

**ADOPTED AMENDMENTS TO THE HARARE PROTOCOL
ON PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS**

HARARE PROTOCOL
ON PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

2025 Edition

ARIPO Secretariat
Harare
2024

Harare Protocol on Patents, Utility Models and Industrial Designs (2025 Edition).

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**HARARE PROTOCOL ON PATENTS, UTILITY MODELS AND INDUSTRIAL
DESIGNS WITHIN THE FRAMEWORK OF THE AFRICAN REGIONAL
INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)**

(adopted on December 10, 1982, at Harare (Zimbabwe), and amended by the Administrative Council of ARIPO on December 11, 1987, April 27, 1994, November 28, 1997, May 26, 1998, November 26, 1999, November 30, 2001, November 21, 2003, November 24, 2006, November 25, 2013, November 17, 2015, December 5, 2016, November 22, 2017, November 23, 2018, November 20, 2019, August 26, 2021, December 8, 2021, November 25, 2022 and December 10, 2024)

And

**REGULATIONS FOR IMPLEMENTING THE HARARE PROTOCOL ON
PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS WITHIN THE
FRAMEWORK OF THE AFRICAN REGIONAL INTELLECTUAL PROPERTY
ORGANIZATION (ARIPO)**

(text entered into force on April 25, 1984, and amended by the Administrative Council of ARIPO on April 27, 1994, November 27, 1998, November 24, 2000, November 21, 2003, November 24, 2006, November 30, 2011, November 25, 2013, November 17, 2015, December 5, 2016, November 22, 2017, November 23, 2018, November 20, 2019, August 26, 2021, December 8, 2021, November 25, 2022 and December 10, 2024)

Preamble

The Contracting States of this Protocol,

Having regard to the Agreement on the Creation of the African Regional Intellectual Property Organization (ARIPO) then known as the Industrial Property Organization for English-Speaking Africa, concluded in Lusaka (Zambia) on December 9, 1976, and in particular to its Article III(c), in accordance with which the objectives of the Organization include the establishment of such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the intellectual property activities affecting its members,

Having regard to Article 19 of the Paris Convention for the Protection of Industrial Property signed in Paris on March 20, 1883, and revised on July 14, 1967, and a Regional Treaty within the meaning of Article 45(1), of the Patent Cooperation Treaty of June 19, 1970,

Desiring to strengthen co-operation between the States in respect of protection and exploitation of patents, utility models and industrial designs and to provide quality intellectual property services for the social, economic and technological development of Member States,

Desiring that such protection may be obtained in those States by a single procedure for the grant of patents, registration of utility models and of industrial designs and by the establishment of certain standard rules governing patents so granted and utility models and industrial designs so registered,

Considering the advantages to be gained by the pooling of resources in respect of intellectual property administration,

Hereby agreed as follows:

PART 1
GENERAL PROVISIONS

Section 1
Interpretation

For the purposes of this Protocol:

- (a) "Administrative Council" means the Administrative Council established by the Agreement on the creation of the African Regional Intellectual Property Organization (ARIPO);
- (b) "Application" means an application for the grant of a patent or for the registration of a utility model or an industrial design, as the case may be, under this Protocol;
- (c) "ARIPO Journal" means the Journal published by the Office;
- (d) "Budapest Treaty" means the Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure done at Budapest in 1977;
- (e) "Contracting State" means a State that has ratified or acceded to this Protocol;
- (f) "Designated State" means a State designated in an ARIPO application;
- (g) "Director General" means the Director General of ARIPO;
- (h) "Elected office" means an industrial property office of a Contracting State, or any other office or organization including the ARIPO Office acting for that industrial property office, which is elected by an applicant under Chapter II of the Patent Cooperation Treaty;
- (i) "Regulations" means the Regulations for Implementing the Harare Protocol on Patents, Utility Model and Industrial Designs within the Framework of the African Regional Intellectual Property Organization (ARIPO);
- (j) "International application" means a patent application filed under the Patent Cooperation Treaty;
- (k) "International depository authority" means a depository institution which has acquired the status of international depository authority as provided for in Article 7 of the Budapest Treaty;
- (l) "International preliminary examination" means an examination carried out in accordance with Article 33 of the Patent Cooperation Treaty.
- (m) "Office" means the ARIPO Office;
- (n) "Official or officially recognized exhibition" means an exhibition recognized by a State or falling within the terms of the Convention on International Exhibitions.
- (o) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, 1883;

- (p) “Patent Cooperation Treaty” means the Patent Cooperation Treaty done at Washington on June 19, 1970, including the Regulations and Administrative Instructions under the Treaty, as last revised;
- (q) "Protocol" means the Harare Protocol on Patents, Utility Models and Industrial Designs within the Framework of the African Regional Intellectual Property Organization (ARIPO) adopted at Harare, Zimbabwe, on December 10, 1982;
- (r) “Representative” means a legally recognized and authorized representative of the applicant residing in any Contracting State who has the right to represent applicants before the industrial property office of any Contracting State and has been so authorized through power of attorney to act on behalf of the applicant with respect to the Office.

