

## KENYA

### **INFORMATION RELATING TO ACTIVITIES OF THE STANDING COMMITTEE ON LAW OF PATENTS**

**Status as of September 2016**

### **CERTAIN ASPECTS OF NATIONAL/REGIONAL PATENT LAWS**

#### **KENYA**

#### **1. PRIOR ART**

1. Everything made available to the public by a written or oral disclosure, use, exhibition or other non-written means before the filing date (priority date).

2. Contents of Kenyan and international patent applications with an earlier filing date (priority date) made available to the public.

#### **2. NOVELTY**

The invention is not anticipated by prior art. The prior art consists of everything made available to the public by a written or oral disclosure, use, exhibition or other non-written means before the filing date (priority date), and the contents of Kenyan and international patent applications with an earlier filing date (priority date) made available to the public.

#### **3. INVENTIVE STEP (OBVIOUSNESS)**

The invention is not obvious to a person skilled in the art having regard to the state of art. The state of the art consists of everything made available to the public by a written or oral disclosure, use, exhibition or other non-written means before the filing date (priority date).

#### **4. GRACE PERIOD**

Disclosure not to be taken into account in determining novelty and inventive step if it occurred within 12 months before the filing date (priority date): 1. by the applicant or his predecessor in title; 2. due to an evident abuse committed by a third party in relation to the applicant or his predecessor in title.

#### **5. SUFFICIENCY OF DISCLOSURE**

The description shall:

- i. disclose the invention in such full, clear, concise and exact terms as to enable any person having ordinary skills in the art to make use of and to evaluate the invention;
- ii. include at least one mode for carrying out the invention.

#### **6. EXCLUSIONS FROM PATENTABLE SUBJECT MATTER**

- i. Discoveries, scientific theories and mathematical methods.
- ii. Schemes, rules or methods for doing business, performing mental acts or playing games.
- iii. Diagnostic, therapeutic and surgical methods for treatment of humans or animals.

- iv. Presentation of information.
- v. Designated methods for the prevention or treatment of serious health hazards and life threatening diseases.
- vi. Plant varieties, other than parts thereof and products of biotechnological processes.
- vii. Inventions contrary to public order, morality, public health and safety, principles of humanity and environmental conservation

## **7. EXCEPTIONS AND LIMITATIONS OF THE RIGHTS**

1. Acts necessary to obtain approval or registration for commercializing products after expiry of patent.
2. Continued prior use by a person who, in good faith at the filing date (priority date), was using the invention for business purposes in Kenya, or making effective and serious Preparations for that purpose.
3. Acts for non-industrial and non-commercial purposes.
4. Acts for scientific research.
5. Acts in respect of articles put on the market in Kenya or any other country or imported into Kenya.
6. Use on foreign aircraft, land vehicles or vessels which temporarily or accidentally enter the territory of Kenya.
7. Variants or mutants of living forms or replicable living matter which are distinctively different from the patented original and deserve a separate patent
8. Exploitation, ordered or authorized by the Minister, by a Government Ministry, Department, agency or other person, in the public interest (in particular, national security, nutrition, health, environmental conservation, or development of other vital sector of the national economy), not subject to remuneration.
9. Compulsory licenses.

### **(ii) Laws and practices regarding the scope of client attorney privilege and applicability to patent advisors**

In Kenya 'client-patent advisor privilege' applies to lawyers (law attorneys) but not to Intellectual Property (IP) advisors unless the intellectual Property advisors are also lawyers (law attorneys) and give legal advice. This is stipulated in Kenyan law as Legal Professional Privilege (LPP)

Legal Professional Privilege (LPP) is a privilege against disclosure, ensuring clients know that certain documents and information provided to lawyers cannot be disclosed at all. It recognises the client's fundamental human right to be candid with his legal adviser, without fear of later disclosure to his prejudice. It is an absolute right and cannot be overridden by any other interest.

Legal Professional Privilege (LPP) does not extend to everything lawyers have a duty to keep confidential. It protects only those confidential communications falling under either advice privilege or litigation privilege.

### **(iii) International work-sharing and collaborative activities for search and examination of patent applications.**

As a way of sharing expertise, knowledge and experience, Kenya allows the use of search results and /or examination reports prepared by other offices on corresponding foreign patent applications. This is because Kenyan patent office is not able to access prior art documents available in paid patent databases, hence gains from search and examination reports prepared by foreign offices which have access to both the free and the fee patent databases.