

# A Practical Q & A Guide To Patent Prosecution In Nigeria:

Procedures, Timelines And Strategies



# Introduction

## Q. 1: WHAT LAWS AND REGULATIONS GOVERN PATENTS IN NIGERIA?

Patents in Nigeria are governed by a combination of domestic legislation, subsidiary instruments, and international treaties, though not all treaties are fully domesticated under Nigerian law. The core legal instruments include:

1. **Patents and Designs Act 1970 (No. 60 of 1970):** This is the principal legislation governing the grant, ownership, and enforcement of patent rights in Nigeria. It establishes the criteria for patentability, outlines the procedures for applying for a patent, and defines the rights conferred by a patent.
2. **Patent Rules 1971 (L.N. 96 of 1971):** These are subsidiary rules made pursuant to the Act, detailing procedural aspects such as filing requirements, forms, and fees.
3. **Paris Convention for the Protection of Industrial Property:** Nigeria acceded to the Paris Convention in 1963, and its provisions on priority rights and national treatment are directly incorporated into the Patents and Designs Act. The Convention plays a key role in allowing foreign applicants to benefit from international filing timelines and reciprocal rights.
4. **Patents and Designs (Convention Countries) Order 1971 (L.N. 95 of 1971):** This order designates countries that are party to the Paris Convention as “convention countries” for the purpose of claiming priority rights in Nigeria under Section 27 of the Act.
5. **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):** As a member of the World Trade Organization (WTO), Nigeria is bound by TRIPS, which sets minimum standards for patent protection and enforcement. However, TRIPS is not expressly referenced in the Patents and Designs Act and has not been domesticated by legislation.
6. **Patent Cooperation Treaty (PCT) (as modified on October 3, 2001):** Nigeria acceded to the PCT in 2005, enabling international patent applicants to designate Nigeria when filing PCT applications. Although, the PCT has not yet been domesticated by national legislation, applicants are able to file PCT applications at the Trademarks, Patent & Designs Registry.

## Q. 2: WHAT ARE THE REQUIREMENTS FOR AN INVENTION TO BE PATENTABLE IN NIGERIA?

Under Section 1 of the Patents and Designs Act 1970, an invention is patentable in Nigeria if it meets the following three core requirements:

- i. **Novelty:** The invention must be new, meaning it does not form part of the “state of the art” that is, it has not been made available to the public anywhere in the world before the filing date or the validly claimed priority date, whether by written or oral disclosure, use, or any other means.

- ii. **Inventive Activity (Non-obviousness):** The invention must not be obvious to a person skilled in the art. It must not obviously follow from existing knowledge in its technical field, whether in terms of method, product, or industrial result.
- iii. **Industrial Applicability:** The invention must be capable of being manufactured or used in any kind of industry, including agriculture. In other words, it must have practical utility.

Additionally, an improvement upon a patented invention may also be patentable if it satisfies the three criteria above.

**Note on Disclosure at Exhibitions:** *An invention is not considered to have lost its novelty if it was disclosed at an official or officially recognised international exhibition within six months before the patent application was filed in Nigeria.*

### Q. 3: WHO CAN APPLY FOR A PATENT IN NIGERIA?

Under Nigerian law, the right to apply for a patent lies with the statutory inventor, i.e., the first person to file a patent application or validly claim foreign priority, whether or not they are the true inventor.

In practice, the following persons or entities can apply:

- i. **Statutory inventor:** The person who first files a patent application or validly claims a foreign priority is deemed the statutory inventor and holds the legal right to the patent, regardless of whether they are the true inventor. However, where the true inventor is not the applicant, the true inventor has the inalienable right to be named in the patent. This right cannot be waived or modified by contract.
- ii. **Employer/Commissioner of a work:** When an invention is made in the course of employment, or pursuant to a commissioned contract, the employer or commissioner owns the patent rights. However, the employee-inventor is entitled to fair remuneration (beyond salary) if:
  - a. The invention is of exceptional importance, or
  - b. The employee used data or means provided through employment, even if inventive activity wasn't required under the employment contract.