Section 2

Scope

This Protocol shall apply to the grant of patents and the registration of utility models and industrial designs under the framework of the African Regional Intellectual Property Organization (ARIPO).

Section 3

Administration

The African Regional Intellectual Property Organization (ARIPO) is empowered to grant patents, register utility models and industrial designs, and administer such patents, utility models and industrial designs on behalf of Contracting States in accordance with this Protocol through its Secretariat.

Section 4

Fees

- (1) The Office may levy fees for any official task or procedure carried out under this Protocol.
- (2) Where the Regulations provide that a fee shall be paid, and the applicant fails to pay the fees in due time, the application shall lapse.
- (3) The amounts of the fees and the manner in which they are to be paid shall be prescribed in the Regulations.

Section 5

Distribution of Fees

Fees collected in accordance with this Protocol shall be distributed between the Office and the Contracting States as prescribed in the Regulations.

Section 6
Time limits

- (1) Where this Protocol does not specify a time limit for a process, such time limits shall be prescribed in the Regulations.
- (2) The Regulations shall, in particular, specify-
 - (a) the time limits which are to be observed in proceedings before the Office;
 - (b) the manner of computation of time limits; and
 - (c) the conditions under which time limits may be extended.

PART 2
PATENTS

Section 7
ARIPO Patent

- (1) Patents granted by virtue of this Protocol shall be called ARIPO patents.
- (2) An ARIPO patent shall in each of the Contracting States for which it is granted have the effect of, and be subject to, the same conditions as a national patent granted by that State.

Section 8
Patentable Inventions

- (1) ARIPO patents shall be granted for any inventions in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.
- (2) The following, in particular, shall not be regarded as inventions within the meaning of paragraph 1 -
- (a) discoveries, scientific theories and mathematical methods;
 - (b) aesthetic creations;
 - (c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers; and
 - (d) presentations of information.
- (3) Paragraph 2 shall exclude the patentability of the subject matter or activities referred to therein only to the extent to which an ARIPO patent application or an ARIPO patent relates to such subject matter or activities as such.

Section 9
Exceptions to Patentability

- (1) ARIPO patents shall not be granted in respect of -
- (a) inventions of which commercial exploitation would be contrary to public order or morality;
or
 - (b) plant or animal varieties or essentially biological processes for the production of plants; or animals.
 - (c) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body.

(2) Paragraph 1(b) shall not apply to microbiological processes or the products thereof.

(3) The methods referred to under paragraph 1(c) shall not apply to products, in particular substances or compositions, for use in any of these methods.

Section 10

Novelty

(1) An invention shall be considered to be new if it is not anticipated by prior art.

(2) Prior art means everything made available to the public anywhere in the world by means of a written disclosure, including drawings and other illustrations, or an oral disclosure, by use or by display at an exhibition, provided that such publication occurred before the date of filing of the ARIPO patent application or, where, priority is claimed, before the priority date.

(3) The contents of ARIPO patent applications filed prior to the date referred to in paragraph 2 and published on or after that date shall be considered as comprised in the prior art.

(4) Paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the State of the art, for use in a method referred to in Section 9(1)(c), provided that its use for any such method is not comprised in the State of the art.

(5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in a method referred to in Section 9(1)(c), provided that such use is not comprised in the State of the art.

Section 11

Non-prejudicial Disclosures

(1) For the purpose of Section 10, disclosure of the invention shall not be taken into consideration if it occurred not more than six (6) months before the date of filing of the ARIPO patent application and if it was due to or in consequence of -

(a) an evident abuse in relation to the applicant or his legal predecessor; or

(b) the applicant or his legal predecessor displayed the invention at an official or officially recognised international exhibition falling within the terms of the Convention on International Exhibitions, 1928.

(2) Paragraph 1(b) shall apply only if the applicant States, when filing the ARIPO patent application, that the invention has been so displayed and files a supporting certificate within the time limit in accordance with the conditions prescribed in the Regulations.

Section 12
Inventive Step

(1) An invention shall be considered as involving an inventive step if, having regard to the State of the art, it is not obvious to a person skilled in the art.

(2) Where the State of the art also includes documents within the meaning of Section 10(3), the documents shall not be considered in deciding whether there has been an inventive step.

Section 13
Industrial Applicability

An invention shall be considered susceptible of industrial applicability if it can be made or utilized in any kind of industry, including agriculture.

Section 14
Entitlement to file an ARIPO patent application

An ARIPO patent application may be filed by a person possessing the right to an ARIPO patent in terms of Section 16.

Section 15
Multiple Applicants

An ARIPO patent application may be filed by two or more applicants.

