HOW TO REGISTER PATENTS IN NAMIBIA

Companies and Patents Registration Office

A Directorate of the Ministry of Trade and Industry

FOREWORD

This booklet is published by the Directorate of Internal Trade, Ministry of Trade and Industry (MTI) and its main object is to inform Namibian patent applicants about the requirements and legal aspects concerning patents protection in Namibia.

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. A patent provides protection for the invention to the owner of the patent.

Patents further provide a means for technological exchange as each patent document describes a new aspect of a technology in clear and specific terms and is available for anyone to read. As such they are vital resources for entrepreneurs, researchers, inventors, academics and others who need to keep up with development in their fields.

To be granted a patent, the invention must be new, it should not have been formerly described, produced or explained to the public. It must be inventive, it should not be obvious or self-evident and it must be applicable to industrial use. It must be practical, reproducible and technologically novel.

If anything is not clear or if you require further information, we shall gladly assist if possible.

Part A: General Information
Where to file the application

Every application for a patent grant, once properly documented, must be filed at the Ministry of Trade & Industry Namibia, Patent Office (which is a unit of the Patents, Trade Marks, Companies and Close Corporation Registration office, in Windhoek.

The application may be brought by hand to:
The Namibian Patent Office
2nd Floor, Block B, Brendan Simbwaye
corner of Goethe & Uhland Street
Windhoek, Namibia

Alternatively, it may be posted to:
The Registrar of Patents,
Namibia Patent Office,
P.O. Box 21214,
Windhoek.

What an invention must meet to be patentable

In order to preliminarily qualify for a patent, an invention must fulfil four important criteria - a standard adhered to, worldwide. These are that the invention must:
(i) be new or novel,
(ii) involve an inventive step,
(iii) be practically viable, and
(iv)meet both statutory and natural laws.

(i) Novelty
This requirement means that the invention must be new or novel. This includes any technology which has ever been published, or disclosed in any form to the public. Some patent systems even limit the period to, about, 50 years: anything disclosed in the last 50 years is unpatentable. Furthermore, unlike abolished practice of the long past, any disclosure in any country and language of the world counts.
An invention is considered to be published, and therefore unpatentable, if its gist is divulged to the public in any means of mass communications such as radio, newspapers, television or even by either a demonstration of how the invention functions.
At two recent occasions, inventors have had to first rush to the radio and newspapers to spill about their valuable new finds, thinking of popularising the newest ideas; but perhaps very much unaware that they are despoiling the patentability of their ideas. If a nice friend gets wind of your successful laboratory work and, perhaps, anonymously discloses it to a mass medium, she/he will have

soiled your invention's patentability with regard to novelty. Therefore the quickest way to disqualify your own valuable invention is to talk about it loosely.

(ii) Inventive step

The proposed invention must not only be new, but it must have an inventive step. Any invention passes this prerequisite, if it displays a noticeable difference between the state of the art known in the field, and that portion which the invention freshly contributes onto this state of the art is the portion above the state of the art by which the particular technology disclosure, is justifiably called an 'invention'.

To explain this requirement clearer, many patent systems expect that the invention must not be obvious to a person ordinarily skilled in the technical field of the invention. WIPO explains that it is essential that this advance or progress be significant and essential, and that it be characterised by the fact that the distance or difference contains new essential elements.

(iii) Practical viability

Additionally, a proposed invention must be capable of practical application. It must be adapted to a practical use in at least one particular field of application whether in the kitchen, industry or elsewhere.

(iv) Conformity to natural and statutory law

Even if qualified for patenting under the foregoing prerequisite, inventions must in addition satisfy statutory and physical laws. Many laws, proscribe certain ideas from patenting, for instance, the British patents.

Excluded are:

- plant varieties or animal hybrids;
- alleged inventions, since the information present is not enough to realize the idea;
- perpetual mobile machines, since they contradict the known laws of thermodynamics by pretending they do useful work without any external source of energy;
- scientific theories and mathematical methods itself, although their practical applications are patentable.
- aesthetic creations, such as sculptures and designs or anything considered as art without any functional effect.
- methods for performing mental acts, such as rules for playing games or doing business. The implements for performing the mental acts are patentable.

