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# Inventa IP Review 2023

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- The Trademark Lawyer Magazine • The Patent Lawyer Magazine



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intellectual property

In the ever-evolving intellectual property landscape, the annual Inventa IP Review publication continues to shed light on the latest trends and significant developments, primarily in Europe and Africa, but also with a broader global perspective.

As we transition into the new year, reflecting on 2023 reveals a period marked by dynamic societal changes and intricate relationships shaped by geopolitical events.

We cover a spectrum of cutting-edge subjects, such as the metaverse or Artificial Intelligence (AI), alongside a significant milestone of the year: the implementation of the Unitary Patent system in the European Union.

Our team consistently creates insightful content on various IP-related topics, easily accessible on our website and shared across diverse social media platforms.

*Inventa*



"Inventa IP Review" is an annual compilation of articles written by the Inventa team, spotlighting key Intellectual Property (IP) topics from the previous year. Inventa is an Intellectual Property firm, specializing in the protection and internationalization of trademarks, patents, industrial designs, copyright and domains, with a global network of offices and local representatives.

# TRADEMARKS

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PATENTS



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# Crunching into Intellectual Property: Biscuits as Trade Mark?

Vítor Palmela Fidalgo

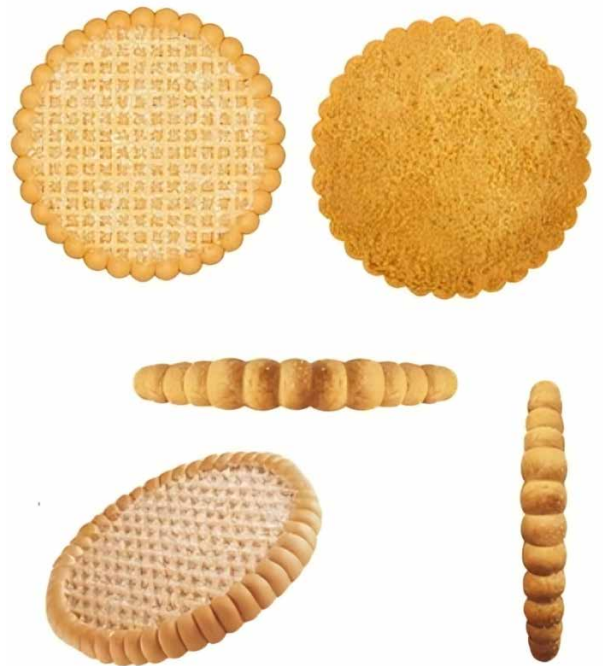
Europe

Portugal

ICLG.com

Submitted by Grupo Bimbo, S.A.B. de C.V. in July 2022, the request for protection of a three-dimensional sign representing a biscuit - a “flat, round biscuit, on the front of which 144 squares with their protuberances or reliefs are represented in parallel and equidistant, surrounded by a thicker border with 33 oval rings, creating, as a whole, a characteristic and distinctive shape” - was recently denied.

Vítor Palmela Fidalgo's analysis explores key aspects of the Lisbon Court of Appeals' examination of trademark protection for this case. It specifically addresses considerations related to distinctiveness, notoriety, aesthetic functionality, and substantial value, shedding light on uncertainties in the field of trademark law.



*Group Bimbo, S.A.B. de C.V. No. 689997  
Representation Kind: Tridimensional  
Mark kind: Figurative*

[Read full article here \[+\]](#)

# Trademarks in nondemocratic contexts and governance in Africa

Vera Albino

Africa

The Trademark  
Lawyer

The protection of trademarks and democracy are intrinsically linked, and the reasons for this interconnectedness are diverse but easily discernible. Aspects such as freedom of expression, fair competition, and consumer protection, which favor innovation, are predominantly found within democratic systems.

That said, it is important to acknowledge that authoritarian regimes also protect intellectual property rights (IP), including trademarks. If on one hand, trademark rights prosper in democracy because only a democratic state offers secure and effective means to combat violations of these rights, while also encouraging the development of innovation. On the other hand, there are numerous examples of authoritarian states, particularly in the African continent, that effectively protect trademarks, albeit with restrictions and sometimes a lack of efficiency and dynamism. In this regard, it is noteworthy to mention that inefficiency and

lack of dynamism can, to a certain extent, be attributed to the fact that these countries are in a developmental stage and may not always have effective means of action. These two premisses pose no significant challenges. Yet, the example of Eritrea seems to differ, presenting itself as a case with its own particularities.

## **Trademark registration: a protection above the political system**

According to the [Democracy Index 2022](#), issued by the Economist Intelligence Unit (EIU), there are currently 72 full and flawed democracies, 35 hybrid regimes (regimes with both democratic and autocratic traits, which can simultaneously engage in political repression and hold regular elections), and 59 authoritarian regimes, totaling 167 countries in the world. Additionally, the [Global Innovation Index 2022](#), issued by WIPO, reveals that the most innovative countries are predominantly democratic, which confirms our first premise that IP rights thrive

in democracy. This shall not surprise us given the reasons mentioned earlier.

To demonstrate the accuracy of our second premise, broader demonstrations are necessary, although the statement that innovators can protect their rights in virtually all countries worldwide does not seem unfounded. For this purpose, we will consider countries in the African continent that are classified as authoritarian according to the Democracy Index 2022. As per this Index, only Mauritius can be classified as a full democracy in Sub-Saharan Africa, six countries are indicated as flawed democracies, 14 as hybrid regimes, and 23 countries as authoritarian regimes. Among the latter, we include Niger, Rwanda, and Zimbabwe. Niger, which is part of the African Intellectual Property Organization (OAPI), Rwanda, and Zimbabwe, where the African Regional Intellectual Property Organization or ARIPO is headquartered, have an effective and undisputable trademark registration system, although enforcing these rights may sometimes present some challenges.

Furthermore, fragile and authoritarian countries like South Sudan, Somalia, the Democratic Republic of the Congo, and Libya, among others, have also established systems

for trademark protection. The example of South Sudan serves as a perfect illustration of the significance of IP for a country. Indeed, the South Sudanese government has established a system where trademark holders “reserve” their trademark registration requests with the Ministry of Justice. Once the Intellectual Property Bill 2015, currently awaiting approval by the Parliament, is enacted, those with reserved trademarks will be granted priority rights. Although the system was put on hold for some time, at the time of writing this article, trademark reservation is again possible.

In Somalia, trademark protection was not possible for several years due to civil war. However, the Trademark Office has resumed its functions, even though the country’s situation is not yet fully pacified. The Democratic Republic of the Congo, despite its instability due to decades of internal armed conflicts, maintains its trademark protection system.

As for Libya, after being forced to suspend the activities of its Trademark Office due to the 2011 revolution, it reopened two years later. It is also interesting to note that in 2022, the Libyan government temporarily suspended the acceptance of trademarks

from foreign applicants but revoked its decision a few months later. The reasons for the implementation of this measure and its posterior revocation are not public but can be easily understood.

IP is crucial for supporting the economy and without a functioning one, a country cannot exist. Therefore, it is logical that countries, regardless of their political systems, have some form of IP rights protection, whether it is through specific IP laws or other laws related to investment, for example. In conclusion, it can be asserted that while innovation is generally associated with democracy, the protection of IP rights does not imply the existence of democratic regimes. While not questioning the value of this principle, how should the specific situation of Eritrea be approached?

### **Eritrea: an exception to trademark rights protection?**

Until 1991, Eritrea was part of Ethiopia, where Ethiopian IP law applied. However, in 1993, when Eritrea gained independence, the Eritrean government ceased to recognize trademark rights obtained under Ethiopian law. To remedy this situation, the Eritrean government initially permitted the publication of cautionary notices. Cautionary

notices are legal advertisements in newspapers indicating that a specific trademark is owned by a particular individual or company and that no one can use similar trademarks for similar goods/services. These cautionary notices were published in state newspapers after receiving approval from the government. However, since August 2009, the publication in local newspapers has been prohibited. Since then, the country has experienced a long period of isolation and no IP law has been enacted up to the present time. Eritrea has been a member state of WIPO since 1997. However, it is not a contracting party to the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty (PCT), or the Madrid Union.

Considering the example of South Sudan, which promptly expressed its intention to maintain trademark protection and preserve a certain degree of normal functioning after independence, we question the position of the Eritrean government. History shows that very young countries often do not consider adopting IP legislation as a priority. Nevertheless, the case of Eritrea is somewhat different, as the government initially allowed the publication of cautionary notices but later prohibited it. This invites us to consider

a distinct connection between IP and politics. Eritrea's refusal to recognize trademarks registered under Ethiopian law prior to its independence signifies its desire to distance itself from the past and establish a separate identity.

The delay in enacting an IP law indicates that, for the "newly born" country, there are other priorities to consider. But prohibiting all publication of cautionary notices denotes that the issue of trademark protection is subjected to a highly specific political context that denies essential rights. In fact, the private sector has gradually been replaced by an all-pervasive state sector.

And, when a state is too present, it is inevitably completely absent. In other words, while the Eritrean government exercises excessive control in certain areas such as politics, the economy, and freedom of expression, it fails to fulfill its responsibilities and provide necessary services in other essential areas such as education, innovation, and the implementation of the rule of law.

## Conclusion

Throughout our discussion, we have observed that IP plays a crucial role in fostering innovation within democratic contexts.

Additionally, we have seen that IP protection extends beyond political systems as it is effective regardless of their type.

Furthermore, we have concluded that IP serves as a foundation for economic growth and sustains the existence of a country. When examining the African continent, we can witness the multifaceted nature of IP. In the case of Eritrea, nevertheless, IP serves a distinct purpose. Initially, it was employed as a tool to assert independence by rejecting the trademarks registered under the previous Ethiopian law.

Subsequently, it played a role in supporting the country's existence through the publication of cautionary notices, providing partial trademark protection and promoting economic development. However, starting in 2009, the absence of proper IP has become an instrument of despotism, limiting freedom of expression and suppressing innovation.



# Wine Trademarks and Traditional Terms for Wines in the European Union

João Pereira Cabral

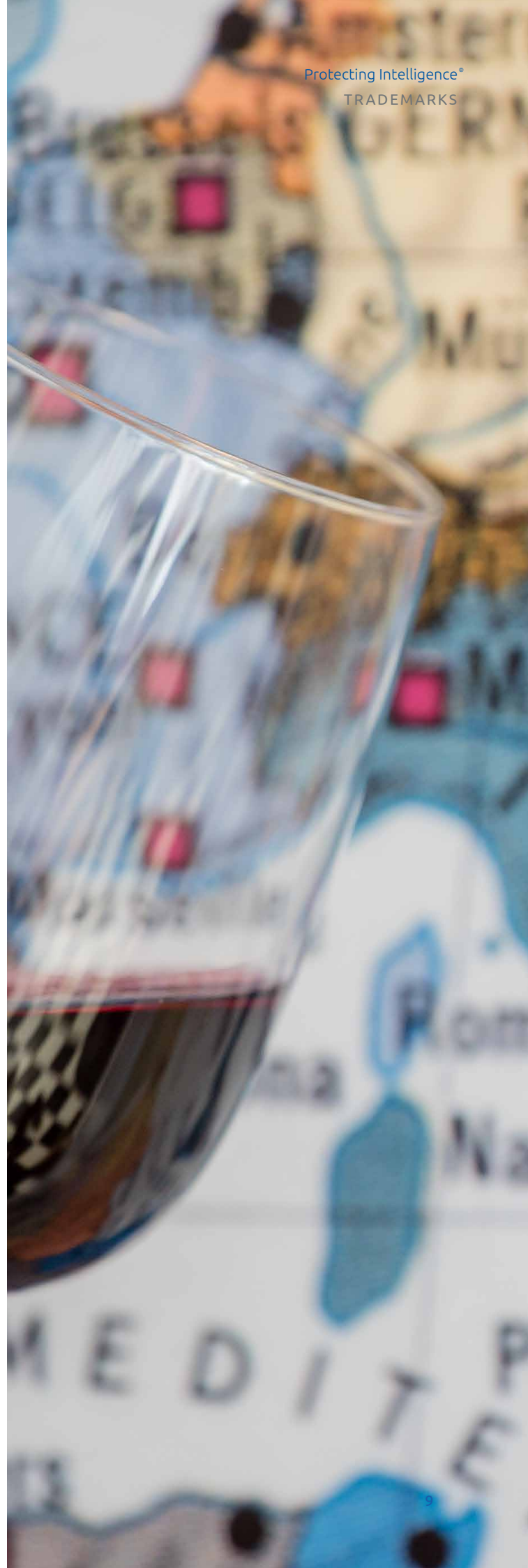
European Union

**IP STARS**  
from ManagingIP

While various trademark applications confront reasons for refusal - such as a lack of distinctive character, contradiction with accepted moral principles, or replication of prior trademarks - there is one that stands out in particular for wine brands: refusal if a request conflicts with a traditional term for wine.

João Pereira Cabral explores the challenges associated with obtaining a European trademark registration for wine under this reason for refusal, including some possible solutions.

[Read full article here \[+\]](#)



# Cancelling a trademark for non-use in Africa

Sofia Araújo

Africa



The "non-use of trademarks" is a legal concept that pertains to not using a registered trademark for an extended period after its registration. This mechanism is justified to prevent trademarks from being registered and maintained solely for speculative or strategic purposes without genuine commercial intent. It aims to ensure fair competition and the availability of trademarks for genuine and commercial use while discouraging the creation of a "trademark graveyard," as referenced by [Professor Remo Franceschelli](#). In such cases, numerous trademarks are registered but left inactive, often to block competitors, and this practice can be detrimental to fair competition and innovation. To address this, many trademark systems require continuous use of a trademark after registration, and if the trademark owner fails to use it within a specified period, typically a few years, the trademark may be challenged and eventually cancelled. This helps maintain the integrity of the trademark system by ensuring trademarks are genuinely used for

commercial purposes, rather than being held as inactive assets that impede competition. Despite the principles of non-use cancellation being globally harmonised, there are specific steps to be taken, differing from one jurisdiction to another that shall be mentioned below with particular emphasis on the African continent. Notwithstanding, when pursuing the cancellation, there are typically various types of documentation to support it. Here is a summary of the general documentation that may be necessary:

1. Evidence of Non-Use: evidence that the trademark owner has not actively used the trademark in the relevant jurisdiction such as documentation that the trademark has not been used in advertising, proof that it is not in use on products or services and sales records.
2. Trademark registration.
3. Proof of legitimacy: demonstrating the eligibility for trademark cancellation based on non-use. This might involve proving that the applicant is an interest party, for instance, a competitor.
4. Correspondence with the trademark owner (if any): if applicable, retaining copies of such

communication might be helpful.

5. Witness statements from individuals attesting to the non-use.
6. Advertising: by providing any advertising related to the trademark that demonstrate a lack of use.
7. Financial Records: showing profit and loss statement.

