

# Patenting in Kenya

## (1) Introduction

A patent gives the owner the exclusive rights to prevent others from manufacturing, using or selling the protected invention in a given country. A patent is a legally enforceable right granted by the government in return for disclosure of the invention to the public. Patent protection is territorial meaning every country grants patents that are only applicable and enforceable in that country. In other words, patents rights can only be enforced in a country where the patent is granted and in force.

Kenya Industrial Property Institute (KIPI) is responsible for examining and granting patents in Kenya. KIPI operates under the Industrial Property Act 2001. However, it is also possible to obtain a patent through the African regional Intellectual Property Organization (ARIPO), which is a regional intergovernmental organization, based in Harare Zimbabwe and which is mandated to grant patents on behalf of its member states. Currently ARIPO has a membership of 16 countries in Africa.

## (2) What can be patented?

In general, any device, substance, method or process can be patented. For a patent to be granted, the invention must satisfy three requirements, that is the invention must

- be **new**, which means that the invention has not been publicly disclosed anywhere in the world;
- Involve an **inventive step**, that is the invention must not be obvious to someone with knowledge and experience in the technological field of the invention; and
- be **industrially applicable**, in that the invention must be capable of being used in industry

There are certain things that are excluded from for patent protection. These include methods and schemes of doing business, scientific and mathematical formulas, method of treatment of animals and humans and artistic creations.

## (3) How does one obtain patent protection?

Patent protection is not automatic. One is required to file an application with a patent office, which will assess whether or not the invention is patentable. It is therefore important that an invention must not be disclosed to the public before a patent is filed. In order to obtain a patent in Kenya, the applicant is required to submit an application form in KIPI. The form can be downloaded from KIPI's website [www.kipi.go.ke](http://www.kipi.go.ke) . The application form should be accompanied by a full description of the invention, which must illustrate the characteristics of the invention and state the scope of patent rights sought.

If one intends to sell their products in overseas markets, it may be important to consider whether to obtain patents overseas and in which countries. The decision will be based on the market potential in each country.

#### **(4) Fees**

Patent costs vary from case to case and increase significantly if one seeks patents overseas. The cost may also vary if the applicant uses the services of patent agents, who have their own set of fees.

To file an application in Kenya, at a minimum the following fees are applicable:  
Filing fee of Ksh. 3000/, which is due when the application is filed;  
Publication fee of Ksh. 3000/, which is due after 18 months from the filing date;  
Examination fee of Ksh. 5000/, which is due within 3 years from the filing date;  
Grant fee of Ksh. 3000/, which is due once the patent has been accepted for grant.

#### **(5) Examination process**

KIPI is required to assess or examine the patent application to ascertain that it meets the requirements of the Industrial Property Act 2001. Examination is not automatic, and the applicant must request within 3 years for the patent application to be examined. Patent applications are often not accepted in their initial form. The Institute informs the applicant of any deficiencies and gives the applicant an opportunity to make changes to the application. Frequently, problems occur because the application is either not clear, or the applicant is seeking protection for something that is already known. When the Institute is satisfied that the deficiencies have been corrected, the application is accepted and a patent certificate is issued.

#### **(6) Term of a patent**

The term of patent protection in Kenya is 20 years. This term is not renewable and once the term has expired, the invention is longer protected and can be exploited by anyone. The law requires the patent to be renewed every year for the entire duration of protection and if the patent is not renewed the rights lapse.

#### **(7) Problems when applying for a patent**

Many patent applications are not successful for one or more of the following reasons:

- The patent application does not describe the invention properly;
- The invention is not new because the applicant disclosed it to the public before applying for a patent.
- The invention is not new when compared with things that are already known. For example a similar invention may have been published in an earlier patent document;  
or
- The application is for something that is not patentable such as a principle, idea or concept rather than its practical adaptation.

Many applicants also abandon their patent applications because they are not sure that the invention will be commercially successful, or they are not prepared to pay the cost necessary to obtain a patent; or they do not have sufficient knowledge of the patent system to respond to problems that may arise, for example in the examination phase.