Act excludes from patenting:

- any discovery, scientific theory or mathematical method;
- a literary, dramatic, musical or artistic work or any other aesthetic creation;
- a scheme, rule or method for performing a mental act, playing a game or for doing business, or a computer programme;
- the presentation of information

The law, in addition, forbids the patenting of any variety of animal or plant or any biological process for the production of animals or plants, not being a microbiological process or the product of such a process. It further excludes from patenting any invention whose exploitation may encourage offensive, immoral or anti-social behaviour.

Filing fees payable

In order to be valid as from the date when an application is filed at the Namibia Patent Office, an application must accompany the full amount of the filing fee due. This is also true of any other document being filed. If any fee is only partially paid, wilfully or unintentionally, the consequence is that the document is legally deemed not to have been filed, until the full amount of the filing fee is paid. Then the filing date is reckonable only from the date on which the unpaid amount is paid.

Part B: The Application Procedure

Introduction
The Patents Act (Act No. 9 of 1916) and proclamation 17 of 1923

Regarding further international cooperation in patenting Nambia is member of the World Intellectual Property Organisation (WIPO) which governs the Paris Convention for the Protection of Industrial Property (PCPIP) in which the country is a signatory state. One of the famous principles of the patent system around the world is 'priority to patent to first to file' meaning that among more than one patent applicants regarding the same invention, priority for a patent grant will be given to the applicant who was first to file an application.
In patent system nomenclature, the first PCPIP contracting state where the patent application was filed is called convention country' and that application's filing date, when applied to subsequent applications filed in other PCPIP contracting states, is known as the subsequent application's 'priority date'. In Namibian nomenclature, the subsequent application is called a 'convention application' while any application which does not claim any priority date or is disentitled, for some reason (see below), to making the claim is called a 'non-convention application'.

It must be mentioned that this convention arrangement is available to any patent applicant only if all the following factors are fulfilled.
(1) the subsequent application must be filed in a Paris Convention member country within 12 months from the priority date (i.e. the date of filing the parent application);
(2) in support of the priority claim, the applicant furnishes a copy of the patent application, certified by the patent office where the patent application was filed;
(3) the applicant must be either a citizen or an established resident of a PCPIP contracting state.

The three months that follow the advertisement date is reserved as opposition time. Any opposition raised during the time is forwarded to the High Court for hearing and decision. Every patent is granted for 20 years from the filing date of the application. Validity must, however, be renewed every year, excluding the first 3 years.

Documenting the application
An inventor, or his/her successor in title, may file one of two types of patent applications, namely a convention application or a non-convention application. (The difference between them has already been stated.) Every convention application must comprise the following documents before it may be considered complete and ready for further processing by the patent office:

(1) the form of application in Patents Form No. 2;

(2) the complete specification (in duplicate) whose first leaf must be in Patents Form No. 6;
(3) a deed of assignment (optional sometimes, see below);
(4) a priority document.

Whereas (1), (2) and (4) must certainly be filed, (1) and (2) must be filed at the application's filing date. Where (1) shows that the applicant differs from the inventor, the applicant must as quickly as possible file (3) issued in his/her favour by the inventor. A priority document is a copy of the patent application originally filed in a PCPIP contracting state, certified and issued by the patent office of that state.

If, however, the applicant desires to file a non-convention application, instead of a convention application, she/he needs to file the following documentation in order to complete the application.

(a) the form of application in Patents Form No. 1;
(b) Either...
    (i) a provisional specification, which must be followed by a complete specification or
    (ii) a complete specification,
(c) a deed of assignment

In this type of application, a priority document is obsolete. Whereas (a) and (b) must be filed at the first day the application is filed, (c) may be filed later but as quickly as possible. It is necessary only when, as in a convention application, the inventor is actually not the applicant and its purpose, therefore, is to certify that the inventor did assign proprietary title over the invention to the person making the application.

A complete specification is the most important of all documents making up the application and must therefore be filed, as the law requires, for all patent applications: convention or non-convention. Nevertheless, whereas in the case of a convention application the form or application in Patents Form No. 3 must compulsorily accompany a complete specification (in duplicate), a non-convention application in Patents

Form No.1 may be accompanied by either a provisional specification Patent Form No. 2, or complete specification.