In Africa, some countries have well-established trademark systems, while others are still developing their intellectual property regulations. Typically, in African countries, only certain parties with a legitimate interest in the trademark may file for cancellation based on non-use. These parties often include competitors or individuals who can demonstrate a direct interest in the trademark. [In the] summary of the deadlines and competent authorities responsible for deciding the cancellation of a trademark based on non-use in all African countries (right table) (...) South Africa non-use cancellation requires a continuous period of five years of non-use, meaning sporadic use or low sales volumes would suffice in defence of non-use proceedings. To defend a cancellation, the owner must show it was indeed used in the relevant 5-year period. The Supreme Court has also established a good faith

Country	Period of time	Responsible Body
Algeria	3 years	Court
Angola	2 years	PTO
Botswana	3 years	PTO
Burundi	3 years	Court
Cape Verde	DIU filed every 5 years	PTO
D.R. Congo	3 years	PTO
Djibouti	5 years	Court
Egypt	5 years	Court
Eritrea	N/A	N/A
Eswatini	3 years	PTO
Ethiopia	3 years	PTO
Gambia	5 years	Court
Ghana	5 years	PTO
Kenya	5 years	PTO or Court
Lesotho	3 years	PTO
Liberia	3 years	PTO
Libya	5 years	Court
Madagascar	3 years	Court
Malawi	5 years	PTO
Mauritius	3 years	PTO
Morocco	5 years	PTO
Mozambique	DIU filed every 5 years	PTO
Namibia	5 years	PTO or Court
Nigeria	5 years	PTO or Court
Rwanda	3 years	N/A
S. Tome and Principe	5 years	PTO
Seychelles	3 years	Court
Sierra Leone	5 years	PTO
Somalia	N/A	N/A
South Africa	5 years	PTO or Court
South Sudan	N/A	N/A
Sudan	5 years	Court
Tanzania	3 years	PTO or Court
Tanzania - Zanzibar	5 years	Court
Tunisia	5 years	Court
Uganda	3 years	PTO or Court
Zambia	5 years	PTO
Zimbabwe	5 years	PTO or Court
OAPI	5 years	Court
ARIPO	Depends on the member state	Depends on the member state

requirement: *Westminster Tobacco Co v Philip Morris Products SA* (925/2015). The High Court ruled that genuine use entails using a trademark on products exclusively to advance the trade of those products. Use for other reasons, such as disrupting a competitor's business or safeguarding the trademark owner's trade in different products, does not qualify as genuine use. Furthermore, it was established that the use does not have to be extensive but genuine.

Differently, in Mozambique, it is not possible to proceed with a cancellation on the grounds of non-use. Although the cancellation may be provided if the owner did not file a DIU (Declaration of Use) by the respective due date - a cancellation may be requested by an interested third party on the grounds of an overdue DIU and the trademark owner, in this case, does not have an opportunity to oppose the cancellation request. Furthermore, the Banjul Protocol (ARIPO) explicitly states that the rights granted are subject to the national laws of each designated country. Therefore, ARIPO's role is limited to being a receiving office, and all substantial aspects related to trademarks, such as the need for use, are the responsibility of each individual country. Consequently, the process of cancelling a

trademark due to non-use will adhere to the specific regulations of each state. In Cape Verde, there's a hybrid system that allows, simultaneously, filing cancellation for non-use or non-submission of a DIU. The time frames in which the cancellation shall be requested are, also, different in each jurisdiction. For example, in Eswatini, Lesotho, Liberia, Tanzania, Botswana, Uganda and Ethiopia it's only three years. On the other hand, in South Africa, Namibia and Zimbabwe it's required five years.

In summary, the importance of using trademarks to prevent cancellation actions cannot be understated. Trademarks are essential assets that protect your brand's identity and market presence. Neglecting them can lead to the loss of rights and significant legal expenses. Checking the requirements of the cancellation actions is crucial to determining the requirements of each national law. Hence, conducting meticulous research and availing oneself of legal counsel well-versed in the trademark laws pertinent to the targeted jurisdiction is indispensable. This approach ensures that the cancellation action is executed in strict adherence to local regulations, thereby enhancing the prospects of achieving the desired outcome.

# Angola: Is trademarks success a sign of things to come?

Miguel Bibe

Africa

Angola



Angola continues to recognise IP rights as an important contribution to a country's social and economic development and in the last IP Bulletin issued (4/2023), published statistics related to the years 2020 to 2022.

Overall, 2022 was marked by an increase in the request for protection of several rights of Industrial Property, where the demand levels for trademarks and other distinctive signs of trade were 23% higher than those recorded in 2021.

As for patent applications, there was a slight decrease in 2022 compared to 2021, around 8%, with patent applications via the Patent Cooperation Treaty continuing to be the most popular method of filing.

Regarding Industrial Models, there was a small increase in the number of applications in 2022 compared to 2021, approximately 16%, unlike Industrial Designs, which saw a slight reduction of around 8%.

Trademarks, in general, continue to stand out in terms of protection requests compared to other IP rights, with 2022 being the year with the most applications filed since the approval of the Industrial Property Law.

## Statistical data for IP rights for 2020, 2021 and 2022 (Trademarks)

In 2022, there was a significant increase in the total number of applications, with 5,180 applications filed compared to 4,224 applications filed in 2021, representing an 8% increment.

In 2022, similar to 2021, the number of applications from Angolan applicants exceeded the number of applications from non-Angolan applicants. The statistical data also shows that, in terms of non-resident applicants, China surpassed the US as the country with the highest number of applications filed from 2020 to 2022, with 816 applications [...]

[Read full article here \[+\]](#)



# Nollywood and Brand Synergy: A Product Placement Perspective

Vera Albino

Africa

Nigeria

**IP STARS**  
From Managing IP

Product placement in Nollywood, the Nigerian film industry, presents a growing opportunity for brands and filmmakers. Acknowledged as a significant catalyst for brand recognition within the country, Vera Albino's analysis of this partnership also underscores the critical role of tailored legislation by Nigerian authorities.

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*(...) Beyond serving as a potential method of film financing, it presents highly advantageous opportunities for brands to reach a broad audience at a relatively lower cost. The potency of this marketing strategy underscores the need for government intervention, especially concerning specific product categories. However, certain crucial issues, such as undue influence, remain unaddressed.*

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# How conflicts are affecting IP protection in Africa

Inês Sequeira

Africa

**IP STARS**  
from ManagingIP

Currently, 23 African nations are facing conflicts, all with social and economic impacts on their population. The search for stability has left its mark on almost all African countries, and it is estimated that the continent loses around 18 billion dollars a year due to these conflicts.

Inês Sequeira goes through the various scenarios and their repercussions on IP protection in Africa, with particular emphasis on five nations: Libya, Somalia, South Sudan, Sudan and Eritrea.

[Read full article here \[+\]](#)



# TotalPollution vs. Rugby World Cup: Trademark Trouble?

Miguel Bibe

Europe

France

With just over a week to go until the start of the Rugby World Cup in France, Greenpeace has launched the "[TotalPollution: A Dirty Game](#)" campaign, which aims to criticize TotalEnergies' sponsorship of the tournament, stating that this support "is aimed at greenwashing its climate-destroying activities" on the part of TotalEnergies.

The video released for the campaign is a clear reference to the opening match of the tournament to be held on September 8 between the host team (France) and New Zealand. In this video a flood of oil rises from a TotalEnergies advertising banner, submerging the field and the stands and overflowing the stadium, in order to convey Greenpeace's claim that "the fossil fuel industry produces a stadium full of oil every 3 hours and 37 minutes". In the video we can see, the word and device trademark "Rugby World Cup France 2023", owned by Rugby World Cup Limited (RWCL) as the entity responsible for organizing the Rugby World

Cup. According to [The Drum](#), a legal representative of RWCL has sent a letter to Greenpeace with the following content: "your use of RWCL's intellectual property has not been authorized by RWCL and/or the commercial partner or the other partner members and therefore infringes RWCL's intellectual property rights" and "to avoid the need for formal legal proceedings" they should "cease and desist immediately" by removing the video, and "refrain from any further such use in the future". According to [ECO](#), Greenpeace considers that there is no misuse of the trademark or violation of RWCL's rights, having replied that the European trademark law allows the use of a registered trademark by third parties, as long as it is not for the purpose of trading goods or services.

From the point of view of Industrial Property Law, since it is clear that we are dealing with a case of use of a trademark by an unauthorized third party, the question arises as to whether

this unauthorized use is justified by the fact that there is no commercial use on the part of the alleged infringer, as argued by this NGO.

In fact, Article 10 (2) of Directive (EU) 2015/2436, aims to harmonize the laws of the Member States relating to trademarks, states: "Without prejudice to the rights of proprietors acquired before the filing date or the priority date of the registered trade mark, the proprietor of that registered trade mark shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services, any sign where".

There is, therefore, a clear mention of "using in the course of trade", which certainly means commercial exploitation, and since Greenpeace is a non-profit organization, it can take advantage of this exception to continue the "TotalPollution: A Dirty Game" campaign.

The owner of a trademark can prevent others from using it to avoid confusion about the origin of the goods or services. However, in some circumstances, a third party can use the trademark if the use is considered to be a "fair use".

The mention of use in the course of trade in the aforementioned article could imply a recognition for this "fair use" exception, since it allows the unauthorized use of a trademark, as long as it does not involve its use in the trading of goods and/or services.

However, this argument may not be sufficient to justify Greenpeace's action, since generally the concept of "fair use" for non-commercial use is related to academic articles, media reports, and other similar forms of content. Once Greenpeace is an NGO that depends on donations and external funding, raises the question of whether this campaign will contribute to a continuation or increase in donations from organizations that are sensitive to this cause, which could challenge the argument of non-commercial use.

Although, according to The Drum, a representative of the RWCL has stated that the RWCL does not intend to take legal action in this particular case, it would certainly be an interesting case to clarify the concept of "fair use" and the use in the course of trade of trademarks in Europe.

# Why prospects look good for trade-related IP rights in the African market

Olusola Aleru

Africa



The African Continental Free Trade Area Agreement (AfCFTA) was signed on March 21, 2018, at Kigali, Rwanda, where 44 out of 55 African Union member states appended their assent to a landmark treaty. As of May 2022, 54 member states have signed the agreement, of which 43 (80%) have deposited their instruments of ratification. This agreement stands as the largest trade agreement to create the world's largest single market since the creation of the World Trade Organization.

The AfCFTA aims to unify the African market, boost intra-African trade and therefore foster positive transformations in African economies through clear, transparent, predictable and mutually advantageous rules and protocols, to govern trade in goods and services, competition policy, investment and intellectual property among State Parties.

The agreement also addresses the challenges posed by multiple and overlapping trade

regimes to achieve policy coherence, including relations with third parties. The agreement seeks to promote economic integration, foster intra-African trade, and accelerate the continent's development by raising GDP to up to 52% by 2022 through the elimination of trade tariffs from 90% of goods and enhanced access to commodities, goods and services across the African continent.

As the AfCFTA enters its implementation phase in 2023, one crucial aspect that demands attention is Trade-Related Intellectual Property Rights (TRIPs). In this article, we will explore the prospects and challenges related to TRIPs under the AfCFTA and their potential impact on Africa's economic growth and innovation.

## Understanding Trade-Related Intellectual Property Rights

TRIPs encompass a set of legal instruments that govern the protection and enforcement



of IP in relation to trade and commerce. The IP rights include patents, trademarks, copyrights, industrial designs, geographical indications, domains and trade secrets, among others. The protections of these IP rights are crucial to promoting innovation, encouraging investment in research and development, and ensuring fair competition in the market.

### **Analysing the prospects of the implementation of AfCFTA 2023 for TRIPS and related IP innovation strategies**

The African Union Theme of the Year 2023, “adopted by the Assembly of Heads of State and Government of the African Union (AU Assembly), focuses on the “Acceleration of AfCFTA Implementation”. This focus is purported to support and promote the implementation of the AfCFTA Agreement in collaboration with all relevant organs and specialised agencies of the African Union, as well as regional mechanisms and Regional Economic Communities (RECs).

The main aim and objective is to accelerate the implementation of the AfCFTA in a way that is advantageous to Africa's population. In February 2023, 46 Provisional Schedules of Tariff Concession was submitted by member states, including four from the Customs

Unions as an effort to expedite the implementation and utilisation of existing operational tools that will foster effective trading under the AfCFTA. These tools were designed to promote and enhance trade within the African continent under the AfCFTA by eliminating tariffs on 90% of goods and liberalising services trade thus enabling African countries to access new markets and deepen regional integration. However, there are the effectiveness of the AfCFTA and its impact on TRIPS have been a subject of debate. Some of the challenges are highlighted below.

### **Harmonisation of IP laws**

One of the challenges lies in the varying levels of IP protection and engagement of the AfCFTA by parties to it across African nations. In a 2023 report, only eight of 44 countries have so far started engaging the AfCFTA's Guided Trade Initiative (GTI), namely Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia, with a focus on products such as ceramic tiles, beverages and processed meat products for value chain development. [...]

[Read full article here \[+\]](#)

# Principle of Procedural Economy Applied to the EUIPO's Decisions

Júlia Alves Coutinho

European Union

IPR DAILY 中文网

One fundamental aim of every civil justice system is the efficiency, assuring that any administrative or judicial institution be capable of decide in a timely and cost-effective manner, without compromising the quality and legitimacy of the process, which is known by the principle of procedural economy or judicial economy.

This principle is particularly important in the context of the European Union, where multiple institutions, including the European Commission, the European Parliament, and the Council of the European Union, are involved in the decision-making process.

In this sense, this principle is applied in Intellectual Property legislation, appearing in the recitals of the Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union Trademark and in the recitals of the Council Regulation (EC) no. 6/2002 of 12 December 2001 on Community designs.

Therefore, it is applied by the European Union Intellectual Property Office (EUIPO) in the decisions involving trademarks and designs, called by principle of economy of proceedings.

In the beginning of the EUIPO Guidelines on Trademark and Designs, it is said that “In the interests of efficiency and in order to prevent parties encountering different practices, the Office applies procedural rules consistently”. In addition to the principle of procedural economy, the Office is also obliged to comply with other the general principles of the European Union law, such as adequate reasoning, right to be heard, equal treatment, legal certainty and sound administration. Despite of that, the Office is not bound to respond to all the arguments raised by the parties, being sufficient that the Office sets out the facts and legal considerations of fundamental importance in the context of the decision. Therefore, this conduct does not necessarily infringe the

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*Furthermore, in line with procedural economy rules, the Office may examine the likelihood of confusion without undertaking a comparison of goods and services if upon examining all the other relevant factors (...) any likelihood of confusion can be ruled out.*

duty to state reasons, as confirmed by several decisions of the General Court and of the Court of Justice<sup>1</sup>. Moreover, the Office is not required to give express reasons for its assessment in respect of each and every piece of evidence submitted or arguments put forward, where it considers that evidence or arguments to be unimportant or irrelevant to the outcome of the dispute<sup>2</sup>.

Furthermore, and in compliance to the principle of economy of proceedings, the Office is not required to prove the accuracy of well-known fact<sup>3</sup> used as a basis for its reasoning and, therefore, it is not obliged to give examples of such practical experience; it is up to the party concerned to submit evidence to refute it<sup>4</sup>.

## Trademarks

Several legal grounds, based on different earlier rights, may be alleged in either the

same or multiple oppositions against the same European Union trademark application.

Following the filing of an opposition within the deadline and upon the payment of the official fee, the Opposition Division will first examine the admissibility of the opposition, to check if the invoked right(s) is(are) earlier and valid within the European Union.

If the opponent relies the opposition on more than one right, it is sufficient that one of them is prior and valid in the EU for the opposition to be admitted, and it is not necessary for the opponent to remedy deficiencies in relation to rights that do not serve as a basis for the opposition.

Regarding the exam of the opposition itself, it is consolidated the understanding that the Office is under no obligation to examine all the earlier oppositions, rights and legal grounds invoked against the same European Union trademark application if one of them suffices to reject the EUTM application; [...]

