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# GUIDELINES **FOR INTELLECTUAL PROPERTY REGISTRATION**

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## GENERAL INTRODUCTION

The development of the guidelines for the administration of the different forms of Intellectual Property (IP) is inspired by the desire to complement the different provisions of the Law No. 31/2009 of 26/10/2009 on the protection of intellectual property in Rwanda.

By drawing from the several years of experience, the juris-precedence from Rwanda and other countries as well as learning from the best practices of the leading IP offices worldwide, the Intellectual Property Office (Office of the Registrar General) has carefully developed these guidelines to aid in the process of examination and subsequent registration of the intellectual property titles. During the development process of the guidelines, several stakeholders were consulted and their inputs incorporated as and where necessary.

These guidelines are intentioned to provide guidance in the practice and procedure to be followed in processing of the IP applications for the grant and registration of trademarks, industrial designs, patents and utility models as well as voluntary registration of copyright in accordance with intellectual property laws and regulations of Rwanda.

The Guidelines are not intended to, and cannot, add to or subtract from the provisions of the laws or the regulations but to provide on substantial matters of practices otherwise not explained in the law. The Guidelines cannot be expected to cover all possible situations but shall be continually improved as the learning process and legal changes continue to take place.

Last but not least, these guidelines are intended to be used by both the office in the processing of IP and by applicants in understanding the requirements and standards used by the office in the administration of IP rights.

As such, any comments and inquiries about these guidelines are always welcome. It is our utmost desire that you will find these guidelines useful.

**Richard KAYIBANDA**  
**Registrar General**

## CHARTER I. GUIDELINES ON TRADE MARK REGISTRATION

### 1.1 Introduction

The purpose of this document is to provide general guidelines on a full range of issues related to applications for trademark registration.

The intention is that these guidelines be available as a reference document, particularly for the IP Office and IP Attorneys in relation Law N° 31/2009 of 26/10/2009 on the protection of intellectual property rights.

In addition, the registration of marks is governed by a Ministerial Order N° 24 of 17/03/2016 determining fees payable for registration services of intellectual property; the Paris convention on the protection of industrial property and the Madrid protocol on the international registration of trade marks.

### 1.2 Trademark protection

The article 133 of the law defines a trade mark as any distinctive sign such as words, proper names, letters, figures and acronyms; figurative elements such as designs, relief, product forms or the relevant packaging; colors or combinations of colors; any combination of aforementioned signs.

Rwanda IP legislation allows only the registration of signs that are visually perceptible or can be represented graphically, but not an audible signs (sounds) of factory sings (smell) or taste signs.

#### 1.2.1 Purposes of protecting the trade mark

##### 1.2.1.1 What is the purpose of having a trade-mark?

The core function of a trade mark is to identify the origin of the product or services. Consumers who are satisfied with a given product are likely to buy or use the product again in the future.

For this, they need to be able to distinguish easily between identical or similar products.

By enabling companies to differentiate themselves and their products from those of competitors, the company invests a lot of effort in building the quality of the products.

A reliable quality associated to trade mark provides a rich image which draws attention to consumers when they are choosing their preferences. Such influential trade mark gains an economical value which is the property that can be protected against invasion.

In addition, trade mark plays a pivotal role in marketing strategies and advertising of companies to define the image, goodwill and reputation of the company's products in the eyes of consumers.

##### 1.2.1.2 Why should a trade mark be protected?

The protection of a trade mark is granted by providing exclusive right.

The exclusivity right granted is contingent to different kinds of protection, and gives the rights holder the exclusive right to prevent others from using the same or similar signs for identical or related goods or services as those protected by the trade mark in the course of trade without the prior authorisation of the owner.

First, trade mark are intangible assets which have an economic value that is to say that the mark is an asset that can be transmissible and enforceable against infringement by a third party.

Second, the exclusive use in relation to the goods and services in which the mark is registered can be viewed as a safeguard strategy.

Third, the exclusivity fulfils the functionality attributed to the mark.

### 1.3. Acquisition of trademark rights

As per the Rwandan legislation, except the principle of well-known marks, the exclusive right conferred by trade mark protection is acquired by registration as provided in article 141 of the IP Law.

### 1.4 Routes for the registration process

There are several routes for acquiring trade mark rights protection. These include: national route (intellectual property law n0 31/2009 of 26/10/2009) and International route (Madrid protocol).

#### 1.4.1 What is the procedure for applying for a trade mark through the national route?

**Step 1:** A person, company, partnership, joint venture or unincorporated body that intends to apply for the registration of a trade mark may carry out a search to ascertain whether the trade mark exists in the register upon payment of prescribed fees as stipulated by the relevant ministerial order.

**Step 2:** A trade mark application is then filed upon payment of application fees. The application should contain the mark proposed to be used, the specification of goods or services, the name, address and the signature of applicant. If the applicant is a foreign company, a Power of Attorney will be required.

**Step 3:** The application is then examined to determine its registrability and conflict with prior existing registrations /applications.

**Step 4:** If accepted, the application will be published in the Official Gazette of the Republic of Rwanda and the Industrial Property Journal, published electronically on the office website for 60 days from for opposition purposes.

**Step 5:** If there is no opposition after the expiration of 60 days of the advertisement, the Registrar General shall register the trade mark in the Register and issue a certificate of registration.

#### 1.4.2 What is the procedure for applying for a trademark through the international route?

##### Step 1: As a receiving office:

- The applicant must file first the application in his country of origin and get a filing number;
- The receiving office than will support the applicant in filing the Madrid application (forms) following these guidance: the same name of applicant is the same in the basic mark; the reproduction of the mark corresponds to the basic mark; claims that the mark is a color, 3-D, sound, collective, certification or guarantee mark appear in the basic mark; colors claimed are also claimed or appear in the basic mark; designate countries, where the applicant requests the protection.
- Applicant will pay the transmittal fees as set in the ministerial order of tariff;
- The receiving office will transmit the application to the international bureau;
- During the process, the receiving office inform the applicant on the irregularities of the international application.

##### Step 2: As a designated office

- Applications designating Rwanda are received through IPAS (intellectual Property Automation System). These applications are deposited in the international bureau and directed to the national office for further examination;
- The IPO have the obligation to notify the international bureau, the ground of the provisional refusal of the mark within the prescribed period of 12 months. The application is examined on the relative and absolute ground of refusal;
- Applicant have 2 months to submit the statement motivating the acceptance of the mark through a local agent;

- The IPO deliver the registration notice or the final refusal based on the statement submitted by the applicant. International application claiming a priority date is treated as regards to the principle guiding the priority rights and as such, the application will be examined on their relative ground of refusal. Where the application benefiting
- All communication on the provisional refusal on the Madrid application and their final results will be transmitted communicated to both agents and the international bureau for transparency;
- The information in regards to registration status of the Madrid application is public and agent are allowed to collect them, but all registration notices are notified to the international bureau and the applicant can collect them though this channel.

### 1.5 Procedure of local trade mark registration

#### 1.5.1 Third Party Searching (Pre-registration)

IP Office provides information to the prospective applicant on existing marks that may pose a conflict to a proposed mark. The applicant submits the required documents to the office to get search records in terms of availability within 3 working days.

The application should contain the form, the international sub-classification of goods and services, provide a reproduction of the sought mark and the payment slip.

The pre-registration process is an optional step; but the office advises the applicant to first do the search as it helps the applicant to ascertain whether the proposed mark is not yet filed.

However, positive search result does not guarantee the protection; the protection is secured from the filing.

#### 1.5.2 Filing

Trade mark applicant has to submit the application documents to the IP office. The requirements are as follows:

1. Application letter to the Registrar General;
2. Applicant details to be filled in the form (form is provided or found on the Office of Registrar General website);
3. Reproduction of the mark corresponding to the request;
4. A notarized power of attorney in case the trademark owner is a foreigner or if the trademark owner is not an employee of the domestic company.
5. Sub-class specification of goods and/or services.
6. A copy of company certificate (for domestic company only)
7. Payment receipt: The fees charges should be deposited on RDB account in the Bank of Kigali.
8. Regulations in case it is collective and/or Certification mark

#### 1.5.3 Examination

##### 1.5.3.1 Formalities examination

Upon the receipt of the application, the office examines if all required documents have been submitted. If the requirements are satisfied, the office issues a journal receipt within 3 working days from the filling date as a confirmation for filling.

The journal receipt comprises: the filing number, the filing date and all relevant information of the marks (name of the owner and address, representation of the mark, sub-class (es), name of the agent and any claim made in the application. Eg. Color claim, priority claim

Where the office finds that, at the time of receipt of the application, the requirements

have not been satisfied, it issues a formalities incomplete notice inviting the applicant to file the required corrections within a period of seven (7) days, which dates are indicated on the notice.

When the applicant complies with the invitation referred, the office accords the filing date as the date of receipt of the required correction.

If the applicant fails to submit the document within the stipulated time frame, the application is considered as abandoned and it is withdrawn from the registry.

The applicant has to file another application if He/She is still interested in the registration of the trade mark or trade name.

### 1.5.3.2 Substantive examination

In order for a trade mark to be registrable, the examiner shall examine if the proposed mark is capable of distinguishing the goods or services of one undertaking from those of other undertakings.

In that case the proposed mark is examined in regards to its representation as well as in relation to the goods and services applied for.

The trademark must fulfil these criteria to be registrable;

- it is distinctive;
- It is not imitative;
- is not deceptive or misleading.
- it is not descriptive.

### 1.5.3.3 Examination on absolute Grounds of refusal

Absolute grounds refer to the incapacity of marks to be distinctive or graphically presented.

Therefore, a trade mark application is examined in its distinctive character. In order for

a mark to be distinctive, it must not describe any characteristic of the goods or services, such as the kind, quality or intended purpose.

The mark is considered distinctive if it contains a word that is not descriptive for the goods or services, or if that mark contains figurative elements.

### 1.5.3.3.1 Trade Mark Elements

#### 1.5.3.3.1.1 Trade mark with terms/word

Terms merely denoting a particular positive or appealing quality or function of the goods and services should be refused if applied for either alone or in combination with descriptive terms:

#### Example:

1. Domain name ending, such as '.com', only indicate the place where information can be found on the internet and thus cannot render a descriptive or otherwise objectionable mark registrable.
2. Abbreviations of the legal form of a company such as Ltd., GmbH, LLC, PVT. Cannot add to the distinctiveness of a sign.
3. Names of individual persons are distinctive but is will be refused if the name can also be perceived as a non-distinctive term in relation to the goods and services (e.g. 'Baker' for pastry products).
4. A slogan whose meaning is vague or impenetrable or whose interpretation requires considerable mental effort on the part of the relevant consumers is also likely to be distinctive since consumers would not be able to establish a clear and direct link with the goods and services for which the trade mark is protected.

