

PROCEDURE FOR REGISTRATION OF PATENTS IN NIGERIA- A QUICK REFERENCE GUIDE

LEGAL FRAMEWORK

Inventions are protectable in Nigeria by patents through registration at the Patents Registry. Nigeria is a member of the Patent Cooperation Treaty (PCT) but has, however, not domesticated the treaty into Nigerian law to give it the force of law under the Nigerian Constitution. Nevertheless, in practice, Patents Registry accepts and processes PCT national phase applications.

In Nigeria, the Patents and Designs Act (The Act) regulates the registration of patents and is the substantive legislation on patents. From a procedural standpoint, the 1971 Patents Rules regulates the registration of patents and is the principal procedural guideline for the Patents Registry. Under section 1 of the Act, an invention is deemed patentable if it is new, results from inventive activity and is capable of industrial application; or if it constitutes an improvement upon a patented invention and also is new, results from inventive activity and is capable of industrial application. However, patents cannot be validly obtained in respect of-

- a. Plant or animal varieties, or essentially biological processes for the production of plants or animals (other than microbiological processes and their products); or
- b. Inventions the publication or exploitation of which would be contrary to public order or morality.

PROCEDURE FOR REGISTRATION

Documentary requirements

Every application made for the registration of a patent in Nigeria must contain:

- a. A petition or request for a patent, signed by the applicant or his agent (acting under a duly executed Power of Attorney/Letter of Authorization) and containing the applicant's full name and address;
- b. A copy of the specification, claims, abstract, plans and drawings including any amendments, where applicable;

- c. An address for service in Nigeria if the applicant's address is outside Nigeria; and
- d. The prescribed fee.

Process of Registration

Receipt and acknowledgement of Application: Upon the making of an application in the prescribed form, together with the required documents to the Patents Registry, the Patents Registrar will issue an acknowledgment of receipt of the application to the applicant. In this regard, the date stated on the receipt will be deemed to be the official filing date of the patent.

Examination of Application: The patent application will be examined for the purpose of ensuring that it is in accordance with the applicable mandatory documentary requirements of the Act. Where an application fails examination stage, the Patents Registrar shall either reject the application or invite the applicant to modify the application for conformity with the applicable mandatory documentary requirements of the Act.

Where the application succeeds at the examination stage by satisfying the mandatory requirements of the Act, the patent shall be granted as applied for without further examination and, in particular, without examination of the questions-

- a. Whether the subject of the application is patentable under the Act;
- b. Whether the description and claims satisfy the requirements of the Act; and
- c. Whether a prior application, or an application benefiting from a foreign priority, has been made in Nigeria in respect of the same invention, and whether a patent has been granted as a result of such an application.

DURATION OF PATENT:

By section 7(1) of the Act, every patent shall expire at the end of the twentieth year from the date of the filing of the relevant patent application. A patent shall also lapse if the prescribed annual fees are not duly paid in respect of it, provided that a grace period of six (6) months shall be allowed for the payment of the fees; and if the fees and the prescribed surcharge are paid within that period, the patent shall continue as if the fees had been duly paid.