

Journal of legal and social studies

Issn: 2507-7333

Eissn: 2676-1742

Substantive and Formal Requirements for the Protection of Inventions in

Algeria as a Mechanism to Encourage Entrepreneurship

fairouz ihaddadene *

University of Continuous Education, f-ihaddadene@ufc.dz, (Algeria)

Date of send: 01/06/2025	date of acceptance: 01/07/2025	Date of Publication: 01/09/2025
--------------------------	--------------------------------	---------------------------------

***Corresponding author**

Abstract

This article examines the substantive and formal requirements for the protection of inventions under Algerian patent law, with a particular focus on their role in promoting innovation and entrepreneurship. It explores key legal conditions such as novelty, inventive step, industrial applicability, and compliance with public order and morality, as outlined in Ordinance No. 03-07. The article also analyzes the procedural aspects, including the patent application process, registration, and the responsibilities of the National Institute of Industrial Property (INAPI). Through a comparative approach with French and international frameworks, the article highlights current challenges in the Algerian system and concludes with recommendations to improve the efficiency, accessibility, and impact of patent protection as a mechanism for economic and technological development.

Introduction

An invention is a new idea that provides a solution to a specific problem in the technical and technological field. It must relate to an industrial activity, meaning it should lead to a tangible material result, and this result must have an industrial character.

A patent, on the other hand, is an official certificate granted by the state to the inventor, giving them an exclusive right in the form of a monopoly on the exploitation of their invention (*un monopole absolu d'exploitation*)¹ for a legally defined period².

The Algerian legislator defined it in the second paragraph of Article 2 of Ordinance 03-07 as follows: "A document issued to protect an invention,"³ encompassing all inventions under protection. However, this definition is incomplete as it does not specify the legal nature of this document—whether it is a property title or merely an administrative paper⁴.

Given the shortcomings of the previous definitions, a patent can be defined as: "An industrial property title issued in accordance with the legally prescribed formalities, delivered to protect an invention that meets the substantive and formal conditions required by law, by the authority responsible for the protection of industrial and commercial property. This industrial title grants its owner or their successors an exclusive monopolistic right to exploit the invention they have achieved throughout the legal protection period, which lasts twenty years starting from the date of application filing, subject to certain restrictions. Its legal nature varies depending on the legal and historical system of each country.

The law does not allow the inventor to legally exploit their invention unless they have completed all legally defined procedures and obtained the document that permits them to do so, as it grants them a temporary right to commercially invest in their intellectual achievement under legal protection⁵.

In light of the above definition, **what are the conditions that must be met for an invention to be patentable under Algerian legislation?**

Chapter One: Substantive Requirements for Protection

The law does not grant the inventor the right to legally exploit their invention unless they have completed all the procedures prescribed by law and obtained the

document that authorizes them to do so. This document grants them a temporary right to commercially invest in their intellectual achievement under legal protection⁶.

Section One: The Requirement of Existence

The Algerian legislator intended to clarify the necessity for the invention to exist, focusing primarily on the need to define the legal nature of the achievements concerned. However, a part of legal scholarship has considered that the legislator took an illogical approach by using the phrase "new inventions,"⁷ arguing that an item cannot be considered an invention unless it is new. Thus, they believe that the word "new" is redundant and should be omitted⁸. On the other hand, another school of thought considers that the addition of this term is clear evidence that the Algerian legislator, like his French counterpart⁹, recognized the mandatory and essential nature of the novelty element. The purpose is to establish a precise definition of the creations subject to legal protection¹⁰.

Section Two: The Requirement of Novelty

Novelty is the second traditional condition for granting a patent. An inventor does not deserve a patent unless they bring something new to the industrial world. It is inconceivable to consider an invention without the element of novelty; novelty is a fundamental requirement for the entitlement to a patent¹¹.

It must be noted that some French legal scholars considered this element necessary but not sufficient on its own. Therefore, they suggested taking into account the notion of "progress" (*le progrès*) instead of relying solely on novelty. Without a doubt, this position is based on several justifications. However, the requirement of novelty cannot be replaced by the requirement of progress, as there are new creations that, while novel, do not contribute to progress in general¹².

