



REGIONAL BUREAU FOR AFRICA SERIES OF WEBINARS FOR SMES- SESSION 1

Loretta Asiedu

Senior Counsellor,
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Department for Africa and LDCs

**Online
22 June a.m.
2020**

Professor Caroline Ncube

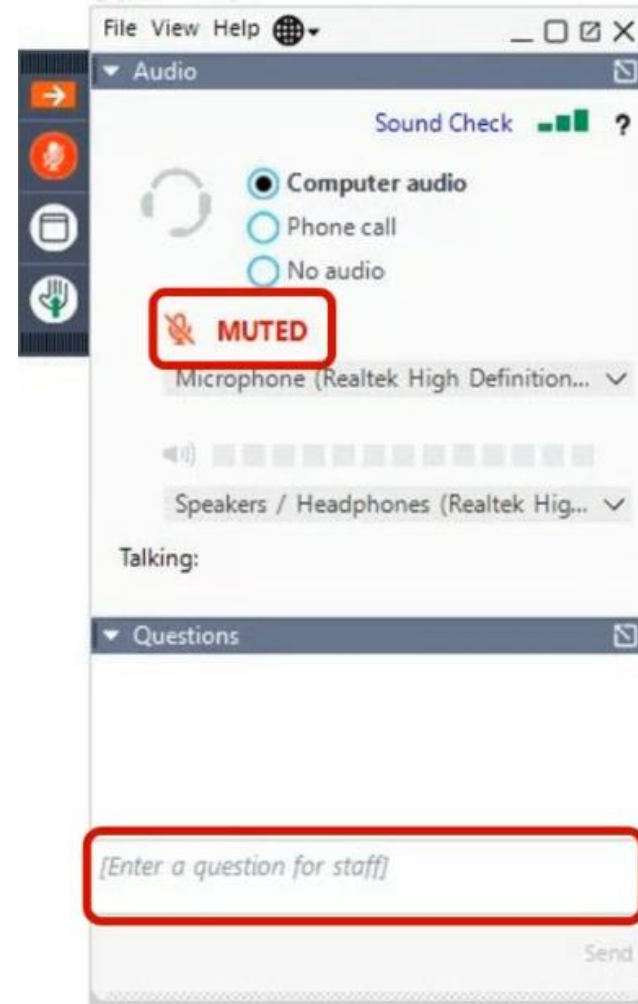
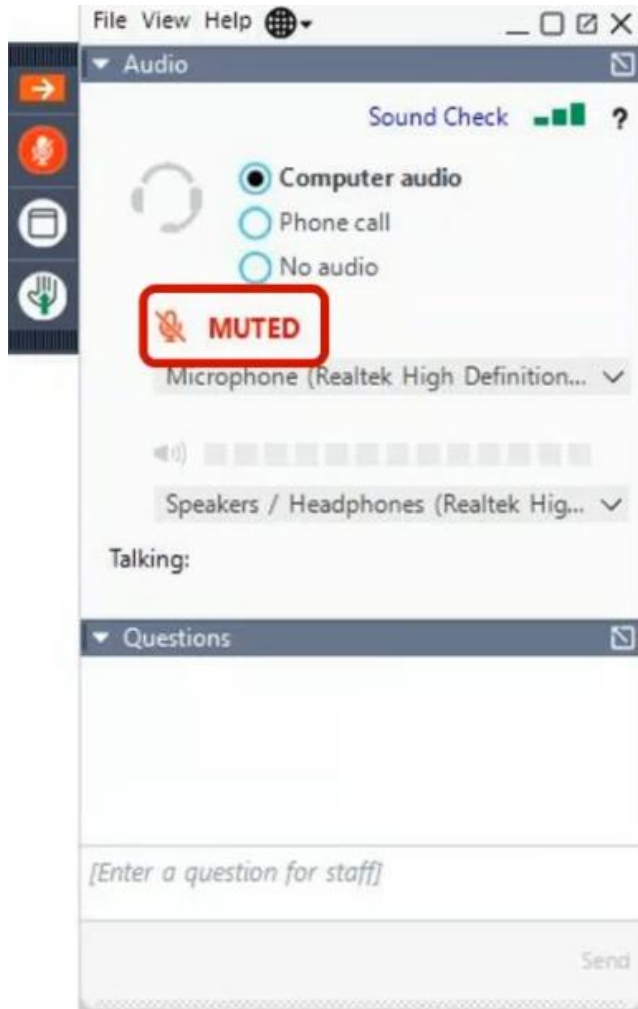


