

INTELLECTUAL PROPERTY WITHIN THE AFRICAN INTELLECTUAL PROPERTY ORGANISATION (OAPI).

PREPARED BY THE
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ABOUT OAPI.

HISTORICAL OVERVIEW.

The African Intellectual Property Organisation known by its French acronym "Organisation Africaine de la Propriété Intellectuelle (OAPI) is the institution created and vested with the powers to manage intellectual property and related issues within member States.

This organization was created by the Bangui Accord of 02 March 1977 which constituted the Revision of the Libreville Accord of 13 September 1962. Another diplomatic meeting was convened by the members of the Bangui Agreement on February 24, 1999 ending up with the revision of the Bangui Agreement and the setting up of a new instrument "**The Revised Bangui Accord**".

The creation of OAPI was inspired by the desire to promote the effective contribution of intellectual property to the development of their States on the one hand and concerned on the other hand to protect intellectual property rights on their territories in an effective and uniform manner.

For each of the member States, the organization shall serve both as the National Industrial Property office.

The institutionalization of OAPI is an indication of the African's drive towards globalization. States voluntarily surrender national sovereignty for regional regroupings in the light of harmonizing their regional intellectual property protection measures.

What makes OAPI unique is that the issuance of an industrial property title by this institution confers automatic protection of rights valid in all the 16 member States, unlike other regional organizations which require separate filing in each member State.

OAPI Member States.

Member states of the African Intellectual Property Organisation include: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Gabon, Guinea – Conakry, Guinea – Bissau, Mali, Mauritania, Niger, Senegal, Togo and Equatorial Guinea.

OAPI's Mission.

OAPI's mission includes:

- The issuance of protection titles.
- Documentation and information.
- Promotion of technological development.

Objectives.

Contributing to the attainment of the industrial development objectives of member States through the achievement of the following specific objectives:

- To ensure the protection and publication of intellectual property right items.
- To encourage creativity and transfer of technology through intellectual property rights system.
- To render the legal framework propitious to promote investment by creating favourable conditions of the principles of intellectual property.
- To implement effective training programmes to enable the African Intellectual Property Organisation render better quality services.
- To create conducive conditions for enhancing the value of research findings and for domestic companies to make use of technological innovations.

SUBJECT MATTER PROTECTED AT OAPI.

1. PATENTS for an invention.
2. UTILITY MODELS for inventions that do not meet up with the criteria for patentability.
3. DISTINCTIVE SIGNS namely;
 - a. TRADE MARKS.
 - b. COMMERCIAL NAMES / TRADE NAMES.
 - c. INDUSTRIAL DESIGNS AND MODELS.
 - d. GEOGRAPHICAL INDICATIONS.
4. LAYOUT DESIGNS OF INTEGRATED CIRCUITS.
5. PLANT VARIETY.

PROTECTING IP WITHIN OAPI.

WHAT IS INTELLECTUAL PROPERTY?

Intellectual Property is a term which denotes specific legal rights which authors, inventors and other intellectual property title holders may hold and exercise with respect to their creation(s) or invention(s).

Intellectual Property seeks to confer a bundle of exclusive rights in relation to the particular form or manner in which ideas are expressed and not in relation to the ideas themselves. It is therefore a product of human ingenuity and fruits of personal creativity and inventiveness that have commercial value.

Intellectual Property (IP) generally is sub-divided into two main branches:

1. Industrial Property.
2. Literary and artistic Property.

INTELLECTUAL PROPERTY	
INDUSTRIAL PROPERTY	LITERARY AND ARTISTIC PROPERTY.
- Patents	Copyright and related rights which are conferred to creation of literary, artistic and cultural works such as music, books, motion pictures, photographic works, computer programmes, sculptures, etc.
- Utility Models	
- Trademarks	
- Trade names	
- Geographical Indications	
- Industrial Designs and Models	
- Layout designs of Integrated circuits	
- Plant Variety	
- Trade Secrets	
SUI GENERIS FORMS OF IP PROTECTION	
- Folklore	
- Traditional knowledge	

I. PATENTS.

A Patent is an exclusive right granted for the protection of an invention. The patent provides its title holder an exclusive right to prevent others from commercially exploiting the invention for a limited period of time in return for disclosing the invention to the public.