The Algerian legislator established the novelty requirement in Ordinance 03-07 concerning patents. It serves as the basis for an invention's eligibility for patent protection, as the state protects inventions that serve society by providing it with useful innovations. Thus, the invention resulting from inventive activity must be new in order to be protected¹³.

It is obvious that an inventor who discloses to society an industrial machine that is already known is not bringing anything new. Therefore, there is no legal reason to grant them a patent¹⁴. If they are granted a certificate for such an achievement, it is as if they have usurped the patent, given the absence of the novelty element. Accordingly, an invention does not exist if the creations in question are not of a novel character¹⁵.

The Algerian legislator defined the novelty requirement in Article 4 of the Patent Law, stating: "*An invention is considered new if it is not included in the state of the art.*" He further added: "*This state includes everything made available to the public by written or oral description, by use, or by any other means anywhere in the world*"¹⁶.

This definition was previously adopted by the French legislator¹⁷.

Thus, all information that has reached the public anywhere and at any time must be taken into consideration, making novelty acquire an absolute character.

Therefore, the Algerian legislator was correct when he added the phrase “*anywhere in the world*” in Ordinance 03-07, meaning that, like his French counterpart, the Algerian legislator does not accept inventions known abroad; they are not patentable¹⁸.

However, “the public” here does not necessarily mean the general public; it is sufficient for the invention to have been made available to even a single person or a small group of people not bound by confidentiality for it to be considered no longer new. Hence, French jurisprudence has ruled that novelty is lost in cases where an invention was disclosed to a customer who was not obligated to maintain secrecy, or where its details were revealed at a scientific conference where attendees were not bound by confidentiality.

Conversely, novelty is not lost if the invention is disclosed to individuals, no matter how many, provided they are bound by a confidentiality obligation. Nevertheless, some legislations have mitigated this strict rule when the disclosure of the invention occurred with the consent of the patent owner, was done abusively by third parties against the inventor or his successors, or when the invention was exhibited by the inventor at official international exhibitions¹⁹. This approach was adopted by the Algerian legislator, who, like the French legislator and most Arab legislations, excluded from novelty-destroying disclosures those made at international exhibitions. Accordingly, an invention is not considered to have been disclosed to the public merely because the inventor displayed it at officially recognized international exhibitions within the 12 months preceding the patent filing date.

This principle is similar to that applied to industrial designs and models, which must be new in terms of time and place by being filed with the National Institute of Industrial Property (INAPI), meaning that the design or model has not been previously filed or registered for the same or different products²⁰. This view is supported by Professor Amer Mahmoud Al-Kasawani, who advocated for the necessity of this exception to the novelty requirement, pointing out that inventors are sometimes compelled to disclose their inventions before registering them when asked to present them before special committees or bodies to assess the invention's significance or to conduct scientific and practical evaluation²¹.

Additionally, scholars have noted that the Algerian legislator merely provided a descriptive definition of novelty in patents, stating that: “*New inventions, whether products or processes, can be protected by patents.*” These inventions must not be included in the state of the art or made available to the public. Novelty can take several forms, such as²²:

- A new product invention that creates a new economic need and satisfies it while ensuring safe usage.
- A new process invention, such as a method to treat computer viruses.
- A new application of known means.
- A new combination by assembling known inventions or means.
- An invention solving a sorting problem.
-

Section Three: Legality of the Invention

The Algerian legislator stipulated this requirement in Article 8 of Ordinance 03-07 concerning patents, stating: *“Patents may not be obtained under this Ordinance for the following:... inventions whose application on Algerian territory would be contrary to public order and morality...”*

Thus, the competent authority cannot grant patents for inventions whose application would violate public order and morality, such as inventions for fingerprint erasing devices, counterfeit money machines, and the like. Among the most important and recent areas affecting public order is the field of the human body, whether living or deceased, which the Algerian legislator excluded from patent protection. Similarly, the French legislator also prohibited granting patents for the human body, including its elements and products²³.

However, a distinction must be made between inventions that are unpatentable because their disclosure or use violates public order or morality, and inventions explicitly excluded from patent protection for other reasons by law.