- Professor, Department of Commercial Law, University of Cape Town; South Africa
- Research Chair in Intellectual Property, Innovation and Development
- University of Cambridge Alumni (LLM)
- Several international IP Law research projects, including [the Open African Innovation Research Network \(Open AIR\)](#) project of which she is a co-leader
- Associate Member of the Centre for Law, Technology and Society at the University of Ottawa
- Founding co-editor of the South African Intellectual Property Law Journal
- Member of the board of various south African journals
- IP Expert with years of experience in WIPO capacity building events

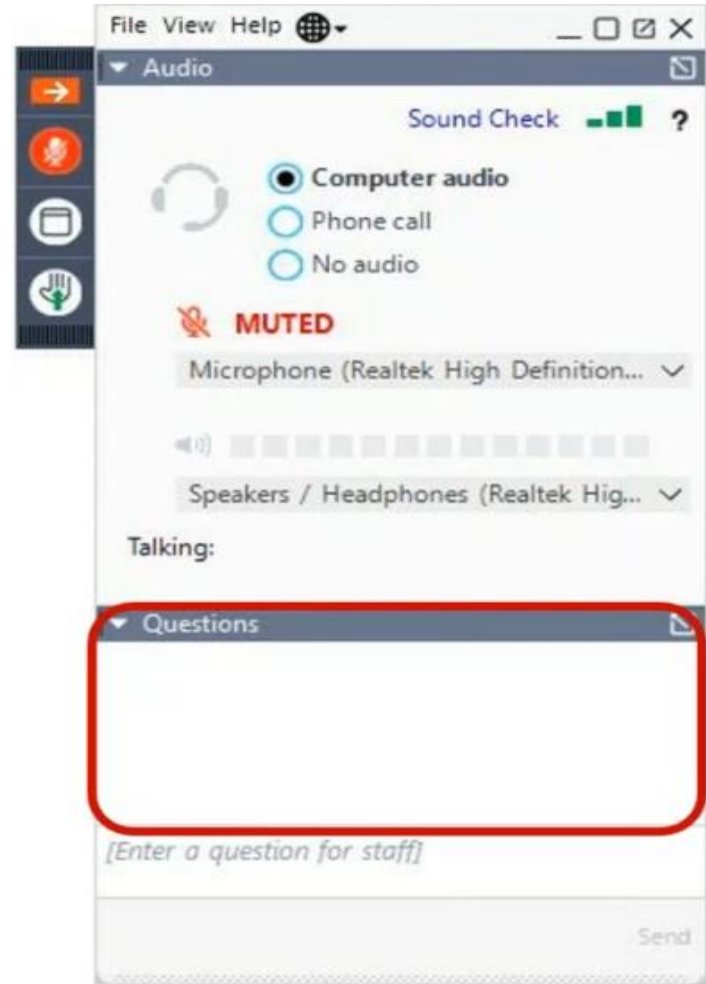
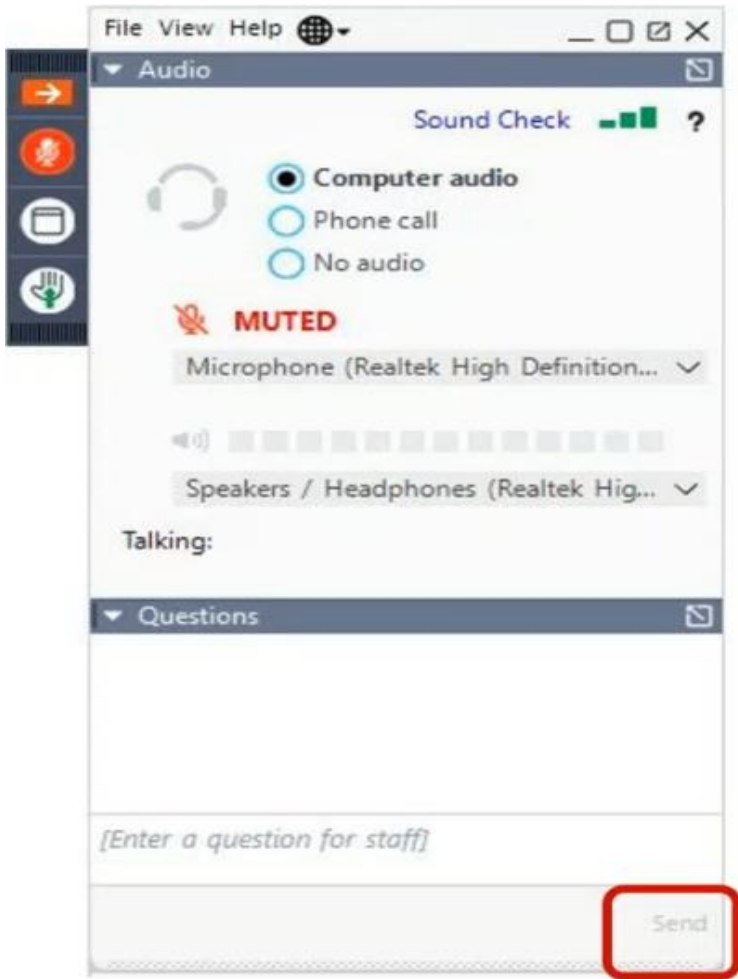
FUNDAMENTALS OF INTELLECTUAL PROPERTY AND RELEVANCE IN BUSINESS