DURATION FOR PROTECTION.

The duration for protecting a patent is usually 20 calendar years which starts running from the date of filing.

Procedures observed by OAPI from filing up to the granting of a Patent.

- i) Filling an application which may be indirectly or directly.
- ii) Administrative examination which takes two forms;
 - a. Formal examination.
- iii) Substantive examination.
- iv) Grant/ rejection.
- v) Publication if and when the Patent is granted.

FILING AN APPLICATION FOR A PATENT.

A. BASIC REQUIREMENTS.

- The applicant must ensure that the invention whether of products or process must be a patentable subject matter.
- Such inventions must be new.
- It must have an inventive step.
- It must be industrially applicable.

For further explanation as to the above, you can always contact the Nico Halle & Co. Law Firm, most especially applicants who wish to obtain Patents from the OAPI jurisdiction whether directly or indirectly and who have not passed through the international office for registration of a Patent (WIPO).

B. FORMAL REQUIREMENTS.

i) CONSTITUTION OF DOCUMENTS

- An application (on form B101) form taken from OAPI must be filed directly or indirectly addressed to the Director General of OAPI in four copies.
- A stamped envelope in two copies which must contain the following;
 - A detailed description of the object of invention which is able to permit any man in that technical field to reproduced same in its exactitude without being helped.
 - Claims.
 - Drawings necessary to describe the invention.
 - An abstract.
- Receipt showing proof of payment of OAPI's official charges.
- A simply signed Power of Attorney if the applicant is represented by an Attorney.
- Where a Priority Right is claimed, documents evidencing a previous registration must be tendered. This shall be a certified copy of the certificate of registration that must mention the name of the applicant, application number and date, country in which an application was filed and the registration number of the earliest application.
- If the Priority Right has just been assigned to another, there must be annexed to such application, notarised copy of the Priority Assignment Deed.

- If made in another language other than English or French, it must be translated into any of the working languages of OAPI which are English or French.

You can claim any priority Right, but note that for each Priority right claimed you will pay charges to OAPI. For further information as to the OAPI official charges vis-à-vis

Patent for an invention, please contact the Nico Halle & Co. Law Firm.

- **Charges Associated to Patent Protection.**

- Cost relating to the application fees and other official charges.
- Cost relating to the services rendered by the Patent Attorney or agent who assists in filing for Patent protection.
- The costs of translation especially if the Patent is in a language other than English or French.
- Annual maintenance fees.

NB: Contact the Nico Halle & Co. Law Firm for details on these charges.

ii) **PLACE OF EFFECTING FILING.**

a) **Direct application.**

- At the Service in charge of receiving application (BAR) at OAPI.
- In a box expressly previewed to this effect on public holidays, non-working days and out of working hours.
- Through a registered mail addressed to the Director General of OAPI.

b) **Indirect application.**

This can only be used if applicant resides within a member State of OAPI. In this case applicant can file through their National Administration in charge of Industrial Property of that applicant's State (SNI).

Note:

Those who reside out of member States of OAPI can only effect their application through their intermediary who must be a Licensed Attorney, but this is optional for applicants residing in any member State of OAPI.

MAINTAINING PATENT RIGHTS.

ANNUITIES.

Once a Patent has been granted, applicant or title holder can only maintain his/her rights by the payment of **Annuities**.

Annuities are due on the anniversary date which is the filing date of the application.

Annuities not effected on the anniversary date are receivable at OAPI within six months from the date the annuities were due, subject to payment of a supplementary tax.

Failure to pay annuities within a reasonable delay shall cause the Patent ipso facto to fall in the public domain. Thus the title holder forfeits all rights to the title except he/she applies for restoration within a period of delay as prescribed by the Revised Bangui Accord.

Please for all issues such as;

- i) Certificate of Addition;
- ii) Correction before and after publication;
- iii) Registration of Patent in the Special Register (IRSB);
- iv) Restoration of Rights;
- v) Enforcement of rights against infringements or any queries you may have vis-à-vis a Patent, the Nico Halle & Co. Law Firm remains at your disposal.

