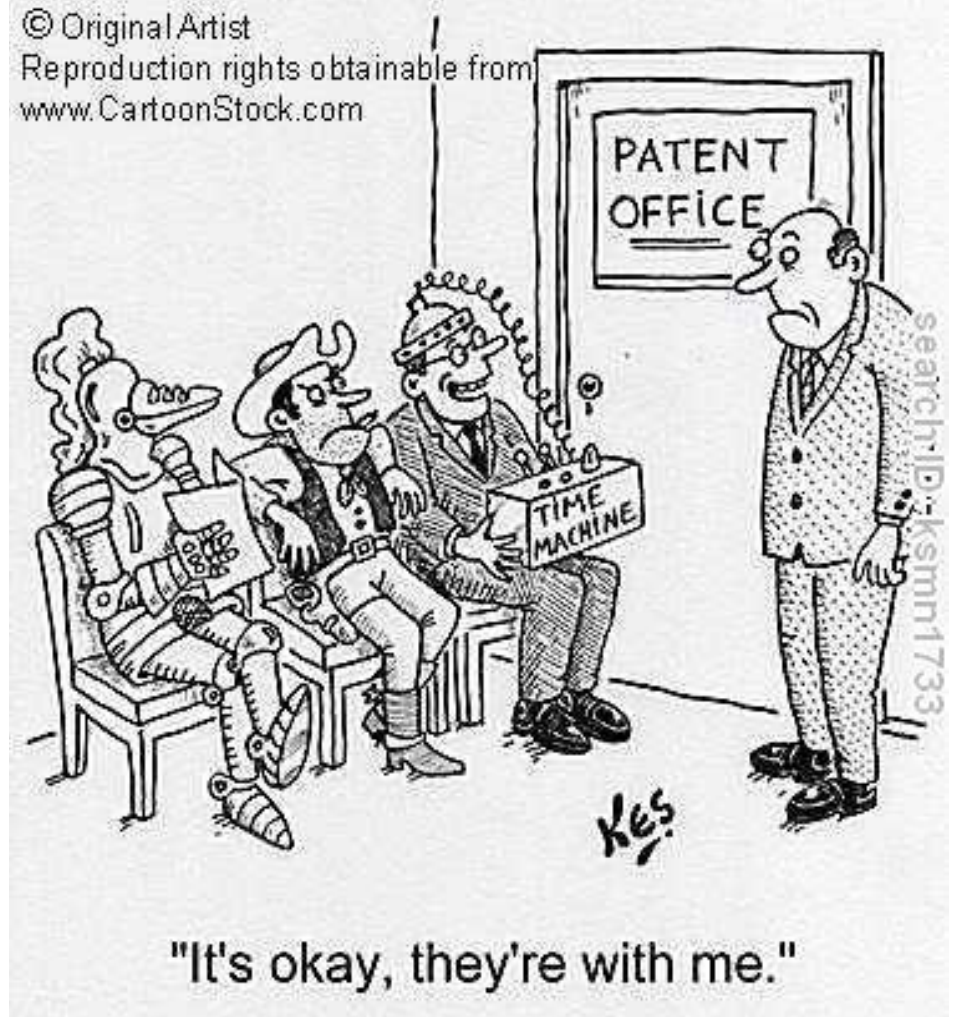
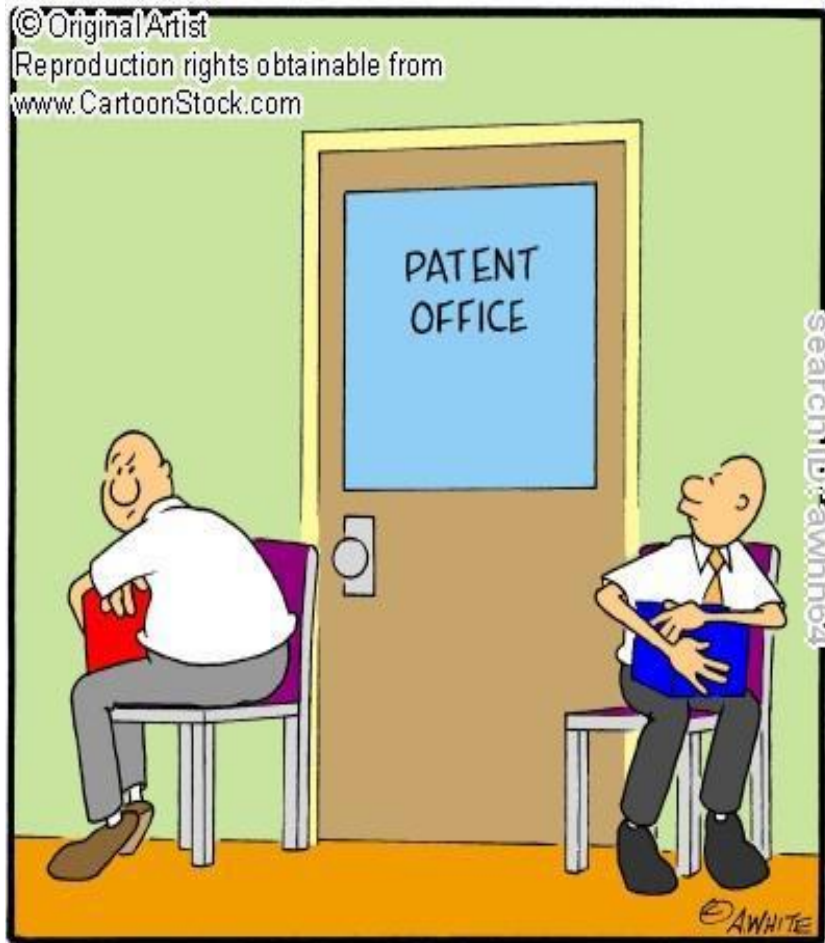


