



Inventa IP Review 2022

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Inventa IP Review highlights some of the prominent IP themes of the previous year, either through opinion articles, interviews or important announcements.

The year 2022 was a year of growth and achievements, but also with new challenges and adversities. Looking back over the past year, we cannot fail to address the Russia-Ukraine conflict that shook economies and changed the world scenario in several sectors. Intellectual property (IP) was no exception. In this compilation we try to disclose consequences and some possible changes that may arise from this conflict. There is also useful information about trademark protection in various jurisdictions and a particular focus on central topics such as the metaverse or Artificial Intelligence. One of the most relevant news is, without a doubt, the entry of the Unitary Patent system in the European Union. We approach some updates on that, as well.

With consistency and regularity, we also seek to share knowledge and expertise through our articles. All created content and information on various IP-related topics are available on our website and will be shared frequently on social media.

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TRADEMARKS

- 04 Can religious trademarks be protected in Angola?
- 07 Protecting EU trademarks in the metaverse
- 09 War and trademarks
- 12 The Impact of Chinese Private Investment on Trademark Rights in Africa
- 14 European Union trademark legislation: an overview on restoration of rights
- 16 Tanzania: first recognition of a well-known trademark
- 18 Trademarks in the metaverse
- 21 Registrability of CBD Products in Nigeria
- 23 Diving into the scope of conceptual trademarks
- 25 Trademark Registrations Trends in the European Union Region by Chinese Applicants in 2022
- 27 Figures reveal early pandemic rush for covid-related trademarks

PATENTS



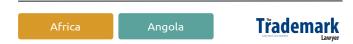
IP RELATED





Can religious trademarks be protected in Angola?

Vera Albino & António Sequeira



Although the religious texts do not refer to Intellectual Property (IP), religions are connected to IP. In a more evident way, religions' influence on IP ranges from discussing and approving IP laws to registering and using trademarks. In a less obvious way, we observed a displacement of religion in trademarks, through consumerism. Like religions, well-known brands, such as Coca-Cola and McDonald's, became ideological structures that shape our ways of being and doing, filling the void left by the withdrawal of the main religions of a partially desacralized world.

This article will focus on the more evident influences of religions on IP, particularly on trademarks, in Angola. The imprint of religions in the IP legislation of secular countries such as Angola is not evident (I). However, it is a question that arises when considering the increase in the number of applications for religious trademarks in the country (II), a question that is, in some measure, addressed by the Angolan Patent and Trademark Office (III).

I. The influence of religions on the legislation applicable in Angola

As Article 6ter of the Paris Convention, applicable in Angola, which provides absolute grounds against trademark registration but makes no specific reference to the religious signs, the Angolan IP law (Law No. 3/92 of February 28, 1992, on Industrial Property), prohibits, in its Article 35°, c, the registration, without due authorization, of trademarks that contain "symbols such as insignia, flags, arms or official signs adopted by the State, commissariats, international organizations or any other public entities", without explicitly mentioning the religious signs. Angola is a secular state (Article 10°, 1°, of the Constitution), ruled by governments inspired by Marxism and Communism since 1975, which can partially explain the omission of the law and the small interest IP legislators have shown in the question. Indeed, in countries where religion occupies a more prominent place, the issue of religious signs is expressly addressed in the IP law like in the United Arab Emirates and in India. Nevertheless, besides



the political and social factors, the Angolan legislation's omission may seem logical if we consider the following viewpoints. First, trademarks аге quite connected commerce, but religions could not always, in its essence, fit into the trade. Second, the religious signs do not comply with the requirements of distinctiveness. Third, the religious signs could not respect the requirements of "Morality" or "Public Order". And fourth, religious signs are symbols that are, generally, adopted by international organizations or by public entities, and thus are necessarily excluded from registration. Despite these considerations, the question of religious trademarks' protection arises when we observe an increase in the number of applications for religious trademarks in the country, accompanying the proliferation of religious confessions, essentially the Gospel radicalism. Having in mind that Article 10°, 3°, of the Constitution, provides that "The state shall protect churches and faiths and their places and objects of worship", what is, or shall be, the action of the state, particularly of the Patent and Trademark National Office (PTO) in this regard?

II. National context

There are currently dozens of religious trademarks in Angola, granted and pending,

related to various classes and goods and services. The most frequent class related to these trademarks is class 41 for cultural and educational services, followed by classes 35 and 25. This brings the following questions:

- 1. Can representatives of religions provide education services without jeopardizing the principle of secularism provided for under the Constitution?
- 2. Shall it be considered that the registration of religious trademarks for goods included in classes 35 and 25 violate religious precepts and, consequently, the Articles 10° of the Constitution, which dictates the state to protect churches and faiths, and 35°, f) of the IP Law, which establishes the legal concept of good morals and public order, if the applicants look for profit only?
- 3. Shall a religious trademark be granted if the applicants look for profit-making by taking advantage of the good faith created by religious signs, misleading the consumers, in the light of Article 35°, a) of the IP Law that prohibits the registration of trademarks that contain "false indications or indications liable to mislead the public as to the nature, characteristics or usefulness of the products or services using the mark"?
- 4. Shall it be accepted that religious names and signs are common names and signs, and, for this reason, are not distinctive and are in



the public domain, as per Article 31° of the IP law? Or can a religious sign obtain secondary meaning by its use in trade and loses its religious characteristic, such as, for instance, "NIRVANA", which is a trademark registered worldwide?

5. Finally, shall religious trademarks be granted having in mind that if religious symbols are registered as trademarks, their proprietor will obtain the exclusive right to use them?

lthough these questions would be without if would be accepted. ригроѕе it unreservedly, that religious signs are symbols that аге adopted by international organizations and by public entities, and thus, should be excluded from registration according to Article 35°, c); we understand that to respond to them, we must consider the inner reasons for these trademark applications and decide on them, at the risk of being abusive or inappropriate regarding the intimate sphere of each applicant.

III. The Patent and Trademark Office's approach

When analyzing Angola's public data, we notice that the PTO grants religious trademarks, independently of the class and the goods and services, and, therefore, without any regard for the motive of the

applications. For instance, the trademark "IGREJA EVANGÉLICA BAPTISTA EM ANGOLA - I.E.B.A" (word and device) was granted for classes 24 and 25. The trademark "IGREJA UNIVERSAL DO REINO DE DEUS" (word and device) is registered in class 41. The trademark "IGREJA DO NOSSO SENHOR JESUS CRISTO NO MUNDO" (word) is registered in classes 25, 26, 35, 41 and 45.

Thus, we must conclude that the Angolan PTO tends to accept religious trademarks unless there is a serious violation of the IP legislation or an imitation of a previous trademark. It seems that the PTO is of the opinion that because it is not expressly prohibited by the law, religious trademarks can be granted. Trade is religiously neutral and, we can assume that, even though the commercialization of religion is rampant, the PTO considers that it is not under its responsibility to judge its rightness.

Because religious trademarks can, effectively, hurt the religious sensibilities of communities, the PTO seems to believe that these communities shall oppose the registration of these trademarks when they are published. In other words, the Angolan PTO appears to believe that religion must stand in a private sphere.



Protecting EU trademarks in the metaverse

João Pereira Cabral

European Union



The presence of brands in the metaverse, depending on the adopted concept, is not a future fact. Brands are already in the metaverse.

If the concept of metaverse is debatable, and so is its present existence, it is at least undeniable that approximate realities already exist. In digital spaces such as, among others, "Roblox", "Fortnite", "Second Life" and "Descentraland", it is possible to sell goods and provide digital services.

Naturally, in recent years, various entities have exercised their freedom of economic initiative in those spaces and have identified their goods and services with their brands. Increasingly, other companies will be interested in doing so.

Protection of registered EU trademarks (EUTM) in the metaverse

The presence of brands in those spaces raises new legal questions. The question addressed in this article is whether an already registered trademark is protected against the registration and use by third parties of an identical or similar trademark, in the metaverse.

Regulation (EU) 2017/1001 of the European Parliament and of the Council of June, 14, 2017 on the European Union trademark, provides that the holder of an EUTM has the right to prevent the use of the same or similar trademark only if used for the same or similar goods and services. The similarity of goods and services is also a requirement for the EUIPO to refuse EUTM applications.

The use of trademarks in the metaverse, and its respective registration, does not, in principle, have any particularity for the analysis of similarity between signs. On the other hand, the analysis of the similarity between goods and services raises new questions. It is questioned, for example, whether the owner of a registered trademark to identify clothing can prevent the use and registration by a third party of an identical or



similar trademark to identify digital clothing in the metaverse.

The question here addressed is therefore related to the analysis of the similarity of goods and services, namely, whether digital goods or services should be considered similar to the corresponding non-digital goods and services.

This issue will not be so important in relation to trademarks with reputation status, due to their broader protection, which cover goods and services for which they are not registered. However, the question still stands for most trademarks, as they do not have reputation status.

The criteria for comparing goods and services

The solution can only be found in the applicable law. Some situations do not offer much doubt. For example, if an architecture firm holds an EUTM registration for architectural services, it may prevent the registration and use of its trademark in the metaverse, by a third party, to identify digital real estate design services. Even if it is understood that the design services of virtual properties are not included in the architectural services, they will still be design

services, which are similar to architectural services.

However, other situations are less clear: should clothing goods, in class 25, be considered similar to digital clothing for metaverse avatars? Should hairdressing services, in class 44, be considered similar to virtual hairdressing services that an entity proposes to provide to the avatar of a user of virtual spaces? Should class 43 restaurant services be considered similar to virtual restaurant services, where metaverse avatars "eat"?

If the question concerns the comparison of goods and services, the answer will be given by the comparison factors established by European case-law.

The Court of Justice of the European Union held, in the Canon case (C-39/97, Canon, 29/09/1998, EU:C:1998:442) that in assessing the similarity of goods all the relevant factors relating to the goods themselves should be taken into account, including, inter alia, their nature, their intended purpose, their method of use and whether they are in competition with each other or are complementary [...]

Read full article here [+]



War and trademarks

Diogo Antunes & Anna Shcherbyna





In 1991 due to the disintegration of the Union of Soviet Socialist Republics (USSR), Ukraine regained its independence and a new era for the Ukrainian economy began. Numerous business opportunities arose for entrepreneurs who were then beginning to emerge. New products and services multiplied in the market and so did the need to create legal mechanisms that would guarantee the protection of the rights of the trademarks' owners. For this purpose, the Ukrainian Institute of Industrial Property (UKRPatent) was created in 2000.

Interestingly, it was also from this date that economic indicators in Ukraine began to register notable increases. In 2000, Ukraine's real gross domestic product amounted to UAH 138.1 billion (\$4.68 billion), in 2003—UAH 256.4 billion, in 2004—UAH 310.1 billion and in 2013 it reached UAH 1 trillion. However, this trend was interrupted by the Russian invasion of Ukraine in 2014, which resulted in the occupation of some Donbas territories and the annexation of Crimea.

That year, real GDP fell to UAH 1.37 trillion, but the following year it resumed growth, amounting to UAH 1.43 trillion.

In 2022, once again Ukraine is experiencing a military attack from its biggest neighbour to such an extent that the economy of this European state is suffering a severe blow. The economic tremors are directly reflected in the number of trademark applications to UKRPatent. This article investigates the status of the trademarks related to Ukraine in the periods covering the beginning of these armed conflicts between Russia and Ukraine.

Drop in trademarks

The first conflict broke out on February 20, 2014. The UKRPatent reported at the time that 2,002 trademark applications were received during that month. In March of the same year, more than 2,645 trademark applications were filed. As we can see, the effects of the conflict were not adversely felt in relation to the total number of trademark applications. The invasion carried out by



Russian troops on February 24, 2022, presents a different scenario. In the same month, the number of applications (2,809) was still at the average level registered over the last few years. In March, however, there was an extreme decrease, which translated into 1,241 trademark applications. The IP bulletins, however, are still being published regularly and registrations are being requested across a wide variety of classes, both by domestic and foreign owners.

Since February 24, we have noted an increase for registrations in applications trademarks from Ukraine-based applicants in other countries compared to the same period in 2021. The most sought-after jurisdiction is the US, to which 17 of the 38 trademarks applied for abroad are directed. About 22% of these marks cover beverages in class 32. The beverage sector, and in particular beer, proved to be particularly vulnerable in this conflict. The most striking example is that of a popular local beer brand, Chernigivske, whose owner, the world's largest beer producer Anheuser-Busch InBev, has applied for several trademarks not only in the US but also in Mexico and Argentina. The first two countries are some of the largest per capita beer consumers in the world. The brand's production facilities are based in the city of Chernihiv. This city north of Kyiv was severely devastated in the early days of the war. Access to water, electricity and gas, crucial to the production of the product, as well as access to logistics, were cut off. Additionally, the imposition of a temporary ban on the sale of alcoholic beverages by the Ukrainian authorities halted the sale of beer that was still in stock in various parts of the country.

'Starlink': a significant trademark

There is another trademark that caught our attention. It is 'Starlink' by SpaceX, filed in Ukraine by Elon Mask's Space Exploration Technologies and published on April 16, 2022. We find this publication loaded with symbolism, since the entry of Ukraine into the state-of-the-art technology, covered by the trademark mentioned above, is an unprecedented turning point in this battle. Currently, the lack of human resources is pointed out by experts as the main obstacle to economic activity in the country. Many working-age men and women have been mobilised or have left the country for safety, not to mention the large migratory flow within Ukraine itself.

Businesses which cannot keep up with the displacement of the population suffer from a lack of labour. According to a study by



Advanter Group, about 48% of small and medium-sized businesses in Ukraine are in this situation. However, the IT sector has revealed itself to be particularly immune to war missiles. As of January 2021, the share of IT was 37% of exports of all services in Ukraine. Last year, exports of Ukrainian IT services increased by 36% to \$6.8 billion.

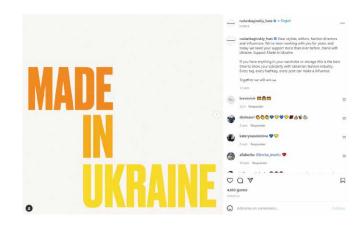
At present Ukraine relies on the digital industry to respond to the immense economic challenges that are piling up as the conflict persists. Taking advantage of the inevitable reduction in the presence of Russian IT engineers on market, Ukrainian specialists have a chance for even faster development in the industry. Exporting digital products is fast, practical, and presents far fewer risks associated with war when compared to exporting physical goods or raw materials. In addition, labour mobility is incomparably greater. The proprietors of the largest Ukrainian IT brands such as SoftServe, Intellias, and Sigma Software, among others, evacuated numerous employees and their families to safer locations abroad. On the one hand, this is a forced expansion, but on the other hand, this measure will surely have positive effects on production stability and consequent further development.

Ukraine 'trending'

It is worth noting that new technologies have paved the way for other industries as well, such as the fashion industry. During this war, Vogue Italia has shown its support to Ukrainian fashion designers by featuring their brands and dedicating articles to the Ukrainian cause.

Naturally, we received this information from digital sources. Many Ukrainian fashion bloggers and fashion influencers, who own trademarks in Ukraine and/or abroad, have transformed their social media into a battlefield.

