

Africa Intellectual Property Newsletter Vol. 80

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1. IMPORTANT TOPICS

Africa: Afreximbank doubles facility for creative and cultural industries to US\$1billion¹

Africa Export-Import Bank (Afreximbank) has announced funding for Africa's creative industries to the value of US\$1billion. This money will finance *'all activities in the creative and cultural industry value chain, from content production to... acquisition of intellectual property.'*

The bank has further formed a company, CANEX Creations Incorporated. The bank will help generate intellectual property and assist with protection and commercialization.

Africa: The role of copyright law in text and data mining research²

Copyright Law in Africa is not fit for purpose, according to Natasha Karanja and Chebet Korosof of Strathmore University. In a recent article the claim that Africa's copyright laws do not make provision for text and data mining research (TDM), something that is vital in the era of Artificial Intelligence Research. They describe TDM as *'automated processing (machine reading) of large volumes of text and data to uncover new knowledge or insights'*, and they say that it can be used for commercial and non-commercial purposes.

The authors go on to say that Japan and Singapore have special exceptions for TDM, whereas in the USA there is the concept of fair use. As for Africa, Kenya does make provision for fair dealing, but is not clear whether this covers TDM

Africa: Patents critical for innovation³

At a seminar organized by AfrIPI in Harare, Zimbabwe, project leader Aida Galindo, emphasized the extremely important role that patents play in the innovation cycle. She said that universities have been transformed into *'knowledge hubs'*, and that AfrIPI is proud of its collaboration with universities. She said that AfrIPI is, in conjunction with the EPO, involved in the training of ARIPO patent examiners.

Africa: Reaction to WTO delay to easing intellectual property rules on COVID-19 tests and treatment – Oxfam International⁴

Oxfam has criticized the decision of the World Trade Organization (WTO) to agree to the USA's request to push back the deadline for WTO states to reach a deal on easing IP rules for Covid medicines and supporting cheaper generics. Oxfam spokesman, Max Lawson, made these points:

- Many low and middle-income countries are excluded from contracts for generic versions of Covid medications.
- 50 members of the European Parliament have called on the EU to reiterate its support for a deal of Covid IP, and 160 civil organisations have called for further action.
- The pharmaceutical industry, however, has lobbied against an IP waiver for Covid medications.
- WTO members have now decided to let another year pass before taking any meaningful action on fighting Covid.

¹ <https://www.afreximbank.com/afreximbank-doubles-funding-facility-for-creative-and-cultural-industries-to-us1-billion/>

² <http://infojustice.org/archives/44946>

³ <https://www.newsday.co.zw/business/article/200004737/patents-critical-for-innovation>

⁴ <https://www.oxfam.org/en/press-releases/reaction-wto-delay-easing-intellectual-property-rules-covid-19-tests-and-treatment>

ARIPO: ARIPO Master's Program in IP⁵

The opening of the practical sessions for the 15th cohort of the Master's Degree in Intellectual Property (MIP) took place on 5 December 2022 - ARIPO Director General Bemanya Twebaze welcomed the candidates. The Master's Program is offered thanks to the support of WIPO, ARIPO, Africa University and Japan Patent Office.

The posting says that Africa desperately needs expertise in intellectual property in order to expand its innovation and creative capacity.

ARIPO: Seminar on Patent Libraries (PATLIB)⁶

At the ARIPO Secretariat in Mozambique (6-7 December 2022) the Director General, Bemanya Twebaze, welcomed the president of the European Patent Office, Antonio Campinos, to the official opening of the Seminar on Patent Libraries (PATLIB) - the seminar was organised within the framework of the Reinforced Partnership between ARIPO & EPO, with support from the Intellectual Property Rights and Innovation in Africa (AfrIPI).

In a LinkedIn posting Twebaze said this:

- PATLIB is part of the *Knowledge Transfer to Africa* project.
- The project is tailored for ARIPO Member States' universities.
- The pilot universities will have access to the well-established network of more than 320 PATLIB centres in Europe, that have IP knowledge & information on how to convert IP rights into market products.
- The seminar aimed to promote awareness of the importance of IP to universities, research and development institutions, and innovation associations.
- The seminar demonstrated how universities can leverage increased patent searches and innovation efficiencies.