These rights are non-waivable and may be enforced through civil proceedings.

- iii. **A Successor in Title:** A person or entity to whom the inventor (or rightful patent holder) has assigned the invention through a valid assignment or contract can apply in their place.
- iv. **Foreign Applicants:** Foreign individuals or companies can apply for a patent in Nigeria through a local patent agent.

**Note:** *If an applicant obtains the essential elements of a patent application from another's invention and files the application without the inventor's consent, rights in the patent or application are deemed to be transferred to the rightful inventor or their successor.*

**Q. 4: WHAT ARE THE AVAILABLE ROUTES FOR FILING A PATENT APPLICATION IN NIGERIA?**

There are three main routes available for filing a patent application in Nigeria:

- A. **Direct National Filing (Ordinary Application):** This entails filing a patent application directly at the Trademarks, Patents and Designs Registry in Nigeria without claiming any priority.
- B. **Conventional Application (Paris Convention Route):** Nigeria is a member of the Paris Convention for the Protection of Industrial Property. This allows an applicant who has filed an earlier patent application in another Paris Convention country to file in Nigeria within 12 months, claiming the priority of that earlier application.
- C. **PCT National Phase Entry (Patent Cooperation Treaty Route):** Nigeria is a contracting state of the PCT; applicants can enter the Nigerian national phase based on a PCT application that designates Nigeria.

**Q. 5: WHAT IS THE PROCEDURE AND REQUIRED DOCUMENTATION FOR FILING A PATENT THROUGH EACH OF THESE ROUTES IN NIGERIA?****A. Direct National Filing (Ordinary Application)**

A direct national patent application in Nigeria is governed by Section 3 of the Patents and Designs Act. The application must be made to the Registrar of Patents at the Trademarks, Patents and Designs Registry and must comply with the following formal requirements:

Application: Every patent application must include:

- i. **The applicant's full name and address;** If the applicant resides outside Nigeria, an address for service within Nigeria must also be provided.
- ii. **A description of the invention:** This must disclose the invention clearly and completely enough for a person skilled in the relevant field to carry it out. It may be accompanied by plans and drawings, where appropriate.
- iii. **One or more claims:** The claims must define the scope of protection sought and must not exceed the limits of the description.

Documents to Accompany the Application:

- i. Prescribed filing fee
- ii. Declaration by the true inventor (if the applicant is not the inventor), requesting to be mentioned in the patent and stating the inventor's name and address.
- iii. **Power of attorney:** Where the application is made through an agent, a signed power of attorney must be submitted. No legalisation or certification is required.

**Unity of Invention Requirement:** The application must relate to one invention only, but may contain:

- i. Multiple claims for products, processes, and applications of the same invention.
- ii. Claims covering means of working the processes, the resulting products, and their applications.

## B. Conventional Application (Paris Convention Route):

In addition to the standard documentation required for direct national filings, the following additional requirements apply:

- i. **Written Declaration of Priority:** The applicant must include a written declaration as part of the application, specifying:
  - The date and application number of the earlier filing;
  - The country in which the earlier application was made; and
  - The name of the applicant who filed the earlier application.

This declaration must be submitted at the time of filing the Nigerian application.

- ii. **Certified Copy of the Earlier Application:** Within three months of filing the Nigerian application, the applicant must submit a certified copy of the earlier application. This copy must be issued or certified by the Industrial Property Office (or equivalent authority) in the country where the priority application was originally filed.

## C. PCT National Phase Entry (Patent Cooperation Treaty Route)

- Foreign applicants must appoint a local patent attorney or agent registered in Nigeria.
- To enter the national phase in Nigeria under the PCT, an applicant must take specific steps within 30 months from the earliest priority date (or within any granted extension). Nigeria does not require a demand for Chapter II examination (international preliminary examination) to enter the national phase.

