

## **SIERRA LEONE PRESENTATION ON CHALLENGES IN FORMULATION AND IMPLEMENTATION OF NATIONAL INTELLECTUAL PROPERTY POLICIES AND STRATEGIES**

Organisers of this August Forum, fellow participants, Ladies and Gentlemen, I bring you very hearty greetings from the Government and the People of the Republic of Sierra Leone. With your permission I stand before you to talk on the challenges in the formulation and implementation of National Intellectual Property Policies and Strategies.

You will agree with me here today that even though intellectual property rights has long been established yet the phenomenon in Africa was not felt or had a meaningful momentum during the colonial era up to the period of self rule in Africa.

The reasons for this are very obvious. Africa was used either as a source of markets for the finished product of the colonial business or as a source of raw materials to feed the industries of the colonial economies. For these reasons, research possibilities towards meaningful inventions was either non-existence or very rare as African countries were largely dependent on the choices of their colonial economies.

This was the situation in Africa up to the period of self determination in the 60s. Unlike most Asian countries in other continents where the people were able to preserved their core cultural values and improved on them, Africa was greatly influenced by the life style of their colonial masters to the extent that they developed total dependence on the life styles of their colonial masters forgetting whatever development they might have attained in the past using their core cultural values. Under these circumstances, it may have been either by design or intentional that Intellectual Property Rights were unheard of in Africa.

However, a period of reawakening in Africa in the early 1980s began to set into motion a chain of development in science and technology to the extent that patent rights protection became an issue of concern as over one fifth of all African countries were now beginning to recondition their minds. These developments brought consciousness and created local awareness which saw the re-registration of grant patent rights in the United Kingdom. Which is still the situation in Sierra Leone if I may hasten to say?

As of today, this practice has been made possible in only a few African States. These countries have either introduced their own national legal framework for protection or joined with other countries to form a regional base Intellectual protection network, such as the African Regional Industrial Property Organisation known for short as ARIPO which is predominantly member by English speaking countries. On the other hand the African Intellectual Property Organisation otherwise known as OAPI is predominantly for French speaking countries.

Membership of these two organizations represents about 70% of countries in the sub Saharan regions in Africa. In terms of implementation of their respective objectives, the two organizations are significantly different in nature with OAPI being the sole industrial property authority for its member states where as member states in ARIPO have maintained their individual national legal framework for obtaining patent rights which is similar to the systems adopted in Europe in which a common convention on patent rights otherwise known as the European Patent Convention (EPC) operating in parallel with the respective national legal frameworks.

In spite of this development in sub Saharan regions of Africa, regional organizations based largely on either Francophone or Anglophone, it was easy to find that the influence of the former colonial masters was greatly felt even with these regional organizations. For instance, until 1982, patent rights in majority of the Francophone member states of OAPI were largely governed by

French Laws. The French National Patent Rights Institute became the National Authority for each of these member states in OAPI.

Member states of OAPI then grouped themselves within the French union (Union Francaise). Upon achieving self rule in the 1960s, the majority of French union member countries found it necessary to create a body of their common territory by way of implementing conventions on patent rights. This creation of a common territorial body amongst the French African states through OAPI found legal justification in Article 19 of the WIPO Paris Convention for the protection of patent rights which among others stipulates that countries which are signatories to the WIPO Paris Convention shall have the right to undertake individually amongst themselves specific agreements for the protection of patent rights so long as such agreements are not in contradiction with the provision of the said convention.

On this basis, twelve (12) African countries together decided to create a single body to act as the authority for the protection of National Patent Rights for each of the twelve countries. Out of this union of twelve African states, the African and Malagasy Patent Right Authority (OAMPI) was born on the 13<sup>th</sup> September, 1962 by the agreement known as the Libreville Agreement.

The Libreville Agreement was based on three fundamental principles namely:

- (i) Adoption of uniform legislation;
- (ii) Application of common administrative procedure which ensures uniformity in the system of protecting patent rights;
- (iii) The creation of common authority to serve as an organization for a national patent right protection department for each member state.

With these three cardinal principles, a single title issued in one member state comprised as many independent national rights in member countries.

On the cessation of Malagasy Republic from the common union, there was further need to expand coverage to other Intellectual Property Protection which led member states to revise the Libreville Agreement and to create the African Intellectual Property Organization (OAPI) by the adoption of a new convention signed in Bangui on the 2<sup>nd</sup> day of March 1973.

