

**UNITED REPUBLIC OF TANZANIA
MINISTRY OF INDUSTRY, TRADE AND MARKETING**



INTELLECTUAL PROPERTY RIGHT IN TANZANIA

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1. Historical Background of IP in Tanzania

The United Republic of Tanzania has the total area of 945,166 sq. km and lies on the eastern coast of Africa, along the Indian Ocean, between latitudes 1° and 12° south of the Equator and longitudes 29° and 41° east. It is bordered by Rwanda and Burundi to the north-west, Mozambique, Malawi and Zambia to the south and south-west, Uganda and Kenya to the north and Democratic Republic of the Congo to the west.

Intellectual property right has long history which came as a result of struggle of creators and inventors. By nature intellectual property right is non rival since can be used by limited number of users simultaneously and is non- excludable eventually became public goods. That is why creators and inventors struggled to ensure intellectual property would be appreciated as a private property and excludable rather being public goods. To enable them be rewarded for their creativity and innovation. The intellectual property rights movements became fruitful when the World Intellectual Property Organization – WIPO was established in 1967 (Hveem, 2007 and Chartrand, 2008). At the same time IP accommodated in World Trade Organization as one of their multilateral trade agreements. Thus, under principle of single undertaking all WTO members are supposed to undertake IP protection measures as stipulated in Trade Related Intellectual Property agreement. But what is IP meant, IP is legal rights given to creators and inventors to have temporary monopoly rights over their creations and inventions of the mind, both artistic and commercial. IP covers: trade marks rights, geographical indication rights, patents rights, plant breeders' rights, industrial design rights, copyrights and related rights (WTO, 2006 and Mgonja, 2009).

In Tanzania (Known as Tanganyika before Independence) Intellectual Property rights aspects was introduced by colonial administration, and this was in 1922 through Chapter 217 of the Patent Legislation and the introduction of Trade Marks and 1924 through "Chapter 218 of the Copyright Legislation"(see . WIPO/SMEs/DAR/05/2).After the independence there was no any significant changes on the contents of IP legal system, however in 1966, the Copyright Ordinance Cap. 218 was repealed by Copyright Act No. 61 of 1966. The new Copyright Legislation was enacted in 1999. It is the current Copyright Legislation in force.

The Patents in Tanzania is governed by Patents Act No.1, 1987, as amended by Acts Nos. 13 and 18 of 1991. she has also ratified WIPO Convention, 1967¹. Patent Cooperation Treaty (PCT) 1970², The Protocol on Marks within the Framework of African Region Industrial Property Organization (the Harare Protocol), 1993³, Agreement on the Creation of the African Regional Industrial Property Organization (ARIPO), 1979⁴. Paris Convention 1883–1967⁵; and "Agreement on Trade Related Aspects of Intellectual Property Rights (Annex 1C of the Marrakesh Agreement Establishing the WTO 1994" (see. WIPO/SMEs/DAR/05/2). The patents that are protected in Tanzania under this Act are patents of inventions and **utility models**. Furthermore it may be registered for inventions "*other than a discovery, scientific*

¹ effective for Tanzania as from 30 December 1983

² effective for Tanzania as from 14 September 1999

³ effective for Tanzania as from 01 September 1999

⁴ Effective for Tanzania as from 12 October 1983.

⁵ effective for Tanzania as from 16 June 1963

theory, mathematical method, aesthetic creation, computer program or presentation of information) meeting specified requirements relating to novelty, utility and inventiveness". The registered patents last for 20 years, subject to the payment of annual fees, while **utility models** last for seven (7) years. Invention is regarded as new if it is not anticipated by prior art, however utility model *"must not form part of the state of the art, that is to say, not made available to the public by means of a written description anywhere in the world or by public use in Tanzania before the filing or priority date"*⁶. In relation to this, the patent granted by ARIPO designating Tanzania is allowed to be protected once the Patent office is notified. Since Tanzania has endorsed the PCT, thus patent granted by through PCT designating Tanzania also qualify to be protected. According to BRELA, 2005 *"The time limit for entering national phase for PCT patents is 21 months from priority date and the time limit for filing translation is 31 months from priority date"*. In addition to that;

"In order to ensure that there is interaction between the ARIPO and PCT system, Harare Protocol incorporates the PCT by inclusion of the provision to the effect that a PCT application which designates PCT Contracting State which has also ratified Harare Protocol, such PCT application is automatically considered to be an application for the grant of a patent under Harare Protocol. The provisions of PCT apply to such international application in addition to the provisions of Harare Protocol and in case of conflict, the provisions of PCT apply". (WIPO/SMEs/DAR/05/2).

