



**REPUBLIC OF KENYA**

*Ministry of Industrialization, Trade and Enterprise Development  
Kenya Industrial Property Institute (KIPI)*

**INTERVENTIONS**

Standing Committee on the Law of Patent  
*33<sup>rd</sup> Session: Geneva, 6<sup>th</sup> – 9<sup>th</sup> December 2021*

**Agenda Item No. 7**

**Quality of Patents, Including Opposition Systems: Sharing Experiences and Information on the Use of AI for Examination of Patent Applications**

Thank you Mr Chairman,

Since it is the first time Kenya is taking the floor, Kenya would like to congratulate you and the two vice Chairs from the honourable delegations of Paraguay and Czechoslovakia for re-election or election, as applicable, to the bureau of the SCP for the next one year. Kenya assures you of its support during your leadership of the Committee.

Mr Chairman, Kenya also takes this opportunity to thank the Secretariat for successfully organising this event under challenging circumstances, especially those posed by the COVID 19 pandemic. In addition, I sincerely thank the Secretariat for the prompt assistance they provided to facilitate my coming to Geneva for this 33<sup>rd</sup> Session of SCP.

Mr Chairman, Kenya also thanks the various honourable delegations that have just shared respective Experiences and Information on the Use of AI for Examination of Patent Applications: beginning from Japan through to Paraguay, I believe. It is hereby further noted that deployment of AI in examination of patent applications is diverse: from provision of technical advice to public, patent classification, and patent search. It looks like soon, this Committee will be hearing of such deployment in determination of patentability criteria.

Mr Chairman, Kenya takes specific note that France's service managers were able to save 10 hours per week by virtue of employing AI in their examination processes, although it was not clear to Kenya whether, or not, the 10 hours are cumulative for the three service managers, and Kenya will be seeking a bilateral for clarification in this respect. Kenya further takes

interest in the “Confusion Matrix” presented by France showing just 8% error, which is by our imagination a very promising deployment.

Mr Chairman Kenya takes keen interest in said matters especially because, as a national patent office that undertakes substantive examination of applications, and like any such patent office, it experiences patent application processing requests that often can not be provided within due timelines. Therefore, Kenya believes that deployment of AI in its patent examination process can cause improvement in the timelines. In this respect Chair, Kenya looks forward to a tripartite cooperation with the Members that are already deploying AI in the processing of patent application and the Secretariat, aimed at assisting Kenya to deploy AI at appropriate levels of processing patent applications, and as appropriate other IP rights including Trade Marks as highlighted by Japan.

Thank you Mr Chairman.

#### **Agenda Item No. 7**

#### **Quality of Patents, Including Opposition Systems: Information Exchange on Expedited Patent Examination Mechanisms at Intellectual Property Offices (Discussion of Document SCP/33/44 Containing US Proposal)**

Thank you Mr Chairman,

Kenya takes note of Document SCP/33/4 containing the proposal submitted by the Delegation of the United States of America to the 33<sup>rd</sup> Session of the SCP for an information exchange on expedited patent examination mechanisms at intellectual property offices, and thanks the honourable delegation of the US for its presentation to this SCP.

Mr Chairman, as Kenya looks forward to sharing its own experience in relation to expedited examination programs at KIPi and to hear and learn about the experiences and practices of others in the Committee, Kenya takes this early opportunity to inform that its recent amendment of its national patent laws provided an additional mechanism for expedited examination of patent applications whereby a patent applicant may request for early publication of own patent application before the expiry of 18 months prescribed in the patent laws. The purpose for this is to facilitate patent processing, and may result to grant if all patentability requirements are met, within the 18 months period from the date of filing.

Thank you Mr Chairman.

#### **Agenda Item No. 8**

#### **Patents and Health: General Statements**

Thank You Mr Chairman,  
especially for allowing me to speak last today, and for that reason, I will be brief.

Mr Chairman Kenya hereby reconfirms its association with the statement made by the Honourable Delegate of the Republic of South Africa on behalf of the African Group (AG).

Mr Chairman, Kenya quickly adds that it is its hope, and intention, that, as this Committee pursues this agenda, the Committee is reminded, and keeps on being keen, on the public and private interests balance of rights and obligations enshrined in the TRIPS Agreement, its subsequent instruments, and other related instruments adopted by relevant UN and its specialised agencies dealing in this matter, as well as other regional arrangements to which Kenya and other Members here belong. Mr Chairman, Kenya has in mind various references including:

- (i) The **WIPO Development Agenda 2007** where in Recommendation 14 states that “...WIPO shall make available advice to developing countries and LDCs, on the implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement” and Recommendation 17 states that “in its activities, including norm-setting, WIPO should take into account the flexibilities in international intellectual property agreements, especially those which are of interest to developing countries and LDCs” in addition to recommendations 22 and 25.
- (ii) Several WHO Resolution (WHA53.14, WHA56.23, WHA56.27, WHA57.14, 58.34, 56.27, WHA57.19, etc.) including the **WHO Resolution (WHA 59.26 ) on International Trade and Health, 2006** where Members undertake “to promote multi-stakeholder dialogue at national level to consider the interplay between international trade and health” and “ to adopt, where necessary, policies, laws and regulations that deal with issues identified in that dialogue, and to take advantage of the potential opportunities, and address the potential challenges, that trade and trade agreements may have for health, considering, where appropriate, using their inherent flexibilities.
- (iii) The **WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, 2008** Which in, among others, Context 12 admit that international intellectual property agreements contain flexibilities that could facilitate increased access to pharmaceutical products by developing countries and that (Element 5) “there is a crucial need to strengthen innovation capacity as well as capacity to manage and apply intellectual property in developing countries, including, in particular, the use to the full of the provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights and instruments related to that agreement, which provide flexibilities to take measures to protect public health”. Of particular noting is Action 5.2(c) which requires WHO Members to “**take into account in trade agreements the flexibilities contained in the Agreement on Trade-Related Aspects of Intellectual Property Rights**, including those recognized by the Doha Declaration on the TRIPS Agreement and Public Health and the WTO decision of 30 August 2003”.
- (iv) The **Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Intellectual Property and Access to Medicines, 2004** observes that “the use of trade pressure to impose “TRIPS plus”-style intellectual property legislation could lead member States to implement intellectual property standards that do not take into account the safeguards and flexibilities included under the TRIPS Agreement, which in turn could constrain States from implementing intellectual property systems that

- provide adequate policy space for the promotion of the right to health” and reiterated the obligation of States “to ensure that the trade rules and policies they select are consistent with their legal obligations in relation to the right to health”.
- (v) **The Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: The Human Right to Medicines, 2006** reiterates the obligation of States to fulfil the human right to medicines and to make full use of TRIPS flexibilities for this purpose and reaffirms that “developed States should not encourage a developing country to accept “TRIPS-plus” standards in any bilateral or multilateral trade agreement”, but instead “they should help developing countries establish effective, integrated, inclusive health systems that include reliable medicine supply systems delivering quality affordable medicines for all, and support research and development into the priority health needs of developing countries.
  - (vi) **The United Nations Secretary-General's High-Level Panel on Access to Medicines Report: Promoting Innovation and Access to Health Technologies, 2016** where in it is observed that TRIPS negotiators included safeguards, or ‘flexibilities,’ within the TRIPS Agreement that could be used by signatories to tailor national intellectual property regimes so that countries could fulfil their human rights and public health obligations (for instance, laws and regulations regarding competition, government procurement and medicines). The proliferation of free trade agreements containing expansive patent and test data protections on health technologies, which exceed the minimum standards for intellectual property protection required by the TRIPS Agreement (so-called ‘TRIPSplus’ provisions), may impede access to health technologies. Also, an uneven application of health and trade policy within and among states can create tensions that fuel policy”. It therefore recommends, among others, that “World Trade Organization (WTO) Members must make full use of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) flexibilities as confirmed by the Doha Declaration to promote access to health technologies when necessary”.
  - (vii) **COMESA Policy On Intellectual Property Rights** wherein Members commit to “facilitate the increase in regional trade in IP-intensive products and the free flow of IPRs using all the available flexibility in international and regional instruments on IPRs
  - (viii) **EAC Regional Intellectual Property Policy on the Utilisation of Public Health-related WTO-TRIPS Flexibilities and the Approximation of National Intellectual Property Legislation** whose overall objective is “to guide the EAC Partner States on how their national intellectual property legislation must be adjusted in order to enable them to fully utilise the Public Health-related WTO-TRIPS Flexibilities” and provides that “The EAC and its Partner States will ensure that no other legislative developments in the region (policies and/or legislative frameworks including that on anti-counterfeiting) will hinder and/or undermine full utilisation of the TRIPS Flexibilities to enhance the access of East African populations to medicines.
  - (ix) **Final Outcome Document of the High-Level Meeting on Promoting Policy Coherence on Health Technology Innovation and Access in the ARIPO Region, 2017** affirms the “need for ARIPO Member States that are WTO members to

incorporate into national laws and policies, public health related flexibilities found in the TRIPS agreement” as a critical need for policy coherence.

In Conclusion Mr Chairman,

As AG has proposed, and as supported by the Honourable delegate of Nigeria, that WHO be invited to the next session(s) of this Committee, Kenya further proposes that such invitation be extended to the other organization keen on this subject matter – of immediate reference being WTO and UN offices in general.

Thank You Mr Chairman.