Section 16
Right to an ARIPO Patent

(1) The right to an ARIPO patent shall belong to the inventor or his successor in title.

(2) Where the inventor referred to in paragraph 1 is an employee, the right to an ARIPO patent shall be determined in accordance with the law of the Contracting State.

(3) Where two or more persons have made an invention independently of each other, the right to an ARIPO patent shall belong to the person whose ARIPO patent application has the earliest filing date or priority date, if claimed, provided that the first application has been published.

Section 17
ARIPO Patent Application Filed by Non-entitled Persons

(1) A person, other than the applicant for an ARIPO patent, who has been adjudged to be entitled to the grant of the ARIPO patent by a final decision of a court of a Designated State, may in accordance with the Regulations-

(a) prosecute the ARIPO patent application as his own application in place of the applicant;

- (b) file a new ARIPO patent application in respect of the same invention; or
 - (c) request that the ARIPO patent application be refused.
- (2) Section 28, shall apply mutatis mutandis to a new ARIPO patent application filed under paragraph 1(b).

Section 18
Right of the Inventor to be Mentioned

The inventor shall have the right to be mentioned as such in an ARIPO patent application.

Section 19
Appointment of Representatives

- (1) An applicant who does not reside or have principal place of business in a Contracting State shall appoint a representative to act in all proceedings established by this Protocol and its Regulations.
- (2) An applicant having their residence or principal place of business in a Contracting State may be represented in proceedings established by this Protocol and its Regulations.

Section 20
Term of the ARIPO Patent

The term of an ARIPO patent shall be 20 years from the date of filing of the application, subject to the payment of maintenance fees.

Section 21
Maintenance of ARIPO Patent and Patent Application

- (1) An applicant or holder of an ARIPO patent shall pay the annual maintenance fees as prescribed in the Regulations.
- (2) Where the annual maintenance fee is not paid as prescribed in the Regulations, the application or patent shall lapse.

Section 22
Rights Conferred by an ARIPO Patent

- (1) An ARIPO patent shall confer on its proprietor from the date on which the mention of its grant is published in the ARIPO Journal in each Contracting State in respect of which it is granted the same rights as would be conferred by a national patent granted in that State.
- (2) An alleged infringement of any ARIPO patent shall be enforced in accordance with the national law of the State in which the alleged infringement occurred.

Section 23
Rights Conferred by an ARIPO Patent Application

An ARIPO patent application shall, on the date of its publication, provisionally confer upon the applicant the protection provided for in Section 22 in the Designated States unless the national law of the Designated State provides otherwise.

Section 24
Extent of Protection

- (1) The extent of the protection conferred by an ARIPO patent or an ARIPO patent application shall be determined by the terms of the claims.
- (2) The description and the drawings shall be used to interpret the claims.

Section 25
Transfer of Rights

- (1) The right of an ARIPO patent application or an ARIPO patent may be transferred with respect to one or more of the Designated States.
- (2) The request for recordal of the transfer of rights of an ARIPO patent application or an ARIPO patent shall be made in writing and signed by the parties to the agreement.
- (3) An ARIPO patent application or an ARIPO patent may be licensed in whole or in part for the whole or part of the territories of the Designated States.

Section 26
Applicable Law

A patent granted by the Office shall, in each Designated State, be subject to provisions of the applicable national law.

Section 27
Filing of an ARIPO Patent Application

- (1) An ARIPO patent application may be filed with the Office or, where the law of a Contracting State so permits, the industrial property office of that State.
- (2) An application filed with the industrial property office of a Contracting State under the provisions of paragraph 1 shall have the same effect as if it had been filed on the same date at the Office.
- (3) Paragraphs 1 and 2 shall not preclude the application of applicable laws which, in any Contracting State—

(a) govern inventions which, owing to the nature of their subject matter, may not be communicated abroad without the prior authorization of the competent Authority of that State; or

(b) prescribe that each application is to be filed initially with the industrial property office of the Contracting State or make direct filing with another authority subject to prior authorization.

Section 28

ARIPO Divisional Application

(1) An ARIPO divisional application shall be filed directly with the Office in accordance with the Regulations and shall be filed only in respect of the subject matter which does not extend beyond the scope of an earlier application as filed.

(2) The divisional application shall be deemed to have been filed on the date of filing the earlier application and shall enjoy the same priority rights.

(3) All Contracting States designated in the earlier application at the time of filing of an ARIPO divisional application shall be deemed to be Designated in the divisional application unless the applicant communicates otherwise.

Section 29

Transmittal of ARIPO Patent Application

Where the application is filed with the industrial property office of a Contracting State, such office shall transmit that application to the ARIPO Office as prescribed in the Regulations.

Section 30

Translation of ARIPO Patent Application

(1) An ARIPO patent application may be filed in any language.

(2) An ARIPO Application filed in a language other than English shall be translated into English within the period prescribed in the Regulations.