2. TRADEMARKS.

A Trademark is a distinctive sign which is used or to be used to distinguish the product(s) or service(s) of a company from those of other companies.

- **Signs considered as a mark.**

Surnames, form or container of a product, fanciful designs, labels, wrappings, emblems, stamps, seals, vignettes, borders, combinations or arrangement of colours, drawings, reliefs, letters, numbers, pseudonyms.

- **Signs not protected as mark within OAPI .**

- Olfactory signs (smells) e.g. perfumes.
- Audible signs (sounds) e.g. cry of an animal, etc.

- **Signs which may not be validly registered.**

- i) Marks which are not distinctive in character.
- ii) Marks which are identical and confusingly similar to that of another person.
- iii) Signs contrary to public order, morality or the Law.
- iv) Signs liable to deceive the public or commercial circles in particular on the geographical origin, the nature or characteristics of the product or service considered.
- v) A sign which reproduces, imitates or contains among its element coat of arms, flag, other emblems, abbreviations or acronyms or an official control and guarantee sign or stamp of a State or an inter-governmental organisation set up by an international convention, unless by authorisation of the competent authority of the State or Organisation.

- **Filing of Application.**

- The application must be addressed to the Director General of the Organisation in sufficient copies.
- The document should show proof of the payment to the Organisation of the filing fees.
- An unstamped Power of Attorney, if the applicant is represented by an agent.
- A print of the mark including a list of goods or services to which it applies and corresponding classes of the international classification of goods and services (Nice Arrangement). The number of models of the mark to be supplied shall be specified by the implementation regulations of the law.
- If it is a collective mark, the approval of the competent authority must be produced.

- **Conditions for Acceptance and date of Filing.**

The Organisation shall admit as the date of filing the date of receipt of the application for registration made on the prescribed form at the Ministry responsible for Industrial Property or at the Organisation, provided that at the time of receipt the application contains:

- Indications concerning name, address, according to ordinary requirements, the nationality and the domicile of the applicant.
- The signature; if it is a corporate body, the identity and position (capacity) of the signatory must be indicated.
- The goods or services to which the mark in question applies.
- Proof of payment of the filing fee.
- In case of appointment of an agent, the applicant must make declaration thereof and indicate his name and address.

- **Scope of Protection of a Mark.**

Registration of a mark shall only have effect for a period of ten (10) years from the date of filing of the application for registration. However, the owner of the mark may preserve same indefinitely through successive renewals every 10 years, subject to the payment of renewal fees.

- **Cost of Trademark Protection.**
 - Official charges for filing.
 - Agent fees (charges for services rendered).
 - Renewal charges or maintenance fees.
 - Cost for conducting a Trademark search.
- **Scope of Registration.**

A Trademark may be registered in one or several classes of goods or services under the terms of the Nice Agreement on the international classification of goods and services for the purpose of registration of marks.

- **Procedure Observed at the Trademark Office.**
 - Formal examination.
 - Substantive examination.
 - Publication and opposition.
 - Registration.
 - Renewal.

3. COMMERCIAL NAMES.

A Trade name is a distinctive sign used in commerce to differentiate between one establishment and another. Trade name means the name under which a commercial, industrial, handicraft or agricultural establishment is known and operated.

- **What is not considered as a Trade Name.**

Name or designation which by its nature or use to which it may be put is contrary to public order and morality and which in particular could mislead commercial circles or the public as to the nature of the commercial, industrial, handicraft or agricultural establishment designated by such name shall not be considered a Trade name.

- **Constitution of Documents.**

The application for the registration of a Trade Name must be made on the prescribed form TN 501 which must mention obligatorily:

- The complete address, nationality and domicile of the applicant.
- The reproduction of the Trade Name.
- The place and nature of activities.
- The address of the Attorney, if represented.
- The date of the application, the signature and stamp of the applicant or Attorney. If the applicant is a moral person, the identity and capacity of the signatory has to be indicated.
- The mode of payment of the official charges/tax and the account of the said tax.
- A proof of payment of the prescribed charges.