Processes

Cont'd

- For a product
 - material, device, assembly
- For a process
 - process for making, preparing, treating, controlling, operating...

PATENT FILING(NATIONAL/INTERNATIONAL)



Patent Filing, Why?

- Claim ownership
- Monopoly : Right to exclude others
- Sell / License / Assign
- Invention is made public
- Encourages further Innovation
- Enforcement: Sue for infringement

Why Patents Instead of Trade Secrets?

- **Patents** are by definition public, and inventions are released to the public domain after 20 years
- **Trade secrets** can persist indefinitely
- However, a patent is recommended for any invention that is publicly released and susceptible to reverse engineering
- •Note: reverse engineering is generally legal

Why Patents Instead of Copyrights?

- Copyrights protect an **expression of an idea, not the underlying idea itself**
- For example, a copyright of computer software protects direct copying of the software
- ❓ Copyright does not protect against competitors developing software that offers the same functionality

Patent

- Basic Concepts—**Prior Art**
 - What is Prior Art?
 - . Any technology
 - . Known to the public
 - . In Ethiopia or abroad
 - . Before the date of filing

Means of Disclosure

- of Prior art
 - By publications
 - By use
 - By other means

Disclosure by Publications

- The independently existing *disseminating carriers* of technical or designing contents, which shall indicate or have other evidence to prove *the date* of public issue or publication
 - Books
 - Magazines
 - Paper reports
 - Advertisements
 - . Audio or video materials
 - . Documents on internet

Disclosure by Publications

- **NOT affected by:**
 - place of issue,
 - language of issue,
 - manner of acquisition,
 - its age,
 - amount of distribution,
 - whether it has been read, or
 - whether the applicant is aware of it

Disclosure by Publications

- Internal Materials” or “Restricted Publication” or other similar wording



Disclosure by publications?



- Distributed in a restricted scope and required to be kept confidential → Not regarded as publications

Disclosure by Publications

- The date of disclosure
 - . The printing date of a publication
- The printing time only indicates a specific month or year
 - .The last day of the month or year
- The date of disclosure is based on local time, regardless of time zone differences.

Disclosure by Publications

- For journals
 - the **uploading date of the online electronic journal** should be deemed the date of disclosure.

