

DEALHQ PARTNERS: HOW TO SERIES NIGERIA

HOW TO REGISTER A PATENT IN NIGERIA

A. What is a Patent?

A patent is a right granted to an inventor, which allows the inventor exploit the full rights and benefits from their invention/work (including right to use, sell, produce, mass produce) to the exclusion of all other users for a period of about 20 years. A registered patent gives protection against third party exploitation within the country where the right is obtained.

B. What law guides the registration of patents and where do I apply for the registration of a patent?

The registration of Patents in Nigeria is governed by the Patents and Design Acts Cap. 344, Laws of the Federation of Nigeria 1990 (Act of 1970) administered by the Registrar of Trademarks, Patents and Designs, Trademarks Registry, Federal Ministry of Industry, Trade and Investment, FCT, Nigeria.

C. How do I know if my work/invention qualifies for registration of a patent?

A patent may be granted for any work/invention that:

- is new (novel); the invention must be substantially different from anything else that is within public knowledge
- involves an inventive step; must not be obvious to a person skilled in the art of the invention and must not make reference to any matter that forms part of the prior existing invention
- is capable of industrial application; (useful)
- is not specifically excluded in the Act; (e.g. inventions which encourage immoral and offensive behaviour)
- has an address for service in Nigeria (if the applicant's address is outside Nigeria arrangement must be made for a verifiable delivery address in Nigeria).

NOTE: Each application must relate only to **one** invention but may cover claims for multiple numbers of products or processes i.e. an invention can be a modification or novation of one or more existing inventions in the market.

D. What are the practical steps for registering a patent in Nigeria?

Step 1: Fill Application Form together with written declaration

There are two classes of application forms available for patent registration;

- Form 1A: being the application form for the registration of a conventional/local patent; and
- Form 1B: being application form for the registration of a non-conventional/international patent.

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I. Filling of Form 1A (Local Application)

Form 1A is the applicable form for local applications for works created and originating in Nigeria. The name, address, email address and contact number of the applicant is required to be provided and in cases of multiple/joint inventors or inventors under the employ of a company, the name, address, email and contact number of a representative of the company or the joint inventors will be appropriate.

A declaration by the true inventor will be required to be submitted alongside the application form and Form 3. The true inventor is the individual responsible for the ideation of the invention.

II. Filling of Form 1B (Foreign Application)

Form 1B is the applicable form for applicant seeking foreign priority for works or inventions which did not originate from Nigeria and which is already registered in another foreign jurisdiction. The application will be accompanied by a written declaration consisting of:

1. The date and the number of the earlier application;
2. The country in which such application was made; and
3. The name of the inventor who made it.

The applicant will also fill a Form 3 as detailed below, to accompany the Form 1B and the written declaration. Not more than 3 months after filing the application, the applicant will be required to furnish the Registrar with a copy of the earlier application certified by the appropriate industrial property office of the foreign convention country.

Step 2: Fill the Specification Form (Form 3)

All Applicants (Local or Foreign) are required to fill Form 3 - Complete Specification Form. Form 3 is very crucial to any Patent application; it contains a detailed description of the invention and its claims (a claim is any information detailing the innovation of the invention provided by the applicant in hopes of creating an extent/scope of protection for the said invention from infringement by a subsequent invention). The applicant would have to explain in the technical terms what makes the invention different from what already exists in the market in hopes to protect it from subsequent inventions.

The contents of Form 3 would include;

1. The title of the invention;
2. An abstract on the functionality of the invention;
3. Background and History of the Invention;

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4. Detailed description of the invention supported with diagrams and illustrations;
5. Claims (starting from general claims to specific ones):
6. Summary of what society/ mankind stands to gain from the invention

Step 3: Submit application to the Registry and pay of application fees

The Applicant will pay the application fee as may from time to time be advised by the Registrar and submit application forms together with evidence of payment of the prescribed fees.

Step 4: Application is granted and patent is valid for 20 years

After submission, the patent application is examined by the Registrar merely to ascertain formal compliance, the Registrar assumes regularity. Once the application satisfies the statutory requirements as to the completion of form, payment of appropriate fees amongst others, the Registrar is likely to grant the patent without enquiries into its novelty, inventiveness and industrial applicability or sufficiency of disclosures in Form 3.

Patents are granted at the risk of the patentee and without guarantee as to their validity. Once granted, a patent is valid for 20 years.

E. Can a foreigner register a patent in Nigeria?

A foreigner or a foreign corporation can seek foreign priority in Nigeria if it has a subsisting local application which has been admitted for registration by the approving authority in its own home country. Upon application for foreign registration such will be admitted for registration by virtue of the Nigeria Patent and Designs Convention Order 1971. The Convention provides that **if a Nigerian application is made within 12 months of the making of the earlier application in the foreign country**, such application will be treated as having been made on the same date on which the foreign application was made.

F. What Legal Rights do I have as Patent holder?

As a patent holder under Nigerian Law:

- You have a valid cause of action against anyone who infringes on your right to the Patent during its subsistence;
- You have the legal and beneficial right over the patent which may be sold, assigned or granted for the use of others in the form of a license.

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HOW TO GET STARTED

Are you interested in registering a patent for your invention? Our corporate services team is available to provide registration and start up support to you. You may contact our team on:
Email: info@dealhqpartners.com Telephone: +234 1 4536427 or +234 9087107575

A patent holder may consider the option of applying to have his patent registered under the World International Property Organization (WIPO) which currently has over 189 member states including Nigeria.