Trade mark is governed by the Trade and Service Marks Act No. 12 of 1986. As explained above Tanzania ratified a number of conventions. In addition to that, Tanzania ratified Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Union) 1957–1977⁷. Trade mark is registered for a period of seven years (7) and it can be renewed for period of ten years (10) in time without end while unregistered trademarks are also "offered protection under common law provided that it can be shown that the proprietor has established goodwill associated with its mark". Tanzanian Trademark Office is responsible for filing trademark applications and in this case BRELA is responsible for this, however at the moment it is not possible to make online filing. According to BRELA, unpublished document, 2007) "the rights granted after registration dates back to the date of filing of the application", furthermore "trademarks are allotted goods or services for which the mark will be used. As pointed out, both Tanzania apply International Classification of Goods and Services (Nice Classification)". As in the case of Patents, a registered trademark by ARIPO is also protected in Tanzania, there is two ways in which application for mark can be made; one is to file direct at the ARIPO Office in Harare, Zimbabwe or via the Tanzanian Trademark Office. "In both cases, the filing date is the date of receipt of the application in that respective Office. The application may be filed by the applicant or her/his authorized representative. The duration of registration of a mark at ARIPO is ten years (10) from the date of registration. A mark is registered as of the date of filing of the application for registration, and such date is deemed for all purposes to be the date of registration" (MITM, 2006). Registration of a mark may be renewed for consecutive periods of ten years on payment of the prescribed fee.

⁶ See WIPO/SMEs/DAR/05/2 for more clarification

⁷ effective for Tanzania as from 14 September 1999;

Industrial design, Ordinance of 1936, cap. 219, however at the moment there is no local system for registration of design in Tanzania; but efforts are being made to have Act on this. In relation to this Tanzania has endorsed protocol on patent and industrial design, Tanzania patents Act, have provisions which recognize designs registered in the United Kingdom, Accordingly, designs can be protected in Tanzania either through ARIPO registration or by registration in the United Kingdom, The Patents Act, 1987 provides that the rights and privileges of proprietors of designs registered in the United Kingdom are extended to Tanzania during the term of design registration. Designs registered by ARIPO designating Tanzania are protected initially for ten years from the date of filing. Design protection can be renewed at ARIPO for further periods and the maximum duration of protection may be 25 years from the date of application

Enforcement of industrial Property rights and Adherence to International Conventions.

In Tanzania most of industrial property rights provide for civil rights and no criminal sanctions, furthermore plaintiffs would only be entitled to injunction, damages and compensations. This is enforced by commercial courts of law.

Though the country has ratified number of international conventions but its adherence is still questionable as there is no clear mechanism of enforcement and some of the Act are out of date and needs to be amended like Industry design.

Competition Law

In Tanzania the competition laws is guided by the following Acts, The Energy and Water Utilities Regulatory Authority Act, 2001 (EWURA), The Surface and Marine Transport Regulatory Act, 2001 (SUMATRA), Tanzania Civil Aviation Regulatory Authority Act, 2003 (TCAA), The Tanzania Communications Regulatory Authority Act, 2003 (TCRA) and The Fair Competition Act, 2003 (FCC). However with this entire Acts, the main Act that regulates unfair competition in Tanzania is Fair Competition Act, 2003. Section 5(6) of FCC, 2003 stipulates clearly "a person is regarded to have a dominant position in a market if acting alone, can profitably and materially restrain or reduce competition in that market for a significant period of time and that person's share of the relevant market exceeds 35 per cent." Furthermore

"Section 10 of the Fair Competition Act, 2003, prohibits a person with a dominant position in a market to use his position of dominance with the object, effect or likely effect of appreciably preventing, restricting or distorting competition". (FCC Act, 2003).

FCC Act and its compatibility with UNACTAD model law

Model Law Provision	Provision in Tanzanian Law
Title of the law	Section 1
Objectives or purpose of the law	Section 3
Definitions and scope of applications	Section 2
Abuse of dominant position	Section 10
Notification, investigation and control of mergers	Section 11
Anti competitive agreements	Section 8
Relationship between competition authorities and sector regulators	Section 96
Establishment, functions and powers of the administering authority	Section 62, 83
Powers of enforcement	Section 59, 60, 68, 70, 71, 88
Sanctions and remedies	Section 59, 60
Appeals	Section 61

Concluding Remarks, In spite of the weakness explained above, Tanzania is in a process of drafting new Industrial Act, 2010.