- Global shifts in value from tangibles to intangibles
- What is intellectual property
- Key concepts in respect of each IP type
- Examples of companies in Africa
- Q&A session (20 minute)

How to ask questions?



How to ask questions?



Q&A



- Do not worry if we can't address all your questions in today's session
- You can always reach us at the following email address for further questions or information:

rba@wipo.int

Next sessions

- IP Audits, Due Diligence and Valuation

- Today July 22 from 14.30 – 15.30 CET

- Register here:

- https://www.wipo.int/meetings/en/details.jsp?meeting_id=58029

- Access to IP

- July 23 from 10.30 – 11.30 CET

- Register here:

- https://www.wipo.int/meetings/en/details.jsp?meeting_id=58048

- Working With IP In Your Business

- July 23 from 14.30 – 15.30 CET

- Register here:

- https://www.wipo.int/meetings/en/details.jsp?meeting_id=58049



**SOUTH AFRICAN
RESEARCH CHAIR:**

Intellectual Property,
Innovation and Development



Fundamentals of Intellectual Property and Relevance in Business

Series of Webinars for African SMEs, July 2020

Professor Caroline B Ncube
South African Research Chair: IP, Innovation & Development
University of Cape Town

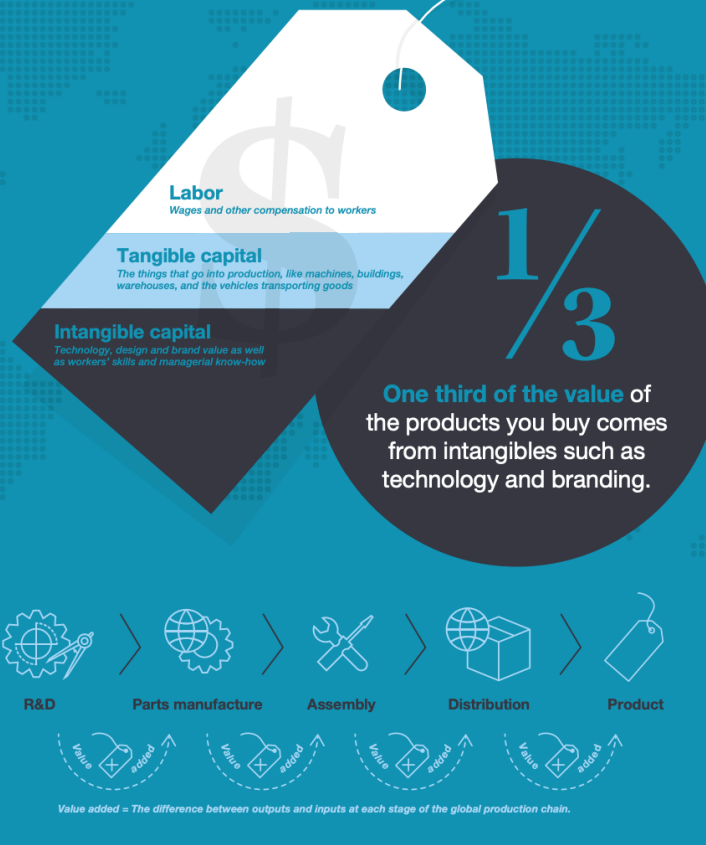
Overview

- Global shifts in value from tangibles to intangibles
- Intellectual Property & your business
 - A. What is intellectual property?
 - B. Key concepts in respect of each IP type
 - C. Examples of companies in Africa and their use of IP in business (developed in webinar 4)