Their smartphones are their loudspeakers for spreading information about Ukrainian brands and making appeals for help and support to their colleagues and followers worldwide.



And these appeals are being heard and answered.



The impact of chinese private investment on trademark rights in Africa

Vera Albino



The commercial relationships between China and the African continent began as early as the 2nd century BC, having expanded in the 7th century following the development of maritime routes. Trade between China and Africa has expanded since then and China became, in the 21st century, Africa's first economic partner.

The exchanges between the two regions concern trade, investment, and finance and it is widely acknowledged that China is a major contributor to the economic and social development of the African continent. The subject matter of this article is how these close relations between the two regions are reflected in Intellectual Property Rights, particularly trademarks, and in brands' behavior.

This analysis is geographically limited to OAPI (African Intellectual Property Organization which includes 17 members), ARIPO (African Regional Intellectual Property Organization,

which has 12 members as far as trademarks are concerned), Nigeria, South Africa, Zambia and, partially, The Democratic Republic of Congo. The choice of OAPI and ARIPO is due to the number of countries it covers. Nigeria, South Africa, Zambia, and The Democratic Republic of Congo were selected because they are among the main African destination countries for Chinese investment, according to China's of Ministry Commerce Transaction-level ODI Data. This analysis is also chronologically limited to the last decades because the 2009 is considered the year in which China emerged as Africa's largest trading partner.

Economic context

The Forum on China–Africa Cooperation (FOCAC), created in 2000, is the most obvious proof of the proximity between China and Africa. This Forum has been held eight times since its creation, with the most recent summit occurring in Dakar (Senegal) on the 29th and 30th of November 2021. Known for



being a means par excellence for strategic collaboration between governments, it is remarkable to notice that FOCAC has evolved, in the last decade, towards a more private forum where investors and finance have begun to dominate the meeting.

Chinese Foreign Direct Investment (FDI) in Africa has risen from \$74.8 million in 2003 to \$4.2 billion in 2020, and part of the investment is of private origin. It is estimated that more than 10,000 Chinese companies are active in Africa and more than 70% are private companies, which is considerable.

Further, the fact that the Chinese companies operate in the continent in sectors that are generally ignored by investors from other parts of the globe, is also worth noting.

In fact, the Chinese companies are much more fearless in operating in unstable contexts. with DOOL property rights protection, including intellectual property rights, in part because, even though in unstable business environments investment is risky, the expected return could generally be very high. Thus, it is not surprising that the Democratic Republic of Congo is 5th in the Top 20 African destination countries, the Top 3 being, by order of importance, Nigeria, South Africa and Zambia, following the referred China's Ministry of Commerce Transaction-level ODI Data.

The African continent is in continuous development and, therefore, it offers new business opportunities. But while most companies are afraid to invest in Africa, Chinese companies and Chinese brands saw the difficulty as a window of opportunity and filled African markets with their goods. The investment of Chinese companies specializing in new technologies is a good example of this.

The new technologies trademarks are the most protected trademarks by Chinese companies in Africa

When analyzing the available data regarding the trademarks registered by Chinese companies in OAPI and ARIPO, we notice that class 9, related to new technology, and class 12, related to vehicles, are the most frequent classes associated with trademarks owned by the Chinese. [...]

Read full article here [+]



European Union trademark legislation: an overview on restoration of rights

Júlia Alves Coutinho

European Union

Trademark

In Intellectual Property systems there are many deadlines that applicants and owners have to comply with. So, missing a deadline is a mistake that should always be taken into account. However, there are exceptional occasions that cannot be foreseen from experience and are therefore unpredictable and involuntary.

As is known, the failure to comply with a time limit, for which the possibility of requesting an extension does not exist or has already been requested, can lead to the loss of a right or the loss of the possibility of appeal. For these cases, the European Union trademark legislation, as well as the design legislation, provides the possibility to reinstate the rights, despite the parties having taken all due care required by the circumstance by them or their representatives, under strict conditions, following a request addressed to the EUIPO and subject to the payment of a fee. The legal institute of the restoration of rights is best known by the Latin expression

restitutio in integrum, including in Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark, which deals with the subject in article 104. Exactly 10 years ago, the case law T-326/11 of the General Court established the two requirements for restitutio in integrum, as above mentioned:

i. that the party has exercised all due care required by the circumstances; and

ii. that the non-observance (of a deadline) by the party has the direct consequence of causing the loss of a right or means of redress.

First requirement – all due care exercised

Over the years, court decisions were issued that were able to determine some examples acceptable and not acceptable by the legislator about the fulfillment of the 'all due care' requirement, as explained below:

• Failure to deliver by the postal or delivery



service: acceptable. However, it is up to the parties' representative at least to find out in advance from the delivery company what the usual delivery times are.

- Relevant error by the Office: acceptable.
- Natural disasters and general strikes: acceptable.
- Errors in the management of files caused by the representative's employees or by the computerised system itself: NOT acceptable.
- Exceptional workload and organisational strains to understand a new or actual applicable law: NOT acceptable.
- Erroneous calculation or time entry of the deadline: of course, NOT acceptable.
- Absence of a key member of the Accounts
 Department: of course, NOT acceptable.
- Delay by the owner in providing instructions: NOT acceptable.
- Financial problems at the proprietor's business, its closure and the loss of jobs: NOT acceptable.
- Legal errors by a professional representative: NOT acceptable.

Second requirement – failure to meet the time limit has to cause direct the loss of rights or means of redress

This requirement is applicable to the late response to an examiner's notification of

provisional refusal if the application is not rectified by the time limit specified because, in this case, there is a direct relationship between failure to meet the time limit and possible refusal. That is, the trademark was refused due to the absence of response from the right holder.

(...) the restoration of rights is a complex procedure, which involves compliance with very specific deadlines and a very well-founded basis, so that it can be granted.

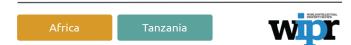
Restitutio in integrum is also available for the late submission of facts and arguments and late filing of observations on the other statements party's in inter partes proceedings if and when the Office refuses to take them into account as being filed too late. The loss of rights in this case involves the of these exclusion submissions and observations from the facts and arguments on which the Office bases its decision. In principle, the Office will disregard any statements filed in inter partes proceedings after the deadline has passed. [...]

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Tanzania: first recognition of a well-known trademark

Miguel Bibe



For the first time, on 4 February, 2021, the High Court of Tanzania (Commercial Division) has issued a decision concerning the protection of well-known trademarks, against infringing company names registered by third parties in the country in a case involving JC Decaux SA and JC Decaux Tanzania Limited (plaintiff) and a local company, JP Decaux Tanzania Limited (defendant).

JC Decaux SA and JC Decaux Tanzania Limited are subsidiaries of the JC Decaux Group, a family-owned business with an outstanding international reputation, established in France by Jean Claude Decaux in 1964, operating in outdoor and/or home advertising business in more than 4,000 cities in over 80 countries worldwide including Tanzania.

JC Decaux SA, the first plaintiff, a South African company, entered the Tanzania market in 2015, by acquiring a Tanzanian advertising company, and, in 2016 changed the name of the Tanzanian company to JC Decaux Tanzania Limited, which was the second plaintiff. Subsequently, it applied and registered the trademark JC Decaux in numerous classes in the country. By that time, the defendant JP Decaux Tanzania Limited had already registered its company in 2014, its main business activity being outdoor advertising.

The main complaint by JC Decaux was that the words JP Decaux infringe the well-known trademark JCDecaux once the designation is confusingly similar to JC Decaux's registered trademark, with only a difference of a letter in the defendant's company name, namely, the letter "C", and considering that the name JC Decaux has been globally using since 1964 and registered as a trademark in 135 countries at least.

However, this was not the first dispute between the parties, as, in July 2015, the



plaintiff, JC Decaux, was succeeded in a domain name complaint with the online ADR Centre of Czech Arbitration Court against the defendant's registration of the domain name JPDecaux.com, on the grounds that the domain name is similar to the plaintiff's trademark JC Decaux.

Further, in October 2015, the plaintiff succeeded in another domain name complaint with the World Intellectual Property Organization (WIPO), against the domain name registration of jpdecaux.co.tz, which, despite not being filed by the defendant, the domain name JPDecaux.tz, was featured on the defendant's website.

On the other hand, in its defence, JP Decaux Tanzania denied the infringement of the trademark and argued that the use of its company name was protected under the Companies Act of Tanzania by virtue of company incorporation in August 2014, which was earlier than the registration of the JCDecaux trademark.

In this regard, in a landmark decision in the country, the court considered that the similarities between the defendant's name and the plaintiff's trademark, differing only in one letter and also covering the same

activity, could not be a mere coincidence. The court was convinced by the evidence filed that the plaintiff's trademarks have been registered in several jurisdictions around the world and there was evidence of use for 50 years at least. The plaintiffs also filed evidence of the favourable decisions in the domain names disputes before the WIPO and Arbitration and Mediation Centre before Czech Arbitration Court, mentioned above.

More significantly, the court ruled that, whilst the registration of a trademark in one country does not extend the protection to Tanzania, "legally, it is not correct for a person to register a trademark or a business, company name confusingly similar to a widely used and known trademark, with well-established goodwill in its business, trade while aware of the existence of the same, simply because that trademark is not registered in his/her country. It has to be noted that trademark goes together with investment in terms of goodwill in a particular business", meaning that the court also considered that the defendant was aware of the well-known status of the JC Decaux trademark. [...]

Read full article here [+]



Trademarks in the metaverse

João Pereira Cabral

Worldwide

The relationship between youth and IP has at least two directions. In one direction, youth innovate and get protection through IP. In another, youth are the main addressees of IP-protected innovations. It is mainly in this direction of the relationship that the sub-theme of trademarks in the metaverse is situated.

What is the metaverse?

The creation of the term "metaverse" is usually attributed to Neal Stephenson, who may have used it for the first time in his science fiction novel Snow Crash, and the result of the mixing of the words "meta" and "universe". This is the metaverse, a universe that is beyond something. That something is the non-digital world, so that universe is digital. But if the metaverse was any digital space, all digital spaces would be covered by the concept, including any email service or online store.

If the metaverse is a universe, then it has the capacity to replace the other universe, the non-digital one. Therefore, the metaverse

must be considered a digital space in which it is possible to practice all (or almost) the activities that it is possible to practice in the non-digital universe. The metaverse, with this definition, does not yet exist. However, close realities already do. The main examples are virtual realities such as Second Life, in which the user can do various activities, through their representation, the avatar. In this virtual reality, it is possible, for example, to buy, among other digital goods, animals, art, vehicles and clothing for the avatar.

Virtual real estate is also now a reality. In 2021, the value of digital land purchases, in places like Sandbox. Decentraland, Cryptovoxels and Somnium, exceeded 500 million US dollars, and many of these buyers hired architectural services to build their virtual properties and bought furniture and art to decorate them. Other examples of approaches to the metaverse, where the largest number of users are mostly young, are games like World of Warcraft, Fortnite and Roblox. Together, these virtual



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Can an entity that already owns a trademark registration be able to use it, without risk, in those spaces, and can it prevent third parties from using it?

spaces currently have approximately 450 million users. If they were a country, they would be the third-largest in the world by population. Taking this fact into account and since it is possible to sell goods and provide services in these digital spaces, many entities are interested in exercising their freedom of economic initiative in these spaces. To do so, entities needed signs that allow consumers to distinguish their products and services from those of other entities. That is, these entities need to use marks.

Trademarks in the "metaverse"

The use of brands in these digital spaces results in new legal situations. How can an entity protect its brand in these spaces? Can an entity that already owns a trademark registration be able to use it, without risk, in those spaces, and can it prevent third parties from using it? The answer to these and other questions results from existing law, including the terms and conditions that users accept when using these platforms and which may, eventually, provide their own mechanisms for

acting against infringements. The answer to the first question, in Portugal and in most European Union countries, is clear. Any entity that intends to be the owner of an exclusive right to use a certain brand must register it, since the right to a mark, in those jurisdictions, results from the registration. The Law is applicable to any of the aforementioned approaches to the metaverse, as it is in any digital space. If it is illegal to sell products with the registered trademark of another entity in an online store, so is the sale of those products in any virtual reality.

It is also questioned whether an entity that already owns a trademark registration will be able to use it, without risk, in those spaces, and whether it will be able to prevent third parties from using it. For example, will a trademark registered to identify clothing be protected against its use by users of these spaces to identify virtual clothing? The answer, in principle, is negative. The trademark right resulting the registration is limited to the products and services covered by the registration and similar ones. If a trademark is registered for clothing, its protection should not cover virtual clothing, which is not clothing or a



similar product, but a digital good. The answer may, however, be different if the trademark in question has the legal status of trademark with reputation. For these trademarks, the Law provides that their protection is not limited to the products and services covered by the registration, and the owner may prevent their use in relation to other products and services, provided that with their use, the third party seeks to take undue advantage of the distinctive character or reputation of the mark or could harm them.

The owner of a trademark without reputation status, as the vast majority are, intending to exploit it in these new spaces, must obtain a new registration covering digital goods or services. This already happens. The American NIKE, despite being a trademark with reputation status, and therefore having less need to do so, intending to sell virtual products, filed, last year, for the registration of several NIKE trademarks to identify, among others, the products "Downloadable virtual goods, namely, computer programs featuring footwear, clothing, headwear, eyewear, bags, sports bags, backpacks, sports equipment, art, toys and accessories for use online and in online virtual worlds" and the services "Retail store services in relation to virtual goods, namely, footwear, clothing, headwear, eyewear sports bags, backpacks, sports equipment, art, toys and accessories for use online." Nike also filed for the registration of NIKELAND to identify, among others, "virtual reality and interactive game services provided online from a global computer network and through various wireless networks and electronic devices," which is currently being used to identify the sports and virtual games space within the aforementioned Roblox game.

The future

The growth of these realities that are approximations to the metaverse, in these last two years, shall have been driven by the pandemic. If physical spaces were limited, virtual spaces benefited. However, economic agents must take precautions and protect their brands properly, obtaining registrations for virtual goods and services. Despite the end of the pandemic, the trend should be the continuation of the growth of virtual spaces. In the last year, among others, in addition to the aforementioned Nike, Hyundai and Gucci were also present in Roblox and several technological companies invested in areas related to the metaverse, such as Facebook, which is now, because of that, Meta.



Registrability of CBD Products in Nigeria

Inês Tavares & Queen Ajura Ugbeda

Africa Nigeria

In the past decade we have been seeing a rise on marketing and sale of products containing Cannabidiol (more commonly referred to as CBD), which is an active compound that derives from the marijuana plant.

Marijuana or Cannabis is a mixture of dried flowers of Cannabis Sativa that is most often smoked and is considered a drug by the World Health Organization (WHO). In fact, the Organization states that Cannabis is *«by far* the most widely cultivated, trafficked, and abused illicit drug. Half of all drug seizures are cannabis seizures. worldwide geographical spread of those seizures is also global, covering practically every country of the world. About 147 million people, 2.5% of the world population, consume cannabis (annual prevalence) compared with 0.2% consuming cocaine and 0.2% consuming opiates. In the present decade, cannabis abuse has grown more rapidly than cocaine and opiate abuse. The most rapid growth in cannabis abuse since the 1960s has been in developed countries in North America, Western

Europe and Australia. Cannabis has become more closely linked to youth culture and the age of initiation is usually lower than for other drugs» [1].