### Required Documents

To enter the national phase, the following must be submitted:

- A request for national phase entry.
- PCT international application (a copy of the published PCT application, including the description, claims, drawings, and abstract).
- International Search Report (ISR) and, if available, International Preliminary Examination Report (IPER).
- Translation into English of the international application (if not already in English).
- Name and address of the applicant and inventor.
- Prescribed filing fee
- Power of Attorney

Examination and Formalities: Nigeria operates a deposit system for patents. This means the Patent Registry does not conduct substantive examination of the invention. Once formalities are complied with, the application proceeds to grant.

#### Q. 6: CAN ONE FILE A PROVISIONAL APPLICATION IN NIGERIA?

No, Nigeria does not allow the filing of provisional patent applications. Under the Patents and Designs Act, applicants must file a complete specification that meets all formal requirements at the time of filing. There is no legal framework for filing a provisional application to secure an early filing date.

#### Q. 7: DOES NIGERIA CONDUCT A SUBSTANTIVE EXAMINATION OF PATENT APPLICATIONS?

Patent applications in Nigeria undergo formal examination only. The Registrar does not conduct a substantive examination of the novelty, inventive step, or industrial applicability of the invention.

The Registrar examines the application to ensure it complies with three key requirements:

- a. **Basic filing requirements (applicant's details, description, claims, etc.):** If the application does not comply with basic filing requirements (e.g., missing claims or description), it will be rejected outright.
- b. **Unity of invention (i.e., the application must relate to only one invention):** If the application fails to meet the unity of invention requirement, the Registrar will invite the applicant to limit the application to one invention. The applicant may, within three months, file subsidiary applications for the other inventions disclosed. These will enjoy the same filing date and priority date (if claimed). If the applicant fails to respond, the application may be rejected.  
and
- c. **Proper claim to foreign priority (if applicable):** If the application does not comply with this (e.g., missing priority documents), the Registrar will disregard the foreign priority claim.

If the application satisfies all the above requirements, the patent is granted as filed, without substantive examination of: Patentability under Section 1 (novelty, inventive step, industrial applicability), Sufficiency of disclosure, and whether similar patents already exist.

**Note:** *Patents in Nigeria are granted at the risk of the patentee and without guarantee of validity. This means the validity of a patent can later be challenged in court, particularly if it fails to meet the substantive requirements of patentability.*

#### Q. 8: HOW LONG DOES IT TYPICALLY TAKE TO OBTAIN A PATENT IN NIGERIA?

In Nigeria, obtaining a patent typically takes about 6 months from the filing date to grant. The formal acceptance is usually issued one to two months followed by issuance of the Letters Patent (within approximately 2–4 months). In some cases, delays can extend the timeline to 9–12 months.

### Q. 9: WHAT HAPPENS AFTER A PATENT IS GRANTED?

Once the Registrar completes the examination and is satisfied that the application complies with the law, an **Acceptance Letter** is issued to the applicant. Following acceptance, the **Letters Patent** (i.e., the formal patent certificate) is issued. The granted patent is then entered into the Register of Patents, maintained by the Registrar.

**Patent Publication:** *Although the law requires the Registrar to publish a notification of the grant, in practice this rarely happens. A notable exception occurred in 2021, when a publication of granted patents was made in the Trademarks, Patents and Designs Journal — the first such public record in many years. Since then, however, regular publication has not been sustained.*

### Q. 10: HOW LONG DOES A NIGERIAN PATENT LAST? ARE THERE ANNUAL MAINTENANCE FEES?

Under the Patents and Designs Act, a Nigerian patent has a maximum duration of 20 years from the date of filing of the patent application.

To maintain the patent for its full term, annual renewal (maintenance) fees must be paid, beginning from the start of the second year after the filing date. The renewal fees are calculated from the filing date, regardless of when the patent is granted.