Next in this webinar series:

2. *IP Audits, Due Diligence and Valuation*
3. *Access to IP*
4. *Working With IP In Your Business*

IP and other intangibles add twice as much value to products as tangible capital



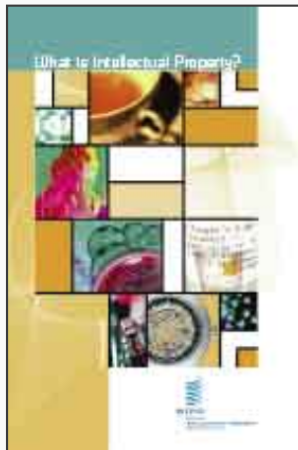
tangibles & intangibles

- tangible/corporeal property (physical)
- intangible/incorporeal property (no physical attributes)
- Intellectual property rights (IP) are intangible
- They may be related to a product or service but exist independently of that good/service
 - e.g. when you buy branded goods, you purchase the item but the right-holder retains their IP
- IP rights are capable of non-rivalrous use
- Physical property can only be in the possession of one person at a time (rivalrous use)

For more see: [World Intellectual Property Report 2017 – Intangible Capital in Global Value Chains](#)

What is Intellectual Property?

Author(s): | Publication year: 2004



Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications. Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

Key concepts

- Creativity of animals and Artificial Intelligence
- IPR fundamentals
- Infringement & civil remedies
- International IP governance framework
- Types of IP
 - i. Patents
 - ii. Designs
 - iii. Trademarks
 - iv. Certification marks
 - v. Collective marks
 - vi. Geographical Indications
 - vii. Plant Breeders Rights
 - viii. Copyright & Related Rights
- Protection of Traditional Knowledge & Traditional Cultural Expressions

Output of human intellect/creativity

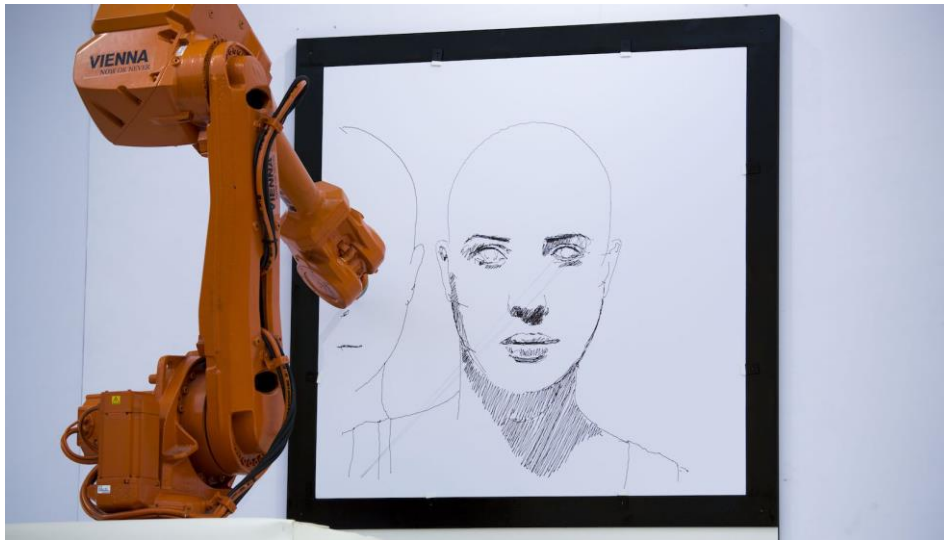


Image: AP Photo/Matt Dunham

For more see:

https://www.wipo.int/about-ip/en/artificial_intelligence/



Image: David J Slater/Caters News Agency

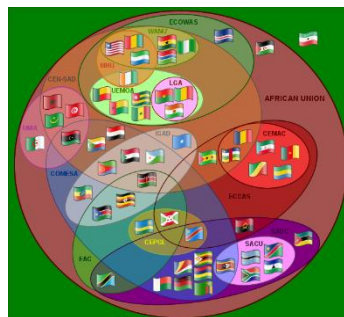
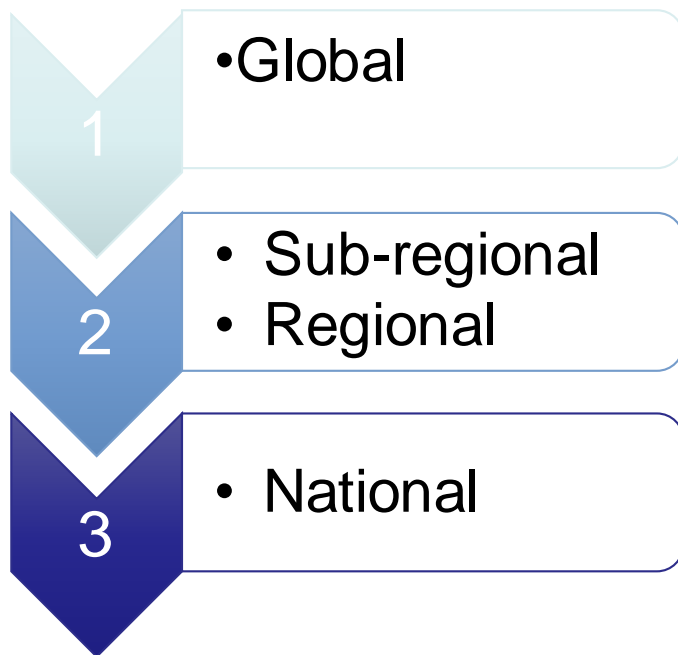
IP rights fundamentals

- IP rights are territorial/jurisdiction specific
 - Minimum standards & some principles set in international agreements
 - In practice there are shared application processes e.g. PCT, ARIPO, OAPI
- Economic exclusivity for a **limited time** over various acts
 - E.g. you cannot do the following, without permission, in relation to patents for the 20year term of the patent : making, using, exercising, disposing or offering to dispose of, or importing the invention (s45 SA Patents Act)
 - Public interest mechanisms e.g. copyright exceptions & limitations permit use of work without authorisation
- Moral rights (Copyright)
 - Paternity (identified as author)
 - Integrity (object to distortion of the work)

Infringement & Civil Remedies

- Any unauthorized use (by law or license) is infringement
- IP right-holder has several remedies incl;
 - damages,
 - interdict,
 - attachment,
 - the rendering of account,
 - the delivery of improperly marked goods or of articles used or intended to be used for marking goods or otherwise

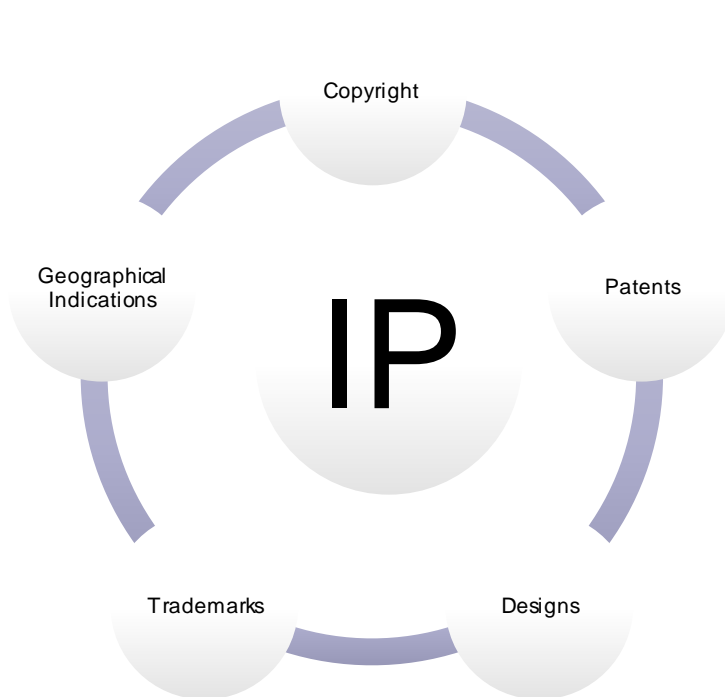
International IP governance framework



Continental Free Trade Area (CFTA)



Types of IP



- Patents
- Designs
- Trade Secrets
- Trademarks
- Collective marks
- Certification marks
- Geographical Indications
- Plant Breeders Rights
- Copyright & Related Rights

** will not cover international agreements, registration processes; classification; Registers; criminal sanctions for infringement*

