

Kenya: patent application, processing, opposition, search and cooperation.

- The applicable laws:
- The Constitution
- Kenya Industrial Property Act, 2001
- The Kenya Industrial Property Regulations 2002
- The laws domesticate regional as well as internal treaties on Patents.
- They establish an IP office

Filing

- Request form (IP form 3)
- Specification document
- Title of invention
- Background information
- Detailed description
- Claims
- Drawings (if necessary)
- Abstract
- Corrections in 14 days

Examination

- **Request form (Section 34)**
 - Title of the invention.
 - Signature.
 - Name and address of applicant,
 - Residence of applicant, etc
- **Description**
 - State the technical field
 - Give background information
 - State the problem to be solved by the invention
 - State the title
 - Give the best embodiment

Examination cont.

- **Claims**

- Should be set in 2 parts
- Numbered consecutively
- Should not make reference to drawings

- **Drawings**

- only if necessary
- They make the understanding of an invention easy
- no unnecessary text matter on drawings
- Reference in description should be indicated in drawing

Examination cont.

- **Abstract**

- Should be maximum 150 words
- Should give summary of the description
- State the title of the invention
- Should not contain economic merits or personal information
- Assign patent application number

Publication of a Patent application

- Publication after 18 months from the earliest priority date.
- Express publication upon request by the applicant
- PCT applications are exempted from this publication; they are published at the international phase.

PCT National phase

- For PCT filing requirements,
 - Form IP 13
 - The patent specification document (published under the PCT)
 - Include the bibliographic page.
 - Within 30 months from the international filing date, or priority date (if priority is claimed)

Examination cont.

- Submitted in form IP8
- Within 3 years from filing date, if not, the application is deemed abandoned.
- Under section 44, PCT applications are treated like national applications

Examination cont.

- Inventiveness
- Not excluded from patentability under sections 21(3) and 26
- Determine the unity of invention
- Assign IPC classification to the application

Examination cont.

- **Search and examination**

- International Search report and examiners opinion is always taken into consideration, however it is not binding.
- Other IP offices to see the direction the invention is headed in terms of novelty and inventive step.
- The examiner determines whether the patent application meets the requirements for patentability
- This involves comparing prior art documents on invention, novelty, inventive steps or whether they are just background information
- WIPO assistance if no local examiners.

Response

- **Positive**

- The Examination report is sent to the applicant
- Patent certificate issued.

- **Negative**

- Corrections or amendments
- Within 90 days from the date of notice
- Extended for 60 days more

Opposition and Patent invalidation

- The Act does not provide for formal opposition during processing.
- Invalidation once the patent is granted.
- Applicant can oppose a decision made by the office.
- Request for invalidation must be filed within 9 months from the date of post-grant.

Grounds for invalidation

- Validity of claims
 - If there is a similar prior art document
 - Claims Not novel-The invention lacks industrial applicability
 - The invention is obvious
 - The invention is not useful
 - Disclosure given is not enabling
 - Embodiment for carrying out the invention.

Remedies

- Applicant can disagree with the result
- Examiner must forward a brief to the IP Tribunal
- Appeals made to the High court, then Court of appeal and finally the Supreme court.
- Infringement follows the same route; IP Tribunal High Court, Court of Appeal and Supreme court

- I THANK YOU

