

WIPO/IP/DAR/00/4

ORIGINAL: English

DATE: June 2000



GOVERNMENT OF TANZANIA



WORLD INTELLECTUAL
PROPERTY ORGANIZATION

**REGIONAL SEMINAR ON THE BENEFITS OF THE
INTELLECTUAL PROPERTY SYSTEM FOR UNIVERSITIES,
UNIVERSITY RESEARCHERS AND RESEARCH
AND DEVELOPMENT ORGANIZATIONS**

organized by
the World Intellectual Property Organization (WIPO)
in cooperation with
the Ministry of Science, Technology and Higher Education
of the United Republic of Tanzania

Dar es Salaam, June 20 to 22, 2000

INTRODUCTION TO THE LEGAL AND ECONOMIC DIMENSIONS OF THE
INTELLECTUAL PROPERTY SYSTEM - LEGAL BASIS; ADMINISTRATION; ROLE
OF INTELLECTUAL PROPERTY IN THE NATIONAL SYSTEM OF INNOVATION;
TRADE AND COMMERCE; ECONOMIC ASPECTS AND BENEFITS OF
INTELLECTUAL PROPERTY FOR INDUSTRIES AND UNIVERSITIES

*Document presented by Mrs. Maria Kiwia, Assistant Registrar, Business Registrations and
Licensing Agency (BRELA), Dar es Salaam*

INTRODUCTION

The impediments limiting the development of intellectual property in this country is the mystification of the subject matter itself and lack of clarity direction for its future development.

The two singled out problems are fundamental as the former scares away even the would be beneficiaries of intellectual property, such as inventors, innovators, authors and creators of artistic works. The few who happen to know the intellectual property subject matter have been, for too long keeping, it to themselves. Not many literature is available particularly in Tanzania and the little that is available has limited readership for reasons of probably being mystic.

The latter problem is lack of visionary perception of all the current potential stakeholders in intellectual property, such as inventors,, innovators, academics, enforcers of intellectual property rights, policy makers and so on. In fact the second problem could well be the product of the first.

Any attempt to address the foregoing problems calls for having in place a clear, articulated and visionary Government statement the ""Intellectual Property Policy

2. WANT OF INTELLECTUAL PROPERTY POLICY

At the moment, save for the brief mention of intellectual property in the National Science and Technology Policy of 1996, it can safely be alluded that there is no national intellectual policy per se.

There is need of a national intellectual property policy which shall spearhead the intellectual property demystification exercise and make it accessible to potential beneficiaries of such rights.

The policy will also be expected to clearly spell the vision and the mission of the whole process of ownership of intellectual property rights., the scopes of their protection and the economic benefits pertaining to ownership of such rights and the development in technology, industry and commerce which is likely to be the product of the protection process of intellectual property.

The Policy will also spell out the scope and the extend by which the nation will participate and co-operate in the regional and international areas of co-operation in intellectual property. And how the nation expects to benefit from such cooperations.

The Policy will also be capable of providing clear place in the national priorities for economic development.

At the national level, the policy should in very broad terms, clearly state the boundaries of each stakeholder in intellectual property and provide an integrative arrangement for the mutual and common benefits of each and every one.

The policy in the wake of digital and global knowledge based economy, should focus in the complex and challenging rapid developments particularly in the information and

telecommunication technology and clearly define and national strategy of making it an active participant.

Last but by no means least the policy should in broad terms state, the contribution of intellectual property in the overall national economic development strategy.

3. INTELLECTUAL PROPERTY POLICY FORMULATION TO INVOLVE ALL STAKEHOLDERS

Since intellectual property touches almost every aspect of everyone's life, there is need to involve everyone in intellectual property policy formulation.

This will ensure the acquisition of the collective vision of every participant in the policy formulation and eventually the common ownership of the policy.

Further more it will be a lot easier to enforce such rights, as the right owners will be aware of their specific intellectual property rights and their specific protection and enforcement systems. Likewise users of such information will also be aware when they legally or fraudulently use such rights.

It is also expected that awareness will be enhanced during the policy formulation workshops, seminars and other consultative fora, with stakeholders and hence such fora have multiplier effects.