Section 31

Requirements of an ARIPO Patent Application

(1) An ARIPO patent application shall contain:-

(a) a request for the grant of an ARIPO patent;

(b) a description of the invention;

(c) one or more claims;

(d) a drawing or drawings, where necessary; and

(e) an abstract;

(2) An ARIPO patent application shall satisfy the requirements prescribed in the Regulations.

(3) An ARIPO patent application shall be subject to the payment of the fees prescribed in the Regulations. Where the fees are not paid in due time, the application shall lapse

Section 32
Designation of Contracting States

(1) The grant of an ARIPO patent shall be requested for one or more of the Contracting States.

(2) The designation of a Contracting State shall be subject to the payment of a designation fee.

(3) The designation of a Contracting State may be withdrawn at any time subject to payment of a prescribed fee.

(4) The designation of a Contracting State may be added at any time before publication referred to in Section 43(1), subject to payment of the prescribed fee.

Section 33
Filing Date

The filing date of an ARIPO patent application shall be the date on which the filing requirements, as provided under Section 31(1)(a) to (c), are fulfilled.

Section 34
Unity of Invention

An ARIPO patent application shall relate to one invention only or to a group of inventions so linked that they form a single general inventive concept.

Section 35
Description

(1) A description shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

(2) The disclosure of an invention referred to in paragraph 1 shall be entirely effected by an enabling description with accompanying drawings, if any.

Section 36
Claims

A claim or claims shall, in a clear and concise manner, define the matter for which protection is sought and shall be supported by the description.

Section 37
Abstract

An abstract shall merely serve as a source of technical information and shall not be used for the purposes of interpreting the scope of the protection sought.

Section 38
Priority Right

(1) Any person, or his successor in title, who has duly applied for a patent to any:-

- (a) State party to the Paris Convention for the Protection of Industrial Property; or
- (b) member of the World Trade Organization,

shall enjoy, for the purposes of filing for an ARIPO patent application, in respect of the same invention, a right of priority during a period of 12 months from the date of filing the first application.

(2) Every filing that is equivalent to a regular national filing under the national law of the Contracting State where it was due, under a bilateral or multilateral agreement including this Protocol, shall be recognized as giving rise to a right of priority.

(3) For the purpose of this section, “regular national filing” means any filing that is sufficient to establish the date on which the application was filed.

Section 39
Claiming Priority

(1) An applicant who intends to take advantage of the priority of the previous application shall file a declaration of priority and any other document required in accordance with the Regulations.

(2) Multiple priorities may be claimed in respect of an ARIPO patent application, notwithstanding that they originated in different countries.

(3) Where appropriate, the multiple priorities may be claimed for one claim.

(4) Where multiple priorities are claimed under paragraph 2, time limits which run from the date of priority shall run from the earliest date of priority.

(5) Where one or more priorities are claimed in respect of an ARIPO patent application, the right of priority shall cover only those elements of the ARIPO patent application which are included in the application or applications whose priority is claimed.

Section 40
Effect of Priority Right

The right of priority shall have the effect that the date of priority shall count as the date of filing of the ARIPO patent application for the purposes of Section 10(2) and (3), and Section 16(2).

Section 41
Examination on Filing

(1) The Office shall examine whether the filing requirements for an ARIPO patent application as provided for in the Regulations has been complied with.

(2) Where the filing requirements have been complied with, the Office shall accord the filing date to the application.

(3) The Office shall notify the applicant and each Designated State that an ARIPO patent application has been filed and complies with the prescribed filing requirements.

(4) Where an ARIPO patent application does not comply with the filing requirements, the Office shall invite the applicant to comply with the requirements within the period prescribed in the Regulations.

(5) Where the applicant does not comply with the filing requirements within the prescribed period, the Office shall refuse the application.

(6) An ARIPO patent application that has been accorded a filing date shall be equivalent to a regular national filing in each Designated State, where appropriate, with the priority claimed for the ARIPO patent application.

Section 42
Examination as to Formal Requirements

(1) The Office shall examine whether the formal requirements for an ARIPO patent application as prescribed in the Regulations has been complied with.

(2) The Office shall notify the applicant and each Designated State that a patent application has been filed and complies with the prescribed formal requirements.

(3) Where an ARIPO patent application does not comply with the formal requirement, the Office shall invite the applicant to comply with the requirements within the prescribed period.

(4) Where the applicant does not comply with the requirements within the said period, the application shall be deemed withdrawn.

Section 43
Publication of the ARIPO Patent Application

- (1) The Office shall publish the ARIPO patent application as soon as possible-
 - (a) after the expiry of a period of 18 months from the date of filing or, if priority has been claimed, from the date of the earliest priority; or
 - (b) at the request of the applicant, before the expiry of the 18 months and subject to the payment of the prescribed fee.
- (2) The ARIPO patent application shall be published at the same time as the specification of the ARIPO patent when the decision to grant the patent becomes effective before the expiry of the 18 months.

