



## PATENTABILITY OF INVENTIONS IN TANZANIA AND ZANZIBAR

I once stumbled upon a reality show called “Shark Tank”. The show features a panel of potential investors, called “sharks,” who consider offers from aspiring entrepreneurs seeking investments for their business or product. Some of these business ideas have been invented by the entrepreneurs and that’s where I first heard of a patent.

The “sharks” would ask if the product was patented and the entrepreneurs would either say yes or that their invention was patent-pending. There was a particular episode where one of the “sharks” asked the entrepreneur why the public needed their product as they were not convinced it was something worth investing in. It’s from this where patentability of inventions comes into play.

So the question now becomes, how do you know that your invention is worth being patented? Patentability of inventions in Tanzania and Zanzibar are governed by the laws of the respective countries. In Tanzania, patents are covered under The Patents (Registration) Act, CAP 217 and in Zanzibar patents are provided for under The Zanzibar Industrial Property Act No. 4 of 2008.

### **PATENTABILITY OF INVENTIONS IN TANZANIA**

Part III of The Patents (Registration) Act, CAP 217 provides for patentability of inventions. It sets out a list of works that do not constitute an invention, and some include discoveries, mathematical or scientific theories, mere presentation of information, rules or methods of doing business and so forth.

As stated in the Act, an invention is patentable if it’s new, involves an inventive step and is industrially applicable. Sections 9-11 provide for the patentability elements as explained below:

#### **Novelty**

The Act provides that, “*An invention is new if it’s not anticipated by prior art*”. This means that the invention must not have been made public -even by the inventor himself- before the date of the application. One way to look at whether your invention is new, as is required under the meaning of section 9, is to ask whether your invention would infringe another patent already issued.

#### **Inventive Step**

As provided for under the Act, an invention is said to have an inventive step if it’s not too obvious to a person so skilled in that art. In other words, a patent will not be issued if the



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invention is trivial. In order to determine if an invention is trivial it is necessary to see if there was inspiration in the prior art to do what the inventor has done.

In a nutshell, an invention would be obvious when someone knowledgeable in a particular area would look at your invention and consider it to be already known.

### **Industrial Application**

According to the Act, this is a requirement where an invention has to be of a kind where it can be used or made in any kind of industry. The utility requirement for patentability is that an invention that is inoperative is not a “useful” invention within the meaning of section 11 and, therefore, does not deserve patent protection.

## **PATENTABILITY OF INVENTIONS IN ZANZIBAR**

The Zanzibar Industrial Property Act No. 4 of 2008 provides for patents under Part II and similarly provides for works that are excluded from patents protection. Unlike The Patent (Registration) Act, The Zanzibar Industrial Property Act No. 4 of 2008 has provided for additional works that cannot be patented.

For example, certain matters like the human body and natural substances are excluded from being protected as patents. Pharmaceutical products, and processes are excluded from patent protection until 1 January 2016 or the expiry of such later period of extension agreed upon by the World Trade Organization Council for TRIPS.

According to the Act, *“An invention shall be patentable if it is new, involves an inventive step, is industrially applicable and has not been excluded from patentability under the Zanzibar law.”* The three criteria found under the Patent (Registration) Act are the same as those of the Zanzibar Industrial Property Act.

That is to mean that the latter Act provides that an invention is said to be new if it is not anticipated by prior art, it is said to be an inventive step if it's not obvious for a person who is highly skilled in the art and is said to be industrially applicable if the invention is useful in any kind of industry be it transport, agriculture, medicine and the likes.

Due to some additions to certain provisions from the two Acts mentioned above, it should be noted that registration of patents in Tanzania and Zanzibar are to be done separately. That is to mean if you register your patent in Tanzania, your patent will not be protected in Zanzibar unless you register a patent in Zanzibar following all the legal requirements of the laws in Zanzibar.



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