



## Protecting an Invention with Letters Patent

Grace Lindo

The growth in technological innovations has led to a rise in the protection of these innovations through the granting of Letters Patents ("patents"). While Jamaica has not been at the vanguard of the development of these inventions, the availability of protection through patents should encourage entrepreneurs and scientists to be innovative since a patent assists the innovator in maximising the profitability of an invention.

A patent gives an inventor, for a fixed period, exclusive use and benefit of a new invention which usually has some industrial application.

The Jamaican Patent Act, 1857 ("the Act") protects an "invention, discovery or improvement" which, according to the Act, is any manner of a new manufacture or a new mode of manufacture. Under the Act, the inventor must show that the invention was not previously used in Jamaica. However, not all scientific innovations can obtain the benefit of a patent. The courts have stated that:

"Discovery adds to the amount of human knowledge but it does so only...by disclosing something. Invention also adds to human knowledge, but not merely by disclosing something. Invention necessarily involves also the suggestion of an act to be done, and it must be an act which results in a new product, or in a new combination of producing an old product or an old result."

The grant of a patent allows the patent holder exclusive use of the invention, therefore restricting other manufacturers from using that invention by selling, manufacturing or even offering it for sale.

Notably, a patent was granted in Jamaica to the inventors of Canasol, a drug used to treat glaucoma and other disorders. Such indigenous patents are rare. Indeed, while there have been a relatively large number of non-resident patent applications in Jamaica, there has been no significant increase in the number of resident Jamaican patents.

Year	Resident Applications	Non-Resident Applications	Total
1997	9	61	70
1998	2	58	60
1999	3	74	77
2000	11	90	101
2001	4	72	76
2002	15	54	69
2003	9	41	50
2004	11	61	72
2005	10	59	69
2006	21	132	153
2007	6	157	163

Source: Patents Branch, Jamaica Intellectual Property Office

In addition, while it may be important to register a patent at our local Patents Registry (located at the offices of the Jamaica Intellectual Property Office), an inventor also receives benefits when he/she registers a patent in other jurisdictions by thereby obtaining the right to exclusive ownership of the invention in each country in which a patent is granted. Further, registration under the Act in Jamaica only protects the invention in Jamaica.

In Jamaica, the Act gives the patent holder the right to exclusively use the invention or innovation including the exclusive right to license, assign or otherwise deal with the invention for a period of fourteen (14) years. This term may be extended for a further seven (7) years by the Governor General if such an extension is considered expedient. Upon the expiry of the term, any other individual may use or sell the invention in Jamaica.

To obtain a patent, it is essential that the invention is new and novel (in Jamaica) and is of some public utility. This means that the invention could be in use or even patented in other jurisdictions but must not have previously been made available to the Jamaican public whether by written or oral description or by use.

An inventor or an authorised representative of the inventor may apply for a patent. It must also be noted that two or more inventors can obtain a patent and therefore be joint patent holders.

An application for a patent involves the applicant petitioning the Governor General for a grant of the patent. The applicant must, through a declaration, swear that he is the true and first inventor, that the invention will be of great public utility and that it is not being used by other individuals in Jamaica. In addition, the applicant must provide specifications of the invention which, if possible, should include drawings and the manner in which the invention can be used. The application will be examined (by the Government Chemist or the Bureau of Standards) to determine whether the invention is of public utility and novel in Jamaica. Once the application is filed, the applicant will acquire provisional rights to use, make and sell the invention.

Legal actions for infringement or revocation can be brought against the patent holder. Under the Act, legal proceedings for the revocation of a patent may be brought in the Supreme Court by the Attorney General, an individual authorised by the Attorney General, a person alleging that the patent was obtained by fraud, by a person alleging that he/she is the true inventor of the invention in question or by a person who alleges that he (or a person through whom he claims an interest) had publicly manufactured, used or sold the invention within Jamaica before the date of the patent.

Patents motivate inventors to be innovative and encourage creativity. The exclusivity which accompanies the granting of a patent allows the earning power flowing from the invention to remain largely with the inventor. The invention therefore becomes a valuable asset which can be assigned to others or for which licenses can be granted by the patent holder.

Grace Lindo is an Associate in the Commercial and Intellectual Property Departments of Myers, Fletcher & Gordon. Grace may be contacted at [grace.lindo@mfg.com.jm](mailto:grace.lindo@mfg.com.jm) or via [www.myersfletcher.com](http://www.myersfletcher.com)