



The concept of utility models in Kenya

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Utility models is an exclusive right granted for an invention which allows the right holder to prevent others from commercially using the protected innovation, without his authorization in the geographical area for which the utility model was granted for a limited period of time.

Utility models are sometimes called petty patents; the concept being that there are certain innovations that don't need to be entirely new, it may be new in Kenya but not necessarily elsewhere, the newness need not be absolute and there need not be an inventive step, it must be useful.

Utility models may also be referred to as innovation patents.

Utility models are provided and protected under the Industrial Property act of 2009 Cap 509 Laws of Kenya.

The main differences between utility models and patents

- I. Utility models have less stringent requirements for registration i.e. protection for utility models is often sought for innovations of another incremental character which may not meet the patentability criteria
- II. The duration for protection of utility models is shorter than that for patents.
- III. The registration process for utility models is simpler and faster. The examination is slightly laxer as compared to patents which involve strict and in-depth examination
- IV. It costs cheaper to obtain and maintain utility models for the reason that they have been majorly modeled by locals than foreigners since they are cheaper and affordable.
- V. Protection of utility models can be obtained for certain fields of technology and only for products, not processes.

Characteristics of utility models

- I. **Inventions** with new technical features and susceptible of industrial application.
- II. **Novelty** – The inventions must be new but not absolute as in patents. They should be able to be reproduced.
- III. **Inventive Step** – This is usually the subject matter of any utility model. The invention must not be that which is obvious to ordinary skilled artist and local inventors.
- IV. **Industrial Application** - Invention is considered susceptible of industrial application if its subject matter can be made or used in any kind of industry, including agriculture.
- V. **Unity of Invention** - For each invention, a separate application must be filed; in the case of lack of unity, several applications are required. Where two or more inventions are so linked as to form a single general inventive concept, they may be claimed in a single application.

Registration of utility models

An application may be filed with either a provisional or complete specification. The application should contain:

1. a request - Form IP3
2. a description
3. one or more claims
4. one or more drawings(where necessary); and
5. an abstract (See descriptions below)

The Utility model is subjected to examination to ascertain that the invention submitted meets the requirements for protection and is free of defects such as:

- I. the request does not comply with the prescribed requirements.
- II. the description, the claims and, where applicable, the drawings do not comply with the prescribed physical requirements;
- III. the application does not contain an abstract;
- IV. the relevant fees have not been paid as provided for in the regulations or the payment of such fees has been waived under that section.

If such defects exists, the applicant is notified to correct the said defects. Once the application is corrected and the managing director of Kenya Industrial Property Institute is satisfied that the application is in order, it is published in the Kenya Gazette or in the Industrial Property Journal and the applicant is invited to pay the publication fees.

The utility model is then registered and the applicant is granted a utility model certificate which expires at the end of the tenth year after the date of the grant of the utility model. The certificate is not renewable.

Conversion of patent applications to applications for utility model certificates, and vice versa

At any time, before the grant or refusal of a patent, an applicant for a patent may convert his application into an application for a utility model certificate. This is upon payment of the prescribed fees. The utility model certificate shall be accorded the filing date of the initial application.

An application may not be converted more than once in either case.

The only downside is that it can take up to 18 months before you are granted a certificate of a utility model in Kenya.

Rights conferred by registration of utility models

The registered owner reserves the right to preclude third parties from performing any of the following acts in Kenya:

- I. Reproducing the industrial design in the manufacture of a product; or
- II. Importing, offering for sale, and selling a product reproducing the protected industrial design; or
- III. Stocking of such product for the purpose of offering it for sale or selling it.

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