Where, however, a provisional specification accompanies Patents Form No. l on filing the application, a complete specification must be filed within 12 months of filing the application. This period may, on request, be extended by a further 3 months - maximum. An application will lapse if a complete specification is not filed within the period stated above.

Part C: How To Prepare The Complete Specification

Legal context

Universal standard requirement for a written application
The worldwide standard prerequisite of the patenting procedure requires any application for a patent of invention to be made in writing. The complete specification is one of the most essential documents in the documentation making up the patent application. This is in the sense that since it alone contains the full description of the invention at hand, it alone answers the inescapable question as to the bounds of the inventor's exclusive rights which arise from the inventor's contribution to the current state-of-the-art.

Need for both full disclosure and claims
Thus, in order to clearly set the bounds (inter alia) the complete specification must therefore fully describe the invention to the inventor's best knowledge as at the time of filing the patent application. The Patent Act specifies, among other aspects, as follows:

That a complete specification shall...
(a) fully describe the invention and the manner in which it is to be performed;
(b) disclose the best method of performing the invention known to the applicant at the time when the specification is lodged at the Patent Office; and
(c) end with a claim or claims defining the subject matter for which protection is claimed.

The universal standard format of a specification
In consequence of this provision, and in keeping with the standard format in which patent specifications are drawn up and filed worldwide, the complete specification must normally contain the following parts: title of the invention, brief introduction of the field of invention, background of the invention, objectives or aims of the invention, brief introduction of the drawings (where the specification contains drawings) a detailed description of the invention, and a set of claims. The next section of this brief explains these various parts in a little more detail. Please note, however, that it is not essential to begin each part in the specification with a heading introducing that part, but in a well written specification as accurately stated as possible.

Complete specification or provisional specification: Which one?
It must be stated that under the Act, the applicant has an option of filing the patent application either with a complete specification or with a provisional specification. If the application accompanies a provisional specification, or any specification which (for lack of qualities specified under the said section 14 of the Act) is classified as a provisional specification, a complete specification (with the said qualities) must be filed within twelve months from the date of filing the "provisional specification" - supported application.

Of course, this period may be extended on request to the Registrar of Patents made before expiry of the initial twelve months. The provision for a provisional specification is meant to afford an early filing date to those inventors who are either still perfecting the invention (but those whose major thrust are so far known to them) and expect to complete the process soon to enable filing a fuller or complete description soon, or who although already possessing the invention's full nature still need a little time for drawing up a proper complete specification.

The parts of a complete specification

Brief introduction on the field of the invention

This part occupies a paragraph on its own having only a few lines (of, perhaps, one or two sentences) since its purpose is, not to detail but, to make a brief introduction of the technical area in which the invention applies Many inventors make use of such starting phrases as "The invention concerns a method..." "The present invention relates to a process of...", "The invention relates to a chemical compound...." and the like wording. The following are two of the numerous examples of formatting this part:

This invention concerns a steering lock for fitting to a motor vehicle having a steering wheel, thereby effectively to immobilise the vehicle by inhibiting rotation of the steering wheel, so as to prevent the vehicle from being properly steered.

The present invention relates to the production of explosives. More particularly, it relates to a method of making an emulsion explosive, and to emulsion compositions for use in the method.

Background to the invention

The purpose of this part is as follows:

(a) to present the level of technical development (i.e. the state-of-the-art) in the field of the invention's application as known at the time of the invention;
(b) to explain any problems that are associated with the use of method of the mentioned state-of-the-art; and
(c) to briefly outline advantages of the invention which are envisaged to overcome the stated shortcomings of the current state-of-the-art.

The idea behind (a) is to set a foundation for the understanding of the invention's contribution (otherwise called the invention's 'inventive step') to and over what society already knows. Closely following this is a statement (b) of any disadvantages of the stated current state-of-the-art which, in the inventor's view, gave rise to the invention. This is for preparing ground for (c) which now outlines the invention's virtues as aiming to overcome these difficulties.