The psychoactive constituent in cannabis is called tetrahydrocannabinol (more commonly referred to as THC) and this is the active compound that produces the "high" from marijuana.

Marijuana has also been increasingly described have medical and as to therapeutical properties, especially the CBD compound. Known effects of its usage include better sleep, reduced anxiety, and pain relieve. CBD can be found in a very wide array of products such as oils, vapes, gummies, topicals and capsules.

But does it work? Yes and No. There is evidence that CBD products can help insomnia and reduce anxiety, however there is no evidence that these are effective in curing cancer: a widespread rumour that



leads more people to find answers in alternative medicine instead of traditional treatments such as chemo and radiotherapy. This a sensitive topic and we are, by no means, denying the potential benefits of CBD in diminishing some of the symptoms caused by these serious illnesses and those of chronical illnesses, such as Fibromyalgia. Nevertheless, there is no scientifical evidence to support these bigger claims for CBD usage that are, most likely, just a form of excellent marketing.

This being said: is CBD consumption legal? It also depends, specifically, on where you are in the Globe. There are countries where CBD is legal for recreational and medicinal purposes, other have exceptions for medicinal purposes only and, in some of these, both forms are still illegal.

More companies selling marijuana-CBD derived products are entering the markets and, consequently, we are faced with increased requests for trademark registrations listing such products.

Now, is it possible to register trademarks for products containing CBD? In almost every jurisdiction worldwide one of the criteria for a trademark registration is its lawfulness. In a

country where CBD and Cannabis usage is prohibited by law, the likelihood of obtaining a certificate of registration is slim to none. The Nice Classification lists products containing cannabis, for example: cannabis plants and cannabis, unprocessed, in class 31 and cannabis for medical purposes, in class 5. Cannabidiol can also be found in the list, namely in class 5 as cannabidiol for medical use.

In this sense, when filing a CBD or cannabis derived product we must ascertain if the country allows for these products to be listed and this will directly depend on the specific laws and regulations of each country.

And what about Nigeria? In Nigeria, CBD products can only be used for medicinal or scientific purposes provided that the same meet certain conditions and upon obtaining the appropriate license. In terms of governing laws and regulatory bodies, the National Agency for Food and Drug Administration (NAFDAC) is the main regulatory agency for food and drug products. [...]

Read full article here [+]



Diving into the scope of conceptual trademarks

Miguel Bibe

Africa South Africa



On May 26, 2022, the South African Supreme Court of Appeal issued a decision in a case involving two tobacco manufacturers, Open Horizon and Carnilinx. Open Horizon filed a lawsuit against Carnilinx for infringement of its 'Pacific' trademarks (with several variants) for tobacco products and cigarettes, on the grounds that the competitor, which was trading the same products under the 'Atlantic' (with several variants) trademarks, was infringing its trademark rights and because there was unfair competition.

The plaintiff considers that the competitor, by trading the same goods under the term 'Atlantic', as the core element of the trademark to identify its products, establishes a connection with its 'Pacific' trademarks, of which the term 'Pacific' is the central element.

Conceptual similarities

Meaning that, by marketing the same products under the 'Atlantic' trademark, the plaintiff considers that the competitor intends to take unfair advantage of its 'Pacific' trademarks, creating confusion or error among consumers, as both designations (which are the dominant element of the marks being compared) invoke the same concept or idea, namely, an ocean.

Although there is no graphic or phonetic between similarity the conflicting trademarks, the plaintiff considers that there is a conceptual similarity since both names are used to identify an ocean, which will lead the average consumer either to confuse them or to assume that the trademark 'Atlantic' belongs to the plaintiff. Additionally, it was argued that the choice of the designation 'Atlantic' was not innocent because the competitor intended to benefit from the confusion that may arise among consumers for its own profit and damage the plaintiff's rights.

However, the court did not follow the understanding of the plaintiff and held that although the trademark 'Atlantic' is an ocean



name and, as such, invokes the same idea as the plaintiff's trademark, "trademarks do not create monopolies in relation to concepts or ideas".

The court also cited previous decisions to support the arguments, namely International v La Chemise Lacoste (2004), where the court held that: "whilst conceptual deception or confusion can constitute a bar to registration in an appropriate case, caution must be exercised not to create a monopoly in relation to a concept". In this case the court held that the plaintiff could not claim a monopoly on a concept for any crocodile figure. Also, in an EU case, Apple opposed the registration of a trademark that included the word 'Pear' together with a pear image, where the court stated that there were "clear differences between the concepts conveyed by the marks—put simply one was an apple, and the other a pear—it is inconceivable that the relevant public displaying a high level of attention will use the term 'fruit' instead of 'pear' or 'apple' when referring to the conflicting marks".

Different oceans

In this case, the court considered that the same reasoning should be applied as "the words relate to two different oceans. Pacific and Atlantic will not be perceived by the average depicting consumer as two unidentifiable oceans but rather two vastly different oceans located in two different geographical locations in the world. There is not likely to be deception or confusion". Where the plaintiff argued that the competitor obtained an unfair advantage and misappropriated its investment in development of the 'Pacific' trademarks, the considered that the evidence presented was not sufficient to support such a claim, stating that, generally, actions against competitors who use the plaintiff's name for their own benefit are rejected, unless the plaintiff can prove that the competitor is using its trademark or trade name in a way likely to create error or confusion among consumers.

On this issue, the court concluded with a warning about the general notion of unfair competition with requirements less demanding than those expressed in the law, stating that "unlawful competition should not be added as a ragbag and often forlorn alternative to every trademark, copyright, design or passing off action. [...]

Read full article here [+]



Trademark registrations trends in the EU region by Chinese applicants in 2022

Diogo Antunes

European Union

IPR DAILY® 中文网》

We are halfway through the year 2022. Covid-19 is not yet eradicated and the armed conflict in Ukraine promises to shake economies globally. How are applicants from China facing this scenario? Will there be a slowdown in the expansion of their trademarks? Through this study, we will verify the main trends in registration since the beginning of the year in the European Union (EU) region (EU trademark applications) by Chinese applicants.

Total numbers of trademarks

From January to September, around 18 thousand trademarks were requested. The same period in the previous year registered a total of 29,835 trademarks. Since there may be a deviation in the data analyzed (the trademarks requested this year in the first week of September may not reflect the totality) we still see a huge shortage compared to the same period of the previous year. The biggest drop was due to the applications in the EU, since national requests registered similar values.

Favorite Jurisdictions

The preferred jurisdiction for applicants from China is undoubtedly the EU system, with nearly 14,000 applications since the beginning of the year. Interestingly, there are more German applications, directly, than applications that designate some jurisdiction of the European Union through the Madrid Protocol.

•	European Union	13.9 k
•	Germany DPMA	2.1 k
•	WIPO (Madrid)	1.4 k
•	Italy UIBM	313
•	France INPI	269
•	Spain OEPM	84
•	Benelux BOIP	37
•	Poland UPRP	24
•	Sweden PRV	23
•	Romania OSIM	20

Most filed applications

In the first place we have the trademark "PICO" in the name of Pico Technology Co., Ltd. which applied for 19 trademarks registrations in the EU region, 7 of which were applied for as a EU trademark registration. Sharing the second place we have the trademark "B" and the



trademark "BEIXIN". The "B" trademark, due to its low degree of distinctiveness, was filed by several companies. In turn, the Beixin trademark registration was requested by Beijing New Building Materials Public Limited Company.

Classification

In the last 10 years, the applicants's preferred classes of applicants from China have been related to technological devices and clothing. China, over the last two decades, has invested in its industry and export capacity. It is its precise reflection that we find in the trademark applications of Chinese applicants. The class most used by applicants since the beginning of 2022 has been class 9, which concerns electrical and scientific devices, which includes Battery chargers, headsets, smartphones. Interestingly Battery chargers was the most chosen item by applicants.

Applicants

Due to the number of Chinese companies, it would be expected that there might not be a preponderance of any company regarding the filing of trademarks applications in the EU region since the beginning of the year. However, despite not being relevant in the total sample, Huawei is highlighted in this [top 10] group with at least 101 trademarks applications compared to the 56 trademarks applications of

Beijing New Building Material. If we compare with the competitor XIAOMI, we can see that the latter has only requested 4 trademarks since the beginning of the year in this region.

- Huawei Technologies (101 trademarks)
- Beijing New Building Material (56)
- Chongqing Weibo Communication Technology (42)
- Honor Device (39)
- ZHU, Liping (34)
- Dongguan XiangLong International Trading (28)
- VIVO Mobile Communication (28)
- Shenzhen Yitianze Technology (25)
- Imiracle (ShenZhen) Technology (22)
- Nio (22)

Despite the total decrease in trademarks in the same period of the previous year, Huawei filed 28 more trademarks than last year. So far, we have been able to verify that there has been a sharp decrease in the number of trademark applications in the EU by Chinese applicants, perhaps due to the armed conflict in Ukraine that has fractured the global economy. However, trademarks classifications continued the trend, demonstrating, once again, the prevalence of the technology sector of the Chinese economy. It remains to be seen, for the future, what will be the economic outcome of this period in history and to be verified how Chinese industry will be able to deal with the instability of the global economy.



Figures reveal early pandemic rush for covid-related trademarks

Diana Pereira



Cape Verde, an island state formed by an archipelago of 10 islands, benefits from its geographic position and has an economy based on the services sector, including trade, transport, tourism, public services, and exports of fish and clothing.

Despite this, natural resources are scarce, with prolonged water shortages enhanced by long and cyclical periods of drought, and low-fertility soils on several of the islands. Although about 40% of the population lives in rural areas, food production makes up a low percentage of GDP (4.9% in 2020), with approximately 70% of food imported. Cape Verde imports fuel and machinery, as it produces neither.

Given these facts it is unsurprising that overseas companies have filed trademark applications under Nice classes related to scarce goods: Class 12 (vehicles); Class 4 (lubricants and fuel); and Classes 29 and 30 (meats and processed foods; staple foods).

In the early months of 2020, medical and focused pharmaceutical industries protecting their IP rights in several countries safeguard the ownership of their intellectual and industrial creations, especially those involving the fight against covid-19. Cape Verde was no exception and it's now clear that the start of 2020 was marked by an increase in trademark applications under Nice Classes 1 (chemicals) and 5 (pharmaceuticals and medical supplies)

While these pharmaceutical and health-related products and services are form only a small percentage of the trademark rights in existence in Cape Verde, it is a significant group. Comprising only trademark applications published in the IP Bulletins (we exclude trademark applications awaiting publication, as these have not been made known to the public yet), the following are worth highlighting. [...]

Read full article here [+]



PATENTS

- 29 The Unitary Patent Era is about to begin: what to expect?
- 30 Ukraine's patents: from past to present
- 34 Patenting life?
- 36 ARIPO and the regional patent examination training programme: what to expect
- 37 Top of the props: patents and music
- 41 Nigeria: The role of patents in promoting innovation
- 43 War: The Patent Turbulence Zone
- 48 Democratic Republic of Congo: three types of Patents
- 50 Filing a priority document in Portugal
- 51 ARIPO: Adding member states
- 52 The inner workings of ARIPO

TRADEMARKS



IP RELATED





The Unitary Patent Era is about to begin: what to expect?

Marisol Cardoso

Еигоре

Patent Lawyer

In December 2012, the European countries and the European Parliament agreed on a legislative initiative that laid the ground for the creation of the unitary patent protection in the European Union (EU). Now, the implementation of a much simpler and less expensive European patent system is highly expected for the second half of 2022.

The Unitary Patents will allow inventors (individuals, companies, universities, and research organizations) to obtain uniform patent protection across all participating EU

member states by submitting a single application to the European Patent Office (EPO), which will be searched and examined under the rules of the European Patent Convention (EPC).

As regards infringement and validity issues, the Unified Patent Court (UPC) will offer a single, specialized patent jurisdiction in all Member States that have ratified the Agreement on a Unified Patent Court (UPC Agreement), therefore, ending the need for litigation in different countries. [...]

Read full article here [+]

Other 2022 news about the Unitary Patent



UP System expected in the spring of 2023



The Unitary Patent system is about to be launched



Ukraine's patents: from past to present

Vítor Sérgio Moreira & Anna Shcherbyna



The first patent system in Russian Empire was established by czar Alexander I in 1812, through the publication of the "Manifesto on the Privileges for Various Inventions and Discoveries in Crafts and Arts".

However, after the October Revolution of 1917, the entire legal system collapsed over a vast territory from the Carpathians to the Pacific Ocean. Landowners, industrialists, craftsmen, and peasants in the hinterland felt especially affected and feared threats to their property. Meanwhile, the Ukrainian People's Republic (UPR) proclaimed its independence in 1918. That year its Ministry of Trade and Industry established the Technical Department of the Inventions. This institution registered the first patents of the Ukrainian State, which acted based on the old legislation of the Russian Empire.

Patent filing requirements

In order to file a patent application for an invention, the inventors had to write a specification according to the established

sample (the form was issued by the Ministry), pay stamp duty in the amount of 31-34 rubles (at that time quite an affordable amount even for a small craftsman), provide clearly defined two types of drawings of their invention on special paper, if applicable, and a template detailed description of the technology. The issuance of a registration certificate could take a couple of months, and during this time the owner of the invention used a certificate of protection, which allowed to advertise the invention, conduct its testing, public demonstration and even sale. The final verdict on the meeting of the patentability criteria by the invention was made by an Expert Committee, which included representatives of other ministries, because the inventions could relate to specific industries, such as the military.

The already granted patent gave the right to use and distribute and even alienate the property from those who illegally use the invention. The patent protected the rights for 15 years and, interestingly, forced its owner



to implement and improve exclusively on the territory of the former Russian Empire. This obviously demonstrated that Ukrainian government saw the Ukrainian State as a partial heir of the Empire and tried to bind inventions on its territory to Ukraine, increasing the potential of its economy.

Russian refugees

And it worked. 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 holders who had been issued by institutions of the Russian Empire. Curiously, the first registration certificate in the history of UPR went to the Russian city Rostov-on-Don. On June 27, 1918, a Ukrainian patent decorated with a filigree trident was received by Russian entrepreneurs Grunthal and Antoshevsky, who produced a special wooden sole that replaced the use of galoshes and wooden sandals.

Currently, the archives of the Ministry of Trade and Industry in Ukraine contain information on 16 issued patents. The last certificate has number 69, dated September 26, 1918. Therefore, it is clear that a significant part of the patent documentation has been lost.

Footwear, heating devices and babits

Mostly, the patents of the UPR concerned domestic needs - the manufacture of footwear from industrial waste, heating devices, and electric heating devices. But there are also examples of other industrial inventions - methods of manufacturing babits (special alloys that can withstand the friction of the railway), an oil-operated engine and even a hydraulic bicycle. Patent applications to the Department of Inventions were by several kinds of inventors, for example, engineers, merchants and even students.