## **(8) Avoiding problems**

The best way to avoid some of these problems is to make informed and realistic decisions about your intellectual property. You need to consider the business viability of your invention before you spend money seeking patent protection. You need to develop a business plan that includes all the costs of commercializing your invention, including development, manufacturing, marketing and patenting costs, as well as sales and revenue forecasts. You should consider how you will use and enforce your patent rights and whether another type of intellectual property right or strategy might be more effective.

However if you are confident that your invention will be a success you may decide that it is worth having a strong patent protection to support your future investment, the cost of patenting and obtaining professional patent advice will often be smaller than the amount you invest in developing, manufacturing and marketing your invention.

You should try to get as much information about the patent system as you can. You may get more information on KIPi's website or other patent office websites such as ARIPO, WIPO, United States Patent and Trademark Office, and European Patent Office.

A search of patent documents will also give you an idea of the level of details required in a patent application.

## **(9) Importance of Patent information**

More than 70% of the world's technical information is published only in patent documents. Therefore, whether your interest is in research or product development, patent information is a resource that one cannot afford to ignore. Patent information is useful in the following ways:

- It can help you to avoid wasting time and money duplicating work already done by other people.
- It can help you identify technology that is in the public domain because it was not patented in Kenya or the patent has expired.
- Technical information about your competitors' products or processes might be published in a patent years before the product appears on the market.
- It can help you to keep an eye on trends in technology and emerging key players.
- It can help you to avoid infringing someone else's patent.

## **(10) KIPi on the internet**

KIPi internet site [www.kipi.go.ke](http://www.kipi.go.ke) offers helpful information on patents and other intellectual property rights such as trade marks, industrial designs and utility models.

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## (11) Statistics

### Number of patents granted in Kenya since 1914

Between 1914 and 1989 a total of 3920 patents were registered under the Patents and Designs Registration Act CAP 508 by the Registrar General, AG chambers. CAP 508 was repealed in 1989 upon enactment of Industrial Property Act CAP 509, which established KIPO, the predecessor of KIPI. CAP 509 was in turn repealed in 2001 when the current Industrial Property Act 2001 came into force.

ARIPO as used herein means Africa Regional Intellectual Property Organization. ARIPO is a regional intergovernmental Organization headquartered in Harare Zimbabwe, and is which mandated to grant patents, utility models and designs on behalf of its member states. For more information on ARIPO, visit [www.aripo.org](http://www.aripo.org)

Year of grant	No of patents granted by KIPI	No of Patents granted by ARIPO	Total
1985	As explained above	1	1
1986	As explained above	1	1
1987	As explained above	7	7
1988	As explained above	23	23
1989	As explained above	34	34
1990	0	42	42
1991	0	53	53
1992	0	66	66
1993	0	66	66
1994	2	79	81
1995	1	68	69
1996	15	129	144
1997	18	54	72
1998	19	90	109
1999	13	80	93
2000	20	127	147
2001	15	111	126
2002	7	102	109
2003	20	99	119
2004	14	126	140
2005	46	137	183
2006	29	201	230
2007	17	112	129
2008	42	98	140
2009	87	147	234
2010	54	110	164
	<b>419</b>	<b>2163</b>	<b>2582</b>

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**Break down of national applications filed in Kenya between 2002 and 2010 according to country of origin.**

**Note:**

- (1) “National” means that the application was filed in KIPI directly and not through ARIPO.
- (2) “PCT” means that the patent application was filed in KIPI through the Patent Cooperation Treaty. PCT process allows applicants to file a patent application in many Countries. For more information on PCT visit [www.wipo.int/pct](http://www.wipo.int/pct)

