

Africa Intellectual Property Newsletter Vol. 81

Index

1. Important topics

Africa: The AfCFTA, an opportunity for Africa's youth to accelerate trade and industrialization

New initiative to increase Africa's drug manufacturing capacity unveiled

ARIPO: Unpacking the Banjul & Harare Protocol Amendments

Ghana: Youth urged to exploit intra-Africa trade opportunities

Morocco: The Moroccan office of Industrial and Commercial Property (OMPIC) launches the mobile application of its online services

Nigeria: Atiku has comprehensive plans for the Nigerian tech ecosystem but we shouldn't get too excited

OAPI: Geographical Indications: an AFD mission within our walls

The new Deputy General Manager installed

Budapest Notification No. 354

Lisbon Notification No. 54

South Africa: Patent office sees surge in new filings but trademark filings remain slow

SA taps African counterparts to advance science, tech

2. Additional topics:

Africa: AFRICA IP SME HELPDESK: Promoting Economic Growth in Europe, Africa

BizTrends 2023: African fintech is trending

WIPO invites applicants for 2023 Global Awards Competition for SMEs

ARIPO: IP awareness on patents and innovation for African universities

Successful Partnership Ushers in 16th MIP Cohort

Master in Intellectual Property (MIP) 2023 Intake

OAPI: The diplomatic tour of the Deputy Managing Director, under good auspices

Nigeria: Copyright Commission provides safe environment for creatives

South Africa: A week of events on copyright and access to knowledge in South Africa

At a glance: trademark registration and use in South Africa

Zambia: 10 amazing facts you didn't know about rooibos tea

3. Annexes:

Annex I ***Amendments to Harare Protocol***
Annex II ***Amendments to Banjul Protocol***

News

1. Important topics

Africa: The AfCFTA, an opportunity for Africa's youth to accelerate trade and industrialization¹

A recent article discusses some of the opportunities that AfCFTA might bring for young people in Africa. The article makes a number of points:

- AfCFTA has a Youth Protocol, which recognizes that young people can play a critical role in the achievement of the free trade zone by initiating youth-led initiatives in agriculture, financial technology, IT and in the creative industry.
- AfCFTA presents huge entrepreneurship opportunities for the youth, but governments need to implement supportive policies and investment to ensure their participation.
- A competition entitled *The African Continental Free Trade Area (AfCFTA): What is in it for young Africans?* has been developed by the Youth Alliance for Leadership and Development in Africa (YALDA), in collaboration with the AfCFTA Secretariat, Afreximbank, the International Trade Centre (ITC), the UN Development Programme (UNDP) and ECA.
- African governments need to prioritize intellectual property rights protection.
- Africa needs to make the Pan African Payment and Settlement System (PAPSS) operational – this is a centralized payment and settlement system for intra-African trade in goods and services that was developed in 2022.
- Implementation of AfCFTA will increase employment opportunities and wages for unskilled workers and help close the gender wage gap.

Africa: New initiative to increase Africa's drug manufacturing capacity unveiled²

A recent article discusses the African Pharmaceutical Technology Foundation (APTF), a body that was approved by the African Development Bank's directors back in June 2022, and formally unveiled by the African Development Bank on 14 December 2022. The APTF is expected to commence operating in early 2023.

Africa presently imports more than 70% of the medicines it needs and this comes at a cost of some US\$14 billion per annum. The APTF's main roles will be to:

- help Africa build its pharmaceutical sector;
- boost Africa's access to technology for manufacturing the full range of pharmaceutical products;
- help build supply chains.

¹ <https://www.uneca.org/stories/the-afcfta%2C-an-opportunity-for-africa%E2%80%99s-youth-to-accelerate-trade-and-industrialization>

² <https://scienceafrica.co.ke/2023/01/18/new-initiative-to-increase-africas-drug-manufacturing-capacity-unveiled/>

The APTF will also act as a mediator advancing the interest of the African pharmaceutical sector on the global stage, to enhance access to technologies know-how and processes.