However, the UPR did not resist, and its government was forced into exile as the Bolsheviks took Kyiv. But the UPR leadership dreamed of a new liberation campaign. On June 4, 1920, the head of the Department of Inventions Zenon Hornytskyi wrote memorandum to the Ministry. Wherein, he compares "patent cases in some countries" and criticizes the new Russian patent system. Zenon Gornitsky proposed to reformat his department into the whole "Department of Industrial Property Protection". In his opinion, this should "raise the prestige of the State in the eyes of the industrial world and give the Ukrainian patent the necessary shine and respect. (...) A matter that may not seem so important at first glance, in reality (...) may



once have an unusual impact on the fate of our young Republic". Ukraine, however, was destined to become part of the Union of Soviet Socialist Republics (USSR), which in turn became a member of the Paris Convention (PC) in 1965 and entered in the Patent Cooperation Treaty (PCT) in 1978.

Soviet rule

During Soviet rule, there was a patent system wherein patent applications were filed and submitted to a substantive examination until the decision of granting or refusal. This regular patent system was mainly applied to non-residents in the USSR, considering that the soviet government stimulated licensing of new technologies to boost the internal industrial structure.

According to data retrieved from PatBase, almost 39,000 patent families were filed and published in the USSR, with a peak of filings in the early 70ths and a declining filing tendency until USSR collapsed. The top five assignees were Bayer, Hoechst, Basf, Eli Lilly and Ciba Geigy. On the other hand, the USSR created a sui generis inventor's certificate system, which was used on large scale by Soviet Citizens. A patent was owned by the inventor or by the party to whom the inventor assigned it. But the inventor's certificate was

assigned to the State, for instance a state organization, wherein this embodiment of industrial property asset was also submitted to a substantive examination. The inventors were encouraged by several incentives such as monetary rewards, receiving better houses from the State or a title of "Distinguished Inventor", which was highly appreciated in the soviet society. Thus, about 790,000 inventor's certificates were filed in the USSR in a steady state from the latter 70s to the latter 80s.

After the USSR collapsed in 1991, the newly formed sovereign countries continued to be members of the PC and the PCT. The Eurasian Patent Convention, which established the Eurasian Patent Organization (EAPO), was signed on 1994 in Moscow by the Heads of the governments of former Soviet republics, including Ukraine. The EAPO aimed the formation of a strong unified regional Patent Office. Nevertheless, Ukraine has not ratified the Convention so far. After independence, the Ukrainian Intellectual Property Institute (Ukrpatent) has adopted a patent system similar to the European system. Though in a transition phase, Ukraine acknowledged the enforcement of former Soviet patents in its territory, to preserve the rights to Ukrainian inventions obtained in Moscow.



Birth of the Ukrainian IP Institute

The number of patent applications filed before the Ukrainian Patent Office (Ukrpatent) suffered several oscillations in the subsequent years, which are related to factors of a political-economic nature. The lowest record was registered in 1998-1999 due to a deep economic crisis that was common to all economies in the post-Soviet space. It is also notable that more than 90% of the patent applications claiming the Ukrainian priority were mainly filed only in Ukraine. The top 4 technological fields of this patent applications were Chemistry (27% of the patent families), Instruments (26%), Mechanical Engineering (24%), and Electrical Engineering (8%). The top 5 applicants are: National University of Food Technologies, National University of Life and Environmental Sciences of Ukraine, Bogomolets National Medical University, East Ukrainian Volodymyr Dahl National University, and Vinnytsia National Technical University.

Chance of recovery

Undoubtedly, Ukrainian inventors had something to strive for even before the sad events unleashed on February 24, 2022. And certainly, they are being seriously impacted by war damages at present. However, we dare to assume that if this state manages to

defend its geographic boundaries, it has every chance of a relatively quick recovery since the most valuable economic resource of Ukraine is, however strange it may sound, people. In 2018, Ukraine ranked first among in the "Science countries Technology" category in The Good Country Index ranking, surpassing even the United States. In turn, industry leaders such as Oracle, Ring, Siemens, Cisco, Samsung, and others had established their R&D facilities in Ukraine. The Ukrainian IT sector had the largest number of IT engineers in Central Europe (130,000 engineering graduates and 16,000 IT graduates annually).

Moreover, despite the current circumstances, Ukraine promotes international cooperation of Ukrainian higher education institutions focusing on working on joint scientific research and projects. Young Ukrainians show an impressive thirst for development and innovation despite high levels of domestic corruption, political and economic instability and even war. They reveal all the qualities that are so demanded in today's world to achieve success, including in the scientific and technological spheres. For our part, we will follow the events and keep our dear readers informed of the most interesting inventions of this no less interesting European nation.



Patenting life?

Marisol Cardoso

Worldwide



Patents can be defined as an exclusive government-granted right for an invention (a product or process), which allows its owner to exclude others from making, using, or selling the patented technology for a limited time.

Inventions can belong to any technological field and the patent document must disclose the invention in detail to enable a person skilled in the art to reproduce it without unreasonable experimentation.

Biotechnology integrates natural sciences and engineering sciences to achieve the application of living organisms, parts thereof and molecular analogues in products and processes. As regards the biotechnology field, patenting brings one question: is it allowable to patent life?

Legislation

The legal protection of biotechnological inventions in the European Union is ruled by Directive 98/44/EC, which aims to harmonise national patent laws and to specify which

inventions are patentable on ethical grounds (and which are not).

According to Rule 26 of the European Patent Convention (EPC), patenting is restricted to products consisting of or containing biological material and processes by means of which biological material is produced, processed, or used, provided that the product/process is new, inventive and can be applied industrially.

Rule 28 (2) EPC further excludes from patentability plants or animals exclusively obtained by means of an essentially biological process (crossbreeding and selection methods without any genetic manipulation), since they are considered mere discoveries.

Due to ethical and moral reasons, processes for cloning humans, using human embryos, or changing the germ line genetic identity of a human or animal are also not patentable (Rule 28 (1) EPC). As regards the human body,



Rule 29 EPC states that its various stages of formation and development, as well as its elements (such as native gene and protein sequences), cannot constitute patentable inventions. However, an element isolated or purified from the human body or otherwise produced by means of a technical process may constitute a patentable invention even if it previously occurred in nature.

Issues

Inventions in the biotechnological field are notable and mostly involve genetic material, the discovery and genetic modification of organisms, drug research, personalised medicine, and synthetic biology.

Thus, since inventions involving living matter do not constitute an obstacle to patenting, the most common issue associated with biotechnological inventions relates to the "patenting of life": the argument is based on the temporary legal monopoly provided by the patent, which would prevent people from benefiting from elements of the nature. The "patenting of life" also raises moral and ethical issues: the argument is based on the fact that life is inviolable and sacred and should not be the subject of property rights and be commercialised.

As regards drug research, the debate is focused on access to medicines and promising treatments. Granting patent exclusivity would cause drugs and treatments to be unaffordable for many people in the developing world, thus, hindering medical care and reducing social benefits.

However, patenting is the most valuable tool to develop biotech research and contribute to innovation.

Promoting innovation

Due to their detailed technical information, patents are considered a valuable source of specific knowledge and are a trigger for innovative ideas and solutions to known technical problems in all technical fields.

Especially in the biotechnological field, patents allow competitors to learn what other companies are doing and the knowledge provided by patent descriptions drives and pushes researchers to think more creatively and to be inspired to create their own inventions, therefore promoting innovation. [...]

Read full article here [+]



ARIPO and the regional patent examination training programme: what to expect

Marisol Cardoso



On September 2021, the African Regional Intellectual Property Organization (ARIPO), with the support of the European Patent Office (EPO), launched the ARIPO Regional Patent Examination Training (ARPET) programme. The programme is predicted to run for 18 months and aims to improve its participants' capability when conducting high-quality searches, as well as examining local patent applications, incorporating the EPO's best practices.

ARIPO's examining activity

ARIPO is one of Africa's regional offices and encompasses 19 member states (mostly English-speaking countries). Except for Swaziland, all the member countries can grant a national patent in addition to, or instead of, a regional patent.

In ARIPO, the substantive examination takes place after the application has met the formal requirements. If the application under consideration derives from an international

application, the international search report is considered and a supplementary ARIPO search is carried out before the issuance of the search report and the examination report.

If the technical field or the invention is too complex, challenging the examination capacity, ARIPO has agreements with other patent offices (such as the EPO), as well as the World Intellectual Property Organization, to enable them to conduct the examination.

The RPET programme

The Regional Patent Examination Training (RPET) programme is an intensive competency-based online training programme, which was developed based on IP Australia's patent examiner training framework, which adopts a blended learning approach. [...]

Read full article here [+]



Top of the props: patents and music

Marisol Cardoso

Worldwide



It is well known that patents are an exclusive granted for inventions, namely, products and processes which are new, inventive, and provided with industrial application. When it comes to music, original compositions are commonly protected by copyright or trademarks (the latter being only possible in the countries where the registration of sound marks is allowed).

Even though musical creations do not represent the kind of innovation that patent laws are designed to protect, the steps of creating, recording, listening or streaming and performing music is complex and can comprise patentable products and processes within it.

Creating music

Creating music is much тоге than songwriting, after all, there are many songs without words. To structure melody, harmony, and rhythm in a way to create new sounds, new musical instruments or new plug-ins can be developed, as well as

structures that allow the use of an existing instrument in a different way.

In this sense, Eddie Van Halen improved his fretboard tapping technique by creating a supporting device for stringed musical instruments which was patented in 1987. The support would place the instrument perpendicular to the player's body, allowing total freedom of the musician's hands to play the instrument in a completely new way.

		Van Halen		
[54]	MUSICAL	INSTRUMENT SUPPORT		
[76]	Inventor:	Edward L. Van Halen, 1900 Ave. of Stars #1780, Los Angeles, Calif. 90067		
[21]	Appl. No.:	760,598		
[22]	Filed:	Jul. 30, 1985		
[51] [52] [58]	U.S. Cl Field of Sea			
[56]		References Cited		
	U.S. I	PATENT DOCUMENTS		
	U.S. I 1,285,802 11/1 1,945,162 1/1 2,814,229 11/1	References Cited		

[45] Date of Patent: Apr. 14, 1987 Primary Examiner—S. J. Witkowski Issistant Examiner—David Warren

4,656,917

Ittorney, Agent, or Firm—Lerner, David, Littenberg, Crumholz & Mentlik ABSTRACT

[11] Patent Number:

[57] ABSTRACT

A supporting device for stringed musical instruments for example, guitars, banjos, mandolins and the like, is disclosed. The supporting device is constructed and rarranged for supporting the musical instrument on the player to permit total freedom of the player's hands to laply the instrument in a completely new ways, thus allowing the player to create new techniques and sounds previously unknown to any player. The device when in its operational position, has a plate which rest upon the player's leg leaving both hands free to explore the musical instrument is arranged perpendicular to the player's body, the player has maximum visibility of the instrument's entire playing surface.

22 Claims, 4 Drawing Figures





As regards percussion instruments, Marlon Brando patented an apparatus for adjusting the tension of a drumhead in 2004. It is important to note that the tuning of a drum is made by uniformly stretching the drumhead, being necessary that all screws that fix the drumhead to the drum body be screwed with the same force. Thus, the problem of the state of the art related to the need for a simple and inexpensive drum tuning device which is also accurate, reliable, and not subject to inadvertent adjustments was solved.

Recording music

Music recording is one of the most expensive and technological steps of music making. A good sound production studio contains not only technical equipment (such as mixing consoles and microphones) but also digital audio workstation software for combining voice and inputs from electronic musical instruments and devices for producing music. In most countries, software and computer programs are considered a non-patentable matter, therefore not being protectable through patents. However, software-related inventions, such as computer systems and computer-implemented methods, can be protected if the patentability requirements are met. Brian Eno, an influential British musician and producer, best known for his pioneering work in ambient music (as well as his work with some of the biggest names in rock), joined his longtime friend Danny Hillis, a computer scientist and founder of Applied Minds, to develop a method and system for masking speech.

LucasFilm, founded by visionary filmmaker George Lucas in 1971, is the owner of several patents in the area of film-making and music making, for example, a system and method for music and effects sound mix creation. Technology has made the recording step much easier, and one can easily record music in a home studio, provided that it comprises all the necessary equipment and computer programs to do so.

It is also worth mentioning the use of technology to modify musical data, for example, to produce more harmonious musical accompaniment or to manipulate vocal performance, as well as computer-implemented inventions comprising artificial intelligence that allow the determination of plagiarism in music.

Listening and streaming music

Music is part of our everyday life, and it has the capability of changing our mood and helping us to manage emotions. The different ways to listen to music have



radically changed over the years and technology is a key factor in this sense. Thomas Edison was the first person to create a device to record and play music—the phonograph—which was patented in 1878. The sound quality was bad, and each recording lasted for one only play. Almost 10 years later, Emile Berliner created the first vinyl record player - the Gramophone—which had to be manually operated.

Over the time, vinyl records went through a series of material alterations (Berliner's records were originally made of glass) and formatting changes, and so did the vinyl players.

The magnetic tape for recording sounds was invented by Fritz Pfleumer in 1928, however, the compact cassettes (with the two-spool cartridge) were only developed in the early 60s by Philips Electronics (whose patent was licensed for free to ensure commercial hegemony).

In 1979, Sony introduced the first mass device mobile to the market—the Walkman—making music portable. The portability made cassettes the format of choice, and cassette sales surpassed vinyl sales in middle 80s.

United States Patent [19] Ikevama et al.

[54] COMBINED TAPE PLAYER AND RADIO TUNER

[75] Inventors: Etsuro Ikeyama; Masayoshi Tsuchiya, both of Tokyo, Japan [73] Assignee: Sony Corporation, Tokyo, Japan

[**] Term: 14 Years [21] Appl. No.: 397,311

[22] Filed: Aug. 23, 1989

Foreign Application Priority Data [30]

References Cited U.S. PATENT DOCUMENTS

D14/167-168, 188, 192, 196; 455/344, 350, 351

[11] Patent Number: Des. 320,208

[45] Date of Patent: ** Sep. 24, 1991

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Design 470; Feb. 1988; p. 33; top left-Sony Solar-Ski Magazine; 11/88; p. 62; Top right—Sony Walkman. International Design; Sep./Oct. 1985; p. 63; left center—Sony Sports Walkman.

Primary Examiner—Theodore M. Shooman Attorney, Agent, or Firm—Lewis H. Eslinger; Jay H. Maioli

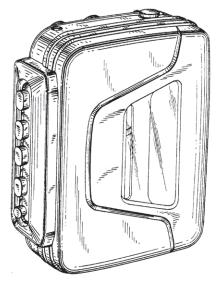
CLAIM

The ornamental design for a combined tape player and

DESCRIPTION

FIG. 1 is a top, front and left-side perspective view of a combined tape player and radio tuner showing our new

design;
FIG. 2 is a front elevational view thereof;
FIG. 3 is a rear elevational view thereof;
FIG. 4 is a left-side elevational view thereof;
FIG. 5 is a right-side elevational view thereof;
FIG. 6 is a top plan view thereof; and
FIG. 7 is a bottom plan view thereof.



