Basic Requirements for a Patent registration in Tanzania?

In the Tanzania there are five elements of patent eligibility.:

1. In order for your invention to qualify for patent eligibility, it must cover subject matter that Congress has defined as patentable. patentable subject matter means any “new and useful” process, machine, manufacture or composition of matter. Machines or processes are patentable subject matter, but the laws of nature are not. So, you can patent a machine for sorting packages, but you can’t get a patent for sunlight.
2. The invention must have a “utility,” or in other words, be useful. Note that this requirement is only for utility patents (see next question, below).
3. The invention must be “novel,” or new.
4. The invention must be “non-obvious,” meaning its use or function can’t be something that is simply the next logical step of an already patented invention.
5. The invention must not have been “disclosed” to the public prior to the application for the patent. For example, if you’ve written an article describing the invention before you apply for the patent, the registry may deny the application because you’ve already disclosed the patent and therefore it’s public knowledge.

What are the Different Types of Patents?

There are three general categories of patents. They are:

1. Utility patents
2. Design patents
3. Plant patents

Utility patents are what most people associated with patents and are the type most frequently granted. Utility patents cover:

- *Processes* – business processes, computer software, engineering methods, etc.
- *Machines* – anything that performs a function
- *Articles of manufacture* – a catchall category that covers anything manufactured
- *Composition of matter* – pharmaceuticals, chemical compounds, artificial genetic creations

A utility patent is the most powerful form of protection, but also the most difficult to attain.

What is the Basic Process of Receiving a Patent?

Think of the patent process as stepping through three doors. The first is the largest door

and the easiest to step through, the second is a smaller door that's more difficult, and the third is a tiny door that is extremely difficult to squeeze through.

In this analogy, door #1 is having patentable subject matter; door #2 is novelty (or "newness" of the invention); and door #3 is "non-obviousness" (whether the invention is enough of a departure from previously awarded patents). If your invention can fit through each door, the patent will be granted.

What is Patentable Subject Matter?

Patentable subject matter is any new and useful process, machine, article of manufacture or composition of matter. Following is a non-exhaustive sample of patentable subject matter:

- Business processes
- Machines and electronics
- Fabrics and fabric designs
- Sporting equipment
- Medicines
- Computer hardware
- Computer software programs that have a "useful, concrete and tangible" result
- Man-made bacteria (by contrast, naturally occurring organisms are not patentable)
- Human genes that are identified and isolated are patentable because they are not naturally occurring when isolated.
- Business methods (e.g., FedEx's method of delivering packages overnight)

What Does it Mean for an Invention to be "Novel?"

To be novel, an invention must not be known or used by anyone else in Tanzania and must not be patented or described in a printed publication in this or a foreign country before the date of the patent application. Basically, if there's another invention out there before your patent application that incorporates all the same elements as your invention, then your invention is not novel and the patent will be denied.

How is Something Determined to be "Non-Obvious?"

The non-obviousness test is the most difficult obstacle in the patent review process. The question the REGISTRY asks is: knowing what's out there, is the invention an obvious step? If the invention is simply a combination of several different prior patents, it may be deemed an obvious next step, and therefore denied.

The REGISTRY will look at “prior art” (a term meaning the state of technological knowledge before the patent application to determine whether the invention is “obvious to a person having ordinary skill in the art.” There must be an inventive leap. In other words, the invention must have a distance between it and the prior art.

In addition to examining prior art, the REGISTRY also looks to secondary considerations to shed light on the level of obviousness at the time of the invention. For example, if your invention is a commercial success, that may indicate that there was nothing else in the market like your invention and that others failed to achieve the same result. Or if there was a long period of time between the relevant prior art and the patent at issue, it may indicate that the patent is not obvious, otherwise there would have been other similar products that tried to fill the void.

Non-obviousness is the most hotly contested portion of the patent review process because it’s the most subjective. One patent examiner may look at an invention and think it’s merely the next logical step up from prior art whereas another examiner may look at the same prior art and think that the invention shows an inventive leap and is therefore not obvious.

What Qualifies an Invention as Having “Utility” or Being Useful in Tanzania?

