



IPR RECORDATION FAQS AND AIMS USER GUIDELINES

Under the Anti-Counterfeit Act, it is an offense to import goods that have not been recorded with ACA. It is also required upon importers to declare the intellectual property rights for goods being imported into Kenya. IPR Agents shall only transact with ACA once they have been admitted and registered as such.

FAQS ON RECORDATION

1. What is recordation of Intellectual Property Rights?

Intellectual Property Rights (IPRs) recordation refers to the process of collecting and entering into an electronic database, information from Intellectual Property Right owners regarding their registered IPRs (trademarks, patents, utility models, industrial designs, copyrights, or any other registered intellectual property right), irrespective of their place of registration, for all goods to be imported into the Kenya.

2. What is the difference between IPR recordation and IPR registration?

IPR registration refers to filing an intellectual property with the relevant registering body in order to be granted exclusive rights with respect to ownership and use. In Kenya, industrial property rights are registered by Kenya Industrial Property Institute (KIPI) while copyrights are administered by Kenya Copyright Board (KECOBO).

IPR Recordation on the other hand refers to the process of submitting information regarding these registered rights (irrespective of their place of registration) to ACA. The information shall include images of products trading under these registered rights, the manufacturer details and contact persons.

3. What is the legal basis for Recordation?

The IPR recordation function is provided for under the following sections;

- (a) Section 34B of the Anti-Counterfeit Act, No.13 of 2008.
- (b) The Anti-Counterfeit (Recordation) Regulations 2021, LN 118 of 2021
- (c) The Anti-Counterfeit (Amendment) Regulations 2021, LN 117 of 2021

4. What is an IPR?

IPR is an abbreviation standing for Intellectual Property Rights and it refers to rights protected as trademarks, industrial designs, patents, utility models, copyrights or any other. In Kenya, Industrial property rights are registered by Kenya Industrial Property Institute (KIPI) while copyrights are administered by Kenya Copyright Board (KECOBO).

5. Who is an IPR owner?

A legal person with the capacity in law to enforce the intellectual property right in his own name.

6. Who is an IPR Agent?

A legal person duly appointed under the Anti-Counterfeit Act through a Power of Attorney (Form ACA 15) and admitted as such to act on behalf of an IPR owner.

7. Who is responsible for recordation?

The IPR owner or his agent who is duly appointed through a power of attorney and admitted by ACA as such.

8. Is IPR Recordation a one-off?

Yes, subject to annual renewal. Refer to Annex:1 for more details.

9. What does AIMS stand for?

AIMS is an acronym standing for ACA Integrated (IPR) Management System. This is the system through which ACA administers the Recordation process. The link for the system is; <https://public.aims.aca.go.ke>.

10. What is the process and cost of recording my intellectual property right with ACA?

Follow the procedure provided in Annex: 1.

11. What is the process and cost of applying for admission as an agent with ACA? Follow the procedure provided in Annex: 2.

12. What do I need to know/do as an importer?

- a) An importer shall declare the IPRs relating to the goods they intend to import into Kenya through the KENTRADE's Trade Facilitation Platform (Single Window System).
- b) Upon application for the Import Declaration Form (IDF), an importer shall be redirected to the Single Window System for purposes of ACA permit processing (Form ACA 2B).

- c) This process shall attract a fee of USD20 per consignment for every instance of application.
- d) An IPR owner who has recorded his right with ACA, his authorized agent, licensee or assignee shall be exempted from the payment of USD20. However, they shall still be required to declare the IPRs relating to the goods being imported.
- e) Raw materials, bulk goods, other industrial inputs, goods in CKD, machinery parts and used goods shall also be exempted from the payment process. An importer shall however be required to submit information supporting manufacturing, assembly or value addition in the case of raw materials, bulk goods other industrial inputs, goods in CKD and machinery parts.
- f) Transit and transshipment goods shall be exempted from the recordation process.
- g) Upon importation ACA shall then issue final clearance for the shipments.

NB. Attachment of an IPR registration certificate to the ACA permit shall be optional.
Clearing Agents and importers shall not be required to register with ACA in any way.

13. How will the recordation process aid the issuance of the Enriched CoC?

In compliance with the government directive on the issuance of an enriched CoC, a CoC shall be considered **enriched** if it has an approved ACA Permit (Form ACA 2B) attached to it and the PVoC agent's/Inspection officers have physically examined the related goods.

14. What are the consequences of not recording?

It shall be an offence for any person to import into Kenya any goods or items bearing an IPR that has not been recorded with ACA.

15. Is Kenya implementing a mandatory or voluntary recordation?

Kenya's Intellectual Property Rights (IPR) Recordation will be an ongoing process with the requirement for declaration of IPRs for imports commencing on January 1, 2023. Importation of unrecorded/unregistered goods shall be allowed as long as they are not counterfeit goods.