- For **direct national filings**, the first annuity becomes due at the beginning of the second year following the filing date.
- For **convention applications** under the Paris Convention, the Nigerian application is usually filed up to 12 months after the priority date. At the time of filing, the first annuity is already due and must be paid immediately with or shortly after filing.
- For **PCT national phase applications**, the Nigerian filing is typically done 30 months after the PCT filing date. In this case, two annuities are already due at the time of filing and must be settled along with the application.

*In practice, however, the Nigerian Patent Registry typically allows **applicants to pay all annuities at the time of filing or defer annuity payments until after a patent has been granted.** This practice also applies to Convention and PCT national phase entries in Nigeria.*

If renewal fees are not paid when due, the patent will lapse. However, a 6-month grace period is provided during which the patentee can still make the payment with a surcharge. If the payment is made within this grace period, the patent remains valid as if the fees had been paid on time.



**Q. 11: WHAT ARE SOME PRACTICAL STRATEGIES FOR ENSURING SMOOTH PROSECUTION, AND WHAT ARE THE COMMON PITFALLS TO AVOID IN THE NIGERIAN PATENT SYSTEM?**

Practical Strategies	Common pitfalls to Avoid
<p><b>Conduct a Prior Art Search</b></p> <p>Before filing, conduct a thorough national and international search (e.g., using WIPO's Patentscope or Espacenet) to assess whether the invention is truly new. While Nigeria does not conduct substantive examination, this step is crucial to avoid wasting resources on a patent that may later be invalidated.</p>	<p><b>Assuming Automatic Grant:</b> While the process is formal, the Registry can still reject applications for non-compliance with basic formalities or unity of invention requirements.</p>
<p><b>Engage a Skilled Patent Draftsman</b></p> <p>The quality of the claims and description significantly affects the scope and enforceability of a patent. Engage a professional experienced in drafting patent claims that are clear, precise, and well-supported by the disclosure.</p>	<p><b>Vague or Overly Broad Claims:</b> Poorly drafted claims may result in a weak or unenforceable patent. Claims must be tailored to reflect the actual inventive step disclosed.</p>
<p><b>Identify Multiple Inventions Early</b></p> <p>Understand whether your invention includes more than one inventive concept. If so, file a main (parent) application and subsidiary applications. Under Nigerian law, subsidiary applications filed within the Registrar's prescribed period enjoy the same filing and priority dates as the main application.</p>	<p><b>Ignoring the Unity Requirement:</b> Submitting an application with multiple unrelated inventions can lead to rejection. Identify and split such inventions appropriately to avoid delays.</p>
<p><b>Appoint a Registered Patent Agent</b></p> <p>Foreign applicants must file through a licensed Nigerian patent agent. Choose a firm or agent familiar with local registry practices and capable of handling follow-ups and physical checks, which are often necessary due to administrative delays.</p>	<p><b>Missing Priority Claim Deadlines:</b> When filing a convention application, submit the certified priority document within 3 months of filing, or you risk losing the priority claim.</p>



