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From Formality to Substance: The Case for Substantive Patent Examination in Nigeria

1. Introduction[1]

Nigeria stands at an inflection point in its innovation trajectory. As the largest economy in Africa and an emerging hub for technology, creative enterprise, and industrial development, the country's intellectual property framework must evolve in line with its ambitions. Yet, the current patent registration system anchored in a purely formal examination process, raises fundamental questions about its capacity to safeguard genuine innovation, promote investor confidence, and align with global best practices.

Under the existing regime, patent applications in Nigeria are assessed primarily for compliance with procedural and documentary requirements, with little to no interrogation of substantive criteria such as novelty, inventive step, and industrial applicability. While this approach may offer administrative efficiency and speed, it inadvertently shifts the burden of validity assessment to the courts and, in many cases, to unsuspecting market participants. The result is a register that confers presumptive exclusivity without a corresponding assurance of legal robustness.

In an era defined by cross-border innovation, monetisation of intellectual property and increasing technological developments and inventions, this model is no longer tenable. Jurisdictions that command investor confidence and technological growth are those in which patent rights are not only granted efficiently but are also trusted as credible indicators of genuine innovation.

This article argues that a strategic shift toward substantive examination is both a legal necessity and an economic imperative. It examines the limitations of the current

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practice and situates Nigeria within comparative global practice, while proposing a pathway for reform that is both pragmatic and forward-looking.

2. Overview of Nigeria's Current Patent Framework

In Nigeria, the substantive legislation that governs the protection and registration of patents in Nigeria is the *Patents and Designs Act*.[2] The *Patents and Designs Act* provide detailed legal provisions that enables the protection and enforceability of patents and inventors' rights in Nigeria. The Act specifies and outlines the key metrics for patentable inventions, details on the procedures and processes involved in registration of patents as well as relevant details on the examination of patent applications in Nigeria.

Section 1(2) of the *Patents and Designs Act* provides that an invention can only be patentable if it adequately satisfies the requirement of novelty, resulting from inventive capability that does not obviously flow from the state of the art and that is capable of industrial application. This erroneously implies that inventions should be subject to proper examination in order to sufficiently determine whether these inventions adhere to the specified criteria as outlined in the Act.

The Act further sets out the patent application requirements and the adopted procedure for examination. In Nigeria, the process for the registration of patents in Nigeria officially begins with the filing of the patent application. The patent application must contain the following:

a) Applicant's full name and address

b) Description of the relevant invention with appropriate plans and drawings

c) Claim or claims

d) Declaration of true inventor where applicable

e) Signed Power of Attorney where the application is carried out by an agent[3]

Upon submission of the patent application, the Registry solely examines the application based on the fulfilment of the formal regulatory and documentary requirements. Section 4(1) of the *Patents and Designs Act* clearly provides that every patent application will only be examined as to its conformity with the provisions pertaining to the required specified documents, rather than its validity, newness,

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2 NIPO, "Patents Filing Procedure" available at: <https://nipo.gov.ng/patents.jsp#:~:text=The%20Patents%20and%20Designs%20Act,adopted%20at%20the%20Patent%20Registry> accessed on 17th March, 2026.

3 Section 3 *Patents and Designs Act* CAP P2 LFN, 2004.

inventive capability or being capable of industrial application.[4] The Registry verifies that prescribed documentation has been duly submitted, fees have been paid, and the application conforms to statutory filing requirements. This includes checking the completeness of the specification, claims, and supporting materials, as well as ensuring compliance with formal classifications and declarations. Crucially, however, this process does not extend to a substantive interrogation of the invention's novelty or inventive step. The immediate consequence of this framework is that patent grants in Nigeria are issued with relative speed and administrative efficiency, but without any institutional assurance of substantive validity.

3. Conceptual Distinction: Formal Examination vs Substantive Examination

At its core, formal examination is concerned with procedural integrity rather than inventive merit. It is an administrative exercise designed to ensure that an application complies with prescribed filing requirements, namely, that the correct forms and specified documents have been submitted, requisite fees paid, and the specification and claims presented in the manner required by statute with plans and drawings. The examiner's role in such a system is therefore largely clerical and compliance-driven, focusing on the outward regularity of the application rather than the underlying validity of the claimed invention. The patent is simply granted without deep substantive evaluation and examination into the genuineness of the invention or whether the invention is new and involves an inventive step.

