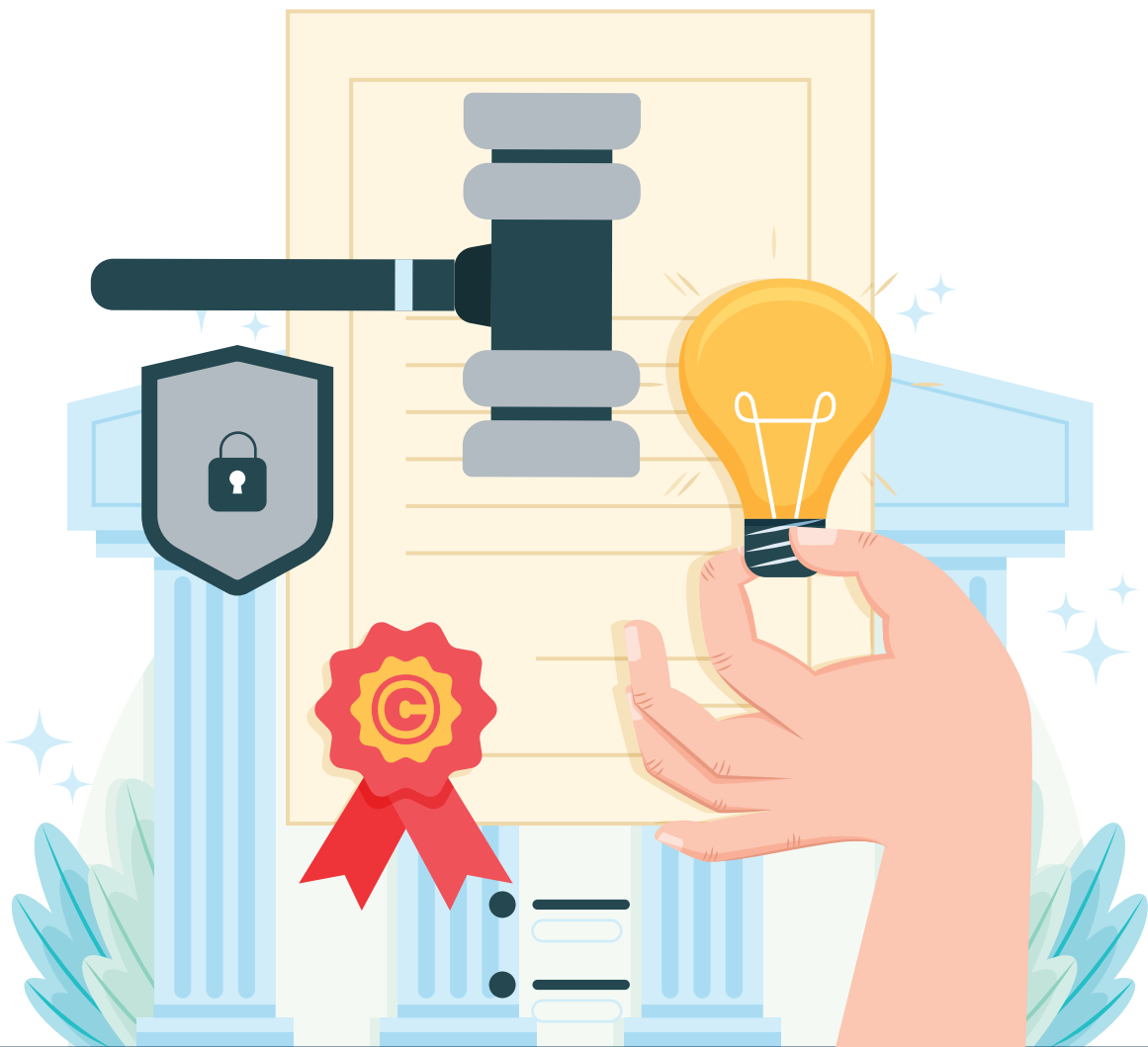




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REGISTRATION OF PATENTS IN TANZANIA



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THE PRIMACY OF THE LAW ON PATENT REGISTRATION AND LEGAL PROTECTIONS AFFORDED TO RIGHT HOLDERS IN TANZANIA.

“The Supreme Court of India observed in *Bishwanath Prasad v. H.M. Industries* AIR 1982 S.C. 1444 that the fundamental principle of patent law is to grant reward for inventions which are new and useful”.