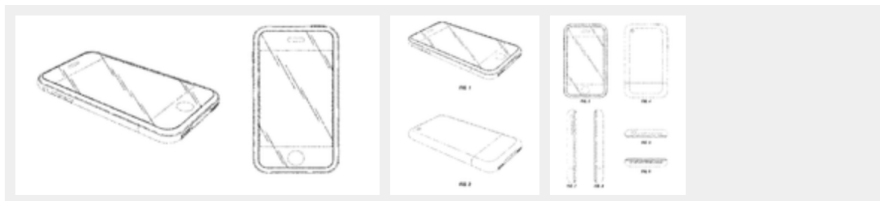
Patents

- Exclusion of subject matter from patentability
- Novelty
- Inventiveness/Non-obviousness
- Industrial Applicability/Utility
- Disclosure
- Term: 20 years

- What can you patent?
 - product (machinery)
 - or process (method of manufacture)

Electronic device

Images (3)



USD672769S1

United States



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Find Prior Art



Similar

Inventor: [Bartley K. Andre](#), [Daniel J. Coster](#), [Daniele De Iulius](#), [Richard P. Howarth](#), [Jonathan P. Ive](#), [Steve Jobs](#), [Duncan Robert Kerr](#), [Shin Nishibori](#), [Matthew Dean Rohrbach](#), [Douglas B. Satzger](#), [Calvin Q. Seid](#), [Christopher J. Stringer](#), [Eugene Antony Whang](#), [Rico Zorkendorfer](#)

Current Assignee : [Apple Inc](#)

Worldwide applications

2007 • [US](#) [AU](#) [CA](#) 2009 • [US](#) 2010 • [US](#) 2011 • [US](#) 2012 • [US](#)
2014 • [US](#) 2016 • [US](#)

Application US29/403,263 events

2007-01-05 • Priority to US29/270,887

2011-07-06 • First worldwide family litigation filed 

2011-10-04 • Application filed by Apple Inc

Second tier patents/utility models

- Also known as, petty patents, innovation patents, short (term) patents.
- Eligibility criteria is less stringent than for patents
 - E.g. does not require inventive step
- Suitable for incremental innovations.
- Exclusive rights granted are for a shorter term of protection than patents
- Application procedure differs from that for patents
 - Shorter process (may exclude pre-grant examination)
 - Costs less

Industrial Designs



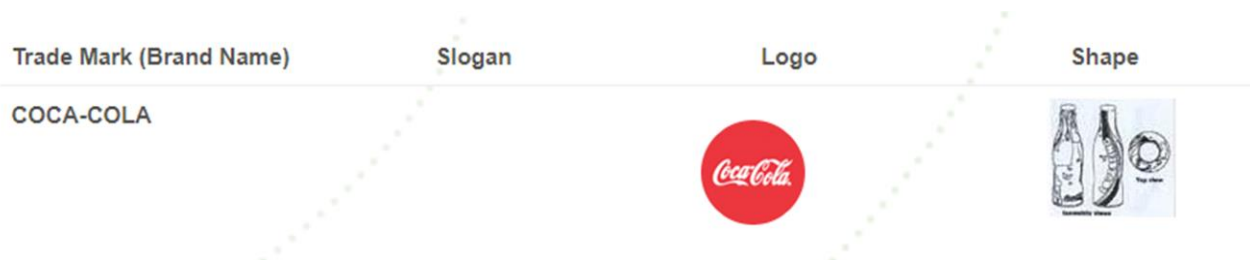
- Protect the visual features of an article, e.g., the shape and appearance of an industrial article.
- Registered if
 - New/original
 - Term: 10 years (initial) renewable for additional 5 years

Trade secrets

- Protection of confidential information which may be sold or licensed.
- Three essential qualities of a trade secret - the information must be:
 1. **commercially valuable** because it is secret,
 2. be known only to a **limited group of persons**, and
 3. be subject to **reasonable steps taken** by the rightful holder of the information to keep it secret.
- Examples: manufacturing processes, designs and drawings of computer programs, distribution methods, supplier and client lists, advertising strategies, formulas, recipes
- Protection mechanisms: physical (lock and key), contractual (non-disclosure agreements)
- Term: as long as confidentiality is preserved

Trademarks

- Types of registered trade marks
- Service
- Product
- Must be capable of distinguishing goods or services, in the course of trade
- Term: 10 years, renewable



Certification marks

- given for compliance with defined standards but are not confined to any membership.
- may be used by anyone who can certify that the products involved meet certain established standards.
- Example: WOOLMARK which certifies that the goods on which it is used are made of 100% wool.



