



African Regional Intellectual Property Organization



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INTELLECTUAL PROPERTY

What is Intellectual Property?

In its very basic meaning, **Intellectual property** (IP) refers to creations of the mind, such as inventions (patents); designs; and symbols, names, images used in commerce as well as literary and artistic works. IP has two branches, namely **Industrial Property** and **Copyright**. Industrial Property includes patents for inventions, industrial designs, utility models and trademarks, while Copyright covers literary works films, music, artistic works as well as related rights.

PATENTS

What is a Patent?

It is a sole right given to an inventor to make, use, or sell his/her invention for a limited period in exclusion of unauthorized competitors.

What kind of protection does a patent offer?

Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. These patent rights are usually enforced in a court of law

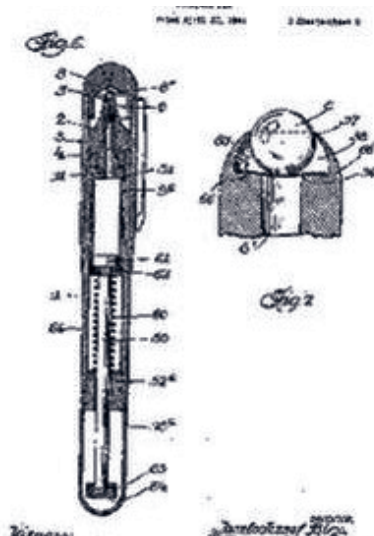
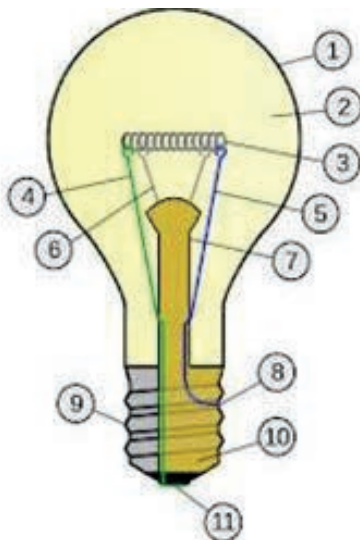
What rights does a patent owner have?

A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected. The owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent.

Once a patent expires, after 20 years, the protection ends, and an invention enters the public domain. This means that the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others.

Why are patents necessary?

Patents provide incentives to individuals by offering them recognition for their creativity, financial investment in research & development (R&D) and material reward for their marketable inventions. These incentives encourage continuous innovation, and creativity which assures that the quality of human life is continuously enhanced.



What role do patents play in everyday life?

Patented inventions have, in fact, pervaded every aspect of human life, for example, from electric lighting, plastic, to ballpoint pens and microprocessors. Patents contribute to the body of public knowledge that promotes further creativity and innovation and inspiration for future generations of researchers and inventors. They are a source of information on new technology.

How is a patent granted?

The first step in securing a patent is the filing of a patent application which is comprised of various documents required by the applicable law. The most important of these is the specification. This document identifies the invention by providing its title (including an indication of its technical field) and a full description (made out in so clear a layout as to aid a person skilled in the field to reproduce the invention) which may include drawings of the invention. The specification ends with one or more "claims", that is, the information which determines the extent of the matter in the invention claimed as new and which define(s) boundaries of patent protection, when a patent is granted.

What kinds of inventions can be protected?

An invention must, in general, fulfil the following conditions in order to qualify for a patent grant. Firstly, it must be of practical use. Secondly, it must show an element of novelty, that is, some new characteristic which is not known in the body of existing knowledge in its technical field. This body of existing knowledge is called "prior art". Thirdly, the invention must show an inventive step which could not be deduced by a person with an average knowledge of the technical field. Finally, its subject matter must be accepted as "patentable" under law. In many countries, scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, or methods for medical treatment (as opposed to medical products) are generally not patentable.

Who grants patents?

A patent is granted by a national patent office or by a regional office that does the work for a number of countries, such as the African Regional Intellectual Property Organization (ARIPO) and the European Patent Office (EPO). Under such regional systems, an applicant requests protection for the invention in one or more countries, and each country decides as to whether to offer patent protection within its borders. The Patent Cooperation Treaty (PCT), which is administered by the World Intellectual Property Organization (WIPO), provides for the filing of a single international patent application which has the same effect as national applications filed in the designated countries once the national phase, undertaken by ARIPO and the EPO for many of their member states, ends in a patent grant. An applicant seeking protection may file one application and request protection in as many signatory states as needed.

UTILITY MODELS

What is a Utility Model?

A utility model is an exclusive right granted for an invention, which for a limited period of time allows the right holder to prevent others from commercially using the protected invention without the right holder's authorization. In its basic definition, which may vary from one country (where such protection is available) to another, a utility model is similar to a patent. In fact, utility models are sometimes referred to as "petty patents" or "innovation patents."