At the meeting on 14 December 2022 the point was made that Covid-19 had exposed serious gaps in Africa's healthcare system. The important role played by intellectual property was, however, recognized and understood. In the words of one of the attendees:

'Intellectual property confers monopolies, and these monopolies give rights to property owners to control the sharing of technologies. Creating the capacity to facilitate timely technology transfer to Africa is important.'

ARIPO: Unpacking the Banjul & Harare Protocol Amendments³

Following the 46th Administrative Council Session (21-25 November 2022 in Maputo), amendments to the Harare (Annex I) and Banjul (Annex II) Protocols were adopted.

Some of the changes to the Harare Protocol include the parameters for not granting patents in respect of plants or animals exclusively obtained by means of an essentially biological process, as well as amendments for *International Applications under the Patent Cooperation Treaty (PCT)*.

The notable amendments to the Banjul protocol include procedures to process applications related to *Changes in Registered Particulars, Cancellation of a registered mark or Withdrawal of Application or Reduction of Classes*, and the corresponding forms and fees structure.

Please follow the links for an in-depth review of the amendments which came into effect on the 1 January 2023:

Harare protocol⁴ and Banjul Protocol⁵

The 2023 editions of the Banjul & Harare Protocols are now available on ARIPO's website to download for free:

Harare Protocol ⁶ and Banjul Protocol ⁷

Ghana: Youth urged to exploit intra-Africa trade opportunities⁸

The Chief Executive Officer (CEO) of the Association of Ghana Industries (AGI), Seth Twum-Akwaboah, has urged the youth to exploit the opportunities offered by the African Continental Free Trade Area (AfCFTA), and create their own businesses.

Mr. Twum-Akwaboah was speaking at an event organized by the School of Continuing and Distance Education, College of Education of the University of Ghana, in collaboration with the National AfCFTA Coordination Office, and entitled "*Positioning the African market for sustainable economic development through African Continental Free Trade Area (AfCFTA)*". Mr Twum-Akwaboah urged participants to ensure that their products complied with high standards, as compromising on standards would undermine the goal of the AfCFTA.

At the same event, a Senior Research Development IOfficer at the Technology Transfer and Intellectual Property Services, University of Ghana, Diana A. Owusu Antwi, advised young people to be innovative and take advantage of intellectual property to protect the products that they developed as entrepreneurs.

³ <https://www.aripo.org/unpacking-the-banjul-harare-protocol-amendments/>

⁴ <https://www.aripo.org/wp-content/uploads/2022/12/Notice-to-Applicants-on-Amendments-to-the-Harare-Protocol.pdf>

⁵ <https://www.aripo.org/wp-content/uploads/2022/12/Notice-to-Applicants-on-Amendments-to-the-Banjul-Protocol.pdf>

⁶ <https://lnkd.in/d6CtDMcZ>

⁷ <https://lnkd.in/dmCe8fkC>

⁸ <https://www.graphic.com.gh/news/general-news/youth-urged-to-exploit-intra-africa-trade-opportunities.html>

Morocco: The Moroccan office of Industrial and Commercial Property (OMPIC) launches the mobile application of its online services⁹

The application is available on Google Play store and allows integration of various online services offered by the OMPIC, through a unified, simple and fast access to all its digital platforms.

The services available on this new mobile application are:

- the request for a negative certificate
- registration and renewal of trademarks
- filing and renewal of industrial designs and models
- access to legal and financial information on companies registered in the commercial register
- the payment of annuities for invention patents
- the e-data service

Nigeria: Atiku has comprehensive plans for the Nigerian tech ecosystem but we shouldn't get too excited¹⁰

The article discusses the fact that one of the Nigerian presidential candidates, Atiku Abubakar of the Peoples' Democratic Party, has published a 115-page document entitled *A Covenant with Nigerians*. Abubakar makes the following points:

- Protecting IP rights is one of the biggest issues facing the Nigerian tech ecosystem. According to PwC, Nigeria has one of the world's weakest intellectual property legal systems, with the Trademarks Act of 1965 and the Patent and Designs Act of 1970 being inadequate to address contemporary IP issues.
- In May 2022, the Nigerian government signed a three-year IP rights agreement with Developing Africa Group (DAG) to create a marketplace where Nigerians can sell their intellectual property rights and receive royalties.
- Nigeria's economic agenda should comprise building '*a knowledge-based economy in which a highly developed, ICT sector, with wide application in commerce, education, health, and other areas of human endeavour plays a significant role.*'
- Nigeria needs '*a comprehensive policy on blockchain technology and cryptocurrencies by the relevant government agencies.*'

OAPI: Geographical Indications: an AFD mission within our walls¹¹

In a recent posting, the French Development Agency (AFD) reports on how a team visited Cameroon over the period 9 -13 January 2023 as part of the second phase of the Support Program for the Implementation of Geographical Indications (PAMPIG 2).

PAMPIG is a joint project involving OAPI and AFD, and it has led to the successful protection of three GIs - Penia Pepper and Oki white honey in Cameroon, and Ziama Macenta coffee in Guinea.

As part of the visit the team met with representatives of the various producers, as well as OAPI Director General Denis Bohoussou.

OAPI: The new Deputy General Manager installed¹²

⁹ <http://www.ompic.ma/fr/actualites/loffice-marocain-de-la-propriete-industrielle-et-commerciale-ompic-lance-lapplication>

¹⁰ <https://technext.ng/2023/01/19/atikus-policy-document-nigerian-tech/>

¹¹ <http://www.oapi.int/index.php/en/component/k2/item/756-oapi-indications-g%C3%A9ographiques-une-mission-de-l%E2%80%99afd-dans-nos-murs>

¹² <http://oapi.int/index.php/fr/component/k2/item/757-oapi-le-nouveau-directeur-g%C3%A9n%C3%A9ral-adjoint-install%C3%A9>

Mr. Oualou Panouala Mondesir was officially installed as the Deputy Director General of OAPI at a ceremony that took place on 11 January 2023 – the appointment followed a recruitment process.

The new Deputy Director General expressed his gratitude to the Director General of OAPI, Mr. Denis Bohoussou, as well as other dignitaries who were present, such as Mr. Gabriel Dodo Ndoke, the Minister of Mines, Industry and Technological Development in Cameroon, and the Chairman of the OAPI Board of Directors.

OAPI: Budapest Notification No. 354¹³

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

According to a recent notification, the African Intellectual Property Organization (OAPI) has filed a declaration under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (28 April 1977, amended 26 September 1980) – Budapest Notification No.354.

The Budapest Treaty eliminates the need to deposit micro-organisms in each country where patent protection is sought.

The declaration will enter into force, with respect to the African Intellectual Property Organization, on March 15, 2023.

OAPI: Lisbon Notification No. 54¹⁴

**Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications
Accession by the African Intellectual Property Organization**

The African Intellectual Property organization (OAPI) has acceded to the Lisbon Agreement.

The Lisbon Agreement provides for the international protection of appellations of origin and geographical indications through a single WIPO procedure. According to the official announcement appellations of origin and geographical indications are ‘designations which require a qualitative link between the product to which they refer and its place of origin.’

The Geneva Act of the Lisbon Agreement will enter into force, with respect to the African Intellectual Property Organization, on March 15, 2023.

South Africa: Patent office sees surge in new filings but trademark filings remain slow¹⁵

A recent article claims that the South African Patent Office (CIPC) has been the fastest growing IP office in the world over the past two years. In support of this claim, it says that in 2022 the number of South African patents went up from 8099 to 14 000, a percentage increase of 73%

This rapid growth in patent filings is driven mostly by Chinese activity, although filings from India have also increased. In 2022, China overtook the USA as the largest filer of South African patents.