Collective marks

- signs which distinguish the geographical origin, material, mode of manufacture or other common characteristics of goods or services of different enterprises using the collective mark.
- The owner may be either an association of which those enterprises are members or any other entity, including a public institution or a cooperative.
- Example: Stellenbosch Farmers Winery.



Geographical Indications

- Designation/description used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that location.
- consists of the name of the place of origin of the goods;
- links the goods to place of origin;
- may indicate qualities, attributes, reputation associated with geographic origin;
- may also imply production skills/processes associated with region

Plant Breeders Rights

- Provides legal protection of a plant variety to a breeder in the form of Plant Breeder's Rights (PBR)
- PBR are intellectual property rights that provide exclusive rights to a breeder of a registered variety
- Some protection instruments:
 1. UPOV: The International Union for the Protection of New Varieties of Plants
 2. African Model Law for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources
 3. Arusha Protocol for the Protection of New Varieties of Plants (ARIPO)
 4. National laws

Copyright & Related Rights

- Copyright protects the expression of ideas that are original, in fixed or material form and are authored by an eligible person or first published in the jurisdiction
- Protected works: e.g. literary, dramatic, artistic, musical, cinematograph films, sound recording etc
 - SMEs: computer programs; website content; product catalogues; newsletters; instruction sheets/operating manuals; user, repair or maintenance manuals; artwork and text on product literature, labels or packaging; marketing and advertising materials on paper, billboards, websites etc.
- Exclusive rights: copying, adaptation, publication, distribution
- Moral rights : Paternity (identified as author) and Integrity (object to distortion of the work)
- Duration: depends on type of work e.g. life plus 50 for literary works

Related rights

- rights granted to performers, phonogram producers and broadcasters.
- In some countries, such as the United States of America and the United Kingdom, these rights are simply incorporated under copyright.
- Other countries, such as Germany and France, protect these rights under the separate category called “neighbouring rights.”

SMEs and Traditional Knowledge (TK) & Traditional Cultural Expressions (TCEs)

- Some SMEs develop goods or services that are informed by, are based on, or incorporate TK and TCEs
- For example: manufacturing and selling traditional handicrafts, running a safari & tours business that uses traditional tracking methods, producing goods using traditional methods
- Therefore the protection of TK and TCEs is important

Protection of Traditional Knowledge

knowledge which has been developed within an indigenous community and has been assimilated into the cultural and social identity of that community, and includes—

- (a) knowledge of a functional nature; *
*knowledge that is scientific and, or technical in nature, any field
- (b) knowledge of natural resources; and
- (c) indigenous cultural expressions;

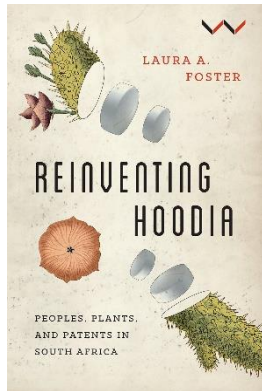
***IKS Act, South Africa**



Traditional Cultural Expressions

- expressions that have a **cultural content** that developed within indigenous communities and have assimilated into their cultural and social identity, including but not limited to—
 - (a) phonetic or verbal expressions;
 - (b) musical or sound expressions;
 - (c) expressions by action; and
 - (d) action tangible expressions;

***IKS
Act**



BUSINESS INSIDER | TRENDING

Outrage as Zara is accused of ripping off a beloved SA brand

Timothy Wangwe, Business Insider SA
Nov 24, 2019, 10:32 AM



MaXhosa by Laduma
MaXhosa by Laduma's signature diamond-shaped design (left) and Zara's new sock range (right).

- South Africans have been outraged by accusations that Zara ripped off a MaXhosa by Laduma design.
- The fashion brand's signature diamond pattern features in much of the SA designer's work.