ARIPO: Co-operation with the Japan Patent Office⁷

At recent meetings of the councils of the ARIPO and OAPI regional registration systems (ARIPO 21-25 November 2022, OAPI, 8 December 2022), the Director of the Trial and Appeal Department of the Japan Patent Office (JPO), Mr Yasuda, stressed that the JPO will continue to promote cooperation with African IP offices in order to create an environment where IP can be protected efficiently in Africa.

Mr. Yasuda, described Japan as a '*partner that grows together*' with Africa.

Kenya: IP rights recordation is here, together with considerable confusion⁸

IP owners doing business in Kenya know that they were required to record their IP rights (IPRs) with the Kenyan Anti-Counterfeit Authority (ACA) by 1 January 2023 - as of 8 January 2023 there has been no extension of this deadline. Despite frequent references to recordation of IPRs, it does seem to be accepted that the requirement is limited to trademarks.

The ACA has, until now, stressed the criminal sanctions flowing from a failure to record IPRs. But a recent notification has a somewhat different tone and focus.*⁹ This presents recordation as a '*trade facilitation measure*' that will see importers '*benefit from reduced clearance time*'. The notification says that '*all recorded*

⁵ https://www.linkedin.com/posts/african-regional-intellectual-property-organization_ip-ip-intellectualproperty-activity-7005483991176773632-VYMM/?utm_source=share&utm_medium=member_ios

⁶ https://www.linkedin.com/posts/bemanya-twebaze-922255192_intellectualproperty-activity-7005972779451768832-MWW4/?utm_source=share&utm_medium=member_ios

⁷ <https://www.jpo.go.jp/e/news/ugoki/202212/2022121202.html>

⁸ <https://www.aca.go.ke/media-center/news-and-events/357-implementation-of-recordation-of-intellectual-property-rights-for-imports>

⁹ *Public Notice No.3/2022 – Implementation of Recordation of Intellectual Property Rights for Imports

IPRs shall be accorded proactive protection against counterfeit imports' under the provisions of the Anti-Counterfeit Act.

The notification further says that the ACA will prioritise the enforcement of the following product categories:

Alcoholic beverages; pharmaceuticals; electricals and electronics; clothing; footwear; cosmetics.

The notification has now been supplemented by a later notice, Public Notice No.4/2022 dated 23 December 2022.¹⁰ Headed *Implementation of Recordation of Intellectual Property Rights for Imports*, the notification reads as follows:

The Authority has adopted a phased approach in order to facilitate continuous compliance by importers and brand owners. Products falling under the following HS Codes have been categorized under Phase One (1) of the implementation process and shall require ACA import permit application starting January 1, 2023.

Chapter 85: Electrical and electronics with HS Codes from 8508 to 8544.

The purpose of Public Notice No. 4 has not been clarified by the ACA but the ACA is seemingly attempting, in a staggered approach by identifying specific key categories, to encourage brand owners to register. That is not to say that brand owners in alternative sectors are not to be concerned with the requirement which in terms of the law is mandatory and applies to all brand owners importing goods into Kenya.

There is considerable confusion about the recordation requirement. It is not clear whether the 1 January 2023 deadline is confined to electrical and electronic goods, but our understanding is that it is not. To be clear - we believe that the deadline applies to all categories of goods. If you have any concerns or queries please seek legal advice.

Mauritius: Mauritius joins PCT¹¹

Mauritius has joined WIPO's Patent Cooperation Treaty, a treaty that allows an inventor to claim patent protection in over 150 countries in a single application.

The PCT will enter into force for Mauritius on 15 March 2023. This means that as of this date inventors in Mauritius will be able to file patent applications under the PCT in order to seek patent protection in PCT member states. At the same time non-Mauritian companies will be able to obtain patent protection in Mauritius through the PCT system.

Nigeria: France to promote awareness on geographical indications on Nigerian products – envoy¹²

The French Embassy in Nigeria has, at a recent meeting, pledged its support to identifying possible Geographical Indications (GIs) on Nigerian products in order to increase the country's economic growth.

At the meeting the EU ambassador to Nigeria said that GIs represented a success story that Europe wishes to promote globally, and particularly in Africa. The ambassador further said that the African Union has asked the UN to establish a continental strategy for GIs, something that has been supported by the European Commission and WIPO.

