

# What is happening in Africa's IP landscape

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The world of intellectual property is undergoing a rapid transformation, and 2023 is gearing up to be an eventful year for the African continent. There are numerous exciting trends to watch, ranging from the continued ascent of personalisation and individualisation, using data collection and the responses thereto in the digital age, to the expanding use of artificial intelligence.



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With this in mind, we review some of the high-impact intellectual property activities in Africa over the past year, especially those aimed at policy change and improving intellectual property rights' protection across the continent.

## SA Copyright Act challenged

The constitutionality of South Africa's Copyright Act was called into question in *Blind SA v Minister of Trade, Industry, and Competition and Others*, as it does not permit organisations representing blind and visually impaired people to produce accessible format copies without the copyright owner's consent.

The apex court of South Africa unanimously acknowledged the unequal access to literature for those with impairments and ruled that the legislation must be amended to remedy this unfair discrimination within 24 months of the judgement, all the while, eyes are still on the highly controversial Copyright Amendment Bill. The National Chamber of Provinces is presently conducting a consultation process on the Copyright Amendment Bill.



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## Mozambique copyright legislation

It appears Mozambique is one step ahead of South Africa regarding access to copyrighted works for disabled individuals. That is because Mozambique's Copyright Law 9/2022, which became effective on 26 September 2022, grants disabled individuals the right to access, create accessible forms of, and freely reproduce and distribute literary works (non-commercially) without the copyright owner's permission.

The law is based on the principles of the Berne Convention for the Protection of Literary and Artistic Works. It provides an exclusive right for authors and copyright holders to reproduce and distribute their works, adapt, or transform them, and publicly perform and communicate them to the public. It also grants authors and copyright holders the ability to license their works to third parties and to obtain fair compensation for their use. The law also provides a collective management system of copyright, neighbouring rights, and collective rights management.

## Anti-counterfeiting developments

Kenya's Anti-Counterfeiting Authority (ACA) has ordered that all intellectual property rights for imported goods (but not services) be registered with the ACA, by 1 January 2023. Now, in addition to registering IP rights with the local Trade Marks Office, IP rights must also be registered with the ACA. Not following the ACA's registration process is a crime that could lead to the seizure and detention of goods. If you own intellectual property and do business in Kenya, you should contact Spoor & Fisher to ensure you've taken steps to register your IP rights with the ACA, or your operations could be interrupted.



Deadline to register IP rights with Kenyan authorities looms

Bernadette Versfeld 8 Dec 2022



## Developments in Zambian trade mark law

Zambia is on track to change its laws on trade marks significantly. The Trade Marks Bill 2022 aims to ensure the protection of geographical indications, service marks, collective marks, certification marks, and well-known marks. It will also include laws that give effect to the Madrid Protocol on the international registration of trade marks, the Paris Convention for the Protection of Industrial Property, and the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights. If they are passed, the new trade mark laws in Zambia will quickly change how brands are protected and how rights are enforced.

## Protection of geographical indications developments

The focus on the protection of geographical indications is on the rise, allowing producers of products that meet the requirements for certification to gain international recognition and protection. In addition to the European Commission approving the registration, in 2021, of the designation "Rooibos/Red Bush" as the first protected geographical indication from Africa, two critical matters in Burkina Faso and Cameroon are also worthwhile mentioning.

Early this year, the Saponé community in Burkina Faso was able to get the Saponé straw hat recognised as a protected geographical indicator - the first registration of its kind in Burkina Faso. The Saponé hat represents Burkinabè national pride and is a cultural icon.

The European Commission registered Poivre de Penja in the European Union as a protected geographical indicator in March 2022, acknowledging the connection between the Poivre de Penja pepper and the Penja region of Cameroon. The soil specific to the Penja Valley is responsible for giving the pepper its distinctive flavour. Trade related to the highly sought-after Poivre de Penja peppers will boost the central African country's economy if it is protected internationally.

## Developments in patent law

Africa saw extensive developments in patent law and practice, in 2022, with some developments signalling further changes for 2023 and beyond. Projects continue to create awareness of patent law, such as the WIPO Summer School, to improve the quality of administration systems and substantive examination, and to make better use of regional bodies.

## South African patent developments

In South Africa, the number of patent cases that went to court remained steady, with several unreported judgements being issued. This is reassuring for patentees with valid patents, who are able to enforce their rights through the South African courts.

Even though South Africa still has a non-examining patent system, our Courts have made it clear that patent applicants have the onus of ensuring that their patent applications are in valid form when they proceed to grant. Applicants are able to delay acceptance of the South African application, pending the outcomes of prosecution of corresponding applications in examining jurisdictions and then file voluntary pre-grant amendments to the claims of the South African application in light of any prior art known to them.

The South African Patent Office is still in preparation for the introduction of substantive search and examination (SSE). The formal aspect of the patent examiners' training was completed in June 2021 and the next step of training is ongoing. This is known as the experiential learning component, which is a practical, non-binding, voluntary and informal trial period for SSE.

SSE can only officially be implemented once the current South African Patents Act and its regulations are amended to allow for the legislative framework required regulate SSE. A draft of the legislative amendments has not yet been published for public comment, and there is no indication yet as to when the draft will be published. Furthermore, the process of passing a Bill, and signing it into law by the South African president, is usually a lengthy process, meaning that the implementation of SSE appears may still be a few years away.



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Cape Verde joined the well-known and well-established African Regional Intellectual Property Office (Ariipo) in January 2022.

On 14 July 2022, Cape Verde joined Ariipo by ratifying the Lusaka, Banjul and Harare Protocols, with membership effective as of 14 October 2022. So, you can protect your intellectual property in Cape Verde by designating that country in an

Aripo application handled centrally at the Aripo office in Zimbabwe. With Cape Verde joining Aripo, there are now 22 states that are part of Aripo. Even though not all the member states have signed up to all the Aripo Protocols, and there are concerns about how well Aripo rights work in countries that haven't amended their laws to accommodate rights granted through Aripo, the growing number of members shows that the Aripo system is still an appealing system for obtaining protection in Africa.

With effect from 6 July 2022, Cape Verde also joined the Madrid Protocol for the international registration of trade marks, the Paris Convention, and the Patent Cooperation Treaty. So, PCT patent applications filed after 6 July 2022 will designate Cape Verde, and priority applications filed in Cape Verde after that date will also be recognised for the purposes of PCT applications.

## **Namibian developments**

Even though substantive patent examination has been part of Namibian law since August 2018 and has been implemented in practice by Aripo on behalf of the Namibian Patent Office, a memorandum signed in June 2022 has made it official. Again, this change doesn't have any direct practical effects, but it shows that the patent systems of African countries need to be developed and improved.

## **TRIPS waiver**

The WTO's Covid-19 vaccine IP waiver proposal by India and South Africa remained a significant issue in 2022. On 17 June 2022, the WTO announced a relaxation of intellectual property restrictions on making and selling these vaccines for the next five years, subject to payment of adequate remuneration to the rights holders. The waiver does not yet cover diagnostics or treatments, but talks are ongoing in this area. Still, how the waiver will be applicable in the long run requires clarification, and patentees' concerns about the partial enforceability of their patent rights remain.

Overall, those seeking to protect their intellectual property rights in Africa, can be confident that reliable and effective systems are in place in key countries, to ensure that valid and enforceable rights can be obtained. The future of intellectual property in Africa appears alive and well, and 2023 will undoubtedly bring additional developments.

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