

Introductory Note

To the Draft Amendment of the 17-97 Law related to the Protection of Industrial Property as amended and supplemented by Law 31-05

At the national level, the protection of industrial property is governed by the provision of the 17/97 Law related to the protection of industrial property as modified and supplemented by the 31/05 Law.

This law provides for the protection of industrial property in compliance with the international standards in this regard, and which are stipulated in the various international treaties of which Morocco is party, namely WTO related treaties such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Agreements administered by the World Intellectual Property Organization (WIPO); such as the Trademark Law Treaty (TLT), as well as the Free Trade Agreement (FTA) binding Morocco and the United States of America.

Also, in a number of partnership agreements, Morocco shall be committed to the key treaties in terms of industrial property such as the Patent Law Treaty (PLT), the Singapore Treaty on The Law of Trademarks, and the Geneva Act of the Hague Agreement related to the international registration of industrial designs.

Besides, the advanced status granted by the European Union to Morocco stipulates, inter alia, the reciprocal commitment of the two parties to secure a level of protection of industrial property rights in conformity with the *acquis communautaire* in the field. Consequently, an agreement was signed on December 17th, 2010 between Morocco and the European Patent Organization (EPO) on the validation of European patents.

Similarly, the national strategy for innovation shall provide for the reviewing of the national patent system in order to raise the enterprises' innovation level and consolidate the protection system, while consideration be made for the

permanent evolution which characterizes the protection of the industrial property related rights.

The main objectives of this draft amendment hinge upon the following:

- 1) Improving the patent system,
- 2) Consolidating the national trademark system,
- 3) Reforming the national system of industrial designs,
- 4) Strengthening the enforcement of the industrial property rights,
- 5) Modernizing the procedure related to the submission of applications for industrial property rights.

1) Improving the patent system:

In the scope of Morocco's Advanced Status with the European Union (E.U.), the two parties have signed an agreement on the validation of European Patents in Morocco. The purpose of this partnership is – on one hand – to provide the due means for the evolution of patent registration in Morocco into a system which will enable OMPIC (*Fr.= l'Office Marocain de la Propriété Industrielle et Commerciale*)* to draft a research report and a patentability opinion in order to guarantee for the domestic direct applicants a satisfactory level of patentability examination. On the other hand, the purpose is to adopt a recognition of the European Patent Organization (EPO) examination system in order to secure the same treatment of non domestic applications which designate Morocco, without subjecting them to a cumbersome examination system.

In this way, the patent applications filed at OMPIC shall be subject to a preliminary research report and a patentability opinion. This report shall be drafted on the basis of the filed claims, while bearing in mind the description and the designs should there be any. The report in question shall cite the documents, which make up the state of the art relating to the application in

* The Moroccan Industrial and Commercial Property Office

question. Each citation shall be made with relation to the claims it shall concern. On the basis of these citations an opinion shall be made as for the patentability criteria of the invention.

In addition, the provisions of the Draft Amendment of the 17/97 Law shall provide for the setting in place of a validation system in conformity with the provisions of the Agreement on the Validation of European Patents in Morocco. Thus, an application for a patent, and for a patent issued by a body in charge of industrial property, by a state or by a community of states, shall bring about (upon the applicant's request) the same effects and shall be subject to conditions similar to those relating to a patent application or a patent filed at the OMPIC.

It shall be necessary to specify that the validation system makes possible the rejection of the European patents should the latter be contrary to the provisions of the national legislations which might be related to public order, the good mores, and the exclusions or exceptions of patentability (surgical treatment methods ...).

Also, in conformity with The Paris Convention on The Protection of Industrial Property Rights and the Patent Cooperation Treaty (**PCT**), the Draft Amendment shall provide for the division of the patent should there be a violation of the invention unity principle. This division may be made at the initiative of the applicant subsequent either to the payment of the issuance fees, or to the invitation of OMPIC after the drafting of the preliminary research report on patentability.

2) Consolidating the national trademark system:

In conformity with the international standards, the provisions of the Draft Amendment shall provide for the setting of a rejection system to deal with the applications for trademark registrations for absolute grounds. This shall be likely to improve the existing national system which is a registration system with possibilities for opposition. In this way, the Draft Amendment shall aim at

the adoption of this system, allowing thus OMPIC to reject – on the ground of a reasoned decision – the registration applications should it consider that the sign is devoid of any distinctive features, or liable to mislead the public, especially when considering the nature, quality or the geographical origin of the product or the service in question.

The putting in place of this system will lead to the improvement of the creative aspect of the national trademarks for the sake of building an identity, an image or a solid reputation in search of distinctiveness in a highly competitive market. Besides, the Draft Amendment shall include provisions related to the division of trademark applications for registration, in conformity with the Singapore Treaty on The Law of Trademarks. These new provisions shall make possible the breaking of a trademark down into one part of the products and/or some designated services. By means of example : in case of opposition to one part of the products or services designated by the initial application, a divisional application will allow the registration of the part which has not been concerned with the opposition without reaching the settlement of the dispute. The divisional application shall benefit from the date of the initial application.

