

## **A Comparative Analysis of Patent Laws in Afghanistan and the TRIPS Agreement**

**Mir Ahmad Parsa Manush<sup>1)</sup> \*, Sayed Abdul Talib Mujadidi<sup>2)</sup>**

<sup>1,2)</sup> Law and Political Science Faculty, Zawul University, Kabul, Afghanistan

\*Corresponding Author

Email: [m.parsamanush@hotmail.com](mailto:m.parsamanush@hotmail.com)

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### **Abstract**

*The Agreement on Trade-Related Aspects of Intellectual Property Rights provides for a minimum standard of Intellectual protection. All WTO member countries are under an obligation to comply with the provision of provisions Agreement. Afghanistan, as a member of the WTO, in the case of intellectual property rights, committed to full implementation of the provision of the TRIPS Agreement. Hence, is required to coordinate all its trade law, including patent law. This research paper examines Afghanistan's patent regime in relation to the RTIPs Agreement. The paper provides a comprehensive overview of the fundamental concept of patents and the historical background of patents in the legal system of Afghanistan. It then delves into an analysis of the law and regulations in Afghanistan, evaluating their compliance with the TRIPs agreement. For analyzing we will employ a descriptive-analytical method to examine the compatibility of Patent law to the TRIPS agreement. The findings of this research indicate that Afghanistan patent law is compatible with the minimum standard of patent protection in the TRIPs Agreement. Nevertheless, Afghanistan's patent law is insufficient, there are certain legal lacunae in its provisions which must be amended.*

**Keywords:** Patent, TRIPS, Afghanistan, Rights.

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## **INTRODUCTION**

Intellectual property protection is the key factor for economic growth and advancement in the high technology sector. The three most common vehicles for protecting intellectual property are patents, trademarks, and copyrights (Lokganathan, 2012). A patent is granted as an exclusive right by the Government for an invention or discovery for a limited period of time in consideration with the disclosure of the invention by an applicant. A patent holder enjoys exclusive right to prevent a third party from act of making, using, offering for selling or importing the patented product or process within the country during the term of the patent.

However, patent law is territorial; each country grants rights that can only be enforce within its border but since the development of Paris convention in the late nineteenth century, the first major international treaty to attempt a degree of standardization intellectual property rights, WTO- IPRS agreement of 1994, followed of late by the patent right have been made of more and more standard form. The TRIPS agreement is one of the most controversial. It seeks to strengthen the minimum standards of IPRs contained in the earlier great conventions viz., the Berne, Paris and Rome convention.

In July 2016 Afghanistan officially became the 164th permanent member of WTO. Afghanistan during its negotiation with WTO for becoming permanent member of WTO, committed to reform all the laws relevant to the trade for standardizing and compliance with WTOs standards in the next five years after joining to this organization<sup>2</sup>; in case of IPRs committed to Full implementation provision of the TRIPS Agreement will start by 1st January 2019. Articles three, four and five of the TRIPS Agreement will apply from the date of accession. Any changes in field of IPR made in Afghanistan's laws, regulations and practice in the transitional period will not result in a lesser degree of consistency with the provisions of the TRIPS Agreement that existed on the date of accession. Afghanistan will search for technical

assistance to ensure that its capacity to enforce its TRIPs consistent legal regime, upon the expiration of the transition period (WTO, 2016). Patent law was one of the first laws that Afghanistan has reformed after joining to WTO on 10th may 2017.

In addition, the patent law of each country can be effective in many ways to economic advancement of the country, such as improving the domestic industry and encouraging foreign investment. inspired by the absence of the comprehensive study of the patent regime in Afghanistan and its compliance to the TRIPs agreement. This research will investigate the TRIPs agreement related to patent vis-à-vis the Afghanistan's law on patent.

## **RESEARCH METHODS**

The methodology adopted shall be descriptive-analytical method. the research study consist of a situation analysis based on a literature review of available relevant a research articles and data. Books, journals, articles, TRIPs agreement and Afghanistan laws shall extensively be used to examine the issues arising out of the interpretation of Afghanistan's law in the prospective of TRIPS agreement.

## **RESULT AND DISCUSSION**

### **Concept of patent**

A patent is a set of exclusive rights granted by a state to an inventor, discoverer, or his assignee for a fixed period of time in exchange for the disclosure of the invention or discovery. The word "patent" is used in two senses. One is the document that is called a patent or letters patent, and the other is the content or the protection that a patent offers. In the first sense of the term 'patent', namely, the document, when a person develops what he considers an invention, he makes an application to the state along with a document in which the person discloses all the essential information about the invention and that he is the owner of the patent.

