

ELEMENTS OF AN EFFECTIVE AND
BALANCED IP SYSTEM TO ENABLE
INNOVATION: ESTABLISHING LEGAL
AND INSTITUTIONAL FRAMEWORKS

By

**Getachew Mengistie, Intellectual Property
Consultant & Attorney**

Dakar, Senegal

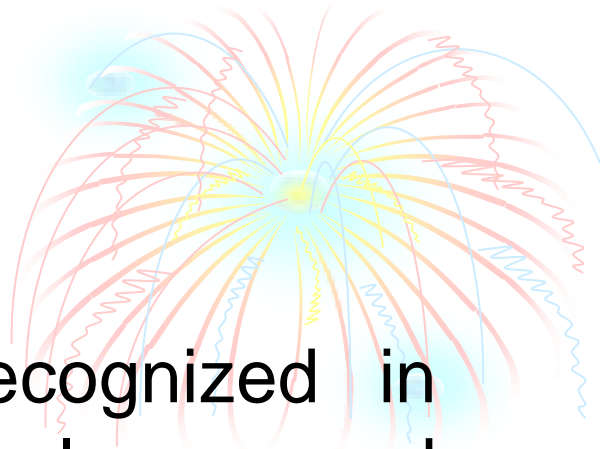
3 November 2015

Introduction



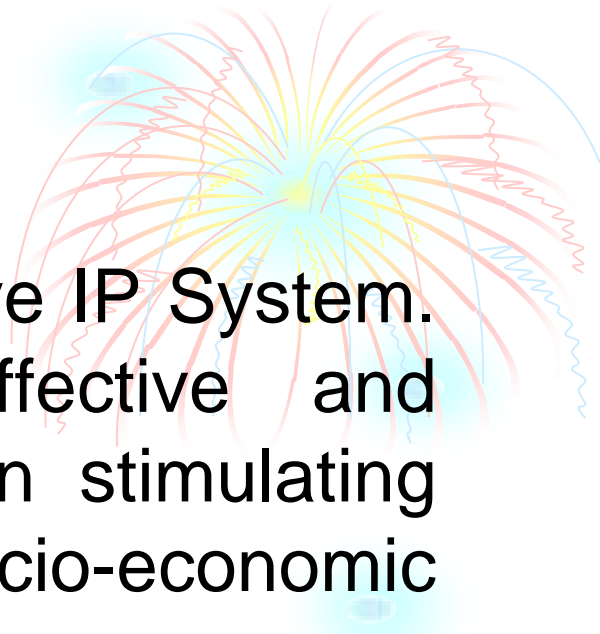
- Innovation key to development of countries and strengthening competitiveness of firms
 - ✓ prosperity & sustainability of a country & its development is no longer based on natural resources but on intangible assets such as innovations
 - ✓ essential tool to enhance competitiveness and ensure market leadership

Introduction



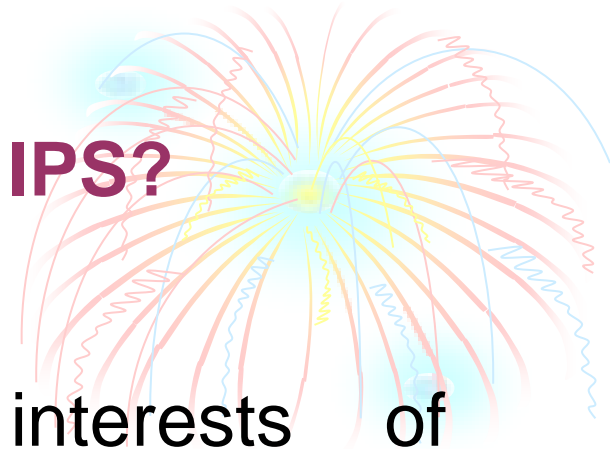
- Role of innovation is well recognized in Africa- policies, strategies, laws and institutions including those dealing with Intellectual Property (IP) aiming at creating an enabling environment
- Intellectual Property System (IPS) consists of polices, laws and institutions dealing with IP
- Effective and balanced IP System plays a role in stimulating inventive and innovative activities and facilitating TOT

