

Intellectual Property Rights Issues -Legal Framework in Zambia

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Introduction

- The first IP office was established in Zambia in 1968 at the end of the federation of Rhodesia and Nyasaland under the ministry of Commerce Trade and Industry
- Prior to this, IP matters were administered under the portfolio of the federation in Southern Rhodesia in Salisbury now Harare
- The office continued to be under the MCTI as a department (PACRO) until 1998 when it was renamed PACRA when the PACRA Act was revised (Act No. 15 of 2010)

Introduction cont'd

- At that time PACRA was mandated to administer five Acts namely:
- Companies Act
- Business names Act
- Patents Act
- Trademarks Act
- Registered Industrial Designs Act

Introduction cont'd

- At that time matters of intellectual property were vested in two ministries in MCTI and MIBS
- The Registrar of companies and industrial property dealt with IP issues whereas the registrar of copyright dealt with copyright issues under MIBS

What is intellectual Property?

- Intellectual property deals with the rights that are given to a person or an entity in regard to intangible things which come about through the intellect of a human being
- This includes patents, designs, and trademarks amongst others
- The law provides for the protection of these intangible things
- Intellectual property is divided into two branches i.e. industrial property and copyright

What is intellectual Property?

- The first branch is that of Industrial property which refers to inventions (patents), designs (aesthetic images) and symbols and images used in commerce
- The second branch is that which deals with copyright
- When these two branches are combined, they result in the term we refer to as Intellectual Property
- As can be seen intellectual property deals with property rights that are intangible...these rights can be treated in the same way as those rights which accrue to tangible property such as land or a car or a house to mention a few.

Objectives of intellectual property

- Intellectual property protection can be understood to have two objectives:
- Encouraging the disclosure of new developments and ensuring honesty in commercial transactions
- Disclosure gives a access to new things...inventions, product designs or works of authorship that the creator might otherwise keep secret
- Disclosure promotes progress by making knowledge available so that others can build on it

Objectives of intellectual property

- The state grants the inventor a monopoly position (exclusive territorial right to the invention for a limited period of time) as a reward for his innovation;
- In return the applicant must fully disclose the invention to the public;
- The patent office provides for the disclosure on behalf of the applicant by publishing the patent documents.

Objectives of intellectual property

- Laws on patents, trademarks and industrial designs give exclusive rights to the inventors and other stakeholders for a limited period of time
- This period of exclusivity gives the inventor or designers an opportunity to recover his or her investment in time and resources and derive a profit
- The patent system offers a huge publicly available data base of technological information much of which is not found elsewhere in the technical literature

Objectives of intellectual property

- In this regard, IP ensures honesty in commercial transactions which benefits both commercial interests and consumers
- Laws on trademarks and unfair competition serve the public by discouraging dishonest business practices such as false or deceptive labelling.

IPRs protection and the legal system

There are many forms of protection:

- Patents protect inventions
- Trademarks identify the source of goods and services and also protect the quality of goods and services
- Copyright protects literary works and authorship, music, computer programmes etc.
- Industrial designs protects aesthetic appearances of products
- Geographical indications protect the source and quality of goods especially agricultural products

IPRs protection and the legal system

- Trade secrets protect proprietary information related to formulas and processes that are used in industry e.g. the Coca-Cola formula
- Laws on Traditional knowledge, cultural expressions and folklore protect traditional knowledge in various fields, cultural expressions in form of traditional ceremonies, music, dance, song, etc. whereas folklore protects such things as stories, fables, tales, proverbs, sayings, etc.
- Each form of protection applies in certain limited circumstances and provides a set of legally enforceable rights

Trademark Protection

- Trademarks are signs that can be presented geographically to distinguish goods and services of one enterprise from those of another
- A trademark can be a logo, picture, number, slogan, colour, smell or any combination of these.
- With the enactment of the new trademark law, both goods and services are protected in Zambia under the Nice Classification.
- The Nice classification has classified goods in 35 classes and services in 10 classes for their protection.

Trademark Protection

- Zambia was losing a lot of income because of not having a law for the protection of services
- Trademarks are administered under the Trademarks Act Cap 400 of the Laws of Zambia read in conjunction with the Regulations of the same Act
- Protection of a trademark is for 10 years with a provision for renewal.
- A trademark can therefore exist ‘forever’ as long as it is renewed.

Trademark Protection

- For a trademark to be registered it must not be confusingly similar to another trademark and it must not be descriptive in its nature
- One of the good trademarks which is not descriptive is “apple” for computers.
- Registration of a trademark can be done by any person
- However registration of a trademark by a foreigner by be done through a local agent

Patent Protection

- Patent protection is administered under the Patents Act Cap 401 of the Laws of Zambia
- A patent is a title granted to a person or an entity by the government to protect an invention in any field of technology
- This can be for a process or a product
- For a patent to be granted it must be novel (new), it must not be obvious to a person who is skilled in the art and it must not be against the law

Patent Protection

- Patents cannot be granted for discoveries or mathematical formulars
- Patents also not be granted for methods or processes used in treating human beings or animals
- Protection is for 20 years as long as the patent is renewed annually in the fourth year from the time of the grant of the patent through annuities
- After this period of time the patent goes into public domain