Introduction of any drawings

If the specification includes any drawings, these are introduced in this part. Since the drawings are described in more detail in the part that describes the invention in full i.e. the next part of the specification, this part merely makes very brief reference to the drawings.

This is done by way of explaining the names, for instance, of a drawing's constituent elements which are represented by any numerical on the drawing since, according to Part III of the Patents Regulations, drawings must never contain any descriptive wording (except flowcharts-see "How to prepare drawings" below). Again, this introduction of the drawings may be began by use of standard suitable wording such as 'The invention is illustrated in the accompanying drawings, wherein:' or 'In the accompanying drawings :'. This part, therefore, may begin thus:

The invention is illustrated in the accompanying drawings, wherein:
Figure 1 is a perspective view of a builder's scaffolding embodying one form of bracing element connecting means according to this invention;
Figure 2 is a side elevation to an enlarged scale of one end of a bracing element and associated connecting means of the construction depicted in Figure 1;
Figure 3 is an end elevation of the construction depicted in Figure 2;
Figure 4 is a plan view showing...;
Figure 5 is a sectional view on the line 5-5 of Figure 4

Detailed description of the invention
This is the main part in which the gist of the invention,and the manner of performing it, has to be described in detail to enable a person ordinarily skilled in the inventions' art to replicate the technology only by studying the description. In constructing this part, the applicant must be mindful of requirements of paragraphs (a) and (b) of section 14 (3), quoted in the paragraph on the need for both full disclosure and claims above, which must be fulfilled in this part of the specification.

Drawings, where available, make construction of this Part extremely easier because in explaining both the structure make-up and manner of using it, as that section requires, the applicant must make regular reference to the Figures and the numerals which stand for these Figures' respective constituents or embodiments. It is very essential to note that this Part must fully disclose the invention since no Claim is legally valid which itemises any idea not disclosed earlier in the Complete Specification.

The claims
Amongst documents that collectively make up a patent application, the Specification is the most important of all, and (in a complete specification as opposed to a provisional specification) the Claims Part is the most important area of the entire Specification. This is because the Claims identify specifically the

aspects of the described idea in which the applicant is claiming, so to say, rights of exclusive use for a limited period of any patent sought thereof.

Since this is the most area which clearly defines bounds of what the applicant claims as her/his novel contribution to current knowledge, it is the most essential decider, in infringement suits for instance, whether any person may have infringed a patented technology. Therefore, great care must be spared in constructing them. In consequence, then, section 14 (4) requires as follows: -

The claim or claims of a complete specification must relate to a single invention, must be clear and succinct, and must be fairly based on the matter disclosed in the specification.

Secondly, the validity of any patent runs from the date of the Claims. This date normally is the filing date of the Complete Specification or, where a Provisional Specification preceded the Complete Specification, the filing date of the Provisional Specification provided, in the latter case, that the 2 Claims of the Complete Specification are fairly based on matter disclosed in the Provisional Specification.

In the case in which the Claims refer to improvements made on the invention after filing the Provisional Specification (or after the priority date, in the case of a convention application), the date of any patent grantable on the application by virtue of such Claims would run from the date of filing the Complete Specification itself and neither from that of the Provisional Specification nor, for convention applications, from the priority date. Above all, as section 14 (3) (c) (see the paragraph on the need for both full disclosure and claims) specifies, the Claims Part must appear only at the end of the Complete Specification.

According to that section, claims may number in quantity from one to several. In practice, however, the applicant should preferably list multiple Claims all of which must, collectively, concern the same invention.

Furthermore, as the universal standard practice, applicants list more than one Claim in order to, firstly have a stronger foundation for prevailing against any consequent attack on the patentability of the invention for the validity of any patent. This is done, secondly in order to enhance clarity of what is being claimed. It is often argued that one Claim is naturally a weaker front than a multiplicity of Claims.

The general look of multiple-structured claims is that the scope of the claims tapers from widest to, perhaps, narrowest. Where the applicant lists many Claims, normally the first Claim serves as the main claim wherein the general idea of the invention is defined. Each of the successive Claims may then occupy itself with one aspect or embodiment of the invention. The Claims must not contain any description of the invention’s benefits.