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LEGAL UPDATE

Ethiopian Intellectual Property Authority Issues Patent Examination Guidelines — Part One: The Legal Framework and the Filing Process

Patent Examination Guidelines | Ethiopian Intellectual Property Authority | First Edition

OCTOBER 2026



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Addis Ababa, Ethiopia

Ethiopian Intellectual Property Authority Issues Patent Examination Guidelines

Part One: The Legal Framework and the Filing Process

1. Introduction

The Ethiopian Intellectual Property Authority has issued its first-edition Patent Examination Guidelines. The Guidelines are prepared to guide patent examiners, patent agents, and other users of the patent system in the application of the Proclamation Concerning Inventions, Minor Inventions and Industrial Designs and its implementing Regulations. They set out the practices to be followed in the examination of patent applications, from the accordance of a filing date through formality examination, search, substantive examination, and grant.

The Guidelines state expressly that they do not have the force and effect of law. Where there is any inconsistency between the Guidelines and the Proclamation or the Regulations, the latter prevail. The Guidelines are to be updated from time to time to reflect amendments to the Proclamation and the Regulations and interpretations by courts of law. This is a significant qualification. The Guidelines are a practical instrument, not a source of binding legal obligation, and they should be read alongside the statutory framework rather than in substitution for it.

This is the first of a three-part series. Part One examines the role of patents, the filing process, and formality examination. Part Two will address substantive examination, patentability, claims, and excluded subject matter. Part Three will address grant, post-grant matters, and patents of introduction.

2. The Role of Patents and the Duration of Protection

The Guidelines describe a patent as a legal title granted to protect an invention, and an invention as a new idea that provides a technical solution to a problem. The invention may relate to a product or a process, and the technical solution must be novel. A patent is granted where the invention is new, involves an inventive step, and is industrially applicable. The exclusive rights granted to the patentee are balanced by the disclosure requirement: the applicant must disclose the technical information about the invention clearly and precisely in the application, and that disclosure is expected to facilitate the dissemination of technological information, stimulate technology transfer, and avoid duplicative research and development.

The Guidelines also address two common misunderstandings. The first is that an invention must be a complex, groundbreaking work of genius to be patentable. The Guidelines note that simple inventions, such as the paper clip, have satisfied the patentability criteria. The second is that a granted patent gives its owner the right to exploit or use the invention. The Guidelines state that having a patent does not authorise the holder to exploit the invention if doing so would violate any law or infringe

another person's rights. The effect of the grant is that the patented invention may not be exploited in the country by persons other than the owner unless the owner agrees.

Patents are territorial rights, and the exclusive rights apply only in the country in which the patent has been filed and granted. In Ethiopia, a patent right extends for an initial period of fifteen years from the date of filing, with a possibility of a five-year extension subject to proper working in Ethiopia. The patent must be renewed every year by payment of a prescribed fee. After the patent expires, the invention becomes part of the public domain.

3. Filing of Patent Applications and Accordance of a Filing Date

The filing date is one of the most important issues in the patent application process. It can show that the applicant is the first to file, and it determines priority where two applications relate to a similar invention. If a filing date is not established, the application is treated as if it had not been filed and proceeds no further. The filing date is also the date from which the term of the patent is calculated, and it determines the priority date of any subsequent application in another country.

The Guidelines set out the minimum requirements for according a filing date. The first is an express or implicit indication that the grant of a patent is sought, which may be given by using the prescribed request form. The second is information allowing the identity of the applicant to be established, including the name, address, nationality, and residence of each applicant. The third is a part which, on the face of it, appears to be a description of an invention. The contents of the description are not closely scrutinised at this stage; it is sufficient to identify a document that appears to include a description.

An application may secure a filing date without a fully completed specification. Claims need not be provided at the outset. If the application is filed without claims but satisfies the requirements for a filing date, the applicant will be requested to provide at least one claim and the other missing elements within two months. The Guidelines note that the purpose of this procedure is not to allow the applicant to improve the disclosed invention while retaining the original filing date, but to provide additional time to submit missing parts.