¹³ https://www.wipo.int/treaties/en/notifications/budapest/treaty_budapest_354.html

¹⁴ https://www.wipo.int/treaties/en/notifications/lisbon/treaty_lisbon_54.html

¹⁵ <https://www.iol.co.za/business-report/economy/patent-office-sees-surge-in-new-filings-but-trademark-filings-remain-slow-6c415f57-c69d-43fb-830a-599f2dd755c9>

One reason for the rapid increase is the introduction of the GlobalIPcO system and the automation it introduces – this system has reduced filing time in South Africa from 12 months to four months, and it has also reduced filings costs.

A further factor in the increase is the collaboration between the South African and Nigerian patent processes in the so-called SANi system.

Trademark filings in South Africa are, however, low, despite the fact that the same online system is in operation. One possible reason for this is the slow examination time, some 24 months.

South Africa: SA taps African counterparts to advance science, tech¹⁶

According to an article in the magazine IT Web, South Africa is strengthening scientific and technological ties with other African countries, and it has recently signed a collaborative agreement with the Democratic Republic of Congo (DRC). South Africa has seemingly identified science, technology and innovation (STI) as key to transforming its socio-economic conditions and new business prospects.

The South African Minister for Higher Education, Science and Technology, Blade Nzimande, quoted as follows:

'Intellectual property management, high-performance computing and technological innovation are three cross-cutting areas that will play a critical role in socio-economic transformation. For example, managing the intellectual property rights of innovations developed by Africans would secure ownership and facilitate commercialisation and the development of industry.'

2. Additional topics

Africa general:

AFRICA IP SME HELPDESK: Promoting Economic Growth in Europe, Africa

<https://noblereportnigeria.wordpress.com/2022/12/19/africa-ip-sme-helpdesk-promoting-economic-growth-in-europe-africa/>

BizTrends 2023: African fintech is trending

<https://www.bizcommunity.com/Article/196/727/234740.html>

WIPO invites applicants for 2023 Global Awards Competition for SMEs

https://www.wipo.int/pressroom/en/articles/2023/article_0001.html

ARIPO:

IP awareness on patents and innovation for African universities

<https://www.aripo.org/ip-awareness-on-patents-and-innovation-for-african-universities%ef%bf%bc/>

Successful Partnership Ushers in 16th MIP Cohort

<https://www.aripo.org/successful-partnership-ushers-in-16th-mip-cohort/>

Master in Intellectual Property (MIP), 2023 Intake

<https://www.aripo.org/notices/master-in-intellectual-property-mip-2023-intake/?fbclid=IwAR2ZT4ekNGAfX1Cp08tVqTMcFpThovrLGRSjkmmONvhOxChQy-q1eAhEuH0>

¹⁶ <https://www.itweb.co.za/content/PmxVEMKE3WnvQY85>

OAPI:

The diplomatic tour of the Deputy Managing Director, under good auspices

<http://www.oapi.int/index.php/fr/component/k2/item/759-la-tourn%C3%A9e-diplomatique-du-directeur-g%C3%A9n%C3%A9ral-adjoint,-sous-de-bons-auspices>

Nigeria:

Copyright Commission provides safe environment for creatives

<https://punchng.com/copyright-commission-provides-safe-environment-for-creatives-group/>

South Africa:

A week of events on copyright and access to knowledge in South Africa

<https://infojustice.org/archives/44970>

South Africa: At a glance: trademark registration and use in South Africa

<https://www.lexology.com/library/detail.aspx?g=0179b080-e481-4b14-8f4c-433890e0862f>

Zambia:

10 amazing facts you didn't know about rooibos tea

<https://zambianews365.com/10-amazing-facts-you/>

Annex I – Amendments to Harare protocol

The Administrative Council at the session adopted the amendments to the Harare Protocol on Patents and Industrial Designs as well as its Implementing Regulations, which came into force on 1 January 2023. The latest edition of the Harare Protocol can be found here: <https://www.aripo.org/wp-content/uploads/2022/12/Harare-Protocol-on-Patents-and-Industrial-Designs-2023.pdf>

The following amendments to the Harare Protocol have been adopted: <https://www.aripo.org/wp-content/uploads/2022/12/Notice-to-Applicants-on-Amendments-to-the-Harare-Protocol.pdf>

The parts in blue show the amendments added and the red parts with strikethrough show the deletions made. The part highlighted in green explains why the changes were made.