Thus, it would be legally unfounded and illogical to assert that plant varieties, animal breeds, and biological processes for obtaining plants or animals are excluded from patentability on the grounds of being unlawful or contrary to public order and morality. In fact, the legislator's primary intent was to specify that certain subject matters cannot be regarded as inventions due to their inherent nature. Furthermore, inventions whose exploitation falls within activities reserved to the State should nonetheless be deemed patentable, as such a status does not affect their validity — for instance, the invention of a cigarette manufacturing machine²⁴.

Also excluded from the scope of protection are inventions whose exploitation within Algerian territory would be harmful to the health and lives of humans and animals, detrimental to the preservation of plants, or pose a serious risk to environmental protection²⁵.

Section Four: Inventive Activity

This is another condition required by the laws of some countries to recognize an invention's right to protection and grant a patent, including Algerian law. It is noteworthy that Algerian law benefited in this area from doctrinal debates and judicial decisions made in France regarding the elements of novelty. Thus, the Algerian legislator, like his French counterpart, enshrined this concept by stating that an invention is considered to result from inventive activity if it is not clearly derived from the state of the art, and the inventive activity is assessed in light of a person skilled in the art and the state of the art.

Inventive activity is defined based on the unexpected and unanticipated nature of the invention as follows: "Inventive activity exceeds the current industrial technology, either in its general concept through a gifted idea, whose foundation lies either in the means of its realization and production, by the difficulties overcome and surpassed by the inventor, or in its economic results, through the unexpected advantage it brought to industry."

An invention is deemed to require creative activity if it is not, from the perspective of a person skilled in the art, a predictable outcome of known technology. That is,

it comes to develop that technology, which can only be achieved through a special intellectual and creative effort, resulting in clear technological progress. If the innovation is obvious and can easily be deduced by anyone skilled in the field just by examining the existing technology, it is not considered an invention, as it does not deviate from what is already known in the technology, but is instead a natural outcome of it.

From this definition, we observe that the unexpected and unanticipated nature is what distinguishes and characterizes inventive activity. Therefore, there is something unexpected either in the idea created, the means of accomplishment invented, or in the economic advantages offered to industry. To measure inventive activity, we consider the state of the art (the objective element), which is made up of all the information in the innovation field available before the filing date or the priority date, and the person skilled in the art (the personal element), a character with abstract reference dimensions like the ideal father figure of technology, in addition to the non-obviousness requirement.

What is observed about the position of the Algerian legislator on inventive activity is that it did not clarify the meaning of this condition. Instead, it simply mentioned the elements that constitute this condition, which are industrial progress, craftsmanship, and the element of obviousness, meaning that the invention must deviate from what is obvious and familiar to people.

Requirement of Industrial Applicability of the Invention

This condition refers to the mandatory requirement that the invention must be capable of industrial exploitation and immediate use in the economic field. It aims to exclude non-industrial inventions, such as scientific discoveries, which can be protected through other methods, not patents. The purpose of this requirement is to establish the technical character of the invention, making it suitable for scientific application and industrial implementation. According to this condition, patents cannot be granted in the following cases²⁶:

1. Plant varieties or animal species, as well as pure biological methods for obtaining plants or animals.
2. Inventions whose application within the Algerian territory would harm the health or lives of people and animals.
3. Works performed solely for scientific research purposes.

Through this condition, the Algerian legislator emphasized the need for a connection between the invention and industry to grant patent protection. The industrial applicability of the invention, as well as its technical impact, are sufficient for granting a patent, regardless of its commercial value. An invention may be considered patentable even if it is not commercially exploitable due to its manufacturing costs. The key factor is the industrial applicability. Additionally, the invention must relate to the industrial field, not art, as inventions are distinguished from industrial designs and models by their industrial nature. However, it is possible for an invention to qualify as both a patent and an industrial design or model simultaneously.

By studying the current provisions, the concept of "industrial application" does not differ from what was stipulated in previous laws, except that it does not

mention agriculture. Undoubtedly, the removal of the phrase "including agriculture" from the legal text does not alter its meaning. According to the provisions of the Paris Convention, the term industry should be understood in its broad sense, including agriculture. Therefore, some scholars have noted that the Algerian legislator addressed this by removing the phrase "even agriculture," considering it an unnecessary elaboration and legislative excess, and that this clarification can be omitted. Thus, the legislator was correct in modifying the legal text, unlike the French legislator, who still refers to agriculture when defining the concept of industrial application²⁷.