Introduction



- Almost all African countries have IP System. However, is the system effective and balanced? Does it contribute in stimulating innovation and meeting socio-economic development goals?
- Purpose of presentation is to:
 - ✓ highlight elements of a balanced and effective IPS,
 - ✓ give an overview of the IPS in Africa
 - ✓ identify challenges, and
 - ✓ make broad recommendations

What is an Effective & Balanced IPS?



- IPS is effective if it:
 - Meets the needs and interests of innovators
 - Serves the development goals and needs of a country and its people
 - Helps to maximize benefits from resources that the country is endowed with and has comparative advantage
 - Supports innovative efforts
 - Linked to & take advantage of International IPs etc.;

What is an Effective & Balanced IPS?



- A balanced IP system
 - recognizes and meets the interests of innovators and the public
 - provides protection for innovation, facilitates disclosure and dissemination of information etc’;
- An effective & balanced IP system is developed reflecting specific situation, level of technological development and taking advantage of policy space while complying with the requirements of international IP agreements

Elements of Effective and Balanced IP Laws



- Provision for appropriate titles of protection, example, utility model
- Definition of requirements for protection- example criteria of patentability, requirement for disclosure of inventions etc.;
- Exclusions from IPR protection- scientific formula, discovery etc.;; from patent protection and ideas from copyright protection etc.;
- Definition of rights and obligations

Elements of Effective and Balanced IP Laws



- Exceptions and limitations- use of patented inventions for scientific experimentation and research, use of copyrightable works for teaching and library purposes, duration of protection etc.;
- Safeguards and sanctions- government use, compulsory license, measures to prevent anti competitive practices etc.;

Elements of Effective and Balanced IP Institutions

- Task not limited to receiving, processing applications, granting & renewing titles
- Support the generation, protection and exploitation of IP assets such as inventions & innovations
- Promote the use of the IP system by residents
- follows up new developments and challenges at national and international level, develop policy & legislative proposals to deal with new issues, accommodate new developments and needs

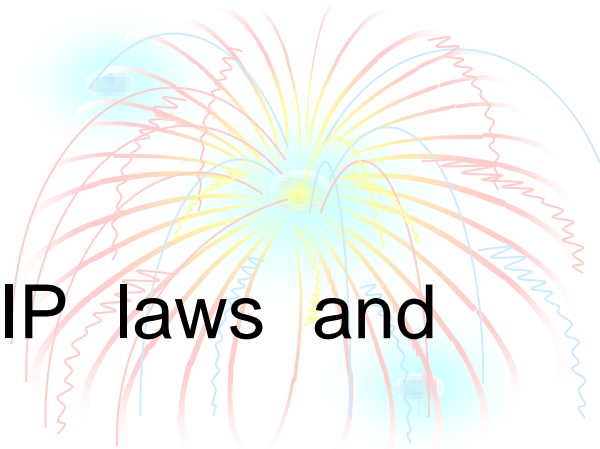


Elements of Effective and Balanced IP Institutions

- Promote use of opportunities offered by international organizations such as the WIPO ARDI and ASPI programs
- Establish closer working relationship with relevant public and private sector bodies and involves stakeholders etc.;
- Provide and continually enhance the quality of its services
- Establish and strengthening partnership and closer working relationship with national, regional and international IP organizations etc.;



The IP system in Africa



- Include national and regional IP laws and institutions- limited to NIPS
- Encouraging measures to replace IP laws inherited from the colonial powers, enact new and comprehensive laws but..
- Majority of IP institutions are weak and have limited development related roles and functions
- Insignificant use of IP and inadequate contribution of the IPS to the realization of development goals etc.