1. RULE 7

Rule 7

Claims

[.....]

(5) (a) Where a group of inventions is claimed in an ARIPO patent application, the requirement of unity of invention under Section 2bis 1(a) shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those features which define a contribution which each of the claimed inventions considered as a whole makes over the prior art.

(b) If the Office considers that the ARIPO patent application does not comply with the requirement of unity of invention, it shall draw up a partial search and examination report on those parts of the application which relate to the invention, or the group of inventions within the meaning of Section 2bis 1(a), first mentioned in the claims. It shall inform the applicant that, the ARIPO search, and examination opinion will only cover the subject-matter of first mentioned invention in the claims and invite the applicant to limit the 2 application to the invention first mentioned in the claims. The remaining invention(s) can be filed as divisional applications.

Explanatory Notes

The previous ARIPO practice was that when the application did not fulfil the unity of invention requirement in accordance with Section 2bis(1)(a), the ARIPO Examiner only conducts search and examination for one invention (first invention mentioned in the claims). However, this practice is not clearly stipulated in the Harare Protocol. Therefore, Rule 7 has been amended by introducing paragraph 5(b) to specify this practice.

2. RULE 7BIS. 3

Rule 7bis. 3. Exceptions to Patentability of Biotechnological Inventions

1. ARIPO patents shall not be granted in respect of biotechnological inventions which, in particular, concern the following: [.....(i) to (viii)]

(2) Under Section 3(10)(j)(ii), ARIPO patents shall not be granted in respect of plants or animals exclusively obtained by means of an essentially biological process.

Explanatory Notes

Rule 7bis.3 has been amended by introducing new paragraph (2) to specify the exclusion of patentability for plants or animals that are obtained by means of an essentially biological process as provided in Section 3(10)(j)(ii).

3. RULE 23

Rule 23

International Applications under the Patent Cooperation Treaty (PCT)

(1) Where an international application is filed with the ARIPO Office as receiving Office under [Section 3bis\(3\)](#) ~~the Patent Cooperation Treaty~~:

(a) the transmittal fee referred to in Rule 14 of the Regulations under that Treaty shall be as prescribed in the Schedule of Fees annexed to these Regulations;

(b) the applicant may be represented by an attorney, agent or legal practitioner who has the right to represent applicants before the industrial property Office of a Contracting State which is also bound by the Patent Cooperation Treaty.

(2) ~~In respect of Where, in~~ an international application [under Section 3bis \(4\) and \(5\)](#), ~~a Contracting State which is also bound by the Patent Cooperation Treaty is designated for the purpose of obtaining a patent under the provisions of the Protocol~~, the applicant shall perform the following acts within thirty-one months from the date of filing of the application or, if priority has been claimed, from the priority date:

(a) furnish an English translation of the international application to the ARIPO Office if the international application was published in a language other than English;

(b) pay the following fees, as prescribed in the Schedule of Fees, to the ARIPO Office:

(i) the application fee;

(ii) the designation fee per country designated;

(iii) subject to Rule 21 (4), the annual maintenance fees which have become due;

(c) where the applicant's ordinary residence or principal place of business is not in a Contracting State which is also bound by the Patent Cooperation Treaty - appoint 3 as his representative an attorney, agent or legal practitioner who has the right to represent applicants before the industrial property office of such a Contracting State.

~~(d) file the request for examination provided for in Section 3(3) and Rule 18 (1);~~

~~(e)~~(d) specify the application documents, as originally filed or as amended, on which the ARIPO grant procedure is to be based.

(3) [In respect of an international application, the applicant shall](#) file the request for examination as provided for in [Section 3\(3\)](#) and [Rule 18 \(1\)](#).

~~(3)~~(4) For the purpose of [Rule 18\(2\)](#), an international search report established for an international application for which the ARIPO Office acts as designated Office under [Article 2 \(xiii\)](#) of the Patent Cooperation Treaty shall be taken into consideration.