Thus, an invention is eligible for a patent if its subject matter is capable of industrial application or use in any type of industry. The two conditions do not need to be combined²⁸, as the legal text uses the word "or" rather than "and." Therefore, the inventor does not have to ensure that the invention is both manufacturable and usable simultaneously. However, the invention must be capable of being manufactured at the time the patent application is filed. The industrial application requirement, like the other conditions, must be evaluated on the filing date²⁹.

Section Two - Formal Conditions for Patent Protection

It should be noted at the outset that no implementing decree has been specifically issued for Decree 93-17 related to the protection of inventions. However, reference can be made to the provisions of Decree 66-60 dated March 19, 1966³⁰. On the other hand, the Order 03-07 concerning Patents has an applicable text. A review of the provisions of the Executive Decree 05-275 dated August 2, 2005³¹, shows that it is essentially a copy of Decree 66-60 with some minor additions. It should also be noted that some provisions of Decree 66-60 have been incorporated into Order 03-07 without altering their substance.

A patent protection certificate can only be obtained after following precise procedures related to the application and issuance.

Requirement One: Submission of the Protection Application

The inventor, as the owner of the invention, submits a request for a patent to obtain legal protection for their invention throughout the entire territory of Algeria at the National Institute of Industrial Property, which examines the patent application according to specific rules. According to Article 27 of Order 03-07, it states: "The competent authority, upon submission, shall verify that the conditions related to the filing procedures set forth in the first section of Chapter Three above, and in the texts adopted for its implementation, are met.

It rejects applications that do not meet the formal and substantive conditions, unlike what is generally known in foreign legislation, which features two different systems: the first is a monitored delivery system or prior rigorous examination system, and the second is an automatic delivery system or a system of patent granting freedom.

The application must include a set of documents specified in Article 03 of Executive Decree 05-275 mentioned earlier, which are the same documents listed in Decree 66-60 concerning the implementation of Ordinance 66-54 related to Inventor Certificates and Patents. The filing date is considered the date on which

the National Institute of Industrial Property receives the patent application and the description of the invention. However, if the application has obtained an international filing date under the Patent Cooperation Treaty, which includes Algeria as a designated country for obtaining the patent, the filing date is considered the date of the first filing, as stipulated in Article 21 of Ordinance 03-07, which states:

"... The filing date of the patent application shall be considered the date on which the competent authority receives at least the following:

1- A written application form that identifies the applicant and their intention to obtain a patent.

2- A description of the invention accompanied by at least one claim. However, an international application that has obtained an international filing date under the Patent Cooperation Treaty, which includes Algeria as a designated country, shall be deemed filed as of its international filing date.

The right to the patent belongs to the person who made the invention, meaning the inventor or their successor. The Algerian legislator also grants the right to the person who first filed the patent application or claimed the earliest priority related to the same invention, unless proven that the invention was misappropriated³².

On this basis, it appears that in both Algerian and French law, the applicant is not required to include a document proving their status as the inventor in their application.

The inventor is obligatorily required, in the application, to state the title of the invention and to define it precisely within the mandatory information included in the file. It is prohibited to use an invented designation, personal names, or any designation that could constitute a factory mark. This is stipulated in Article 4, paragraph (c) of Executive Decree 05-275, which states: The application for grant shall include... the title of the invention, that is, its precise and concise designation, provided that it is not a pseudonym, a person's name, or any designation that may constitute a manufacturing or commercial mark likely to cause confusion with any trademark.

The purpose of specifying the title of the invention is to facilitate its classification among other inventions. It is a mandatory condition for filing the original patent application or the additional certificate, with payment of filing and publication fees, under penalty of invalidity of the filing. Additionally, registration and maintenance fees must be paid, the latter being annual and progressive, increasing over the years until the end of the patent's term, as compensation for the protection that the law grants to the invention³³.