In the second sense, the word "patent," when it relates to content or protection, means that anyone who desires to exploit the invention disclosed therein must obtain the authorization of the person who is the owner of the patent. If anyone exploits the invention disclosed in the patent without such authorization, he commits an illegal act (infringement), and such a person is liable to legal action for paying damages to the proprietor of the patent (Subbarm, 2007).

In the legal definition, a patent is a legal term that protects a technical invention or discovery for a limited time. It gives the right holder to prevent others from exploiting the invention or discovery in the countries for which it has been granted. Article 3(3) Patent Act of Afghanistan defined a patent as "a right granted to the inventor or discoverer in accordance with the provisions of this law". Although the law in an ambiguous state has given the same right to the inventor and discoverer, whereas the nature of these two is separate from each other. Nevertheless, this definition is exhausted in the sense that there cannot be a patent right outside the patent act.

The patent law of Afghanistan provided that the subject matter of a patent can be inventions as well as discoveries that meet the criteria of patentability. In here, the question arises that the legislator of Afghanistan granted a patent on discoveries, whereas the TRIPS Agreement granted a patent just on inventions, not on discoveries.

The basic argument of the Afghanistan's legislator is that the constitution of Afghanistan is the basis of all laws, and this law has been enacted pursuant to Article 47 of the constitution. Article 47 of the constitution provides that "The state shall guarantee the copyrights of authors, inventors, and discoverers, and shall encourage and protect scientific research in all fields,

publicizing their results for effective use in accordance with the provisions of the law". Therefore, it seems that the Afghanistan's legislator wanted, in accordance with the mother of law, to support both inventions as well as discoveries (Joya, 2017).

Secondly, patent law limited patent protection to inventions or discoveries, whether products or processes, in all fields of technology that were new, involved an inventive step, and were capable of industrial application. Thus, only discoveries that met the criteria of patentability in article 27 of the WTO-TRIPS agreement could be the subject matter of a patent. A mere observation or identification of a fact or phenomenon, which did not meet those criteria, could not be patentable in Afghanistan (WTO, 2015).

Thirdly, the TRIPS agreement does not prohibit WTO members from granting patent protection for discoveries or for inventions that could be seen as mere reconstitutions of natural products and processes (De Carvalho, 2002). TRIPS provides flexibility to member nations in framing their patent laws. Hence, patent laws of different countries may have varying standards on patentability.

A simple, precise, and comprehensive definition for a patent is not available in any of the patent laws of various countries. An attempt in this direction has been made by an UNCTAD study, which describes a patent as "a legally enforceable right granted by virtue of a law to a person to exclude, for a limited time, others from certain acts in relation to a described new invention"(Sangal and Singh, 1987).

### **History and evolution of patent law in Afghanistan**

Intellectual property rights are known as a new field in the Afghanistan's legal system, which does not have a long history. The oldest law in the field of intellectual property rights is Principle of Trade Marks 1339SH (1960), which was published in No. 100 of the official gazette. After this, penal code enacted on October 7, 1976, provided legal sanction for protection of IPR. Article 490 provided that "A person violating one of the rights to non-material possessions of another, protected by the law of an international agreement to which Afghanistan has consented, shall be fined an amount not exceeding 12,000 Afghanis, unless provisions of the Special Law stipulate more severe punishment ". In addition, the civil code in 1976 recognized intellectual property rights as a civil right of an Afghan citizen. Article 491 states that "intellectual rights that are rights to intangible property shall be subject to provisions of special laws ". Civil code adjourns supporting intellectual property rights to special laws, but Afghanistan, due to existing internal wars, struggles, and international terrorism, couldn't enact any law in the intellectual property rights domain.

As mentioned earlier, Afghanistan has not had a patent or copyright system in the past, and its dated trademark legislation has not been consistent fashion. The most significant mutation in the field of intellectual property came after the enactment of the new constitution of Afghanistan. Article 47 of the constitution provides that "The state shall guarantee the copyrights of authors, inventors, and discoverers, and shall encourage and protect scientific research in all fields, publicizing their results for effective use in accordance with the provisions of the law." Laterally, all laws relating to aspects of IPR have been enacted, and Afghanistan joined some relative organizations and signed relative agreements and treaties.