### 1.5.3.3.1.2 Trade mark with figurative/logotype

Figurative marks are the trademarks that consists of just a figure or a figure combined with one or more words. Words in a specific font are also considered figurative.

Figurative element consists of a representation of the goods and services for which the trade mark is protected.

In principle, the said representation is considered to be descriptive and/or devoid of distinctive character whenever it is a true-to-life linked to the goods and services or when it consists of a symbolic/stylized representation of the goods and services that does not depart significantly from the common representation of the said goods and services.

In other cases, the figurative element might not represent the goods and services but might still have a direct link with the characteristics of the goods and/or services. In such cases, the sign will be considered non-distinctive, unless it is sufficiently stylized.

Example: representation of a cow on milk and products and/or milk chocolate products.



### 1.5.3.3.1.3 Trade mark with Common/Non-Distinctive Labels

A figurative sign may be composed of shapes, designs or figures that will be perceived by the relevant public as non-distinctive labels.

In this case, the reason for the refusal lies in the fact that such figurative elements are not capable of impressing themselves on the consumer's mind, since they are too simple and/or commonly used in connection with the goods/services for which protection is sought.

#### Example



The said figurative element represents or at least strongly imply to the ingredients of some of the claimed goods, such as, for example, fruit juices.

### 1.5.3.3.1.4 Trade mark with Pictograms

The use of pictogram are the basic and un-ornamented signs and symbols that will be interpreted as having purely informational or instructional value in relation to the goods or services concerned.

They are not distinctive in relation to the goods or services in respect of which they are used. If the pictogram immediately conveys information about the kind, quality, intended purpose or other characteristics of the goods or services it will also be rejected.

Example: knife and fork in relation to the restaurant

### 1.5.3.3.1.5 Fanciful marks

These marks are inherently distinctive and registrable since the signs are invented or made up signs for example: Google, Second.



#### 1.5.3.3.1.6 Arbitrary marks

The sign is commonly known but it is representing something that has nothing to do with the goods or services it is representing. These marks are distinctive and registrable.

For example, dial mark used for soap. Example of mark lacking the distinctiveness character.

- a) ECO as denoting 'ecological';
- b) FLEX and FLEXI as referring to 'flexible';
- c) MEDI as referring to 'medical'
- d) MULTI as referring to 'much, many, more than one'
- e) MINI as denoting 'very small' or 'tiny'
- f) MEGA as denoting 'big'
- g) SUPER for highlighting the 'positive qualities of the goods or services'
- h) ULTRA 1 as denoting 'extremely'
- i) UNIVERSAL as referring to goods that are 'fit for general or universal use'
- j) GREEN as being 'environmentally friendly';
- k) Premium/PREMIUM as referring to 'best quality'
- l) PLUS as denoting 'additional, extra, of superior quality, excellent of its kind'.

#### 1.5.3.3.1.7 Dimension marks

If the product itself or the product's packaging have a special shape, for example a perfume bottle or a liqueur bottle, you may be able to register it as a three-dimensional mark.

The shape has to be significantly different from what is known on the market for a three-dimensional mark to be registered.

#### 1.5.3.3.1.8 Suggestive marks

Suggestive marks are not as distinctive as coined or arbitrary marks, but may still be considered strong marks. A suggestive mark hints at some function or property of

the product or service, but does not directly describe it.

A consumer is required to use a degree of thought or imagination to ascertain the exact nature of the goods.

Suggestive marks often comprise words that embody desirable qualities or characteristics associated with a product or service—such as efficiency, speed, accuracy, comfort or elegance.

Examples of suggestive marks include **GREYHOUND**<sup>®</sup> for bus services and **CARESS**<sup>®</sup> for body soap.

Therefore, to be register, like a descriptive mark, should be protected only upon a showing that the mark has developed source significance in the minds of consumers and in that sense, the office can request the applicant to demonstrate its secondary meaning and well known.

#### 1.5.3.3.1.9 Colors as marks

There are marks that consist solely of one or more colors used on particular products or their packaging to indicate a connection with certain goods and services.

Distinctiveness of colors marks is dependent on the manner in which they are used. An application for colors marks should indicate the colors making up the trademark.

Where an application for color marks consists of one color, the applicant should also indicate how those colors are applied on the product or product packaging including the pattern or order.

#### 1.5.3.3.1.10 Composite marks

A composite mark consists of two or more elements, some of which may not be registrable individual but the mark may still be distinctive when all elements are looked as a whole.

An unregistrable component mark is subject to disclaimer. However, if a composite mark (or a portion) is unitary, an individual compo-

nent of the mark (or of the unitary portion) that would otherwise be registrable need not be disclaimed. Eg **Bookchoice, Maxima-chine, Pulsair...**

#### 1.5.3.3.1.11 Deceptive or misleading mark

There are marks that mis-describe the product in such a way that the name appears to claim that it is what it is not.

The test is to determine if the term to be registered misdescribes the goods or services, if it is so, the examiner inquires if it is deceptive and likely to influence the buying decision of potential buyers.

That is, if potential buyers believe the misrepresentation. If the latter is true, such marks are not registrable unless there is proof of secondary meaning or acquired distinctiveness.

#### 1.5.3.3.1.12 Geographic significance

- a. Geographic deceptive marks; A mark is geographic deceptive if:
  - The primary significance of the term is geographic;
  - The goods or services do not originate from that geographic place;
  - Purchasers are likely to believe that goods or services originate there; and
  - Such purchasers believe would influence the buying decision.

Such marks are not registrable no matter the disclaimer or proof of secondary meaning attached to the term.

- b. Geographic deceptive misdiscriptive marks: A mark is geographically deceptively misdiscriptive if:
  - The primary significance of the term is geographic;
  - The goods or services do not originate from that geographic place; and
  - Purchases are likely to believe that

goods or services originate there.

Such marks may be registered if proof of secondary meaning is shown.

#### 1.5.3.3.1.13 Acquiring a secondary meaning or distinctiveness

As per the national legislation, a trade mark is registered if it fulfils distinctiveness characteristics.

However, for trade mark that is descriptive and have been used for some to the market can get the customer's recognition as to the origin of the mark.

In those cases, the law accords such marks a secondary meaning or acquire distinctiveness through continuous use, therefore they can be registered as distinctive marks.

The policy maker (Minister of trade and industry) is the empowered authority to access and decide whether or not the mark acquires a secondary meaning and the following, not limited aspects can be accessed:

- (1) The market share held by the mark, (2) how intensive geographically widespread and long-standing the use of the mark has been, (3) the amount invested by the undertaking in promoting the mark, and (5) statements from chambers of commerce and industry or other trade and professional association.



#### 1.5.3.3.1.14 Acquiring a goodwill (Well-known marks)

A well-known trade mark in the sense of Art.6bis of the Paris Convention is a trade mark which as a consequence of its extensive use in the market and its advertising has been widely diffused without losing its distinctive character and is well-known by the consumers of those goods or services for which the trade mark is protected.

The Agreement on Trade-Related Aspects of Intellectual Property Rights of 15 April 1994 (TRIPs Agreement) provides additional legal standards for recognition and protection of well-known trade mark.

The Joint Recommendations provides guideline for determination of whether a mark is a well-known. The factors which shall be required in determining if the mark deemed to be consider as a well-known mark are as follows:

1. The degree of knowledge or recognition of the mark in the relevant sector of the public;
2. the duration, extent and geographical area of any use of the mark;
3. the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;
4. the duration and geographical area of any registrations, and/or any applications for registration, of the mark, to the extent that they reflect use or recognition of the mark;
5. the record of successful enforcement of rights in the mark, in particular, the extent to which the mark was recognized as well known by competent authorities;
6. The value associated with the mark.

The article 136 the Law no 31/2009 of 26/10/2009 protects well-known marks against any identical or confusingly similar trademark for identical or similar products of another company.

Therefore, mark in that category have right with or without it registration.

#### 1.5.3.3.1.15 Acquire a protection with disclaimer of element in trademarks

The purpose of a disclaimer is to permit the registration of a mark that is registrable as a whole but contains matter that would not be registrable standing alone, without creating a false impression of the extent of the registrant's right with respect to certain elements in the mark.

A disclaimer is a statement that the applicant does not claim the exclusive right to use a specified element of the mark in a trademark application.

The disclaimer may be included in an application by the applicant or the IPO should request an applicant to add or approved the disclaimer as notified on the acceptance notice.

The word to disclaim would read as follow:

- For a composite mark: **"the registration of this mark shall give no right to the exclusive use of the word...."**
- Here, the applicant or the office can disclaim the descriptive aspect of the mark
- A combination of many descriptive elements associated with a figurative elements or not: **"the registration of this mark shall give no right to the mark, separately and apart of the mark as a whole"**

If an applicant has been requested to disclaim or to consent to the disclaimer as regards to the notice submitted by the office and fails to comply with the examining authority, the office must refuse the trade mark application.

An unregistrable components of trade names or company names shall be disclaimed. Eg Martin's famous pastry shop

If the trade mark consists entirely of a slogan that is generic, merely descriptive, merely informational, of that is otherwise not being used as a mark, registration must be refused. Eg. Holding America's Freshest Ice Cream for Flavored ices, ice cream etc..

if an unregistrable slogan is a component of a mark with registrable matter, the office must require that the slogan be disclaimed.

#### 1.5.3.4 Relative grounds of examination

##### 1.5.3.4.1 Confusing similar to another mark

The applicant's mark can be refused if it's imitative in the sense that it is identical with, or confusingly similar, to a trade mark or trade name which is well known to the market, or similar products of another company, or constitutes a translation of this trade mark or trade name.

The similarities can be found as well to a trade mark belonging to another owner and which is already filed for registration or registered mark.

##### 1.5.3.4.2 confusing similar to another trade name

Trade name means a name or designation identifying and distinguishing the company of a natural person or a legal person; It often ends with Limited, enterprises or other similar titles that denote the legal character of the company.

