

Problems of Invention Patent Laws

Islamic Republic of Iran

Karaj Shahid Aghaei Association

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To esteemed Human Rights Council of United Nations Organization

Introduction of the organization

Karaj Shahid Aghaei Artistic Cultural Association has been registered under No. 1220 by Iran Noncommercial Institutes in accordance with bylaw of Article 8 and received license from Ministry of Islamic Culture and Guidance and Ministry of the Interior and has completed its activity and mission in the field of cultural and artistic youth problems , training courses and sociocultural seminars scientific group and studies on activities of the inventors and the elites under license No. 2305022273014201 since 1997 and is regarded as one of the active NGOs in national level and as top association in Tehran Province. This association started its activity in 2008 by aiming at supporting inventors and elites in the country, faculty board and elites of the association under management of Mr. Masoud Shahpouri Jah who is one of the excellent inventors of the country and prepared this report and is studying and mentioning the problems of the inventors and elites and problems of patent laws in Iran and creating a sustainable system for supervision on rights of the elites and inventors in Iran in a common research project with the inventors and elites . This project is expanding with use of different tools, strategies, problems and legal sources which can be covered by the elites and their organizations for supervision on their rights in different related fields.

Methodology

- for presentation of a clear picture of elites and inventors' rights reality , elites board of Shahid Aghaei Association has considered efficient method for supervision covering coordinated activities in three fields : supervision on personal experiences , political supervision and law (problems of patent law , policies and especially in the field of patent law and protecting inventors) and supervision on research finding (study on the information gathered by national research of Iran government regarding conditions of the elites).

Regarding supervision on policy and law, patent law has been relied on in comparison to other countries for gathering information and assessing it as well as identifying problems in enactment of the laws and policies. The information regarding patent law and policy in Iran has been gathered in comparison to other member states of WIPO. Supervision on personal experiences has been achieved by gathering face to face information by elite interviewers through interview with elites and inventors. In these interviews, elites and inventors are asked to mention their problems and patent laws and other articles.

History:

Although Iran is a developing country which is comprised of creative and innovative young persons who have great plans and ideas and with regard to the fact that patent is one of the important substructures in national innovation system so that if this substructure has not been correctly built in a country, technology development will be deviated, this law could have not fulfilled the following two goals in spite of its long duration in accordance with review on Iran Patent and Trademark Law with duration of 70 years:

- A) legal protection of rights of the inventor and prevention from its abuse
- B) contribution of the registered inventions to growth and development of industries

In accordance with trademarks and patent registration law enacted in 1931 and its amended executive bylaw, the patent is declaratory (claimed).

Current conditions of the world

In patent laws of member states of European Union are other special conditions such as innovativeness, scientific usefulness, enjoying industrial application capacity and creation of invention and patent stages are very complex in these countries.

Another method for patent registration which is used in some countries such as Japan is auditing method that is the person claiming invention should prove his invention applicability by taking examination in presence of the specialists after confirming newness of the design.

Current conditions of Iran

Declaratory patent in Iran means that General Registry of Companies and Industrial Ownership can register it as invention without confirming newness of the design and the only condition is that the person or company should have not registered it beforehand. The only case which can be mentioned as special condition of invention in patent law and its amendment in Iran is newness of the invention which need not be proved in Iran laws. Ministry of Sciences, Research and Technology as the first authority of science, technology and research in Iran doesn't rely on and support patents of Deeds and Real Estates Registration Organization. In recent years in Iran, Registration Organization sends some patent files to other organs such as Iran Scientific and Industrial Researches Organization and a defense session is held by attendance of experts and applicants for patents. However, substantial study is not done in Iran in other ways adopted by other countries at present.

In European Union, patent file is given to the examiner whose field of study conforms to subject of invention, but this is not always observed in Iran.

- inattention to scope of registration subject is one of the other problems which researchers and inventors face so that in patents, scope of the invention itself is not included and the term "magnetic nanoparticles" or "nanoenergy" is easily registered. This may be problematic for the researchers and even customers of the invention may be confused.
- Lack of suitable form and format in patents is one of the other problems of patent law in Iran. Unfortunately, it has been observed that once the inventors complete their declarations, they are registered in Registry indicating inattention of the Registry to the expert trend of registration.
- Lack of study on patenting conditions in Iran Patent is one of the other problems of this law. Under patenting conditions, industrial application shall be included in addition to newness which is not considered in Iran Patent Registry. The patented inventions under title of "nanoholes" or "quantum nanoparticles" are of examples of them. It is necessary to note that noncompliance with the principal conditions of patenting is a major problem in which valuable inventions of Iranian researchers and scientists will be involved.
- Lack of primary scientific study on patents is one of the other problems of Iranian inventors. Generally, the more feasible the patenting conditions and the stricter the patenting conditions, the higher the value and credit of the inventions will be. For example, a person referring to Registry has patented only 42 inventions in all fields of nanotechnology within some days, while not body and no team can do this so that if there was a scientific supervisor or person informed of technology in registration, this could not happen.