The Afghanistan Transitional Commercial Law Project ("Project") is a joint project of the Center for International Management Education ("CIME") and the American Bar Association-Asia Law Initiative. The project is a component of the Private Sector Development Task Force for Afghanistan, which is being coordinated through the Afghanistan Embassy in Washington, D.C. The goal of this initiative is to contribute towards encouraging foreign direct investment in Afghanistan by assisting Afghanistan in developing its commercial laws. It is anticipated that the result of this project will be the implementation of a new "code of commerce" covering, inter alia, intellectual property. The Intellectual Property and Technology Working

Group of the Project (the "IP Working Group") is focused on assisting Afghanistan in developing and implementing legislation concerning intellectual property and technology. Specifically, the initial tasks of this working group were to develop new copyright and patent legislation and revise Afghanistan's existing trademark law.

While copyright, trademarks, and patent law are considerably different, the IP Working Group developed and implemented a common strategy to address each of these areas. First, the IP Working Group spent considerable time researching and reviewing the copyright, patent, and trademark legislation of other nations that enjoyed certain similarities with Afghanistan. The goal of this stage was to identify existing legislation that could serve as a useful model for Afghanistan. Once such model legislation was identified, the recommendations of the IP Working Group were presented to key officials of the Afghanistan government (the "government officials") for their consideration (Findlaw, 2008). At this stage in the project, the IP Working Group has completed its initial redraft of Afghanistan's existing trademark law and has also developed initial discussion drafts of new patent and copyright laws for consideration by the government officials.

The earliest grants of patents for an invention in Afghanistan seem to have been by enacting the "law on supporting the rights of inventors and discoverers on July 26th, 2008 (patent law)". This law was designed in the sex chapter and includes fifty articles to grant certain exclusive privileges to inventors and discoverers of new manufactured goods for a period of 20 years. Patent law defined the patent, whose definition is almost unchanged up to now and states "a privilege granted to the inventor or discoverer in accordance with the provision of this law". The law, however, did not define what constitutes an invention; it only noted that the inventions are not patentable, *inter alia*, excluding drug formulae from patenting. This law had been enforced for eight years and repealed by enacting the new patent Act on September 28, 2016. However, the patent law of 2016 brought about certain changes to the first law but had not a long age. This law has been repealed by enacting the current patent law on 10<sup>th</sup> May 2017.

The patent law has so far seen two major repeals. All of which were done as a part of the exercise to conform the Afghanistan patent law to the obligations under the TRIPS agreement of the WTO. The patent law 2017, passed on 10<sup>th</sup> May 2017, was a further step in conforming Afghanistan's patent laws to obligations under the TRIPS Agreement. The changes introduced by the patent law include deleting the exclusion for drug formulae at Article 7 of the previous law; applicability of the law in all fields of technology; right of priority; adding patentability exceptions for diagnostic, therapeutic, and surgical methods for the treatment of humans or animals, plants and animals other than microorganisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes

#### **Afghanistan's law in the perspective of TRIPS**

In the area of patents, the TRIPs agreement established the standards concerning the availability, scope, and use of patent rights. They include: (i) basic standards for patentability and a limited list of exceptions to patentable subject matter; (ii) in terms of the availability of patents and the enjoyment of rights, no discrimination as to the field of technology, the place of invention and whether products are imported or locally produced; (iii) rights conferred by a patent and exceptions to the rights; (iv) conditions concerning the disclosure of the invention in a patent application; (v) compulsory licenses; (vi) availability of judicial review process for any decision to revoke or forfeit ; a patent; (vii) the term of protection and (viii) the burden of proof in deciding whether a product was obtained by a patented process Setting international standards on a number of issues is an extraordinary result achieved by the TRIPs agreement. However, the controversy as such has not disappeared with the adoption of the TRIPs agreement. Re-examination of provisions with respect to patents is under way.

Afghanistan joined the WTO in July 2016. As TRIPS became a part of the WTO regime, the member countries became bound to provide intellectual property protection as per TRIPS provisions and were forced to amend their laws in tune with TRIPS. In order to fully comply with the TRIPS provisions, Afghanistan provided two draft amendments and repealed them two times. The recent changes in patent law reflect Afghanistan's compliance with the obligation under the TRIPS agreement in the following instances:

### **1) patentable subject matter**

Patentable subject matter consists of the subject matter that is permissible under the patent law as protectable. Conflict and uncertainty surround the issue of what ought to be patented or not. There are certain conditions that have to be fulfilled for an invention to be patentable, as stated earlier pursuant to the patent law of Afghanistan. According to article 4 and article 18 of Patent act, an invention is patentable if it is new, results from inventive activity, and is capable of industrial application. or if it constitutes an improvement upon a patent invention, it is also new, results from inventive activity, and is capable of industrial application. The requirement for patent protection is similar to Article 27.1 of the TRIPS agreement.