The national IP law protects trade names against any unlawful use be it in the form of a trade name, mark or collective mark, in the same way as any use of a similar trade name or a similar mark likely to mislead the public.

The Office must examine the trademark or trade name submitted in the IP registry versus the company names in the company registry to avoid any confusion or mislead the public on the name and goods and service in relation.

#### 1.5.3.5 Examination on the ground of Goods and Services

The Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks provides a widely accepted system of classification of goods and services.

##### 1.5.3.5.1 Description of the Goods and services

The goods and/or services in an application should be described clearly, with specification, to determine the extent of protection sought.

The Office avails to the public and the applicant the latest version of nice classification as published by the world intellectual property organization every year.

The description of goods/services selected and utilized by the applicant should be examined if they are precise and concise.

If the listed goods and services falls within the NICE classification description, they are accepted, otherwise if they are unclear and broad, the office shall request correction from the applicant.

The following are points to be considered when the applications are submitted:

- a) The use of class headings is discouraged. Applicant must use sub classes (specifications);
- b) The use of **"All Goods in Class"** is not allowed as a permitted definition of goods or services in applications, because, among other things, classifications may change over time, thereby creating ambiguity as to the scope of protected goods;
- c) The use of the words **'namely'** or **'being'** is acceptable but must be understood as a restriction to the specific goods and services to mean that the application only covers specification of product.... and not any other type of the same goods and services. **For example, clothes, namely shoes in Class 25 means that the application only cov-**



### ers shoes and not any other type of clothes;

- d) The expression 'in particular' can also be accepted as it serves to indicate an example of the goods and services applied for. For example, clothes, in particular shoes means that the application covers any kind of clothes, with shoes being an example;
- e) The term 'and/or' to mean that both goods/services referred to fall in the same class;
- f) The use of commas is used to indicate the items within a similar category or expression;
- g) The use of a semicolon means a separation between expressions. Example, flour and preparations made from cereals; bread, pastry and confectionery in Class 30;
- h) The use of abbreviation is acceptable if the abbreviation is well known in the field of activity but the examiners will carry out search in order to determine whether the abbreviation needs to be expanded in full;
- i) To applicant who wants to protect all goods or services of a particular class, he or she must indicate this by listing these goods or services explicitly and individually;
- j) Trade marks cannot appear within a list of goods and services as if they were a generic term or a category of goods. The office will object to the inclusion of such terms and request that they are replaced by or will be requested to replace it by a synonym for the goods or services in question;
- k) The terms fittings and parts; components and accessories as combination or separately are not acceptable unless if they are identifying factors such as characteristics, purpose and/or identifiable market sector.

Example: Parts and fittings for motor land vehicles is acceptable in class 12

- l) The use of qualifiers such as 'the like', 'ancillary', 'associated goods', 'and related goods' or 'etc.' in a list of goods or services is unacceptable, since they do not comply with the requirements of clarity and precision.

#### 1.5.4 Issuance of the substantive examination results

The office should examine the application and issue a notification of objections or acceptance to the registration within a reasonable period of 30 calendar days i.e., before the publication, as the latest period for issuance of the first official action.

The applicant is provided a time period of 30 calendar days to respond to any objections (request for correction of the information) issued by the Office. Corrections, which might request by the office are:

- i. Spelling errors;
- ii. Correction of misuse of classifications;
- iii. Correction of mark representation;

The office should also examine the application as regards to the absolute and relative ground of refusal and issue an acceptance or a refusal notice.

The applicant is provided a time period of 30 calendar days to respond to any objections on the disclaim the absolute ground of refusal.

The substantive examination of such trade mark will be postponed to the following month after the submission of the correction.

Applicants are allowed to appeal the refusals based on the absolute and relative grounds in the office until the policy maker will nominate the members of the council of appeal commission as provided in the Ministerial Order **N°07/10/Minicom** of **25/08/2010** determining the structure and functioning of the Council of Appeal in charge of settling disputes related to intellectual property.

#### 1.5.5 Publication

After the acceptance is issued to the applicant, the Office published the accepted trade mark to the Republic of Rwanda and Industrial Property Journal for 60 days. Applications, which are refused are not published in the gazette or office website.

During the 60 days of advertisement, any interested person may oppose to the registration on the grounds that the proposed mark didn't fulfil one or more of registration requirements.

For consistency of the publication journal, all publication may be published within a week of the end of each month, except issue encountered in the publication process out of the control of the office.

#### 1.5.6 Opposition

The opposition to the registration of a mark is received when it fulfils the prescribed requirements as provided under article 146 of the IP Law n° 31/2009 of 26/10/2009 and article 4 of the Ministerial Order N°24 of 17/03/2016 determining fees payable for registration services of intellectual property.

The opposition request and its grounds are transmitted to the applicant, who shall, within 14 calendar days send to the office a response explaining the grounds on which the application is based.

In the absence of such a response, the applicant shall be considered to have abandoned his/her application. Particular circumstances can be considered and examined by the office to extend the opposition period (60 days) and the dates of submission of statements.

Where the applicant sends a counter statement, the office shall transmit a copy of that response to the opposing party and, after hearing the parties, if one or both of them wish to be heard, and examining the substantive issues, shall decide whether it is appropriate to register the mark or not.

The office accepts two rounds of submissions from both parties and have a prescribed period of three months to register or reject the mark based on the opposition.

The decision of the opposition is transmitted to both parties and registered in the above file.

#### 1.6 Matters excluded from registration as mark

The article 140 of the law prohibits any person to adopt, in relation with products or services, a trade or Service mark which:

1° is contrary to public order or to morality;

2° reproduces, imitates or contains among its features a coat of arms or armorial bearing, flags or other emblems, a name or abbreviation or initials of the name of official sign or hallmark and guarantee of a State or intergovernmental organization set up by an international convention, unless authorization is given by the empowered authority of such a State or organization.

However, any applicant can file a trade mark application in regards to the point 2, when an agreement was settled between both parties on the use of that mark.

#### 1.7 Registration of Trade mark

The article 147, provides the way the trademark application is registered. If the application has been accepted by the office and it has been published for 60 days without opposition or where opposition proceedings are conducted in favor of the applicant, the Office shall register the mark and issue the certificate to the applicant and as per the IP law, the registered mark shall be published as reference to the registration.

Certificate with e-signature and stamp are generated by the automation system. The certificate comprises all important indications to identify the owner, his address, the IP in relation, the filing date and the renewal date or the extension of rights.

## 1.8 Post registration process

### 1.8.1 Renewal Period

A trade mark has an unlimited validity, but subject to a renewal every 10 years as regards to the article 153. The calculation of the renewal period is ten (10) years from the filing date of the application for registration.

Upon request, the registration of a mark may be indefinitely renewed for consecutive periods of ten years each, if the owner pays the prescribed renewal fee required to extend the period.

A grace period of ten (10) months shall be granted for the payment of the renewal fee after the deadline, subject to payment of the prescribed surcharge (refer to the client charter).

Where the renewal fee is not paid in accordance with the provisions of this article, the application of the mark registration shall be considered to have been withdrawn or shall lapse.

### 1.8.2 Invalidation of trade mark

According to the article 148 of the law, any interested person may request the competent court to invalidate the registration of a mark. The final court decision can confirm or invalidate the mark, and which decision is kept in the registry.

### 1.8.3 Removal of trade mark on ground of non-use

According to the article 149, any interested person may request the Office of the Registrar General within Rwanda Development Board to remove a mark from the register, for a product or service for which it is registered, on the grounds that, following its registration and up to one month prior to submission of the request, the mark has not been used by the registration owner or by a licensee for an uninterrupted period of three years (3) or more.

#### 1.8.3.1 Genuine use of the trade mark

The use of the mark in Rwanda legislation is not indicated, however the following and not limited list can be retained as a genuine use of the mark;

- Evidence of sale of the products;
- License on the mark;
- images, such as photographs, showing the trade mark applied to the goods, or specimens of packaging, tags or other labels bearing the trade mark;

#### 1.8.3.2 Not genuine use of trade mark

The following will not be retained as a genuine use of the mark:

- Internal use is not sufficient. Even genuine efforts within a business to get products ready for sale are not enough (e.g. the hiring of local staff). It is only the use of the mark in public that counts.
- Distribution of promotional items as a reward for the purchase of other goods and to encourage sales of the latter;
- Use during purely private events, or in advertising or announcements of such events, because these constitute private use.

#### 1.8.3.3 Circumstances often the use of trade mark

Non-use can be justified in the case of force majeure, and any other circumstance that is not due to fault or negligence on the part of the proprietor of the mark, such as import restrictions or special legal requirements within the country can be retained as particular circumstances restraining the use of the mark.

#### 1.8.3.4 Procedures to cancel the trade mark on the ground of none use.

The application to cancel the trade mark on the basis is received with the prescribed requirements as provided in the Law n° 31/2009 of 26/10/2009 on the protection of intellectual property rights.

The request to cancel the trade mark request and their grounds are transmitted to the owner of the trade mark in 7 calendar days, who shall, within 30 calendar days send to the office a counter statement with the ground on the use of the trademark or a particular circumstances preventing its use.

Where the applicant sends a counter statement, the office shall transmit a copy of that response to the opposing party and, after hearing the parties, if one or both of them wish to be heard, and examining the substantive issues as regards to the matters.

The office accept two submissions rounds from both parties and have a prescribed period of three months from the first notification to party to decide whether it is appropriate to cancel or maintain the trade mark in the register registry.

The decision of the opposition is transmitted to both parties and register in the above file.

#### 1.8.4 Registration of any amendment of trade mark

An amendment of a trademark is a formal or official change made on trade mark, which may comprise; a change of name; a change of address an assignment; change of class over the mark; change of agent service.

Applicant of the amendment can therefore add, remove, or update parts of the mentioned elements. However, the amendment of the trade mark (logo and the composite) is not allowed and this is subject to a new application.

Where the applicant submits the amendment of class, the request must pass the substantive exam and the publication;

Where the request for recording of a change is not filed in accordance with the requirements, the Office shall invite the person who filed the request to remedy the deficiencies of the requestor to file the relevant evidence within 7 days counting from the day of receipt of the invitation.

Where the person who filed the request complies with the invitation within the prescribed time limit, the Office shall issue a decision on the recording of the change.

On request, the time limit laid down may be extended for not more than 30 days, if the applicant justify a particular circumstance that often the submission of the evidence or additional documents.