Section 44
Observations by Third Parties

- (1) Following the publication of the ARIPO patent application, any person may present observations concerning the patentability of the invention to which the application relates as prescribed in the regulations.
- (2) The third party referred to in paragraph 1 shall not be a party to the proceedings.

Section 45
Examination as to Substance

- (1) The Office shall, on request and upon the payment of prescribed fees, undertake or arrange for the search and substantive examination of an ARIPO patent application in accordance with the Regulations to determine whether it meets the requirements of this Protocol.
- (2) The request referred to in paragraph 1 shall not be deemed to be filed until the prescribed fees have been paid.
- (3) Where no request is made within the specified period, the application shall lapse.
- (4) Where the examination reveals that the application does not comply with the requirements of this Protocol, the Office shall invite the applicant within the prescribed period to file his or her observations and, subject to Section 47, amend the application.
- (5) Where the applicant fails to respond to the invitation in paragraph 4, the application shall be deemed withdrawn.

Section 46
Decision to Grant a Patent

- (1) Where the Office is of the opinion that an ARIPO patent application meets the requirements of this Protocol and decides to grant a patent, it shall notify the applicant and each Designated State.

(2) Upon receipt of the notification referred to in paragraph 1, each Designated State may, within the prescribed period, make a written communication to the Office that if a patent is granted by the Office, the patent shall -

(a) have effect in its territory; or

(b) have no effect in its territory for the reason that –

(i) the invention is not patentable in accordance with this Protocol; or

(ii) due to the nature of the invention, a patent cannot be granted or has no effect under the national law of that State.

(3) Where the Designated State communicates in accordance with paragraph 2(b), the applicant may, within a prescribed period, request the Designated State to reconsider its decision by providing amendments and/or arguments in relation to the communication.

(4) Where an applicant submits amendments and/or arguments referred to in paragraph 3, the Designated State shall respond within the prescribed period. Where the Designated State does not respond within the specified period, the application shall be deemed refused by the Designated State.

Section 47

Amendments

(1) An ARIPO patent application may be amended in proceedings before the Office in accordance with the Regulations.

(2) An applicant for an ARIPO patent may amend the description, the claims or the drawings, subject to payment of the prescribed fee.

(3) An ARIPO patent application may not be amended in such a way that it contains subject matter that extends beyond the content of the initial application as filed.

Section 48

Grant or Refusal

(1) Where the Office is satisfied that an ARIPO patent application fulfil the requirements of this Protocol, it shall grant an ARIPO patent.

(2) Where the Office grant an ARIPO patent, such grant shall have effect in those Designated States which have not made the communication referred to in Section 46(2)(b).

(3) Where an ARIPO patent application, notwithstanding a request for reconsideration, does not fulfil the requirements of this Protocol, the Office shall refuse the application and notify the applicant of that decision.

(4) Where the Office refuses an ARIPO patent application, the applicant may, within the prescribed period of being notified of the refusal-

(a) lodge an appeal against the decision of the Office to the Board of Appeal; or

(b) request that the application be treated, in any Designated State, as an application according to the national law of that State.

(5) Where the Designated State refuses an ARIPO patent application in accordance with Section 46(2)(b) and (4), notwithstanding the applicant's amendments and/or arguments, the applicant may, within the prescribed period of being notified of such refusal, request that the application be treated in the Designated State as an application according to the national law of that State.

(6) The ARIPO patent application shall lapse if the request referred to in paragraphs 4(b) and 5 is not filed within the prescribed period.

(7) Where all the Designated State(s) make the communication referred to in Section 46(2)(a) and subject to the payment of the prescribed fee, the applicant may request for an early grant before the expiry of the period prescribed in the Regulations.

Section 49

Publication of the ARIPO Patent

The Office shall publish the ARIPO patent granted as provided for in the Regulations.

Section 50

Post-grant Amendment

(1) An ARIPO patent may be limited by post-grant amendment at the request of the proprietor.

(2) The request referred to in paragraph 1 shall be filed with the Office in accordance with the Regulations. The request shall not be deemed to have been filed until the request fee has been paid.

(2) Any amendment to the claims shall fall wholly within the scope of the claims before the amendment.

(3) Where the proprietor makes a request for post-grant amendment referred to in paragraph 1, the application shall be re-examined and re-published, subject to the payment of prescribed fees.

Section 51
ARIPO Patent Register

- (1) The Office shall maintain an ARIPO Patent Register, which shall contain particulars specified in the Regulations.
- (2) No entry shall be made in the ARIPO Patent Register before the publication of the ARIPO patent application.
- (3) The ARIPO Patent Register shall be open to public inspection in accordance with Section 52, subject to payment of the prescribed fees.