From the above, it is clear that the Algerian legislator intended to link the continuation of protection (the patent) to the payment of regulatory fees. This obligation was stipulated in the article that determines the duration of legal protection, and it was established that the ownership of the patent lapses if its holder fails to pay the annual regulatory fees within the legally specified period. Accordingly, if the legal conditions required for granting a patent are not met, the Director of the National Institute of Industrial Property may reject the patent grant

application. This decision is not final and can be challenged through an administrative appeal or, alternatively, through judicial appeal³⁴.

Section Two: Registration of the Patent

The Algerian National Institute of Industrial Property maintains a register called the Patent Register, in which all granted patents are recorded. Logically, they are to be registered in the order of their granting, indicating their number, the name of the owner, the date of the application, and the date of issuance. As a result, any person may consult the said Institute to view all registered patents and obtain a copy at their own expense. The competent authority is also responsible for preparing an official patent bulletin, in which patents and all related transactions are periodically published³⁵.

From a formal standpoint, the following data must be recorded in the Patent Register for each patent³⁶:

1. The full name, surname, and address of the patent holder.
2. The name and address of the agent, if applicable.
3. The title of the invention, the filing date of the patent application, and the date and number of patent issuance.
4. The symbol or symbols of the international patent classification and certificates of addition related to the patent, with mention of their numbers and relevant dates.
5. The date of payment of fees.
6. A record of contracts affecting the patent, as stipulated to be registered under Articles 36, 43, 52, and 53 of the Algerian Patent Law.

Section Three – The Patent Granting Process

The Director of the National Institute of Industrial Property, after examining the protection requests, grants patents according to the date the files were received. However, the applicant may only correct material errors if they submit a petition to this effect before the patent is granted. If the corrections are not made within the legally prescribed period, the patent is granted as is³⁷.

The patent is granted in the name of the original applicant or in the name of the assignee, provided that the assignment has been notified to the Director of the National Institute of Industrial Property. If the assignment is recorded in the patent register before the granting process, the patent is issued in the name of the assignee³⁸.

Conclusion:

The objective and formal requirements for patent protection in Algeria are fundamental pillars for supporting creativity and encouraging entrepreneurship. These conditions provide a legal framework that motivates inventors to present their inventions and benefit from legal protection. However, some challenges remain concerning the procedures and fees that might hinder some inventors, which calls for improvements in the legal system to encourage more innovation. Based on the above, I find it necessary to offer the following recommendations:

1. Simplify legal procedures for easier patent registration.
2. Provide financial support or facilities to inventors to help them pay annual fees.

3. Enhance awareness and training programs for inventors about their legal rights.
4. Encourage investment in research and development through legal incentives.
5. Strengthen international cooperation in intellectual property protection.

By implementing these recommendations, the legal protection of inventions will be reinforced, fostering entrepreneurship and innovation in Algeria.