Actions of the country

These challenges caused that new patent law of Iran was included in agenda of judicial and legal commission of Islamic Consultative Assembly of Iran and enacted in this commission in late Azar (Dec) 2008. In accordance with this design, the "declaratory system" which is method of invention patenting in Iran will remain as basis of patent in Iran but "auditing system" is also mentioned in this law so that invention of the inventor is sent to Ministry of Sciences at his request after patenting in Registry. This design has not considered majority of views of Ministry of Sciences. With regard to the fact that in all countries invention is patented by the government, in Iran, it is done in the Judiciary. In accordance with paragraph C of Article 2 regarding duties of Ministry of Sciences, one of the duties of this Ministry is to confirm inventions, explorations and innovations and inventions having being confirmed by this Ministry should be supported. With regard to the fact that there is no need for sending file to Iran Industrial Scientific Researches Organization in accordance with new law, this way will be detrimental to the country because patent shall accompany with trial and examination.

Iran joining the PCT is about to be raised in the assembly soon and in case of approval, Iran will allow the inventions to be patented in other member states of this treaty and inventions of Iranian inventors can be patented in these countries.

Invention declaratory patenting system is detrimental to Iran and is not proper at all. This is view of the Executive, most of the inventors, elites and experts regarding the new law which has been enacted by the assembly recently in spite of 76 year-term of enactment of the previous patent law. New patent law violates law relates to duties of Ministry of Sciences and problems of the previous law have not been solved at all due to inattention to view of Ministry of Sciences. We are among 183 countries in the world of which inventions are patented by an organization under supervision of the Judiciary not the Executive. However, authorities of the Legislative and Judiciary believe that gaps of the new law will be filled by joining the PCT, while many experts believe that with the declaratory system available in this law, inventions of many inventors of Iran will be rejected by joining PCT by Intellectual Property Patent International Organization and will not be commercialized.

New law doesn't fulfill expectations of researchers, inventors and elites because problems of the present patent law have not been solved yet. Of these problems are contradiction of this law of Ministry of Sciences based on assessment of the inventions and reference of the result to patent authority which has not been considered in new law. As said before, unfortunately, patent in new law is of declaratory type like the past, that is, any person referring to Registry of Industrial Ownership and claims that he has made an invention, his claim is registered. This kind of registration has been converted to examination system method with regard to current conditions in the world and studies done in different countries. On the other hand, because patent is based on accurate examination, sometimes patenting takes a long time but the patenting sheet which is issued in this way is internationally valid. While in the declaratory system, patent sheet is valid only in Iran though it is not valid and will not be financed by Ministry of Sciences unless confirmed by this Ministry. At present, only 2% of the inventions patented in Registry of Industrial Ownership of the Judiciary are confirmed in Ministry of Sciences after specialized investigations. In addition, the declaratory patent issue has not executive guarantee in Iran because it is only a sheet. This kind of patenting is detrimental to the country especially when Iran wants to join PCT. For jointing this treaty, we should use examination system for patenting so that foreign countries can not easily patent their inventions without being scientifically investigated and have validity for 20 years. In fact, we have limited innovators and inventors of Iran though we hope that that esteemed council provides the opportunity for solving the

problems, otherwise, after 76 years, a law will be enacted in Iran that has not solved essential problems of the previous law.

Ministry of Sciences and many inventors and experts believe that the Judiciary is not a special position for registration of the industrial ownerships. Patent is an expert work and the related expert should investigate it accurately and register it after investigating the cases registered in the world through the available database in case that it is not repeated and is new. For this reason, in most countries, Ministries of Industry, Commerce, Economy and Technology are responsible for this case in the Executive. View of Ministry of Sciences is that this process which needs expert and specialist's work until stage of patenting should be done in associations supervised by the Executive. Another problem which has occurred by approval of new law is emergence of a kind of conflict in our communication with international assemblies. On the one hand, President should accept membership in the international assemblers and sign the treaties and mission delegate and on the other hand, this law has stipulated that Iranian delegate in international organizations relating to patenting is Deeds Registration Organization which is out of scope of the Executive. In our country, industrial ownership registration is done out of the Executive, while, literary, artistic and software ownership registration is done in Ministry of Islamic Culture and Guidance supervised by the Executive. This conflict will lead to many problems. In accordance with the new law which is similar to the present law, invention is patented by an authority not confirmed by Ministry of Sciences and Ministry of Sciences can confirm it only after restudy based on scientific methods leading to waste of time and human resources and objection of some inventors holding patent sheet. When Ministry of Sciences is about to finance the inventors, this organization or the similar organizations should have been patenting auditory. At present, 10% of patents in our country relate to investors outside Iran but because our patent system is the declaratory system patent is much cheaper in Iran (in Europe and America, at least \$10,000/-, in Iran, Tomans 10,000/-equivalent to \$10)., therefore, inventions outside Iran will patent their innovation easily in Iran and our inventors will be limited by joining PCT.

Conclusion:

With regard to the fact that Iran is a developing country and with such hidden innovation and talent volume in this country (Iranian scientists play important role in the world), if issue of science and innovation is considered in the country, Iran can help progress the world and with regard to the fact that patent is one of the important substructures of national innovation system, this issue should be considered more and law of this important case should be enacted and executed carefully and in accordance with international treaties, otherwise, not only it doesn't help the world, but also it leads to mental and physical damage to the young seeking for science

and technology and makes the people far from this issue . Therefore, we ask that esteemed international organization and authorities of our country to take action regarding following this important case and correcting it.

Suggestions and strategies:

- Change in patent system from the declaratory system to careful examination of inventions
- More attention to and careful study on patent law
- Formulation and execution of patent law in accordance with international treaties(PCT)
- Formulation of a bylaw regarding specifying scope of patent
- Change of patenting authority in the country from the Judiciary to the Executive
- Study on patenting conditions in Iran
- Protecting material and spiritual rights of the inventors