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THEDEVELOPMENT OFTHEINTERNATIONAL PATENTSYSTEM

THEAFRICANREGIONALINDUSTRIALPROPERTYORGANIZATION  
(ARIPO)ASANEXAMPLEOFREGIONALCOOPERATION  
INTHEFIELDOPATENTS

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## I. INTRODUCTION

1. One of the ideas which evolved from the "Conference on the International Patent System," which was held in Geneva last March and organized by WIPO, was the need for countries to come together and establish regional patent offices. Prof. Edmund W. Kitch quoted this idea as the following: "for a patent system to be a net social benefit to society, it is necessary that the tasks involved in administering the patent system are undertaken at a reasonable cost."
2. An appropriate policy that the international patent systems should consider to ensure that costs are minimized and the benefits maximized is the regionalization of patent granting authorities. At present there are four regional patent offices with two in Europe, namely the European Patent Office (EPO) and the Eurasian Patent Office (EAPO) and two others are in Africa, the *Organisation Africaine de la Propriété Intellectuelle* (OAPI) and the African Regional Industrial Property Organization (ARIPO).
3. The agenda of this paper is to introduce ARIPO in the context of the development of the international patent system.

## II. THE ESTABLISHMENT OF ARIPO

4. The history of ARIPO goes back to the early seventies when a Regional Seminar on patents and copyright for the English-speaking African countries was held in Nairobi. That seminar recommended that a regional industrial property organization be set up. In 1973, the United Nations Economic Commission for Africa (UNECA) and the World Intellectual Property Organization (WIPO) responded to a request by these English-speaking countries for assistance in pooling their resources together in industrial property matters. Following a number of meetings at ECA headquarters in Addis Ababa and WIPO headquarters in Geneva, a draft Agreement on the Creation of the Industrial Property Organization for English-speaking Africa (ESARIPO) was prepared.
5. This Agreement, now known as the Lusaka Agreement, was adopted by a Diplomatic Conference held in Lusaka, Zambia on December 9, 1976. ESARIPO was therefore born on the December 9, 1976.
6. The Lusaka Agreement came into force on February 15, 1978. From that date ECA and WIPO acted as a joint Secretariat of ESARIPO until the June 1, 1981 when the Organization established its own Secretariat.
7. In December 1985, the Lusaka Agreement was amended in order to open up the membership of the Organization to all African states members of the United Nations Economic Commission for Africa or the Organization of African Unity (OAU) and changed its name to the African Regional Industrial Property Organization (ARIPO) in order to reflect its new pan-African outlook.

## III. REASONS FOR ESTABLISHING ARIPO

8. ARIPO was mainly established to pool together the resources of its member countries in industrial property matters in order to avoid duplication of financial and human resources. Thus the preamble to the Lusaka Agreement clearly states that the member states are "aware of

theadvantagetobederivedbythemfromtheeffectiveandcontinuousexchangeof informationandharmonizationandco -ordinationoftheirlawsandactivitiesinindustrial property matters.”Memberstatesalsorecognizedthatthe“creationofanAfricanregional industrialpropertyorganizationforthestudyandpromotionofandcooperationinindustrial property matterswouldbestserve”thatpurpose.

#### IV. OBJECTIVES OF ARIPO

9. The objectives of the Organization, as enshrined in Article III of the Lusaka Agreement, show that cooperation in industrial property is intended to achieve technological advancement for the economic and industrial development of the member states. This cooperation is reflected in the objectives of the Organization which are:

- a) to promote the harmonization and development of the industrial property laws, and matters related thereto, appropriate to the needs of its members and of the region as a whole;
- b) to foster the establishment of a closer relationship between its members in matters relating to industrial property;
- c) to establish such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the industrial property activities affecting its members;
- d) to establish schemes for the training of staff in the administration of industrial property law;
- e) to organize conferences, seminars and other meetings on industrial property matters;
- f) to promote the exchange of ideas and experience, research and studies relating to industrial property matters;
- g) to promote and evolve a common view and approach of its members on industrial property matters;
- h) to assist its members, as appropriate, in the acquisition and development of technology relating to industrial property matters, and
- i) to do all such other things as may be desirable for the achievement of these objectives.