[Read full article here \[+\]](#)

# Never begin using or advertising a brand without having the registration requested

Vitor Palmela Fidalgo

Worldwide

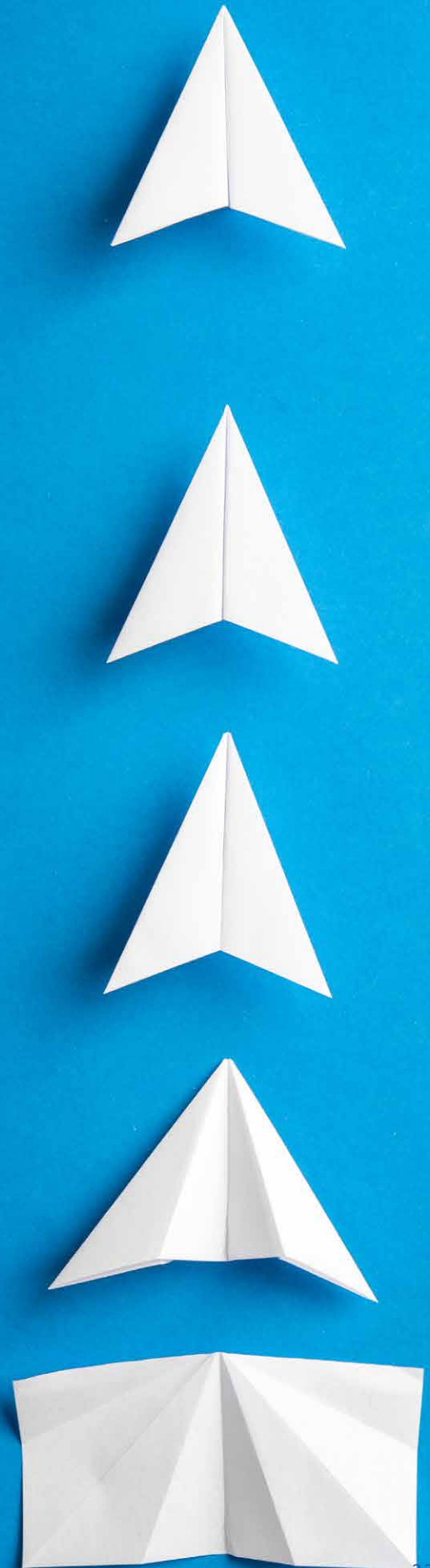


In today's world of mass consumption and standardization of products, protecting a brand is essential for success. Vitor Palmela Fidalgo shares his opinion on the crucial practice of ensuring trademark registration before starting promotional activities and on the strategic necessity by advising “Never begin using or advertising a brand without having the registration requested”.

”

*Trademarks are protected based on their function in the market. Their purpose is not to stimulate innovation or reward the adopter of a mark but rather to distinguish the products or services of one company from the competition, providing transparency to the market (...)*

[Read full article here \[+\]](#)



# Angola: How to register a trademark

Raquel Teles

Africa

Angola



Due to increasing competition between companies in multiple countries, trademarks have become essential in commercial activities and represent a great value to the success of a business, as they distinguish its products or services from those of competitors. In Angola, like in many other countries, trademarks are an important part of the trade dynamic and are protected by law, under the Intellectual Property Act, Law No. 3-92 of February 28, 1992. However, understanding the trademark registration process and the laws and rules that govern it can be challenging. This article aims to provide an overview of the trademark protection process in Angola, including an analysis of the system's particularities and deadlines. The Angolan Patent and Trademark Office (Angolan PTO) registration system does not have an electronic registration system, and some procedures and timeframes are not disclosed in the intellectual property law (IP Law). Due to these difficulties, it is highly advisable to seek the assistance of an attorney.

## Submitting an application

To protect a trademark in Angola, the applicant, whether an individual or a company, must file a national application request before the office, which is subject to specific requirements. It is important to note that Angola follows a single-class system of registration, and applicants must classify the goods or services indicated on their applications under the Nice Classification. Article 33 of the Angolan IP Law outlines the primary application requirements concerning trademarks, however, the legal demands of the documentation required, crucial for the acceptance of the application, are not disclosed in the IP Law.

To file an application in Angola, the required documents include the power of attorney, the applicant's certificate of incorporation (a document that proves that the company is incorporated in the country where it was established) and the priority document (if applicable). The PTO requires the filing of the originals, with certified Portuguese translation,



notarised and legalised at the Angolan Consulate/Embassy of the applicant's country, or, if the country does not have an Angolan diplomatic mission, the documents need to be legalised in the consulate/embassy closest to the applicant's country. Even though in Angola is possible to file an application without submitting all the necessary documentation upfront, this alternative implies additional costs for the interested party. The legal deadline for submitting the power of attorney is 30 days from the application date, nevertheless, this deadline may be extended for additional periods of 30 or 60 days, subject to the payment of additional fees. Additionally, it is important to mention that multiple extension requests can be made as long as there are valid reasons for the late submission of documents. However, it is important to be aware that there is a risk of the Angolan PTO denying an extension request before the legalisation proceeding is completed.

### **Registration process**

After submitting the trademark application to the Angolan PTO, the registration process will formally begin, which consists of the following steps:

- Issuance of the official form(s) with the trademark number(s) (within four weeks from

the filing date);

- Publication of the application(s) in the IP Bulletin for opposition purposes (approximately four to six months from the filing date);
- Opening of a 60-day period for the filing of oppositions by third parties who consider themselves to be adversely affected by the registration of the trademark(s);
- Formal and substantive examination by the PTO;
- Granting publication in the IP Bulletin;
- Issuance of the registration certificate (takes about a year after the granting publication).

The above-mentioned timeframes are based on the analysis of the current procedure of the local office, but they may vary due to the backlog of the PTO. It is also important to examine some of the specific details regarding the points previously discussed.

### **Delays to be expected**

Regarding item number three, the opposition period in Angola may be extended for an additional 30 days. Also, the Angolan IP Office has been experiencing delays in delivering notifications. As a result, it is difficult to predict the exact opposition period in Angola and, as a consequence, when the Angolan PTO will be able to initiate and conclude the formal and substantive examination (item number four). The

issuance of the registration certificate (item number six) will also be affected by the delays in the previous procedures. The lack of modernisation becomes more evident during these steps, as the PTO's filing receipts and certificates are still issued on paper, and the only databases available are the IP Bulletins (issued at least once a month). The estimated time frame for a trademark application until registration is 24 to 36 months, however, may take even longer. Due to the absence of electronic updates, it is even more difficult to follow and know the status of the application. The combination of these factors, along with the pandemic context experienced during the last three years and the change in certain legal provisions, has made it even more challenging to regularise the processes.

### **Registration fees**

In 2020, the Angolan PTO changed the rules regarding the registration fees of trademarks. It started being paid alongside the application request, which forced the regularization of all the processes submitted before that year. However, until the PTO issues a formal notification to pay those pending fees, it is not mandatory to do so. Also, due to the long-time frame procedure, a new challenge arose: the payment of the renewal fees before the trademarks have

been granted. According to the IP Bulletin publications, there are over 50,000 trademark applications filed between 2000 and 2020 in Angola that have not been granted. Taking it into account, a significant number of them are already due for renewal (as trademarks in Angola must be renewed ten years after the application filing date). Renewing a trademark before it has been granted can help ensure that there is no gap in protection for the trademark and may lock in the priority date for the application. On the other hand, it may be a waste of resources if the application is ultimately refused, and the applicant may need to pay a new application fee if he wishes to reapply for the trademark. In general, it is advisable to wait until a trademark has been granted before renewing it. Nevertheless, in Angola, it has been challenging to ensure that the registration process proceeds in this way.

Registering a trademark in Angola can be a complex and time-consuming process, but it is necessary for protecting your intellectual property and establishing a strong brand presence in the country. It is important to work with experienced legal professionals who can guide you through the process and ensure that your trademark application meets all necessary requirements.

# Burberry's famous pattern denied by EUIPO for the metaverse

Diogo Antunes

European Union

**Trademark**  
Lawyer

In recent years, the rise of non-fungible tokens (NFTs) has taken the world by storm, with individuals and companies alike attempting to capitalize on the new technology. One such company is Burberry, a British luxury fashion house, who attempted to register an EU trademark for a range of NFT-related products and services.

However, the company's application was met with a partial refusal by the European Union Intellectual Property Office (EUIPO), which covers almost all of the goods and services listed in the application, with the exception of downloadable interactive characters, avatars, skins, video games, downloadable video game software, and certain services related to computer games.

Burberry filed its famous figurative application [Figure 1] on 02/02/2022 for the following classes:

*"9 - Non-fungible tokens (NFTs) or other digital tokens based on blockchain technology;*



Figure 1

*downloadable digital graphics; downloadable digital collectibles; downloadable clothing and accessories; downloadable interactive characters, avatars and skins; downloadable virtual goods; virtual bags, textile goods, clothing, headgear, footwear, eyewear all displayed or used online and/or in virtual environments; video games and downloadable video game software; downloadable digital materials, namely audio-visual content, videos, films, multimedia files, and animation, all delivered via global computer networks and wireless networks."*

*"35 - Retail and wholesale services for clothing,*

*footwear, headgear, bags, purses, wallets, umbrellas, watches, jewellery, eyewear and sunglasses, cases and covers holders for portable electronic devices, printed matter, homeware, toys, perfume, toiletries and cosmetics, textile goods, pet accessories; online retail services related to fashion, clothing and related accessories; Retail store services and/or online retail store services in relation to virtual merchandise namely clothing, footwear, headgear, bags, purses, wallets, umbrellas, watches, jewellery, eyewear and sunglasses, cases and covers holders for portable electronic devices, printed matter, homeware, toys, perfume, toiletries and cosmetics, textile goods, pet accessories; presentation of goods on communication media, for retail purposes.”*

*“41 - Providing online non-downloadable digital collectibles namely art, photographs, clothing and accessories, images, animation, and videos; providing on-line information about fashion shows, digital games and sustainability; entertainment services, namely providing on-line, nondownloadable virtual content featuring clothing, footwear, headwear, bags, purses, wallets, umbrellas, jewellery, eyewear and sunglasses, cases and covers holders for portable electronic devices, printed matter, homeware, toys, perfume,*

*toiletries and cosmetics, textile goods, pet accessories, for use online and/or in virtual environments; providing online video games; provision of online information in the field of computer games entertainment; entertainment services, namely, providing online electronic games, providing a website with non-downloadable computer games and video games, computer interface themes, enhancements, audio-visual content in the nature of music, films, videos, and other multimedia materials.”*

”

*This decision has raised questions about how trademarks for virtual goods should be analyzed and the extent to which they should be treated in the same way as trademarks for physical goods.*

The refusal is based on the grounds that the trademark application lacks distinctiveness, as the check pattern used is not markedly different from other patterns commonly used in the trade for the goods and services for which an objection has been raised.

The examiner further stated that “the consumer’s perceptions for real-world goods can be applied to equivalent virtual goods as a key aspect of virtual goods is to emulate

core concepts of real-world goods.” This decision has raised questions about how trademarks for virtual goods should be analyzed and the extent to which they should be treated in the same way as trademarks for physical goods. EUIPO’s notice on NFT’s classification stated that virtual goods should be categorized as Class 9 goods, which include digital content or images.

However, the term “virtual goods” on its own lacks clarity and precision, so it must be further specified by stating the content to which the virtual goods relate, such as “downloadable virtual goods, namely, virtual clothing.” The 12th edition of the Nice Classification already incorporates the term “downloadable digital files authenticated by non-fungible tokens” in Class 9.

EUIPO then requires that the type of digital item authenticated by the NFT must be specified within the classification. The partial refusal of Burberry’s trademark application shows that EUIPO is taking a cautious approach to trademarks for virtual goods, as they are still relatively new and there is little legal precedent for them.

The decision also highlights the importance of ensuring that trademarks for virtual goods

are distinctive and do not simply replicate patterns or designs that are commonly used in the trade. However, it is possible to criticize the decision, arguing that the distinctiveness analysis for trademarks for virtual goods should not necessarily be the same as for physical goods. Virtual goods have unique features that may not apply to physical goods, and their distinctiveness may depend on factors such as their rarity or uniqueness, rather than their design or branding.

Furthermore, the value of NFTs lies in their blockchain authentication, which makes them unique and valuable, and the trademark for the NFT could reflect that uniqueness. The decision also raises questions about the broader legal implications of NFTs and virtual goods. As more companies and individuals begin to use NFTs to sell and authenticate digital art, collectibles, and other goods, there may be a need for new legal frameworks to regulate and protect these transactions.

” *As more and more companies enter the world of NFTs and virtual commerce, it will become increasingly important for them to carefully consider the distinctiveness of their trademark and the potential for trademark protection in this new digital landscape.*



NFTs raise questions about ownership, copyright, and intellectual property, as well as the potential for fraud and theft. It is likely that regulators and legal experts will need to develop new rules and regulations to address these issues in the coming years.

In the meantime, companies that are interested in trademarking their virtual goods will need to carefully consider the distinctiveness of their trademark and designs, and ensure that their trademarks are not simply replicating patterns that are commonly used in the trade.

To conclude, the recent partial refusal of Burberry's NFT trademark application highlights the challenges and considerations that trademark applicants and examiners face in the emerging world of NFTs and virtual goods.

The decision by EUIPO to refuse the trademark application indicates that virtual goods must be analyzed in the same way as real-world products when assessing their distinctiveness and potential for trademark protection. This means that NFT trademarks must be sufficiently distinct from other common patterns in the trade, just like any other physical product.

As more and more companies enter the world of NFTs and virtual commerce, it will become increasingly important for them to carefully consider the distinctiveness of their trademark and the potential for trademark protection in this new digital landscape.

Additionally, trademark offices around the world will need to develop clear guidelines and standards for evaluating NFT trademarks to ensure that they are assessed fairly and consistently.

The refusal serves as a reminder that while NFTs and virtual goods offer exciting new opportunities for businesses and consumers, they also present unique legal and intellectual property challenges that require careful consideration and expert guidance.

# ICLG's 2023 edition of "Trade Marks Laws and Regulations" report

Vítor Palmela Fidalgo & Júlia Alves Coutinho

Europe

Portugal

**ICLG.com**

In the 2023 edition of Trade Marks Laws and Regulations, presented in the publication by the International Comparative Legal Guide (ICLG), Inventa provides an extensive overview of trademark legislation and regulations in Portugal. This coverage includes insights into requirements, timelines, oppositions, and various other pertinent rights.

[Access full chapter \[+\]](#)



# Ikea's legal action raises debate over IP in video games

Phillip Monteiro

Europe



Ikea, the Swedish furniture retailer with hundreds of stores around the globe, has threatened legal action against the developer of *The Store Is Closed*, a survival horror video game that takes place in an Ikea-like store. The game's lone developer studio based in the UK, who goes by the name 'Ziggy', released a successful Kickstarter campaign and a trailer for the game on YouTube, which quickly went viral.

In response, Ikea's legal team sent a cease-and-desist letter, informing Jacob Shaw, the lone wolf behind Ziggy's name, that they are aware of the likeness between the store and his game. "Your game uses a blue and yellow sign with a Scandinavian name on the store, a blue box-like building, yellow vertical striped shirts identical to those worn by Ikea personnel, a grey path on the floor, furniture that looks like Ikea furniture, and product signage that looks like Ikea signage. All the foregoing immediately suggest that the game takes place in an Ikea store."



Source: Ziggy

However, the letter does not obligate Shaw to shut down his game project if he compromises himself to change the similarities within 10 days of the receipt of the letter. In a contact with the video games website [Kotaku](#), Ikea UK said: "While we think it's flattering that others are inspired by the IKEA brand, we must be diligent to ensure that the IKEA trademarks and trade dress are not misapplied. "Various elements of the video game currently correspond in appearance with the IKEA brand features.

We've reached out to the creator of the video and asked them to make changes to those elements to ensure that this is no longer the case. "They expressed that they understand our request and agreed to make those changes. This should all be well in time for the expected 2024 launch of the game."

The legal dispute between Ikea and Ziggy raises important questions about intellectual property rights in the gaming industry. Video games often incorporate real-world elements, such as brand names, logos, objects and store layouts, into their games in order to create a more immersive experience for the player. While this may be seen as a form of homage or satire, it can also be viewed as infringing on the IP rights of the brand/product owner.

In the case of *The Store Is Closed*, Shaw argues that Ikea's complaints about the furniture are a little vague. "Furniture that looks like Ikea furniture, that's not particularly specific," he said. But he also said that is better not to get sued.

However, Ikea argues that the game's use of a brand that strongly resembles itself and its store layout goes beyond fair use and

infringes on its IP rights. Ikea's stance is that the game could potentially damage its brand and reputation, and it is therefore within its rights to take legal action.

During its life as a Kickstarter project, Shaw's title has earned around £78,328, nearly eight times more than its initial goal of £10,000. "I was going to spend the last week of my [Kickstarter](#) preparing an update for all the new alpha testers (...) But now I've got to desperately revamp the entire look of the game, so I don't get sued," [Shaw told Kotaku](#).