How do Utility Models Differ from Patents

The main differences between utility models and patents are the following: The requirements for acquiring a utility model are less stringent than for patents. While the requirement of "novelty" is always to be met, that of "inventive step" or "non-obviousness" may be much lower or absent altogether. In practice, protection for utility models is often sought for innovations of a rather incremental character which may not meet the patentability criteria.

The term of protection for utility models is shorter than for patents and varies from country to country (usually between 7 and 10 years without the possibility of extension or renewal).

In most countries where utility model protection is available, patent offices do not examine applications as to substance prior to registration. This means that the registration process is often significantly simpler and faster, taking, on average, six months.

Utility models are much cheaper to obtain and to maintain.

In some countries, utility model protection can be obtained only for certain fields of technology and only for products but not for processes. Utility models are considered particularly suited for small and medium enterprises (SMEs) that make "minor" improvements to, and adaptations of, existing products. Utility models are primarily used for mechanical innovations.

The "Innovation patent" was introduced as a result of extensive research into the needs of SMEs with the aim of providing a "low-cost entry point into the intellectual property system." Only a small but significant number of countries and regions provide the option of utility model protection.



How Can Your SME Acquire and Maintain Intellectual Property Protection?

Before your SME can take advantage of intellectual property (IP) assets, it has to acquire IP rights. A number of IP rights need to be granted or registered. At the national level, IP offices of the respective countries are the only local institutions entrusted with functions of granting or registering IP rights. The procedure for their acquisition and maintenance may differ from country to country, but the basic principles and features of these procedures are common to most countries. One should also note that IP rights could also, where certain conditions are met, be acquired at a regional level through, in this case, the African Regional Intellectual Property Organization (ARIPO). Before seeking IP protection for your SME in a particular country, you are advised to study the country's legal system that governs IP issues.

Sources of information

There are various sources of information on IP legislation. Probably the best place to start would be the national or regional IP office or copyright office to obtain the details of IP protection in your country. It is often advisable to seek guidance from an IP agent or attorney particularly when the relevant IP laws require that an applicant who does not reside in the country be represented by an agent or attorney entitled to practice in that country.

The IP office or IP agent/attorney should be able to advise you as to the fees and other details regarding the procedure for IP acquisition and maintenance.

INDUSTRIAL DESIGNS

Why Protect Industrial Designs?

Industrial designs are what make an article attractive and appealing, hence, they add to the commercial value of a product and increase its marketability.

What is an Industrial Design?

It is the ornamental aesthetic aspect of a useful article. When an industrial design is protected, the owner is assured an exclusive right against unauthorized copying or imitation of the design by third parties.

This helps to ensure a fair return on investment. An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices, encouraging creativity, and promoting more aesthetically attractive products.

Protecting industrial designs helps economic development by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. They contribute to the expansion of commercial activities and the export of national products. Industrial designs can be relatively simple and inexpensive to develop and protect.

They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and craftsmen, in both industrialized and developing countries.





How can industrial designs be protected?

In most countries, an industrial design must be registered in order to be protected under industrial design law. As a general rule, to be registrable, the design must be “new” or “original”. Generally, “new” means that no identical or very similar design is known to have existed before. Once a design is registered, a registration certificate is issued. Following that, the term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years.

Depending on the particular national law and the kind of design, an industrial design may also be protected as a work of art under copyright law. In some countries, industrial design and copyright protection can exist concurrently. In other countries, they are mutually exclusive: once the owner chooses one kind of protection, he can no longer invoke the other. Under certain circumstances, an industrial design may also be protectable under unfair competition law although the conditions of protection and the rights and remedies ensured can be significantly different.



TRADEMARKS

What is a Trademark?

It is a distinctive word or sign or a combination of both, which identifies certain goods and services of one producer offered for sale as being different from those of another.

What does a trademark do?

A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment of a royalty. It also keeps the goodwill of its owner to distinguish the business of that owner from that of another trader.

In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services.

The period of protection varies, but a trademark registration can be renewed indefinitely beyond the time limit on payment of renewal fees. Trademark protection is enforced by the courts, which in most systems have the authority to block trademark infringement.

What kinds of trademarks can be registered?

The possibilities are almost limitless provided that basic distinctiveness is inherent in the mark. Trademarks may be one or a combination of words, letters, graphics and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colors used as distinguishing features.

In addition to trademarks identifying the commercial source of goods, several other categories of marks exist.

Collective marks are owned by an association whose members use them to identify themselves with a level of quality and other requirements set by the association. Examples are professional associations.

Certification marks are given for compliance with dened standards, but are not conned to any membership. They may be granted to anyone who can certify that those products meet certain established standards. The internationally accepted "ISO 9000" quality standards are an example of such widely-recognized certifications.

How is a trademark registered?

First, an application for registration of a trademark must be filed with the appropriate national or regional trademark office. The application must contain a clear reproduction of the sign filed for registration, including any colors, forms, or three-dimensional features. The application must also contain a list of goods or services to which the sign would apply when in use.