The Guidelines also address acknowledgement of receipt, the application numbering system, correction of deficiencies, divisional applications, and fees. Applications satisfying the requirements for a filing date are assigned an application number consisting of the letters ET, the letter P, the last two digits of the filing year, and a five-digit serial number. Where information necessary for according a filing date is missing, or where the application refers to drawings that are not included, the applicant is invited to make the correction within two months together with the prescribed correction fee. If the correction is made, the date of receipt of the correction is accorded as the filing date. If no correction is made, the application is treated as if it had not been filed.

A divisional application may be filed where there is more than one invention in the application, up to the time when the application is in order for grant. Each divisional application is entitled to the filing date and priority date of the initial application, and it must not go beyond the disclosure of the initial application. Once filed, the divisional application is treated as a separate, new application and is searched, published, and examined independently.

4. Formality Examination

The Guidelines describe three major activities that the Authority undertakes after the filing date is accorded: examination as to form, search, and examination as to substance. Formality examination checks whether the documents comply with the formal requirements laid down in the Proclamation and the Regulations. These requirements include the request for the grant of a patent, the description, one or more claims, any drawings referred to, and an abstract. Formality examination also covers information concerning the inventor, information on corresponding foreign applications, payment of fees, priority claims, completion of forms, use of correct paper size, terminology and expressions, units and symbols, margins, and the suitability of the documents for reproduction.

The request for the grant of a patent is made on the prescribed form and must be signed by each applicant. It must indicate that the grant of a patent is requested, include the title of the invention, and provide each applicant's name, address, nationality, and residence. It must designate the inventor and any representation, and state the applicant's right to the patent. The title must be the same as in the abstract and the description, should preferably be from two to seven words, and must clearly and concisely indicate the subject matter. The inventor must be designated unless a written declaration stating that the inventor wishes not to be named is filed.

The description must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art, and it must indicate at least one mode known to the applicant for carrying out the invention. It must be arranged in itemised form in accordance with the Regulations, with each item preceded by a heading, and it must cover the technical field, the background art, the task the invention is designed to fulfil, the effective results, the figures in the drawings, and the mode for carrying out the invention. The description and drawings may be used to interpret the claims.

The Guidelines also address representation and power of attorney. A foreign applicant is required to appoint a patent agent registered in Ethiopia, and local applicants may choose to do so. Where an agent is appointed, the application must indicate the agent's name and be accompanied by a power of attorney signed by each applicant, filed within two months of the filing date. Communications are sent to the agent, and procedural steps taken by a foreign applicant not represented by a registered Ethiopian patent agent are deemed not to have been taken.

Information concerning corresponding foreign applications must be filed at the request of the Authority, including the date of filing, application number, results of search and examination, the granted patent, and any final decision rejecting, refusing, or invalidating the foreign application or patent. The information is used to facilitate the evaluation of novelty and inventive step. The requested information and documents must be filed within a time limit of not less than two months and not more than six months from the date of the request, which may be extended on a reasoned request.

Priority may be claimed where the earlier application was filed not more than twelve months before the filing date in Ethiopia and relates to the same invention. A copy of the earlier application must be filed, with a translation where necessary. The previous application may be a patent application or an application for a utility model certificate; a priority right based on an industrial design is not recognised.

Where the application has formal deficiencies, the applicant is invited to remedy them within two months. If the applicant fails to comply, or where the corrections submitted do not satisfy the requirements, the application is rejected.

5. What Part One Signals

For applicants and their advisers, Part One of the Guidelines signals that the filing stage is procedural but consequential. A defective application may be treated as never filed, and priority depends on the date accorded. The two-month correction window and the power of attorney timeline should be diarised. The description should be drafted with the itemised structure in mind, and the title should be short, precise, and technical. Foreign applicants should appoint a registered Ethiopian patent agent before or at the time of filing.

Part Two of this series will address substantive examination, patentability, claims, and excluded subject matter. Part Three will address grant, post-grant matters, and patents of introduction.

Disclaimer

This legal update is provided for general informational purposes only and does not constitute legal advice. The application of the Guidelines may depend on the specific circumstances of an applicant, invention, or application, and on the practice of the Ethiopian Intellectual Property Authority. The Guidelines do not have the force of law, and the Proclamation and Regulations prevail in the event of inconsistency. Professional legal advice should be sought before relying on this update or taking any action.

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