Where the person who filed the request does not comply with the invitation referred within the prescribed time limit, the request shall be rejected by a decision.

Where the request for the recording of a change relates to several applications, the applicant of which is the same person, or to several registrations of a trade mark, the holder of which is the same person, a single request may be filed, provided that the application or registration numbers of all the applications or registrations concerned are indicated in the request.





However, the fees are payable separately to maintain the consistency of the process and for audit purposes.

If the recording of a partial transfer is requested, the Office maintain the original application and proceed for a partial transfer of the mark that covers the goods or services in respect of which the transfer has been made.

Where the transfer concerns goods or services falling under a general term, the general term shall be used in all the new lists of goods or services to which it is transferred and it shall be restricted by appropriate additions in such a way to avoid any overlapping of the lists of goods or services.

A complete copy of the files of the original application or registration shall become a part of the files of the amendment applications and a copy of the request for recording of the transfer shall become a part of the files of the original application or registration.

The procedures initiated in respect of the original application or registration of a trade mark shall maintain the initial registration number in the automation sys



## CHAPTER 2. GUIDELINES ON THE REGISTRATION OF PATENT ON INVENTION AND UTILITY MODEL

### 2.1 Introduction

These guidelines give instructions as to the practice and procedure to be followed in the various aspects of processing patents and utility model applications within the Rwanda Jurisdiction in accordance with the Rwanda Intellectual Property Law No. 31/2009 and the relevant ministerial orders.

Adherence to the international and regional treaties, such as Patent Cooperation Treaty and Harare protocol, the rules made and the administrative instructions issued thereunder are to be observed in dealing with international and regional patent applications as far as the same are given effect under the Intellectual property law and any amendments thereafter.

The Guidelines are not intended to, and cannot, add to or subtract from the provisions of the Law or the Regulations.

They are meant to assist the examiners to consistently apply the Law and the Regulations to the examination procedure, and applicants to comply with requirements, but they cannot be expected to cover all possible situations.

### 2.2 International treaties

Rwanda is a member of a number of international treaties and conventions in the field of intellectual property.

Such instruments have a direct bearing on the procedures and standards adopted in dealing with industrial property matters. The treaties and conventions include:

#### 2.2.1 Paris Convention

The Paris Convention for the Protection of Industrial Property contains provisions in regard to national treatment and right of priority which are domesticated in the intellectual property law.

#### 2.2.2 Trade Related Aspects of Intellectual Property Right (TRIPS) Agreement

This is part of the multilateral trade agreements made under the general agreements in tariffs and trade (referred to as the GATT Agreement).

It covers a wide range of intellectual property aspects and sets out the minimum standards of protection to be provided by each member of the World Trade Organization (WTO).

#### 2.2.3 Patent Cooperation Treaty (PCT)

Patent Co-operation Treaty (PCT) is a system for filing international patent applications. It is administered by the World Intellectual Property Organization (WIPO). Under the PCT, an applicant can file a patent application in all the member countries through a single application.

#### 2.2.4 Harare Protocol

The Harare Protocol is administered by the African Regional Intellectual Property Organization (ARIPO). The protocol empowers ARIPO to grant patents and register industrial designs and utility models on behalf of the contracting states.

### 2.3 Definition of patent and utility model

#### 2.3.1 Definition of a patent of invention and utility model

A patent is a document, issued upon application, by the Registrar office in a government office, which describes an invention and creates a legal situation in which the patented invention can normally only be exploited (manufactured, used, sold, imported) with the authorization of the owner of the patent. "Invention" means a technical solution to a specific problem in the field of technology.

An invention may relate to a product or a process. A utility model provides protection of



minor inventions through a system similar to the patent system. Recognizing that minor improvements of existing products, which does not fulfill patentability requirements, may have important role in a local innovation system.

For the purpose of this document, patent shall be used to mean both patent and utility model, unless where a utility model has been explicitly mentioned.

### 2.3.2 Purpose of patent and utility model protection

A patent is the right granted by the Registrar Office to an inventor to exclude others from commercially exploiting the invention for a given period (20 years for patents and 10 years for utility models) from the filing date in return for the disclosure of the invention.

The disclosure of the invention is thus an important consideration in any patent granting procedure as it makes available technical information to the public in order to promote technological growth.

Apart from the exclusivity rights, a patent accords a strong market position to the inventor by reducing competition and establishing a market as pre-eminent player.

A Patent is a source of money through the monopoly accorded to it, the inventor can obtain higher returns.

The inventor can therefore license and sell the invention to another enterprise.

## 2.4 Patent and utility model registration

An invention must meet several criteria if it is to be eligible for patent protection.

These include:

- i) The invention must consist of patentable subject matter,
- ii) Must be industrially applicable (useful),
- iii) Must be new (novel),
- iv) Must exhibit a sufficient “inventive step” (be non-obvious), and
- v) The disclosure of the invention in the patent application must meet certain standards.

Whilst the patent fulfills three criteria, the utility model fulfills the novelty and industrial applicability.

## 2.5 Matters excluded from patentability

The following, as stated in article 18 of the IP law, shall be excluded from patent protection even if they constitute inventions:

1° discoveries, scientific theories and mathematical methods;

2° schemes, rules or methods for doing business, performing purely mental acts or playing games;

3° methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practiced on the human or animal body; nevertheless, this provision shall not apply to products for use in any of those methods;

4° substances, even if purified, synthesized or otherwise isolated from nature.

Nevertheless, this provision shall not apply to the processes of isolating those substances from their original environment;

5° known substances for which a new use has been discovered; this provision shall not apply to the use itself, where it constitutes an invention under item 7 of Article 5 of this law;

6° plants and animals, including their parts, other than micro-organisms and essentially biological processes for the production of plants or animals and their parts, other than non-biological and microbiological processes and products obtained from those processes;

7° animal and plant varieties; as they are protected under a sui-generis system under the Ministry of Agriculture.

8° pharmaceutical products, for the purposes of international conventions to which Rwanda is party;

9° inventions whose commercial use is contrary to public order and to morality.

The commercial exploitation of the following inventions is contrary to public order or morality and, accordingly, those inventions are not patentable:

- an invention that is a process for cloning human beings;
- an invention that is a process for modifying the germ line genetic identity of human beings;
- an invention that involves the use of human embryos for industrial or commercial purposes;
- an invention that is a process for modifying the genetic identity of animals that is likely to cause them suffering without any substantial medical benefit to human beings or animals, or an invention that is an animal resulting from such a process.

A patent will not be granted for an invention whose exploitation would be generally expected to encourage offensive, immoral or antisocial behavior.

## 2.6 Registration process

A submission for a request for grant of a patent or a utility model can be made by the inventor, legal entity or any other person authorized by the applicant.

An application for the grant and registration of a patent or utility model, shall be done by the inventor or another whom he/she has transferred the right. A legal entity might apply for a patent or utility model however the inventor of the patent should be mentioned.

All documents relating to patents or utility models are received at the front office of intellectual property office and the date of receipt is stamped upon receipt of the documents.

After the reception of the application, the office carries out formality examination in order to ascertain that the applicant has fulfilled the required documents and the substantive examination in order to determine whether the application is subject to be patentable.

### 2.6.1 Formalities examination

Before the application is accepted to substantive examination, the office carries out formality examination to determine whether the application is in conformity with the physical requirements.

These physical requirements are:

#### 2.6.1.1 Request

The request for patent shall contain:

1° an application letter to the Registrar requesting for the grant of a patent;

2° the name, address and other information relating to the applicant and to the inventor (s). If there is more than one applicant, the request should set out, in addition to an address for each applicant, a single address at which all the applicants can be contacted.

3° the information relating to the representative, where appropriate;

4° the title of the invention.

5. The request for grant is based on a provisional or a final specification. If it is a provisional specification, the examiner should inform the applicant that the final specification is due within one year from the filing date and that the office will not process the application until the final specification is filed.

### 2.6.1.2 Title of the invention

The title must clearly and concisely state the technical designation of the invention and must exclude all fancy names.

The examiner should take the following into account:

- Personal names, fancy names, the word “patent” or similar terms of a non-technical nature which do not serve to identify the invention should not be used;
- The abbreviation “etc.”, being vague, should not be used and should be replaced by an indication of what it is intended to cover; For example: A method for manufacture of dichlofenac, a lighting device.
- Titles such as “Method”, “Apparatus”, “Chemical Compounds” alone are vague
- Titles do not meet the requirement that the title must clearly state the technical designation of the invention;
- Trade names and trademarks should also not be used; the examiner, however, need

only intervene when names are used which, according to common general knowledge, are trade names or trademarks.

In case the title doesn't meet the above requirements, the examiner shall invite the applicant to submit a corrected title within 7 days, failure of which, the filing date shall be withdrawn.

### 2.6.1.3 Description

With regard to description of the invention, it should be ascertained that it:

- a) States the title of the invention;
- b) specifies the technical field to which the invention relates;
- c) Indicates the background art which, as far as it is known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention; and
- d) Indicates how the invention is industrially applicable.

### 2.6.1.4 Claims

With respect to claims, they should be checked to find out whether they set out:

- a) The technical features that are necessary to define the subject matter of the invention but that are part of the prior art (the preamble); and
- b) The technical features that, in combination with the features referred to in subparagraph (a), define that for which protection is sought (the body). It should be noted that the features set out in the claim under paragraph (b) above should be preceded by an appropriate transition. Such transitions may be words such as “characterized in that”, “characterized by”, “wherein the improvement comprises” or any other words to the same effect.

### 2.6.1.5 Drawings

If the specification contains drawings, the examiner should ascertain that they comply with the following;

- a) That they are not colored;
- b) That the lines of the drawings are black, durable, uniformly thick and well-defined.
- c) That the drawings are such that all de-

tails can be distinguished without difficulty when the drawings are reproduced photographically;

- d) That all features shown in the drawings are disclosed in the description
- e) That the drawings do not include text.

### 2.6.1.6 Abstract

The examiner is to ascertain that the application contains an abstract. If the abstract is present, the examiner should check whether it starts on a new page and whether it includes

- a) The title of the invention;
- b) A summary of the disclosure included in the description.

The summary should indicate the technical field to which the invention relates and the principal use or uses of the invention.

The abstract should not include statements about the merits or value of the invention or about uses that are speculative.

It should not contain more than one hundred and fifty words. It should try as much as possible to capture the most relevant terms defining the invention.