3) Reforming the national system of industrial designs

The Draft Amendment shall provide for the possibility of dividing the designs or model applications. Accordingly, should the application include designs or models pertaining to different categories, it shall be considered as irregular by OMPIC. The applicant shall have to regularize his/her application by dividing it. This division shall consist in gathering the designs and models by classes, and setting to a new application file for each design, model or group of designs pertaining to a different category. The divisional application shall benefit from the initial date.

4) Strengthening the enforcement of the industrial property rights:

In compliance with the Anti-Counterfeiting Trade Agreement (ACTA), and taking into account the recommendations made by CONPIAC (*Fr. Comité National pour la Propriété Industrielle et Anti-Contrefaçon**), the Draft Amendment shall include for provisions which aim at consolidating the national anti counterfeiting system. It will also raise the protection level in this field. In this context, the Draft's provisions shall consist in strengthening the law enforcement measures by making counterfeiting more dissuasive and by making longer the prison sentences and fines. These provisions shall also open the possibility for the right holders to choose either civil or penal actions to defend their rights without any restriction. Besides, and according to the said draft, the president of the court shall authorize the seizure, or another form of retention, of the materials, instruments, or documentary evidence, either in originals or copies, which are related to the violation.

5) Modernizing the procedure related to the submission of applications for industrial property rights

The Draft Amendment to the 17/97 Law as modified and supplemented by the 31/05 Law shall be characterized by new provisions which favor the simplification relating to industrial property titles, meeting thus the economic operators' expectations.

These new provisions concern the following:

- The filing formalities,
- The deadline extension for the restoration of rights,
- The opposition procedure
- The date marking system
- The electronic filing of applications for the registration of designs and models

* The National Committee for Industrial Property and Anti-Counterfeiting

- The organization of the industrial property attorney profession

a) The title filing formalities:

In order to further ease the process of filing applications for industrial property rights the Draft Amendment shall provide for the minimization of the documents required for application filing. Also, these provisions provide for the possibility to file, by any person, observations and comments on the submission of applications for industrial property rights. These comments may be geared to the necessary criteria for the validation of the registration.

Besides, the Draft Amendment shall, in compliance with the Geneva Act of The Hague Agreement, provide for the publication of the registration of the industrial designs and models. This publication may be deferred at the request of applicants wishing to retain their industrial design unpublished. Furthermore, the Draft shall also provide for more flexibility regarding the application rejection, by granting the applicants the possibility to make comment against rejection decisions made by OMPIC.

b) The deadline extension for the restoration of rights:

In conformity with the international standards for industrial property, namely the Singapore Treaty on The Law of Trademarks, the Patent Cooperation Treaty (PCT), the European Patent Convention (EPC), the Draft shall provide for the possibility to extend the deadline for the accomplishment of certain acts for excusable reasons.

c) The opposition procedures:

The opposition procedures have been set up by the 31/05 Law modifying and supplementing the aforementioned 17/97. This procedure is meeting a resounding success. Its main assets are its celerity, its low cost and the fact that it can result in the rejection of the filing of the disputed file, while avoiding a judiciary procedure. Nevertheless, some improvement might be introduced at the procedural level, particularly concerning the time management relating to this process.

d) The date marking system:

The Draft Amendment shall contain provisions related to the date marking system. This system shall allow authors and creators to build up evidences for their creation as of the date of the submission of a closed file to OMPIC. The submission of this file shall, in itself, provide no protection, nor shall it entail any exclusive right.

e) The electronic filing of applications for the registration of designs and models:

The Draft Amendment shall provide for the electronic filing of applications for the registration of designs and models in conformity with the Geneva Act of The Hague Agreement relating to the international registration of industrial designs and models. These new provisions shall allow the domestic economic operators to file directly, through a secured interface, applications for the registration of industrial designs or models.

The electronic filing procedure, in force in many developed countries, comes as a measure for accompanying the evolution which has been witnessed in a number of domestic applications, and which has significantly expanded in recent years.

f) The organization of the industrial property attorney profession:

The Draft Amendment shall, in harmony with the international trends, provide for the organization of the trade of industrial property attorneys, the purpose being the quality enhancement for the assistance services offered by the professionals in aid of inventors and creators.

Also, the Draft Amendment to the 17/97 Law as modified and supplemented by the 31/05 Law shall be characterized by new contributions which shall have a hand in the improvement of the domestic system of industrial property through

the reconciliation between the domestic legislation in the field and the new international treaties.

Such shall be the objective of the aforementioned Draft Amendment to the 17/97 Law.