INTRODUCTION

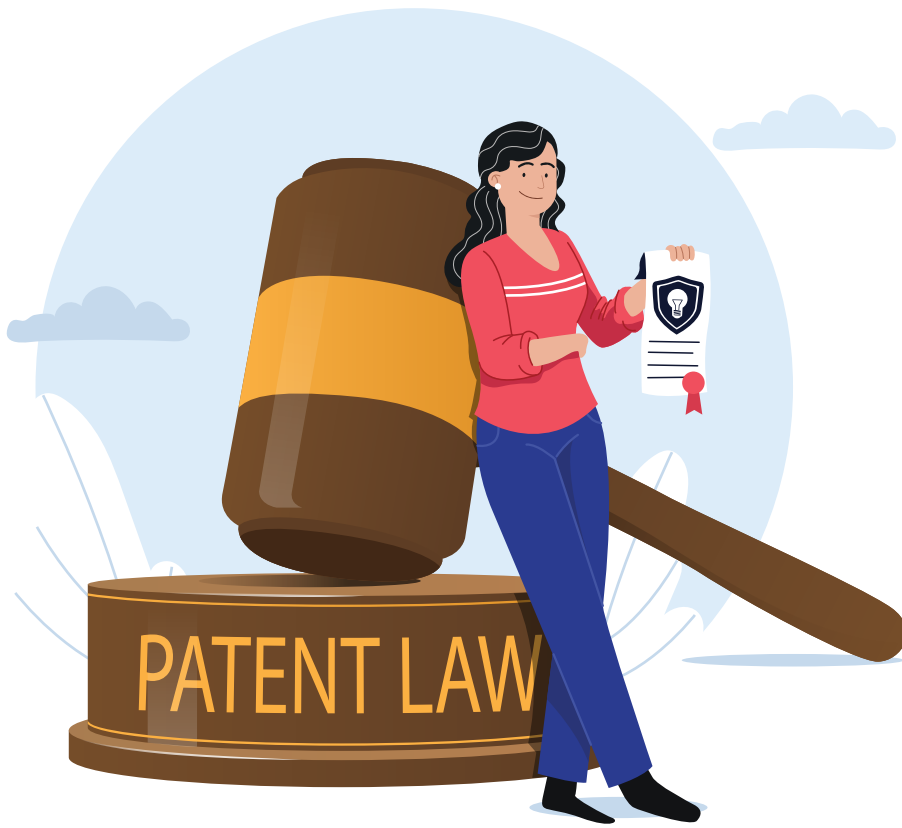
Technological development is among the most important factors for development in the society. The introduction of new technology into an economy fosters considerable economic growth and enhances social welfare of the people. The producers or the inventors of such technologies, by a way of patent, are given exclusive rights to decide on the use of their inventions for a specific period of time.

Patent law concerns new, industrially applicable inventions. It is perhaps fitting that intellectual property law reserves a very special and powerful mode of protection for inventions that meet exacting standards. The grant of a patent effectively gives the inventor, or more commonly his employer, a monopoly to work the invention to the exclusion of others for a period of time. However, the monopoly is not absolute and there are a number of checks and balances to curb its abuse.

Prior to the end of the end of nineteenth century, patent protection was strictly a national matter. This means that, each state had sovereign to decide on which inventions to protect. The state therefore was free to exclude certain types of inventions which were regarded as essential either for social or economic development. However, states with many patent laws like Tanzania demanded for codification of patent law in international treaties.



THE GOVERNING LAWS



Patent registration is governed by the Patents (Registration) Act, Cap 217 (R.E. 2002) as well as The Patents Regulations GN. No. 490 of 1994. Its registration is done through the Business Registrations and Licensing Agency's (BRELA) Online Registration System (ORS).



WHAT IS A PATENT RIGHT?

Patent right is a grant of a property right given by the Government to an inventor. With a patent, the inventor, or the patentee will have the right to exclude others from making, using, offering for sale, selling the invention in a country, or importing the invention into a country, along with other rights to protect their best interests. They are a form of incorporeal rights.

It is trite that in order for one to enjoy the exclusive recognition right or protection, there must be an invention, that is why sometimes patent is taken to be an agreement between an individual and the public as represented by the Government to prevent other people from making, using or selling an invention.



THE MEANING OF INVENTION

Section 7 of the Patents (Registration) Act, provides definition of the term invention to mean a solution to a specific problem in the field of technology and may relate to a product or process. Invention typically is the result of human ingenuity that introduces a new idea, process, device, or method.