Organizers of this forum, fellow participants, ladies and Gentlemen as far as Sierra Leone is concerned I consider it just to throw light on the organizations to which Sierra Leone is a member, its current legal framework, operative and the challenges. Sierra Leone is a member of the following organizations dealing with Intellectual Properties Rights to wits.

- (i) World Trade Organization and therefore bound by the TRIPS Agreement which is an Agreement that deals with trade related aspects of Intellectual Property Rights.
- (ii) World Intellectual Property Organization (WIPO) (1986) and has acceded to the Paris Convention for the protection of Industrial Property (1997), the Patent Cooperation Treaty (PCT) (1997) and the Madrid System (the Madrid Agreement and Protocol) (1997 and 1999) for the Registration of Trade Marks.

However, Sierra Leone is not a member of the Berne Convention for the protection of literary and Artistic works

As a member of ARIPO Sierra Leone is a signatory to and has acceded to the ARIPO Harare Protocol for the registration of Patent and Industrial Designs but has not acceded to the Banjul Protocol for the registration of Trade Marks.

Also, Sierra Leone has not ratified the convention on the International Union for the Protection of New Varieties of Plant (UPOV) but Sierra Leone is a party to the convention on Biological Diversity

(CBD) and wishes to ensure that its legislations on intellectual property rights do not undermine the protection of biodiversity.

## **CURRENT LEGAL FRAME WORK**

The office of the Administrator and Registrar General for Sierra Leone has the statutory duty to administer the registration of Industrial Property. This includes Patent Rights, Trade Marks and Industrial Designs, Copy Rights and Related Rights are administered by the Ministry of Tourism and Cultural Affairs. However, only 10% of original registration of trademarks is done by the Administrator and Registrar Generals Office. The reason being that the current Intellectual Property Right Laws are generally based on the laws of the United Kingdom (UK) under which Sierra Leone has a “dependent” Industrial Property System whereby Patents originally granted in the United Kingdom automatically applies to Sierra Leone upon application in the UK for registration. There is no provision in our present laws for the original registration of patents. What this means is that a Sierra Leonean national who seeks to protect her invention would have to apply first in the UK in order to get protection in Sierra Leone. This is still what obtains in our present legal framework and as such is out dated and no longer stands the test of the present day legal frame work because it does not cover the full scope of the subject matter of Intellectual Property Rights.

Organizers of this forum, fellow participants, ladies and Gentlemen you will agree with me that today, we live in a knowledge driven economy and as such, Intellectual Property Rights plays a pivotal role in social and economical development of a nation as Intellectual Property is gaining increased recognition by policy makers as a lever for economic growth and development in the knowledge driven economies. However, this can only be achieved where the necessary policies and laws are put in place to promote it use.

In seeking to address this situation Sierra Leone, has just recently enacted laws aiming at protecting copyright under the Copyright Act, 2011 (Act No. 8 of 2011) and presently reviewing the existing legislation relating to Trade Marks and Merchandise Marks which is going through the final stages before being passed into law, which will provide for the following objectives:

- (a) Ensure the incorporation of statutory provisions in the amended legislation for the protection of service marks, collective marks, trade marks and well-known marks.
- (b) Ensure the deletion of preferential treatment relating to marks registered in England in accordance with Sierra Leone's obligations under the Marrakech Agreement establishing the World Trade Organisation.
- (c) Ensure the incorporation of other marks registered in other jurisdictions.
- (d) Ensure that the amended instrument accords protections to Geographical Indications in line with its international obligations under the TRIPS agreement.
- (e) Ensure the incorporation of provisions for registration of marks coming into Sierra Leone via the Madrid Agreement and Protocol.
- (f) Ensure the incorporation of matters relating to unfair competition and protection of Trade Marks.
- (g) Ensure that it adopts a national system for classification of Marks that are based on the Nice and/or Vienna Agreements. and
- (h) Ensure that it ratifies and incorporates the Banjul Protocol into its laws.

Furthermore, in line with this present momentum, Sierra Leone has passed a constitutional instrument known as Gazette volume CXLI No. 11 dated 19<sup>th</sup> February 2010 establishing the rules of the Commercial Court amongst which, Rule 3 set down extensively the areas of jurisdiction of the Commercial Court particularly paragraph (t) which included claims founded on intellectual property rights and copyright.