**2010**

<b>Application Type</b>	<b>Applicant's Country</b>	<b>Number of Applications</b>	<b>Number of Grants</b>
National Design	Netherlands		2
National Design	Brazil	2	
National Design	Switzerland	1	
National Design	Germany		1
National Design	Ireland	1	
National Design	Kenya	69	39
National Design	Britain	3	6
National Design	South Africa		2
<b>National Design Total</b>		<b>76</b>	<b>50</b>
National Utility Model	Kenya	28	5
<b>National Utility Model Total</b>		<b>28</b>	<b>5</b>
National patent	China	1	
National patent	India		2
National patent	Japan	1	
National patent	Kenya	77	4
National patent	United States		1
<b>National patent Total</b>		<b>79</b>	<b>7</b>
PCT Patent	Austria	1	
PCT Patent	Belgium	1	
PCT Patent	Switzerland	6	3
PCT Patent	China	1	
PCT Patent	Germany	22	17
PCT Patent	France	31	5
PCT Patent	Britain	5	1
PCT Patent	Greece		1
PCT Patent	Ireland		1
PCT Patent	India	4	5
PCT Patent	Italy	1	1
PCT Patent	Japan	30	3
PCT Patent	Korea		2
PCT Patent	Cayman Islands		2
PCT Patent	Nigeria	1	
PCT Patent	Sweden	1	

PCT Patent	Singapore		1
PCT Patent	Britain		1
PCT Patent	United States	13	3
PCT Patent	South Africa	1	1
<b>PCT Patent Total</b>		<b>118</b>	<b>47</b>
<b>Grand Total</b>		<b>301</b>	<b>109</b>

2009

Application type	Applicant's Country	Number of Applications	Number of Grants
National Design	Netherlands		2
National Design	Canada	1	
National Design	Switzerland		1
National Design	Germany	12	
National Design	Israel	1	
National Design	Kenya	76	90
National Design	Britain		2
National Design	United States		5
National Design	South Africa		3
<b>National Design Total</b>		<b>90</b>	<b>103</b>
National Utility Model	Canada	1	
National Utility Model	Kenya	29	2
<b>National Utility Model Total</b>		<b>30</b>	<b>2</b>
National patent	Israel	1	
National patent	India	1	4
National patent	Japan	4	
National patent	Kenya	48	6
National patent	Nigeria		1
<b>National patent Total</b>		<b>54</b>	<b>11</b>
PCT Patent	Australia	3	3
PCT Patent	Belgium	1	1
PCT Patent	Brazil		1
PCT Patent	Switzerland	6	6
PCT Patent	Ivory Coast		1
PCT Patent	China	2	
PCT Patent	Cayman Islands	2	1
PCT Patent	Germany	18	24
PCT Patent	Spain		1
PCT Patent	Finland	2	5
PCT Patent	France	28	14
PCT Patent	Britain	3	3
PCT Patent	Israel	1	
PCT Patent	Isle of Man	1	
PCT Patent	India	7	6
PCT Patent	Italy	1	
PCT Patent	Japan	18	1
PCT Patent	Korea	1	

PCT Patent	Netherlands	1	
PCT Patent	Sweden	1	
PCT Patent	Singapore	1	
PCT Patent	Slovakia	1	
PCT Patent	United States	16	9
PCT Patent	South Africa	3	
<b>PCT Patent Total</b>		117	76
		85	38
<b>Grand Total</b>		376	230

**2008**

<b>Application type</b>	<b>Applicant's Country</b>	<b>Number of Applications</b>	<b>Number of Grants</b>
National Design	Netherlands	4	4
National Design	Switzerland		3
National Design	Egypt	2	
National Design	Kenya	39	33
National Design	Netherlands	1	1
National Design	Britain	2	3
National Design	United States	1	4
<b>National Design Total</b>		49	48
National Utility Model	Germany	1	
National Utility Model	Kenya	18	3
<b>National Utility Model Total</b>		19	3
National patent	Germany		1
National patent	India		1
National patent	Kenya	63	5
National patent	Nigeria		1
National patent	South Africa		1
<b>National patent Total</b>		63	9
PCT Patent	Australia		1
PCT Patent	Brazil	1	
PCT Patent	Switzerland	3	4
PCT Patent	Germany	21	8
PCT Patent	Finland	9	
PCT Patent	France	26	5
PCT Patent	Britain	4	3
PCT Patent	Israel		2
PCT Patent	India	1	
PCT Patent	Italy	1	1
PCT Patent	Korea	2	
PCT Patent	Netherlands	1	1
PCT Patent	Norway		1
PCT Patent	Saudi Arabia		1
PCT Patent	Britain	1	3
PCT Patent	United States	19	3