Co-developed by Philips and Sony, compact disks (CDs) only reached the market in 1982. However, the digital reproduction technology behind the CDs was patented almost a decade earlier by James Russell.The same happened with MP3 players: the devices reached the market in late 1990s, while Kane Kramer patented the first digital audio player in 1979. An innovation developed by singer and songwriter Neil Young relates to a multiple-resolution audio and video system that executes a music file in studio-quality



resolution, high-resolution, best resolution, acceptable resolution, selected resolution and / or high definition in a device. The portable music player was commercialised by the name PonoPlayer and sold until 2017, when Neil Young announced the end of the due to the overcharge brand high-resolution formats imposed by record companies. Today, streaming music, ie, feeding audio content to an audio device without the need of downloading files from the internet, is the easiest and most common way to listen to music. Music streaming services, such as Spotify, uses machine learning to provide its users with a personalised experience, for example, by creating playlists based on what they think the listener would enjoy based on their previous listening history and to recommend or suggest media content in response to input searches for songs of a particular nature.

Performing music

The music performance combines songs, dance and sometimes acting and is intended not only to entertain the public, but also to drive the emotions of the audience. Michael Jackson defied gravity in his live performances by leaning forward by 45 degrees. Such movement was only possible due to special shoes that create an

anti-gravity illusion created by the pop singer himself. During the concert, a triangular slot in the heel of his shoes would detachably engage to a hitch member that emerged from the stage floor at the right time. In order to improve the quality of the audio during the movements in her performance, singer Paula Abdul invented a microphone support apparatus having a concave-shaped bottom base. The dynamic apparatus would allow the singer to move the microphone support by shifting her weight in a particular direction. Rapper Kanye West has filed a patent application to protect an immersive audio / video experience, which comprised several viewing screens located on the front, on the sides, on above and on below or slightly forward of the viewer. The images are visually coordinated, and the viewer would experience viewing the images, such as a music video or sporting events, as if he or she were actually "in" the scene.

Even though music creations are not protectable by patents, innovative music technologies are changing the way people create, listen, and feel music. Advances in technology are not limited to the design and construction of musical instruments: it affects all steps of the music making and allow people to be a part of the whole process.



Nigeria: The role of patents in promoting innovation

Queen Ajura Ugbeda



The greater heritage of a nation remains in the creativity of its citizens. Since the beginning of the 20th Century, the world has continued to experience astronomical advancement in scientific and technological innovations, which has changed the phase of modern society, leading many thinkers to term this present civilization "the jet age".

This technological advancement has had an enormous impact on the world's legal systems. It has disrupted traditional modes of IP protection, which have been forced to change to keep abreast with the ever-changing forms of innovation.

To help promote creativity and innovations with the recent technological evolution that the world has experienced, as the life of every average citizen now revolves around one or more of these technologies, such as computers; including palmtops, hi-tech phones, cable receivers and the perpetually growing internet. Several laws exist to protect and administer different kinds of IP.

The three main statutes governing IP law in Nigeria are the Copyright Act, Patents and Designs Act, and the Trademarks Act.

This article examines the role of patents in promoting innovation and creativity in Nigeria.

Patents

A patent is a grant by a country to an inventor of a monopoly right, to preclude another person from exploiting his invention without his consent for a fixed period (usually 20 years). The monopoly is granted in return for the investor making his invention publicly known. Application for the grant of a patent in Nigeria is made to the Registrar of Patents and Designs; The Patent Registry.

F.O.Babafemi, in his book "Intellectual Property; The Law and practice of Copyrights, Trade Marks, Patents and Industrial Designs in Nigeria" (2006), explained that; a grant made by the relevant government authorities within a country to protect new inventions or



improvements thereon are considered to have improved the way(s) the earlier inventions were made or used. The Patent and Designs Act CAP P2, Laws of the Federation of Nigeria 2004, is the principal legislation that governs the registration and proprietorship of patents and designs in Nigeria and other matters ancillary thereto. The court that has jurisdiction to hear any patent-related matter is the Federal High Court.

Essentials of patentable inventions

The Patent and Designs Act makes a provision for the requirements of a patentable invention. Section 1(1) of the act provides.

- 1. If 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.

It is important to mention that a patent cannot be validly 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 and their products); or Inventions the publication or exploitation of which would be contrary to public order or morality

Role of patents in promoting innovation and creativity

Patents and other forms of IP protection play an important role in encouraging innovation and creativity. The purpose of patenting is essentially economic. To encourage innovation and creativity, it is important for a creator to register their invention to have the exclusive legal right to their invention, so as to have a monopoly right to exploit the invention for a limited period of time. Registration of a patent gives the patent holder the right to exclude other persons from using the registered invention.

A patent confers upon the patentee the right to preclude any other person from doing the following acts; Section 6 (1) of the patent and Designs Act makes provision for the following:

 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 [...]

Read full article here [+]



War: The Patent Turbulence Zone

Vítor Sérgio Moreira & Anna Shcherbyna



Pätent Lawyer

A fierce battle broke out in the IP field because of the war in Ukraine. The Russian Government issued Decree No. 299, dated March 6th, 2022, which allows national companies or individuals to use inventions, utility models and industrial designs, belonging to "unfriendly countries" of Russia, without owner permission or compensation. Its aftermath may result in deep uncertainty regarding the enforcement of IP rights in Russia. Patent applicants should strongly consider their strategies concerning the protection of their inventions in Russia, since if they do apply, their rights may be subject to an expropriation.

If they do not apply, they may lose their exclusive rights to their inventions in the Russian market. Considering that patents involve precious technological information and are valuable intangible assets, this article focuses on the role of patents in war times and particularly on how these have been used as war and economic weapons from World War I (WWI) to the present.

Historical parallels

WWI began after Paris Convention (PC) was adopted in 1883. The PC was the first major step taken to help inventors to ensure that their patent applications were protected in other countries and was based on several principles that remain until today. One of these principles is the right of priority, which allows applicants to claim the original patent filing date within 12 months in other Contracting States, assuring that the novelty requirement is evaluated considering the priority date. WWI caused a decrease in the filing of patent applications in several belligerent countries. Considering technological means of communication available, the patent agents had difficulties in communicating with colleagues from other countries, resulting in delays in prosecution of patent applications. During WWI, the priority right was extended, allowing the applicants more time to make their decisions.

During WWI, sanctions regarding seizing



DEUTSCHES REICH



AUSGEGEBEN AM 22. FEBRUAR 1930

REICHSPATENTAMT

PATENTSCHRIFT

№ 492282

KLASSE 33c · GRUPPE 11

L 72056 X|33c Tag der Bekanntmachung über die Erteilung des Patents: 6. Februar 1930

1. Before the Second World War

DEUTSCHES

BUNDESREPUBLIK DEUTSCHLAND

PATENTAMT

Kl. 21 h 29/01 INTERNAT. KL. H 05 b

AUSLEGESCHRIFT 1148671

P 28213 VIII d/21h

BEKANNTMACHUNG DER ANMELDUNG UND AUSGABE DER

ANMELDETAG: 11. NOVEMBER 1961

AUSLEGESCHRIFT: 16. MAI 1963

3. After the Second World War

patents from enemy (or hostile) countries were adopted by the belligerent countries. For example, the USA seized over 4,000 enemy patents, and, although German and the Austro-Hungarian Empire formally raised similar sanctions, a smaller number of enemy patents were seized for these countries. Amongst the patents seized by the USA, there were the Bayer's patents in the USA, which were confiscated by the Americans in 1917. These sanctions against the German company Bayer were motivated by its production of war materials, including explosives and chemical weapons. Moreover,

Erieilf auf Grund der Verordnung vom 12. Mai 1943

DEUTSCHES REICH

AUSGEGEBEN AM. 7. DEZEMBER 1944



REICHSPATENTAMT
PATENTSCHRIFT

N£ **74**9 **380** KLASSE **72 g GRUPPE** 9

2. During the Second World War

DEUTSCHES REICH



AUSGEGEBEN AM 22. DEZEMBER 1942

REICHSPATENTAMT
PATENTSCHRIFT

№ 729606 KLASSE **57** b GRUPPE 1705 K 157568 IVa|57b

4. After the Second World War the swastika printed on the German patent applications was removed from many patent files

Bayer's Russian subsidiary was expropriated as a result of the Russian Revolution.

World War II (WWII) triggered similar sanctions. The USA, for instance, issued the Alien Property Custodian (APC), which demanded the US Patent Office seize almost 3,000 pending patents from nationals of the enemy and enemy- occupied countries, to provide technologies developed by the enemies to the American Industry. The expropriation of patents of the German pharmaceutical laboratories of the I.G. Farbenkonzern, a subsidiary of the Farbwerke



Hoechst, is an example of practical sanctions prompted by the US government after WWII ended. The I.G. Farbenkonzern had been developing several opioid analgesic drugs before and during WWII, and several pharmacological tests had been carried out during WWII, but in the aftermath of the German defeat, the patents of the I.G. Farbenkonzern were requisitioned and expropriated by the allied forces. Methadone was a drug comprised in the scope of protection of said seized patents, and several pharmaceutical companies were able to for purchase the rights commercial production of methadone for just one dollar after approval of the commercialization of methadone in 1947.

The patent's technological information is a strategic asset during war times. It is worth recalling the efforts of the German Patent Office (GPO), in the later years of WWII, to keep safe its patent database.

About 320,000 paper files of patent applications were evacuated to Heringen, a small town located about 170 km northeast from Frankfurt am Main, by the Germans, to avoid scientific information from being captured by enemy forces. The patent files were carefully stored 600 meters

underground in a potash mine but were discovered by American troops after German capitulation.

Subsequently, the swastika printed on the German patent applications was removed from at least 120,000 public patent files, as shown in the central image of figure 2, wherein it is also possible to see the GPO's logo before the Nazi regime (left image) and the West German Patent Office's logo (right image), established in 1948.

War in Ukraine VS Patent System

The modern Patent Offices process most patent applications by digital means. Certainly, their main concerns in the current war situation are related to safeguarding the digital files with proper backups and protecting their computer systems from cyber-attacks, particularly taking special protection actions for unpublished patent applications.

Bearing in mind the set of sanctions imposed on Russia, it would be no surprise if the Western Patent Offices blocked access to IPs (internet protocols) addresses located in Russia. Moreover, it is expectable that defensive measures, such as reinforcement of firewalls, will be provided.



Returning the discussion to the impacts of the Decree No. 299, let's evaluate the patenting activity of the main West economic powers before the ROSPATENT and before the Eurasian Patent Office (EAPO), which has the Russian Federation as its main member, disclaiming that the most recent patent applications are yet unpublished.

195,878 patent families were published from 2001 to 2019 having an earliest priority country origin in the following jurisdictions: European Patent Office (EPO), USA, United Kingdom, France, or Germany, wherein said patent applications were filed before ROSPAT or EAPO may be originated from "unfriendly countries, according to Decree N° 299.

The top five assignees are: Ford Global Technologies (an American automobile manufacturer), Basf (a German chemical company), Qualcomm (an American corporation), Bayer (a German pharmaceutical and life sciences company), and Safran (a French aircraft engine).

On the other hand, in the same period, only 10,570 patent families having an earliest priority country with origin in Russia or the EAPO were published by the EPO and/or by the National Patent Offices from said

"unfriendly countries", which is almost 19 times smaller than the number cited in the previous paragraph. The top five assignees are: Samsung Electronics (a South Korean electronics corporation), Yandex Europe (a Russian online search portal and other IT services), Schlumber Technology (an American oilfield services company), AO Kaspersky (a Russian provider of systems protecting computers against digital threats), and Ajinomoto Co. (a Japanese food and biotechnology corporation).

Summarily, the war disputed in the theatre of IP rights may have several developments. In the short term, the huge portfolio of patents held by "unfriendly countries" would be used by Russian economic agents, which would not have to pay any royalties to the original owners according to Decree No. 299.

On the contrary, if said "unfriendly countries" decide to retaliate with similar sanctions, this would probably result in a significantly lower impact on Russia. The reason for this is based on the relatively lower number of pending patent applications or active granted patents, originating from Russian and filed in Western countries. Besides, a significant fraction of patents originating from Russia is owned by subsidiaries of Western, South-Korean, or



Japanese multinationals, based in Russia, so, retaliations against this set of patents would not make sense.

Conclusion

The pillars of the Patent System, namely the national treatment and the acknowledgement of the patents as inviolable private properties are often struck down during war times. Patents are used more as tactical weapons to weaken the enemy's economy.

The Decree No. 299, issued by the Russian Federation, enables the expropriation of new technologies by the Russian economic agents and may boost technological advances in the consolidated industries of Russia, such as oil and gas industries.

It is also possible that Russian authorities use this broad spectrum of expropriated technologies to improve some crucial technical fields, which are still undeveloped in the country. However, the economic sanctions raised by the Western powers promote continuous isolation of Russia's economy.

Sanctions will limit Russia's capacity for production and reduce foreign investments. The potential for investments by national economic agents may also be insufficient for

the necessary research to overcome the lack of know-how, occasionally absent in patent specifications. Nevertheless, even if Russia manages to develop new technologies based on patents originating from "unfriendly countries", the loss of Russia's reputation in the international community and the limited markets for exporting or importing, may result in a long-time frame for Russia to recover investments in new technologies or even make these policies sustainable.

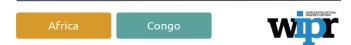
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Democratic Republic of Congo: three types of Patents

Diogo Antunes



In many countries, a patent can only be registered if it is new, has an inventive step, and is industrially applicable. In addition to meeting these substantial requirements, you also must meet other formal requirements, including legal deadlines. It turns out that in many jurisdictions there are types of patents with substantial lighter requirements, namely utility models.

However, the Democratic Republic of the Congo (DR Congo) chooses to specify three other types of patents: "Art.5. There shall be three types of patents: invention patents, import patents, and improvement patents." (Article 5, Law No. 82-001 of January 7, 1982, on Industrial Property).

The rules on invention patents are the traditional ones, present in most countries. Any invention which, arising from inventive activity, is capable of being exploited as the subject matter of industry or trade, shall be patentable.

Regarding the others, the following is stipulated:

- Import patents: shall cover inventions for which, on the date of filing or of priority of the related application, the holder had already obtained an invention patent in a foreign country.
- Improvement patents: shall be those which concern any improvement of an already patented invention.

Protection for these two types of inventions shall come to an end at the same time as the primary patent to which they are attached.

The law does not refer in detail to the examination conditions for these inventions other than these two definitions.

However, we must still delimit what can or cannot be registered as a patent in DR Congo:

- theoretical or purely scientific principles and conceptions;
- 2. creations of a purely ornamental nature;



- financial or accounting methods, game rules, and all other systems of an abstract nature, in particular programs or series of instructions for the sequence of operations of a calculating machine; and
- inventions whose publication or exploitation would be contrary to public order, State security, or morality.

Although there is no protection for this non-patentable matter, discoveries may be the subject of a title called an "incentive certificate".

The law further adds that: "Incentive certificates shall be issued to the author or holder of the discovery and shall give him the right to a reward, in accordance with the conditions and arrangements to be determined by enabling measures. Nevertheless, incentive certificates shall only be granted for useful discoveries."