- A Power of Attorney, signed without stamp, if the applicant is represented by an Attorney.

- **Duration of Protection.**

The duration of a Trade Name is 10 years from the date of filing an application for registration. However, the Trade Name can be conserved without limitation or duration by successive renewal after every 10 years upon payment of the renewal charges. Where a Trade Name is not renewed by its due renewal date as a result of circumstances independent of the will of the title holder, it can be a subject of restoration within a period of two years which start running from the date the renewal was due.

4. INDUSTRIAL DESIGNS.

Definition.

Any arrangement of lines or colours shall be considered a design, and any three dimensional shape, whether or not associated with lines or colours, shall be considered a model, provided that the said arrangement or shape gives a special appearance to an industrial or craft product and may serve as a pattern for the manufacture of such a product.

If the object can at the same time be considered a new design and a patentable invention and if the elements constituting the novelty of the design are inseparable from those of the invention, the said object may only be protected under the provisions of Annex I on Patents or Annex II on Utility Models.

Industrial designs eligible for registration.

- i) An industrial design may be registered if it is new.
- ii) An industrial design is new if it has not been disclosed anywhere in the world by publication in tangible form, by use or by any other means before the filing date or, where applicable, before the priority date of the application for registration.
- iii) The novelty referred to in paragraph (i) above shall not be denied if during the 12 months preceding the date specified in the said paragraph, the industrial design was the subject of disclosure resulting from
 - a. An obvious violation in relation to the applicant or his predecessor in title; or
 - b. The fact that the applicant or his predecessor in title has displayed it at an official or officially recognised international exhibition.
- iv) Industrial design is the exploitation of which is contrary to public policy or morality may not be registered, on the understanding that the commercial exploitation of the said designs is not considered contrary to public policy or morality merely on account of its being prohibited by a legal or regulatory provision.

Rights conferred by registration

Any creator of an industrial design and his successors in title shall have the exclusive right to exploit the said design and to sell or cause to be sold for industrial or commercial purposes the goods in which the design is incorporated, subject to the conditions of this Annex, without prejudice to the rights conferred by other legal provisions.

- Right to the industrial design.

i) Only designs deposited in the proper manner shall enjoy the benefits of this Annex.

ii) The ownership of a design shall vest in the person who created it or in his successors in title, but in the absence of proof to the contrary the first applicant shall be presumed to be the creator of the design.

- Acquisition of rights by foreigners.

Foreigners shall enjoy the benefits of this Annex if they fulfil the conditions thereof.

- Designs created by employees.

i) Subject to the legal provisions governing contracts for performing a certain work and employment contracts, and in the absence of contractual provisions to the contrary, the right to the registration of an industrial design made under such a contract shall belong to the person who commissioned the work or to the employer.

ii) The same provision shall apply when an employment contract does not require the employee to exercise any creative activity, but where the employee has created the industrial design using data or means available to him on account of his employment.

iii) In the circumstances provided for in paragraph (2) above, the employee who has created the industrial design shall have a right to remuneration reflecting the importance of the design created, which remuneration shall be fixed by the court in the absence of agreement between the parties.

iv) The provisions of this Article shall likewise be applicable to employees of the state, public associations and any other corporate entity under public law in the absence of specific provisions to the contrary.

v) Where the employer expressly renounces his right to the design, that right shall belong to the creator.

vi) The provisions of paragraph (3) are a matter of public policy.

- Limitation of the rights conferred

The registered industrial design shall not be binding on third parties who, at the time of filing of the application for registration, were already exploiting the said design on the territory of one of the member States or had taken the necessary steps with a view to exploiting it. The said third party shall be authorised to use the industrial

design in his business or his own workshops or in those of other persons. That right may only be transferred with the business.