- ¹ - Guéry, Gabriel. *The Essentials of Business Law*. 7th ed. Paris: Dunod, 2016, p. 302
- ² - Mghabghab, Naïm. *Patent Law: Industrial and Commercial Property, A Comparative Law Study*. 2nd ed. Beirut: Al-Halabi Legal Publications, 2009, pp. 5-6
- ³ Considering that there are inventions that enjoy protection once substantive and formal requirements are fulfilled, and others that are not eligible for protection, either because of their nature or due to their illegality.
- ⁴ -Djelali, Aja. *Patent: Its Characteristics and Protection*. Previously cited reference, p. 18.
- ⁵ - Farha, Zerouai-Salah. *The Complete Guide to Commercial Law: Intellectual Property Rights*. Previously cited reference, p. 16.
- ⁶ - Farha Zerouai-Salah, *The Complete Guide to Commercial Law: Intellectual Property Rights*, previously cited reference, p. 16.
- ⁷ -Article 08, Sections 2 and 3 of Ordinance 03-07, and refer to Article 08, Paragraph 02 of Legislative Decree 93-17 and Article 05, Paragraph 02 of Ordinance 66-54.
- ⁸ -Samir Jamil Hussein Al-Fatlawi, previously cited reference, p. 139
- ⁹ - Article 611-10 of the French Intellectual Property Code: “*New inventions are patentable...*”
- ¹⁰ .- Farha Salah Zerouai, *The Complete Guide to Commercial Law: Intellectual Property Rights*, p. 57
- ¹¹ - Salah El-Din Abdel Latif Al-Nahi, previously cited reference, p. 72.
- ¹² - Farha Salah Zerouai, *The Complete Guide to Commercial Law: Intellectual Property Rights*, previously cited reference, p. 60.
- ¹³ - Refer to Ordinance 03-07 dated July 19, 2003, concerning Patents.
- ¹⁴ - Mustafa Kamal Taha, *Commercial Law*, Dar Al-Jami'ah, Beirut, Lebanon, 1988, p. 681.
- ¹⁵ - Farha Salah Zerouai, *The Complete Guide to Commercial Law: Intellectual Property Rights*, previously cited reference, p. 61.
- ¹⁶ -For comparison, see Article 4, paragraph 1 of Legislative Decree No. 93-17, where it is noted that, by comparing the two texts, the legislator deleted the term “*industry*” and replaced it with “*state of the art*”. He also changed the phrase “*patent application*” to “*protection application*”, and added the phrase “*anywhere in the world*” after “*any other means*”. Also, see Article 3 of Ordinance 66-54 concerning the Certificate of Inventors, which states: “*Any invention resulting from inventive activity shall be considered as such if it does not clearly derive from the state of the art.*”
- ¹⁷ - Article 611-11 of the French Intellectual Property Code.
- ¹⁸ - J. Azéma / J-Christophe Galloux, *op. cit.*, p. 779.
- ¹⁹ -Fouad Mallal, *Explanation of the New Commercial Law*, Volume 1, 5th Edition, Dar Al-Afaq Al-Maghribiya for Publishing and Distribution, Morocco, 2016, p. 288.
- ²⁰ - Abdel Fattah Bayoumi Hegazy, *Industrial Property in Comparative Law*, Edition not specified, Dar Al-Fikr Al-Jamii, Alexandria, Cairo, 2008, p. 472.
- ²¹ - Amer Mahmoud Al-Kasawani, *op. cit.*, p. 85
- ²² - Mohamed Anwar Hamada, *The Legal System of Patents, Industrial Designs, and Models*, previously cited reference, pp. 16-18.
- ²³ -Law No. 27/09/1994, Official Journal of France, 30/07/1994 (Human Body).
- ²⁴ - Farha Saleh Zerouali, *The Complete Guide to Commercial Law: Intellectual Property Rights*, previously cited reference, p. 61.
- ²⁵ - Article 08 of Ordinance No. 03-07 concerning patents, previously cited reference
- ²⁶ -Hussein Nouwara, **Industrial and Commercial Property in Algerian Law**, Al-Amal for Printing, Publishing, and Distribution, Algeria, 2015, p. 29.
- ²⁷ -See Article 611/15 of the French Intellectual Property Code. *Op. Cit.*
- ²⁸ - Salah Zine El-Din, *Explanation of Industrial and Commercial Legislation*, previous reference, p. 42
- ²⁹ - Article 06 of Order 03-07 concerning Patents, previous reference.

³⁰ - The application of Order 66-54 dated March 3, 1966, related to Inventor Certificates and Invention Licenses, Official Journal, dated March 8, 1966, issue 19, and the Official Journal dated April 1, 1966, issue 26.

³¹ - This decree defines the procedures for filing a patent application and its issuance, Official Journal, dated August 7, 2005, issue 54.

³² - Article 13 of Ordinance 03-07 concerning patents, and Article 13 of Legislative Decree 93-17.

³³ - Article 54 of Ordinance 03-07 related to patents

³⁴ Mohamed Anwar Hamada, previously cited reference, p. 41..

³⁵ -Articles 33 and 34 of Ordinance 03-07 related to Patents.

³⁶ - Article 30 of Executive Decree 05-275, as amended and supplemented by Executive Decree 08-344 dated October 26, 2008, Official Gazette of November 16, 2008, No. 63:

³⁷ - Article 26 of Order 03-07 concerning Patents of Invention, and Article 30 of Executive Decree 05-275, previously mentioned.

³⁸ - Farha Saleh Zarawi, "Al-Kamil fi Al-Qanun Al-Tijari", Intellectual Property, Previous Reference, p. 120.