¹⁰ <https://www.aca.go.ke/media-center/news-and-events/365-public-notice-4-2022-implementation-of-recordation-of-intellectual-property-rights-for-imports>

¹¹ https://www.linkedin.com/posts/wipo_mauritius-joins-wipos-patent-cooperation-activity-7009184465037983744-uvG?utm_source=share&utm_medium=member_ios

¹² <https://www.sunnewsonline.com/france-to-promote-awareness-on-geographical-indications-on-nigerian-products-envoy/>

OAPI: OAPI offers a new opportunity to the geographical indications of the Member States¹³

On 15 December 2022, OAPI formally acceded to the Geneva Act (of 20 May 2015) of the Lisbon Agreement for the Protection of Appellations of Origin and Geographical Indications and their International Registration – this provides for the international registration of appellations of origin and geographical indications through a single registration procedure with WIPO.

OAPI: The 2023-2027 Strategic Plan adopted¹⁴

At a meeting of ministers at the 62nd Ordinary Session of the OAPI Administrative Council, the Strategic Plan 2023-2027 was adopted. This authorizes: the creation of a mechanism for financing invention and innovations; and the creation of model laws on the protection of traditional knowledge, genetic resources and cultural expressions.

South Africa: Supreme Court of Appeal judgment on product shape trademarks and passing off¹⁵

In a judgment the South African Supreme Court of Appeal (SCA) ruled that a trade mark registration for a particular bottle shape was not valid because there was no evidence that consumers regard the shape as a trade mark. Yet the court went on to hold that a competitor that was using a similar looking shape for its bottle was guilty of the common law action of passing off (where no registration is necessary) – the court was strongly influenced by the fact that the competitor had clearly sought to copy the shape of the registered bottle shape.

**Darts Industries Incorporated and another v Botle Buhle Brands (Pty) Ltd and Another (636/2021) (2022) ZASCA 170.*

South Africa: South Africa was wrong to patent an AI's invention¹⁶

In 2021 South Africa made the news when the patent office accepted that Artificial Intelligence (AI) - in this instance AI known as DABUS - was the inventor of a particular patent application, whereas the developer of the AI (DABUS), one Stephen Thaler, was as the patentee/applicant. But in other jurisdictions such as Australia similar applications were rejected on the basis that a natural person (human) must be listed as the inventor.

In a recent article two South African IP attorneys, David Cochrane and Christopher Mhangwane, accept that the approach adopted by the South African patent office was incorrect and that the inventor of a patent must be human. They point, inter alia, to the fact that the South African Patents Act uses the terms 'him' and 'person' when referring to the inventor.

South Africa: The Copyright Amendment Bill and the many fronts of the battle¹⁷

We have discussed the controversial Copyright Amendment Bill previously. In a recent article lawyer Thato Moloto calls for a balanced approach to the much- publicised bill, legislation which introduces contentious amendments to the Copyright Act. Moloto calls for a balanced approach and says this:

¹³ <http://oapi.int/index.php/fr/component/k2/item/751-protection-des-indications-g%C3%A9ographiques-l%E2%80%99oapi-adh%C3%A8re-aux-trait%C3%A9s-internationaux>

¹⁴ <http://oapi.int/index.php/fr/component/k2/item/750-oapi-le-plan-strat%C3%A9gique-2023-2027-adopt%C3%A9>

¹⁵ <http://www.saflii.org/za/cases/ZASCA/2022/170.html>

¹⁶ <https://techcentral.co.za/south-africa-was-wrong-to-patent-an-ais-invention/218389/>

¹⁷ <https://www.polity.org.za/article/the-copyright-amendment-bill-and-the-many-fronts-of-the-battle-2022-12-12>

- Many different parties have an interest in the legislation, but in each case their interests are ‘*best served by a balanced and well-written law.*’
- A particular issue with South Africa is that it is a ‘*developmental state*’ and there is a need for a ‘*sophisticated understanding*’ of different industries. When it comes to an area like textbook authors, publishers and technology companies all have competing interests.
- Copyright exceptions are the tools that legislators have to balance rights.
- There needs to be greater accommodation of differing interests, failing which there is likely to be repeated and sustained litigation in regard to the new legislation.