Section 52
Inspection of ARIPO Patent Register

- (1) Information relating to ARIPO patent applications which have not yet been published shall not be made publicly accessible or available for inspection without the consent of the applicant.
- (2) Where an ARIPO divisional application or a new ARIPO patent application filed under Section 28(1), is published, any person may obtain inspection of the files of the earlier application before the publication of that application and without the consent of the applicant.
- (3) After the publication of the ARIPO patent application, the documents relating to the application and the resulting ARIPO patent may be inspected on request, subject to the restrictions prescribed in the Regulations
- (4) Even before the publication of the ARIPO patent application, the Office may communicate to third parties or publish the particulars specified in the Regulations.
- (5) Where an application is withdrawn before publication, the file relating to it may be inspected only with the written permission of the applicant or proprietor.
- (6) The inspection of files by the Courts or authorities of Contracting States shall be by the provision of copies of the relevant documents or extracts of the relevant entries.

Section 53
Conversion of ARIPO Patent Application to a National Patent Application

- (1) Where the Office refuses an application under Section 48(2)(b) or (3), the industrial property office of a Designated State shall, at the request of the applicant or proprietor of an ARIPO patent application, apply the procedure for the grant of a national patent.
- (2) Subject to paragraph 1, the request for conversion shall be submitted to the Office in accordance with the Regulations.
- (3) The Office shall transmit the request referred to in paragraph 2 to the specified industrial property offices of the Contracting States.

(4) The request referred to in paragraph 2 shall not be deemed to be filed until the conversion fee has been paid.

(5) The effect of the ARIPO patent application referred to in Section 41(5) shall lapse if the request for conversion is not submitted in due time.

Section 54

Conversion of ARIPO Patent Application to a Utility Model Application

(1) At any time before the grant or refusal of an ARIPO patent application, the applicant may, upon request and payment of the prescribed fees, convert the patent application into an application for a utility model, which shall be accorded the filing date of the initial patent application.

(2) An application shall not be reverted back to an ARIPO patent application once it is converted under this Section.

(3) Where an ARIPO patent application has been converted under paragraph 1, the ARIPO patent application shall be deemed to be withdrawn.

(4) Where the conversion of an ARIPO patent application under paragraph 1 is made, any documents filed with respect to the original patent application shall be deemed to have been filed at the same time the request for conversion is made.

Section 55

Restoration of Rights

(1) An applicant for an ARIPO patent application or an ARIPO patent who was unable to observe a time limit leading to the loss of rights, in spite of all due care required by the circumstances having been taken, may have the rights restored upon request.

(2) The Office may grant the request, provided that the requirements prescribed in the Regulations are met. No right shall be deemed restored until the request has been granted in writing.

(3) Where the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(4) Restoration of rights shall be ruled out in respect of the time limit for requesting restoration of rights. The Regulations may rule out restoration of other time limits.

(5) A person who, in a Designated State, has in good faith used or made effective and serious preparations for using an invention in a Designated State which is the subject of a published ARIPO patent application or an ARIPO patent in the period between the loss of rights referred to in paragraph 1 and publication in the ARIPO Journal of the mention of restoration of those

rights, may without payment continue such use in the course of business or for the needs thereof.

(6) Nothing in this section shall limit the right of a Contracting State to grant restoration of rights in respect of time limits provided for in this Protocol and to be observed vis-à-vis the authorities of such State.

PART 3
INTERNATIONAL APPLICATIONS

Section 56

Application of the Patent Cooperation Treaty

(1) An international application in which a Contracting State, which is also bound by the Patent Cooperation Treaty, is Designated for the purposes of obtaining a patent under the provisions of that treaty shall be considered to be an application for the grant of a patent under this Protocol.

(2) The Patent Cooperation Treaty shall apply to such international application in addition to this Protocol and the Regulations under this Protocol. Where there is a conflict, the provisions of the Patent Cooperation Treaty shall prevail.

(3) Where an international application is made under paragraph 1, any annual maintenance fee(s) that falls due under Section 21 shall not be paid until the expiration of the applicable time limit under Article 22 or 39(1)(a) of the Patent Cooperation Treaty.

Section 57

ARIPO Office as a Receiving Office

The Office may act as the receiving Office under Article 2(xv) of the Patent Cooperation Treaty in relation to an international application filed by an applicant who is a resident or national of a Contracting State, which is also bound by the Patent Cooperation Treaty.

Section 58

ARIPO as Designated Office or Elected Office

(1) The Office shall be the Designated Office under Article 2(xiii) of the Patent Cooperation Treaty in relation to an international application referred to in Section 56(1).

(2) The Office shall act as elected Office under Article 2(xiv) of the Patent Cooperation Treaty in relation to an international application referred to in Section 56(1), where a Contracting State is elected for the purposes of international preliminary examination under Article 31(4) of the Patent Cooperation Treaty.

