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LEGAL UPDATE

Ethiopian Intellectual Property Authority Issues Patent Examination Guidelines, Part Three: Grant, Post-Grant Matters, and Patents of Introduction

Patent Examination Guidelines | Ethiopian Intellectual Property Authority | First Edition

NOVEMBER 2026



https://hirkoandassociates.com/

Addis Ababa, Ethiopia

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1. Introduction

This is the third and final part of our series on the Patent Examination Guidelines issued by the Ethiopian Intellectual Property Authority. Part One examined the role of patents, the filing process, and formality examination. Part Two examined the search and substantive examination, the criteria of patentability, non-patentable inventions, and the rules on claims, unity of invention, and double patenting. Part Three examines the grant and publication of patents, the duration and extension of patent rights, limitation and surrender, and the special regime for patents of introduction.

The post-grant stage is where the patent becomes enforceable and where the patentee assumes continuing obligations. The Guidelines are precise about the administrative steps that follow a favourable substantive examination, the fees that must be paid, and the consequences of failing to work the invention or to pay the annual fees. They also describe the patent of introduction, a distinct route for inventions that have been patented abroad but not in Ethiopia. For patentees and their advisers, this part of the Guidelines governs the maintenance and, ultimately, the loss or surrender of the rights conferred.

2. Grant and Publication

If all the necessary requirements as to form and substance laid down in the Proclamation and the Regulations are fulfilled, the Authority will grant a patent. The Authority informs the applicant of the decision to grant and requests the fee for grant and publication within three months from notification. Once the fee is paid, the patent is published in the Official Gazette and is deemed to be granted on the date of publication.

The Guidelines specify the information that is published with the grant. This includes the number of the patent; the name and address of the owner; the name and address of the inventor, except where the inventor has asked not to be named; the name and address of the agent, if any; the filing date and application number; where priority has been claimed and accepted, a statement of the priority, the priority date, and the name of the country or countries in which the application was filed; the effective date of the grant; the title of the invention; the abstract; the most illustrative of the drawings, if any; and the symbol of the International Patent Classification.

The Authority also issues a certificate of grant signed by the Director General. The certificate contains the number of the patent, the name and address of the owner, the filing date and, where applicable, the priority date, the effective date of grant, and the title of the invention.

3. Duration, Annual Fees, and Extension

A patent is granted for a period of fifteen years from the date of filing, subject to the payment of annual fees. The Guidelines state that, to maintain the patent or the patent application, an annual fee must be paid in advance for each year, starting one year after the filing date. A period of grace of six months is allowed for the late payment of the annual fee on payment of the prescribed surcharge. If the annual fee is not paid in accordance with these requirements, the patent application is deemed to have been withdrawn or the patent lapses.

The validity of a patent may be extended for a further period of five years, provided that proof is furnished that the invention is being properly worked in Ethiopia. The Guidelines treat the extension as conditional on working, and they link it to the obligation of the patentee to make the invention available in the country. The annual fee regime and the extension provision together mean that the patent is not a single payment right but a continuing obligation, and that the failure to maintain the patent has the consequence of lapse.

4. Limitation and Surrender

The Guidelines address the two ways in which the scope or the existence of a granted patent may be reduced after grant.

Limitation allows the owner of the patent to request that the Authority make changes in the text or drawings of the patent in order to limit the extent of the protection conferred. The limitation is permitted only where the changes do not result in the disclosure contained in the patent going beyond the disclosure contained in the initial application on the basis of which the patent was granted. This is a substantive constraint. A patentee may narrow the claims or correct the description, but may not add matter that was not disclosed in the application as filed.

Surrender allows the patent owner to give up the patent in whole or in respect of one or more of the claims. The surrender must be registered and published by the Authority. The Guidelines do not prescribe a detailed procedure beyond registration and publication, but the effect is that the surrendered rights cease to exist and the subject matter falls into the public domain to that extent.

5. Patents of Introduction

The Guidelines describe a distinct route for inventions that have been patented abroad and have not expired but have not been patented in Ethiopia. A patent of introduction may be issued to such an invention following a declaration by the interested party that the invention is not patented in Ethiopia, for which the applicant takes full responsibility.

The objective of the patent of introduction is to provide incentives for the transfer of foreign technology. The owner of a patent of introduction is granted privileges that

enhance market competitiveness in return for introducing the foreign technology into Ethiopia, even though the owner has not disclosed globally new and non-obvious technological information for the first time. This is the reason why the Proclamation places an obligation on the owner to prove the working of the invention each year from the third year after the grant.

The duration of a patent of introduction is up to ten years, subject to the payment of annual fees and provided that the owner works the invention. The requirements and conditions for a patent of introduction are the same as those prescribed for a patent of invention, subject to the specific issues highlighted in the Guidelines.

5.1 Requirements on Filing

At the time of receipt, the application must contain an indication that the granting of a patent of introduction is sought; indications allowing the identity of the applicant to be established; a declaration that the invention has not been patented in Ethiopia; and the number, date, and origin of the foreign patent. An application satisfying these basic requirements is assigned an application number in the form ET/PI/XX/00XXX, where ET indicates Ethiopia, PI indicates patent of introduction, XX is the year in the European calendar, and 00XXX is the application number. A filing receipt is issued and the applicant is notified.

If the examiner finds that the application did not, at the time of receipt, comply with these requirements, the applicant is invited to file the required correction and 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. The invitation to file a correction must be in writing.

5.2 Formality Requirements

Examination as to form is subject to the same formalities as those prescribed for a patent of invention. In particular, the application for a patent of introduction must meet the following requirements: a written application in one of the working languages of the Authority (English or Amharic) using the prescribed form; a request for the grant of a patent of introduction relating to one invention, containing the names and addresses of the applicant and the inventor; where the applicant is not the inventor, a statement justifying the right to apply; the title of the invention and, if an agent has been appointed, the agent's name and address; proof of payment of the filing fee; a description of the invention; a claim or claims defining the scope of protection sought; an abstract containing a summary of the contents of the invention; and drawings, if necessary or useful for the understanding of the invention.

5.3 Search and Substantive Examination

The search and substantive examination of an application for a patent of introduction is conducted to ensure that the invention mentioned in the application is patented in

another country and that not more than twenty years have passed starting from the filing date in its country of origin, and that an application claiming priority from the foreign application which is the subject of the application for a patent of introduction has not been filed or granted a patent in Ethiopia.

A patent of introduction is granted subject to substantive examination for novelty, inventive step, and industrial applicability. The novelty examination in this case focuses on exploring the availability of previously filed patent applications or utility models or granted patents or utility models for the same invention, and public use of such an invention on the Ethiopian market before the filing date of the patent of introduction with the Authority.

6. What Part Three Signals

For patentees, Part Three of the Guidelines signals that the post-grant stage is a continuing compliance relationship. The annual fee must be paid in advance, with a six-month grace period on surcharge. The five-year extension depends on proof of working in Ethiopia. Limitation is available but cannot add matter beyond the initial disclosure, and surrender is available but must be registered and published. For holders of patents of introduction, the regime is more demanding: the term is shorter, the working obligation begins in the third year, and the novelty examination is focused on the Ethiopian market rather than on absolute novelty. Applicants considering this route should assess whether the foreign patent, the declaration, and the working plan satisfy the requirements before filing.

This concludes our three-part series on the Patent Examination Guidelines.

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 a patentee, 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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