10. It is clear from the above objectives that the common thread running through them is the idea of cooperation. The concept of cooperation plays an important role in the functions of the Organization.

## V. LAWS BEFORE THE ESTABLISHMENT OF ARIPO

11. In determining its objectives, the founding fathers of the Organization took into account the fact that the majority of the countries concerned had “dependent industrial property legislations” which did not provide for original grant or registration in the countries concerned but could only extend to their territories the effects of industrial property rights obtained in a foreign country (in most cases the United Kingdom). Such effects were normally governed by law of the foreign country.

12. This explains the position of harmonization and development of industrial property law on the list of objectives of ARIPO. Since its establishment, the Organization has ensured that all its member states adopted independent industrial property systems.

## VI. MEMBERSHIP

13. According to Article IV of the Lusaka Agreement, membership to the Organization is open to state members of the United Nations Economic Commission for Africa or the Organization of African Unity. There are currently fifteen states which are party to the Lusaka Agreement and therefore members of ARIPO, namely Botswana, the Gambia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Sierra Leone, Somalia, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

14. Article VI also mandates the Organization to cooperate with non-member states. In line with this provision, ARIPO cooperates with the following 10 potential member states who have observer status in the meetings of its main organs: Angola, Egypt, Eritrea, Ethiopia, Liberia, Mauritius, Namibia, Nigeria, Seychelles and South Africa.

## VII. ORGANS OF ARIPO

15. Article II of the Lusaka Agreement established three organs of the Organization. These are the Council of Ministers, the Administrative Council and the Secretariat. In 1993 the Administrative Council established, as its subsidiary body, the Finance Committee, and in 1997 the Council amended the Harare Protocol to provide for the Board of Appeal as an independent organ.

### A. Council of Ministers

16. Article VI bis of the Lusaka Agreement provides for the composition and functions of the Council of Ministers. The Council of Ministers consists of ministers of the governments of member states of the Organization who are responsible for the administration of industrial property.

17. The Council of Ministers is the supreme organ of the Organization and, in that capacity, it is responsible for the policy orientation of the Organization. It is also responsible for solving problems which, because of their nature, cannot be resolved by the Administrative Council.

18. The Council of Ministers meets once every two years. It may delegate any of its powers and functions entrusted to it by Article VI bis to the Administrative Council.

## B. Administrative Council

19. According to Article VII of the Lusaka Agreement, the Administrative Council consists of technocrats, namely, the heads of offices dealing with the administration of industrial property in member states of the Organization. The Administrative Council is subordinate and reports to the Council of Ministers. It is responsible for, *inter alia*, the supervision of the execution of the policy of the Organization as set by the Council of Ministers, the approval of the program of activities and budget of the Organization as well as the appointment of the Director General of the Organization. The Administrative Council meets once every year in ordinary session, normally during the last week of November.

## C. The Board of Appeal

20. At its Twenty-first session, the Administrative Council established the Board of Appeal to hear appeals against the decision of the ARIPO Office under the Harare and Banjul Protocols as well as any other Protocol that may be adopted within the framework of ARIPO in the future.

21. According to Section 4bis of the Harare Protocol, the Board shall consist of five persons experienced in industrial property matters, two of whom shall be examiners. At least one examiner shall be present at all sittings of the Board.

22. Although the Board is appointed by the Administrative Council, it is independent of all other organs of the Organization.

23. Members of the Board are appointed for a period of two years. The Board started functioning on January 1, 2000.

## D. Secretariat

24. The Secretariat is headed by the Director General who is the Principal Executive Officer of the Organization. He is appointed by the Administrative Council. The Secretariat (the ARIPO Office) is responsible for implementing the program of activities of the Organization in accordance with the established objectives.

## E. Finance Committee

25. The Finance Committee was established by the Administrative Council at its Seventeenth Session held in Banjul, the Gambia, in November 1993 to review the financial statements, program of activities and budget as well as advise the Director General in the preparation of the same before they are considered by the Administrative Council.

26. The Finance Committee consists of five members of the Council who are elected for a period of two years. Zimbabwe is an ex-officio member of the Committee as long as the headquarters of ARIPO is located in that country.