Protection of product patents is a source of concern for industrialized countries, and they have continuously pushed for the protection of all products and processes that meet the requirements for patenting. The protection of product patents that particularly relate to pharmaceutical products could not be patented in many countries till the second half of the last century. Afghanistan's patent law (2008) had excluded drug formulae from patentable subject matter. By enactment of patent law 2017, exclusion for drug formulae was deleted. According to the new patent law, pharmaceutical inventions are patentable, and like any other invention, a pharmaceutical invention should satisfy the three tests of novelty, inventive step, and industrial application for it to be patentable. Thus, the new patent law does not limit patents to particular fields of technology, i.e., in essence, all fields of technology can be patented under patent law 2017, except for specific exemptions. In addition, Article 27.1 of the TRIPS Agreement required Member countries to make patents available for any inventions, whether products or processes, in all fields of technology without discrimination, subject to the normal tests of novelty, inventiveness, and industrial applicability. There are three permissible exceptions to the basic rule on patentability. The patent law makes no distinction between applicants or right holders based on nationality, since Article 2 of the patent law enumerates the registration of national and international patent rights as one of the objectives of this law. The patent law complies with its obligation as required under Article 27.1 of the TRIPS agreement.

### **2) Exclusion from patentability**

For inventions contrary to order public or morality, this explicitly includes inventions dangerous to human, animal, or plant life or health or seriously prejudicial to the environment. The use of this exception is subject to the condition that the commercial exploitation of the invention must also be prevented, and this prevention must be necessary for the protection of order public or morality.

Article 17(2) Patent law provides that the invention or discoveries, the commercial exploitation of which would be contrary to public order, as well as an invention or discoveries, are excluded, provided the commercial exploitation is contrary to Islamic values and national values. All types of exploitation contrary to public order or morality may be excluded from patentability (De Carvalho, 2002). Moreover, the patent law specifically excluded the protection of inventions or discoveries contrary to human health, or inventions that cause serious prejudice to the environment should be avoided.

Another issue that the TRIPS Agreement requires before an invention is excluded from patentability is that exclusion should not be based on the fact that it is prohibited by law in the member state. For complies with this requirement, Afghanistan's patent law has no provision to

clearly provide that exclusion is not contrary to public order or morality merely because its exploitation is prohibited by law.

### **3)Methods of treatment**

Article 23(3)(a) of The TRIPS Agreement allows members of the WTO to exclude from patentability diagnostic, therapeutic, and surgical methods for the treatment of humans or animals. This is an important exception that is specifically exempt in patent law. The first patent law had no such provision; the new patent law in article 17(3), excluded diagnostic, therapeutic, and surgical methods for the treatment of humans or animals from patent protection. However, since such methods are not industrially applicable, they may not be patentable even in the absence of specific exclusion (UNCTAD/ICTSD, 2005).

### **4)Plants, animals and essentially biological processes**

Article 27.3(b) of TRIPS Agreement allows members of the WTO to exclude plants and animals other than microorganisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement. This article obliges members to provide protection for “plant varieties (UNCTAD/ICTSD, 2005). This article essentially provides that members may exclude plants and animals, but not microorganisms, and essentially biological processes for the production of plants or animals may not be protected, but non-biological and microbiological processes may be. However, any country excluding plant varieties from patent protection must provide an effective *sui generis* system of protection.