### 2.6.2 Search

After the application meets all formal requirements, the examiner should then automatically conduct search and subsequent substantive examination.

The Purpose of the search and examination is to ensure that the application and the invention to which it relates meet the requirements set out in the relevant sections of the IP Law.

### 2.6.2.1 Interested party request search

Patent search may be requested by any interested party. Depending of the applicant for the search, the reason could be any of the following:

- Prior art searches for providing information as a basis for further research and development
- Gathering business intelligence
- Avoiding patent infringement
- Patent valuation
- Identifying key trends in technology development.

The office conducts the search and provides a response to the applicant within 7 working days, upon payment of the applicable fee.

### 2.6.2.2 Substantive examination search.

For purposes of substantive examination however, the objective of the search is to discover the prior art relevant for the purpose of determining whether and if so to what extent, the invention or innovation to which the application relates is new and involves an inventive step pursuant to the relevant articles of the Law.

The examination procedure and the preparation of the search opinion depend on the search for the knowledge of the state of the art on which assessment of the patentability of the invention is based.

The search must, therefore, be as complete and effective as possible, within the limitations necessarily imposed by issues such as unity of invention and other considerations.

The search is carried out in in-house or external collections of documents or databases, the contents of which are systematically accessible, e.g. by means of words, classification symbols or indexing codes.

These are primarily patent documents of various countries, supplemented by a number of

articles from periodicals and other non-patent literature.

A report should be prepared containing the results of the search, in particular by identifying the documents constituting the relevant state of the art.

The search report serves to provide information on the relevant state of the art.

It must be realized that in a search, 100% completeness cannot always be obtained, because of such factors as the inevitable imperfections of any information retrieval system and its implementation, and may not be economically justified if the cost is to be kept within reasonable bounds.

For applications claiming priority, the examiner should request the applicant to submit copies of any communication received by the applicant concerning the results of any search or examination carried out in respect of the priority application.

The examiner should exercise his judgment, based on his knowledge of the technology in question and of the available information retrieval systems, to omit sections of the documentation in which the likelihood of finding any documents relevant to the search is negligible, for example documents falling within a period preceding the time when the area of technology in question began to develop.

### 2.6.2.3 Procedure prior to searching Analysis of the application.

When taking up an application to be searched, the examiner should first consider the application in order to determine the subject of the claimed invention. For this purpose, the examiner should make a critical analysis of the claims in the light of the description and drawings.

S/He should in particular consider the content of the claims, description and drawings sufficiently to identify the problem underlying the invention, the inventive concept leading to its solution, the features essential to the

solution as found in the claims and the results and effects obtained.

Furthermore, where technical features which are not present in the claims are indicated in the description as essential for the solution of the stated problem, these features should be included in the search.

### 2.6.2.4 Preparation of the search report

After completion of the search, the examiner should select from the documents retrieved the ones to be cited in the report.

These should always include the most relevant documents (which will be specially **characterized** in the report).

Less relevant documents should only be cited when they concern aspects or details of the claimed invention not found in the documents already selected for citation.

The examiner should not cite more documents than is necessary and therefore, when there are several documents of equal relevance, the search report should not normally cite more than one of them.

Subsequently, the examiner prepares the search report.

### 2.6.3 Substantive Examination

The Purpose of substantive examination is to ensure that the application and the invention to which it relates meet the requirements set out in the relevant sections of the Act and the Regulations.

The prime task of the Examiner at this stage is to deal with the substantive requirements, however there he should ensure that formality requirements have been complied with.

In the event that there are deficiencies of formal requirements the applicants should be invited to remedy the deficiencies.

### 2.6.3.1 Formal deficiencies as matter of substantive examination

If the examiner notices any formal shortcomings which have been overlooked during formality examination, he may invite the applicant to remedy these deficiencies. Such deficiencies which the examiner might notice include:

- 1) physical deficiencies of the application, including:
  - a) incorrect sequence and/or positioning of page numbering and/or failure to use Arabic numerals in page numbering
  - b) presence of drawings in the description and/or claims
  - c) presence of erasures and/or alterations in the application documents, such that the authenticity of the content and/or other requirements for good reproduction are jeopardized
- 2) presence of prohibited matter in the application:
  - a) which is contrary to public order.
  - b) constituting disparaging statements.
- 3) failure to comply with the provisions relating to the deposition of biological material, in particular with regard to the correct identification in the application of the depository institution and culture deposit number of the biological material assigned to the deposited material by the depository institution.

### 2.6.3.2 Manner and order of presentation of documents

The manner and order of presentation of the description should be as specified below; unless, because of the nature of the invention, a different manner or a different order would afford a better understanding and a more economic presentation.

- Title
- Abstract
- Background
- Description
- Claims
- Drawings (if applicable)

Since the responsibility for clearly and completely describing the invention lies with the applicant, the examiner should not object to the presentation unless satisfied that such an objection would be a proper exercise of his discretion.

Some departure from the requirements of the law is acceptable, provided the description is clear and orderly and all the requisite information is present. Certain technically simple inventions may be fully comprehensible with the minimum of description and only slight reference to prior art.

### 2.6.3.3 Examination criteria

During substantive examination main areas of focus for the examiner include:

- (i) Sufficiency of disclosure
- (ii) Claims supported by description (enabled)
- (iii) Unity invention
- (iv) Novelty
- (v) Inventive step
- (vi) Industrial applicability



- (vii) Matters excluded from patentability
- (viii) Matters prejudicial to public order, morality, safety and environment

### 2.6.3.3.1 Sufficiency of disclosure

A detailed description of at least one way of carrying out the invention must be given. Since the application is addressed to the person skilled in the art, it is neither necessary nor desirable that details of well-known ancillary features should be given, but the description must disclose any feature essential for carrying out the invention in sufficient detail to render it apparent to the skilled person how to put the invention into practice.

A single example may suffice, but where the claims cover a broad field, the application should not usually be regarded as satisfying the legal requirements on sufficient disclosure unless the description gives a number of examples or describes alternative embodiments or variations extending over the area protected by the claims.

It is necessary that the invention is described not only in terms of its structure but also in terms of its function, unless the functions of the various parts are immediately apparent.

### 2.6.3.3.2 Insufficient disclosure

Occasionally applications are filed in which there is a fundamental insufficiency in the invention in the sense that it cannot be carried out by a person skilled in the art; there is then a failure to satisfy the requirements of article 14 which is essentially irreparable. Two instances deserve special mention.

The first is where the successful performance of the invention is dependent on chance.

That is to say, the skilled person, in following the instructions for carrying out the invention, finds either that the alleged results of the invention are unrepeatable or that success in obtaining these results is achieved in a totally unreliable way.

An example where this may arise is a microbiological process involving mutations.

Such a case should be distinguished from one where repeated success is assured even though accompanied by a proportion of failures, as can arise e.g. in the manufacture of small magnetic cores or electronic components.

In this latter case, provided the satisfactory parts can be readily sorted by a non-destructive testing procedure, no objection arises.

The second instance is where successful performance of the invention is inherently impossible because it would be contrary to well-established physical laws – this applies e.g. to a perpetual motion machine.

If the claims for such a machine are directed to its function, and not merely to its structure, an objection arises that the invention is not industrially applicable.

### 2.6.3.3.3 Novelty

Novelty is a fundamental requirement in any examination as to substance and is an undisputed condition of patentability. It must be emphasized, however, that novelty is not something which can be proved or established; only its absence can be proved.

An invention is new if it is not anticipated by the prior art. “Prior art” is, in general, all the knowledge that existed prior to the relevant filing or priority date of a patent application, whether it existed by way of written or oral disclosure. In Rwanda, novelty shall comprise everything that has been disclosed by prior art anywhere in the world at the time of the application.

The disclosure of an invention so that it becomes part of the prior art may take place in three ways, namely:

- a) by a description of the invention in a published writing or publication in other form;

Publication in tangible form requires that

there be some physical carrier for the information, a document in the broad sense of the term, and that document must have been published, that is to say, made available to the public in any manner such as by offering for sale or deposit in a public collection.

Publications include issued patents or published patent applications, writings (whether they be manuscript, typescript, or printed matter), pictures including photographs, drawings or films, and recording, whether they be discs or tapes in either spoken or coded language.

Today, publication on the Internet must increasingly be taken into consideration.

- b) by a description of the invention in spoken words uttered in public, such a disclosure being called an oral disclosure; Oral disclosure, as the expression suggests, implies that the words or form of the disclosure are not necessarily recorded as such and includes lectures and radio broadcasts.
- c) by the use of the invention in public, or by putting the public in a position that enables any member of the public to use it, such a disclosure being a “disclosure by use.” Disclosure by use is essentially a public, visual disclosure such as by display, sale, demonstration, unrecorded television broadcasts and actual public use.

A document will only destroy the novelty of any invention claimed if the subject matter is explicitly contained in the document.

The subject matter set forth in a claim of an application under examination is thus compared element by element with the contents of each individual publication. Lack of novelty can only be found if the publication by itself contains all the characteristics of that claim, that is, if it anticipates the subject matter of the claim.

Lack of novelty may however, be implicit in the publication in the sense that, in carrying out the “teaching” of the publication, a person having ordinary skill in the art would inevitably

arrive at a result falling within the terms of the claim. Generally speaking, lack of novelty of this kind will only be raised by the Patent Office where there is no reasonable doubt as to the practical effect of the prior “teaching.”

It should be noted that in considering novelty, it is not permissible to combine separate items of prior art together.

### 2.6.3.3.4 Inventive Step (Non-Obviousness)

In relation to the requirement of inventive step (also referred to as “non-obviousness”), the question as to whether or not the invention “would have been obvious to a person having ordinary skill in the art” is perhaps the most difficult of the standards to determine in the examination as to substance.

The inclusion of a requirement like this in patent legislation is based on the premise that protection should not be given to what is already known as part of the prior art, or to anything that the person with ordinary skill could deduce as an obvious consequence thereof.

The expression “ordinary skill” is intended to exclude the “best” expert that can be found. It is intended that the person be limited to one having the average level of skill reached in the field in the country concerned.

It should be noted that novelty and inventive step are different criteria. Novelty exists if there is any difference between the invention and the prior art.

The question, “is there inventive step?” only arises if there is novelty. The expression “inventive step” conveys the idea that it is not enough that the claimed invention is new, that is, different from what exists in the state of the art, but that this difference must have two characteristics.