Volume of Patent documents (WIPO, 2012)

- United States of America: 10,197,545 records
- Japan: 7,584,538 records
- European Patent Office: 2,608,154 records
- Brazil: 532,672 records
- South Africa: 129,037 records
- Morocco: 13,630 records
- Cuba: 2,797 records
- Panama: 2,312 records
- ARIPO: 1,868 records
- Kenya: 373 records

Protection of Registered Industrial Designs

- Industrial Designs protection is administered under the Registered Industrial Designs Act Cap 402 of the Laws of Zambia
- An industrial design is an ornamental or aesthetic aspect of a product of industry or handicraft
- This also include architectural designs, paintings, buildings or similar structures
- Protection is for five years and is renewable up to a maximum of 15 years
- Thereafter, the product goes into public domain

Intellectual Property Policy

- Prior to 2010, Zambia had no intellectual property policy
- This made it difficult to coordinate and monitor IP activities in the country
- In 2010, a policy was formulated and adopted.
- The policy aims at providing guidance and policy direction on matters related to IP administration in Zambia
- The policy also aims at encouraging R&D work and increasing collaboration amongst and between stakeholders
- It is now relatively easy for PACRA to administer IP in the country

Collaboration with regional and international IP Bodies

- Zambia is a member of the WIPO, a world body on IP based in Geneva
- In addition, Zambia is a signatory to a number of IP conventions of WIPO through which it administers IP issues on the international platform

Collaboration with regional and international IP Bodies

- Some of these are the Patent Cooperation Treaty (PTC) and the Madrid Protocol dealing with the registration of trademarks internationally
- Zambia is also a signatory to the TRIPs agreement
- This is an international agreement under the WTO which has brought issues of trade and issues of IP together with in their administration

African Regional Intellectual Property Organisation

- Zambia is also a member of the African Regional Intellectual Property Organisation (ARIPO) which is a body of about 17 members headquartered in Harare in Zimbabwe
- It coordinates IP issues in the region on behalf of member states in the region
- It also registers trademarks under the Lusaka protocol on behalf of member states
- SA is not a member of this body

Recent Developments IP Law

- The IP laws in Zambia were promulgated in 1958
- The Patents law did not include petty patents or utility models which is good for small scale business people
- Now it includes these and has increased the protection period for patents from 16 years to 20 years
- Previously the scope of protected matter was limited; i.e. it did not meet the TRIPs criteria
- The new patents law has increased the scope of protected subject matter

Recent Developments IP Law

- One can also seek protection under trade secret protection
- This has also been included in the new patent law
- Previously, the Trademarks Act did not include service marks
- Protection of service marks is a very important addition since many companies providing services in the economy were not protected
- Additionally the new trademarks act includes the protection of geographical indications in agricultural products

Recent Developments IP Law

- GIs refers to goods originating or manufactured or grown in a particular place where quality, reputation and other characteristics of the goods is essentially attributable to the place of origin because of temperatures, soils, rainfall pattern.
- Potential goods for GI protection in Zambia includes Mongu or Chama rice and Kasama and Munali coffee.
- The protection period was 7 years, now it is 10 years

Recent Developments IP Law

- As regards traditional knowledge, cultural expressions and expressions of folklore, a new Act has been passed for the protection of these aspects of IP
- These will include traditional medicine together with cultural heritage

Recent Developments IP Law

- Folklore and traditional songs will also be protected so that the indigenous owners can also benefit from their works
- Copyright will now be administered under the PACRA mandate
- This will bring about uniformity of IP protection in the SADC region
- Zambia has also enacted a new Act for the protection of Lay out designs for Integrated circuits
- This is a good development in the electronic industry

Challenges in the protection of IPRs

- The major challenge is the enforcement of IP
- IPRs are individual rights and owners of the IPRs should be on the lookout for infringers
- IP enforcement can only be successful if the owners of IPRs are active in monitoring the situation to see who is infringing the IPRs
- In Zambia infringements have been encountered in medicines, soft drinks, shampoos, etc.
- (shampoo was recently seized which had acid in it!)

Challenges in the protection of IPRs

- There is limited awareness of IP issues in the general populace
- R&D institutions and universities in Zambia have not been very active in protecting their IPRs
- More awareness in the law enforcement agencies and the judiciary is needed for the prosecution of IPR matters
- IP issues have not been fully incorporated in school, college or university curricula.

Way Forward

- It is a good development that the new IP laws have included more stringent measures for infringers which include criminal sanctions as opposed to civil sanctions alone
- Research and development institutions and universities should come up with policies which will compel government to inject more funds in research and development programmes
- R&D institutions should work towards registering more patents for their inventions through research.

Conclusion

- Intellectual property protection promotes innovation
- Effective IPR protection increases funding for R&D and other innovation initiatives, including by helping firms realize more value from innovations that are protected by IPR than those that are not
- IPR underpins the development of cultural expression and diversity, and promotes broader dissemination of innovations through publication and licensing.
- It has also been seen that trademarks can act as a marketing tool

Thank you for listening.

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