Afghanistan’s patent law in Article 17(4), excludes plants or animals other than microorganisms. As well as excluded essentially biological processes for the production of plants or animals. But it does not specifically exclude the “microorganism,” “non-biological,” and “microbiological” processes from patentability. Protecting microorganisms, non-biological processes, and microbiological processes of plants and animals has been a source of serious debate internationally. Afghanistan complies with its obligation for the protection of plant varieties by enacting the Plant Variety Protection Act. 2016

### **5)Right conferred by patents**

Article 28 of the TRIPS agreement expressly provides that a patent right holder is entitled to certain exclusive rights. The extent of the rights conferred by patents under a TRIPS agreement in relation to a product patent entails the exclusive rights to prevent third parties not having the owner’s consent from making, using, offering for sale, selling, or importing such products. A process patent grants exclusive rights not only over use of the process but also over products obtained directly by that process. This article obliges members to ensure that patent ownership enjoy exclusive and details the minimum content of such rights, which may be exercised with regard to acts performed during manufacturing as well as to acts performed after manufacturing. Article 23(2) of patent law reads like this article, and article 28 reflects the standard used by many countries prior to the TRIPS agreement (UNCTAD/ICTSD, 2005). Both the TRIPS agreement and the Afghanistan patent law provide a negative right, as no specific rights are granted.

In addition, according article 28(2), the patent owner has the right to assign, or transfer by succession, the patent and to conclude licensing contracts. A similar provision is provided for in article 11 of the patent law, which provides that the patentee may, in accordance with the provisions of this law, license or otherwise transfer his exclusive right in respect of a patent that has been registered in Afghanistan to a third party.

**6)Condition on patent applicant**

The provision of Article 29 of the TRIPS agreement is important and is essential for any country intending to develop technologically. The objective of this obligation is to ensure proper disclosure of an invention in a way that is sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

Article 21(1) of the of the patent law provides that every application shall consist of a description of the relevant invention in one of the official languages of the country, and a summary of the invention or discovery, as well as the method of its use, shall be added at the end thereof. Where the description of the invention or discovery is not available in the official languages of the country, its full description shall be prepared in the English language, and its summary in one of the official languages of the country shall be supplemented thereto. Article 21(2) of The patent law required that a description of the invention or discovery shall be readable and shall be arranged in such a way as to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art. The description of an invention or discovery shall be without crossings, and insertion of words between the lines thereof shall be prohibited.

Regarding information concerning the applicant's corresponding foreign application and grants, the patent law requires a similar process for the invention or discovery that has already been registered outside Afghanistan. according article 20 of patent law, The inventor, discoverer, or their legal representative may, on the basis of the original patent certificate or on the basis of the complementary patent certificate, submit to the Office of Intellectual Property an application for the registration of the invention or discovery. In this regard, Afghanistan's patent law conforms to the requirements of the TRIPS agreement.

**7)Exception to rights conferred**

The inclusion of the exceptions to patent rights is to balance the objective of patenting. Over the last two decades, patentable inventions have been questioned, and more limitations and greater access have been demanded. The TRIPS agreement set out that members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent holder, taking account of legitimate interests of third parties. It has been argued that Article 30 provides 'a general and flexible authority for members to adopt measures that balance the interests of patent owners with the interests of others, as article 7 of the TRIPS agreement expressly stated was an objective of the TRIPS agreement (WT/DS114/R, 2000).

Article 27 of the TRIPS Agreement generally contains certain exclusions from patentability; this article gives members the rights to create exceptions in so far as they do not conflict with normal exploitation. Various exceptions to patent rights were provided by national laws at the time of the negotiation and adoption of the TRIPS agreement. They included, among others:

- Use of the invention for teaching and research;
- Commercial experimentation on the invention to test or improve on it;
- Experiments made for the purposes of seeking regulatory approval for marketing of a product after the expiration of a patent;
- preparation of medicines under individual prescriptions;
- use of the invention by a third party that had used it bona fide before the date of application of the patent (prior use);
- Importation of a patented product that has been lawfully marketed in a foreign country ("parallel imports").

Afghanistan's patent law includes two exceptions. The first is regarding the 'temporary presence exception' (TPE), which is set out in Article 5ter of the Paris Convention. Article 23(3)

of the patent law provides that using spare parts of aircraft, road vehicles, or ships belonging to other countries that enter temporarily or coincidentally the airspace or territorial waters of Afghanistan shall be an exception to the provision set forth under paragraph (2) of the present articles. And the second one is regarding "prior use." Patent law provides that any natural or legal person who, before the filing date or priority date of a patent was, in good faith, using within the territory of Afghanistan an invention that is the subject matter of that patent may, despite the existence of the patent, continue to use that invention, provided that the scope or scale of such use is not increased. The right afforded by this article may only be transferred together with the business. In this regard, Afghanistan's patent law is compliant with the requirements of the TRIPS agreement.

