Intellectual property cooperation in China-Africa relations

By:

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Background China is the largest developing country with a GDP of USD17.82 trillion, while Africa boasts of a conglomeration of the highest number of developing countries under the largest regional free trade mechanism – the African Continental Free Trade Area (AfCFTA) – with a collective GDP of USD3.4 trillion. China is Africa's largest bilateral trade partner. Trade between China and Africa stood at USD282 billion in 2023. China and Africa appreciate the significance of IP rights to fostering bilateral, and intra-regional (Africa), trade. Little wonders, therefore, international cooperation on IP rights forms a key strategy for achieving the objectives of China's Belt and Road Initiative (BRI), and the AfCFTA agreement. As the 9th Forum on China-Africa Cooperation (FOCAC), which was established in 2000, holds in China from 4-6 September with possible focus on green energy, ICTs and technology development, it is important to examine the continued prominence of IP issues in China-Africa relations.

For now, however, it should be noted that China and Africa are yet to negotiate a bilateral IP legal instrument. This may be due to the lack of a single regional IP institution in Africa drive such initiative. Plans to create the Pan African IP Organization (PAIPO) currently only exists on paper. Only 7 signatures and 1 ratification out of 55 member states of the AU have been recorded for the PAIPO Statute since its adoption in 2016. With the adoption of the AfCFTA IP Rights Protocol in February 2023, it is possible that Africa may soon have a harmonized regional IP mechanism within the context of regional trade.

There are currently two "ideologically" and linguistically different IP Organisations on the continent: the Anglophone-based African Regional Intellectual Property Organization (ARIPO) and the Francophone-based African Intellectual Property Organisation (OAPI). ARIPO currently has 22 members, while OAPI has 17. Nigeria, South Africa, Egypt, and Morocco (regional power houses) are not members of either organisation. However, Nigeria and South Africa have observer status with ARIPO. While ARIPO pursues IP harmonization objectives, OAPI strives towards unification. ARIPO's and OAPI's IP cooperation with China is highlighted below.

Cooperation at the global level

IP cooperation between Africa and China in the form of IP enforcement support, knowledge sharing and setting of common objectives happens at the global, regional and national levels. On the global space, for instance, China supported Africa's proposal for waiver of certain aspects of the WTO's Agreement on Trade Related Aspects of IP Rights (TRIPS Agreement) for the prevention, containment and treatment of COVID-19. BRICS, which has China and three African countries (South Africa, Egypt and Ethiopia) as part of its membership, offers another dimension of IP cooperation between China and Africa. IP BRICS, a cooperation mechanism among national IP offices of BRICS member states, was informally birthed in 2012 in Geneva with the overall objective to harness the value of IP for national development. IP BRICS established a Roadmap in 2013 with 8 cooperation streams: namely, training of IP office staff and examiner exchange, national IP strategy and promotion of public awareness on IP, information services on IP, IP/patent processes and procedures, IP strategies for SMMES, collaboration in international forums, trademarks, and industrial designs. Ongoing conversations and exchanges have extended IP BRICS' focus

to issues around digital and frontier technologies, and IP and SDGs.

Cooperation at the regional level

Regionally, cooperation on IP between China and Africa is apparent within the framework of FOCAC. Both parties adopted the China-Africa Cooperation Vision 2035 in November 2021. The Cooperation Vision 2035 is hinged on China's Vision 2035, AU's Agenda 2063, and the UN Sustainable Development Agenda 2030. In terms of paragraph 3 of the Cooperation Vision 2035, both parties committed to promote "a new development paradigm featuring transformation and growth to advance industries in China and Africa". To this end, both parties undertake to extensively cooperate in "science and technological innovation, and jointly promote research on high-level cooperation, technology transfer and application as well as cooperation in innovation and entrepreneurship, in a bid to improve science and innovation capabilities and sustainable economic and social development in Africa" (paragraph 3.3).

To achieve the objectives of the Cooperation Vision 2035, both parties also adopted the FOCAC Dakar Action Plan (2022-2024) in November 2021 wherein they commit to work closely to further upgrade and improve cooperation in key areas that impact and are impacted by IP. The key areas include digital economy, industry partnership and production capacity, agriculture, food security and food safety, medical care and public health, culture, education and human resources, infrastructure development, science, technology and knowledge sharing, customs and market supervision. In terms of paragraph 3.6.1 of the Dakar Action Plan, both parties specifically commit to strengthening communication and cooperation, and setting up bilateral and multilateral dialogue mechanisms, on preventing unfair competition to "create an open, fair, just and non-discriminatory business environment for the high-quality common development" of their respective territories. In addition, by their Declaration on Climate Change adopted in December 2021, China and Africa commit to cooperate on the sharing and exchange of climate mitigation and adaptation technology in areas including clean energy, agriculture, ocean, low-carbon infrastructure development, early warning disaster prevention, among others.

China continues to cooperate on IP protection with the two IP organisations existing on the continent: that is, ARIPO and OAPI. The bilaterial Patent Prosecution Highway (PPH) pilot program launched in June 2024 between ARIPO and the China National IP Administration (CNIPA) is an example of a China-Africa cooperation on IP protection. The program promotes expedited patent decisions by enabling applicants who have obtained positive outcomes on patent claims in one participating office (ARIPO or CNIPA as the office of earlier examination) to request for accelerated examination in the other participating office (ARIPO or CNIPA as the office of later examination). CNIPA and ARIPO have already started implementing the program within their domains. The program will run for 5 years (till June 2029) with the possibility of extension.

Existing reports also show a long-standing relationship and cooperation between CNIPA and OAPI since 2008, which culminated in the signing of the CNIPA-OAPI work Plan 2020-2021 at the 59th Ordinary Session of OAPI's Board of Directors in Chad in 2019. In 2023, the heads of the CNIPA and OAPI held bilateral talks in China on the fringes of the 12th China IP Annual Conference in Jinan, Shandong Province, wherein they acknowledged the long-standing relationship and cooperation existing between their organisations and the need to continue cooperating in the area of IP (especially geographical indication) protection, personnel training and capacity building, and knowledge sharing.

Cooperation at the national level

At the national level, similar PPH program as that of ARIPO was earlier launched by CNIPA and the Egyptian Patent Office (EGYPO). The first CNIPA-EGYPO PPH program was launched in 2017, extended in 2019 and again in 2024 till 2029. In terms of normative cooperation, Mauritius signed a free trade agreement (FTA) with China in 2019, which came into effect on 3 January 2021. Chapter 10 of the FTA, which deals with IP, requires the parties to protect and enforce IP rights in a manner that strikes a balance between the legitimate interests of right owners and the public. To this end, the chapter reaffirms the rights and obligations of the parties under the TRIPS Agreement; and commits the parties to addressing IP and public health as envisaged in the Doha Declaration on TRIPS Agreement and Public Health, and to cooperate on IP protection, enforcement, administration, and capacity building.

Concluding remarks

The foregoing shows a common understanding of the important instrumentalist role of IP towards achieving sustainable development in Africa and China. There is also a shared commitment between Africa (as a collective and/or individual nations) and China on the need to cooperate on IP. To be effective such cooperation must be rooted in the values of equality, equity and fairness, based on a clear understanding of the respective developmental needs of Africa and China, and a shared commitment to address the development challenges faced by both parties through tailor-made strategies that aligns with the individual territorial realities.

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