All utility patents must demonstrate that they are useful now, not just potentially useful, or at least have a sound theoretical basis for being useful. For example, you may be issued a patent for a process that speeds a manufacturing line based on past processes that have proven successful, but may not be awarded a patent for a drug the effectiveness of which has no scientific backing. Remember that only utility patent applicants are required to prove the usefulness of the invention.

Application Documents

Non-provisional patent applications include the following documents:

Specification

The specification s a full, clear, concise, and exact written description of the invention and the process of creating and using it. The description should enable a skilled person in the field of the invention to make and use the invention without the need to conduct extensive experimentation. A specification should not be vague or keep certain aspects of the invention a secret. If the invention improves upon an existing invention, the specification should only describe the specific improvement to the invention, unless a certain aspect of the previous invention relates to the improvement.

The specification section includes the following parts:

- **Title of the Invention**: The title of the invention should be short, specific, and accurate.
- **Background of the Invention**: This section should include a description of the field in which the invention is part of and references to prior inventions and any problems with the other **inventions.**
- **Brief Summary of the Invention**: This summary should include a descriptive overview of the invention, advantages of the invention, and a description of how the invention solves a previous problem**.**
- **Brief Description of the Several Views of the Drawing**: This section should list the figures by number and should include a very brief description of each. Common terms used to describe the view of the drawing include perspective, sectional, cut-away, detail, exploded, and elevation.
- **Detailed Description of the Invention**: The detailed description should be concise and complete, and should describe how to use and distinguish it from other inventions. The "best mode" of how to create the invention must be part of the description. A description of each of the drawings is also included in this section.

Claim or Claims

The claim or claims section identifies the scope of the patent will receive. Ultimately, the claim or claims will define a patent holder's right to exclude others from using, making, or selling the item. Therefore, the wording in the claim or claims should be distinct and clear enough to define the extent of protection.

Drawings

An application must include drawings if they are necessary to explain the invention. Drawings will provide a detailed understanding of the invention and must illustrate each feature of the invention as specified in the claims. The failure to include drawings may result in an incomplete application.

Filing Patent Applications in Tanzania

Communicating with Patent Examiners

After the REGISTRY receives a patent application, an examiner will evaluate the application. The examiner will determine whether the invention is patentable and whether the application uses the proper format and language. In most cases, a patent application is not approved based on its initial filings. More commonly, the patent examiner and the applicant will engage in written and verbal communication about the scope of the patent. If the examiner rejects the patent application, the applicant can amend and resubmit the application. A final rejection, however, will limit the applicants reply. The process takes between one to three years.

Who is the patent granted to, if two people work on the invention together?

A: If two people share ideas to form the invention, they are joint inventors. The patent will issue to them jointly, provided the patent application is otherwise proper. If one person provided all of the ideas of the invention, and the other only followed instruction in making it, the person who provided all of the ideas is the sole inventor.

Assigning Your Invention to Another Entity

In some situations, you may choose to “assign” your rights in the patent to another party — giving over all rights to the invention — for a lump sum payment. A patent application also may be assigned to another company or individual, giving the recipient full control of the invention once it receives full patent protection.

Licensing: The Most Common Way to Profit From Your Patent

The license is most often in the form of a contract that gives the licensee the right to make, use, and sell the invention in exchange for giving the inventor a license fee and royalty payments. Royalty payments are normally calculated as a percentage of the net revenues from the invention, or they can be payments for each unit sold.

When an inventor licenses his invention to another party, he generally gives the other party the authorization to utilize and exploit the invention. The precise terms of the license are contained in language such as “Inventor X gives Company Y a license to make, use and sell invention Z in exchange for royalty payments set out below.”

Use Nondisclosure Agreements when Possible

Many inventions and ideas are simply not patentable, so the best course of action is to use NDAs when dealing with potential customers. NDAs also go by other names, such as disclosure agreements or confidentiality agreements. Upon signing a NDA, if a customer

breaks any provision of the NDA, you can sue them to recover any damages caused by their breach of the agreement.