Options for protecting IK/ICEs

- Different aspects e.g. biodiversity, knowledge governance
- Protection with conventional/existing IP systems
 - Difficulties: protection criterion, duration & scope of protection
- Adaptation of conventional/existing IP systems
 - To overcome difficulties of conventional system
- *Sui generis* protection
 - Custom made to meet requirements of indigenous communities
 - Communal ownership, perpetual protection

Protection Mechanisms

- **Defensive protection:** measures which ensure that IP rights over IK are not given to parties other than the customary IK holders
- **Positive protection:** the creation of positive rights in IK that empower IK holders to protect and promote their IK

Ethiopia gets its injera back

Simon Allison 06 Feb 2019 13:04



It is gluten-free and rich in nutrients, and has been touted as the next major health food fad, following in the footsteps of quinoa and kale. (Photo: SarahTz/Flickr)

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[COMMENTS](#)

The Ethiopian government is celebrating a major victory in a long-running dispute over who owns the patent for products made from teff - an ancient grain that forms the basis of Ethiopia's staple food, injera.

[READ MORE: Whose injera is it anyway?](#)

In 2003, a Dutch company registered a European patent for teff-related products, claiming that these were "invented" by a certain Jans Roosjen, a senior company official. In recent years, Ethiopia has complained that this is totally inaccurate — Ethiopians have been using teff for millennia, after all — and that the patent prevents Ethiopian companies from exploiting a growing global market for teff.

injera-back

Africa: Regional & National Examples

African Union	African Model Legislation for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources, 2000
ARIPO	African Regional Intellectual Property Organization Swakopmund Protocol on the protection of traditional knowledge and expressions of folklore, 2010 (wef May 2015)
SADC	SADC Draft Protocol for Protection of New Varieties of Plants
Kenya	The Protection of Traditional Knowledge and Cultural Expressions Act of 2016
Zambia	Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act, 2016 [No. 16 of 2016].
South Africa	IP Laws Amendment Act 28 of 2013 Protection, Promotion, Development and Management of IK Systems Act 6 of 2019

Examples of companies in Africa

Mpesa (Vodafone), MTN, Vodacom, Sasol, Debswana / De Beers, Dangote, Econet, DSTV, Ethiopian Airways, Safaricom, Jumia, Shoprite



<https://africanbusinessmagazine.com/top-african-brands/global-brands-dominate-africa/>

25 Most Admired African Brands

Rank	Brand	Category	Country
1	Dangote	Consumer Non-cyclical	Nigeria
2	MTN	Telecoms	South Africa
3	Anbessa Shoes	Apparel	Ethiopia
4	DStv	Media	South Africa
5	Econet	Telecoms	Ethiopia
6	Safaricom	Telecoms	Kenya
7	Shoprite	Retail	South Africa
8	Glo	Telecoms	Nigeria
9	Tusker	Alcoholic Beverages	Kenya
10	Trade Kings	Consumer Non-cyclical	Zambia
11	Kasapreko drinks	Alcoholic Beverages	Ghana
12	Amarula	Alcoholic Beverages	South Africa
13	Jumia	Retail	Nigeria
14	Kenya Airways	Aviation	Kenya
15	Tiger brands	Consumer Non-cyclical	South Africa
16	Castle Lager	Alcoholic Beverages	South Africa
17	Nanawax	Apparel	Benin
18	Azam	Food	Tanzania
19	Star Beer	Alcoholic Beverages	Nigeria
20	Chibuku	Alcoholic Beverages	Zambia
21	Ethiopian Airlines	Aviation	Ethiopia
22	Bidco	Consumer Non-cyclical	Kenya
23	Kwese	Media	Zimbabwe
24	All Kasi	Apparel	Botswana
25	Sivop	Cosmetics	Ivory Coast

IP and your business

- This overview of the different IP rights and their use in business, has prepared us to consider how your business may beneficially use IP
- The following webinars, will develop this by focusing on
 1. *IP Audits, Due Diligence and Valuation*
 2. *Access to IP*
 3. *Working With IP In Your Business*

Further resources for SMEs

- [In Good Company: Managing Intellectual Property Issues in Franchising](#) (2019)
- [Looking Good: An Introduction to Industrial Designs for Small and Medium-sized Enterprises](#) (2019)
- [Inventing the Future: An Introduction to Patents for Small and Medium-sized Enterprises](#) (2018)
- [Making a Mark: An Introduction to Trademarks for Small and Medium-Sized Enterprises](#) (2017)
- [Creative Expression: An Introduction to Copyright and Related Rights for Small and Medium-sized Enterprises](#) (2006)
- [A Stitch in Time - Smart Use of Intellectual Property by Textile Companies](#) (2006)
- [Secrets of Intellectual Property: A Guide for Small and Medium-sized Exporters](#) (2003)
- WIPO [Trade Secrets – FAQs](#)

Thank you!



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