<b>PCT Patent Total</b>		89	33
<b>Grand Total</b>		220	93

**2007**

<b>Application type</b>	<b>Applicant's Country</b>	<b>Number of Applications</b>	<b>Number of Grants</b>
National Design	Netherlands	4	6
National Design	Switzerland	4	
National Design	Germany		2
National Design	India	17	5
National Design	Kenya	42	16
National Design	Korea		1
National Design	Malaysia	1	
National Design	Britain	2	3
National Design	United States	4	2
<b>National Design Total</b>		74	35
National Utility Model	Kenya	16	2
<b>National Utility Model Total</b>		16	2
National patent	Israel	2	
National patent	India	1	
National patent	Kenya	41	4
National patent	Nigeria	1	
National patent	South Africa	2	
National patent	South Africa		1
<b>National patent Total</b>		47	5
PCT Patent	Switzerland	4	2
PCT Patent	Germany	19	1
PCT Patent	Spain	1	
PCT Patent	Finland	3	1
PCT Patent	France	23	1
PCT Patent	Britain	7	2
PCT Patent	India	1	1
PCT Patent	Italy	1	1
PCT Patent	Japan	3	
PCT Patent	Kenya	2	
PCT Patent	Netherlands		1
PCT Patent	Britain	4	
PCT Patent	United States	15	1
PCT Patent	South Africa	2	1
<b>PCT Patent Total</b>		85	12
<b>Grand Total</b>		222	54

**2006**



<b>Application type</b>	<b>Applicant's Country</b>	<b>Number of Applications</b>	<b>Number of Grants</b>
National Design	Netherlands	3	5
National Design	Brazil	1	
National Design	Switzerland		1
National Design	France		1
National Design	Ireland		1
National Design	India	4	2
National Design	Kenya	54	34
National Design	Korea	1	
National Design	Netherlands		1
National Design	Tanzania		2
National Design	Britain	4	
National Design	United States	5	
<b>National Design Total</b>		72	47
National Utility Model	Kenya	19	4
<b>National Utility Model Total</b>		19	4
National patent	Switzerland		1
National patent	Germany		1
National patent	India		3
National patent	Kenya	41	5
National patent	United States	1	1
National patent	South Africa	1	
<b>National patent Total</b>		43	11
PCT Patent	Netherlands	1	
PCT Patent	Canada		1
PCT Patent	Switzerland		2
PCT Patent	Ivory Coast	1	
PCT Patent	China		1
PCT Patent	Germany	8	2
PCT Patent	France	8	
PCT Patent	Britain	1	2
PCT Patent	Israel	1	
PCT Patent	India	2	2
PCT Patent	Italy		2
PCT Patent	Japan		1
PCT Patent	Cayman Islands	2	
PCT Patent	Netherlands	1	1
PCT Patent	Britain	1	
PCT Patent	United States	13	3
PCT Patent	South Africa		1
<b>PCT Patent Total</b>		39	18
<b>Grand Total</b>		173	80

2005

<b>Application type</b>	<b>Applicant's Country</b>	<b>Number of Applications</b>	<b>Number of Grants</b>
National Design	Netherlands	7	1
National Design	Germany	3	3
National Design	Denmark	1	
National Design	Kenya	102	59
National Design	Netherlands	1	1
National Design	Tanzania	2	
National Design	Britain		1
National Design	United States	1	1
<b>National Design Total</b>		117	66
National Utility Model	Kenya	11	8
<b>National Utility Model Total</b>		11	8
National patent	Australia		1
National patent	Canada	1	
National patent	Switzerland		3
National patent	Germany	1	1
National patent	Israel		1
National patent	India	1	3
National patent	Italy		1
National patent	Japan		1
National patent	Kenya	34	8
National patent	Nigeria	1	
National patent	Russia		1
National patent	Thailand	1	
National patent	United States		11
National patent	South Africa	1	1
<b>National patent Total</b>		40	32
PCT Patent	Australia	1	
PCT Patent	Belgium	1	2
PCT Patent	Switzerland	3	3
PCT Patent	Germany	15	2
PCT Patent	Finland		1
PCT Patent	France	4	
PCT Patent	Britain	1	3
PCT Patent	Israel	1	
PCT Patent	India	1	2
PCT Patent	Italy	1	
PCT Patent	Japan		1
PCT Patent	Kenya	1	
PCT Patent	Netherlands	2	1
PCT Patent	United States	19	1
PCT Patent	South Africa	2	
PCT Patent	South Africa	1	
<b>PCT Patent Total</b>		53	16
<b>Grand Total</b>		221	122