On the other hand, substantive evaluation considers the patentability of the invention i.e., whether the invention is actually new, involves an inventive step, is capable of industrial application and does not fall within excluded subject-matter.[5] Substantive patent examination in most cases is regarded as a gatekeeping process that prevents frivolous and substandard patents from being granted.[6] It entails a detailed and technically informed assessment of the patent application against established criteria of patentability. In jurisdictions that adopt this model, patent examiners typically conduct prior art searches, conduct detailed scientific examination and issue examination reports which would determine whether the invention should be patented.

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4 Section 4(1).

5 Fillun, "Substantive Examination and the Main Requirements to Obtain a Patent: Novelty, Inventive Step and Industrial Applicability" available at <https://www.fillun.com/substantive-examination#:~:text=Substantive%20examination%20considers%20the%20patentability,invention%20as%20disclosed%20in%20the> accessed on 19th March, 2026.

6 WIPO, "Alternatives in Patent Search and Examination" available at: <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_guide_patentsearch.pdf> accessed at 23rd March, 2026.

The process is largely evaluative and serves as a critical filter to ensure that only inventions meeting the requisite legal thresholds are granted exclusive rights.

The distinction between formal and substantive examination is not merely technical, rather it is foundational to the integrity of a country's patent system. A patent system grounded in substantive examination confers a degree of credibility on granted patents, signalling to the market that the rights in question have been evaluated, vetted and are presumed to be valid. This, in turn, enhances their enforceability, transactional value, genuineness of operation and also largely boosts investors' confidence in the patent. The practical consequence of the use of formal examination is a shift from administrative certainty to judicial uncertainty, where the true validity of patents is determined not at the point of grant, but in the course of costly and expensive litigation before the courts.

4. The Limitations of Nigeria's Formal Examination System

The use of formal examination of patents in Nigeria has largely limited and affected growth in various areas such as the economy, the development of applicable laws and in international trade. The limitations of the formal examination system are:

a) Proliferation of Low-Quality Patents

Due to the absence of rigorous substantive examination of patent applications, particularly with respect to novelty, inventive step, and industrial applicability, many registered inventions do not meet the required standards of patentability. As a result, inventions that fail to satisfy substantive criteria are nonetheless granted patent protection. This creates a patent register which lacks proper commercial value and genuineness due to the proliferation of low-quality patents that have merely satisfied formal regulatory requirements. A patent system that dispenses with substantive scrutiny at the point of grant inevitably carries a risk of conferring protection on inventions that do not, in fact, meet the statutory thresholds of patentability.

b) Litigation Burden and Judicial Strain

Section 4(4) of the *Patents and Designs Act* provides that patents are granted at the risk of the patentee and are granted without guaranteed validity.[7] This essentially means that the validity of a patent can only be achieved through litigation in the courts. Where patents are granted without substantive examination, the task of interrogating validity is effectively deferred to the courts,

[7] Section 4(4) *Patents and Designs Act* CAP P2 LFN.

typically in the context of infringement/invalidation proceedings. This imposes significant costs on litigants, who must combine technical and legal expertise to challenge or defend patent validity, and places additional strain on a judicial system like Nigeria which is not always optimally equipped for complex patent adjudication.

c) Impact on Foreign Direct Investments

The reliance on a purely formal examination system has significant implications for foreign direct investment and technology transfer in Nigeria. While it is true that investors from developed jurisdictions may already possess patents that have undergone rigorous substantive examination in their home countries, and which may be extended or recognised in Nigeria under applicable international frameworks, the broader weakness of the domestic patent system still presents material concerns. In particular, the absence of substantive examination at the national level creates uncertainty as to the reliability and enforceability of patent rights within the jurisdiction.