16. What do I do if my goods do not have brands or registered trademarks?

It shall be an offence for any person to import into Kenya, in the course of trade, any goods or items except raw materials that are unbranded.

17. Must IPRs relating to locally manufactured goods be recorded with ACA?

IPRs relating to goods manufactured in Kenya may be recorded voluntarily and free of charge.

18. Are local manufactures affected by recordation regulation?

Kenyans IPR owners for locally manufactured goods are exempted from the pay schedule in the IPR Recordation. They are however encouraged to record their intellectual property rights to enable government agencies manning the ports of entry have their IPR records to deter entry of counterfeiting products

19. What if I'm importing a few items for personal use?

An offence is only committed if goods are imported in the course of trade.

20. What type of goods are exempted from IPR Recordation?

Goods exempted from recordation include raw materials, transit goods, secondhand goods, small quantities for private and personal use, donations, goods in CKD, live plants and animals. Exemption consideration for other categories not mentioned can be granted by the Authority upon requisition.

21. How can I confirm that a brand is already recorded with ACA?

This can be done by conducting a search on <https://public.aims.aca.go.ke>. This shall attract a fee of USD5 for every application.

22. How does ACA intend to roll out the import processing process?

The import processing process shall be rolled out in phases starting with HS Codes relating to mostly counterfeited categories of goods. Please refer to Public notice here <https://www.aca.go.ke/media-center/news-and-events/357-implementation-of-recordation-of-intellectual-property-rights-for-imports>

23. What is the main objective of IPR recordation?

IPR Recordation aims to prevent importation of counterfeit goods into Kenya thereby proactively protecting brand owners and consumers from harmful counterfeit goods.

24. Why is Kenya implementing Recordation of IPR?

The IPR Recordation aims at preventing counterfeit imports into Kenya. An analysis of the counterfeit products seized over the years by ACA found out that 80% of the IP infringing products were imported into the country, while 20% were locally manufactured. The Authority had therefore to change its enforcement strategy to target the importation component.

Recordation is lauded as one of the most effective international best practices in prohibiting the importation of counterfeit goods. Kenya is the 4th country (after RSA, Algeria and Mauritius to adopt recordation in Africa. Recordation has also been employed internationally as a world's best practice in combating counterfeiting in USA, China, Japan, UAE, UK, etc

25. Do brand owners benefit from Recordation?

Recordation is beneficial to intellectual property owners since it ensures that those who import counterfeit goods into Kenya will be stopped in their tracks and called to book. They are hence assured of their market share and protection of their IP from unfair trade practice of counterfeiting.

26. Do importers benefit from Recordation?

Importers stand to benefit from reduced clearance time and losses arising from enforcement interventions at the point of entry or in the market since clearance will be done at country of origin.

Recordation is a trade facilitation measure aimed at promoting fair and legitimate trade by creating a favorable and conducive business environment for all players.

27. Are generics pharmaceuticals counterfeits and affected by the recordation requirements?

Generic pharmaceutical products that are legitimately manufactured and correctly labeled, are not counterfeit.

Recordation's applies to all products bearing brand names or trademarks irrespective of whether they are generic or not since both original and generic pharmaceutical products with brand names can be counterfeited.

The recordation requirements are thus beneficial to trademark owners as they help protect registered marks from infringement and also protect our consumers from the health and safety risks of consuming counterfeit drugs.

28. When is the commencement date for IPR Recordation?

The processing of applications for IPR recordation and admission of agents commenced on February 28, 2022. Processing of imports shall commence on 1st January 2023.

29. What other services can I access on the AIMS system?

- a) Application for Renewal of Recordation of Intellectual Property Rights.
- b) Application for renewal of Registration as an IPR Agent
- c) Application to continue recordation on Change of Ownership of IPR
- d) Notice of Change of Name of IPR owner
- e) Application for official Search of the IPR database (f) Application for copies of documents.

AIMS USER GUIDELINES

ANNEX: 1

1. User Guidelines for Application for IPR Recordation.

To apply for recordation of an Intellectual Property Right;

- (a) Visit <https://public.aims.aca.go.ke>.
- (b) Create an account. Upon creation of an account, you shall be prompted to verify your account through the email address provided.
- (c) Log in as an IPR Owner or log in as an IPR Agent and follow the agent admission process.
- (d) To be admitted as an agent, you will be required to provide;
 - A valid Power of Attorney in Form ACA 15, stamp duty paid, certified as a true copy of the original and notarized if foreign,
 - Proof of membership to a statutory professional body in Kenya or proof of compliance with the Private Security Regulation Act, No. 13 of 2016.
- (e) You can apply for recordation as an individual, a partnership or a company as follows;
 - As an individual, you shall provide a certified copy of Passports/Identification Card
 - As a partnership, you shall provide the full details of the partners, certified copies of their Passport/ identification cards and a partnership registration certificate.
 - As a company, you shall provide the company details, a certified copy of the certificate of incorporation and tax pin certificate (optional).
- f) Select the type of IPR you wish to record, i.e. a trademark, an industrial design, a patent, a utility model, a copyright or any other.