## **KEY CHALLENGES**

Organizers of this forum, fellow participants, ladies and Gentlemen even with this giant step so far taken by the Government of Sierra Leone, implementation of intellectual property rights laws particularly patent right is yet farfetched in Sierra Leone for the following reasons:

### **(1) CAPACITY BUILDING**

In the administration of justice, the modus operandi had been largely based on the customary and usual claims founded on either torts, contracts, petitions, admiralty and criminal offences. Enforcement of rights founded on patent right was and is still not a familiar area in our jurisdiction that really requires substantial effort for a meaningful development. Even courses in the study of law in our universities are largely tailored on the traditional curriculum of criminal law legal systems, laws of tort, contract, land law, mercantile law, and so on to the exclusion of laws dealing with intellectual property, Arbitration, trade laws, trade negotiations, mediation and a host of other areas that are yet to receive the attention of the university authorities.

I want to implore WIPO member states, WTO, ARIPO and other relevant institutions to encourage university authorities and Law Schools in West Africa to include in the existing course curriculum for lawyers, paralegals, accountants, economist and other areas related to social sciences such courses as copyright laws, intellectual property rights, arbitration (ADR) etc. Additionally it is important that friendly

nations should consider setting up a fellowship or grant facility to encourage students from African universities to pursue research in areas that are likely to end up in the acquisition of patent rights.

In order to make a meaningful impact, there is a very urgent need to create a regional based institution, possibly under ECOWAS, or an autonomous regional base organization for West Africa to undertake the training of Judges and Lawyers in these emerging areas.

As I am talking to you now ECOWAS which is a regional base organization in West Africa is giving serious consideration to include the enforcement of intellectual property rights as additional areas of its competence.

(2) **REGISTRATION:**

Registration of intellectual property rights in Sierra Leone is presently done mechanically, so too is the storage of registration documents, this has made the process of searches very slow and tedious. There is a need to overhaul the registration system in the office of Administrator and Registrar General where titles are registered into an entirely modernized and electronic facility that will not only take care of input and output but will also enhance storage facility that makes searching less strenuous and speedy.

This proposal requires that the office of Administrator and Registrar General needs to be housed in an exclusive building for a smooth flow of its functions and also to accommodate innovations and expansion in novel areas and systems of registration. This means also that the staff of the Administrator and Registrar General needs to be trained to be able to carry out their functions smoothly and in the right manner.



Therefore, we implore WIPO, ARIPO and other relevant institutions of intellectual property that are concerned with the implementation and enforcement to consider setting up a scheme whereby Judges, Lawyers and Paralegals may be given the opportunity to work with either WIPO, ARIPO etc. for a reasonable period to enable them to understudy and act as refresher courses in order to keep them informed on the current requirements of implementation and enforcement of intellectual property laws at all levels.

Sierra Leone is especially at a crucial juncture. While being rated highly by the World Bank in the ranking of the ease of doing business especially in West Africa, while successfully establishing a public private partnership to foster investment growth resulting in an increase in foreign and local investment especially in the mining and agricultural sector, yet there can be no prospect of economic growth and sustainable development without a developed Intellectual Property system in Sierra Leone. In this regard building solid foundations and a sound intellectual property system that will promote innovation and creativity, provide confidence to investors, businesses and other stakeholders that their rights will be adequately protected, will make for economic growth and sustainable development in Sierra Leone.

Organizers of this forum, fellow participants, ladies and Gentlemen to implement the above requires that a huge funding is necessary to set into motion a legal framework and machinery that is specialized in the implementation and enforcement of intellectual property rights in our Courts or other informal sector where justice is administered across Africa. We therefore look forward to WIPO's enhanced effort especially in providing technical assistance in the setting up of a copyrights office, in the registration and examination of patents, in building capacity in our research and Development Institutes of our Universities in Sierra Leone, in the development of a strategic plan for

an outreach campaign and in general capacitating the advancement of Sierra Leone's Intellectual Property System.

Organizers of this forum, fellow participants, ladies and Gentlemen here present unless we get the aforesaid support, Sierra Leone will continue to remain at the bottom of the Intellectual Property System.

I thank you all for your attention.