

Strengthening Intellectual Property Rights for Research and Innovation

INTRODUCTION

Intellectual property (IP) refers to creations of the mind ranging from works of art to inventions, computer programs to trademarks and other commercial signs. IP covers a vast range of activities and plays an important role in both cultural and economic life. A well-functioning IPR framework is fundamental to creating an enabling environment for innovation and technological advancement, thereby contributing to the achievement of the national development goals.

Form of IP protection	Definition and function
Patents	Grant exclusive rights through registration for an invention (which can be either a product or a process) to prevent others from commercially making, using, distributing, importing or selling the invention for a limited time period (20 years). In exchange for this right, the patent owner makes technical information about the invention publicly available in a published patent document.
Trademarks	Provide legal recourse against unauthorised use or imitation of words, names, symbols, devices (logos), designs or any other distinctive sign or mark that helps identify and distinguish specific goods or services produced by an individual or company from others.
Industrial designs	Protect the ornamental, physical or aesthetic features of a useful article by providing exclusive rights and protection against unauthorised use by third parties. A design may consist of three - dimensional features such as the shape or surface of an article, or of two - dimensional features such as patterns, lines or colour.
Copyrights	Offer protection for artists, creators and authors by granting exclusive economic rights to prohibit or authorise the reproduction, public performance, distribution, recording, broadcasting, translation and adaptation of their creative works.
Geographical Indications (GI)	Signs used on products that have a specific geographical origin and possess characteristics or qualities or a reputation that essentially owe to that place of origin. A GI prohibits the designation or presentation of a good in a manner that indicates or suggests it originates in a geographical area other than its true place of origin.
Trade Secrets	IP rights on confidential information which may be sold or licensed .
Utility Models	Provide protection for minor inventions and small, incremental and cumulative innovations or improvements to existing products by granting an exclusive right that prevents others from commercially using the protected invention, without authorisation, for a limited period of time.

Source: WIPO/UNCTAD

There are multiple international agreements which cover different categories of IPR and take various approaches. The latest among these agreements is the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights (TRIPS) that is a key international treaty that establishes minimum standards for the protection of intellectual property rights member countries. TRIPS Agreement, part of the Uruguay Round of trade negotiations and within the General Agreement on Tariffs and Trade is considered the most significant multilateral IP treaty. As a founding member, Kenya has signed all the WTO agreements including TRIPS. The three main features of the Agreement are Standards, Enforcement and Dispute settlement with respect to IPRs.

The areas of intellectual property that it covers are: copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data.

INSTITUTIONAL FRAMEWORK

Kenya's intellectual property (IP) framework has evolved from colonial era legislation focused on imperial interests to a more relevant system reflecting the country's economic, technological, and developmental priorities. Today, Kenya recognizes various forms of IP, including trademarks, patents, utility models, industrial designs, copyrights, and plant breeders' rights. These are governed by four main laws: the Industrial Property Act (2001), the Trademark Act (Cap 506), the Copyright Act (2001), and the Seeds and Plant Varieties Act (Cap 326), and are administered by three primary institutions, Kenya Industrial Property Institute (KIPI), Kenya Copyright Board (KECOBO), and Kenya Plant Health Inspectorate Service (KEPHIS). Additionally, the Anti-Counterfeit Authority (ACA) plays a vital role in enforcing IPR and combating counterfeiting.

However, Kenya currently lacks a unified national intellectual property policy to guide legislative development and institutional coordination. The National Commission for Science, Technology and Innovation (NACOSTI), established under the Science, Technology and Innovation Act (2013), serves as the body in regulating and assuring quality in the science, technology, and innovation sector. NACOSTI's mandate includes promoting effective IP management across government agencies, as reflected in performance contracting targets, thereby playing a pivotal role in aligning IPR with the national development agenda.

RATIONALE

Intellectual Property Rights (IPR) are essential tools for stimulating innovation, protecting creativity, and promoting commercialization of research and knowledge-based products. Based on global indices, Kenyan residents contribution to generation of intellectual assets is low. In addition, there is limited commercialization of research, technology and innovation outputs. This policy brief seeks to provide direction on mainstreaming IPR into national development efforts and building a robust, coordinated IP ecosystem that supports innovators, researchers, entrepreneurs and the broader society.

FINDINGS

The Global Innovation Index 2024 captured the innovation ecosystem performance of 133 economies and tracked the most recent global innovation trends. In Sub-Saharan Africa, only Mauritius (55th) ranks among the top 60. Three of the region's other economies rank within the top 90 globally: namely, South Africa (69th), Botswana (87th) and Cabo Verde (90th). Kenya was ranked number 96.