■ ■ REQUIREMENTS FOR A ■ ■ PATENT TO BE REGISTERED

To be registered/patentable in Tanzania, an invention must satisfy the three requirements set under section 8 the Patents (Registration) Act, which includes.

- i. Novelty/New
- ii. Must involve an inventive step and
- iii. Must be industrial applicable

The above criteria apply cumulatively and in addition, the applicant of patent should establish priority date ahead of any other person in the field of an invention.

■ ■ CATEGORIES OF ■ ■ UNPATENTABLE SUBJECTS

Section 7 of the Patents (Registration) Act, provides five spheres of unpatentable patents or patents that are incapable of being registered:

- a. Discoveries, laws of nature, and mathematical methods.
- b. Plant or animal varieties or essentially biological processes for the production of plants or animals, other than microbiological and products of such processes.
- c. Schemes, rules or methods for doing business performing purely mental acts or playing games.
- d. Method for treatment of the human or animal body by surgery or therapy as well as diagnostic methods but shall not apply to products for use in any of those methods;
- e. More presentation of information/data and abstract ideas.



RIGHT TO PATENT REGISTRATION

The right to patent is exclusively given to the inventor and in case two or more persons have jointly made an invention, the right to the patent belongs to them jointly. Regarding to inventions made in execution of commission or by employees, in absence of contractual provisions to the contrary, the right to a patent for invention made in execution of the commission or of an employment contract belongs to the person commissioned the work or to the employer. This is by virtue of section 14 and 16 of the Patents (Registration) Act.



REGISTRATION OF PATENTS

A person who needs to secure patent for his or her inventions has two steps to follow, being:

1. To Lodge an application for Registration with the Registrar of Patents at BRELA

At this stage, the inventor or any person who has a right over an invention, files an application for registration of patent with the office of the Registrar of Patent. The said application is done through the Business Registrations and Licensing Agency's (BRELA) Online Registration System (ORS).

1.1. Necessary documents for Patent Registration in Tanzania include:

- a. A consolidated form, this form is automatically generated by the ORS upon filling all necessary credentials.

b. Power of Attorney in case an application is made by an Agent or Advocate.

c. A Patent Document which contains detailed information on which patent is sought.

Regulation 4(1) of the Patents Regulations provides that, documents for patent registration in Tanzania may be submitted in foreign languages with the condition that, they must be translated into the English language.

1.2. Procedure For Patent Registration in Tanzania

The patent application will go through the following main stages of examination after being submitted to the Business Registrations and Licensing Agency's (BRELA) Online Registration System (ORS).

A. Preliminary examination.

During this stage, the examiners will check if the patent application is qualified to obtain a filing date or not, such as if the documents are filed in English, etc.

B. Formality examination.

Officers will examine if there are errors in the formality of the patent, the applicant will be given 3 months period to make amendments if any.

C. Novelty search

Upon thorough verification of whether or not the patent is Novelty, thereafter the application will be published in the Patents Journal should there be no errors found.

D. The **Substance** of application will be examined. An amendment to the application at this stage is possible.
E. Finally, the **application will be granted** to the Applicant.

Note:

Upon registration of the Annual maintenance fees must be paid yearly to maintain the validity of the patent. The first payment of maintenance fees becomes due in the second year after the date of filing of the application.

2. By filing an application for Registration with the African Regional Intellectual Property Organization (ARIPO)

Alternatively, Tanzania is a member of the Harare Protocol on Patents and Industrial Designs within the Framework of the African Regional Intellectual Property Organisation (ARIPO). By virtue of being a member of this protocol, it is possible for the inventor to protect their patent in Tanzania by registering the same through ARIPO.

ARIPO is an intergovernmental organisation that grants and administer intellectual property titles on behalf of its Member States and provides IP information to its client (clientele) in the form of search services, publications and awareness creation. Membership of the organisation is open to all member states of the African Union (AU) or of the United Nations Economic Commission for Africa (ECA).

Among of the current members of the organisation are United Republic of Tanzania, Zambia, Zimbabwe, Mozambique, Botswana, Gambia, Namibia, Rwanda, Sierra Leone, Sudan, and Uganda.

In terms of the Harare Protocol, patent and industrial design applications may be lodged through single filing. By filing a single application an applicant is able to designate contracting states and thereby obtain an industrial property rights in more than one state. Members in which protection is required must be selected at time of filing a Patent with ARIPO.

