

Intellectual property - is AI sufficiently central to Africa's agenda?

 By [Marco Vatta](#)

5 Jan 2022

The interplay of artificial Intelligence (AI) and intellectual property (IP) is hot on the agenda of the World Intellectual Property Organisation (WIPO), which has published a draft paper on IP Policy and AI for comments by member states and other interested parties.



According to a [2020 Daily Maverick article by Dr Andrew Rens](#), “WIPO is driving a rapid policy process to set the international agenda on artificial intelligence and intellectual property, with debates centering on developed countries’ interests”. [Research ICT Africa \(RIA\)](#) has also pointed out that the issue of AI and IP cannot be adequately considered by WIPO without taking into account development imperatives.

Yet most of the responses to the draft paper were provided by developed countries, with Morocco being the only African country to comment. This begs the question:

“To what extent is artificial intelligence and intellectual property receiving adequate attention in Africa?”

My answer? Not enough (perhaps until very recently).

The 4IR is already here

Considering that many of the most in-demand occupations at present didn’t exist 10 years ago, and that over 65% of new-entrant learners will work in jobs not currently available in the marketplace, it is clear that Africa must embrace the 4th industrial revolution – and quickly.

It is unlikely that we will reach a stage where AI will fully replace humans in the workforce, but it will become a universally acceptable and accessible tool for augmenting human abilities. Therefore, as the technology develops (along with a plethora of intellectual property), so should Africa, as a manual taskforce will become significantly irrelevant.

Although South Africa's patent office granted the first patent in July 2021 for an invention created by AI, many international IP experts have criticised the awarding of the patent.

Some labelled it a mistake or an oversight by the patent office, with commentators pointing out that the granting of the patent was the result of a misinterpretation of legislative rules and procedures for nationalising Patent Cooperation Treaty (PCT) applications in South Africa.

Many also saw the patent award as an indictment of South Africa's patent procedures, which currently only consist of a formal examination step. This involves a checkbox-style evaluation, to ensure that all relevant forms are submitted and duly completed.

South Africa and the rest of Africa must come to the realisation that AI is finding its way into all aspects of life and that advances in AI, as well as its application in Africa, have great potential to propel innovation, provided that sound policy exists to support it.

Unpacking AfCFTA

The Agreement Establishing the African Continental Free Trade Area (AfCFTA) was signed by 44 African countries to establish the world's largest free trade area; its purpose: to eliminate existing barriers to trade within Africa by promoting economic integration and the structural transformation of Africa's economy.

To fulfil the objectives enshrined in the agreement, state parties are required to cooperate on investment, IP rights and competition policy, among other requirements. The IP system, specifically, is a useful public policy tool for stimulating innovation and creativity, with the benefit of disseminating and transferring knowledge.

In practice, however, Africa's IP architecture is widely considered to be fragmented and broken due to differing regional aspirations, the adoption of different trade and IP agreements, and coercive pressures.

Article 8 of the Agreement provides that the Protocols on Trade in Goods, Trade in Services, Investment, IP Rights (IPR), Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices will form an integral part of the AfCFTA as a single undertaking, meaning that Member States are bound to fulfil the obligations set out under all the Protocols.

By denying member states a smorgasbord from which to choose, the harmonisation of IP laws is attainable via minimum standards and the design of a homegrown IP system that promotes the kind of innovation unique to Africa.

Furthermore, the IPR Protocol of AfCFTA gives member states an opportunity to bring about development in supporting, enhancing and embracing the legitimate economic aspirations of Africa. This can be achieved by eliminating differential treatment of the AfCFTA countries, leveraging already existing IP regimes and focusing on opening the continent's market.

The Protocol should not be a hurdle in the strengthening of Africa, but rather a catalyst for economic transformation from a resource-based economy to a knowledge-based economy –
by easing the ways in which technology and knowledge are transferred and disseminated.

Private efforts

An AI Africa Consortium has been established and is being led by the University of the Witwatersrand in Johannesburg. The Consortium includes universities, research organisations and government agencies that receive a variety of benefits and the opportunity to provide feedback to shape the future direction of Cirrus: a private-sector-led initiative for the establishment of a world-class AI research and application capability in Africa.

On the grounds that the region has not expanded fast enough to fully realise the opportunities presented, and that there's now a rapidly growing need for talent, infrastructure and funding to support innovation, Cirrus promises a step change.

Progress cannot be made fast enough. To compete with the disproportionate build-up of resources in North America and, more recently, Asia, efforts far greater than any we've seen are required: in academia and in industry. Beyond competitiveness, and perhaps even for survival, it is time for Africa to accelerate its own change; not merely watch from the sidelines as things unfold in developed countries.

ABOUT MARCO VATTA

Marco Vatta is a registered Patent Attorney who has a BSc (Microbiology) and an LLB. He is an Attorney of the High Court of South Africa and has five years of experience in patents and registered designs.

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