Firstly, it must be “inventive”, that is, the result of a creative idea, and it must be a step, that is, it must be noticeable.

There must be a clearly identifiable difference between the state of the art and the claimed

invention. This is why, in some jurisdictions, there is the concept of an “advance” or “progress” over the prior art.

Secondly, it is required that this advance or progress be significant and essential to the invention. In order to assess the nature of the differences which are relied upon as constituting an inventive step, account has to be taken of the prior art as a whole.

Thus, as distinct from the assessment of novelty, the subject matter of the claim under examination is compared not with each publication or other disclosure separately, but with the combinations thereof, insofar as each such combination is obvious to the person having ordinary skill in the art.

The combination may be global, whereas the claim may define a set of subject matter known separately, for instance a new form of washing machine including a particular type of motor coupled to a particular type of pump.

For the inventive step to be denied, it is necessary that not only the combination, but also the choice of the combined elements, is obvious. It is the sum of the differences that have been discovered which must be compared with the prior art and judged as to obviousness, and not each of the new elements taken individually, except where there is no technical link between them.

- In most cases, it is useful to assess inventive step in relation to three aspects, namely:
- the problem to be solved;
- the solution to that problem; and
- the advantageous effects, if any, of the invention with reference to the background art.

If the problem is known or obvious, the examination will bear on the originality of the solution claimed. If no inventive step is found in the solution, the question becomes whether or not the result is obvious or whether it is sur-

prising either by its nature or by its extent. If a person having ordinary skill in the art would have been able to pose the problem, solve it in the manner claimed, and foresee the result, the inventive step is lacking.

#### 2.6.3.3.5 Industrial application

The description should indicate explicitly the way in which the invention is capable of exploitation in industry, if this is not obvious from the description or from the nature of the invention.

It is to be expected that, in most cases, the way in which the invention can be exploited in industry will be self-evident, so that no more explicit description on this point will be required; but there may be a few instances, e.g. in relation to methods of testing, where the manner of industrial exploitation is not apparent and must therefore be explicitly indicated.

Also, in relation to certain biotechnological inventions, i.e. sequences and partial sequences of genes, the industrial application is not self-evident. The industrial application of such sequences must be disclosed in the patent application.

#### 2.6.3.3.6 Unity of invention.

A patent application must “relate to one invention only or to a group of inventions so linked as to form a single general inventive concept”.

The second of these alternatives, i.e. the single-concept linked group, may give rise to a plurality of independent claims in the same category.

#### 2.6.3.3.7 Claims Articles

The application must contain “one or more claims”. The claims must:

- define the matter for which protection is sought”;
- be clear and concise”;
- be supported by the description”.

Since the extent of the protection conferred by a patent or application is determined by the terms of the claims (interpreted with the help of the description and the drawings), clarity of claim is of the utmost importance.

#### 2.6.3.3.7.1 Form and content of claims

##### a) Technical features

The claims must be drafted in terms of the “technical features of the invention”.

This means that claims should not contain any statements relating, for example, to commercial advantages or other non-technical matters, but statements of purpose should be allowed if they assist in defining the invention. It is not necessary that every feature should be expressed in terms of a structural limitation.

Functional features may be included provided that a skilled person would have no difficulty in providing some means of performing this function without exercising inventive skill. Claims to the use of the invention, in the sense of the technical application thereof, are allowable.

##### b) form Regulation

The first part should contain a statement indicating “the designation of the subject-matter of the invention” i.e. the general technical class of apparatus, process, etc. to which the invention relates, followed by a statement of “those technical features which are necessary for the definition of the claimed subject-matter but which, in combination, are part of the prior art”.

This statement of prior-art features is applicable only to independent claims and not to dependent claims.

It is necessary only to refer to those prior-art features which are relevant to the invention. For example, if the invention relates to a photographic camera but the inventive step relates entirely to the shutter, it would be sufficient for the first part of the claim to read: “A photographic camera including a focal plane

shutter” and there is no need to refer also to the other known features of a camera such as the lens and view-finder.

The second part or “characterizing portion” should state the features which the invention adds to the prior art, i.e. the technical features for which, in combination with the features stated in sub-paragraph (a) (the first part), protection is sought.

If a single document in the state of the art cited in the search report, reveals that one or more features in the second part of the claim were already known in combination with all the features in the first part of the claim and in that combination have the same effect as they have in the full combination according to the invention, the examiner should require that such feature or features be transferred to the first part.

Where, however, a claim relates to a novel combination, and where the division of the features of the claim between the prior-art part and the characterizing part could be made in more than one way without inaccuracy, the applicant should not be pressed, unless there are very substantial reasons, to adopt a different division of the features from that which he has chosen, if his version is not incorrect.

##### c) Formulae and tables

The claims, as well as the description, may contain chemical or mathematical formulae but not drawings.

##### d) Independent and dependent claims

All applications will contain one or more independent claims directed to the essential features of the invention. Any such claim may be followed by one or more claims concerning particular embodiments of that invention.

It is evident that any claim relating to a particular embodiment must effectively include also the essential features of the invention, and hence must include all the features of at least one independent claim. The term “particular embodiment” should be construed

broadly as meaning any more specific disclosure of the invention than that set out in the independent claim or claims.

Any claim which includes all the features of any other claim is termed a “dependent claim.” Such a claim must contain, if possible at the beginning, a reference to the other claim, all features of which it includes.

Since a dependent claim does not by itself define all the characterizing features of the subject-matter which it claims, expressions such as “characterized in that” or “characterized by” are not necessary in such a claim but are nevertheless permissible.

A claim defining further particulars of an invention may include all the features of another dependent claim and should then refer back to that claim.

Also, in some cases, a dependent claim may define a particular feature or features which may appropriately be added to more than one previous claim (independent or dependent).

It follows that there are several possibilities: a dependent claim may refer back to one or more independent claims, to one or more dependent claims, or to both independent and dependent claims.

#### **2.6.3.3.8 Matters excluded from patentability**

The matters excluded from patentability shall be as discussed and examined at the formalities examination stage. They are provided for by the intellectual property law and are further elaborated in this guideline.

#### **2.6.4 Terminology**

Although the description should be clear and straightforward with avoidance of unnecessary technical jargon, the use of recognized terms of art is acceptable, and will often be desirable.

Little-known or specially formulated technical terms may be allowed provided that they are adequately defined and that there is no

generally recognized equivalent. This discretion may be extended to foreign terms when there is no equivalent in the language of the proceedings.

Terms already having an established meaning should not be allowed to be used to mean something different if this is likely to cause confusion.

There may, however, be circumstances where a term may legitimately be borrowed from an analogous Art. Terminology and signs must be consistent throughout the application.

#### **2.6.5 Physical values, units**

When the properties of a material are referred to, the relevant units should be specified if quantitative considerations are involved. If this is done by reference to a published standard (e.g. a standard of sieve sizes) and such standard is referred to by a set of initials or similar abbreviation, it should be adequately identified in the description.

Physical values must be expressed in the units recognized in international practice, which is generally in the metric system, using SI units.

Any values not meeting this requirement must also be expressed in the units recognized in international practice. Values in the inch/pound system, in general, do not meet the criterion “recognized in international practice”.

For mathematical formulae the symbols in general use must be employed.

For chemical formulae, the symbols, atomic weights and molecular formulae in general use must be employed. In general, use should be made of the technical terms, signs and symbols generally accepted in the field in question.

#### **2.6.6 Proper names, trademarks and trade names**

The use of proper names, trademarks or trade names or similar words to refer to materials or articles is undesirable insofar as such words merely denote origin or where they may relate to a range of different products.

If such a word is used, then, where it is necessary in order to satisfy the requirements of patentability, the product must be sufficiently identified, without reliance upon the word, to enable the invention to be carried out by the skilled person at the date of filing.

However, where such words have become internationally accepted as standard descriptive terms and have acquired a precise meaning (e.g. “Bowden” cable, “Belleville” washer, “Panhard” rod, “teflon” layer, “caterpillar” belt) they may be allowed without further identification of the product to which they relate.

#### **2.6.7 Reference documents**

References to other documents may relate either to the background art or to part of the disclosure of the invention.

Where the reference document relates to the background art, it may be in the application as originally filed or introduced at a later date.

Where the reference document relates directly to the disclosure of the invention (e.g. details of one of the components of a claimed apparatus), then the examiner should first consider whether knowing what is in the reference document is in fact essential for carrying out the invention.

If not essential, the usual expression “which is hereby incorporated by reference”, or any expression of the same kind, should be deleted from the description.

If matter in the document referred to is essential to satisfy the requirements of Section (on sufficient disclosure), the examiner should require the deletion of the above-mentioned expression and that, instead, the mat-

ter is expressly incorporated into the description, because the patent specification should, regarding the essential features of the invention, be self-contained, i.e. capable of being understood without reference to any other document.

#### **2.6.8 Drawings**

##### **2.6.8.1 Form and content**

The requirements relating to the form and content of drawings are set down in Regulation 15. The only question likely to cause difficulty is whether the textual matter included on the drawings is absolutely indispensable.

In the case of circuit diagrams, block schematics and flow sheets, identifying catchwords for functional integers of complex systems (e.g. “magnetic core store”, “speed integrator”) may be regarded as indispensable from a practical point of view if they are necessary to enable a diagram to be interpreted rapidly and clearly.

##### **2.6.8.2 Photographs**

The Act makes no express provision for photographs. They are nevertheless allowed where it is impossible to present in a drawing what is to be shown and provided that they are in black and white, directly reproducible and fulfill the applicable requirements for drawings (e.g. paper size, margins, etc.). Color photographs are not accepted.



### 2.6.9 Publication

If and when the examination process has reached a conclusion favorable to the applicant, that is to say all the necessary requirements as to form and substance have been fulfilled, and assuming no opposition has been filed or that any opposition has been unsuccessful, the Patent Office will grant a patent on the application.

This involves certain actions on the part of the Patent Office.

Firstly, when the patent is granted, the details of the patent are entered into the Patent Register.

The Register usually contains bibliographic data such as the patent number, the name and address of the applicant/patentee, the name of the inventor, the original application number, the filing date, certain priority application details and the title of the invention. It does not contain any technical information.

Additionally, the Register will contain details of when annual fees have been paid, and may also list any details of licenses or assignments which may have been recorded.