Statistics from the national Industrial Property administration office on applications, registrations and grants is as presented below:

Table 1: IP Statistics

No	Type of Industrial Property	2018		2019		2020		2021		2022	
		Applic ations	Grant/ Registered	Applic ations	Grant/ Registered	Applic ations	Grant/ Registered	Applic ations	Grant/ Registered	Applic ations	Grant/ Registered
1.	Patents (Residents, non residents and filed through ARIPO)	928	245	1043	230	995	381	866	481	1130	522
2.	Trade marks (Residents, non residents and Madrid Designations)	6154	5737	6401	6224	7045	6057	-	7524	-	-
3.	Industrial Design (Residents, Non residents and Madrid Designations)	258	186	225	124	301	245	198	141	192	153
4.	Utility Models (Residents, non residents and filed through ARIPO)	198	33	221	40	217	55	135	53	383	29

Source: KIPi Report

The Industrial Property statistics spanning the years 2018 to 2022 reveal notable trends across various categories, including patents, trademarks, industrial designs, and utility models. In 2018, there were 928 patent applications, with 245 granted. The number of applications peaked in 2022 at 1,130, with 522 patents granted marking the highest grant rate over the five-year period. Trademarks remained the most active category. Applications increased steadily from 6,154 in 2018 to a high of 7,524 in 2021. Data for grants in 2021 and both applications and grants in 2022 were not available.

In the category of Industrial Designs, figures remained relatively stable with a slight downward trend in both applications and grants from 2018 to 2022. Applications ranged from a high of 301 in 2020 to a low of 192 in 2022. Grant figures followed a similar trend, ending at 153 in 2022. Utility Models exhibited significant variation. After a relatively steady application rate between 2018 and 2020, there was a decline in 2021 to 135 applications, followed by an increase in 2022, reaching 383.

CHALLENGES

1. **Low level of awareness on IP:** Studies have indicated that the level of awareness on intellectual property in the country is low. Academia, Researchers, innovators, entrepreneurs, and institutions lack sufficient knowledge about IP rights, protection and the potential benefits of owning an intellectual asset.
2. **Weak enforcement of IP rights:** Intellectual property infringement remains widespread due to ineffective enforcement mechanisms. This has resulted in criminal cases against violators at the tax-payers expense.
3. **Inadequate Policy and Regulatory Framework:** Lack of a national IP policy and strategy is a major drawback in advancing IP agenda for societal benefit. Existing IP laws do not fully address emerging issues such as digital content, artificial intelligence, and protection of traditional knowledge.
4. **Limited commercialization and technology transfer:** The level of translation of research outputs to products remains low. Even among those who have secured IP protection, few innovations are brought to market.
5. **Inadequate capacity:** National IP institutions face financial, physical and human resource constraints, negatively affecting their ability to deliver on their mandate. In addition the Country has a limited number of IP professionals. These constraints result in delays in applications and consideration of applications, undermining the efficiency of the national innovation system.

POLICY RECOMMENDATIONS

1. **Promote Awareness:** Enhanced outreach efforts by relevant agencies is necessary in order to raise the level of awareness on IPRs. These may include outreach programmes and initiatives by the national IP offices and other relevant agencies. These should include public education on IPR generation, protection and transfer and sensitisation of potential generators such as researchers, innovators and entrepreneurs.
2. **Enhance Enforcement:** To enhance enforcement, the national IP offices and other relevant agencies should consider a multi-agency approach. In addition, leveraging on technology in tracking, verification, and tracing, identifying and monitoring of infringement, pirating counterfeit products throughout their distribution channels is a viable initiative.
3. **Review of Policy and Regulatory Framework:** The country needs to expedite the development, adoption and implementation of the National IP Policy and Strategy. This will provide a cohesive, stakeholder-driven framework for IP generation, protection, and commercialization. The policy and strategy should consider the global best practice and the EAC regional IP policy and guide on IPR from emerging technologies.
4. **Commercialization of Research and Innovation:** Institutions and agencies involved in research, science, technology need to develop institutional policies and implement structures that would support translation of outputs into marketable products. These may include the promotion of collaborations through the Technology Transfer Offices (TTOs) in academic and research institutions
5. **Capacity development:** Strengthen the institutional and human resource capacity of national IP institutions by investing in staff training and upgrading infrastructure. There is also need to enhance the capacity of intellectual property professionals in other institutions including research institutions, universities and technical institutions.

CONCLUSION

Strengthening intellectual property rights depends on government commitments to lead the process. There is an urgent need to enhance the capacity to generate, protect and commercialize all forms of intellectual property. Awareness creation, effective enforcement, review of policy and regulatory framework and capacity development are viable policy options. However, the government may not undertake these alone. It needs to

provide a conducive environment to enhance academia-industry collaborations and partnerships, and build on mutual trust, accountability for effective coordination.

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