PART 4
UTILITY MODELS

Section 59
ARIPO Utility Model

- (1) A utility Model registered under this Protocol shall be called the ARIPO utility model.
- (2) An RIPO utility model shall, in each of the Contracting States for which it is registered, have the effect and be subject to the same conditions as a national utility model registered by that State.
- (3) No utility model may be registered if the claimed subject matter has already been the subject of a patent or a utility model registration based on a prior application or application benefiting from an earlier priority.

Section 60
Applicability of Provisions Relating to Patents

- (1) Sections 9 to 11, 13 to 19, 21 to 43, and 46 to 55 shall apply mutatis mutandis to utility models or utility model applications.
- (2) Where the right to a patent conflicts with the right to a utility model in the case referred to in Section 16(2), the said provision shall apply as if the word “patent” were replaced by the words “utility model”.

Section 61
Invention Qualifies for a Utility Model Protection

- (1) ARIPO utility models shall be registered for any invention in all fields of technology, provided that they are new and susceptible of industrial application.
- (2) Section 8(2) and (3) shall apply mutatis mutandis to the subject matters which are not regarded as inventions.
- (3) A utility model shall be considered susceptible of industrial applicability if it can be made or utilized in any industry including agriculture.

Section 62
Term of Protection of Utility Model

- (1) The term of protection of an ARIPO utility model shall be 10 years from the filing date, subject to payment of maintenance fees.
- (2) For the Designated States with a shorter or longer term of protection, the registration shall expire at the end of the term of protection provided for under their respective national utility model law.

(3) Where a utility model was registered before the commencement of the amendment of this Section, the registration period shall be as provided before this amendment.

Section 63

Examination as to Substance of Utility Model Application

(1) The Office shall undertake or arrange for the search and substantive examination of the application for a utility model in accordance with the Regulations.

(2) Section 45(4) and (5) shall apply mutatis mutandis to Utility Models.

Section 64

Conversion of Utility Model Application to a Patent Application

(1) At any time before the refusal of an application for, or the registration of a utility model, an applicant for registration of a utility model may, upon request and payment of the prescribed fees, convert his application into a patent application, which shall be accorded the filing date of the initial application

(2) An application may not be converted under this Section more than once.

PART 5
INDUSTRIAL DESIGNS

Section 65
ARIPO Industrial Design

(1) An industrial design registered under this Protocol shall be called an ARIPO industrial design.

(2) An ARIPO industrial design shall, in each of the Contracting States for which it is registered, have the effect and be subject to the same conditions as a national industrial design registered by that State.

Section 66
Applicability of Provisions Relating to Patent

Sections 14 to 19, 21 to 23, 25 to 27, 29, 30, 32, 38 to 42, 49, 51 and 55 shall apply mutatis mutandis to industrial designs or industrial design applications.

Section 67
Novelty

An industrial design shall be considered to be new if it has not been disclosed to the public in accordance with the provisions of the national laws of the Designated State.

Section 68
Term of the ARIPO Industrial Design

(1) The term of the ARIPO industrial design registration shall be 15 years from the filing date subject to payment of maintenance fees.

(2) For the Designated States with a shorter or longer term of protection, the registration shall expire at the end of the term of protection provided for under their respective national industrial design law.

(3) Where an industrial design was registered before the commencement of the amendment of this Section, the registration period shall be as provided for before this amendment.

Section 69
Requirements of an ARIPO Industrial Design Application

(1) An ARIPO industrial design application shall contain-

- (a) a request for registration of an industrial design;
- (b) a reproduction of the industrial design; and

(c) a Statement of novelty.

(2) An ARIPO industrial design application shall satisfy the requirements prescribed in the Regulations.

(3) Payment of fees under Section 31(2) shall apply mutatis mutandis to ARIPO industrial design applications .

Section 70

Publication of the ARIPO Industrial Design Application

(1) The Office shall publish an ARIPO industrial design application as soon as possible—

(a) on the filing of the application; and

(b) on the registration of the Industrial Design.

Section 71

Filing Date of the ARIPO Industrial Design Application

The filing date of an ARIPO industrial design application shall be the date on which the filing requirements, as provided under Section 69(1)(a) and (b) are fulfilled.

Section 72

Examination as to Substance of the ARIPO Industrial Design Application

(1) Where the application complies with the formal requirements, the Office shall transmit it to each Designated State for substantive examination in accordance with the national law.

(2) Upon receiving the communications referred to in paragraph 1, each Designated State may, within the period prescribed in the regulations, make a written communication of the outcome of substantive examination to the Office that, if the industrial design is registered by the Office, the registration shall-

(a) have effect in its territory; or

(b) have no effect in its territory for the reasons prescribed in the national law.

(3) Section 46(3) and (4) shall apply mutatis mutandis to an ARIPO Industrial Design Application.

Section 73

Registration or Refusal of the ARIPO Industrial Design Application

(1) Where the Office is satisfied that the requirements of this Protocol have been fulfilled, it shall register an ARIPO industrial design.