~~(4)~~(5) For the purpose of [Rule 18\(2\)](#), an international preliminary examination report established for an international application for which the ARIPO Office acts as elected Office under [Article 2 \(xiv\)](#) of the Patent Cooperation Treaty shall be taken into consideration.

Explanatory Notes

ARIPO's view was that the previous wording of Rule 23 may lead to confusion and clarification of the wording was required. The title of Rule 23 has been amended to specify International Applications under the PCT in accordance with [Section 3bis](#).

Furthermore, ARIPO was also of the view that the previous wording of Rule 23 (2)(d) may result in confusion as it could be interpreted that the request for substantive examination in terms of Rule 18 must be filed within 31 months from the date of filing of the International Application, or if priority is claimed, within 31 months from the earliest priority date. Rule 23(2)(d) has been amended by removing part (d) from being part of paragraph (2) and making it a separate paragraph (3).

Annex II – Amendments Banjul Protocol

The 46th Administrative Council Session was held on 21-25 November 2022 in Maputo.

The Administrative Council at the session adopted the amendments to the Banjul Protocol on Marks as well as its Implementing Regulations, which came into force on 1 January 2023. The latest edition of the Banjul Protocol can be found here: <https://www.aripo.org/wp-content/uploads/2022/12/Banjul-Protocol-on-Marks-2023-2.pdf>

The following amendments to the Banjul Protocol have been adopted: <https://www.aripo.org/wp-content/uploads/2022/12/Notice-to-Applicants-on-Amendments-to-the-Banjul-Protocol.pdf>

The parts in blue show the amendments added and the red parts with strikethrough show the deletions made. The part highlighted in green explains why the changes were made.

1. RULE 13BIS

Rule 13 bis has a new heading, namely:

Changes in Registered Particulars, Cancellation of a registered mark or Withdrawal of Application ~~Cancellation of Designated States~~ or Reduction of Classes

Rule 13 bis is changed by adding following point:

d) Cancellation of a registered mark by a designated state under Section 8:2 shall be communicated to the Office under Form M11 D.

Explanatory Notes

This amendment simply states that the newly introduced form (see point 3) should be submitted with cancellation of a registered mark requested by designated state.

2. FEES SCHEDULE BANJUL PROTOCOL FEES Part B: Regional Fees Structure

The Regional Fees will remain the same, however the fee for Subsequent designation section has been amended with specific sections:

Matter of Proceeding	Amount of fee (US \$)	Corresponding form
3. Subsequent designation:	100.00	No. M 3
(a) Subsequent designation per D/S	100.00	No. M 3
(b) For one mark		
(i) In one class per D/S	50.00	No. M 3
(ii) In every additional class per D/S	10.00	No. M 3

Explanatory Notes

The amended protocol now provides applicable fees for each subsequent designated state and for every additional class.

3. NEW FORM No. M 11D (FOR NEW CLAUSE 13BIS:1(D))



AFRICAN REGIONAL INTELLECTUAL PROPERTY ORGANIZATION (ARIPO)

<p>Form No. M 11D BANJUL PROTOCOL <i>(Rule 13bis:1 (d))</i></p> <p>To: Director General ARIPO Office P.O. Box 4228 Harare Zimbabwe</p>	<p style="text-align: right;">For Official Use</p> <p>Received on:</p>
<p>COMMUNICATION BY DESIGNATED STATE OF CANCELLATION OF A MARK REGISTRATION</p>	
<p>I. Registration No.:</p> <p>Classification:</p>	<p>Filing date:</p>
<p>II. PROPRIETOR</p> <p>Name:</p> <p>Address:</p>	
<p>III. COMMUNICATION</p> <p>We hereby communicate to the ARIPO Office that, the above-identified registration, has been cancelled in the territory of (designated State) with effect from (date) for the following reasons:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	
<p>IV. SIGNATURE: DATE:</p>	

Explanatory Notes

The newly introduced form to be used.

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[Author]
Spoor & Fisher
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