2.1 Procedure for filing of a Patent with ARIPO

Application may be filed by the applicant (who can be an inventor or assignee) or by authorized representative of the applicant (attorney, agent, or legal practitioner) who has the right to represent applicants before the industrial property office of any of the Harare Protocol contracting state.

Representation is mandatory for applicants who are not resident or whose principal place of business is not situated in a contracting state. To file the applicant has to submit the following:

- a. A request for grant of an ARIPO Patent
- b. Description of invention
- c. One or more claims
- d. One or more Drawings(if any)
- e. An Abstract and

- f. Prescribed Application fees or written undertaking to lodge the fees;
- g. Designation of at least one state.

2.1.1 Mode of Application

Applications can be filed directly at ARIPO by:

- i. E-filing
- ii. Email
- iii. In Person
- iv. Registered mail
- v. Courier



RATIONALE FOR REGISTRATION OF PATENTS

Registering a Patent is important for so many reasons

1. Protection of Invention

Registration a patent grants exclusive rights to the inventor by preventing others from making, using, selling or importing the patented invention without permission of the inventor.

2. Right to Legal Recourse

Having a registered patent provides a legal basis for the inventor to take legal action against anyone who infringes on their patent rights.

3. Market advantage

A registered patent can provide a competitive advantage in the market place by excluding others from the same technology, giving the patent holder a unique position.

4. Global Protection

In many cases, patents can be filed internationally (e.g in case of ARIPO), offering protection for inventions in multiple countries.

5. Public disclosure

While it grants exclusivity, a patent also requires the inventor to disclose the details of the invention, contributing to the pool of public knowledge and furthering research and development.

Generally, patent registration not only protects the inventor's rights but also plays a crucial role in promoting innovation, fostering competition, and contributing to overall progress of the society specifically in the area of development of science and technology.

DURATION UNDER WHICH PATENT OPERATES UNDER TANZANIA LAWS

Under the Patent Registration Act, especially S.39 (1), states that, a patent is protected for the term of ten (10) years to be counted from the date of filing of the application, the right of extension is provided under section 39(2) of the Act, the owner of the patent or licensee may request extension of duration of patent for five (5) years provided that the said owner or licensee proves, to the satisfaction of the Registrar of Patent that, either;

1. The invention which is the subject of the said patent is being worked in the United Republic of Tanzania at a date of request.
2. There is a legitimate reason for failing so to work the Invention.

When the patent term expires, it falls to public domain so that others are free to copy the product or the process.

The cumulative duration of protection of an ARIPO patent is twenty (20) years the position which is different from its state members like Tanzania.



PATENT INFRINGEMENT

The exclusive rights granted to patent owner generally exclude others from exercising any right of the patent owner during the term of protection of the invention. Patent infringement is, therefore, the making, importing, selling, offering for sale, or using the product or process which is the subject of patent without the authority of the patent owner.

In Tanzania, Patent infringement is both civil wrong and criminal offence. A person whose right has been infringed may request the Court for the following remedies which may be legal or equitable.

1. Injunction

Injunction is the legal order that compels a person to stop doing specific action. It is typically issued by a Court to prevent harm or enforce right during the course of a legal proceedings.

Therefore, the purpose of injunction in this aspect is to stop the infringing activity, preventing the infringer from continuing use, manufacture or sell the patented invention.

2. Damages

One may also pray for damages; damages are monetary compensation for the harm or loss caused by infringement. These can include lost profits, royalties and other expenses incurred by an inventor.

The Court can also order for the defendant to deliver-up or destroy any patented product which relates to the infringement, an order to account of the profits made from the infringement and a declaration that the patent is valid and has been infringed.

Apart from that, section 65 of the Patent (Registration) Act is to the effect that, any person who intentionally infringes patent is guilty under criminal law. The punishments provided for under the Act is fine not exceeding five hundred thousand or a term of imprisonment not exceeding five years or both.



CONCLUSION

If you have an invention or product that you believe is unique and is of Novelty importance, it is advisable to register it with BRELA, WIPO or ARIPO so as to enjoy exclusive rights of using, manufacturing and selling our invention for the specified period as provided under the relevant laws and this is where experienced practitioners.

If those who do not work shall not eat then those who do not invent an item should equally not reap the fruits of the intelligent endeavours crafted by others without paying a price or at the risk of some legal sanction if they fail to do so. This in simple terms is the ideology behind the law on patent rights registration.

Lyson Law Group is well versed in the area of Patent Rights Law and has competent personnel to assist you navigate through the registration process smoothly.



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