### VIII. COOPERATION WITH OTHER ORGANIZATIONS AND INDUSTRIAL PROPERTY OFFICES

27. Article V of the Lusaka Agreement mandates the Organization to establish and maintain a close and continuous working relationship with the United Nations Economic Commission for Africa (ECA), WIPO and the Organization of African Unity (OAU). Article VI further gives discretion to ARIPO to cooperate with states not members of ARIPO and with organizations, institutions and bodies (cooperating states and organizations) which are willing to assist ARIPO in achieving its objectives.

28. Pursuant to the above provisions, the Organization has established a close and continuous working relationship with WIPO, particularly within the framework of the ARIPO-OAPI-ARCT-WIPO Quadripartite Agreement of July 22, 1985 and its bilateral agreement with WIPO of July 3, 1981. It has had close cooperation with the European Patent Office (EPO) and the Benelux Trademarks Office (BBM) for a long time. A Memorandum of Understanding has also been signed, in June 1999, between ARIPO and the Office for Harmonization in the Internal Market (Trademarks and Designs) (OHIM) while a similar agreement with the Eurasian Patent Office (EAPO) was concluded in 2001.

29. Outside the Quadripartite Agreement, ARIPO concluded a cooperation agreement with OAPI in November 1996. Contacts have been made with WTO regarding the admission of ARIPO as an observer in the meetings of the TRIPS Council with the hope that this may lead to further cooperation in the implementation of the TRIPS Agreement by ARIPO member states.

30. In 1995 ARIPO concluded an agreement of cooperation with the African Regional Organization for Standardization (ARSO). An agreement with COMESA was signed in early 2002. ARIPO is currently negotiating a cooperation agreement with SADC.

31. ARIPO has also concluded agreements of cooperation with the following industrial property offices to ensure technical cooperation and mutual exchange of documentation and information:

- a) the UK Patent Office;
- b) the Swedish Patent and Registration Office;
- c) the National Institute of Industrial Property (INPI) of Brazil;
- d) the US Patent and Trademark Office (USPTO).

32. The Organization also cooperates with the Austrian Patent Office, German Patent Office and Korean Industrial Property Office (KIPO).

### IX. COOPERATION WITH OAU/AFRICAN UNION

33. Article V of the Lusaka Agreement mandates the Organization to establish and maintain a close and continuous working relationship with the OAU.

34. The Assembly of Heads of States and Governments of OAU at its second extra-ordinary session held in Lagos, Nigeria on April 28 and 29, 1990, which was devoted to the economic situation in Africa, adopted a Plan of Action for the Implementation of the Monrovia Strategy for the Economic Development of Africa (the Lagos Plan of Action).

35. In adopting the Lagos Plan of Action, the Heads of State and Government appealed to all OAU member states to take extra measures to implement the Lagos Plan of Action at national, sub-regional and continental levels. Paragraph 154 of the Lagos Plan of Action reads as follows:

“Lack of information is one of the most serious obstacles to the selection, acquisition and use of appropriate technology options. An understanding of the local environment and the character and orientation of the transferee is as important as information on the technology to be supplied. Care should therefore be taken to ensure that the technology supplied matches the local needs identified. Machinery should be established to assess and promote the acquisition and dissemination of information on the range of alternative technologies, processes and products available for particular application.” The following measures are proposed: “... actively supporting and strengthening African regional organizations in the field of patent documentation and information, such as ARIPO...”

36. Despite the above pronouncements, it is only recently that serious attempts have been made to establish a closer relationship with OAU.

37. An agreement of cooperation is being negotiated between the two organizations with a view to ARIPO being given an observer status in the meetings of some important organs of OAU.

38. In view of this, the Council of Ministers of ARIPO, at its Sixth Session held in Mombasa, Kenya, in May 1998, also adopted a policy statement to be considered for adoption by the Assembly of Heads of State and Government. The statement, *inter alia*, urges African countries to support the two African regional intellectual property organizations, namely ARIPO and OAPI, and accelerate their accession to the two organizations.