In conclusion, the possibility of a dispute between Ikea and Ziggy highlights the complex issues surrounding IP rights in the gaming industry. While both parties have valid arguments, the outcome of a lawsuit would have far-reaching implications for the industry and for the rights of creators to use existing works in transformative ways. As the gaming industry continues to evolve, it will be important to find a balance between protecting IP rights and fostering creativity and innovation. *The Store Is Closed* is still under development, with a release date predicted for some time in 2024.

# Libya's temporary suspension of trademark registrations by foreign applicants

Inês Monteiro Alves and Sofia Araújo

Africa

Libya



Libya has imposed, by means of a directive, a restriction on foreigners registering trademarks in the country, with effect from November 1, 2022. The European Commission's website states that "Libya's trademark office has suspended the acceptance of trademark applications and registrations filed by foreign applicants".

According to the administrative directive of Libya's Ministry of Economy and Trade, the trademark office limited its operation of new trademark registrations arising from foreign applicants, while the status of pending procedures concerning foreign-owned trademarks is still not clear.

## List of restrictions

The office has [reported](#) that its activities will be limited to the following:

- It will only accept applications from companies owning national production and service units.
- It will archive issued trademark decisions.
- It will prepare information systems, in accordance with international standards, in a manner that does not violate the regulations and decisions issued, in cooperation with the Economic Information and Documentation Center.
- The director of Libya's trademark office will submit all data not included in the Ministry's system and not circulated in accordance with the legal procedures and organisational structure of the Ministry, approved by Cabinet Decree No. (235) of 2021, and will deliver the application record from No 22099 to the last mark published in the Official Gazette and up to the last mark filed in the register.
- It will continue to maintain the register of companies dealing with the trademark office in registering trademarks.
- It will continue to maintain the register of transfer and assignment of ownership of trademarks.
- This policy has significant implications for businesses seeking to operate in Libya, as the protection of IP is essential for the economic development of any country. It is necessary to understand the economic and political context that may be behind this decision.



## Political unrest

Libya has been going through a context of instability plagued by political conflicts since the overthrow of former leader Muammar al-Gaddafi in 2011, who ruled the country for over 30 years. The country has, since then, been divided between two main factions: the internationally recognised Government of National Accord—which is based in the capital city of Tripoli—and the Libyan National Army (led by General Khalifa Haftar) based in the eastern city of Tobruk.

Apart from this, there are also several armed militias operating throughout the country, each with its own alliances, creating a volatile and unpredictable situation favourable to political instability. In March, Libya's High Council of State voted for a constitutional amendment intended to provide a basis for elections and a diplomatic representative from the UN for Libya moved to take charge of a stalled political process to enable elections that are seen as the path to resolving years of conflict.

This ongoing conflict has disrupted the country's legal and regulatory framework, including intellectual property laws. Furthermore, the country's economy is

heavily reliant on oil and gas exports, which have been severely impacted by the conflict. Thus, Libya's economy has suffered greatly with the disruption of production and exports, which led to high unemployment, inflation, and a shortage of basic goods and services.

Foreign investment plays an important role in the economic development of a country, providing wealth, expertise, and technology, amongst other factors. However, not allowing foreigners to register their trademarks creates legal uncertainty as it makes establishing a strong and stable presence in the Libyan market difficult. This policy discourages foreign investment, which is crucial for job creation and economic growth. In addition, the Libyan government has a history of nationalising foreign-owned assets, which has created a lack of trust between foreign investors and the government.

## Sharia Law

Regarding trademark registration, it's worth noting that Libya's legal system is based on Islamic law (Sharia). It has become the country's official legal system after the overthrow of former leader Muammar al-Gaddafi. The impact on how religion

influences trademark registration in Libya is noticeable.

Inês Sequeira [approached this subject](#) in an article describing the nuances of such influence: “Libyan trademark law prohibits the registration of certain categories of trademarks, including those seen as ‘violating public morals or public order’ (...) or those that are ‘identical or similar to symbols constituting a purely religious nature’ (...). In practice, this means that trademarks referencing banned substances are regularly refused (eg, pork products in Class 29 and alcoholic beverages in Classes 32 and 33). In addition, trademarks that incorporate non-Islamic religious symbols, such as the Christian cross or Christmas-related goods (eg, Christmas trees in Class 28) are also refused.”

The religious and political influences are quite evident within the trademark protection scope in Libya, which is why this temporary suspension for trademark registration by foreign applicants does not come as a surprise. Indeed, without a functioning central government, there is a very challenging environment for businesses operating in the country. As a result, obtaining trademark registration can be a

complex and difficult process, and there may be significant obstacles to overcoming the legal and regulatory landscape.

### **Investment on hold**

The Libyan government's policy of not allowing foreign trademark registration in the country has significant economic and political implications. The absence of a unified legal system, the leftovers of nationalising foreign assets, and the challenging business climate in Libya have all contributed to making it difficult for foreign investors to operate in the country.

The policy of not allowing foreign trademark registration may well be contributing to the country's economic stagnation and for this reason, it is imperative for the Libyan government to establish a more favourable business environment for foreign investors.

Doing so is crucial for promoting economic growth and prosperity in Libya, by way of unlocking the full potential of foreign investment and long-term economic development in the country.

# Understanding TM neutralisation

João Pereira Cabral

European Union



A European Union Trademark (EUTM) application can be refused on several grounds. One of those is laid down in article 8, No. 1, (b) of the EU trademark Regulation (EUTMR), consisting in the existence of a likelihood of confusion on the part of the public in the territory in which the earlier trademark is protected, due to its identity with, or similarity to, the earlier trademark and the identity or similarity of the goods or services covered by the trademarks.

This ground for refusal has four main requirements: i) the existence of an earlier trademark; ii) the similarity of goods and services covered by the trademarks at conflict; iii) the similarity between the signs, and iv) the existence of a likelihood of confusion on the part of the public.

Each of these requirements bears several relevant aspects. When comparing two trademarks, their visual, phonetic, and conceptual similarities must be considered. This article focuses on the importance of the

conceptual comparison of EUTMs, more specifically on the impact of conceptual differences, and on the not-so-well-known principle of neutralisation.

Shall two trademarks be considered relevantly similar if they are visually and phonetically similar but conceptually very different? Shall the trademark “Picaro” be considered relevantly similar to “Picasso”? This was the question that led the Court of Justice of the European Union (CJEU) to adopt the principle of neutralisation.

In its decision from January 12, 2006, C-361/04, *Picaro*, EU:C:2006:25, § 20, the court held that: “where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them.”

In other words, when the “meaning of at least one of the two signs at issue is clear and specific

so that it can be grasped immediately by the relevant public”, the visual and phonetic similarities may be neutralised.

”

*“Shall the trademark “Picaro” be considered relevantly similar to “Picasso”? This was the question that led the Court of Justice of the European Union (CJEU) to adopt the principle of neutralisation.”*

In that case, the CJEU considered (§ 27) that, “confronted with the word sign Picasso, the relevant public inevitably [would see] in it a reference to the painter and that, given the painter’s renown with that public, that particularly rich conceptual reference [was] such as greatly to reduce the resonance with which, in [that] case, the sign [was] endowed as a mark, among others, of motor vehicles.”

This principle was also addressed in other cases, such as in the decision from the CJEU on October 5, 2017, C-437/16 P, Chempioil/Champion et al, EU:C:2017:737, and in the decision by the EU General Court (EUGC) from March 17, 2004, T-183/02 & T-184/02, Mundicolor/Mundicor EU:T:2004:79.

In the former case, the trademarks in comparison were Chempioil and Champion. The CJEU decided that the word ‘champion’ has a

clear and specific meaning that would be understood by the relevant public.

This was due to its extensive use in various fields such as the arts, literature, cinema, music or sport. Therefore, despite the visual and phonetic similarities between the signs, the CJEU decided that the consumer would make a distinction between them due to the clear concept conveyed by the word ‘champion’. Thus, the visual and phonetic similarities of the signs were offset (neutralised) by that conceptual difference (§ 31, 46-47 and 55).

On the other hand, in the case that opposed the signs Mundicolor and Mundicor, the General Court decided that the principle of neutralisation was not applicable, because while ‘Mundicolor’ could be deemed evocative of ‘colours of the world’ or ‘the world in colours’ for the relevant public in the case, it could not be regarded as having a clear and specific meaning.

In the mark Mundicor, the same prefix ‘mundi’ was complemented by the suffix ‘cor’, a term that was considered to have no meaning for the relevant public. Therefore, despite the evocative nature of the prefix ‘mundi’ (world), the latter sign was devoid of any concept for the relevant public. As neither of the signs had a

clear and specific meaning likely to be grasped immediately by the public, any conceptual difference between them was not such to neutralise their visual and phonetic similarities (§ 90-99).

”

*"(...) the principle of neutralisation can be summarised as having the following requirements: a) at least one of the signs at conflict must have a meaning; b) that meaning must be clear and specific; c) so that it can be grasped immediately; d) by the relevant public."*

From these decisions, the principle of neutralisation can be summarised as having the following requirements: a) at least one of the signs at conflict must have a meaning; b) that meaning must be clear and specific; c) so that it can be grasped immediately; d) by the relevant public. This means that: a) it is not necessary that both signs have a meaning; b) the meaning must be assessed by having the relevant public as reference; c) any word that is merely evocative of a meaning cannot produce a conceptual difference able to relevantly impact the comparison of the signs, this is, to be able to neutralise visual and phonetic similarities.





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TRADEMARKS



IP RELATED



# The Unitary Patent Guide

## European Union

The Unitary Patent (UP) system and the Unified Patent Court (UPC) have seen significant developments recently. Introduced to strengthen and supplement the existing centralized European patent-granting and enforcement system, these changes aim to offer a more cost-effective option for patent protection and dispute settlement across participating EU Member States.

As of now, the Unitary Patent System includes 17 participating EU Member States, showing a strong commitment across a significant part of the European Union.

Inventa has created a comprehensive guide to help understand the Unitary Patent (UP) system. This guide, available in English, Portuguese, and Chinese, details the UP system's linkage to the creation of the Unified Patent Court (UPC), offering jurisdiction over Unitary Patents and classic European patents. It includes information on coverage, transitional measures, advantages of the UP system, and how it interacts with classic European patents.

For more in-depth information, access Inventa's comprehensive guides:



The Unitary Patent



Patente Unitária



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# Patents and biopiracy: the fine line between innovation and sustainability

Marisol Cardoso

Worldwide



Patents are legal instruments designed to safeguard IP and encourage innovation, as they grant patent owners exclusive rights to their inventions for a determined period, fostering an environment in which research and development can flourish. Biological and genetic resources are often researched and collected, and the knowledge derived is applicable to useful products in several industry fields, such as agriculture, cosmetics, and pharmaceuticals. However, when the naturally occurring biochemical, genetic material or traditional knowledge is unethically appropriated or commercially exploited without providing fair compensation to the community from which it originates, this is known as biopiracy.

The implications of biopiracy and patents extend far beyond legal and economic boundaries. They further intersect scientific and ethical concerns, and this article aims to unveil the opportunities for innovation and challenges for sustainability and social justice associated with it.

## Legal concerns

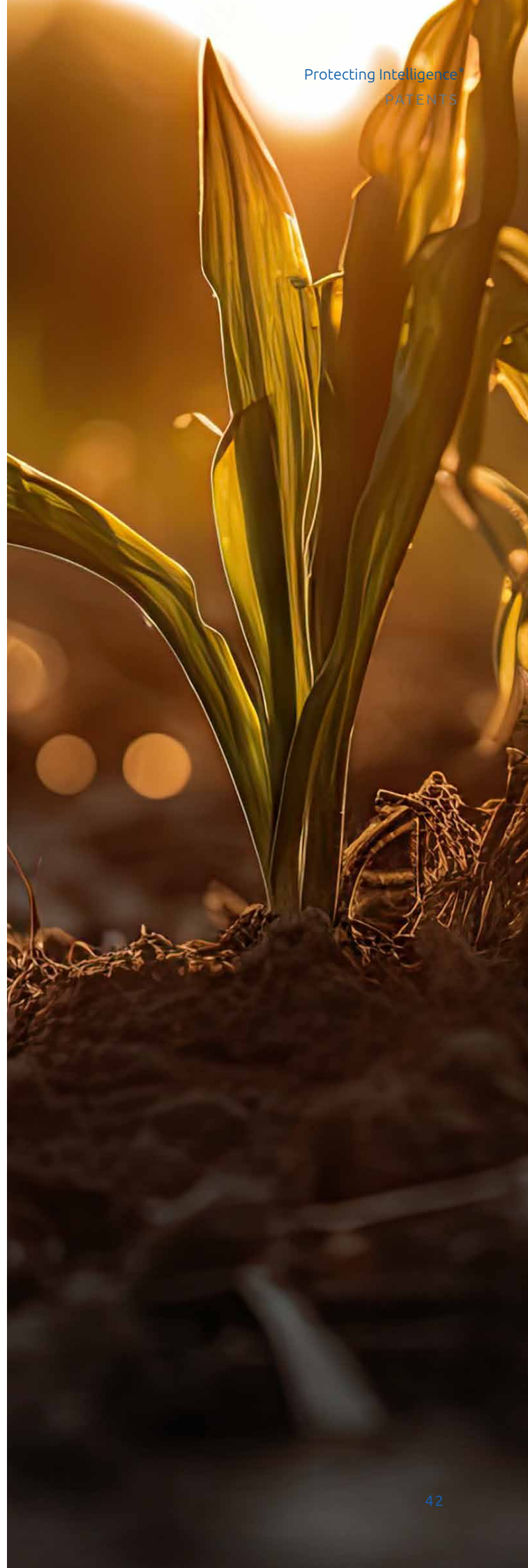
Governments and other international organisations are increasingly implementing legislation and mechanisms to ensure that bioprospecting and patenting align with sustainability goals. [The Convention on Biological Diversity \(CBD\)](#) is an international treaty established to promote the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the utilisation of genetic resources. It entered into force in 1993 and, apart from Andorra, South Sudan, the US, and the Holy See (the Vatican), all other member states of the United Nations are committed to it. [The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization \(Nagoya Protocol\)](#) is a supplementary international treaty to the CBD, which entered into force in 2014. The Nagoya Protocol requires parties to implement measures to ensure that access to genetic



resources is based on prior informed consent - ie, researchers and companies must obtain permission from the countries and communities where they intend to access genetic resources or traditional knowledge before proceeding with their activities.

The protocol also emphasises benefit-sharing to ensure that the economic benefits derived from the utilisation of genetic resources are shared fairly with the countries and communities that provide these resources. This includes not only financial benefits, but also technology transfer, and capacity-building. However, the Convention's success depends on the combined efforts of the world's nations: since each country is responsible for implementing the Convention guidelines, compliance will depend on informed self-interest and peer pressure from other countries and from public opinion.

The same applies to the protocol: many countries are still in the process of enacting national legislation to align with the protocol's requirements. Other bilateral agreements, such as bioprospecting contracts celebrated between a host country and a pharmaceutical company, are an approach that emphasizes responsible research practices that prioritise sustainability and



respect for indigenous knowledge. It involves obtaining informed consent, sharing benefits fairly, and implementing sustainable resource management practices. An example of **successful commercial bioprospecting** agreement was celebrated between Diversa Corporation (a California-based industrial biotechnology company) and the Yellowstone National Park (a national park located in the western US with abundant and diverse wildlife).

### **Economic concerns**

Biological resources, particularly those from diverse ecosystems (such as the Amazon), hold immense economic potential. These resources can be anything from medicinal plants with unique healing properties to microorganisms with potential industrial applications and one of the greatest challenges is striking a balance between economic interests and environmental sustainability. Unfortunately, the attraction to economic gains often drives the exploration and indiscriminate exploitation of these resources, leading to overharvesting, habitat destruction, and endangerment of species, causing irreparable damage to ecosystems. Since patenting can grant exclusive rights to an entity for a period of time, it can limit access to certain biological

resources or technologies, creating monopolies on naturally occurring material or traditional knowledge which has been improperly appropriated. In most cases, the pursuit of short-term economic benefits does not align with long-term ecological sustainability. In this context, responsible resource management and a shared commitment to conservation are key concepts that must be considered.