NB

- ✓ *For a trademark you shall select the applicable Nice Classes as provided in the registration certificate.*
- ✓ *For an industrial design, you shall select the applicable Locarno Classes as provided in the system*
- ✓ *It shall not be mandatory for an IPR owner to record all the registered IPRs relating to one product.*

- g) Provide the details of the IPR, including the name of the IPR, IPR registration number and expiration date and attach a certified copy of the valid IPR Registration Certificate.
- h) Submit the details of the manufacturer, foreign entities, parent company, subsidiaries and licensees if any.
- i) If you are an IPR owner, you may select an agent from the list of accredited agents from the system. Alternatively, an IPR owner can still issue an agent with a power of attorney (Form ACA 15) for them to follow the agent admission process.
- j) Provide the product details, including the product name and product description and upload clear representative images of all products trading under the registered IPR, including all SKUs, models and variations.
- k) A downloadable invoice is then generated; USD90 for the first class and US\$10 for every classes shall only attract a fee of USD90 per IPR.
- l) Payments shall be made against the invoice through M-PESA, Credit/Debit Card or Cash deposit/EFT, Bankers' Cheque or RTGS and proof of the offline payment attached.
- m) All payments shall be made to:

**ANTI COUNTERFEIT AGENCY
KENYA COMMERCIAL BANK
KIPANDE HOUSE BRANCH
ACCOUNT NO: 1128466090
BANK CODE: 01
BRANCH CODE: 101**

SWIFT CODE: KCBLKENX or ANTI COUNTERFEIT AGENCY

OR MPESA PAYBILL: 682067, ACCOUNT NO: (enter application reference number as indicated on the invoice)

- n) Upon completion of payment, submit the application to ACA for consideration.
- o) ACA will review and consider for approval all applications within a period of 30 days.

NB

- ✓ *Additional information may be required from the applicant before an approval is done.*
- ✓ *ACA also reserves the right to reject an application on reasonable grounds.*

- p) Upon approval of an application, the applicant will receive a recordation certificate through their email or through the AIMS portal. The recordation shall remain valid for a period of 12 months' subject to annual renewal at USD50.

ANNEX: 2.

2. User Guidelines for Application for Admission as an Agent.

To apply for admission as an Agent;

- (a) Visit <https://public.aims.aca.go.ke>.
- (b) Create an account. Upon creation of an account, you shall be prompted to verify your account through the email address provided.
- (c) Log in as an IPR Agent.
- (d) You can apply for admission as Agent as an individual, a partnership or a company as follows;
 - As an individual, you shall provide a certified copy of Passports/ Identification Card. *(Ensure the power of attorney is in the name of the individual applying for admission as an agent).*
 - As a partnership, you shall provide the full details of the partners, certified copies of their passport/identification card and a partnership registration certificate. *(Ensure the power of attorney is in the name of the partnership applying for admission as an agent).*
 - As a company, you shall provide the company details, a certified copy of the certificate of incorporation and tax pin certificate (optional). *(Ensure the power of attorney is in the name of the company applying for admission as an agent).*
- (e) You shall be required to upload a valid Power of Attorney in form ACA 15. The power of attorney must have stamp duty paid, certified as a true copy of the original and notarized if foreign.
- (f) You shall be required to upload proof of membership to a statutory professional body in Kenya or proof of compliance with the Private Security Regulation Act, No. 13 of 2016.
- (g) A downloadable invoice of KES. 10,000 is generated.

(h) Payments shall be made against the invoice through M-PESA, Credit/Debit Card or Cash deposit/EFT, Bankers' Cheque or RTGS and proof of the manual payment attached.

(i) All payments shall be made to:

**ANTI COUNTERFEIT AGENCY
KENYA COMMERCIAL BANK
KIPANDE HOUSE BRANCH
ACCOUNT NO: 1128466090
BANK CODE: 01
BRANCH CODE: 101**

SWIFT CODE: KCBLKENX or ANTI COUNTERFEIT AGENCY

OR MPESA PAYBILL: 682067, ACCOUNT NO: (enter application reference number as indicated on the invoice)

(j) Upon payment, submit this application to ACA for consideration.

(k) ACA will review and consider for approval all applications within a period of 30 days.

✓ *N Additional information may be required from the applicant before an approval is done.*

✓ *ACA also reserves the right to reject an application on reasonable grounds.*

Upon approval of an application, the applicant will receive a certificate for admission as an agent through their email or through the AIMS portal. The registration shall remain valid for a period of 12 months' subject to annual renewal at KES. 5, 000.

For more information, visit www.aca.go.ke, or call +254-(0)-20-2225130,
or email recordation@aca.go.ke.

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