

# UNLOCKING INNOVATION: UNDERSTANDING PATENT RIGHTS IN KENYA



Kenya is quickly emerging as a hub for innovation in Africa, from Nairobi's "Silicon Savannah" brimming with ground-breaking tech startups to innovative agricultural solutions revolutionizing rural communities. At the core of every great invention is a vital component: patent rights. Patent rights are essential for protecting intellectual property, ensuring that inventors can protect their ideas and innovations from unauthorized use.

Inventions are often risky and require immense dedication, like the Wright brothers, who risked their lives to invent the airplane, or Karl Benz, who created the first automobile. Such groundbreaking innovations require protection. In Kenya, patents play a vital role in safeguarding innovations across various industries. A prime example is M-Pesa, the mobile money service owned by Safaricom PLC, which secured intellectual property protection for the innovative technologies that

power it. This illustrates how patents are essential in protecting inventors' intellectual property, fostering confidence that encourages further investment and development.

## WHAT IS A PATENT?

A patent is defined as an exclusive right to a product or a process that generally provides a new way of doing something or offers a new technical solution to a problem. In Kenya, patents are governed by the Industrial Property Act, Chapter 509 ("IPA").

## THE ELIGIBILITY CRITERIA FOR PATENT REGISTRATION

For an invention to qualify for patent protection in Kenya, it must satisfy the following requirements:

- **Novelty:**

An invention must be new to qualify for

registration. It cannot be part of “prior art”, which includes everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) or, by oral disclosure, use, exhibition or other non-written means.

• **Inventive Step (Non-Obviousness):**

An invention must not be obvious to a person skilled in the art to which the invention pertains.

• **Industrial Applicability:**

An invention is considered industrially applicable if, according to its nature, it can be made or used in any kind of industry.

However, not everything can be patented. The IPA provides that discoveries, scientific theories, and mathematical methods; business methods and rules; methods for treating or diagnosing the human or animal body by surgery or therapy, except products used in such methods; mere presentation of information; and public health-related uses of any molecule or substance for disease prevention or treatment are matters excluded from patentability. This ensures that while groundbreaking inventions are protected, certain areas, particularly those related to public health and abstract concepts, are kept open for the greater good of society and to prevent monopolization of fundamental knowledge.

## THE PROCESS OF PATENT REGISTRATION IN KENYA

### 1. Filing the Application:

Once you have confirmed your invention meets the above criteria for patentability, an application may be lodged at the Kenya Industrial Property Institute (KIPI). This involves submitting detailed documentation, including a data sheet that specifies the title, applicant and inventor details and a specification with claims, drawings and an abstract.

### 2. Examination and publication:

On filing, patent applications are subjected to formal examination to confirm whether all the formality filing requirements are met. Thereafter, the Registry calls for the filing of a request for substantive examination and payment of the prescribed fees. The request for substantive examination must be filed within three (3) years from the filing date. The application for a grant of patent is then published within eighteen (18) months after its filing date on payment of the publication fees.

### 3. Registration:

Upon approval of the application, it will be published in the Kenya Industrial Property Journal, and the Certificate of Grant of Patent will be issued shortly thereafter.



Patents provide exclusive rights to an invention for a limited period of up to twenty (20) years, with annual renewal fees required to maintain patent validity. Upon registration, a patent holder is granted exclusive rights to their invention, providing them with several key advantages. These rights allow the patent holder to exclude others from making, using or selling the invention without their consent. Additionally, a patent holder can license or

assign their invention to others for a fee, generating passive income. The patent holder also has the authority to enforce their intellectual property rights, enabling them to take legal action against anyone who infringes upon their patent. Finally, owning a patent creates a market advantage, securing a competitive edge by ensuring that no one else can legally produce or offer the same invention.

## CONCLUSION

Patent rights are the unsung heroes behind Kenya's innovation boom. Whether you're a tech guru or an agricultural inventor, understanding and leveraging patent rights can be the key to transforming your ideas into profitable ventures. So, the next time you dream up a game-changing invention, remember—patent it, protect it, and profit from it!

At **CM Advocates LLP**, we have a dynamic team of Intellectual Property Lawyers dedicated to helping secure all forms of Intellectual Property including trademarks, patents, copyrights, industrial designs and utility models. Our services also extend to the recordation of intellectual property rights with the Anti-Counterfeit Authority as well as monitoring and enforcement of intellectual property rights. If you would like to consult on this article or any other related matter, you may contact the contributor on the email below or the commercial team through ***commercial@cmadvocates.com***.

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