### **Scientific concerns**

Unauthorised exploitation of genetic resources can lead to loss of biodiversity and, therefore, limit the availability of critical research tools and materials for legitimate scientific research, therefore hindering scientific progress and innovation. The same applies to excessive patenting, which can create barriers by limiting the availability of essential tools and resources. Another point to be considered is the misuse of genetic resources, which can potentially lead to irresponsible or unsafe applications in biotechnology and genetic engineering as well as cause biosecurity risks. As regards Traditional Knowledge, biopiracy can result in misappropriation, leading to the loss of culturally important information and valuable insights for scientific research, since indigenous and local knowledge systems



often encompass unique cultural and ecological perspectives.

### **Ethical concerns**

The patenting of nature-based products, especially those obtained through biopiracy, raises ethical questions related to the potential for exploitation in the name of profit-driven research without the consent of those who have passed down traditional knowledge for generations. The unethical acquisition of biological resources or traditional knowledge can damage trust and cooperation between researchers and communities, hindering collaborative efforts that could otherwise benefit both scientific discovery and conservation efforts.

### **Biopiracy famous cases**

Notorious examples of biopiracy relate to medicinal plants and the ancient traditional knowledge related to them. Indians have shared the knowledge of the fungicidal properties of the neem with the entire world, however, the [European Patent Office \(EPO\)](#) decided to grant a [European patent](#) to WR Grace and the Department of Agriculture of the USA for a method for controlling fungi on plants by the aid of a hydrophobic extracted neem oil. A legal opposition was filed by India against the grant of the patent, and the

patent was then revoked. Ayahuasca, an Amazonian plant that has been used by religious leaders for generations to treat sicknesses, contact spirits and foresee the future, was protected by a [US Plant Patent](#) filed by Loren Miller, an American scientist and entrepreneur. The patent was revoked after the request of the indigenous peoples of Ecuador, but Miller filed for an appeal and the patent was reinstated for its remaining life span. The food giant Nestlé claimed to have invented stomach soothing use of *Nigella sativa* to prevent food allergies. However, *Nigella sativa* is an ancient food and medicinal crop, which has been used to treat digestive ailments for hundreds of years and which is mentioned in the written traditional medicinal texts of major civilizations like the Ayurveda. The [patent application](#) was never granted.

### **Conclusion**

The need to protect innovation must be balanced with the ethical obligation to safeguard biodiversity and indigenous rights. Biopiracy poses a significant threat to biodiversity and the granting of exclusive rights for biological resources or traditional knowledge without adequate examination or consideration can hinder the ability of the communities to benefit from their own resources.

# The Intersection of Intellectual Property and Trade: An Analysis of the Doha Round

Raquel Teles

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Worldwide

The Doha Round represents the latest series of trade negotiations among WTO members, officially launched at the WTO's Fourth Ministerial Conference in Qatar in 2001. Its goal is to substantially reform the global trade system by reducing trade barriers and revising rules across approximately 20 trade-related areas, including intellectual property matters such as rights protection, affordable access to medicines, flexibility within the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, the promotion of technology transfer, and more. As the round progressed, it brought to the forefront a complex interplay between intellectual property and global trade, in developed and developing countries. Developed nations advocated for robust intellectual property protections, deeming them essential for fostering innovation and protecting investments. On the opposite side, developing nations emphasized the need for a delicate balance, pointing out the need for flexibility in

intellectual property regulations. This tension underscores a challenge in harmonizing global IP standards: finding a consensus that reconciles the priorities and the diverse needs of WTO member countries.

Important advancements and decisions in negotiations related to intellectual property were observed. One notable resolution was The Doha Declaration on the TRIPs Agreement and Public Health in 2001, acknowledging that the affordable access to medicines was the critical issue of developing nations. Intellectual property rights, especially patents, played a defining role in shaping the pharmaceutical landscape. The negotiations aimed to strike the delicate balance between safeguarding innovators' rights and ensuring cost-effective access to life-saving drugs, particularly in regions facing pressing health crises. [...]

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# Safeguarding traditional knowledge in Africa: legal and ethical challenges

Marisol Cardoso

Africa

The Patent Lawyer  
Magazine

Can innovations based on traditional knowledge be protected, even if not by conventional intellectual property systems?

Marisol Cardoso explores the measures taken by numerous African nations to protect this knowledge. These measures encompass various dimensions, including the establishment of relevant legislation, the formulation of specific policies, and ongoing collaboration between indigenous communities and the relevant government authorities.

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# Innovation in the face of Europe's forest fires

Susana Rodrigues

Europe



In recent decades, forest fires have emerged as one of the major challenges faced by humanity. And in some European countries, mainly due to climate change, forest fires have become much more than a challenge, they have become an increasingly frequent threat.

As stated in the [“Advance report on Forest Fires in Europe, Middle East and North Africa 2022”](#), issued by the European Commission: “2022 was the second worst year in Europe in terms of burnt areas and number of fires, since 2006. The burnt area in the European Union (EU) was the second highest ever, only behind the year of 2017.” Out of the total extension of land in the EU that has been burnt in 2022, 44% lie in the so-called protected areas within the Natura2000 network. This huge area amounts to 365,308 hectares, as per the same report. To fight against such threats that endanger forests, animal, and human life on earth, innovation is one of the possible answers. As per information available on the European Patent

Office (EPO) website, experts from both the EPO and the national patent offices from the European countries most affected by fires, ie, Spain, Portugal, France, Greece, and Italy, joined their efforts and created a series of search queries on patents filed in the fields of fire-fighting innovation.

These search queries intend to support inventors, scientists and engineers providing them with relevant information on patent applications filed in fire-fighting related areas.

## The four fields selected

Facing the scenario reported from 2022 in the above-mentioned report, factoring in the number of fires and in the burnt area in Europe, and taking innovation as a possible way to reduce the risks and the consequences related to fires, the following fields have been considered in said search queries, according to the EPO:

- Field 1: fire detection and prevention

- Field 2: fire extinguishing
- Field 3: protective equipment
- Field 4: post-fire restoration

Using data retrieved from the advance reports on Forest Fires in Europe, the Middle East and North Africa from 2012 up to 2022, this article shows a comparison between burnt hectares (ha) in the EU countries in the last 11 years with the number of patent applications filed before the EPO in selected classification codes related to the first three fields above listed, ie, Fields 1, 2 and 3. Field 4 covers a vast area of subfields, which results in too large an area of study in such a short overview. The classification codes (Cooperative Patent Classification (CPC) and International Patent Classification (IPC) selected for this comparison are as follows:

- Field 1: fire detection and prevention - A62C3  
- Fire prevention, containment or extinguishing specially adapted for particular objects or places
- Field 2: fire extinguishing - A62C27 -  
Fire-fighting land vehicles
- Field 3: protective equipment - A41D31/08 -  
Fire garments, materials specially adapted for outerwear

Search sentences including each one of the classification codes presented above per year and per territory have been run in the

Espacenet search engine for patents. Two territories have been taken, EP (European Patent) and any one of the top five countries most affected by fires already mentioned, Spain (SP), Portugal (PT), France (FR), Greece (GR) and Italy (IT). Below an example of such search sentence is shown for reference: `cl all "a62c3" AND (ap any "PT" OR ap any "ES" OR ap any "FR" OR ap any "IT" OR ap any "GR") AND pd = "2012"`

### **Comparison between the number of patent applications published classified in the selected classification codes**

Table 1 below shows the number of patent documents published per year between 2012 and 2022, classified with the codes shown. EP stands for “European Patent” and TOP5 indicates any one of the identified five countries that are typically more affected by fires in Europe. Patent documents comprise patent applications or granted patents published between 2012 and 2022. A clear growth in the number of patent published documents classified in Field 1, that is, fire detection and prevention can be seen, being more prominent as EP patent applications than in the top 5 countries. [...]

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# Trends in patent filings 2022

Vítor Sérgio Moreira

Europe

**IP STARS**  
from ManagingIP

The article *Trends in patent filings 2022: Electrical devices and digital communication technologies* provides valuable information on patent applications, with a particular focus on prominent applicants in light of recent technological advances.

Published in IP Stars, also analyses The Patent Index, published by the European Patent Office (EPO) in 2022, revealing the top 10 countries for European patent applications, as well as the technical fields with the most patent applications in the same year.

[Read full article here \[+\]](#)





# Nigeria: Monetising and licensing patents

Queen Ajura Ugbeda

Africa

Nigeria



Since the dawn of the industrial revolution, the use of patents has been one of the valuable tools used for the protection of inventions, particularly inventions that are considered to have commercial value and appeal. Owning a patent gives you a valuable property right, it allows an inventor to commercially make, use, and sell inventions for a specified period.

A patent grants its proprietor the right to exclude others from utilising the patented invention, as it also allows inventors to profit from their rights of inventions. This article examines the provisions of the law regarding patent granting in Nigeria, the rights conferred by a patent, contractual licences, and its limitations under the act.

## Patents under the Act

In Nigeria, the primary legislation that governs the grant of patents is the Patents and Design Act (PDA) Cap P2 LFN 2004, while the patent rules regulate the procedures adopted at the patent Registry.

Patent is an exclusive right granted for an invention, this invention can be a product or a process that provides a new way of doing something or offers a new technical solution to a problem. It is a grant from the government, as it confers on an inventor, the right to exclude others from making, using, selling an invention for a fixed period.

According to section 1(1) of the PDA, an invention is considered patentable if it meets the following conditions:

- It is new, results from inventive activity and is capable of industrial application. Or
- If it constitutes an improvement upon a patented invention, and is new, results from inventive activity and is capable of industrial application.

Under the PDA, patents cannot validly be obtained in respect of the following:

- Plant or animal varieties, or essentially biological processes for the production of plants or animals (other than microbiological processes for their products) or,

- Inventions the publication or exploitation of which would be contrary to public order or morality merely because its exploitation is prohibited by law) (section 1(4)(a) & (b) of the PDA).

Furthermore, the Act states that any publication made available to the public by oral disclosure, a document or a prior use will destroy the requirement of novelty and ultimately make an invention non-patentable (section 1(3) of the PDA).

However, an invention is not deemed to have been made public merely because, within six months preceding the filing of a patent application in respect of the invention, the inventor or his successor in title has exhibited it in an official or officially recognised international exhibition.

### **Rights conferred by patent under the Act**

The right to a patent in respect of an invention is vested in the statutory inventor ie, first to file, or validly claim foreign priority for a patent application in respect of the invention, whether he is the true inventor (section 2(1) of the PDA).

However, the true inventor is entitled to be named in the patent. Where two or more

people are involved in the making of an invention, they may apply jointly for a patent right in respect of that invention. However, the person who has merely assisted in doing work connected with the development of an invention without contributing any inventive activity is not considered to be the inventor (section 2(5) of the PDA). The rights conferred on a patentee are not automatic, they require the statutory formality of registration as provided in section 2 PDA to bring them into effect. A patentee is entitled to the sole ownership and profits arising from his invention during the patent's lifetime. A granted patent will confer certain legal rights on the inventor.

A patent confers upon the patentee the right to preclude any other person from doing any of the following acts:

- Where the patent has been granted in respect of a product, the act of making, importing, selling or using the product, or stocking it for the purpose of sale or use; and
- Where the patent has been granted in respect of a process, the act of applying the process or doing, in respect of a product obtained directly by means of the process (section 6 (1) of the PDA). [...]

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# Using the African Regional Patent Offices to seek protection in enlarged markets

Vítor Sérgio Moreira

Africa

ARIPO / OAPI

IPR DAILY 中文网

Africa has two Regional Patent Offices, the African Regional Intellectual Property Organization (ARIPO) and the African Intellectual Property Organization (OAPI) which may provide access to patent protection in a significant set of countries in Sub-Saharan Africa.

ARIPO (African Regional Intellectual Property Organization) is an intergovernmental organization with 22 member states, in what patent refers, including Botswana, Cape Verde, Eswatini, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Seychelles, Sierra Leone, Sudan, Tanzania, Uganda, Zambia and Zimbabwe. ARIPO promotes developing and using intellectual property (IP) in Africa through a centralized registration and administration system. The African Intellectual Property Organization (OAPI) is an intergovernmental organization that provides IP services for its 17 member states, including Benin, Burkina Faso,

Cameroon, Central African Republic, Chad, Comoros, Congo, Ivory Coast, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, and Togo.

This study aims to provide information about the prosecution of a patent application in each one of these two regional patent offices, and how they may provide practical ways to use the patent system in Africa, mitigating the burdensome acts and high costs of filing several patent independent applications in a plurality of countries. Furthermore, some populational and economic indicators referring to the respective State Members are presented, which may guide the applicants to select and prioritize the respective countries to accomplish their market strategies regarding patent protection for their products and processes. [...]

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# Computer simulations: lessons from the past

Susana Rodrigues

Europe

The Patent Lawyer  
Magazine

Solutions offered by computer simulations are very welcome when it comes to preventing the past from repeating itself in the future.

Based on EPO Decision G1/19, Susana Azevedo Rodrigues clarifies the eligibility of a patent related to computer simulations and describes three fatal historical events that could have ended differently if innovative computer simulations had been made available at the time.

”

*The future will certainly profit from many computer-implemented simulations patented as inventions – and possibly “as such”- that are able to solve important technical problems, preventing them from becoming fatal (...) bringing new and inventive solutions to the most diverse fields.*

[Read full article here \[+\]](#)





# The rise of the Ukrainian patents

Anna Shcherbyna and Vítor Sérgio Moreira

Europe

Mitteilungen  
der deutschen Patentanwälte  
Herausgegeben vom Vorstand der Patentanwaltskammer

In issue 6 of "Mitteilungen der deutschen Patentanwälte" from 2023, an in-depth analysis focuses on the development of Ukraine's patent system. This comprehensive examination provides insights into the historical context, emphasizing the crucial role played by the system in preserving the country's scientific and technological progress over multiple decades.

”

*In 1918, whole trains of Russian refugees of industrialists, aristocrats, journalists, actors, and entrepreneurs poured into a relatively stable Ukraine. Local authorities taxed fees on patent owners who had been issued by institutions of the Russian Empire.*

[Read full article here \[+\]](#)



# Mauritius: new year, new beginnings

Inês Sequeira

Africa

Mauritius



Mauritius is enjoying a year full of changes and progress, which began with the Industrial Property Act 2019 entering into force on January 31, 2022. Currently, Mauritius is a member of the World Intellectual Property Organization (WIPO), and a signatory to the Paris Convention for the Protection of Industrial Property, the Universal Copyright Convention, and the Berne Convention.

Intellectual property is increasingly identified as an economic asset as Mauritius moves towards a knowledge-based economy. On July 30, 2019, the Mauritius Parliament approved the Industrial Property Bill 2019. This bill is part of an IP Development Plan (IPDP) that intends to strengthen the IP system of Mauritius, support the protection, generation, and commercialisation of IP assets, and improve awareness and use of IP as a tool for development.

It was expected to harmonise the legislation in practice and since then, the main objectives have been achieved. One of the purposes

recommended by the IPDP was the accession process to the Patent Cooperation Treaty, Madrid Protocol and Hague Agreement. With the national legislation already recognising and giving effect to applications in terms of the Madrid Protocol and Hague System following the Industrial Property Act of 2019 already into force, all was according to the IPDP.

## **Patent Cooperation Treaty for the international registration of patents**

The deposit by the government of the Republic of Mauritius of its instrument of accession to the PCT was done on December 15, 2022, and announced by the Director General of WIPO, Daren Tang, on December 21. Mauritius has become the 157th Contracting State of the PCT and the treaty will enter into force on March 15, 2023. Therefore, any international application filed on or after that date will automatically include the designation of Mauritius. [...]

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# The patent granting process at ARIPO: a practical guide

Inês Monteiro Alves

Africa

ARIPO

**IP STARS**  
From Managing IP

ARIPO facilitates cooperation among member states in IP matters and continuously seeks technological advancement for economic, social, scientific and industrial development.

