



# Patents in the Democratic Republic of Congo [DRC]

publié le **05/06/2013**, vu **5397 fois**, Auteur : [YAV & ASSOCIATES](#)

**This article deals with Patents in the Democratic Republic of Congo [DRC]**

## 1. Laws dealing with Patents in the DRC

- Industrial Property Law no 82-001 of 1982
- Industrial Property Regulations, 1989

## 2. Patent protection in DRC

Patent protection is available in the DRC by way of a national filing. The DRC is a signatory to the Paris Convention and a national filing can claim convention priority. The DRC is not a member of the PCT, ARIPO, or OAPI. It is to be noted that foreign applicants must be represented by an agent in the DRC. [Our Law Firm can represent you.](#)

## 3. Patentable subject matter in DRC

Under the concept invention, the Law includes any subject matter that, as a result of inventive activity, is capable of being used industrially or commercially.

The following subject matter is not regarded as being patentable:

- theoretical or purely scientific principles and conceptions
- creations that are purely ornamental in character
- financial or accounting methods, the rules of games and all other systems having an abstract character, including, in particular, programs or a series of instructions for carrying out the operations of a computer (ie computer programs)
- subject matter, the publication or use of which would be contrary or present a threat to public order, the security of the state or public decency
- the discovery of an object that already exists in nature .

Additionally, in order to be patentable, the subject matter for which patent protection is being sought must be new, involve an inventive step and be capable of being used in commerce or industry. The requirement of novelty is discussed in more detail below.

The Law provides that an invention relating to a pharmaceutical invention can only be patented if its object is a product, a substance or a composition that is introduced for the first time in the form of a pharmaceutical.

## 4. Types of applications for patents in DRC

Application for a patent may be made by way of:

- a non-convention application, the effective date of which is the filing date of the application
- a convention application, the effective date of which is the filing date of the priority application on the basis of which convention priority is being claimed
- an application for a patent of improvement, the effective date of which is the same as that of the main patent on which it is based
- an application for a patent of importation, the expiry date of which is the same as that of the foreign patent on which it is based
- a divisional application, the effective date of which is the same as the initial application.

#### **4.1. Application of patents in DRC**

**For a patent of invention to be granted**, the following documents are required:

- full particulars of the applicant
- power of attorney (notarised), in French (a copy of the signed power of attorney is required on the day of filing)
- specification (including claims, drawings and abstract), in French
- international classification
- certified copy of the priority document, with a sworn French translation of the first page thereof
- assignment of invention (notarised; if applicable), in French or with French translation.

**For a patent of importation to be granted**, the following documents are required:

- full particulars of the applicant
- power of attorney (notarised), in French (a copy of the signed power of attorney is required on the day of filing)
- specification (including claims, drawings and abstract), in French
- the number, filing date, priority details and remaining period of the granted foreign patent on which the patent of importation is to be based
- certified copy of the granted foreign patent and a sworn translation thereof in French
- international classification
- assignment of invention (if applicable; notarised), in French or with French translation.

#### **4.2. Novelty of patents**

An invention is regarded as being new if it does not form part of the current state of the art at the effective date of the application. The current state of the art comprises everything that is or has been made available in the public domain before the priority date of the patent application, whether such availability occurred through a written or verbal description, through use or in any other way.

#### **5. Convention priority**

An applicant who has filed a patent application in a convention country is entitled to claim priority from such earlier application, provided that a DRC application is filed within 12 months of the filing date of the earlier application.

#### **6. Examination/procedure**

Applications are subjected to formal examination. Once all the formal requirements have been

complied with, issuance of a DRC patent can be expected within about two to three years after the application filing date.

## **7. Duration and maintenance**

Patents of invention are granted for a maximum term of 20 years. Patents of invention relating to pharmaceuticals are granted for a maximum term of 15 years. Both of these periods are calculated from the filing date of the application.

Patents of importation expire at the same time as the foreign patent on which they are based. Patents of improvement expire at the same time as the parent DRC patent on which they are based. Maintenance fees are payable on granted patents and pending applications, and the first maintenance fee falls due by the second anniversary of the application filing date.

## **8. Amendments to the patents specification in DRC**

Amendments to the specification can only be made within a period of five months after the filing date. Thereafter, amendments must be effected by the filing of an application for a certificate of addition, ie a patent of improvement. It is not possible to amend a granted patent.

It is possible to amend and replace the claims of a patent of importation, where the foreign patent on which the DRC patent is based has been amended to replace the claims. Details of the amendment under cover of a certificate from the foreign patent office must be filed with the IP office.

## **9. Working**

As indicated above, the invention must be industrially exploited in the DRC within a period of five years of the filing date of the application, or within three years of the grant of the patent, whichever period expires first. Failure to exploit the patented invention provides a ground for the granting of a compulsory licence.

In the case of pharmaceutical patents, the industrial exploitation must occur within four years of the date of grant of the patent.

In the case of patents of importation, exploitation must occur within three years of the filing date of the application. If the invention covered by a patent of importation has already been worked abroad, working in the DRC must commence within two years of the date of filing in the DRC.

A one year extension on the abovementioned time periods is obtainable on request, to be filed prior to the expiration of the said periods.