The Register can thus be very useful to third parties especially competitors of the patentee, because it reveals the actual status of the patent.

Secondly, the Patent Office publishes in an Official Gazette, a reference to the grant of the patent with the prescribed bibliographic data. The entry in the Official Gazette may also contain the abstract or the main claim and, if there are drawings, the most illustrative drawing.

Thirdly, a Certificate of Grant is issued to the applicant, which is the legal document establishing his ownership of the patent. A copy of the granted patent is also issued at the same time.

Lastly, the Patent Office generally publishes the patent document itself in printed form.

Copies of the patent document are made available by the Patent Office for use by patent libraries, etc., as a source of technical information, and by third parties subject to the payment of a fee. The Offices also publish the application 18 months after the priority date or filing date.

As stated above, in order to keep the patent in force, each year, for the term of the patent, a prescribed renewal or maintenance fee, has to be paid to the Patent Office.

in some countries, where for example a deferred examination system exists, the maintenance fee is payable even before the patent is granted. In some countries the maintenance fee is not required annually but may be paid, for example, say every three to five years.

A small number of countries do not require the payment of maintenance fees.

## CHAPTER 3. GUIDELINES ON THE REGISTRATION OF INDUSTRIAL DESIGN

### 3.1 Introduction

The aim of this set of guidelines is to clarify the principles that govern the registration and protection of industrial design in Rwanda.

These guidelines provide information to designers and businesses on practical steps they can take to access the effective protection on industrial design.

These guidelines should be considered in conjunction with the applicable provisions as set in the **Law No 31/2009 of 26/10/2009** on the protection of intellectual property, the Paris Convention on the Protection of Industrial Property and The Hague Agreement Concerning the International Registration of Industrial Designs that Rwanda is party to.

### 3.2 Definition of industrial design

An industrial design is that feature of a useful article which is decorative or appealing. It may consist of three dimensional features such as the shape or surface of the article, or two-dimensional features such as patterns, lines or colors.

According to article 5 of the IP Law, an **“industrial design and model”** shall be any assembly of lines or colors, and any plastic shape, associated with lines or colors or otherwise, shall be a model, provided that this assembly or shape gives a special appearance to an industrial or craft product and may serve as a model for the manufacture of an industrial or craft product.

#### 3.2.1 Elements of the definition

The legal definition of an industrial design mentioned above prescribes or implies the following elements that the subject matter of an application must comply with in order that it may be admitted as an industrial design:

- (i) it must comprise features of appearance or features that ‘appeal to the eye’, that result from one or several factors in-

cluding shape, lines, colors or combinations thereof;

- (ii) it should be capable of embodiment in a product or article;
- (iii) such product or article should be made in industry or handicraft.

#### 3.2.2 Kind of products that benefits from industrial Design protection

Industrial designs are applied to a wide variety of products from industry and handmade items: these include packages and containers to furniture and household goods, from lighting equipment to jewellery and from electronic devices to textile.

### 3.3 Purpose of industrial design protection

The owner of the registered industrial design has the right to prevent third parties from making, selling, stocking or importing articles bearing or embodying a design which is a copy, or substantially a copy of the protected design, when such acts are undertaken for commercial purposes.

When the industrial design is protected, the owner (person or entity) that has registered the design is assured an exclusive right against unauthorized copying or imitation of the design by third parties.

Protecting industrial designs helps economic development by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts.

### 3.4 Right conferred by the industrial design protection

If you are the owner of a registered design, you have the exclusive right to use the design (monopoly right to prevent any third party use).

You can take action against any design that produces on an informed user the same overall impression as your registered design.

Nobody may use your registered design without your consent.

### 3.5 Registration process

In Rwanda, registrable designs must be novel: i.e. it must not be known or used by anyone other than the applicant, nor described or illustrated in a publication in or outside Rwanda, nor prior registered.

An industrial design shall be taken to be new if it has not been disclosed to the public, anywhere in the world or in Rwanda, by publication in tangible form or, by use or in any other way, prior to the filing date or, where applicable, the priority date of the application for registration.

The product embodying the Industrial design should also be capable of industrial applicability. This condition is complied with to the extent that the product or article that embodies the design may be manufactured industrially or produced by handicraft.

Industrial designs are embodied in functional, utilitarian articles. They provide aesthetic value to those products in order to make them more attractive to the potential buyer.

The design must be able to serve as a model or pattern for the manufacture of an industrial or handicraft product.

To be registered as a design, the product that embodies the design should be capable of being reproduced in substantial quantities in such a way that each of the individual items produced has an appearance identical to the original model.

Products, articles and objects that do not comply with this repeatability requirement because they cannot be produced in identical copies, or cannot be manufactured industrially

or in the context of handicraft activity, is not a product for design registration purposes.

#### 3.5.1 Matters excluded from design protection

According to article 91, non-registrable subject matter is any design that is contrary to public order and morality. As such, public morality refers to moral and ethical standards enforced in Rwanda by law or police work or social pressure and applied to public life.

#### 3.5.2 Examination of industrial design

A person who wishes to register an industrial design shall submit to the Registrar General:

- a) an application letter addressed to the Registrar General;
- b) filing of the prescribed form;
- c) a power of attorney, where the applicant is represented by an agent;
- d) drawings, photographs or other adequate graphic representations of the article embodying the industrial design and an indication of the kind of products for which the industrial design is to be used; and
- e) Proof of payment of the prescribed application fee.

The Registrar General shall record, as the filing date, the date of receipt of the application if at the time of receipt of the application, the prescribed application fee is paid and the application contains the name of the applicant and a graphic representation of the article embodying the industrial design or a specimen of the industrial design.

#### 3.5.2.1 Formalities

The application is examined to ascertain that it meets the filing requirements. The application form is checked to ascertain that the following information is provided:

1. name, nationality, country of residence and contact details of the applicant
2. name and address of the creator (the creator must be a natural person)
3. description of the article to which the design is being applied to.

The accompanying documents are then checked to see if all the required attachments are present: diagrams/ representations, request letters, statement justifying the basis of the applicant's right (if the applicant isn't the creator).

Two or more industrial designs may be the subject of the same classification if they relate to the same class under international classification or to the same set or composition of articles.

#### 3.5.2.2 Classification

To assign a classification the design is assigned a representative description relating to its title. The Locarno Classification is then used to determine the class and subclass of the specific application in line with the international standard for classification of designs.

The Registrar General shall, if satisfied that an application meets the requirements, register the industrial design, publish a reference to the registration, and issue a certificate of registration to the applicant.

#### 3.5.2.3 Substantive examination

##### 3.5.2.3.1 Search

Using the Locarno classification of the design as well as the title of the design, a search is then carried out in IPAS to identify similar designs on the register.

A further search is carried out using a search engine to determine whether similar designs are available on the market and the information of which is easily accessible.

The Registrar General shall publish a notice of an application to register an industrial design in the official Gazette of the Republic of Rwanda.

##### 3.5.2.3.2 Means of identification of a claimed part

In order to define clearly and distinctly the part of a product to which the claimed design applies, and disclaim the other parts of a larger product that will not be covered by the registration, the applicant may identify the relevant part by using the following means:

- Dotted lines and solid lines
- Perimetric boundaries
- Shading and blurring
- Separations and cuts

##### 3.5.2.3.3 Different appearances of a product during use

A product or device may present two or more alternative positions during its normal use. Such is the case, in particular, with articles that require an opening and closing action to be used, or devices that require folding or unfolding to operate.

The device's alternative positions will correspondingly produce different visible

appearances of the product, all of which should be represented in the application.

In this regard, each design should be represented and claimed in all the positions or phases that would be visible by the end user during the product's normal operation.

This would need to be reflected clearly in the representation or drawings submitted for registration, and can be supplemented by an explanatory description.

### 3.5.2.3.4 Sets of claims articles

A set of articles is a group or ensemble of articles that share an identical or similar appearance or design.

The articles that compose the set are normally commercialized as a collection and intended for use together. Unlike a complex product, the individual articles that compose a set are not physically connected or attached to each other and do not require any mechanical joining or mounting to be able to function.

An application for registration of an industrial design that refers to a set of products should be treated as a single design application if the individual articles in fact share features of appearance and are functionally complementary in their use.

Typical designs for sets relate to products such as tableware, cutlery, kitchenware, table textile products, furniture.

The representations filed in the application for registration of a design for a set of products should therefore include separate representations for each of the individual articles and a representation of all the articles in the set viewed as an ensemble.

The view of the set ensemble is required in order that the application may be treated as an application for a single design and not as a multiple application. If the individual articles that compose the set are not clearly presented in a representation that shows all

of them as an ensemble, the examiner should raise an objection with a view to treating the application as a multiple application.

### 3.5.3 Multiple application and unity of design

#### 3.5.3.1 General aspects

Applications for the registration of industrial designs may contain more than one design, and may be referred to as 'multiple applications'.

The number of different designs in a multiple application is not limited. However, the number of designs will have a direct effect on the amount of fees to be paid for the application.

Applications may also refer to 'sets' of products. Sets are defined as an ensemble of individual articles that are intended to be used together and that have common features that give them the same overall appearance. Regarding the representation of sets of products, see the relevant item above.

In a multiple application each design is examined individually for compliance with the applicable substantive grounds for refusal.

If one or several designs do not comply with the applicable conditions for registration, the examiner should raise an objection in respect of those designs only.

Likewise, if revocation, cancellation or invalidation is requested for one or several designs in a registration, the designs not affected by the petition should remain valid.

The Office should resolve the entire application, in respect of all the designs it contains, in the same decision, prescribing what designs are acceptable and which cannot be validly registered.

#### 3.5.3.2 Standard of unity of design

A multiple application requires a standard of unity of design in order to avoid situations where the different designs contained in the application are totally unrelated to each other. Such dissimilarity can make examination of the application particularly complicated.

As a matter of policy and administrative simplicity, the diversity of designs contained in a single design registration needs to be confined under specified criteria.

Also, a standard of unity of design will allow a better structuring of fees by attaching fee payment to the design's belonging to a particular category. Designs that do not fall within that category may not be included in the same application.

The standard of unity of design is based on the classes of the International Classification of the Locarno Agreement establishing an International Classification for Industrial Designs.

The International Classification contains a list of 32 classes of all products that may embody industrial designs.

The classes of products of the Locarno classification are fairly broad but each class is further divided into several subclasses, with the exception of the final classes 31 and 32.