39. ARIPO views its cooperation with OAU as being of particular importance in the context of the OAU Abuja Treaty of 1991, establishing the African Economic Community (AEC) within 34 years of the date of that Treaty. As the OAU became the African Union (AU) in July 2001, ARIPO sees itself as one of the building blocks of the AEC and AU.

## X. FINANCE

40. The operations of ARIPO are financed by two main sources: annual contributions of member states and income from fees generated by registration activities under the Harare and Banjul Protocols.

41. The annual budgets of the Organization are approved by the Administrative Council as the amount of annual contributions. Since 1988, the assessment of contributions have been based on an equal amount for each member state as opposed to the earlier system where contributions were calculated according to a scale derived from the contributions scale of the

Organization of African Unity. The OAU scale of contribution was seen by some member states as inequitable and became unpopular with member states with high GDP. The current amount of annual contributions by each State is US\$26,040.00.

42. In 1984, in order to facilitate the payment of contributions and arrears of contributions, WIPO was able to obtain from the United Nations Development Programme (UNDP), on an exceptional basis, an arrangement whereby member states could remit their contributions in local currencies to the local UNDP office which in turn transferred the equivalent in hard currency to ARIPO (swap agreement).

43. A number of member states have used the swap agreement to pay their annual contributions and arrears.

44. According to the regulations implementing the Protocols, the fees received by ARIPO are shared between the ARIPO Office and the contracting states designated in the applications. The amount of fees due to member states are offset against their annual contributions and arrears. Some member states have already started earning fees whose amounts are more than their annual contributions. It is expected that for such states the Organization will very soon be a source of income.

## XI. THE HEADQUARTERS OF ARIPO

45. The Headquarters of ARIPO was first established in Nairobi, Kenya where it remained from 1978 to 1981. In September 1981, the Administrative Council decided to move the headquarters to Harare, Zimbabwe. The physical relocation having been completed by February 1982, the headquarters has remained in Zimbabwe since then.

46. The location of the Headquarters is determined by the Council of Ministers. When this is done an agreement is entered into between the host country and the Organization. The Agreement between the host country and ARIPO determines the status of the Organization including control and protection of the organization, immunities and privileges, transport and communication, etc.

47. In February 1999, ARIPO purchased its own headquarters building in Harare. The Secretariat moved to this building on March 5, 2001. In November 2001, the Administrative Council resolved that the building be extended to accommodate a regional training center. It is expected that the training center will be ready by the middle of 2004.

## XII. SUBSTANTIVE ACTIVITIES OF ARIPO

48. As the Lusaka Agreement merely created the Organization without elaborating its powers and functions as an industrial property office, it was necessary to adopt additional legal instruments which would give the Organization specific functions to perform on behalf of member states in the field of industrial property. These additional legal instruments are:

a) the Protocol on Patents and Industrial Designs within the Framework of the African Regional Industrial Property Organization (the Harare Protocol);

b) the Banjul Protocol on Marks.



A. The Harare Protocol

49. For any given country to be able to carry out substantive examination of patent applications and provide a comprehensive technological information service based on patent documentation, it would need to have a vast collection of patent documents and employ a large number of engineers and scientists.
50. This is because it is estimated that there are more than 30 million published patent documents in the world. Every year about 1 million patent documents, representing approximately 400,000 new solutions to technical problems, are added to this collection.
51. For any African country, the costs in terms of human and financial resources needed to establish and maintain an effective industrial property office would be astronomical. This is why member states decided to create a common organ, which would establish a patent information and documentation center to be used to process patent applications and provide information services to its member states.
52. It was with this in mind that, in December 1982, in Harare, Zimbabwe, the Administrative Council of ARIPO adopted the Harare Protocol. The Protocol empowers the ARIPO Office to receive and process patent, industrial design and utility model applications on behalf of States party to the Protocol.
53. The Protocol entered into force in 1984 and now has the 14 following member states as contracting parties: Botswana, the Gambia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Sierra Leone, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.
54. Under the Protocol an application for the grant of a patent or the registration of an industrial design can, by filing only one application, designate any of the Contracting States in which he wishes his invention or industrial design to be accorded protection. The Protocol requires the filing of the application to be made either with one of the Contracting States or directly with the ARIPO Office.
55. On receipt of the patent application, the ARIPO Office verifies that the application complies with formal requirements and then accords a filing date. Later on the Office carries out the substantive examination to ensure that the invention is patentable (in other words, that it is new, involves an inventive step and is capable of being applied in industry). When the application complies with the substantive requirements, copies thereof are sent to each designated contracting state whomay, within six months, indicate to the ARIPO Office that, according to grounds specified in the Protocol, should ARIPO grant the patent that grant will not have effect in its territory.
56. The substantive examination of ARIPO applications makes an ARIPO patent a particularly strong one since such an examination raises its presumption of validity.
57. For industrial design applications, only a formality examination is performed. If the application fulfills the formal requirements, the ARIPO Office registers the industrial designs which have effect in the designated states.
58. However, the same right to communicate to the ARIPO Office within six months that the registration may not have effect in the designated states concerned is reserved.