The DR Congo law assigns applicants several ways to protect their inventions. The rules are quite applicant-friendly and create a broad dome of protection for inventions and discoveries. In this sense, despite the lack of deadlines to file a patent in DR Congo, there are legal mechanisms to fill in this gap.





Filing a priority document in Portugal

Vítor Sérgio Moreira



The Portuguese Patent Law (CPI) may provide interesting ways for an applicant to file a priority document in Portugal and when filing subsequent patent applications abroad.

The CPI provides users of the patent system with two embodiments of patent applications, namely a provisional patent application (PPA) and a non-provisional patent application (PA).

This article aims to present the advantages to the user to begin a patent family in Portugal, including some careful considerations, especially when the applicant chooses to take the PPA route.

Advantages of filing a PA

A PA must be filed in Portuguese and must meet the formal requirements of a standard patent application, wherein the filing official fee is €109.07 (\$110.46). According to number 1 of article 68 of the CPI, the Portuguese Patent Office (INPI) drafts a search report and a written opinion about the

patentability within 10 months after filing the PA, wherein this non-binding report may be useful for the applicant concerning the decision about filing correspondent patent applications abroad. Another advantage of this embodiment is referred to the fact that any objections regarding lack of clarity, novelty, or inventive step, for example, may be fixed before filing patent applications abroad.

Advantages of filing a PPA

A PPA may be very useful for applicants who want to ensure a priority date for their inventions as soon as possible.

A PPA may be filed before the INPI in Portuguese or English. Therefore, for the applicants that want to file correspondent patents abroad claiming as a priority the PPA, it is possible to save money on translations from Portuguese into English. [...]

Read full article here [+]



ARIPO: Adding member states

Diogo Antunes

Africa ARIPO

ARIPO is a regional intellectual property organization that is regulated by several protocols. With regard to patent applications, it is regulated by the Harare protocol whose member states are: Botswana, Kingdom of Eswatini, The Gambia, Ghana, Kenya, Kingdom of Lesotho, Liberia, Malawi, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Sierra Leone, Sudan, Tanzania, Uganda, Zambia, and Zimbabwe.

Filing requests for protection

ARIPO requires in the application form to specify which member states the applicant seeks protection. Unlike OAPI, the cost will increase depending on the number of member states selected. However, it is common for applicants to obtain more funding to designate more member states after they file the application. To alleviate this pressure, the protocol establishes rules to require the addition of more member states. The Harare Protocol states the following: The applicant may, for ARIPO applications, add to the number of designated States at any time

before publication of the application in accordance with Rule 19bis, by submitting a written request to the Office. This provision shall not apply to applications filed according to Section 3bis. The request referred to in sub-paragraph (3)(a) above shall be deemed to have been filed when the request fee, designation fee of the added designated State(s) as well as any outstanding maintenance fee in respect of added designated States has been lodged. Late designations may be made at any time before publication of the application in accordance with Rule 19bis. However, it is important to note that in the case of PCT regional phase applications, it is not possible to late designate states. This is a difference when compared to direct patent applications, not filed through PCT where it is possible to late designate member--states. For all non-pct applications a mandatory 18-month publication period is applicable. Since it is not possible to know with complete certainty the date of publication of an application when it is requested, the applicant should apply for the addition of states as soon as possible within the indicated 18



The inner workings of ARIPO

Vítor Sérgio Moreira



The African Regional Intellectual Property Organization (ARIPO) is an intergovernmental organisation for cooperation in Intellectual Property matters, founded in 1976 with the Lusaka Agreement. Its main objective is the development and protection of IP rights in its 20 member states. ARIPO has four working protocols, one of which is the Harare Protocol, which regulates patent and industrial design applications.

ARIPO patent applications are formally and substantively reviewed by ARIPO examiners and are granted and effective in the designated member states with the legal enforceability of the respective national law.

ARIPO maintains a searchable database in internet comprising information regarding bibliographic data of patent applications, besides their legal status. ARIPO also publishes detailed guidelines for examination. On the other hand, the office actions issued by ARIPO are not available online, resulting in lack of an easily accessible information

regarding specificities of the substantive examination carried out by ARIPO. This study aims to evaluate a sample of search reports and substantive examination reports issued by ARIPO, which are referred to patent applications, wherein we are the respective applicant's legal representative, in order to gather some impressions about the approaches followed by ARIPO during the substantive examination phase.

Basic substantive examination prosecution in ARIPO

The applicant may request examination of the patent application and pay the examination fee up to three years from the date of its filing, according to Rule 18 (1) comprised in the regulations for implementing the Harare Protocol. The grant of an ARIPO patent may be requested for one or more of the member states. [...]

Read full article here [+]



IP RELATED

- 55 IP as Russia's new economic weapon against the US and their allies
- 56 Invalidity of a design due to copyright infringement and the interception of these IP rights in the EU-China context
- 57 Nigeria: Copyright and the protection of creatives
- 62 Is IP Education sufficient for African young inventors?
- 65 4D printing: how to protect space-age tech
- 68 Design Systems in China and the EU
- 70 Cape Verde: a taste of things to come
- 71 Counterfeits: breaking young people's consumer habits
- 74 WTO Geneva Package: a breakthrough for Africa?
- 76 South Africa: Where is the trade secrets rulebook?
- 78 Trade dress and 3D marks in the EU
- 81 Bangui Agreement: a summary of the essential changes

INSIGHTS

- I. How the African Continental Free Trade Area could revolutionise IP in Africa
- II. BIG drama featuring two Portuguese banks
- III. Africa: Non-conventional trademarks at OAPI
- IV. Cape Verde steps up its pace in IP protection
- V. Leaders League Expert Insights: Vítor Palmela Fidalgo
- VI. Trends & developments in the enforcement of intellectual property rights in Africa
- VII. Insulating Indigenous Innovation

TRADEMARKS

PATENTS







INSIGHTS

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nal **Willia**n

Insulating Indigenous Innovation

Vera Albino shares some comments on how indigenous innovation is being supported and the role of IP in supporting innovation in developing countries. [Read]



Vítor Palmela Fidalgo



Vera Albino



Inês Sequeira



Diana Pereira



João Francisco Sá



IP as Russia's new economic weapon against the US and their allies

Daniel Reis Nobre



Sanctions. The word we hear the most these days. The target is only one: Russia. Due to the unjustified invasion of Ukraine and all the devastation caused to the country and its people.

United States, Canada, the 27 European Union member states, the UK, Montenegro, Switzerland, Albania, Andorra, Iceland, Liechtenstein, Monaco, Norway, San Marino, North Macedonia, and also Japan, South Korea, Australia, Micronesia, New Zealand, Singapore, and Taiwan – what do all of these countries have in common?

The Russian Federation has identified all of them in a list of "unfriendly countries" to add to Ukraine – basically the USA and all their international allies who joined in on the sanctions against Putin's latest actions – and started to implement measures to hurt them back. Among all these measures, intellectual property owners from the so-called "unfriendly countries" are already facing the

effects of war, despite being out of the battlefield. Some news reported Russia was even legalizing "intellectual property piracy" or "patent theft". While it doesn't go that far, it will actually have an impact on IP assets owned by those from the "unfriendly countries" list.

The first payback measure announced by the Kremlin states that intellectual property owners from the "unfriendly countries" will not be compensated for the unauthorized use of their patents, utility models and industrial designs. Compulsory licenses of IP rights are common in times like these, essentially to ensure the necessary supply of certain goods that may be protected by patents or other IP rights. But these usually come with reasonable compensation to the IP rights holders from the state enacting them and using such innovation without prior consent from their owners. [...]

Read full article here [+]



Invalidity of a design due to copyright infringement and the interception of these Intellectual Property rights in the EU-China context

Júlia Alves Coutinho



There is a grey area of protection for works of applied art, either by copyright or by design, both intellectual property rights which have different criteria of protection.

One of the main differences is that with a work does Copyright, not require registration to be protected, whereas the design must be registered to ensure its Copyright protection. protects the intellectual work (artistic or literary), which is the fruit of creative work originating from the human intellect and externalised to the world. Design protection encompasses the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, pattern, texture and/or materials of the product itself and/or its ornamentation.

Despite novelty and individual character being requirements for the protection of design, both in European Union and Chinese legislations, the IP Offices of these jurisdictions do not analyse these requirements to grant the protection, which will only be analysed in case of invalidity proceedings after granting the designs.

Due to the overlapping of these IP rights which a particular work or product may receive, a work may even be a ground of invalidity of a Community design, which has been registered infringing this copyrighted work.

Invalidity of a design based on copyright infringement

The Article 25 (1)(f) of Community Design Regulation (EC) No 6/2002 regulates this matter and the application for a declaration of invalidity of a Community design must fulfil [some] requirements. [...]

Read full article here [+]



Nigeria: Copyright and the protection of creatives

Adeoluwa Ademola



This article serves the purpose of educating creatives on the importance of copyright laws in Nigeria. It also provides insight into the major aspects of copyrights, its protection, and their implication on creatives. It is worthy of note that the principal law that governs copyrights in Nigeria is the Copyright Act LFN 2004, and the government agency that is responsible for the regulation and administration of copyright in Nigeria is the Nigerian Copyright Commission (NCC).

The Copyright Act (the Act) makes provision for the protection, transfer, infringement, and remedies for the infringement of copyrights in Nigeria. It is important to note that not all creative works are eligible for copyright. Section 1(1) of the Copyright Act LFN 2004 states that the following listed works qualify for copyright:

- Literary works;
- Musical works;
- Artistic works;
- Cinematograph films;
- Sound recordings.

Section 1(2) of the Copyright Act provides that a literary, musical, or artistic work shall not be eligible to be copyrighted except the following occurs:

- Sufficient effort was expended in making the work to give it its original character;
- The work has been fixed in a definite medium of expression that is now known or to be developed later from which it can be perceived either directly or with the aid of any machine.

The above conditions must be fulfilled before a creative work can be deemed a copyright under the Nigerian law. Let us consider the elements for copyright above.

Originality: To be original, a work must not be derived from another and must have been created independently. It should not be an adaptation or a reproduction of another person's work. It also suffices to mention that such work must be a product of creative expression that falls under a category of copyrightable subject matter;



Fixed: In this instance, a work must be fixed in a tangible medium of expression. An eligible work is deemed copyrighted the moment the work is fixed. A work is considered to be fixed so long as it is sufficiently permanent or stable to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. In other words, an idea cannot form a copyright because it is a collection of thoughts and is not fixed in a medium of expression.

Duration of copyright

It is important to note that copyright does not vest in the author forever.

The First Schedule to Copyright Act LFN 2004 provides for the duration of copyright protection in a work:

- For literary, musical, and artistic work other than photographs; the Copyright Act stipulates seventy years after the end of the year in which the author dies and in the case of a government or a body corporate, seventy years, after the end of the year in which the work was first published.
- For Cinematograph films and photograph;
 the Copyright Act stipulates fifty years
 after the end of the year in which the work
 was first published. For sound recordings,

- the Copyright Act stipulates fifty years after the end of the year in which the recording was first published.
- For broadcasts, the Copyright Act stipulates fifty years after the end of the year in which the broadcast first took place.

"

[for authors whose copyrights have been infringed upon] they may write a letter of demand that, the person infringing their copyrights stop the infringement, deliver all original and copies of the infringed work to them and pay compensation for use of their work.

Registration of a copyright

A voluntary copyright registration scheme has been established by The Nigerian Copyright Commission (NCC), to enable authors and right owners to notify the commission of the creation and existence of a work. A person is required to submit an application personally or through an agent for registration to any office of the NCC nationwide.

A complete registration form, copies of the work, and evidence of payment of the prescribed fee must be submitted to the commission.







Copyright infringement

Investopedia defines Copyright infringement as the use or production of copyright-protected material without the permission of the copyright holder. It further defines copyright infringement as the rights afforded to the copyright holder, such as the exclusive use of a work for a set period of time, are being breached by a third party.

Section 15 of the Copyright Act provides for the infringement of Copyright in Nigeria. Copyright is infringed by any person who, without the licence or authorisation of the owner of the Copyright does the following acts:

- Does or causes any other person to do an act, the doing of which is controlled by copyright.
- Import or causes to be imported into Nigeria any copy of a work which it had been made in Nigeria would be an infringing copy.
- Exhibit in public any article in respect of which copyright is infringed.
- Distributes by way of trade, offers for sale, hires, or otherwise for the purpose prejudicial to the owner of the copyright any article in respect of which copyright is infringed.
- Makes or has in his possession plates,

- master tapes, machines, equipment, or contrivances used for making infringed copies of the work.
- Permits a place of public entertainment or business to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in work, unless the person permitting the place to be used not aware, and had no reasonable ground for suspecting the performance would be an infringement of the copyright.
- Performs or causes to be performed for trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

Institution of copyright infringement

An action on infringement may be brought by the owner of the copyright, an assignee or an exclusive licensee to the Federal High Court exercising jurisdiction where the infringement occurred. Such reliefs by way of injunction or damages shall be available to the plaintiff.

Also, an action relating to the infringement of copyright may be civil or criminal. A civil action may arise between two parties. On the other hand, the NCC may institute criminal action against the infringer. Notably, a civil and criminal action may run simultaneously on the



same fact of infringement, and the criminal action may subsist even if the parties had settled the civil claim.

Remedies of infringement

There are remedies available to authors of copyright works whose copyrights have been infringed upon. For example, they may write a letter of demand that, the person infringing their copyrights stop the infringement, deliver all original and copies of the infringed work to them and pay compensation for use of their work.

In the event that the infringing party does not respond to such demand, the copyright owner can commence an action at the Federal High Court, seeking to claim damages for the infringement and an injunction preventing the infringer from further perpetrating such act.

Furthermore, there are criminal liabilities for any persons that infringe on another's copyright.

Specifically, Section 20 of the Copyright Act provides that a person who makes or causes to be made for sale, hire, or for the purpose of trade or business any infringing copy of a work in which copyright subsist or imports or

causes to be imported into Nigeria a copy of any work which if had been made in Nigeria would be an infringing copy or make or causes to be made, or has in his possession any plate, master tape, machine, equipment or contrivance for the purpose of making any infringing copy of any such is criminally liable. The punishment upon conviction is five years of imprisonment or a fine or both.

Conclusion

Copyright is an important aspect of intellectual property that should be taken seriously by every creative in this era, as it plays a crucial role in protecting the value and interests of creatives and provides opportunity for creatives to fully exploit the works created by them.

It provides an avenue for the balance of a creative's desire for financial rewards and a user's access to the creative work for societal benefits.



Is IP Education sufficient for African young inventors?

Vera Albino

Africa

The African economy is losing billions of dollars for not protecting their intellectual property (IP), says Prof. Munashe Furusa, Vice-Chancellor of Africa University, in Zimbabwe. And young inventors are among the most concerned.

The number of inventors from all over the continent that struggle to develop, manufacture, protect and commercialize their inventions, is considerable. Inevitably, it results in an important loss of earnings to the inventors and to the economies.

In a globalized world in which Africa aspires to be a major player after the entry into force of the African Continental Free Trade Area, on 1 January 2021, this reality is a major problem that deserves special attention.