South Africa: A second patents case goes to the Constitutional Court¹⁸

In a recent posting the IPKitten blog has reported on the decision of the South African Constitutional Court in the case of *Villa Crop Protection (Pty) Ltd v Bayer Intellectual Property GmbH*.

The issue was whether a decision of Patents Court refusing Villa Crop leave (authority) to amend its court papers by introducing the common law defense of ‘*unclean hands*’ was correct – the defense of unclean hands is a broad one that provides that a party who is engaged in inequitable behavior in relation to its claim is not entitled to relief from the courts.

The Constitutional Court ruled that the decision of the Patents Court was incorrect, because the doctrine of unclean hands is distinct from a claim of patent revocation – unclean hands is directed at the issue of whether a party is one that the court should hear, whereas revocation is to do with the validity or otherwise of the patent. So the introduction of the unclean hands defence was valid!

Although this is a somewhat technical issue IP cases seldom make their way to the Constitutional Court, making such judgments noteworthy.

2. Additional topics:

Africa general:

African Development Bank Group Appoints Professor Padmashree Gehl Sampath as Special Advisor for Pharmaceuticals and Health Infrastructure to Dr. Akinwumi Adesina

<https://www.afdb.org/en/news-and-events/press-releases/african-development-bank-group-appoints-professor-padmashree-gehl-sampath-special-advisor-pharmaceuticals-and-health-infrastructure-dr-akinwumi-adesina-57311>

Fashion forward: pioneering African designer eyes luxury brands market

https://www.wipo.int/wipo_magazine/en/2022/04/article_0003.html

Which African countries were most innovative in 2022?

<https://finance.yahoo.com/news/african-countries-were-most-innovative-090500304.html>

ARIPO:

2022 ends on a high note

<https://www.aripo.org/2022-ends-on-a-high-note%ef%bf%bc/>

Egypt:

Authority to Protect Intellectual Property is Coming to Egypt in 2024

<https://cairosce.com/Buzz/Authority-to-Protect-Intellectual-Property-is-Coming-to-Egypt-in-2024>

¹⁸ <https://ipkitten.blogspot.com/2022/12/africa-ip-highlights-3-patents-other.html>

Egypt joins DESIGN view

<https://internationalipcooperation.eu/en/afripi/news>

Intellectual Property Authority to launch in 2024 under new five-year IP strategy

<https://enterprise.press/stories/2022/09/22/intellectual-property-authority-to-launch-in-2024-under-new-five-year-ip-strategy-81775/>

Mozambique:

Director General Visits Mozambique, Participates in ARIPO Administrative Council

https://www.wipo.int/about-wipo/en/dg_tang/news/2022/news_0063.html

Nigeria:

Dangers of illicit products, counterfeiting on consumers' health dominate discourse

<https://businessday.ng/news/article/dangers-of-illicit-products-counterfeiting-on-consumers-health-dominate-discourse/>

Google trains NCC staff on removal of illegal content from Web pages

<https://copyright.gov.ng/google-trains-ncc-staff-on-removal-of-illegal-content-from-web-pages/>

OAPI:

FINAL COMMUNIQUE: 62nd ordinary session of the Board of Directors

<http://oapi.int/index.php/fr/component/k2/item/752-communique-final-62eme-session-ordinaire-du-conseil-d-administration>

Board of Directors: OAPI experts in conclave in Doula

<http://www.oapi.int/index.php/fr/component/k2/item/749-oapi-les-ministres-de-l%E2%80%99industrie-de-17-pays-se-rencontrent-%C3%A0-douala>

South Africa:

Worldwide IP Filings Reached New All-Time Highs in 2021, Asia Drives Growth

https://www.wipo.int/pressroom/en/articles/2022/article_0013.html

Music streaming in SA: New survey reveals musicians get a raw deal

<https://www.moneyweb.co.za/news/south-africa/music-streaming-in-south-africa/>

SA has room for growth in innovation

<https://it-online.co.za/2022/12/13/sa-has-room-for-growth-in-innovation/>

The role of intellectual property and the importance of its protection

<https://arenaevents.africa/the-role-of-intellectual-property-and-the-importance-of-its-protection/>

Uganda:

ARIPO Director General's Keynote Speech at the Innovation Week of Makerere University Centennial

<https://www.aripo.org/aripo-director-generals-keynote-speech-at-the-innovation-week-of-makerere-university-centennial/>

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