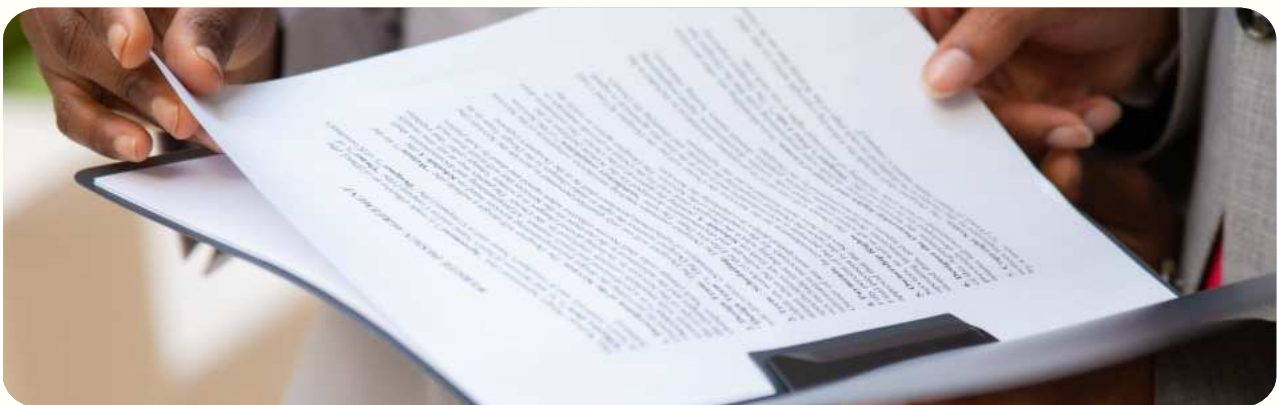
**Q. 12: SHOULD AN APPLICANT CONDUCT A PATENTABILITY SEARCH BEFORE FILING IN NIGERIA?**

Yes, it is advisable, though not mandatory, to conduct a patentability search before filing a patent application in Nigeria. Since the Nigerian Patents Registry does not conduct a substantive examination, an applicant may unknowingly obtain a patent for an invention that is not new or is already protected, making the patent vulnerable to invalidation.

While Nigeria does not currently operate an online searchable database, a manual search known as a **patent equivalent search** can be carried out at the patent registry. This search involves reviewing the register of accepted applications to identify any similar or conflicting inventions. Although the search may not be exhaustive, it helps assess whether the invention is likely to meet the **novelty** requirement under Section 1(2) of the Patents and Designs Act. Applicants can also choose to conduct searches using international databases such as WIPO's PATENTSCOPE.

**Q. 13: CAN ONE OBTAIN REGIONAL PROTECTION THROUGH ARIPO OR OAPI FROM NIGERIA?**

No, Nigeria is not a member of either the African Regional Intellectual Property Organization (ARIPO) or the Organisation Africaine de la Propriété Intellectuelle (OAPI). This means that an applicant cannot designate Nigeria in a patent application filed through ARIPO or OAPI. To obtain IP protection in Nigeria, you must file nationally through the Trademarks, Patents, and Designs Registry in Abuja.

**Q. 14: CAN A NIGERIAN APPLICANT FILE A PCT APPLICATION FROM NIGERIA?**

No, please note that although Nigeria is a contracting state to the Patent Cooperation Treaty (PCT), Nigeria does not operate a Receiving Office for international applications under the PCT. As such, a Nigerian national or resident cannot file a PCT application directly from Nigeria. Instead, the designated Receiving Office (RO) for Nigerian applicants is the International Bureau (RO/IB). However, foreign applicants can designate Nigeria in their PCT application and later seek protection in Nigeria via national phase entry, typically by filing a direct national application with the Nigerian Patent Office, claiming the PCT application's priority.

**Q. 16: IS THE PARIS CONVENTION THE SAME AS THE PCT IN TERMS OF GRANTING PATENTS?**

No, they serve different purposes, and neither grants patents. The Paris Convention is a legal framework that allows applicants to claim a priority date from a first-filed application when filing in other member countries within 12 months. It does not involve international filing or examination; separate national applications must be submitted and examined by each country.

In contrast, the PCT (Patent Cooperation Treaty) is a procedural system that allows applicants to file one international application, which undergoes an international search and preliminary opinion, and is published globally. It extends the time to enter individual countries (up to 30 or 31 months) but also requires separate national phase entries for a patent to be granted. So, while both systems help secure patent rights internationally, neither result in a single global patent, and national filings are still necessary.

**Caution:** *This article is intended for informational purposes only and does not constitute legal advice. For personalized legal advice and assistance, please contact us directly to schedule a consultation with one of our experienced attorneys.*

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