The critical portions of a NDA set forth:

1. ***Exactly what is and isn't confidential:***NDAs define what is considered confidential and may include a section on what is considered a trade secret. NDAs also expressly exclude certain items from the definition of confidential so that parties aren't burdened with unnecessary obligations.
2. ***Obligations each party has to keep the information a secret:***it isn't enough to simply say that something is to be kept confidential. NDAs specify the standard of care in keeping the item secret, and list out the obligations that each party must fulfill in order to maintain the confidentiality of the underlying information. Common examples of these duties include how information will be handled with third parties who aren't a part of the agreement, as well as setting forth how information should be handled and stored.
3. ***How long the obligations last:***the party that wants the information to be protected will want a longer period of time, while the party encumbered by the NDA will want a shorter period of time. This is often one of the largest points of contention between parties and is usually resolved in negotiations. Common time periods within the are anywhere from 2 to 5 years. As an inventor, how flexible you can be is determined by how long you think it will take others to figure out your invention once people have access to it. If you think that others will begin duplicating your invention quickly, then a longer period of protection may not be necessary.
4. ***What happens if one party breaches the agreement:***pay extremely close attention to what the agreement says happens in the event that one party breaches the agreement. Consider whether arbitration or alternative forms of resolution make sense, and whether the court of jurisdiction specified in the agreement makes sense for you. Large companies will often try to put in terms that are favorable to them, so always consider the worst case scenario and decide if it's ok for you to be forced into court across the country years down the road.

Patents and the Employment Relationship: Who Owns Them?

The general rule is that, in the absence of an agreement to the contrary, an employer is entitled to a nonexclusive license to use an invention devised by an employee while he or she was working for the employer.

Q: How is Patent Infringement Determined?

Patents are made up of “claims,” which are different elements that make the invention unique. “Prior art” is a term that refers to any document, or article that was available to public before the date of priority of the application.

- Literal Infringement. If you take all of the claims of a prior art and add elements, you are still infringing. On the other hand, if you take some, or even most, elements of a prior art, then you are not infringing.
- Doctrine of Equivalents. Courts found that limiting infringement to only literal infringement was very restrictive (and often unfair) and came up with this doctrine to combat substantially similar inventions. The basic rule is that patent holders can claim infringement if:
    - the accused device performs substantially the same function,
    - in substantially the same way,
    - to obtain the same result.

Courts prevent patent owners from going back and claiming protection for claims that they had to give up during the application stage. If the patent owner can prove, however, that the amendment was made for a reason other than avoiding prior art and it was not meant to be surrendered, then the owner can a still argue infringement under the Doctrine of Equivalents.

Q: What Happens During a Patent Infringement Case?

After a patent owner brings an infringement case, the accused infringer has a number of defenses. They can argue that the patent was “disclosed” over a year prior to the patent application, that the accused device doesn’t actually infringe, or that the patent is invalid.

The most common defense to a patent infringement lawsuit is that the patent was wrongly approved by the REGISTRY and is therefore invalid. Accused infringers will attack each of the 5 requirements (patentable subject matter, utility, novelty, non-obviousness, and prior disclosure).

If a patent is determined by a court to be invalid, the patent holder loses all exclusive rights to the invention.

What Rights Do I Have as a Patent Owner?

A patent is basically a government award for an invention. The patent grants what’s known as a negative right (or right to exclude): no one else can create, use, sell, or import your invention for any purpose without your consent.

If anyone violates the patent, you can bring an enforcementand a court can issue an injunction preventing the other party from continuing their actions and award damages.

1. **Checklist for Utility Patents**
2. Is the utility invention:

- a process or method?
- a machine?
- an article of manufacture?
- a composition of matter? *or*
- an improvement of an invention that fits within one of the first four categories?

1. Is the utility invention:

- useful? (even some trivial usefulness satisfies the utility requirement)
- novel? (that is, different from all previous inventions in some important way)
- nonobvious? (is it a surprising and significant development to somebody who understands the technical field of the invention?)

1. **Checklist for Design Patents**
2. Is the design invention:

- novel? (that is, different from all previous inventions in some important way)
- nonobvious? (is it a surprising and significant development to somebody who understands the technical field of the invention?)
- nonfunctional? (as distinguished from a utility patent)