- **Filing of the application.**

- i. Any person wishing to have an industrial design registered shall file with the Organisation or with the Ministry responsible for industrial property, or send it by registered mail with a request for acknowledgement of receipt:
 - a. His application, addressed to the Director General of the Organisation in the number of copies prescribed by regulation.
 - b. A document proving payment of the prescribed fees to the Organisation.
 - c. An unstamped private Power of Attorney, if the applicant is represented by an agent.
 - d. A mention of the type of product for which the design is to be used.
 - e. On pain of invalidity of the application, a sealed package containing two identical copies of a graphic or photographic representation of the design, in dimensions specified by regulation.
- ii. The same filing may include from one to 100 designs, which shall be numbered from one to last, provided that they belong to the same class of the international classification (Locarno Agreement) or to the same set or range of articles. Designs additional to the hundredth shall not be considered validly deposited under this Annex.
- iii. At the time of filing the application may contain a request for publication of the design, once registered, to be delayed for a period not exceeding 12 months following the filing date of the application, or following the priority date thereof where priority is claimed.

5. GEOGRAPHICAL INDICATIONS.

This means an indication that serves to identify a product as originating from a territory, a region, or a locality within that territory, in those cases where the quality, reputation or other specific characteristic of the product may be essentially attributed to such geographical origin.

Registration of a Trademark containing a geographical indication or constituted but such indication shall be refused or invalidated if the use of such indication in the trademark for such products is liable to mislead the public as to the true place of origin.

Likewise, registration of a geographical indication which although literally exact with respect to the territory, region or locality from which the products originate, shall also be refused or invalidated if it suggests to the public that the products originate from a different territory.

Natural or legal persons carrying on an activity as a producer in a geographical area specified in the application, with respect to the product specified in the application, as

well as groups of such persons, groups of consumers and any competent authority shall be entitled to file an application for the registration of a geographical indication.

Any person wishing to obtain the registration of a geographical indication shall file with the Organisation or with the Ministry responsible for industrial property, or send by registered mail with a request for acknowledgement of receipt:

- a. An application to the Director General of the Organisation in sufficient number of copies.
- b. A document proving payment to the Organisation of the filing fee.
- c. The geographical area to which the application applies.
- d. The products for which the indication is used.
- e. The quality, reputation or other characteristic of the products for which the indication is used.

• **MISTAKES COMMONLY MADE BY EXPORTERS.**

- Exporters often realise the importance of protecting Intellectual Property only after it is too late i.e. once they are faced with imitators or counterfeiters or once they are being accused of infringing on the rights of others.
- Exporters also believe that IP Protection is universal. This is not true. IP Protection is territorially limited to where protection is sought.
- They also assume that laws and procedures for the protection of IP rights are the same worldwide. Even though the laws of IP have been harmonised worldwide, there are still many areas in which there are significant differences between countries.
- Exporters do not verify whether a Trademark is already registered or is being used by competitors in the export market. We must know that the use of a Trademark in another country that is identical or similar to the one that is registered or is already being used there by a different company could be considered to be an infringement on the other Firm's Trademark rights.
- Most inventors and exporters do not use regional or international protection systems. Applying for IP protection in a number of National IP offices worldwide may be expensive. Regional and international protection systems are an effective, efficient and cost-effective way of applying for IP protection in various countries.
- Most inventors and exporters apply too late for IP Protection abroad.
- They disclose information too early without a confidentiality or non-disclosure agreement.
- They seek to license a product in a market where the relevant patent or design is not protected.
- They use a Trademark that is inappropriate for the market in question.
- They infringe on the IP rights of others.

NB:**One product can entitle an inventor many IP rights.**

For example, a CD player originally owned by PHILIPS and SONY:

- The innovative technical feature of this CD is protected by a series of Patents.
- Embedded computer programmes controlling the operation are protected by copyright and neighbouring rights.
- Aesthetic design of each specific CD is protected as an Industrial Design.
- Brand used to market this CD may be protected as a Trademark.
- Manufacturers may hold some trade secrets ranging from their customers list to manufacturing process or to some other confidential information that they would not want to disclose to competitors.
- CD player can be licensed to others for uses which may be subject to payment, thus an additional income.
- Music played in a CD player is generally protected by Copyright and neighbouring rights unless protection has expired. Anyone who wishes to perform, sell copies of CD, broadcast it on radio, translate the music into other languages or use its content in any other commercial way has to seek authorisation from the musician.

