

Commission on Intellectual Property Rights

Country Case Study for Study 9: Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement

Kenya

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KENYA IP POLICY CASE STUDY

Part A: OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK.

1.1 Recent history on the development of the national IP legal framework;

The law on Intellectual Property in Kenya is categorized into four main areas ;

- a) The law relating to patents
- b) The law relating to copyrights
- c) The law relating to Trade Marks
- d) The law on Utility Models, Industrial Design and Design Rights

1.1a) History of the law relating to Patents:

Patent application and registration in Kenya is traceable to the Patent Registration Act (Repealed), Chapter 508 of the Laws of Kenya. This statute was enacted in 1962 and provided for the grant of patents in the United Kingdom which were subsequently registered in Kenya

Registration of patents in Kenya was carried out by the Registrar General a department of the Attorney General's office.

The Industrial Property Act Cap 509, gazette notice was published on 16th February 1990 bringing the Property Act into force with effect from 2nd February 1990. In August 1993, processing of patent applications started after the implementation of Regulations. The Act provided for the promotion of inventive and innovative activities and facilitates the acquisition of technology through the grant and regulation of patents utility models, industrial designs traded marks and service marks. Trade marks and service marks are registered under Trade Mark Act Cap. 506.

The Industrial Property Act established the Kenya Industrial Property Office (KIPO) to administer the Act under the supervision of the Ministry of Research, Technical Training and Technology and a Director was appointed to head the Office.

1.1b) The law relating to Copyright:

Modern Kenya copyright laws have evolved from 1911 and 1956 Copyright Acts of the United Kingdom. These Acts were applied together with English Common law under the Reception Clause in Kenya. In 1966, Kenya enacted its Copyright Act. The Act was reformed in 1975 to introduce folklore. A number of doctrines were also introduced into the Act in 1982, 1989 and 1995. Other sections were also repealed.

1.1c) The law relating to Trade Marks:

Trade Mark law is embodied in the Trade Marks Act of 1962 and revised in 1982, Chapter 506 of the laws of Kenya. This statute is in all fours with the Trade Marks Act of the United Kingdom of 1938.

1.1d) The law relating to Utility Models, Industrial designs and Design Rights:

Utility models are protected under the Industrial property Act under which they are also registered. The Act also protects industrial property design but does not protect anything in an industry, which serves solely to obtain a technical result. Industrial designs are not excluded from the protection of the Copyright Act.

1.2 Institutional Framework

The Kenya Industrial Property Institute:

The Kenyan Industrial Property Institute formerly the Kenya Industrial Property office, which is charged with the responsibility of considering applications for and to grant Industrial Property rights, screen technology, transfer agreements and licenses and to provide to the public, industrial property information and economic development and promote initiatives and innovations in Kenya.

2. Key Issues and challenges:

Key issues and challenges can be classified into:

Constitutional challenges

-The constitution of Kenya does recognize the freedom to own property and protects the rights of individuals to the protection of their property. However the right to intellectual property is not recognized as one of such rights that need protection under the

constitution. Infringements of intellectual property rights are taken lightly as compared with other rights to the protection of tangible property that are easily protected.

Institutional and policy challenges

- Lack of sufficient qualified personnel responsible for matters related to intellectual property.
- Lack of sufficient training facilities on I.P
- Insufficient funds for running of IP institutions.
- Lack of public awareness and or ignorance by the general public on I.P related issues.
- I.P related issues are not a priority to the Government due to other pressing needs e.g. food security, poverty etc.
- Lack of sufficient technological know how and the promotion of research and development which accentuates the development of I.P

Legislative challenges

- Most of the I.P laws are outdated and cannot keep up with the latest development in I.P. I.P issues.
- Insufficiency of the enacted laws to comprehensively deal with the whole corpus of I.P in Kenya.
- Lack of legislation in some I.P related areas.

LEGAL FRAMEWORK

3. Analysis of National IP-related legislation.

The Industrial Property Act.

This is the Key legislation regarding Intellectual Property, especially Industrial Property in Kenya. It is an Act of parliament to provide for the promotion of inventive and innovative activities, to facilitate the acquisition of technology through the grant and regulation of patents, utility models, technovations and industrial designs, to provide for the establishment of powers and functions of the Kenya Industrial Property Institute and for purposes incidental thereto and connected therewith.