It must be distinctive so that consumers can distinguish it as identifying a particular product, as well as from other trademarks identifying other products. It must neither mislead nor deceive customers.

How extensive is trademark protection?

Almost all countries in the world register and protect trademarks. Each national or regional office maintains a Register of Trademarks which contains full application information on all registrations and renewals, facilitating examination, search, and potential opposition by third parties. The effects of such a registration are, however, limited to the country (or, in the case of a regional registration, countries) concerned. In order to avoid the need to register separately with each national office, ARIPO administers a system of regional registration of marks under the Banjul Protocol on Marks.

At the international level, the World Intellectual Property Organization (WIPO) administers a trademark system which is governed by two treaties, the Madrid Agreement Concerning the International Registration of Marks and the Madrid Protocol.



COPYRIGHT AND RELATED RIGHTS

What is a Copyright?

Copyright is a form of intellectual property that protects literary and artistic works from exploitation without authorization from the owner. Examples of works protected by copyright are books, musical works, poems, drama, sculptures, computer software, dance, art, etc.

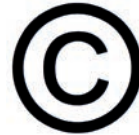
Criteria for Copyright Protection

Copyright protects expressions of ideas that have been created independently. That is, for a work to be protected by copyright, it should be an original creation of either artistic or literary nature. Copyright protection is not subject to the quality or aesthetic appeal of the work.

Rights Provided by Copyright

The owner of a copyright protected work has the exclusive right to prohibit or authorize the following:

- reproduction of the work;
- distribution of the work to the public by sale or other transfer of ownership;
- public performance of the work;
- public display of the work; and creation or production of derivative works.



Copyright further gives right holders moral rights. Moral rights grant the author of a work the right to be identified as the author of a work and also the right to prohibit the use of a work in a manner that affects his/her reputation.

Duration of Copyright

Generally, copyright protection lasts for the life of the author plus 50 years after the author's death. However, some jurisdictions provide for the duration of life of the author plus 70 years after the death of the author.

What are Related Rights

Related rights, also referred to as neighbouring rights, are created around copyright protected works, and they provide similar, although often more limited rights and are of shorter duration.

Related rights cover:

- performing artistes (such as actors and singers) in their performances;
- producers of sound recordings (for example, cassette recordings and compact discs) in their recordings;
- broadcasting organizations in their radio and television programs.

Rationale for Copyright Protection

Copyright protection encourages creativity and information exchange by granting creators of works limited monopoly to enjoy benefits of their hard work.

Copyright and its related rights are essential to human creativity by giving creators incentives in the form of recognition and fair economic rewards.

Under this system of rights, creators are assured that their works can be disseminated without fear of unauthorized copying or piracy. This in turn helps increase access to and enhances the enjoyment of culture, knowledge, and entertainment thus encouraging further creativity.

How is Copyright Protection Acquired?

Copyright protection itself does not depend on official procedures. Upon its creation, any artistic or literary work is automatically protected by copyright laws. However, some countries have in their national laws provisions that allow for registration or depositing of works with the copyright office for purposes of, for example, identifying and distinguishing titles of works.

Registration of a work can also serve as prima facie evidence should copyright ownership be disputed.

In August 2022, ARIPO adopted the Kampala Protocol on Voluntary Registration of Copyright and Related Rights with the objective of, among others, to establish, manage, facilitate, and coordinate a system for voluntary registration and notification of copyright and related rights, so that the copyright industry meaningfully contributes to the socio-economic development of countries.

Collective Management

The increasingly worldwide use of literary and artistic works makes it difficult for right-holders to manage access to and use of their works. Collective management of copyright and related rights has over the years gained popularity as a means to allow access to works thereby ensuring that right-holders are compensated for the use of their works.

Collective management is a system where collective management organizations or societies are established to license the use of works of their members, collect royalties and distribute these royalties to right-holders. Collective management has become a trend in many countries, more so that it also enables societies to enter into reciprocal agreements which enable collecting societies to collect royalties for the use of foreign works and pay to other reciprocating societies.

What is ARIPO's Role in Intellectual Property

The African Regional Intellectual Property Organization (ARIPO) is mandated by its member States to grant patents and register trademarks, utility models, industrial designs and traditional knowledge on their behalf.

To carry out this function, ARIPO administers 5 protocols namely, The Harare Protocol on Patents and Industrial Designs, Banjul Protocol on Marks, Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore, Arusha Protocol for the Protection of New Varieties of Plants and the Kampala Protocol on Voluntary Registration of Copyright and Related Rights.

Currently, the member States of the Organization are:

Botswana, Cape Verde, Eswatini, The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mauritius, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Seychelles, Sierra Leone, Somalia, Sudan, Uganda, United Republic of Tanzania, Zambia and Zimbabwe.

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