For more information on acquiring IP titles within the OAPI Jurisdiction, do not hesitate to contact the Nico Halle & Co. Law Firm.

- **ABOUT THE DENIS EKANI INTELLECTUAL PROPERTY TRAINING CENTRE.**

The Administrative Council of the African Intellectual Property Organisation (OAPI) meeting in its 44th Ordinary Assembly from the 3rd to 4th December 2004 at Cotonou – Republic of Benin, adopted the law on the creation and organisation of an Intellectual Property Training Centre. The Council also decided to name the said Centre “THE DENIS EKANI INTELLECTUAL PROPERTY TRAINING CENTRE” as homage to Mr. Denis Ekani, former Director General of OAPI.

The Denis Ekani Intellectual Property Training Centre is charged with:

- The organisation of Intellectual Property courses.
- The constant training and organisation of refresher courses for stakeholders and users of Intellectual Property.
- The organisation of lectures and training seminars covering the different aspects of Intellectual Property.
- The organisation of meetings to handle questions with respect to current issues on Intellectual Property Law.
- The initiation and promotion of studies on Intellectual Property Law questions.

A Scientific Committee was put in place to oversee the proper functioning of the Denis Ekani Intellectual Property Training Centre. The Nico Halle & Co. Law Firm is proud to have its Senior Managing Partner – Barrister Nico Halle, as a pioneer

member of this Scientific Committee. This is no doubt in recognition of our high quality and unrivalled professional IP services to clients worldwide for over 24 years.

Contact the Nico Halle & Co. Law Firm for all your IP matters within the OAPI Jurisdiction.

For details on our Intellectual Property services, we further invite you to visit our IP Website at www.wipnetglobal.com

ABOUT THE LAW FIRM

The Nico Halle & Co. Law Firm was established in 1986 and offers a full range of legal services. The Firm has been recognised and appreciated worldwide over the years not only because of its mastery of the bi-jural system of law and command in its areas of specialisation, but also for its credibility, expeditiousness and bilingualism.

The Nico Halle & Co. Law Firm has lawyers specialised in various areas of practice and accredited to foreign BAR Associations.

Its client base is Africa, Europe, Asia, the USA and the rest of the world.

The Nico Halle & Co. Law Firm is amongst the few accredited (Licensed) IP Law Firms at the African Intellectual Property Organisation (OAPI). The Firm operates an IP Department [Worldwide Intellectual Property Network (WIPNET Global)] comprising the following IP Experts:

1. Nico Halle, Esq, Licensed IP Attorney, Senior Managing Partner of the Nico Halle & Co. Law Firm and Head of WIPNET Global. With over 22 years experience in the IP Domain, he is also a member of the Scientific Committee of the Denis Ekani Intellectual Property Training Centre at OAPI.
2. Mustapha Ngouana, Esq, Accredited IP Agent: Assistant Manager.
3. Akueya Cynthia Nchaw, Esq, Accredited IP Attorney: Collaborator.
4. Moukouri Mbango Rose Danielle, Esq, IP Attorney: Collaborator.
5. Muluh Jude Khan, Esq, Accredited IP Attorney: Collaborator.
6. Halle John Halle Jr, IP Attorney: Collaborator.
7. Rosaline Fambove, IP Attorney: Collaborator.
8. Fon Donald, IP Attorney: Collaborator.
9. Suh Eric Che, Collaborator.
10. Linus Ngongpa, Collaborator.

The African Intellectual Property Organisation [Organisation Africaine de la Propriété Intellectuelle (OAPI)] is the Organisation that assumes responsibility for all intellectual property related matters. It has a membership of 16 States viz: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Cote d'Ivoire, Gabon, Guinea – Conakry, Guinea – Bissau, Mali, Mauritania, Niger, Senegal, Togo and Equatorial Guinea. **A Trademark registered at OAPI has an effect in all 16 Member States.**

For over twenty-five (25) years of existence, the Nico Halle & Co. Law Firm has rendered and continues to render unrivalled, top quality and professional services to clients world-wide in the IP Domain.

For details, please contact us through our email, telephone, fax or postal address as indicated above.