For sophisticated investors and multinational enterprises, the decision to commit capital, deploy proprietary technology, or establish research-intensive operations depends not only on the existence of patent protection, but on the credibility and predictability of the legal regime that upholds those rights. A system that permits the grant of patents without substantive scrutiny increases the risk of conflicting or low-quality rights, thereby heightening the likelihood of disputes and litigation. This, in turn, raises transaction costs and complicates freedom-to-operate assessments.

d) Business and Investor Uncertainty

For businesses operating within such a framework, the absence of reliable patent quality introduces a layer of commercial uncertainty that can distort strategic decision-making. Firms may be deterred from entering certain markets or investing in research and development due to the risk of encountering patents that are facially valid but substantively weak.

e) Reduction on Innovation and Competition

The proliferation of patents of uncertain validity can also exert a chilling effect on competition. Market entrants, particularly small and medium-sized enterprises, may lack the resources to challenge dubious patents and may therefore elect to avoid potentially contentious areas altogether. This in turn discourages and

serves as a disincentive for individuals and enterprises from developing or creating inventions that could promote innovation and competition.

5. Comparative Perspectives from Other Jurisdictions

An analysis of leading patent jurisdictions reveals a consistent reliance on substantive examination as the cornerstone of credible patent protection. In the United States, applications are rigorously examined by the United States Patent and Trademark Office, where examiners conduct prior art searches and assess compliance with statutory patentability criteria. Similarly, the United Kingdom operates a substantive examination system through the UK Intellectual Property Office, while across Europe, the European Patent Office administers a highly structured and technically sophisticated examination process for European patents.[8] In India, a jurisdiction often cited as a peer for developing economies, the patent office conducts detailed examinations that include objections, hearings, and reasoned decisions on patentability. These systems, while varying in procedural detail, share a common commitment to evaluating the substantive merits of inventions before conferring exclusive rights.

The practical advantages of substantive examination in these jurisdictions are numerous. Firstly, the credibility of granted patents is significantly enhanced, as they are presumed to have undergone rigorous scrutiny prior to issuance. This strengthens their enforceability and reduces the likelihood of successful validity challenges in litigation. Secondly, the patent register in such systems serves as a reliable repository of technological information, enabling competitors, researchers, and investors to make informed decisions based on a clearer understanding of existing rights. Thirdly, the overall transactional value of patents whether in licensing, financing, or mergers and acquisitions is elevated.

6. The Case for Reform to Substantive Examination in Nigeria

a) Economic Growth and Investment

The introduction and transition to substantive examination of patents would ensure certainty of granted patents and guarantee genuineness as well as investor confidence. In an increasingly knowledge-driven global economy, the credibility of a country's patent system serves as a key determinant of its attractiveness to high-value investment. By adopting substantive examination,

[8] Intellectual Property Office of Ireland, "European Patent Office" available at <https://www.ipoi.gov.ie/en/understanding-ip/international-ip-rights/epo/> accessed on 20th March, 2026.

Nigeria would signal a commitment to strengthening the integrity of its innovation ecosystem, thereby enhancing its capacity to attract capital, support start-ups, promote research and developments and facilitate the growth of indigenous technological enterprises. Substantive examination would also incentivise research and development and facilitate the commercialisation of locally generated inventions.

b) Legal Certainty and Efficiency

The adoption of substantive examination would establish and promote greater certainty in the validity of patents. By filtering out weak or invalid applications at the administrative stage, the volume and complexity of patent disputes reaching the courts would likely diminish. This would not only reduce litigation costs for private actors but also alleviate pressure on the judiciary, enabling more efficient resolution of genuinely contested matters. Additionally, it restores the primary responsibility for assessing patent validity to the registry, where it can be exercised in a structured and technically informed manner.

c) Alignment with International Standards

Reform would also position Nigeria more closely in line with prevailing international intellectual property standards. As a participant in global trade and a signatory to key multilateral frameworks, aligning with these international standards would enhance Nigeria's credibility in international negotiations and foster deeper integration into global networks.

d) Public Interest Considerations

Beyond economic and institutional considerations, the case for reform must also be understood through the lens of public interest. A system that permits the proliferation of weak or overly broad patents can have tangible consequences for access to essential goods, particularly in sectors such as pharmaceuticals. Questionable patent grants may be invoked to delay the entry of generic medicines, thereby sustaining higher prices and limiting public access. By introducing a rigorous examination process, Nigeria would better safeguard against such outcomes and ensure that patent protection acts as an incentive that balances private rights with societal welfare.