African intellectuals and decision-makers, conscious of it, have implemented projects, with the support of the World Intellectual Property Organization (WIPO), to try to

reverse the trend and initiate a change in the continent. One of them is improving IP education and sharing knowledge.

So, some African universities started to propose IP Education programs to their students. For instance, since 2008, Africa University, in Zimbabwe, proposes a master's program in IP, in partnership with WIPO, the African Regional Intellectual Property Organization (ARIPO), and with financial support from Japan. Similarly, the University of Yaoundé II, with WIPO, and the African Intellectual Property Organization (OAPI), offers a similar program for French-speaking African students.

Further, in South Africa, following an initiative of WIPO, the National Intellectual Property Management Office (NIPMO), with the University of KwaZulu-Natal and the Companies and Intellectual Property Commission (CIPC), hosted recently a free summer school on intellectual property,



targeted for students, innovators, researchers, and professionals, including government officials.

Additionally, workshops and forums for young African innovators, creators, and entrepreneurs, are regularly organized across the continent, the most recent being the fourth African Science, Technology and Innovation Forum, held from 1 to 2 March 2022 in Kigali, Rwanda, co-organized with UNESCO, the African Union Commission and the Department of Science and Innovation of South Africa.

These IP education projects are reinforced by incentives for creativity and inventiveness, through the creation and/or participation in competitions. At the regional level, we can mention the Innovation Prize for Africa, the Africa Prize for Engineering Innovation, the Africa Young Innovators for Health Award, and the Kofi Annan Award for Innovation in Africa, among others.

The African inventors are also present in international competitions, as, for example, in the WIPO "How does AI work?" competition where an IP team from the Centre for Intellectual Property and Information Technology Law (CIPIT) in Kenya, was selected as one of the winners.

Foundations were also created to support similar initiatives such as the African Science, Technology and Innovation Endowment Fund, launched by the United Nations Economic Commission for Africa (UNECA).

The role of the African universities is also paramount and is not limited to providing IP Education. They can implement projects promoting innovation and IP protection.

Despite all these efforts, and without devaluating all the benefits they bring, which are unquestionable, the results achieved are below the expectations. Indeed, as Mrs. Gwen Mwaba, director at African Export-Import Bank (Afreximbank), observed in November 2021: "Africa has an abundance of ideas, but often does not convert them into viable and profitable businesses, resulting in lost IP". Thus, the problem remains.

In fact, the achievements obtained to date reveal the extent and importance of this issue. Educating in IP is a primordial step toward an innovative and prosperous economy. But it is far from being sufficient.

The role of governments is essential. The IP legislation in many African countries is



unchanged for many years, it has serious loopholes, and it is inadequate to protect the IP efficiently. So, African governments must adopt legislation capable of responding to the new challenges that resulted from the industrial and technological revolutions.

Further, many African National Intellectual Property Offices (IPO) have a serious need for modern equipment, technology, and to enhance the knowledge and skills of their officers.

Without it, the IPOs cannot fulfil their assignments, including assisting the youth inventors whenever they look for legal advice.

Finally, African governments must financially support the young inventors. As Ebenezer Olanrewaju, from the Association of Nigerian Inventors, said "If African governments support young innovators across the continent, it will have an immediate turnaround for technology development in Africa."

The role of the African universities is also paramount and is not limited to providing IP Education. They can implement projects promoting innovation and IP protection. Take

the example of the Africa University, in Zimbabwe, which has set up an innovation hub, the i5 hub that provides support to inventors. They can also prepare the students and participate in international prizes, such as CIPIT from Kenya which participated in the WIPO "How does Al work?" competition.

As Brian Asingia, the CEO of DreamGalaxy, remarked recently, African universities can be a motor for innovation in Africa if they become more focused on experiential or practical learning.

In conclusion, education in IP has notably extended in the African Continent in the last 20 years.

However, to stop the bleeding of the continent's economy, as far as IP rights are concerned, it is necessary for governments to adopt significant measures and for universities to actively participate in the solution.



4D printing: how to protect space-age tech

João Francisco Sá

Worldwide



4D printing adds a new dimension to the process: time. Whereas 3D printing technologies allow users to construct a 3D product, 4D technologies allow a 2D product to gradually change its shape over time in response to an external stimulus or energy source. This technique is also known as active origami or shape-morphing.

The technology already has practical applications: a sheet of plastic can transform itself into a cube when it comes into contact with water or a simple string that reveals a hidden message when you add it to water. Both were developed by Skylar Tibbits' team at Massachusetts Institute of Technology's Self-Assembly Lab (link with videos of the technology in action). Like many futuristic technologies, the prospect of real-life applications of 4D printing are immense, with the most promising (in my view) applications for space.

The organisation of space cargo greatly impacts the cost of rocket launches and the

use of 4D printed materials can increase the quantity of cargo that will be able to be transported.

This will increase the viability of scientific projects such as the recent James Webb Space Telescope (which used origami technics) or Elon Musk's plans to colonise Mars, where space cargo needs to be maximised.

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From a legal point of view, the most novel aspect of 4D printing relates to the changing shape of its products as they are not static and change over time. In other words, the shape of the product might be different at any given time (...)

Legal conundrums

3D printing created many legal discussions focusing on the scope of industrial design rights and its limits, in a similar fashion to how the introduction of peer-to-peer technologies started discussions in copyright-intensive creative industries.



New technologies that democratise access to the tools of production or allow creative materials to be freely shared will certainly overlap with the principles of IP.

Many users of 3D printing tech—if not most—do not breach IP laws, as they share schematics or print products that are new designs in their own right or where said uses are not in conflict with any exclusive industrial design rights, including private uses. While conflicts between 3D printing and IP rights have already made the news (see, Just 3D Print v Stratasys / Makerbot, Philidelphia), the true impact has not yet been felt to a larger extent because 3D printing machines are not widespread.

This could change over time as more users get access to 3D printing machines and will start to use the schematics of others with commercial intent. As 4D printing technologies build upon 3D technologies, the legal issues relating to the scope of industrial property and its limits will remain.

From a legal point of view, the most novel aspect of 4D printing relates to the changing shape of its products as they are not static and change over time. In other words, the shape of the product might be different at any given

time, depending on how they were programmed to act to certain environmental stimuli.

Changing shapes - shaping laws?

A "design" is defined by article 3(a) of the Community Designs Regulation (CDR) as the "appearance of the whole or a part of a product".

This definition is very broad and while it clarifies that the appearance results from its "lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation", it does not necessarily follow that 4D products are excluded from protection, although it could be argued that the gradual change in shape of a product is not expressly mentioned.

The features that are mentioned, chiefly its material, sufficiently cover different or changing shapes, which means that 4D printed products can be included in the current definition of "design" under CDR. Protection can thus be awarded if the appearance does not stem solely from its technical function and if the substantial requirements are met.

A less promising conclusion can be drawn from articles 36(1)(c) and 36(5) of the CDR, as



it is still required by the implementing regulations that designs need to represented in a manner suitable for static reproduction, which includes рарег reproductions specifically and рарег This registration certificates. forces applicants to file design applications that only use still shots and not animated simulations.

Currently, the European Union Intellectual Property Office allows Community Designs to be filed with the most common JPEG format. It also allows OBJ, STL and X3D formats for 3D dynamic views of static images.

With the most recent updates to the EU Trademark Regulation and the administrative instructions that followed, the types of trademarks that can be registered were expanded and new file formats are now allowed, including OBJ, STL and X3D for 3D trademarks, but also MP4 for motion, multimedia, and hologram trademarks.

While 4D products can certainly be registered as a succession of still images, as a way of circumnavigating the current limitations of the system, this is not ideal.

With the most recent updates to the EU Trademark Regulation and the administrative instructions that followed, the types of trademarks that can be registered were expanded and new file formats are now allowed, including OBJ, STL and X3D for 3D trademarks, but also MP4 for motion, multimedia, and hologram trademarks.

Future updates to the EU's industrial design law framework should take the above difficulties into account and allow more types of files to be uploaded, allowing applicants to protect the changing shapes of products.

This will also be useful in other areas of design, such as dynamic and interactive graphical user interfaces which are also protected or examined as snapshots.

Both the EU Design Regulation and Directive should be updated to clarify the scope of protection of industrial design rights and its relationship with 3D and 4D printing to foster the use of these technologies without prejudice to designers.



Design Systems in China and the European Union

Júlia Alves Coutinho





The design of a product can be protected by an intellectual property right through a registration before an intellectual property office. In this article, it will be compared the design systems of China and European Union. In general terms, the scope of protection of a design encompasses the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colors, shape, pattern, texture and/or materials of the product itself and/or its ornamentation. The advantage of having a registered design is the exclusive right to exploit the design. This exclusive right includes, namely, the making, offering, putting on the market, importing, exporting, or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

Law Systems

In China, the design registration is called design patent and is protected along with invention and utility model on the basis of Chinese Patent Law.

On June 1st of 2021, the fourth amendment to the Patent Law of the People's Republic of China entered into force, which made important changes in many aspects and some of these amendments regarding design patents will be discussed below.

The final revision of the fourth amendment was proposed in 2012 and promulgated on October 17th of 2020. China's current Patent Law entered into force in 1985 and has already been revised in 1992, 2000, and 2008.

The design patents, as well as the trademarks, geographical indications and other industrial property rights, are filed before the China National Intellectual Property Administration, located in Beijing.

The European Union law on designs dates to the early 2000s, with Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs, amended by Council Regulation No. 1891/2006. Due to the date of the law, unlike the European Union



trademark, the protected design in the EU is still called Community design.

Besides the registered Community Design (RCD), the EU legislation also protects the unregistered Community design (UCD). The scope of protection of the UCD is more limited, so the owner of a UCD can use a design without registration and has the right to prevent commercial use of a design only if that design is an intentional copy of the protected one, made in bad faith, i.e. knowing of the existence of the earlier design.

The European Union Intellectual Property Office (EUIPO), located in Alicante (Spain), is the responsible entity to receive and grant the applications for registered Community designs, as well as EU trademarks. The European Union jurisdiction is part of the Hague Agreement concerning the international registration of industrial designs and, as a result of the new changes in Chinese law in order to bring it closer to the international practice, China's entry into the Hague Agreement seems to be next.

Scope, requirements and validity of rights

Protection of a part of a design
 In the definition of a design, the Chinese
 Patent law innovates to bring the possibility

to protect the design of a part of a product, which was already possible in the EU legislation. Now, in China, a portion of a product which cannot be separated or independently sold from the whole product can be protected, using broken lines to show the whole product and solid lines to show the partial design for protection, for example. Accordingly to the Common Practice (CP6) of (Convergence on EUIPO representations of designs – 15 May 2018), the applicant may use visual disclaimers to indicate what is not intended to be protected and this can be achieved by excluding with broken lines, blurring or color shading the features of the design for which protection is not sought or by including the features of the design for which protection is sought within a boundary, thus making it clear that no protection is sought for what falls outside the boundary.

Requirements of protection

In both Chinese and European Union systems, a design will not be granted if it is contrary to public policy or to accepted principles of morality. [...]

Read full article here [+]



Cape Verde: a taste of things to come

Diana Pereira



Cape Verde is an island state formed by ten islands of volcanic origin, located in the tropical north-western Atlantic Ocean, on the African continent, 500km off the coast of Senegal. With landscapes varying from dry plains to high active volcanoes with cliffs rising steeply from the ocean, islands in the east are arid and only sparsely settled to exploit their extensive salt deposits, while the more southerly ones receive more precipitation and support larger populations, but agriculture and livestock grazing have impacted the soil fertility and vegetation. Notwithstanding these characteristics, which may be considered a favourable starting point to develop unique products, the entities' attentiveness in protecting the singularity of their national products by means of protection via designations of origin or geographical indication has received tiny expression in Cape Verde, when compared to other IP rights, such as trademarks and patents.

This may be related to the little information

local producers had about the existence of legal regulations to protect and confer ownership over their products by means of registration through designations of origin and geographical indications.

The Cape Verdean Patent and Trademark Office (PTO) had an important role in this matter, raising awareness among entities as to the importance of protecting products with specific geographical origins and qualities that they possess because of their location.

People have therefore become more conscious that, if designations of origin and geographical indications are registered, they become an industrial property right, which gives legitimate users the possibility to react against improper and abusive uses in products that discredit them, adding value to products, producers and to the region itself. [...]

Read full article here [+]



Counterfeits: breaking young people's consumer habits

Mariana Hazt Lencina

European Union



With the technological advance of the internet, increased access to content and information is proportional to the heightened access to content that infringes IP rights.

If it is possible to access entertainment content on a paid streaming service, it is also possible to find on the internet the same movie, music or game on platforms that provide this access sometimes for free and without the proper authorisation. The same occurs with counterfeit clothing and footwear, available for reduced prices.

EUIPO's 2022 IP Youth Scoreboard

According to the 2022 IP Youth Scoreboard, released by the European Union Intellectual Property Office (EUIPO) in June 2022, the intentional access to counterfeit products or pirated digital content has increased.

The main objective of the study, carried out by the EUIPO, is to understand the perceptions of young people in EU member states regarding intellectual property rights in the digital field. The first edition occurred in 2016 and it is possible to identify changes in the perceptions of online consumers since then, mainly after the COVID-19 pandemic, when online purchasing increased.

According to the Youth Scoreboard, in 2019 only 14% of respondents confirmed that they had intentionally purchased counterfeit goods. These numbers jumped during the COVID-19 pandemic, reaching 37% of respondents in 2022.

The results of the 2022 study indicated that cost is the main factor for intentional purchases of counterfeit goods, as it was in 2016 and 2019, with 48% of respondents affirming that cheaper prices were the main reason they bought fake goods. The second main reason was a lack of concern that the product was fake (27% of respondents) and the belief that there was no difference



between the original and the counterfeit product (24% of respondents).

Clothes and accessories accounted for 29% of purchases of counterfeit goods, and footwear 23%, which increased by 24% and 19% respectively since 2019. But it is also concerning that the purchase of counterfeit cosmetics and medication has increased by 19% and 14%, respectively, in the past three years. Regarding access to platforms of online content such as movies, TV series and music, the main reason for intentionally using illegal sources was the high costs of the legal streaming services. In the survey results, respondents voiced their frustrations and feelings of injustice about this situation, suggesting that accessing illegal content was almost an act of protest.

This behaviour could benefit consumers if it prompts the legal platforms to review their prices and the advantages to subscribers. However, winning over the younger generation to paid content is a challenge if they consider broad access to illegal sources to be a form of democratisation and means to culture for all.

Ways to improve statistics

It is possible to find ways to improve the

results indicated in the EUIPO research. For a start, a focus on risk awareness could help to change the attitudes of young people towards illegal content and fake goods.

In the study, the respondents affirmed that they would think twice before proceeding with a purchase of counterfeit goods or accessing illegal sources if there was more information regarding the risks.

It is important to note, however, that the risks that concern young people relate to their own losses, not to collective, social or commercial damage. The main red flags that the respondents said would make them think again about accessing illegal content or products were the possibility of credit card details being stolen (43%), the absence of a guarantee for the product (34%) and the risk of their computer being infected by viruses (34%). Other factors that the respondents said would influence their decision was the probability of fake products being prejudicial to health (31%) and the risk of punishment (22%).