The Act provides for the conditions to be satisfied before rights under a patent, utility model, innovations and Industrial designs can be granted to an applicant.

The most potent feature of this statute, is the provision for the exploitation of patented inventions by the government or by third persons authorized by the government where the public interest, national security, nutrition, health, environmental conservation, the development of other vital sectors or national economy so require.

- **The Trade Marks Act**

- This is the basic statute that deals with the Registration of Trade Marks in Kenya. The Act provides for the appointment of the Registrar-general or such other persons as the Minister may appoint, who shall be the registrar of Trade Marks. The Act further provides for the establishment of the Register of Trade Marks wherein shall be entered all registered Trade Marks. Under the Act, no action can lie in the infringement of an unregistered Trade Mark. The Act sets all the types of marks that can be registered under it and the rights accruing to the proprietor or registered user of a registered Trade Mark.

- **The Copyright Act (1983) Chapter 130 of the laws of Kenya**

The above is an Act of parliament to make provision for copyright in literary, musical and artistic works, cinematograph films, sound recording and broadcasts. The Act lays down the works, which shall be eligible for copyright and provides that copyright shall be conferred to an individual who is a citizen of Kenya or is domiciled or resident in Kenya or a body corporate which is incorporated under or in accordance with the laws of Kenya.

- **The Seeds and Plant varieties Act, 1997(Chapter 326 of the laws of Kenya)**

The above is an Act of parliament to confer power to regulate transactions in seeds including provision for the testing and certification of seeds; for the establishment of an index of names of plant varieties; to empower the imposition of restriction on the introduction of new varieties; to control the importation of seeds; to authorize the measures to prevent injurious cross-pollination; to provide for the grant of propriety rights to persons breeding or discovering new varieties; to establish a tribunal to hear appeals and the other proceedings; and for purposes connected with and incidental to the foregoing.

PUBLIC SECTOR

4. Main public sector agencies responsible for IP policy, information dissemination, administration and enforcement including mission and main functions of each agency.

The main public sector agency in IP policy information is the Kenya Industrial Property Institute formerly the Kenya Industrial property Office established by the Industrial Property Act 2001. The Institute is charged with the responsibility of:

- a) Examining applications and grant Industrial Property Rights, including Patents, Industrial designs and Utility Models.
- b) Screening technology transfer agreements and licenses.
- c) Collecting documents and disseminating patent information to the public.
- d) Promoting inventiveness and innovative activities in Kenya.
- e) Instituting infringement proceedings in relation to Industrial Property Rights.
- f) Registering and renewing Trade Marks and Service Marks.

The Attorney General's office is in charge of copyrights.

The Kenya Bureau of Standards and the Kenya Association of Manufactures formed the Anti-counterfeit committee in November 2001 whose main function is to deal with infringement of rights in IP-related matters.

5. Description of IP-related competition policy/legislation and administrative arrangements

The Restrictive Trade Practices, Monopolies and Price Control Act of 1990 – Chapter 504 of the laws of Kenya. The Statute was enacted to encourage competition in the economy by prohibiting restrictive traded practices, controlling monopolies, concentrations of economic power and prices. Unfair competition is now regarded as an issue of Industrial Property protection. The purpose of unfair competition is to protect legitimate traders and innovators against abusive, dishonest practices as well as confusion and false allegations, which would discredit other traders or mislead consumers. UNCTAD, Consumer's International Regional Office for Africa approach unfair competition from a consumer and developmental perspective. This could also be termed as the Kenyan approach. It is argued that it is not enough to establish competition, because it may not necessarily benefit the consumers. It focuses on the need to regulate corporate structures. Unfair competition practices may also constitute trade libel and in Kenya, the law of defamation applies in such instances.

PRIVATE SECTOR

6. Role of private sector in agencies and NGOs (e.g. industry associations) in IP policy development, information dissemination, administration and enforcement.

The role of the private sector particularly in policy development is very minimal, though it should be noted that organizations such as the Kenya Association of Manufactures (KAM) and the Kenya Bureau of Standards are consulted on such issues.

