

IN THE FOURTH SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA

REPORT OF THE COMMITTEE ON CONSTITUTIONAL,
LEGAL AND PARLIAMENTARY AFFAIRS

ON THE

PATENTS (AMENDMENT) BILL, 2018

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**IN THE THIRD MEETING OF THE FOURTH SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC**

**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS ON THE PATENTS (AMENDMENT)
BILL, 2018**

1.0 INTRODUCTION

- 1.1 The Patents (Amendment) Bill, 2018 was laid in Parliament on 1st June, 2018 by the Hon. Attorney-General and Minister for Justice, Miss Gloria Afua Akuffo in accordance with Article 106 of the Constitution.
- 1.2 Consequently, the Rt. Speaker referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to the Order 179 of the Standing Orders of the House.

2.0 DELIBERATIONS

The Committee met with the Hon. Attorney-General and Minister for Justice, Officials of the Office of the Attorney-General and the Registrar-General's Department to discuss the Bill.

The Committee is grateful to the Hon. Attorney-General and the Officials for attending upon the Committee and for assisting in the deliberations.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during the deliberations:

- i. The Constitution of the Republic, 1992;
- ii. The Standing Orders of Parliament, 2000;
- iii. The Patents Act, 2003 (Act 657);
- iv. The World Trade Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS);
- v. The Paris Convention for Industrial Property; and
- vi. The Patent Co-operation Treaty and the Harare Protocol.

4.0 BACKGROUND INFORMATION

- 4.1 The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) sets out minimum standards for the regulation by national governments of different forms of intellectual property (IP) as applied to nationals of other WTO member nations. Subsequently, some flexibilities were introduced in the TRIPS Agreement through the Doha Declaration in 2001 and 2003.
- 4.2 The Patent Act, 2003 (Act 657) was passed in December 2003 to establish the regime for the protection of inventions and related matters. Though this enactment incorporated some of the provisions of the TRIPS Agreement, some essential provisions of the Agreement were omitted. This situation has impacted negatively on both industry and research institutions as they are yet to fully maximize the opportunities contained in the TRIPS Agreement.
- 4.3 It has therefore become imperative for the Patents Act to deal with the above concern. Hence, the introduction of the Patents (Amendment) Bill, 2003 for its passage to achieve that effect.

5.0 SUMMARY OF PROVISIONS OF THE BILL

- 5.1 The Bill contains seven (7) Clauses.
- 5.2 Clause 1 of the Bill intends to amend Section 2 of Act 67 to expand the scope of matters excluded from patent protection
- 5.3 The Bill also seeks to amend Section 3 of Act 657 by substituting for the expression "having ordinary skill" of "highly skilled" (Clause 2 of the Bill).
- 5.4 Further proposals to amend Sections 5, 8 and 11 of Act 657 to respectively provide for matters relating to disclosure of certain information and exhaustion of rights (Clauses 3 and 5).
- 5.5 Clauses 6 of the Bill would amend Section 12 of the Act 657 to provide for late payment of the annual fees while Clause 7 would amend the Section 41 of the Act to introduce new definitions.

6.0 OBJECT OF THE BILL

The object of the Bill is to amend the Patents Act, 2003 (Act 657) to incorporate additional provisions of the World Trade Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS). The Bill

also incorporates aspects of the Paris Convention for Industrial Property and the Patent Co-operation Treaty and the Harare Protocol.

7.0 OBSERVATIONS

The Committee made the following observations during the deliberations:

7.1 Fulfilment of Ghana's international Obligations

The Committee noted that the passage of the Bill would enable the country fulfil its international obligations under the World Trade Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) as well as the Paris Convention for Industrial Property and the Patent Co-operation Treaty and the Harare Protocol. The amendment would also address existing policy and legislation gaps which have created obstacles to the implementation of the flexibilities in the TRIPS Agreement. This would ensure that the patent rules at the national level are aligned with international best practices and also boost the creativity and innovativeness of industry and research institutions.

7.2 Foreign applications

The Committee also noted that the Bill intends to amend the existing regime for the handling of foreign applications. The current regime as provided for under Section 8 of Act 657 requires applicants to produce certain documents only upon request by the Registrar-General. In response to some operational difficulties, the Bill intends to reverse this arrangement. Accordingly, the Bill provides for the amendment of the Section to require the applicants to furnish the Registrar-General with a copy of any final decision invalidating the patent granted on the basis of the foreign application and other documents.