2004

Application type	Applicant's Country	Number of Applications	Number of Grants
National Design	Netherlands	3	
National Design	Germany	2	
National Design	India	5	
National Design	Kenya	44	5
National Design	Netherlands	1	
<b>National Design Total</b>		55	5
National Utility Model	Kenya	13	1
<b>National Utility Model Total</b>		13	1
National patent	China	1	
National patent	India	2	
National patent	Kenya	31	8
<b>National patent Total</b>		34	8
PCT Patent	United Arab Emirates	1	
PCT Patent	Australia	1	
PCT Patent	Switzerland	2	
PCT Patent	Cayman Islands	1	
PCT Patent	Germany	22	2
PCT Patent	Denmark	1	
PCT Patent	Finland	2	1
PCT Patent	France	5	
PCT Patent	Britain	2	1
PCT Patent	Croatia		1
PCT Patent	Israel	3	
PCT Patent	India	1	
PCT Patent	Italy	2	
PCT Patent	Japan	1	
PCT Patent	Korea	1	
PCT Patent	Netherlands	1	
PCT Patent	United States	4	2
<b>PCT Patent Total</b>		50	7
<b>Grand Total</b>		152	21

2003

Application type	Applicant's Country	Number of Applications	Number of Grants
National Design	Germany	3	6
National Design	France	1	
National Design	Indonesia	2	
National Design	Ireland	1	
National Design	Italy	1	

National Design	Japan		1
National Design	Kenya	43	8
National Design	Netherlands		1
National Design	Britain	2	
<b>National Design Total</b>		53	16
National Utility Model	Kenya	12	1
<b>National Utility Model Total</b>		12	1
National patent	Germany	1	
National patent	Britain		1
National patent	India	1	
National patent	Kenya	22	6
National patent	United States		1
National patent	South Africa	1	
<b>National patent Total</b>		25	8
PCT Patent	Canada	1	
PCT Patent	Switzerland	11	1
PCT Patent	China	1	
PCT Patent	Germany	17	2
PCT Patent	Finland	2	
PCT Patent	France	5	2
PCT Patent	Britain	5	1
PCT Patent	Gibraltar	1	
PCT Patent	Croatia	1	
PCT Patent	Ireland	1	
PCT Patent	Israel	1	1
PCT Patent	India	7	
PCT Patent	Italy	2	1
PCT Patent	Korea	1	
PCT Patent	Netherlands	2	
PCT Patent	Singapore	1	1
PCT Patent	Britain	1	
PCT Patent	United States	10	2
PCT Patent	South Africa		1
<b>PCT Patent Total</b>		70	12
<b>Grand Total</b>		160	37

## 2002

Application type	Applicant's Country	Number of Applications	Number of Grants
National Design	Switzerland	1	
National Design	Germany	10	
National Design	Kenya	73	1
National Design	Netherlands	1	
<b>National Design Total</b>		85	1
National Utility Model	Kenya	14	
<b>National Utility Model Total</b>		14	0

National patent	Canada	1	
National patent	India	1	
National patent	Kenya	23	
National patent	South Africa	1	
<b>National patent Total</b>		26	0
PCT Patent	Australia		1
PCT Patent	Canada	1	2
PCT Patent	Switzerland	3	
PCT Patent	Germany	20	2
PCT Patent	Finland	2	
PCT Patent	Britain	3	
PCT Patent	Greece	1	
PCT Patent	India	7	
PCT Patent	Italy	2	
PCT Patent	Japan	2	
PCT Patent	Kenya		1
PCT Patent	Korea		1
PCT Patent	United States	5	
<b>PCT Patent Total</b>		46	7
<b>Grand Total</b>		171	8