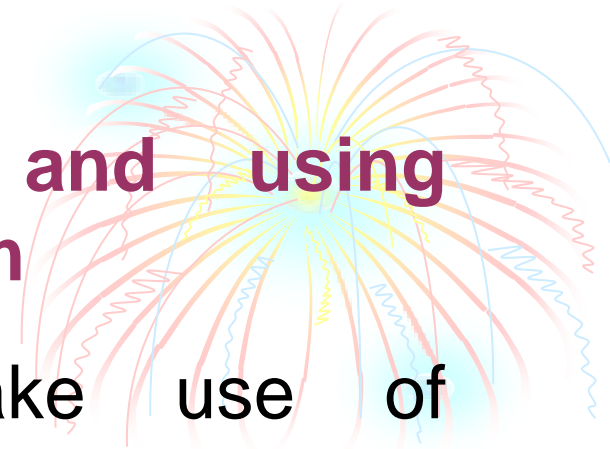
Challenges in establishing and running effective and balanced IP system



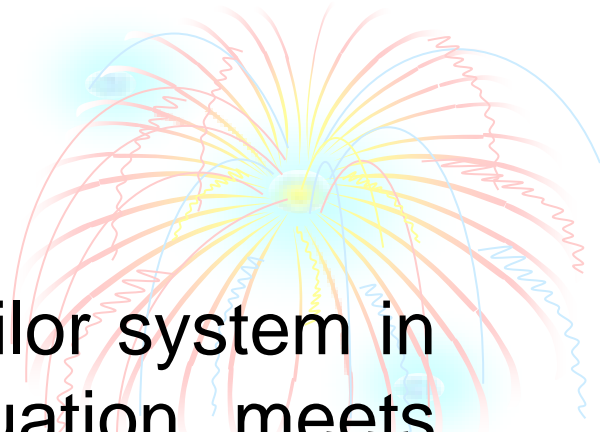
- Inadequate capacity in developing IPS based on concrete needs and specific situation
- Limited policy space to tailor IPS
- Inadequate knowledge or capacity to make use of flexibilities-ex. Article 29(1) of the TRIPS agreement
- Inadequate participation and capacity in influencing international rule making, following up new developments and developing and promoting own position etc.;

Challenges in establishing and using effective and balanced IP system

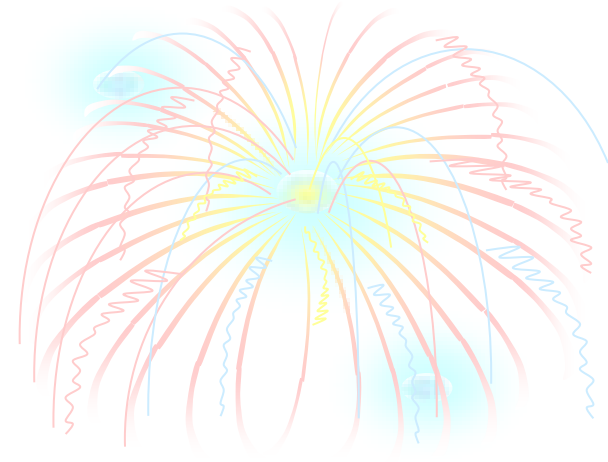
- Inadequate capacity to make use of safeguard mechanisms- example compulsory license
- Lack of or inadequate monitoring and evaluation of impact of IPS; review & further development of system
- inadequate awareness of the significance of IPS in stimulating & supporting development goals- example IP and government priorities etc.;



Reccommendation



- No one size fits all approach- tailor system in a way that reflects concrete situation, meets needs of innovators and the public taking advantage of the policy space left for developing countries
- Build human resource capacity in IP policy legislation formulation and monitoring, evaluation and impact analysis
- Review existing IPS and ensure that it is effective and balanced
- Ensure dynamism of IPS



Thank you for your Kind Attention!!