59. The Administrative Council, at its Second Extra -Ordinary session held in April 1994 adopted amendments to the Harare Protocol and its Implementing Regulations to create a link between the Protocol and the Patent Cooperation Treaty (PCT). This link took effect on July 1, 1994 and has the following effects:

- a) any applicant filing a PCT application may designate A RIPO which in turn means a designation of all states party to both the Harare Protocol and the PCT;
- b) the ARIPO Offices shall act as receiving office under the PCT; and,
- c) the ARIPO Office may be elected in any PCT application.

60. The following 13 countries are party to both the Harare Protocol and the PCT: the Gambia, Ghana, Kenya, Lesotho, Malawi, Sierra Leone, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe.

61. The linkage of the Harare Protocol to the PCT finally created a bond between the ARIPO regional patents system and the international patents system, particularly as far as filing, search and examination was concerned.

62. In November 1999, the Council further adopted amendments to provide for choice of office of filing application, period of protection for patents and industrial designs and protection for utility models.

### XIII. ADVANTAGES OF ARIPO TO MEMBER STATES

63. Membership to the Organization brings several advantages to Member States.

- a) as the Organization was formed to pool resources together to avoid duplication of both human and financial resources, member states have the advantage of economies of scale. This in turn releases scarce resources for the member states to spend on more pressing needs of their citizens;

- b) the ARIPO regional industrial property system covers a total area of nearly 6,5 million square kilometers with a population of over 166 million. Membership to ARIPO therefore opens up new markets for its member states, improves their investment climate and encourages access to technical information, particularly that contained in patent documents;

- c) the ARIPO regional system complements the national industrial property system of its member states. The sovereignty of member states is therefore preserved but applicants are given more choice as to route of filing their applications and where to obtain protection.

- d) there is increased use of the local industrial property system by foreign applicants.

## XIV. ADVANTAGES OF THE HARARE PROTOCOL

64. The Harare Protocol on Patents and Industrial Design offers distinct advantages to both industrial property offices of ARIPO member states and the users:

A. Advantages to the Industrial Property Offices

a) the Harare Protocol ensures that IPO offices handle more applications and therefore receive more revenue than would otherwise be the case.

b) the IPO office saves some of the costs of processing applications, particularly publication, grant/registration and renewals since this is done by the ARIPO Office on their behalf.

c) the quality of examination, particularly with regard to patents, ensures that the rights granted have a strong presumption of validity.

d) IPO offices with weak infrastructures, shortage of human and financial resources still offer a high standard of industrial property protection.

B. Advantages to the Users

a) the applicant can file his application with either his national office or directly with the ARIPO Office.

b) one application has effect in all designated member states.

c) the applicant uses only one language – English – and pays fees in one currency – US dollars – and employs only one agent.

d) centralized processing, grant and renewal.

e) the system is simple, cost effective and user -friendly.

## XV. CONCLUSION

65. Generally, the ARIPO regional patents system has proved, during the last 20 years of its existence, that it is fulfilling the objectives for which the Organization was established. Although the system is linked to the PCT through the Harare Protocol and the Paris Convention through the national laws of its member states, it should be realized that the regional system is not the ideal system. One hopes that the ARIPO regional system is one of the foundation stones of the ideal international patents system.

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