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REPUBLIC OF KENYA

NATIONAL ASSEMBLY

EIGHTH PARLIAMENT- FIFTH SESSION

DEPARTMENTAL COMMITTEE ON EDUCATION,
RESEARCH AND TECHNOLOGY

REPORT ON
THE INDUSTRIAL PROPERTY BILL, 2001

PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2001

PREFACE

Mr Speaker Sir,

On behalf of the Members of the Departmental Committee "C" on Education, Research and Technology, I beg to present to the House the Report containing Minutes and Recommendations of the Committee on The Industrial Property Bill, 2001.

Mr. Speaker,

This Departmental Committee was appointed pursuant to the Provisions of Standing Order No.151(1) and it comprises the following Members:-

1. The Hon. Owino Acholla, M.P. (Chairman)
2. The Hon. Kipruto arap Kirwa, M.P.
3. The Hon. Cyrus Jirongo, M.P.
4. The Hon. Grace M. Mwewa, M.P.
5. The Hon. Matu Wamae, M.P.
6. The Hon. Tabitha J. Seii, M.P.
7. The Hon. John B. Munyasia, M.P.
8. The Hon. Jonesmus M. Kikuyu, M.P.
9. The Hon. Ramadhan Kajembe, M.P.
10. The Hon. Justin Muturi, M.P

Mr. Speaker Sir,

Let me begin by sincerely thanking the Members of the Committee for their cooperation and dedication in pursuing the objectives for which the Committee was established and making the production of this Report possible.

Mr. Speaker Sir,

The terms of reference for this Committee are set out in Standing Order No.151(4) which states that the Committee is supposed to:-

- (a) to investigate, inquire into, and report on all matters relating to the mandate, management activities, administration, operations and estimates of the assigned Ministries and departments;
- (b) to study the Programme and Policy objectives of the Ministries and departments and the effectiveness for the implementation.

- (c) to study and review all legislation after First Reading, subject to the exemptions under Standing Order 101.A(4).
- (d) to study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;
- (e) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister;
- (f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

Mr. Speaker, the Industrial Property Bill has been before the Committee since 1999 when it was first published and the Committee has subsequently held several meetings with various stakeholders, an exercise that gave the Committee a broad understanding of the issues at stake. I, therefore, wish to express our appreciation for the invaluable information the Committee received from the following organisations:-

- (1) Medecins Sans Frontieres, Belgium-Access to Essential Medicines Project.
- (2) Action Aid.
- (3) Traditional Medicine Development Agency (TRAMEDEA)
- (4) Kenya Agricultural Research Institute
- (5) Kenya Industrial Research & Development Institute.
- (6) Coffee Research Foundation
- (7) Faculty of Law, University of Nairobi
- (8) Research -based Pharmaceutical Companies and Institutes based in Kenya.
- (9) Lords Health Care Limited.
- (10) Kenya Forestry Research Institute

(11) Pharmaceutical Society of Kenya.

Mr. Speaker Sir.

Ministers for Tourism, Trade and Industry and Public Health appeared before the Committee accompanied by the Management of Kenya Industrial Property Office. I hereby wish to thank the two Ministers for the able manner in which they responded to the questions and concerns raised by the Committee and more particularly the Minister for Tourism, Trade and Industry for the amicable manner in which he handled various queries and amendments put to him by the Committee.

I wish to assure the House, Mr. Speaker, that the proposed amendments put to the Minister by the Committee appearing in the Report were agreed upon by the Committee and the Minister after lengthy deliberations and consultations.

My gratitude also goes to the Office of the Clerk of the National Assembly whose Officers made the production of this Report possible.

Mr. Speaker Sir, allow me to table a Petition from the Kenya Coalition for Access to Essential Medicines, containing fifty thousand (50,000) signatures from Kenya residents urging the Honourable Members to pass the Bill in order to allow for affordable medicines as provided for in Clauses 54,58 and 80 of the Industrial Property Bill, 2001.


Signed.....

HON. OWINO ACHOLA, M.P.

(CHAIRMAN)

DEPATMENTAL COMMITTEE ON EDUCATION, RESEARCH
AND TECHNOLOGY

DATE:.....