4. POSITION OF INTELLECTUAL PROPERTY IN TANZANIA

In Tanzania, intellectual property can be categorised into two main aspects as follows:

- (i) Traditional knowledge
- (ii) Modern aspects of intellectual property

Whereas traditional knowledge, in its widest sense, relates-, to all traditionally accumulated knowledge, subsisting in traditionally based recognisable ethnic groups, within a distinct traditional environment differs completely from the modern aspects of intellectual property both in form and content.

Traditional knowledge depicts itself in such ethnic groups, through cultural expressions, customs, healing and treatment methods. Methods of protecting such knowledge, from passing to other unauthorised groups of persons etc. (traditional intellectual property protection systems).

Generally speaking there were no formal, in the modern sense, legal protection systems of traditional knowledge, its is only recently (in Tanzania, last year, that legal recognition of expression of folklore is included in the copyright and Neighbouring Rights Act No. 7 of 1999) that formal legal forms are instituted in form of statute to protect traditional knowledge. This new legal statutes, aim to providing legal protection of expression of folklore, an aspect of traditional knowledge in the modern sense. The intended outcome is to encourage the custodians of such knowledge, to disclose such knowledges for general communal and public use and for the moral and economic benefits, to such custodians and their communities.

The second category, is the modern concept of intellectual property systems which came into this country on board the colonial administration.

The introduction of colonial legal systems in Tanzania, also brought legal intellectual property protection systems, which implied the recognition of modern intellectual property notions in the country. We see the introduction in 1931 of cap. 217 which was a legislation introduced to regulate registration of patents in the then Tanganyika. That legislation- was repealed and replaced by a new Patent Act No. 1 of 1987. The new Act is a modern piece of legislation and has all the regulatory prowess,, of a modern patent protection legislation, which requires equally modern patent infrastructure to complement an effective patent protection system.

Utility models and petty patents are also included in the new above mentioned Patent Act.

The Trade Marks legislation was first introduced into this country on the 1st April, 1922 when the first Trade Marks Ordinance became operational the ordinance was repealed in 1958 by Trade Marks Ordinance cap. 394 which was also repealed by the current Act the Trade and Service Marks Act No. 12 of 1986. The Act is modern and its operation in Tanzania is quite effective.

The other aspect of intellectual property legal position in Tanzania is with respect to Copyrights. The first Copyright legislation in Tanzania was promulgated 1924 cap. 218. It became operational in Tanganyika on the 1st August, 1924. The Ordinance was repealed by Act No. 61 of 1966.

The 1966 Act was repealed last year 1999 when a new and modern Copyright Act was promulgated. The new Copyright Act became operational on the 31st December, 1999.

So the position of intellectual property in Tanzania can be summarised as follows. That there are two categories of intellectual property one category which is based in traditional knowledge and which at the moment is being given modern recognition and has even been included in the new Copyright Act No. 7 of 1999 in an aspect of Folklore.

The second category is with respect to intellectual property on the basis of the modern concept which include aspects such as Patents, Trade and Service Marks and Copyrights.

In Tanzania, all intellectual property legislations are enforced by the Business Registrations and Licensing Agency, which is a Government Executive Agency under the ministry of Industry and Trade.

The most active aspect, is the aspect that deals with trade and service marks. The responsible office receive about 2000 applications for registrations or trade and service marks annually from within and outside the country.

Tanzania is a member of the World Intellectual Property Organisation (WIPO) since 1982 and has been a member of the Paris convention of Industrial Property from 1963. Tanganyika has been a member of the Berne Convention from 1964 and has recently joined the Patent Cooperation Treaty,, the Madrid Union on Trade Marks and the Nice Agreement of International Classification of Goods, Tanzania is also a member of African Regional Industrial Property Organisation (ARIPO) and recently joined the Harare Protocol on Patents and Banjul Protocol on Trade Marks.

5. Recommendations:

As already noted, the Policy stipulated in the science and technology policy on intellectual property in itself does not adequately address issues pertaining to such rights, there is a need to have a comprehensive national intellectual property policy, which would take into consideration the particular social economic conditions prevailing at the national, regional and international level.

In formulating the policy it is strongly recommended that, the process should be transparent and take into account the views of the stakeholders private sector, the academic and institutions involved in intellectual property. Furthermore, Government departments dealing with enforcement of intellectual property matters should also be involved in the process.