Under the standard of 'unity of class', an application containing several designs will comply with the requirement of unity of design if all the designs are embodied in products or articles that fall within the same class of the Locarno classification (LCL).

The examiner himself should classify each of the designs in the application. In case of disagreement between the applicant and the Office, the Office's view should prevail.

The full classification should comprise one class and one subclass according to the LCL. In case of an article that has a dual nature or use, the design of the product should indicate the classifications for both uses of the article.





### 3.5.4 Gazette notice and search report

If the design is available and doesn't match any on the system or currently in use as determined by the search, a journal notice is then issued to the applicant.

If, however, the examiner has an objection to registration, a search report is established stating the grounds for not passing the design.

The grounds are similar design discovered either on the register or in use and the design being contrary to morality or national safety.

Within ninety days after the notice of the application is published a person may oppose the application by giving a notice of opposition to the Registrar General.

The notice of opposition shall set out the grounds for opposing the application.

### 3.5.5 Grant/Publication/Suspension

The IPO issue the certificate of industrial design and publish the application in the gazette when the application fulfills the requirements.

However, any industrial design can be suspended by a third party after its registration and before the publication.

In that case, a court proceeding is therefore necessary to solve the dispute and keep the registry update after the final decision.



## CHAPTER 4. GUIDELINES FOR VOLUNTARY REGISTRATION OF COPYRIGHT

### 4.1 Introduction

Intellectual property rights (IPRs) are property rights in something intangible and protect creativity and innovations and reward the activity.

Among the regimes constituting the field of intellectual property (IP) law, copyright stands apart. Unlike patent, trademark or (with some qualifications) design protection, the recognition and enforcement of proprietary interests is automatic, arising upon creation.

In Rwanda, copyright is part of the rights protected under the Law No 31/2009 of 26/10/2009 on the protection of intellectual property (IP Law), which provides a formality registration system.

However, the ease with which proprietary rights are generated, their profusion and the ensuing difficulty of keeping track of them have led to calls for the introduction of formalities to bring some much-needed clarity to copyright entitlements

Therefore, the purpose of this document is to provide general guidelines on a full range of issues surrounding the copyright registration procedures in Rwanda.

The intention is that these guidelines be available as a reference document, particularly for the Office of the Registrar General, the IP Division.

### 4.2 Definition of copyright

Copyright refers to an exclusive bundle of rights granted by the law to authors or creators of original works such as literary works, audio visual works, artistic and scientific works. Literature and artistic works are categorized as indicated in section 1.2.2

### 4.3 Purpose of Copyright protection

Copyright work whether literary, musical, scientific or artistic accords the owner the exclusive right to exploit such as reproducing, publishing, performing, or recording among other rights any such work and to authorize others to do the same.

The copyright Law makes it an offence punishable by fine or imprisonment to infringe on another person's copyright.

### 4.4 How to obtain Copyright?

As per the IP Law, copyright protection is obtained automatically from the moment when the work is created and no registration or other formality is required. Whether the right holder decides to register, the registration is free of charge.

As per article 195 of the IP Law, the copyright protection covers:

- a) Literary work which includes:
  - o novels, stories and poetical works; broadcasting scripts;
  - o textbooks, biographies, autobiography, illustration and none illustration books, poetry, memoir, essays and articles;
  - o computer program
  - o encyclopedias and dictionaries;
  - o letters, reports and memoranda;
  - o lectures, addresses and sermons, but does not include a written law or judicial decision;
- b) Musical work such as compositions with or without words

- c) Dramatic works such as plays, motion picture films, screenplays
- d) Artistic works which include:
  - o paintings, drawings, prints;
  - o audio visual works; fiction, true story, TV or radio shows
  - o works of sculpture;
  - o photographs;
- e) Scientific works such as maps, plans and diagrams, works of architecture in the form of buildings or models works of artistic craftsmanship, articles of applied handicraft and industrial art;

The article 196 of Rwandan IP Law extends the protection to: translations, adaptations, arrangements and other transformations or modifications of works and the works of expression of folklore; collections of works, works of expression of folklore.

#### 4.5 What types of rights are conferred by copyright protection?

Copyright protection guarantees the following rights:

##### a). Moral rights

This entitles the author or creator to claim authorship of the work and object to distortion or mutilation harmful to his/her honor or reputation. These rights are independent from economic rights and are non-transferable.

##### b). Economic rights

These are economic benefits to the rights holder by virtue of his/her exclusive right to exploit the work in any material form; translating and adapting; distributing to the public by sale; lease; hire; importation; broadcasting and performing the work in public.

#### 4.6 Related Rights

Related rights, also referred to as neighboring rights, protect the legal interests of certain persons and legal entities that contribute to making works available to the public or that produce subject matter which, while not qualifying as works under the copyright system, contains sufficient creativity or technical and organizational skill to justify recognition of a copyright-like property right.

The IP Law deems that the productions that result from the activities of such persons and entities merit legal protection as they are related to the protection of works of authorship under copyright.

Traditionally, related rights are granted to three categories of beneficiaries:

- (i) performers;
- (ii) Producers of sound recordings (also referred to as phonograms); and
- (iii) broadcasting organizations.

#### 4.7 Limitations and Exceptions to Copyright and Related Rights

In order to maintain an appropriate balance between the interests of right holders and users of protected works, copyright laws allow certain limitations on economic rights, that is, cases in which protected works may be used without the authorization of the right holder and with or without payment of compensation.

Under fair use doctrine governing intellectual property, it is permissible to use limited portions of a work including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports.

This means any one can use a protected work for education purposes, commentary, criticism, news reporting without the consent of the right owner.

#### 4.8 Voluntary registration process

There is no registration or other formality required to get a copyright. However, the office provides a mechanism for voluntary registration/deposit of works protected by copyright.

This is to facilitate the right holder to get a copyright certificate as a bona fide proof of ownership. (e.g. to solve disputes over ownership or creation, to facilitate financial transactions).

##### 4.8.1 To Whom Can Copyright Be Conferred?

- (a) An individual who is a citizen of, or is domiciled or resident in Rwanda; or
- (b) a corporate body which is incorporated under or in accordance with the laws of Rwanda.
- (c) Nationals of countries which are parties to international treaties to which Rwanda is party.

##### 4.8.2 Requirements for Voluntary Registration of a Copyright Work

To qualify for copyright registration a work must:

- be original
- should be in tangible format
- 1 copy of work should be submitted with the application form
- Application forms duly filled
- Identification document of the applicant
- Identification document of the author and/or co-author(s)
- Notarized power of attorney when the applicant is represented by an IP agent
- Notarized agreement between co-authors and other rights transfers

##### 4.8.3 Procedures for Voluntary Registration

- Submit all required documents at the IPO
- A certificate will be issued if the application meets the requirements.

The registration process differs from one application to another depending on the type of the work to be registered.

Once the applicant(s) submit(s) the application, the standard timeframe of the registration is 7 calendar days from the filing date, unless otherwise communicated to the applicant.

#### 4.9 Protection of Handcraft and its Registration

Traditional handicrafts are the images of the cultural heritage of any country. In India, the importance of traditional handicrafts becomes more appealing because of its rich heritage. In Rwanda, traditional handicrafts play an important role in serving this purpose and thus, they need to be protected.

In respect of handicrafts, it is important to have the distinction between traditional and technical handicrafts.

Under Rwandan law, the protection can only be provided to the handcraft that are not categorized in the technical national folklore or the added value that the creator has put on the handcraft categorized in the national folklore.

Such handcraft (national folklore) are subject to a protection in a sui generis system under the Law N° 28/2016 of 22/7/2016 on the Preservation of Cultural Heritage and Traditional Knowledge



#### 4.10 Correlating Formality Examination and Public Interest

Broadly understood, formalities refer to the procedural mechanisms which are required for acquiring a valid copyright, such as registration, notice, deposit, or renewal procedures. They are conditions independent of those substantive requirements relating to the creation of the work, such as the originality or fixation requirements.

The public interest features frequently in copyright (and broader IP) doctrine and the grant of private proprietary rights over intangibles is conventionally understood to promote the public interest, based on consequential reasoning. With this in mind and to protect the public interest, in some specific cases a pre-examination of copyright must be done by a different competent entity before its registration in IPO.

Rwanda Academy of Language and Culture and the National Commission for the Fight against Genocide will successively pre-examine the following: any copyright against public morality; any copyright based on the genocide memory and any based on Rwanda history.

The applicant of autobiography will seek the consent of the person designated in the autobiography.

#### 4.11 Ownership, Exercise and Transfer of Copyright

The owner of copyright in a work is generally, at least in the first instance, the creator of a work, that is, the author. However, this is not always the case.

In Rwanda, IP Law provides that where a work is created by an author employed for the purpose of creating that work, the employer, not the author, is the owner of the copyright in that work. As noted above, however, in Rwanda, moral rights belong to the individual author of a work regardless of who owns the economic rights. The IP Law provides that the initial right owner may transfer all economic rights in a work to a third party, although moral rights

cannot be transferred.

Authors may transfer the economic rights in their works to individuals or companies best able to market them, in return for payment. Such payments are often made dependent on actual use of the works and are referred to as royalties. Transfer of copyright may take one of two forms: assignment and licensing.

The IPO has the mandate to keep this transfer in the registry and deliver the transfer notice.

#### 4.12 Duration of economic rights

The duration of protection of copyright varies from work to work depending on the type of copyright and the nature of authorship. In most cases, moreover, copyright protection is available for 50 years after the author's death. Works that are no longer subject to copyright protection enter the public domain.

#### 4.13 Enforcement of Copyright and Related Rights (Art.261)

Any infringement of copyrights or related rights protected under this law, committed willfully or by gross negligence, by any third person for profit-making purposes and without owner's right consent shall constitute an act of forgery.

Any third person, who knowingly sells, offers on sale, is making rent, detains or introduces on the territory of the Republic of Rwanda, the alleged infringing goods for commercial purposes, shall be considered as committing the same offence. The IPO provides the alternative mechanism of settling copyright disputes. The mediation system as set by the office, incorporates any procedure for settling disputes by means other than litigation.

Such procedures are frequently distinguishable by the degree of control that parties maintain over the settlement process and the dispute's ultimate outcome. Parties in copyright dispute can also use the court proceeding to settle and terminate any infringement on copyright matters.

## 6. REFERENCES

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