7. Pathways and Recommendation for Transition to Substantive Examination

a) Phased Implementation Strategy and Hybrid Models

A complete and immediate transition to substantive examination may prove administratively disruptive and burdensome. Accordingly, a phased implementation strategy offers a more pragmatic pathway. Priority sectors such as pharmaceuticals, biotechnology, and information technology could be earmarked for early adoption of substantive examination, with gradual expansion across other fields. Such an incremental approach ensures that reform is both sustainable and responsive to current realities.

b) Capacity Building and International Cooperation

The success of any substantive examination regime ultimately depends on human capital. Developing a system with skilled patent examiners with expertise across diverse technical areas is therefore essential. This will require sustained investment in training, competitive recruitment, and professional development. Strategic partnerships with established patent offices, such as the European Patent Office and the United States Patent and Trademark Office could facilitate knowledge transfer, secondment programmes, and technical assistance. In the interim, Nigeria may also leverage foreign examination outputs, including international search and examination reports to act as persuasive references for domestic examination. In addition, the Patent Registry can collaborate with science and engineering faculties across Nigerian universities and research institutions to provide specialised technical expertise on an agreed fee basis. Such collaboration would help bridge immediate capacity gaps while strengthening the long-term interface between the patent system and the country's scientific community.

c) Legislative and Regulatory Reform

A transition to substantive examination will necessitate targeted amendments to Nigeria's patent legislation and subsidiary regulations. The *Patents and Designs Act*, in its current form, does not provide a sufficiently detailed framework for substantive examination and review. Legislative reform should therefore clarify the scope of substantive examination as well as the creation of procedural rules governing timelines for the examination.

In this regard, the Nigerian National Intellectual Property Policy explicitly recommends the introduction of a substantive examination system, to be supported by the recruitment and continuous training of technically competent

patent examiners. Aligning legislative reforms with this policy direction would provide a coherent institutional framework for implementation, ensuring that the shift toward substantive examination is both legally grounded and operationally sustainable.[9]

d) Leveraging Technology and Digital Infrastructure

Investment in comprehensive digital databases which would encompass both local filings would significantly enhance the quality and efficiency of examination. Furthermore, the deployment of AI-assisted search and analytics tools can support examiners in identifying relevant prior art, mapping claim scope, and detecting potential overlaps with existing technologies. By integrating digital infrastructure into the reform process, Nigeria can mitigate capacity constraints, reduce processing times, and align its patent office with contemporary global standards.

e) Stakeholder Engagement

Finally, the success of any reform initiative will depend on the extent to which it is informed by, and responsive to, the needs of key stakeholders. Structured engagement with industry participants, academic institutions, research organisations, and legal practitioners is essential to ensure that the transition reflects practical realities and garners broad-based support. Such engagement may take the form of public consultations, pilot programmes, and collaborative policy development processes.

8. Conclusion

The need for and importance of transitioning Nigeria's patent system from formal examination to substantive examination cannot be over-emphasised. While the current framework has the advantage of administrative simplicity and expediency, it falls short of delivering the level of legal certainty and patent quality required in a modern, innovation-driven economy. The absence of substantive examination at the point of grant not only weakens the integrity of patent rights but also displaces critical evaluative functions onto the courts.

Admittedly, the introduction of substantive examination will entail increased administrative and financial commitments. It will require investment in human capital, technological infrastructure, and legislative reform, as well as careful management of

[9] NIPPS, "National Intellectual Property Policy and Strategy", <https://fmiti.gov.ng/wp-content/uploads/2025/12/National-Intellectual-Property-Policy.pdf> accessed on 9th April, 2026.

transitional challenges. However, these costs should not be viewed in isolation, but rather as part of a broader development of the patent system toward durability, credibility, and global competitiveness.

A robust substantive examination system enhances investor confidence, promotes economic growth as well as research and developments, facilitates technology transfer, promotes fair competition, and safeguards public interest considerations, including access to essential goods. The real question is not whether Nigeria can afford the costs associated with reform, but whether it can afford the continued risks and inefficiencies of maintaining the status quo. Notably, this reform direction is already reflected in the Nigerian National Intellectual Property Policy, which recommends the introduction of substantive examination supported by the recruitment and continuous training of technically competent patent examiners. Aligning practice with this policy framework would strengthen the credibility, coherence, and effectiveness of Nigeria's patent system.

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