PROPOSED AMENDMENTS TO THE INDUSTRIAL PROPERTY BILL, 2001 SENT TO THE MINISTER FOR TOURISM, TRADE AND INDUSTRY

Clause 2: Interpretation

The Committee considered the Bill and proposed amendments as follows:-

- (i) The Minister should clarify explicitly the meaning of the term **"utility model"**
- (ii) The Minister should define the meaning of the word **"technology"** as it appears in the Bill.
- (iii) The Minister should harmonize definition of the term **"invention"** with that appearing in clause 21(1).
- (iv) The clause be amended in the definition of **Industrial Property rights** by inserting the words **"include"** immediately after the word **"and"** appearing on the second line.
- (v) In the definition of the term **"licensee"**, the Minister should explain the meaning of the word **"deemed"** appearing in the Bill in relation to patents that have already been registered in the country.
- (vi) The Minister to make elaborate the definitions of the term **licence contract** as it appears on the Bill.

Clauses 3 - 8	-	Agreed to
Clauses 9 - 10	-	Agreed to
Clause 11	-	The Clause be amended in Clause 11(2) by deleting the word "seven" and inserting the word "five" in place thereof.
Clause 11, 2(b)	-	The sub-clause be deleted.
Clauses 12 - 19	-	Agreed to
Clause 20	-	That the Clause be amended in Sub-Clause

(2) by inserting the words "subject to the approval of Treasury" immediately after the word "Board" appearing in the sub-clause

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| Clauses 21 - 27 | - | Agreed to |
| Clause 28(1) | - | The Minister to explain to whom the term "resident" applies |
| Clauses 29 - 33 | - | Agreed to |
| Clause 34 (2) | - | Minister to clarify the phrase "admitted to practice before the institute" , appearing in the Bill. |
| Clause 39 | - | The clause to be amended in clause 39 (I) by deleting the words "of the" appearing on clause. |
| Clauses 40-41 | - | Agreed to |
| Clause 42(1) | - | The Minister to explain why the publication process should take eighteen months. |
| Clause 44 | - | To be amended in sub-clause (1) by inserting the words "an internationally recognized" immediately before the words "industrial" appearing in the clause. |
| Clauses 45 – 52 | - | Agreed to |
| Clause 53 (2) | - | That the Clause be amended in order to provide for a sub-clause which enables an inventor to work out his invention within a period of 4 years. |
| Clauses 54-(2) | - | To be deleted and in place thereof insert the following "(2) provided that the rights conferred on the owner of the patent under this section shall not apply to acts by third parties necessary to obtain approval and/or registration of a product from the competent authority for purposes of commercializing the product after expiry of the patent." |
| Clauses 55 – 58 | - | Agreed to |
| Clause 59 | - | That the Clause be amended by |

inserting a condition that before ARIPO makes a decision, the Managing Director be informed (through a copy of the application).

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| Clause 60 | - | That the Clause be amended by deleting the word " twenty " and inserting in place thereof the word " seven ". |
| Clause 61-68 | | Agreed to |
| Clause 69 | - | that the Clause be amended by deleting the words " he is of the opinion that " appearing on the second line. |
| Clauses 70 – 83 | - | Agreed to |
| Clause 84 | - | The Minister to clarify the meaning of the clause. |
| Clauses 85-91 | - | Agreed to |
| Clause 92(2) | - | The Minister to clarify the ambiguity in the Clause |
| Clause 101 | - | To be amended by inserting a proviso indicating where a technovator can register a dispute when an enterprise and employee do not agree. |
| Clauses 102-106 | - | Agreed to |
| Clause 107(2) | - | The clause be amended by deleting the words " a reasonable time " and inserting in place thereof the words " Fourteen days ". |
| Clauses 108-109 | - | Agreed to |
| Clause 110 | - | The Minister to explain why the alleged infringer is assumed guilty before he is heard by the Tribunal. |
| Clause 111-121 | - | Agreed to |
| Clause 122 | - | The Clause be amended by deleting |

“or” appearing immediately before the words “**the institute**” and inserting in place thereof the word “of”.