(2) The Office shall register the industrial design, such registration shall have effect in the Designated States which have not made any communication referred to in Section 72(2)(b).

(2) Section 48(3) and (4) shall apply mutatis mutandis to an ARIPO Industrial Design Application.

(3) Where all the Designated States make the communication referred to in Section 72(2)(a) and subject to the payment of the prescribed fee, the applicant may request early registration before the expiry of the period referred to in the Regulations.

PART 6
APPEAL AND ITS PROCEDURES

Section 74
Board of Appeal

- (1) A Board of Appeal (hereinafter referred to as “the Board”) shall be constituted by the Administrative Council.
- (2) The Board shall consist of five members who are experienced in intellectual property matters, two of whom shall be patent examiners.
- (3) Three members of the Board shall form quorum.
- (4) At all sittings of the Board, at least one patent examiner shall be present.
- (5) The members of the Board shall be appointed by the Administrative Council of the Organization—
 - (a) for a period of 2 years, renewable once for another term of 2 years;
 - (b) from the Member States of the Organization; and
 - (c) on such other terms and conditions as the Council may determine.
- (6) The functions of the Board are to—
 - (a) consider and decide on any appeal lodged by the applicant against any decision of the Office under this Protocol;
 - (b) review any final decision of the Office in relation to the implementation of the provisions of this Protocol;
 - (c) decide on any other matter related to or incidental to the exercise of the Board’s powers.
- (7) The Administrative Council shall make and adopt the rules of procedure of the Board.

Section 75
Persons Entitled to Appeal

A party adversely affected by any final decision of the Office made under this Protocol may appeal against such decision.

Section 76
Decisions Subject to Appeal and effect of an appeal

- (1) An appeal shall lie from any final decision of the Office.
- (2) An appeal shall operate as a stay of all subsequent actions on the application until the Board determines the appeal.

Section 77
Filing Appeal

- (1) Notice of appeal shall be filed within the period prescribed in the Regulations.
- (2) The notice of appeal shall not be deemed to have been filed until the fees for appeal have been paid.

Section 78
Decision of the Board of Appeal

The Board of Appeal shall hear the appeal in accordance with the Rules of Procedure of the Board of Appeal and its decision shall be final.

PART 7
FINAL PROVISIONS

Section 79
Regulations

- (1) The Administrative Council of ARIPO shall make Regulations for the implementation of this Protocol and may amend them, where necessary.
- (2) The Regulations shall in particular relate to:–
 - (a) any administrative requirements, matters of procedure, or any details necessary for the implementation of this Protocol and any relevant international treaties; and
 - (b) the fees to be charged by the Office and the details of the distribution of part of those fees among the Contracting States.

Section 80
Entry into Force

- (1) A State which is a member of the Organization or any State to which membership of the Organization is open in accordance with Article IV(1) of the Agreement on the Creation of the African Regional Intellectual Property Organization may become party to this Protocol by–
 - (a) signature followed by the deposit of an instrument of ratification; or
 - (b) deposit of an instrument of accession.
- (2) Instruments of ratification or accession under this Protocol shall be deposited with the Director General.
- (3) This Protocol shall enter into force 3 months after 3 States have deposited their instruments of ratification or accession.
- (4) Any State which is not party to this Protocol upon its entry into force referred to in paragraph 3 shall become bound by this Protocol 3 months after the date on which such State deposits its instrument of ratification or accession.
- (5) Ratification or accession to this Protocol by a State which is not a party to the Agreement on the Creation of an African Regional Intellectual Property Organization shall have the effect that the said State shall become party to the said Agreement on the date on which it deposits its instrument of ratification or accession to this Protocol.

Section 81
Denunciation of the Protocol

- (1) A Contracting State may denounce this Protocol by notification addressed to the Director General.
- (2) The denunciation shall take effect 6 months after receipt of the said notification by the Director General.
- (3) The denunciation shall not affect any patent application or application for the registration of an industrial design or of a utility model filed with the Office prior to the expiration of the said 6-month period or any patent granted or registration of an industrial design or utility model effected upon such application.

Section 82
Signature of the Protocol

- (1) This Protocol shall be signed in a single copy and shall be deposited with the Director General.
- (2) The Director General shall transmit certified copies of this Protocol to the Contracting States, other States members of the African Regional Intellectual Property Organization and the States to which membership of the Organization is open in accordance with Article IV (1) of the Agreement on the Creation of the African Regional Intellectual Property Organization, the World Intellectual Property Organization and the United Nations Economic Commission for Africa.

Section 83
Amendment of the Protocol

- (1) This Protocol may be amended at the instance of any Contracting State, or the Administrative Council or by the Director General during the sessions of the Council of Ministers of ARIPO.
- (2) The adoption of amendments of any provision of this Protocol shall require two-thirds of the votes of all Contracting States.
- (3) The Council of Ministers shall determine the date of entry into force of the amendments.