7.3 Matters to be excluded from patent protection

The Committee noted that the Bill would further exclude certain acts from patent protection. The matters to be excluded include acts made or quantity produced which exceeds that of the prior user on the filing or priority date, and acts made or quantity produced which exceeds those that the prior user could reasonably expect to make or produce as a result of the preparation.

8.0 PROPOSED AMENDMENT

The Committee has proposed the attached amendments to further strengthen the provisions of the Bill.

9.0 CONCLUSION AND RECOMMENDATION

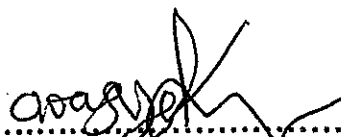
The Committee has scrutinised the Bill and is of the considered view that its passage would enable the country fulfil its international obligations under the TRIPS Agreement, the Paris Convention for Industrial Property and the Patent Co-operation Treaty and the Harare Protocol. The amendment would also boost the creativity and innovativeness of industry and research institution.

In this regard, the Committee recommends to the House to adopt this Report and to pass the Patents (Amendment) Bill, 2018 in accordance with Article 106 of the Constitution and the Standing Orders of the House.

Respectfully submitted.



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HON. BEN ABDALLAH BANDA
(CHAIRMAN, COMMITTEE ON
CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS)



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AKUA DUROWAA OWUSU-AGYEKUM (MRS)
(CLERK TO THE COMMITTEE)

PATENTS (AMENDMENT) BILL, 2018

PROPOSED AMENDMENTS

- i. **Clause 1** - **Amendment proposed** – In paragraph (a), line 2, before “biological” insert “essentially”.
- ii. **Clause 1** - **Amendment proposed** – Delete paragraph (b) and insert“(b) the insertion of a new paragraph (h)
“(h) known substance for which new use has been discovered except where the use of the known substance does not constitute an invention under subsection (1) of subsection 3.”.
- iii. **Clause 1** - **Amendment proposed** – Delete paragraph (c).
- iv. **Clause 2** - **Amendment proposed** – Delete entire clause.
- v. **Clause 3** - **Amendment proposed** – In paragraph (a), line 4, delete “highly skilled” and insert “having ordinary skill”.
- vi. **Clause 3** - **Amendment proposed** – In paragraph (b), in the new subsection (5A), line 7, delete “highly skilled” and insert “having ordinary skill”.
- vii. **Clause 3** - **Amendment proposed** – In paragraph (b), in the new subsection (5B), line 3, delete “highly skilled” and insert “having ordinary skill”.
- viii. **Clause 3** - **Amendment proposed** – In paragraph (b), delete the new subsection (5D) and insert the following:

“(5D) For the purpose of this section, a person having ordinary skill in the art refers to a person having normal skill and knowledge in a particular technical field.”.
- ix. **Clause 3** - **Amendment proposed** – In paragraph (b), in the new subsection (5E), line 1, delete “a”.
- x. **Clause 5** - **Amendment proposed** – Paragraph (a), subsection (4), subparagraph (g), sub-subparagraph (ii), line 3, delete “it” and insert “the product”.

- xi. **Clause 5** - **Amendment proposed** – Paragraph (b), subsection (4D), subparagraph (a), line 2, delete “it” and insert “the product”.
- xii. **Clause 5** - **Amendment proposed** – Paragraph (b), subsection (4D), subparagraph (b), line 6, delete “that” and insert “the”.
- xiii. **Clause 5** - **Amendment proposed** – Paragraph (b), subsection (4E), line 2, delete “Minister’s decision” and insert “decision of the Minister”.
- xiv. **Clause 6** - **Amendment proposed** – Paragraph (a), line 4, delete “subcharge” and insert “surcharge”.
- xv. **Clause 6** - **Amendment proposed** – Paragraph (b), subparagraph (b), line 1, before “rights” delete “that” and insert “the”.
- xvi. **Clause 7** - **Amendment proposed** – paragraph (a), lines 1 and 2, delete “in the interpretation section”.