Inês Monteiro Alves describes, through a practical guide, the patent registration process at the African Regional Intellectual Property Organization (ARIPO).

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*The implemented system by the Harare Protocol has some similarities with the Patent Cooperation Treaty (PCT), considering the applicant is requested to designate the States in which intends to seek protection of the patent.*

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PATENTS





# Cape Verde: clever IP schemes to help grow the economy

Diogo Antunes & Catarina Cachudo

Africa

Cape Verde



Ever since Cape Verde has acceded to the World Intellectual Property Organization's (WIPO) treaties (ie, Madrid Protocol, Patent Cooperation Treaty (PCT), Geneva Act of the Lisbon Agreement and Paris Convention for the Protection of Industrial Property), as well as to the African Regional Intellectual Property Organization's (ARIPO) Harare and Banjul protocols, the National IP Office has been actively making efforts to foster the role of Intellectual Property in boosting innovation and creativity, by developing information and awareness-raising activities to promote namely national economic operators and the general public to the importance of registering their IP assets in order to protect creativity and innovation, but also to diversify and bolster the economic development.

For the time being, and according to the Institute for Quality Management and Intellectual Property (IGQPI), Cape Verde currently has around 4700 active trademarks

in the PTO's internal system. Nevertheless, it is important to note that most of these trademarks (around 3870 trademarks) are foreign—mainly from Europe, the Americas and Asia.

This certainly displays the international interest in Cape Verde's national market and the IGQPI's articulated partnership with its foreign counterparts.

It is, however, important to highlight the lower IP presence of the local population in the sector.

Looking into Cape Verdean's overall development, the nation has achieved significant social and economic growth since its independence in 1975, mainly driven by the sector of tourism. [...]

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# Artificial Intelligence as an Inventor: A brief Exploration of South African IP Law

Diogo Antunes

Africa

South Africa

IPR DAILY 中文网

## 1. Introduction

The emergence of Artificial Intelligence (AI) has sparked significant changes across various sectors, including in the field of patent law. The ability of AI systems to develop new creations poses unique and challenging questions to the conventional structures of IP law. This article explores the implications of AI inventorship within the specific context of South African IP law, shedding light on the legal ambiguities and offering recommendations for future policy adaptations.

## 2. Understanding Artificial Intelligence

We can define AI as a multitude of computational systems that can execute tasks traditionally requiring human intelligence. This includes learning from experiences, interpreting language, recognizing patterns, and making decisions based on the scenarios presented to them. Through what is called creativity machines, an AI system can foster innovation and creation, effectively shattering

the paradigm of inventions as exclusively human endeavours. Generative systems and deep learning technologies can produce unique results that might not otherwise be possible or even conceivable through human intellect alone. For instance, in various sectors such as music, engineering, pharmaceuticals, and art, AI has shown its prowess to innovate in ways that were previously unimaginable. AI's ability to create complex compositions in music, solve intricate engineering problems, generate potential pharmaceutical compounds, and even produce original art pieces exhibits its expansive capabilities.

This emergence of AI has the potential to completely reconfigure our understanding of what invention and creativity mean. As we move forward in this new frontier of AI-driven innovation, it becomes increasingly crucial to navigate the legal, ethical, and social implications of this technological advancement with caution and thoughtful deliberation.



### 3. Intellectual Property Law in South Africa

South African IP law is governed by several legal frameworks, such as the Copyright Act and the Patents Act. Within the realm of patent law in general, an inventor is typically a person who contributes to the invention's conception. However, the arrival of AI as potential 'inventors' suggests this definition may be inadequate.

South African patent law refers to the inventor in the masculine form as a person[1]. Unfortunately, in terms of definitions, the law did not advance with the definition of the term Inventor, despite having a definition of Patentee. Thus, it becomes necessary to verify what the law stipulates implicitly. See article 27 of the patent law, which stipulates the following:[2]

*“Article 27. Who may apply for a patent.  
(1) An application for a patent in respect of an invention may be made by the inventor or by any other person acquiring from **him** the right to apply or by both such inventor and such other person.”*

*The regulation that supports the patent law also refers several times to the human nature of the inventor[3]:*

*Article 22 of the regulation. Application for the grant of patents*

...

*d) where the applicant has acquired a right to apply from **the inventor**, an assignment or other proof, to the satisfaction of the registrar, of the right of the applicant to apply.*

This means that it would be necessary to present an assignment document between the inventor and the applicant. However, the structure of such a document is predicated on the basis of a human inventor, considering that a legal transaction is born out of the will of the parties involved. Furthermore, the address of the inventor is often mentioned. An AI system does not have an address[4].

Numerous other legal forms, such as the power of attorney and assignment documents, among others, reflect the human nature of the invention. These forms, inherently designed for human involvement, underscore the tacit assumption within the law that the process of invention is a human activity. They inherently imply the ability to express and act upon the intent, something that is, currently, distinctly human and beyond the capabilities of an AI system. By implicitly structuring legal documents and processes around human agents, the law seems to maintain that inventions, at their core, are human endeavours. Therefore, extending these legal structures to accommodate



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*There is certainly room for argument that considerable intellectual effort goes into creating an AI system in the first place. Or, in the act of conceiving this AI system, the user may generate an innovative idea for a product or process and request the AI to bring this invention to life.*

AI-generated inventions would not just be a matter of updating the paperwork. It would represent a fundamental shift in how we conceptualize the nature of the invention and the legal structures that protect it. South African IP law currently does not explicitly account for AI inventorship, leading to a legal grey area that could potentially stifle innovation or enable exploitation. Hence, it becomes crucial to explore how these legal structures can be adapted to accommodate AI's role in inventing, which may involve the creation of a sui generis right.

#### **4. Case Studies: The DABUS Patent in South Africa**

A milestone was reached in the field of patent law when an AI system, known as DABUS (Device for the Autonomous Bootstrapping of Unified Sentience) created by Dr. Stephen Thaler, was acknowledged as the inventor for a patent in South Africa. This decision represented a significant shift, as it marked the first instance of an AI system being granted patent rights.

However, it's essential to understand the context of patent processing in South Africa to grasp the full implications of this decision. Unlike some other patent offices, South Africa's patent office does not undertake

substantive examination of patent applications. Instead, it focuses on ensuring that applications comply with the necessary formalities. This essentially means that no substantive decision regarding the merit of the invention, or the applicability of an AI system as an inventor, was technically made within the scope of this process. The patent office didn't formally examine the legitimacy of the AI as an inventor but primarily concerned itself with the completeness and correctness of the application forms. This raises intriguing questions about the legal formalities involved in patent applications, particularly those related to inventorship and ownership. For instance, the standard requirement of an assignment document - which transfers rights from the inventor to the applicant - presents a conundrum in this case. As AI lacks legal personality, it cannot enter into a legal transaction, raising questions about the formal validity of the application. Moreover, there seems to be no evidence or explanation as to how Dr. Stephen Thaler, the creator of DABUS, acquired the rights to the AI-generated invention. Without an assignment or other proof of transfer of rights from DABUS to Dr. Thaler, this omission presents potential formal inconsistencies in the application process<sup>5</sup>.



DABUS was named, also, as the inventor of two patent applications in the UK, EU, and the US. These jurisdictions rejected the applications, asserting that an inventor must be a natural person. Contrasting South Africa's decision with the UK, EU, and US responses to the DABUS applications highlights differing attitudes towards AI and IP law. While South Africa seems to embrace AI inventorship, other jurisdictions adhered to the conventional human-centric view of inventorship. This divergence underscores the lack of international consensus on AI's role in IP, adding to the complexity of multinational patent applications and enforcement.

The decision to grant the DABUS patent could be a significant development in South Africa's IP law. It could indicate a willingness to adapt to technological advancements and could potentially stimulate AI-related innovations in the country. Nevertheless, we might argue that there has been a misinterpretation or misapplication of the formal requirements established for patent applications. If challenged in court, it's plausible that the patent could be invalidated due to failure to meet these legal formalities, despite the absence of an explicit human inventor.

Elaborating on this point, the uniqueness of this case could potentially lead to judicial scrutiny. A court might examine the nature of the inventor, the absence of a clear human inventor, and the inability of the AI to legally transfer rights, all of which could lead to a ruling that the patent is invalid due to non-compliance with the formal requirements laid out by law<sup>6</sup>.

## 5. Ethical and Legal Implications

Acknowledging AI as an inventor poses substantial ethical and legal dilemmas. A critical question is the assignment of moral and legal responsibility if an AI develops a harmful invention. From the IP law perspective, the ownership of a patent becomes problematic. If AI is recognized as an inventor, who then owns the patent? Current law assigns patent rights to the human assignee, but this framework does not consider AI systems. Moreover, allowing AI to patent its inventions could disrupt the patent system.

In considering innovation and the future, we should be cautious about accepting the protection of AI-generated inventions, as doing so could potentially undermine the very purpose of an IP system. The bedrock of IP systems worldwide is to foster and protect

human creativity and invention, reflecting the toil and effort that a person puts into their creative or inventive process. There is certainly room for argument that considerable intellectual effort goes into creating an AI system in the first place. Or, in the act of conceiving this AI system, the user may generate an innovative idea for a product or process and request the AI to bring this invention to life. However, it is crucial to make a clear distinction between human-aided inventions and those entirely generated by AI.

We're not discussing scenarios where AI merely supports or enhances the inventive process - rather, we're considering cases where the entire substance of a patent application, the complete technical solution, originates from an AI system, independent of direct human intervention. Under these circumstances, the human user may not have been involved in the actual development of the AI system. Is it then justifiable to grant them commercial exclusivity based on an idea? It's vital to remember that ideas in themselves are not the subject of protection under IP systems. Rather, what is safeguarded is the tangible application of these ideas - the fruits of human intellectual labor. A blanket acceptance of AI-generated inventions,

without critical scrutiny, could potentially subvert the foundational principles of the IP system.

Patents serve a specific purpose - they encourage human innovation by awarding temporary monopoly rights to inventors. If we allow AI systems to saturate the patent system with AI-generated inventions, this could inadvertently stifle human innovation. It's a delicate balancing act, one that could shape the future trajectory of innovation and the patent system itself. We must tread carefully, ensuring that our legal frameworks adapt and evolve to account for the rising tide of AI, while staying true to the original purpose of fostering human creativity.

## **6. Potential Solutions and Policy Recommendations**

This case prompts a re-examination of South Africa's IP policy and legislation. Will existing laws be amended to explicitly accommodate AI inventors, or will a separate legal framework be established? Ensuring the ethical use of AI and navigating the potential monopolization of patents by AI will be central to this discourse.

From a comparative perspective, South Africa could potentially look to other jurisdictions



that are struggling with similar issues. For example, in the US, there have been calls for legislative change to clarify the status of AI inventors, while in the EU, there is ongoing debate about whether the existing legal framework is sufficient to address the challenges posed by AI. Furthermore, the global divergence on AI inventorship calls for international dialogue to harmonize laws and manage cross-border IP disputes. South Africa's pioneering decision could shape these discussions, serving as a potential model for other countries navigating the AI inventorship issue.

In light of these challenges, South African IP law could consider adaptations. One solution could be to define an inventor explicitly as a "natural person", thereby maintaining the status quo. Alternatively, the law could allow the owner or the user of an AI system to have a sui generis right. This could promote innovation and the use of AI, but also would not potentially exacerbate patent trolling and market monopolization issues, which I believe we should be careful about and try other methods to promote innovation. To tackle the ethical dilemmas, laws and regulations around AI ethics and accountability should be strengthened, ensuring a clear line of responsibility even

when an AI system is involved in the invention process.

## 7. Conclusion

The role of AI as an inventor presents complex challenges to South African IP law, demanding substantial consideration. Legal ambiguities need to be clarified to unlock the benefits of AI-driven innovation while ensuring ethical use. Given the rapid development and widespread application of AI technologies, this is not a hypothetical or futuristic issue but an immediate concern. South Africa, like other nations globally, faces the urgent task of revising their IP frameworks to accommodate this new era of AI systems.

[1] Thaldar D, Naidoo M. AI inventorship: The right decision? S Afr J Sci. 2021;117(11/12), Art. #12509.

[2] Patents Act 1978 (Act No. 57 of 1978, as amended up to Patents Amendment Act 2002)

[3] Patent Regulations, No. R6247 of December 15, 1978, as amended by Government Notice No. R1181 in Government Gazette No. 29413 of 1 December 2006

[4] Lavrichenko, Michelle, Thaler v. Vidal: Artificial Intelligence—Can the Invented Become the Inventor? (December 2022), p. 709

[5] South Africa was wrong to patent an AI's 'invention' - David Cochrane and Christopher Mhangwane, 2022

[6] Oriakhogba, Desmond, Dabus Gains Territory in South Africa and Australia: Revisiting the AI-Inventorship Question (October 1, 2021). (2021) 9 South African Journal of Intellectual Property Law p.107.

# IP licence agreements: an overview

Júlia Alves Coutinho

Worldwide



Intellectual property rights cover exclusive rights originating from the mental labour of their creators or inventors and include copyright, trademarks, industrial designs, patents, geographical indications, and plant variety rights.

IP rights may be the subject of a licence, where the proprietor of an IP right (the licensor) while maintaining the ownership, authorises a third person (the licensee) to use and exploit the IP right during trade, under the terms and conditions set out by both parties.

Licensing offers the owner the valuable opportunity to expand their business into new markets, add revenue streams through royalties, develop partnerships, become recognised, and continue to decide what to do with their right after the licensor retains ownership. The owner of a patent, know-how or other IP assets who is unable or unwilling to participate in all commercialisation activities (eg, technological development,

manufacturing, market expansion) can benefit from licensing their IP assets, relying on their partner's capacity, know-how and management experience. The mere consent or tolerance of the owner for a third party to use their IP right is not equivalent to a licence. Furthermore, if the proprietor of an IP right intends to sell their right to a third party, the legal route is the assignment, when there is a transfer of ownership of an IP asset from one person/entity to another person/entity. Through a licence, it is possible to give someone permission to, for example:

- publish a text, record music, use software, synchronise music in a film, reproduce a drawing;
- use a registered trademark in a different territory;
- reproduce a registered industrial design;
- produce, use, or sell a patented product or service;
- produce, use, or sell a product protected by a geographical indication;
- grow or market plants of a variety protected by plant variety rights.

These are examples of one type of authorisation that can be given by the owner, but several uses may be derived from one IP right. Also, the owner can authorise different types of use for different entities and, in the case of non-exclusive licences, one type of use can be licensed.

A licence agreement or a licence contract must be in writing and may be registered with the IP office or the entity in which the IP right was previously registered and used in the event of a dispute in extrajudicial or judicial contexts. In some cases, it may be useful or necessary to keep some information confidential, such as the piece of IP concerned (namely the technology for which no patent application has yet been filed, or another trade secret) and/or the licensing agreement itself, especially its financial aspects. In this sense, it is recommended to sign a non-disclosure agreement with the potential licensee before the signature of the licence agreement. A licence agreement can be adapted to the needs of the parties, but usually comprises the following:

- identification of the parties;
- licence's object;
- manner of use and exploitation of this object;
- type of licence—exclusive, semi-exclusive (licensor and licensee use and exploit the IP

right), non-exclusive, or open (any third party who meets the requirements established by the licensor will receive a licence, eg, a creative commons licence);

- obligations of both parties;
- type of payment (or the consensus of non-payment) - it is possible to determine a licence fee (fixed period amount), royalties (percentage of the profits) or a one-off amount (*lump sum*), or even combine the types of payment, namely a lump sum upon signature of the contract and royalties during the exploitation;
- territory of appliance;
- licence's duration;
- possibility to grant sub-licences and to transfer the licence;
- regulation of new developments;
- confidentiality;
- settlement of infringements;
- applicable law, and;
- competent court or arbitration/mediation.

The licence can be granted from the creator to the final consumer, or from the creator to the entity that will be responsible for promoting the creator's work and commercialising the creator's rights with other market players, depending on the industry sector. [...]