### **8)Other use without authorization of the right**

Article 31 is one of the most controversial aspects of the TRIPS agreement. This provision is generally referred to as the 'compulsory license' provision, as it gives members authorization to use a patent without the patent holder's permission. Although commonly known as the compulsory licenses provision, the TRIPS Agreement entitles it to 'other use without authorization of the right holder', which includes uses by governments and third parties to meet specific needs. The provision is an additional exception that members can provide in their legislation, apart from the limited exceptions mentioned under Article 30(UNCTAD/ICTSD, 2005). Article 25 of Afghanistan's patent law provides for the use of compulsory licenses. The provision generally specifies the guidelines and conditions that third parties should follow to access the benefit of this provision.

### **9)Revocation/ forfeiture**

An opportunity for judicial review of any decision to revoke or forfeit a patent is required to be made available by member. Failure to meet the requirement for the rights granted leads to revocation of such rights. On the other hand, a failure to comply with a condition to maintain a right also results in forfeiture. It is clear that both acts involve the withdrawal and removal of patent rights. No grounds for revocation or forfeiture are stated in the TRIPS agreement, which leaves room for members to determine on what grounds a patent may be revoked or forfeited.

Articles 26, 27, 28, and 29 deal with the affaire relating to revocation and forfeiture. Patent law provides that any interested person may file with the office of intellectual property (OIP) a written application to revoke a registered patent if the invention or discovery was not eligible for registration under this law or if the applicant was not entitled to register the invention or discovery. The intellectual property office's decisions relevant to revocation and forfeiture shall be subject to independent judicial review, as stipulated in the regulation. Moreover, patent law provides for judicial review of OIP's decision related to compulsory licenses.

### **10)Term of protection of patent**

According to Article 33 of the TRIPS agreement, a patent shall be protected for a period of 20 years. The 20-year term cannot be broken down into different stages; it must begin from the date of filing the patent application. The term of protection of a patent under Article 28 is 20 years from the date of filing the application, but the patent law of Afghanistan does not provide that the nonpayment of the annual fees by the patentee or failure to renew the patent annually may lead to the lapse of the patent or not. There is no provision in the patent law of Afghanistan for the extension of the 20-year term. Neither can the term of protection be reduced.

### **11)Process patents: burden of proof**

Article 34 of TRIPS Agreement shifts the burden of proof in process patent to the infringer, which is logical considering the nature of a process patent. The rule of evidence that he who asserts must prove does not apply to the case of infringement of a process patent. Where a process patent is concerned, he who is alleged to have infringed a process for obtaining a product must prove that the process of obtaining an identical product is different from the

patented process. The purpose of reversing this rule of evidence is to achieve an impossible proof.

Members are under the obligation to empower judicial authorities where there is no such procedure in regards to patent infringement. It is now required that such a procedure be included in their procedural rules. In Afghanistan, in case of infringement of the patent process, Article 9 Annex no 1 commercial procedure law, enables the court to give such orders that the defendant must prove that the process of obtaining an identical product is different from the patented process. Or if the product obtained by the patented process is new. Moreover, commercial procedure law provides that, in adduction of proof to the contrary, the legitimate interests of the defendants in protecting their manufacturing and business secrets shall be taken into account. In this regard, Afghanistan's law is compliant with the requirements of the TRIPS agreement.

## CONCLUSION

Patent system have been developed in order to promote the publication of ideas and to provide incentive for people to invent or to engage in creative efforts. However patent law of Afghanistan meets the minimum standard of patent protection set out by TRIPS Agreement. Nevertheless, there are certain lacunae in the patent law which must be amended in the light of following suggestion:

1. Patent law grants patent to both invention as well as discoveries. It's suggested to modify provisions suitably. Patent should grant only to invention and those discoveries or ideas which has a technical aspect and meet the substantive requirement of patentability and exclude explicitly mere discoveries or ideas from patentable subject matters.
2. Compulsory licensing provision in the patent act must spell out clearly the circumstances under which it can be issued by the government. Afghanistan's Patent law provided only one ground i.e. non-working or insufficient work for issuing compulsory license. It is suggested to expand the ground for issuing compulsory license to the public interest including public health, national security, national emergencies and anti-competitive agreements.
3. As indicated above, certain flexibilities in TRIPS agreement which mitigate the effect of the patent provision are absent in patent act. For instance, exhaustion of rights and parallel imports. It is suggested that a system of international exhaustion should be adopted.
4. the provision relating right of co-owners are absent in patent act. It is suggested that apart from amendment of patent act, the provisions relating the right of co-owners should also be added.

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