Disclosure by use

- The relevant technical content is placed in such a state that *the public can know it if they wish*, disclosure by use can be established.
- No relevance whether the public had actually known it or not.

Disclosure by use

- Disclosure on an **exhibition stand** or in a **shop window** of informative materials **that are readable by the public or directly visible materials**
- **posters, drawings, photographs, specimens, and samples**

Disclosure by other means

- Mainly refer to **oral disclosure**:
 - **talking, reporting or speaking at symposium, broadcasting, televising and cinematographing**

Utility Model

- **Utility model** is a name given to a title of protection for **certain inventions of lower inventive step**, such as inventions in the mechanical field.
- Utility models are usually sought **for technically less complex inventions** or for inventions that have a short commercial life.

☐ **Utility model protection is given to inventions which are:**

- **-New in Ethiopia and Industrially applicable**

☐ **Reasons for inclusion UM in the law:**

- ☐ Most of the inventions involve small adaptations of existing technologies that **fall short of qualifying for patent protection**
- ☐ On the assumption that **small adaptations can have a positive impact on the growth of productivity in the country.**
- ☐ To encourage **local inventors**
- ☐ The term of protection of Utility model is for **a period of 10 year (5+5).**

Patent of Introduction

❑ Patent of Introduction granted to inventions which are:

- Patented abroad
- Not expired
- Not been patented in Ethiopia
- following a declaration by the interested party for which he takes full responsibility.

❑ The term of protection of Patent of Introduction is for a period of 10 year (3+1+1+1+1+1+1+1).

Invalidation of a Patent of Introduction

- A patent of introduction shall be considered null and void where the owner of the foreign patent files a corresponding application before the expiration of the period of one year.
- The owner of the patent of introduction fails to prove working of the invention or pay the annual fee as required.
- Invalidation of patent of introduction shall be declared by court upon request by an interested party.

Industrial Design

- Protects the way an article looks, including
 - its shape and configuration, as well as
 - surface ornamentation applied to the article
- ☐ Protects only the appearance of an article, not its structural or functional features
- ☐ Criteria of Protection for Industrial Designs:
 - Originality (new)
 - Industrial Applicability
- ☐ The protection period of an industrial design lasts for a 15 (5+5+5).
- ☐ Most the applications for industrial design protection are for shoe and furniture design

The **visual** shape or otherwise of a finished article



Features /technical features /
design must be original where it can be 2 or 3 dimensions



Industrial design



INVENTIONS-NOT PATENTABLE

- Inventions contrary to **public order or morality**
- Plant or animal varieties or essentially biological processes for the **production of plants or animals.**
- Schemes, rules or methods for playing games or performing commercial and industrial activities and computer programs.
- Discoveries, scientific theories and mathematical methods.
Discovery adds to the human knowledge by
- ***disclosing something ,not seen before, whereas,***
- ***Invention adds to human knowledge by suggesting an action resulting in a new product or new process***
- ***e.g.*** Archimedes Principle, Superconducting Phenomenon as such – not patentable , **However,**
- An apparatus /method for technological application may be patentable
- Methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body.

Where to apply for a patent

❑ National patent offices

- ? National patent **valid only in the country where it is granted**
- ? Non-residents can also apply for a patent
- ? One year of "priority" for subsequent applications

❑ European Patent Office

- ? A European patent is **equivalent to national patents** in the countries where it is granted (the applicant chooses the countries)

❑ Via the Patent Cooperation Treaty

- ? Just one application for up to 141 countries
- ? After the initial application phase, the international application leads to multiple national patent examination procedures
- ? **Decisions with cost implications can be delayed** until 30-31 months after filing (e.g. choice of countries to file in)

❑ There is no such thing as an international patent!

International treaties

- The 1883 Paris convention,-established the principle of priority right
- The 1978 Patent Cooperation Treaty, -Unified procedure for filing patent application
- TRIPs, and the Rio convention on biological diversity.---sets common standard for the requirement of patentability
 - Rio CBD—indigeneous knowledge

- Thank you!