The question remains as to how to combat the counterfeiting trend perpetuated by the younger generation. Part of the solution certainly lies in understanding that for these



consumers, social media apps are the main influence on behaviours or trends and that paid publicity can dictate choices through repetitive results appearing on a smartphone screen.

Social media influencers

Social media influencers are a relevant piece of the puzzle, considering they are trusted by the public as opinion leaders, according to research and analysis of the impact of social media influencers promoting counterfeit goods released by UK Intellectual Property Office (UKIPO). According to this study, some social media influencers have contracts with providers of counterfeit goods to promote the sale of these items. This promotion can increase access to illegal sources and, as proved by the research, influence young people's behaviour. In the EUIPO's Youth Scoreboard survey, some of the respondents stated that a lot of influencers advertise original and luxury products, which stimulates the search for similar products.

But other respondents revealed that in some social media apps, where videos are shown according to users' preferences, users can be directed to videos or posts with influencers promoting fake products. These videos often demonstrate a comparison with the original, or

tests that show some 'quality' of the counterfeit products, as feedback of the purchase.

Conclusions

With great power comes great responsibility. In the same way that social media influencers can induce their audiences to consume certain products and services, it would not be absurd to demand that they direct their followers to the enforcement of laws and the purchase of legal products. Maybe it is time to start thinking about the social function of digital influencers. It is not only about rights and privileges, but also about duties. Furthermore, new duties should be imposed on the owners of social media platforms. From the indication of ingredients, allergenic substances, suggested age range and risk of using chemicals, companies have always been obliged to ensure the physical and mental health of consumers. Requiring digital platforms to include warnings about social and economic risks is just another reasonable measure for the benefit of digital consumers.

Considering the repetitive advertising directed to social media users to stimulate consumption, maybe repetitive warnings could encourage more conscious consumption.

The complete 2022 IP Youth Scoreboard report can be found here.



WTO Geneva Package: a breakthrough for Africa?

Inês Sequeira





In Geneva, on June 17, ministers, and delegates at the World Trade Organisation's (WTO's) Twelfth Ministerial Conference (MC12) reached an agreement on a series of key trade initiatives. The deal represents a breakthrough for the Organisation which has created one agreement between all 164 members in its 27-year existence to date.

This long-anticipated achieved consensus took place after MC12 had been postponed for two years due to COVID-19 and deepened with the Russia and Ukraine conflict. It was heard in the voice of Ngozi Okonjo-Iweala, the World Trade Organisation's Director-General, "You stepped up and delivered in every area we have been working on," which celebrated a striking moment of real multilateral success with the organisation's members.

After these words, a series of unprecedented decisions and agreements now known as the Geneva Package was listed after the members "can come together, across geopolitical fault lines, to address problems of the global

commons, and to reinforce and reinvigorate this institution."

Focus points of the Geneva Package

A package on WTO response to provide concrete trade-related responses to important challenges facing the world today, comprising:

- the WTO's response to the pandemic, including intellectual property rights response
- 2. Fisheries subsidies
- 3. Food insecurity
- e-commerce work programme and moratorium
- 5. WTO reform

We will focus our discussion on topic number one for this article.

TRIPS Waiver

Until now, four WTO members, the US, the European Union, the UK, and Switzerland produced over 90% of COVID-19 vaccines.



However, more than 80% of Africans remain unvaccinated according to the United Nations. Trying to give an urgent response to the ongoing impact of COVID-19, members adopted a Ministerial Declaration on the WTO response to the current and future pandemics.

As stated in the Ministerial Declaration, members experienced supply constraints of COVID-19 vaccines, therapeutics, diagnostics, and other essential medical goods.

Thus, these experiences were not shared equally during the pandemic, due to members' differing levels of development, financial capabilities, and degrees of import dependence on those products.

In this regard, one of these measures is a waiver of certain requirements under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) concerning the use of compulsory licences to produce COVID-19 vaccines.

In 2020, South Africa and India proposed a waiver to the TRIPS Agreement allowing countries to suspend patent and other IP protections on COVID-19-related products and technologies, such as vaccines,

therapeutics, and diagnostics, for the duration of the pandemic. Nevertheless, the major developed countries have not agreed with this measure, consistent with the pharmaceutical sectors, which considered that the waiver would be unnecessary and would challenge the profit incentives that IP provides to develop new drugs.

The Ministerial Decision on the TRIPS Agreement will provide a platform for members to work together to diversify vaccine production capacity.

According to Okonjo-Iweala: "[declaration] will make access to medical supplies and components more predictable in this pandemic, and in the next one."

The compromise "will contribute to ongoing efforts to deconcentrate and diversify vaccine manufacturing capacity, so that a crisis in one region does not leave others cut off".

It was recalled that the Doha Declaration on the TRIPS Agreement and Public Health of 2001 shall not inhibit members from taking measures to protect public health. [...]

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South Africa: Where is the trade secrets rulebook?

Sofia Araújo



Understanding trade secrets is fundamental to protect IP but it is also essential to innovation on a global scale. Despite countless litigations, many countries, like South Africa, still lack specific laws related to trade secrets. This begs the question, does the common law offer enough protection?

Trade secrets run parallel with other intangible assets and IP rights—eg, patents, trademarks, utility models—but with significant differences: they aren't subject to a deadline; they have low protection costs and, more importantly, trade secrets can protect a wider range of assets, such as lists of clients, formulas, internal methods, recipes, etc. Furthermore, the protection or dissemination of commercial secrets is a matter of both private and public interest. The social interest determines that the information should be released to the public, as it promotes economic growth. Private interest, on the other hand, requires confidentiality, to benefit from potential competitive advantages.

Trade secrets: South Africa's definition

South Africa courts have defined trade secrets as "a trade, business or industrial information belonging to a person (usually an entrepreneur) which has a particular economic value, and which is not generally available to and known by others. It is evident that an entrepreneur's trade secret represents a valuable economic asset for him (as proprietor) which is worthy of legal protection. Currently, there's widespread support for the view that a trade secret, as an incorporeal product of the human mind embodied in a tangible agent, constitutes immaterial property which serves as the independent object of an immaterial property right".

As in the case Harchris *Heat Treatment v Iscor*, the subject matter was described as IP belonging to the plaintiff. The court established three requirements for an asset to be classified as a trade secret: 1) the information must not only relate to but also be capable of application in trade or industry;



2) the information must be secret or confidential—the south African courts impose a proof of diligences in order to protect the trade secret; 3) the information must, likewise objectively viewed, be of economic (business) value to the plaintiff.

It's important to retain that although South Africa does not have specific legislation on the matter, they still considered misappropriation as unlawful—the legal basis has been contractual or fiduciary obligations.

Moreover, the South African courts consider the breach of trade secrets to be unlawful competition and, more precisely, the misuse of confidential information to advance one's own business and activities at the expense of competitors. There have been many instances, all around the country, of former employees stealing confidential information. In all these cases, it was ruled that there must be an intention of appropriation—the information acquired by the worker daily may be used in the future, if he doesn't memorise it with the intention of stealing it (eg, a worker stealing a list of clients for another company).

Uncertainty in borderline cases

However, there are always borderline cases, so the legal uncertainty is enormous, "there are to my mind, specific trade secrets so confidential that, even though they may necessarily have been learned by heart and even though the servant may have left the service, they cannot lawfully be used for anyone's benefit but the master's".

What about an innocent third party that receives confidential information? It has been deemed that proof of fault blameworthiness is required to proceed with a lawsuit—such as in cases of posteriori knowledge. In extreme cases, such as preventing the destruction of stolen IP, the "Anton Piller order" provides the right to search and seize evidence without warning and can be used to verify the plaintiff's claim. It can't, however, be used to anticipate the discovery of truth, as such an order does not give the accused party the ability to defend themselves. The plaintiff can either apply for an order of delivery or destruction of goods.

Despite many litigation processes, there still haven't been established specific rules on trade secrets. [...]

Read full article here [+]



Trade dress and 3D marks in the EU

Phillip Monteiro

European Union



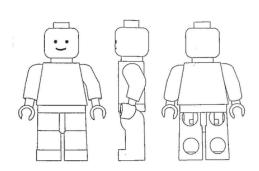
To understand how trade dresses are being safeguarded in Europe, we need to answer the question, what is "trade dress"?

We can define trade dress as a set of characteristics – not only visual, but also sensorial – that allow a consumer to distinguish a particular product or service from the others that coexist in the market. These characteristics can include the way some products are displayed in a store, furniture patterns, ambient music, a smell and so on. Also, a particular packing or product shape can be understood as a trade dress. Below, we can find some examples of the protection of trade dress using 3D trademarks in European Union countries and Court decisions in connection to this particular type of IP protection.

Lego vs. European Union Intellectual Property Office (EUIPO) - 2010

The use of 3D trademarks by Lego – and the outcomes of the trademark applications – are very controversial. The application of the

world-famous Lego bricks as a trademark was refused by the Cancellation Division in 2004. ivision argued that the mark consisted exclusively of the shape of the goods which was necessary to obtain a technical result. The European Court of Justice (ECJ) denied the appeal against the cancellation decision, agreeing with the Cancellation Division. However, a different outcome was reached related to the human-shaped Lego figure. The ECJ ruled in 2010 that such figures' shape is not necessary to obtain a particular technical result, considering that its main feature is to represent a character, conferring human traits to the shape of the object.







Source: EUIPO

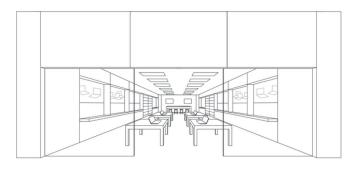


Apple vs. German Patent and Trademark Office (DPMA) - 2013

Apple attempted to extend the protection of a 3D trademark to Europe that had been granted in the United States. The trademark consisted of a "design and layout of a retail store". Apple received a decision of provisional refusal from the DPMA.

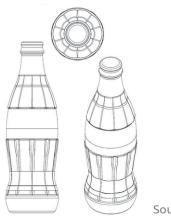
The examination division argued that the trademark was not sufficiently distinctive, because it represented fundamental elements of a retail store. Apple appealed the decision to the ECJ, which ruled that symbols/geometrical shapes which are capable of distinguishing products or services from others, even if they illustrate a retail store layout, may be sufficient to meet the criteria for trademark protection.

This decision opened a new path of understanding for trade dress protection, which started to be used as a method of protecting products.



Source: USPTO

Coca-Cola vs. European Union Intellectual Property Office (EUIPO) – 2011-2014



Source: EUIPO

In 2002, Coca-Cola filed a Community Trademark application claiming protection for its century-old glass bottle. The trademark was granted.

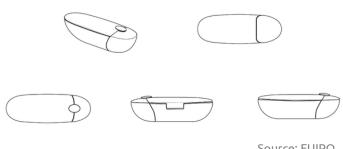
With plastic bottles being increasingly used at the time, Coca-Cola tried to protect the new bottles by filing two 3D Community Trademark applications: one application showing the particular lines of the Coca-Cola bottles (side image) and the second, showing a plain bottle.

For the first example, the EUIPO rejected the trademark due to lack of distinctiveness. However, in 2014, the Second Board of Appeal issued a new decision, confirming that the overall aesthetic was eye-catching and capable of holding the public's attention. On the other hand, the second trademark application (the "not fluted" bottle) was



rejected both by the examiner and the Second Board of Appeal.

Guerlain vs. European Union Intellectual Property Office (EUIPO) - 2020/2021



Source: EUIPO

The French cosmetics giant Guerlain applied for a 3D trademark related to its lipsticks.

Upon examination, the EUIPO found that the trademark lacked distinctiveness and rejected it. After Guerlain's appeal, the Board of Appeal upheld the first decision, dismissing the application.

Guerlain then turned to the General Court of the European Union, which accepted the appeal and contradicted the previous findings.

The General Court found that the pleaded trademark differed sufficiently from the usual lipsticks in the market and thus granted the trademark.

Conclusion

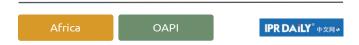
Even though some companies are trying to protect their trade dresses in Europe using 3D trademarks, it is still a challenge to obtain such protection. There is no common understanding between national IP Offices, which forces applicants to appeal to Courts to have their trademarks granted.

We can expect that far more companies will use this method in the future to expand their IP protection. If the claimed trademark is being used it is likely to overcome non-use cancellation actions. In such trademarks can be renewed without any time limit. Despite the uncertainties at the time of filing for protection, the potential everlasting protection provides a strong incentive for companies to push forward with this protection route.



Bangui Agreement: a summary of the essential changes

Inês Tavares



In March 1977 the Bangui Agreement (hereinafter, also referred to as "Agreement") created OAPI, the Organisation Africaine de la Propriété Intellectuelle (African Organization of Intellectual Property). OAPI is an organization mainly composed of francophone jurisdictions, namely: Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Comoro Islands, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, and Togo. The main purpose of its creation was to encourage member states to collaborate, build networks and share common resources.

The benefit of filing through the regional system is the possibility of obtaining protection for Industrial Property assets in several countries at the same time, through a single and uniform filing procedure which, of course, reduces the overall costs of said procedure and the time frame to obtain protection. In the Bangui Agreement preamble, it is stated «(...) Considering the importance of creating a body

responsible for applying common procedures deriving from a uniform system for the protection of intellectual property and to promote training and the dissemination of knowledge in intellectual property».

An important revision involved customs proceedings against counterfeiting.

Article 77 stipulates new border measures.

The Organization acts as a single jurisdiction, OAPI member states do not have Intellectual Property Institutes. Therefore, registration is only possible through the Regional System. This is one of the main differences between OAPI and ARIPO, another intellectual property regional system of Africa, where the member states for which an applicant intends to obtain protection have to be designated, not acting as a single jurisdiction in itself. [...]

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Cape Verde

July: The Minister of Energy, Trade and Industry of Cape Verde, Alexandre Monteiro, deposited the instruments of Accession to the Lusaka Agreement, Banjul Protocol, Harare Protocol, Swakopmund Protocol, and Arusha Protocol. Cape Verde becomes the 22nd ARIPO Member State. [Know more]

Following the approved accession of Cape Verde to the Lusaka Agreement (ARIPO), the country also joined four key WIPO treaties: Madrid Protocol, Patent Cooperation Treaty (PCT), Geneva Act of the Lisbon Agreement and Paris Convention for the Protection of Industrial Property. [Know more]

Mozambique

September: Decree No. 9/2022 on the **new Mozambican copyright law** was approved by the Republic Assembly in March and published in the Diário Oficial in June. [Know more]

EPO

April: The European Patent Office (EPO) announced its **new fees**, especially filing, search, examination, and renewal related fees, starting from 1 April 2022. In general, EPO official fees increased between 2.5% and 3%. For international applications, however, the search fees will remain unaltered. [Know more]

East Timor

November: The Parliament of East Timor approved the **country's first Code of Copyright and Related Rights**, intended to protect the creation, production and commercialization of literary, scientific and artistic works and their respective authors. [Know more]





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