FIRST SCHEDULE

- 2(iii) That the 1st schedule be amended in 2(iii) by deleting the word “**prolonged**” appearing in the first line and /or indicate a definite period of illness.
- 5(2) That the schedule be amended by inserting a sub-clause 5(3) to provide for punitive measures against a Board Member who contravenes the provisions of Clause 5(1).

SECOND SCHEDULE - Agreed to

- Title (i) That the Title of the Bill be amended to read “**Intellectual Property Bill, 2001**”.
- (i) The Minister to explain the technicality involved in repealing the Copyright Act and incorporating the necessary provisions in the Bill.

AMENDMENTS AGREED UPON BY THE COMMITTEE AND THE MINISTER FOR TOURISM, TRADE AND INDUSTRY ON THE INDUSTRIAL PROPERTY BILL, 2001

Clause 2 Interpretation

- (i) The meaning of the term utility model as explained by the Minister, *agreed to*
- (ii) The term ‘*technology*’ as defined by the Minister, *agreed to*.
- (iii) The definition of the term invention as it originally appears in the Interpretation and also in Clause 21 (1), *agreed to*.
- (iv) The Committee proposed amendment to the definition of **industrial property rights**, *agreed to*.
- (v) The meaning of the word “*deemed*” as explained by the Minister, *agreed to*.
- (vi) In the definition of the term “**licence contract**” the minister proposed an amendment to delete all the words appearing immediately after the word **rights**. The proposal was *agreed to*.

Clauses 3 – 5 Agreed to

Clause 6	That the Clause be amended by inserting a sub-section ((1) to read as follows. The Chief executive of Kenya Association of Manufacturers or his representative.
Clause 7 - 10	Agreed to
Clause 11	<i>The following amendments were agreed upon</i> (i) That the Clause be amended in sub section 2 by inserting the word working immediately before the word experience, appearing in the sub-clause. (ii) That the Clause be amended by deleting sub-clause 2(b) and introducing a new sub-clause (b) to read as follows: (b) has a University degree in law, science, information technology, or business administration from a recognized University.
Clause 12 - 19	Agreed to
Clause 20	The Committee's proposed amendment, agreed to
Clause 21	The following amendment moved by the Minister for Public Health was agreed upon; That the Clause be amended in sub clause (1)(e) by deleting the words for therapeutic purposes of a known product and inserting in place thereof the words of any molecule or other substances whatsoever used for the prevention or treatment of a disease, which disease may be designated by the Minister responsible for Health as a serious health hazard or life threatening.
Clauses 22-27	Agreed to
Clause 28	(i) The explanation of the term resident by the Minister, agreed to (ii) The Clause be amended in sub-clause(3) by deleting the word twenty and inserting in place thereof the words two hundred
Clause 29 - 33	Agreed to
Clause 34	The clarification by the Minister. <i>Agreed to</i>

Clauses 35-38 Agreed to

Clause 39 As amended (by the Committee) *Agreed to*

Clauses 40 - 41 Agreed to

Clause 42 Clarification by the Minister. *Agreed to*

Clause 43 *Agreed to*

Clause 44 - 53 *Agreed to*

Clause 54 To be amended by inserting a new sub clause (3) to read as follows:-

Sub clause (3) **The rights conferred on the owner of the patent under this section shall not apply to acts by third parties necessary to obtain approval and/or registration of a product from the competent authority for purposes of commercializing the product after expiry of the patent.**

Clauses 55 - 80 *Agreed to*

Clauses 55 - 79 *Agreed to*

Clause 80

The Clause be amended in (1)(b) by deleting the symbol(,) appearing immediately after the word competitive and inserting in place thereof the symbol (;)

- That the clause be amended further by renumbering all the words appearing before the symbol (;) as (b)
- The Clause be amended in sub clause 80(1) by introducing a new sub clause (c) to read as follows:-

(c) **The Minister shall, notwithstanding any of the measures set out in this section, authorise the utilization of any process for the manufacture, sale, or supply of any molecule or substance whatsoever by any individual, corporation or society as named or described in the order and such order shall remain in force until revoked by the Minister in writing giving 6 months prior notice of intention of such revocation to the party named or described in the order.**

Clauses 81 - 100 - *Agreed to*