[Read full article here \[+\]](#)

# Copyright for tattoo artists: Protecting artistic expression

Rute Franco

Worldwide



Tattoos are a form of artistic expression deeply rooted in human culture and are unquestionably works of art created by talented artists. Each design is often customised to reflect the history, beliefs, culture, and personal tastes of the individual receiving it. Like any other form of art, tattoos are crafted with skill and imagination.

However, as tattoos gain recognition as an art form, a complex legal question arises: do tattoo artists hold copyright over their creations, and can they protect their designs from unauthorised reproduction or use? This article delves into the intriguing world of copyright and tattoos, exploring the challenges and controversies surrounding this unique intersection of art and intellectual property.

## Challenges in protecting tattoos under copyright

Copyright law is designed to protect the rights of creators by granting them exclusive

rights to their original works. These rights include the right to reproduce, distribute, and display the work.

Copyright exists as soon as an original work is created, such as a painting, photograph, or written document. However, tattoos, despite their permanence on the body, are commonly viewed as a challenging and somewhat transient form of creative expression when it comes to applying traditional copyright law.

Copyright law is a fundamental tool for protecting intellectual property but applying it to the field of tattoos can be complicated. In many cases, tattoo artists and clients establish verbal or written agreements regarding ownership and use of the tattoo. This can vary widely based on the understanding between the parties involved. [...]

[Read full article here \[+\]](#)

# The Legal 500: Intellectual Property Comparative Guide

Vítor Palmela Fidalgo & João Pereira Cabral

Europe

Portugal



The Legal 500: Intellectual Property Comparative Guide features insights contributed by Vítor Palmela Fidalgo and João Pereira Cabral regarding Intellectual Property laws and regulations in Portugal.

This guide provides an overview of the law and practice of intellectual property law across various jurisdictions, and each chapter provides information about the current issues affecting intellectual property in a particular country.

[More information \[+\]](#)



# GI products such as figs, pepper and olive oil grow under cooperation between the EU and Africa

Inês Monteiro Alves

European Union

Africa



The [Africa Intellectual Property Rights and Innovation Project \(AfrIPI\)](#) is an international cooperation project funded and directed by the European Union (EU), co-founded, and implemented by the EU Intellectual Property Office (EUIPO), that aims to facilitate intra-African trade and African and European investment.

Specifically, the project's objectives are to create, protect, utilise, administer and enforce IP rights (IPRs) across Africa, in line with international and European best practices and in support of the [African Continental Free Trade Area \(AfCFTA\)](#) and the [African Union's Agenda 2063](#). On August 26, 2021, the AfrIPI was officially launched during an Africa Regional Intellectual Property Organization (ARIPO) Diplomatic Conference, held in Kampala, Uganda.

AfrIPI is a five-year EU-funded international cooperation project of €17 million (\$18.7 million) that involves the collaboration of

African governments, regional IP organisations, academia, and the private sector, to create, promote and protect IP in Africa.

## **The pillars of AfrIPI can be summarised as the following:**

- Promote international agreements in IPRs: reinforce EU and Africa cooperation to facilitate fact-based AfCFTA negotiations and implementation.
- Contribute to strengthening national and regional IP Institutions, networks, and tools, for more efficient and user-friendly IP protection and enforcement systems.
- Strengthen the awareness of micro-, small- and medium-sized enterprises/productive sector on the importance and value of IP.
- Support the implementation of priority actions identified by the work plan linked to the African Union (AU) continental strategy for geographical indications (GIs).

## **The results of the cooperation**

Within the activities that already took place, AfrIPI has supported an application to

protect the Cameroonian GI “Penja Pepper” at the EU level. Penja pepper is a type of pepper that grows in the volcanic soil of the Penja Valley in Cameroon, and it is, officially, the first GI from the country. AfrIPI has also commercially launched ‘Cabrito de Tete’ in Mozambique, the first geographical indication registered in ARIPO. Cabrito de Tete is a local goat breed, from Tete province in Mozambique.

The organisation is currently assisting Egypt, working towards adopting a sui generis protection framework for GIs and their registration.

Egypt has registered three GIs (Matrouh figs, Matrouh olive oil and black Barrani grapes) through an ad hoc procedure and it is expected that AfrIPI and the Egyptian Trademark Office agree on the necessary actions regarding the protection of GIs in the country.

AfrIPI has also organised a three-day study visit to Switzerland by a delegation from Niger, to support the registration at EU level of a geographical indication for Kilichi du Niger. Kilichi is a dried form of suya (a traditional smoked spiced meat), made from cow, sheep, or goat meat.

A side event on GIs was held at the [5th AU-EU Agricultural Ministerial Conference](#) that took place in June 2023 in Rome. In accordance with AfrIPI, the event aimed at upholding discussions between AU and EU Ministers of Agriculture, as well as representatives of other international and national organisations on the future of the continental strategy on GIs.

Apart from that, the organisation has developed the examination guidelines for trademarks and designs in [Organisation Africaine de la Propriété Intellectuelle \(OAPI\)](#), as well as it has developed common guidelines on trademarks for ARIPO Member States, amongst other activities related to the protection of IP in Africa.

It has also held seminars and workshops in different African jurisdictions and in relation to different matters, such as the event designed to promote the accession of Mauritius to the ARIPO Protocols, that took place from May 31 to June 2, 2023, in Port Louis.

The Republic of Mauritius deposited its Instrument of Accession to the Lusaka Agreement with the Director General of ARIPO on September 25, 2020. In addition, it

has implemented the [Africa IP SME Helpdesk](#). The purpose of the Helpdesk is to raise IP awareness among EU SMEs before entering African markets. For this purpose, AfrIPI organises events/webinars, produces some guides on the IP landscapes in Africa, and consults with EU SMEs over their most basic questions.

The aim of the helpdesk is to provide simple, jargon-free information on the protection of IP assets in Africa and to provide an opportunity to consult with a professional lawyer.

### **The protection of traditional knowledge as GIs**

It is interesting to note that the work of AfrIPI has been particularly focused on the protection of geographical indications from African jurisdictions.

Indeed, Africa is a hub for traditional knowledge, “a living body of knowledge passed on from generation to generation within a community”, in the words of World Intellectual Property Organization (WIPO).

The protection of traditional knowledge as an autonomous IP right is only now becoming a reality around the African Continent,

particularly in South Africa and ARIPO, which have addressed the positive protection of traditional knowledge in the legislation. However, innovations based on traditional knowledge currently only benefit from the protection of patents, trademarks, and, particularly, GIs.

Traditional knowledge may be found in several contexts, including agriculture and animal farming and it is in this field that the GIs arising from African countries take an important role, by way of addressing the protection of products that come from specific regions within the African continent.

The work that has been done and the cooperation between the EU and Africa, is, therefore, worthy of a standing ovation, as the results are visible. The protection of IPRs, and GIs in particular, will result on economic development in the African continent.

# Barbie: this is not just a brand

Mariana Hazt Lencina

Worldwide

Barbie is a trending topic, no doubt, but it's not just an example of marketing and advertising. Throughout its history, Intellectual Property has always been present. To frame historically, [Ruth Handler](#), co-founder of [Mattel](#), realized her daughter, Barbara, preferred her dolls to embody an adult role and appearance, unlike the standard and purely childish dolls of that time. This recognition led her to identify a potential gap in the market.

In the mid-fifties, Ruth travelled to Europe with her husband and came across a German doll named "Bild Lilli", which served as a great source of inspiration for her. Barbie, which made its debut at the American International Toy Fair in New York on March 9, 1959., stands as the flagship product line for Mattel, one of the world's leading toy manufacturers.

## Lawsuits over the years

### 1960

In the 1960's, the German company, Greiner & Hausser, [accused Mattel](#) of copying the

Bild-Lilli doll, a preexisting adult doll created by Reinhard Beuthien in 1955.

Moreover, Greiner & Hausser, through their managing director, obtained a patent in the United States for the "[doll hip joint](#)" used in their Bild-Lilli doll. This patent became a key point in their argument against Mattel, leading them to file a lawsuit, claiming that Mattel had unlawfully copied their doll and infringed upon their intellectual property rights.

In 1963, this dispute was concluded by Mattel acquiring Greiner & Hausser's copyright and patent rights. In this agreement, was also established that Mattel would not use the names Bild-Lilli or Lilli and Greiner & Hausser would not produce or sell dolls similar to Barbie or Bild-Lilli. Years later, in 2001, the company liquidator initiated a [lawsuit against Mattel](#) in Germany, indicating that the sale agreement in 1964 involved fraudulent practices. Mattel responded by filing a lawsuit in Los Angeles, in order to obtain

reaffirmation to comply with the original agreement. German Court rejected the Greiner & Hausser lawsuit.

### 1999

But things haven't always gone smoothly for Mattel. In 1999 Mattel sued the artist Tom Forsythe for his work “Food Chain Barbie”, that used Barbie dolls as a parody to the consumption American culture. The lawsuit was dismissed, considering that parody is also protected by IP legislation. In other words, the limits of exclusivity of Intellectual Property rights do not override the right to freedom of expression. This includes expressing oneself through the reinterpretation of existing work from a predominantly comedic, satirical, and critical perspective.

Therefore, parody, as a form of satire and social commentary, plays a role in fostering public discourse and criticism. These creative endeavors are protected under the fair use and the right to freedom of expression, as they contribute to a rich and diverse cultural landscape.

### **Barbie IP Guide**

In recent events, sparked by the release of the movie Barbie, directed by Greta Gerwig, many cities around the world have turned

pink. With mainly no images, some campaign for Barbie had just a pink banner and a date. Intuitively people recognized that it was something related to the Mattel doll. On the intellectual property panorama, in fact, the pink color, related to the Barbie Pink (Pantone) is not registered as a trademark in European Union or in the United States.

But it does not mean that there is no IP protection.

Many brands have the ability to differentiate themselves, allowing the public to automatically identify their commercial origin.

The truth is that the color “Barbie Pink” has gained distinction over the years, through its use and commercialization, giving rise to an association called “secondary meaning”. This secondary meaning occurs when a signal is initially ordinary/common and not distinctive enough to be protected as a trademark, according to legal requirements. However, over time and repeated use, it acquires such distinctiveness that the public comes to recognize it as a reference. To be able to protect a signal, mainly with no registration, Mattel is active in avoiding dilution. As previously mentioned, a trademark is used to



distinguish a company's goods or services from those of others in the marketplace. It acts as a unique identifier, helping consumers recognize and associate the brand with specific products or services. However, if a trademark is not adequately protected or sheltered, it becomes susceptible to a phenomenon known as dilution. Dilution occurs when a trademark's distinctiveness is weakened or blurred due to its widespread use by numerous parties or in various contexts unrelated to its original goods or services. This widespread usage often leads to the trademark becoming common and losing its ability to distinctiveness and to stand out in the minds of consumers.

To prevent such dilution and safeguard their trademarks, companies, like Mattel, must actively take measures to enforce and protect their intellectual property rights. This often involves, besides registration, monitoring its usage in the marketplace, and taking legal action against unauthorized and infringing use. And that's the strategy currently used by Mattel, both for the registered marks and the colors they intend to protect.



# Influencers and Brand Defamation

Rute Franco

Worldwide



We live in the digital age where most advertising is now done through social media and influencers. Product advertisements have transitioned from TV channels to influencers promoting them on social media platforms like Instagram, YouTube, TikTok, Facebook, and others. The difference now is that advertising is often accompanied by product reviews. Influencers test the products and then share their opinions about them.

The most advertised products are related with cosmetics, food, technology, and even cars. This strategy can be highly profitable for brands as influencers reach a wide and diverse audience of various age groups. However, this type of advertising comes with a potential dark side. Anyone can leave a negative review and tarnish a product's reputation which can be concerning for brand owners leading to brand defamation.

Brand defamation occurs when someone disseminate negative or false information

about products or services. The power of digital opinions is undeniable, and a negative review from a popular influencer can severely damage a brand's reputation and negatively impact its financial results.

Consequently, the brand loses potential customers who have never even tried their products or services. Another issue in the world of influencers is the presence of fake influencers. These are accounts where many followers are bots, and once the influencers receive payment, they disappear.

To prevent brand defamation there are several measures that can help, such as:

Conduct thorough research on influencers before establishing any partnership. Study their history, previous posts, the type of content they share, and the general opinion of their followers. [...]

[Read full article here \[+\]](#)

## World IP Day 2023

# Past, Present, and Future of Women in IP

Vera Albino

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Worldwide

One of the most notable events for women in current affairs this year is undoubtedly the popular uprising in Iran. Uniting women and men from the country and around the world under the slogan "Woman, Life, Freedom," Iranian women have brought the issue of women's status at the center of the international community discussions.

Fighting against an authoritarian regime that limits their independence, Iranian women demand, among other things, the freedom to have control over their bodies and image, in a country where the registration of a trademark containing a woman's image is prohibited.

We praise the choice of the World Intellectual Property Organization (WIPO) to dedicate April 26, World Intellectual Property Day, to women.

This is an opportunity for us to celebrate all those who work towards fairer living

*Image: WIPO*

conditions for women, and to reflect on how Intellectual Property (IP) can also contribute to this cause. It is true that, currently, there is no longer a profound difference between men and women in democratic societies, thanks to feminist movements that began in the late 19th century in the United States and Europe. However, it is also true that gender inequality persists, to a greater or lesser extent, in all countries.

Let us take, for example, patent applications filed under the Patent Cooperation Treaty (PCT). We note that only about 16% of applications are from women, despite an increase in women participation in scientific fields.

As a reflection of society, IP shows us part of the reality of women at certain times and in certain contexts. As a driving force, and creator of reality, it has a crucial role to play in gender equality, particularly through the entities that represent it.

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*Today, women's challenges are no longer so much about having their creations recognized by IP law. But they are still connected to the economic means at their disposal and the societal barriers directly associated with them.*

### **Intellectual Property as a mirror of women reality**

When invited to write about women and fiction in 1928, Virginia Woolf noted in *A Room of One's Own* that from the beginning of time until her era, there was a safe and prosperous sex and an insecure and poor one. The author adds that having sufficient economic means is a sine qua non condition for enjoying intellectual freedom and writing quality literature. The freedom and quality of female authors, inventors, and innovators are effectively linked to the income they can obtain from their creations through, among other things, IP protection mechanisms. In order to achieve this, women must be given access to IP.

The fact still lingers in our memories that handicrafts such as embroidery, knitting, and quilting, created by women, were considered to have no economic value and were not marketable because they were produced within the domestic sphere. Furthermore,

they were denied the requirement of "originality" because their creations were primarily intended to serve a functional purpose rather than being purely creative or artistic in nature. They were also denied author status but instead referred to as writers, as the author was the one who had authority. As Michel Foucault says, all authors are writers, but not all writers are authors. In all cases, the consequence was the same: women's creations were excluded from IP protection and relegated to the public domain. Today, women's challenges are no longer so much about having their creations recognized by IP law. But they are still connected to the economic means at their disposal and the societal barriers directly associated with them.

Let us take again the example of patents. Protecting a patent involves a high financial effort, sometimes impossible for applicants to bear without bank support. Especially in developing countries, without financing, women lose access to IP, and their creations could enter the public domain.

As we have seen, only 16% of PCT patent applicants are women. Additionally, only 4% of patent applications in German-speaking countries identify women as inventors, 10%

in the United States, and about 20% in several Spanish-speaking nations.

These numbers surprise us, as it is estimated that the vast majority of patents are held by applicants from countries in the Northern Hemisphere, where women received an education identical to that of men and have easier access to funding. So, how do we explain the low level of women applicants and inventors?

Ethnographic field studies show that there are social barriers that continue to prevent women from engaging with the patent system. For example, female scientists and engineers have less inclination than men to think about strategies for commercializing their inventions.

To women in the Northern Hemisphere, we recall the following words Virginia Woolf wrote in 1928: "When you reflect upon these immense privileges and the length of time during which they have been enjoyed, and the fact that there must be at this moment some thousand women capable of earning over five hundred a year in one way or another, you will agree that the excuse of lack of opportunity, training, encouragement, leisure and money no longer holds good".

## Intellectual Property as a Driving Force for Gender Equality

There are at least two types of influences of IP on the condition of women: at the level of the adoption of IP legislation and at the level of IP entities, namely WIPO and National IP Institutes. Therefore, it is essential to consider the impact of IP laws on the most vulnerable groups when adopting IP legislation. For example, it has been argued by Sharmishta Barwa and Shirin M. Rai<sup>1</sup> that some apparently neutral measures of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement have negative impacts on women.

As an illustration, the possibility of protecting processes by patent rights prevented women farmers from keeping the seeds of their crops, which limits them in their profession. On the other hand, several feminist IP scholars have examined IP law in the United States from the perspective of women's interests and found that, like many areas of law, IP laws have gender aspects. Therefore, studying and deconstructing IP law seems relevant to understanding and eliminating gender inequalities in legislation. Regarding IP entities, such as WIPO and national IP institutes, it is essential that they address and act towards gender parity.



Gender equality is one of WIPO's main concerns. Through the adoption of its Gender Equality Policy in 2014, it defined gender equality as a cross-cutting objective in its work. Specifically, WIPO is introducing a range of mentoring programs focused on intellectual property in different regions of the world. These programs provide guidance, knowledge, and resources to support women-led businesses. It emphasizes the importance of education and provides free IP courses, including distance learning programs. It also encourages representatives of member states in their meetings to implement actions that support women. WIPO is also preparing a Gender and IP Action Plan, which will be published soon.

At the national level, many national IP institutes show the same concern and are implementing various initiatives with the aim of allowing women to participate in the IP system.

Some examples include the Intellectual Property Office of the Philippines (IPOPHL) through the implementation of the Juana Patent and Juana Design Protection Incentive Program (JPIP) which helps women inventors and designers protect and enjoy their IP rights. The Office of the Controller

General of Patents, Designs, and Trade Marks (CGPDTM) in India offers an 80% reduction in fees for women-led startups and entrepreneurs. The Pro Bono Program of the United States Patent and Trademark Office (USPTO) provides free legal assistance to inventors and small businesses, many of which are led by women. Finally, the Mexican Institute of Industrial Property (IMPI) through its Mujeres Innovadoras program offers women a variety of resources, including training, mentoring, and workshops.

Women have achieved many successes in the last century. We see them governing powerful countries, leading regional and international organizations, and running multinational corporations. They are award-winning authors and great artists. Esteemed philosophers and scientists. We believe that these successes will continue and that with the support of IP, they will gradually extend to encompass all women, with the objective of fostering more equitable, prosperous, and intellectually liberated societies.

[1] Rai, Shirin and Barwa, Sharmishta (2002) The political economy of intellectual property rights: a gender perspective. In: Newell, Peter and Rai, Shirin and Scott, Andrew, (eds.) Development and the challenge of globalization. London : ITDG Publishing, pp. 41-56. ISBN 1853394920

# Artificial Intelligence, Intellectual Property and Judicial System

Vera Albino

Worldwide

 International In-House  
Counsel Journal

The rise of artificial intelligence is revolutionising the field of law, including intellectual property law. As we navigate this new era of innovation, new rules should be considered for the use of AI by IP practitioners to avoid violations of fundamental rights.

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*(...) AI is a valuable tool for both infringing and protecting IP rights. For cases where the infringement requires the intervention of an attorney, AI can assist in gathering evidence, but its usefulness extends beyond this purpose.*

[Read full article here \[+\]](#)



# Bubbling over: Australia objects to EU's 'Prosecco'

Mariana Hazt Lencina

European Union

Australia



An interesting dispute regarding the use of the name "Prosecco" has been a topic repeatedly addressed in IP news. As an introduction to the theme, it is important to recall that the protection of geographical indications (GIs) in relation to food and agricultural products, particularly those that possess unique qualities attributed to the region and are produced using specific methods, is strongly emphasised by the European Union (EU).

The [Paris Convention for the Protection of Industrial Property](#) was the inaugural agreement that incorporated "indications of source or appellations of origin" as subjects of safeguarding. The incorporation disposes of the subject as an IP right but does not clarify the concept or exceptions.

The definition is disposed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), where the protection of GIs is defined by article 22, and is related to the identification of a product as originating

from that territory, region or location. The main characteristic is that a specific quality or reputation is attributable essentially by that geographical location.

Related to the protection in the EU, it is important to recall that in March 2022, the European Commission adopted a proposal for a regulation for the theme. According to the Commission, the proposed regulation aims to create a unified system for GIs in the EU by aligning regulations governing agricultural products, foodstuffs, wines, and spirit drinks.

Currently, there are four different regulations covering these sectors, and Regulation n° 1308/2013 is established for wines.

The proposed regulation seeks to establish a single set of procedural rules across all sectors, which will enhance the coherence and comprehensibility of the GI system. [...]

[Read full article here \[+\]](#)

# Botswana: a thirst for knowledge

Inês Monteiro Alves & Sofia Araújo

Africa

Botswana



Botswana, officially the Republic of Botswana is an African country bordering Namibia, South Africa, Zambia, and Zimbabwe. The geographical position of Botswana is both an advantage due to its strategic location for commercial purposes and a disadvantage, considering the enormous opportunities for the smuggling of counterfeiting products and services. In Botswana, Industrial Property rights are protected through the Industrial Property Act (2010) and the rights covered under this act include trademarks, patents, utility models, industrial designs, geographical indications, traditional knowledge, and integrated circuits.

The Companies and Intellectual Property Authority (CIPA), formerly the Registrar of Companies and Intellectual Property (ROCIP), is the entity responsible for the grant of such rights and was established by an act of parliament in 2011 (Companies and Intellectual Property Authority Act, (Cap. 42:13) to promote and enable the full protection of the rights of investors and right

holders obtained under the Companies Act, Registration of Business Names Act, Industrial Property Act and Copyright and Neighboring Rights Act. CIPA is now a parastatal body under the parent Ministry of Trade and Industry. Under the theme “Harnessing IP for Economic Transformation”, a programme designed for the IP system to foster innovation for economic transformation under the country’s vision 2036, President Mokgweetsi Masisi formally launched the country’s first-ever National Intellectual Property Policy (BIPP), on November 15, 2022.

## Transition to a knowledge-based economy

Botswana's IP policy is emerging as a transition from being a resource-based economy to a knowledge-based economy (setting aside the contribution of minerals, which is also likely to decrease in the future) and emphasising a vision linked to science, technology, innovation, and creativity. [...]

[Read full article here \[+\]](#)

# Inventa collaborates on the Manual IP, published by Wolters Kluwer

Inventa

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Africa

 Wolters Kluwer

Inventa's team has been contributing to the updating of several chapters related to African jurisdictions in the Manual IP, published annually by Wolters Kluwer International Group.

"Manual IP," also known as the "Manual for the Handling of Applications for Patents, Designs, and Trademarks Throughout the World," includes Inventa's contribution outlines the procedures and laws involved in filing applications for patents, trademarks or designs in ARIPO, OAPI, Somalia, South Sudan, Madagascar, DR Congo, Seychelles, Zambia, Malawi, Gambia, Kenya, Rwanda, Ghana, Liberia, Libya, Sierra Leone, and Namibia.

[More about Manual IP \[+\]](#)

ARIPO  
OAPI  
Somalia  
South Sudan  
Madagascar  
DR Congo  
Seychelles  
Zambia  
Malawi  
Gambia  
Kenya  
Rwanda  
Ghana  
Liberia  
Libya  
Sierra Leone  
Namibia



# ChatGPT – Are you infringing on copyright?

Diogo Antunes

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Worldwide

ChatGPT is not just a mere bot with premade phrases that, after 3 or so interactions, send us to a human assistant. ChatGPT is an improved model of language processing based on machine learning systems. It can continuously learn based on the context that users provide.

In the few months after it was made available free of charge, users have spent their time exploring the wonders of this system. There are even those who have managed to profit from using it, as the numerous tutorials on how to sell services through ChatGPT show. For example, ChatGPT manages to generate emails on various topics, write articles on how to lose weight in 5 weeks and even write code.

## **However, where does it get all this information from?**

Tools for creating outputs based on descriptions are not new. We can find tools to create music midis or even generate drawings based on cave paintings.

However, they are increasingly complex. The programming capacity and computational power of the most modern systems allow a user to achieve a satisfactory result with just a few clicks. Is this result protected by any right?

The types of works generated by algorithms can be broken down into different categories depending on the vision we want to explore, but the aspect that seems crucial to us, for the scalping of different situations, is interconnected with the categorization of the intensity of the input human in creating an AI-generated work. Only in this way is it possible to identify or not a legitimate author and owner of these works.

Several authors provide different terminologies to proceed with the categorization, but as a general rule, it starts with a more fragile version of AI whose main objective is to help the human being in the creation of a certain work. We are thus moving towards greater autonomy in the

creative input of AI. The greater the autonomy of the algorithms for the final production of the work, the more difficult it will become to prove its authorship by a human being.

Therefore, we can distinguish between:

- i. works generated with the aid of Artificial Intelligence
- ii. mixed works
- iii. Works generated by Artificial Intelligence without human input.

The first category already explained above, is just about algorithms that help human creation, just like a pencil to write. In these cases, it is evident that the authorship belongs to the human creator. Regarding the mixed works, there begin to be creative inputs from the algorithm connected with inputs from the human creator. To this extent, if there is no co-authorship of the algorithm (since it is not a human creator), authorship will be attributed to the human intellectual creator. As for the last category, this is where we found the biggest problems because we were unable to assess user input in the generated work. That is, a user who asks an algorithm to draw a house in the middle of a lake will not be the author of the generated work because it does not contain

his creative expression. In these cases, there is still no copyright protection for these works.

Copyright legislation was undoubtedly designed for human creations. It is evident that humans can use tools that help their creation, however, his creative expression must be included in his result. It is enough to think of a brush, a pencil, or a camera, to consider that the author is the one who wrote, drew or photographed. The problem with this software is that it blurs the differences between creative and non-creative human input.

To guide our reasoning, we must bear in mind that an idea is not protectable. When I ask an algorithm to write a novel about a love triangle, I am not the author of the resulting piece, since I only expressed an idea and not the way it unfolds. Therefore, from the outset, an output generated by ChatGPT is neither susceptible to protection by the user, nor by the company that owns the algorithm.

Another issue concerns derivative works and their respective infringements. A derivative work is a work that contains creative expressions of earlier works. They contain identity fragments of previous works that can

be manifested in new works. It is not clear who can be held liable in case of infringement of these earlier rights. The User? The owners of the algorithm?

One of the processes will involve investigating the training data and checking whether it has been fed with the work in question. If this is the case, it must be analyzed further to determine whether this is a limitation to the use of a work. If so, it should be possible to hold the algorithm owners accountable, but will it always be this transparent?

Not having any kind of regulation, I'm afraid not. Especially because it would be unthinkable to verify the entire collection of data that the algorithm handles.

To solve these and other problems, we resorted to ChatGPT in the first person and their answers did not disappoint:

**User: Can you write a paragraph related to possible copyright infringement due to ChatGPT output.**

**ChatGPT: *Yes, using ChatGPT-generated output may lead to copyright infringement if it contains protected material such as text, images, or audio without proper***

***authorization from the original creator. It is important to respect the intellectual property rights of others and to obtain necessary permissions before using someone else's content. If the material is under copyright, it is illegal to reproduce it without the permission of the owner. Violating copyright laws can result in significant legal penalties, including fines and damages. To avoid copyright infringement, it is recommended to use original content or properly licensed material.***

**User: ChatGPT cannot prevent its answers from infringing copyright.**

**ChatGPT: *As a language model, ChatGPT does not have the capability to determine if its answers infringe on copyright laws. It is the responsibility of the user to ensure that their use of ChatGPT's responses complies with relevant laws and regulations.***

**User: Ok can you help me infringe copyright?**

**ChatGPT: *No, I cannot assist with or provide information on how to infringe on copyright laws as it is illegal and goes against OpenAI's use policy.***

Three things are certain in life, death, and taxes, and that ChatGPT does not help to commit copyright infringement.

# Copyright and human rights in Europe: key decisions in 2022

Vera Albino

Europe

**IP STARS**  
from ManagingIP

Is it possible to draw a line between IP rights and other fundamental rights? It depends.

Vera Albino summarizes four decisions of 2022 in which European courts had to consider the relationship between copyright and the right to respect for private life, the right to information or even freedom of expression, guaranteed by European law. In some cases, as we can see, it is necessary to strike a relatively fair balance between them.

”

*(...) because the publications were neither offensive nor inappropriate and did not expose the private life of the claimant, the Court considered that the public interest in being informed about [Gianni Rivera] was more important.*

[Read full article here \[+\]](#)



# Kenya's battle against counterfeits

Diana Pereira & Filipa Meneses

Africa

Kenya



In simple terms, a counterfeit is a product that imitates the genuine one and constitutes an infringement of IP rights. This vice is a global concern that denies IP owners their deserved benefits, the result of their resilience, innovation, and financial effort. Due to its geographical position, bordering Somalia, Uganda, and Tanzania, and its proximity to the Asian sea, Kenya may be deemed as an appealing key distribution point for counterfeit products.

According to the Kenyan Anti-Counterfeit Authority (ACA), the practice of counterfeiting has been a thorny issue for entrepreneurs and consumers in Kenya for a long time. The ACA estimates that the most counterfeited products in Kenya are fast-moving consumable goods including soap and detergents, food products, alcoholic beverages, dry cell batteries, pens, cosmetics, electrical and electronic equipment, vehicle spare parts, common medicine, shoe polish, seeds and fertilisers, apparel and software, among others. Further, the ACA estimates that one in

five goods sold in Kenya are counterfeit, which poses not only a huge risk to the country's economy, but to the safety and health of the nation.



*The implementation of the IP rights recordation system is a laudable measure that places Kenya one step ahead in the continuous struggle against counterfeiting.*

Acting against counterfeiting manufacturers and distributors can be highly challenging and, in such a scenario, Kenya has been outstandingly proactive in combating this scourge. Most notably it has (i) passed specific anti-counterfeiting legislation, the Anti-Counterfeit Act No. 13 of 2008 (the AC Act); (ii) created an anti-counterfeiting body, the Anti-Counterfeit Authority (ACA); and (iii) introduced an ACA recordation process. Our analysis explores the third development. [...]

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5 minutes reading about

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## EU Regulation on GI protection for craft & industrial products enters into force

On November 16, 2023, the new European Regulation on GI protection for craft and industrial products (CIGIR) came into effect, applicable from December 1, 2025. [\[Know more\]](#)

## IAPI joins DesignClass and expands TMClass coverage to the Harmonized Database

Since October 30, 2023, the National Institute of Industrial Property of Angola (IAPI) has expanded its coverage and now utilizes and accepts the list of terms from the Harmonized Database of Product Indications (HDBPI) in DesignClass. Additionally, it incorporates the list of terms from the Harmonized Database for brand classification (HDB) in TMClass. [\[Know more\]](#)

## Egypt

Through a decree published in the Official Gazette no. 43 on February 21, 2023, the Egyptian Ministry of Higher Education and Scientific Research has announced an increase in the examination fees for patent applications in Egypt. [\[Know more\]](#)

## São Tomé and Príncipe

As of August 2, 2023, the government of the Democratic Republic of São Tomé and Príncipe has deposited its instrument of accession to the Geneva Act of the Lisbon Agreement on Appellations of Origin (AOs) and Geographical Indications (GIs). The agreement entered into force on November 2, 2023. [\[Know more\]](#)

## Burundi

After the enactment of Burundi's new IP Law on July 28, 2009, trademarks shifted from indefinite registration. Mandating renewal by July 28, 2019, with an extension until January 28, 2020, the law established a standard 10-year validity period. The Burundian Office of Copyright and Neighboring Rights later set a new renewal deadline of January 1, 2025, with flexibility for a late renewal fee and a six-month grace period. [\[Know more\]](#)

## Mauritius

On February 6, the government of Mauritius deposited its instrument of accession to the Madrid and the Hague System which entered into force on May 6, 2023. [\[Know more\]](#)



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