Perhaps the legal fraternity plays the greatest role in this area. They are the main agents responsible for the filing of applications for I.P acquired rights at the respective offices. Lawyers on behalf of their clients file most of the applications to the Kenya Industrial Property Institute for the grant of patents and Trade Marks. The significant role that lawyers play in I.P in Kenya is emphasized also by the fact that lawyers also receive training in I.P as one of the units offered for the award of the law degree.

General ignorance of the public in I.P has also emphasized the significant role of lawyers as the possessors of knowledge of I.P.

Private research based organizations also play a significant role in I.P development in Kenya. One such organization is the Africa Centre for Technology Studies (ACTS), which is a non-partisan, non-profit institution established to Conduct public policy research, training and information dissemination. The Centre maintains that technological changes, environmental management and institutional innovation are crucial to sustainable development and should be at the core of all development efforts. ACTS has a national focus and an international perspective and collaborates with UN bodies, governmental, intergovernmental, private, academic and other institutions with similar objective.

7. Role of legal community for filing patents. Experts at law schools.

The legal sector is very potent in patent registration in Kenya due to the lack of awareness regarding Intellectual Property. Patent applications in Kenya can be filed either directly by the individual or through a lawyer or patent agent though all foreign applicants must apply through an agent. Fees for admission, as the patent agent is KShs. 5,000.00

There are experts at the law schools to teach intellectual property, however their numbers are few and intellectual property law is not offered as a compulsory course though it should be noted that up 90% of law students opt to take it.

PUBLIC POLICY MAKING PROCESS

8. How public policy on IP is made; the decision makers; constitution process; parties consulted; interest of the poor.

Parliament being the supreme law-making organ in the country is responsible for making laws regarding intellectual property. The consultation process involves experts in research and development, lawyers who have knowledge in intellectual property and any other experts in any field that parliament may deem necessary. Institutions such as Kenya

Industrial Property Institute -KIPI, Kenya Association of Manufactures -KAS and Kenya Bureau of Standards - KBS are also consulted.

The interests of the poor are taken into consideration by their representatives in parliament, who consider views and legislate on matters touching them. The genesis of the laws relating to intellectual property is the Acts of parliament enacted therein. The decision makers are the legislators, who take into account the views of their electorate in law making in intellectual property.

9. Evidence of integration of IP policy making with that of wider national economic policy and strategies for development and poverty reduction.

A good example is the enactment of the Industrial Property Act 2001, which was necessitated by the HIV and AIDS pandemic in Kenya. The government repealed the previous statute and provided for compulsory licensing and parallel importing. This was to pave the way for the government to import generic HIV/AIDS drugs in the interest of national health.

Section 80 (1) provides that subject to this section where:

“... the public interest , in particular national security , nutrition , health , environmental conservation or the development of other vital sector of the national economy so requires the minister may , upon application to him in the prescribed form and after consultation with the institute and the owner of the patent ,order that the protected invention be exploited by a Government Ministry / Department /Agency /3rd party as the minister may designate in the order to subject to payment of adequate compensation to the owner of the paten in accordance with this section .

1a) Upon exercising the powers conferred upon him under subsection (1), the minister may , notwithstanding any of the measures set out in this section , authorize by written order the importation , manufacture or supply , or authorize the utilization of any molecule or substance whatsoever by any individual , corporation or society as named or described by any individual, corporation or society as named or described in the order without notice to the patent holder or any other notifiable party and such order shall

remain in force until revoked by the minister in writing , after giving six months' prior notice of his intention of such revocation to the party named or described in that order .

1b) An order made under subsection (1a) shall not require the payment of compensation to the owner of the patent or license holder or any other party so interested.”

PART B INDICATORS OF THE IP SYSTEM

1) Annual numbers of applications and other filings for IP protection in the last 3 years

The table below shows the number of IP applications.

Table B1

Year	Patents	PCT	ID	UM	TM	SM
2001	19 (5)	22	112	5	1254	330
2000	27 (6)	31	73	5	1372	491
1999	34 (10)	24	43	7	1357	289
1998	32 (4)	28	35	3	1060	231

NB: Patents: Application for local patent, the figure in brackets () indicates the number of foreign applications, which include countries such as India, Switzerland, USA, Israel, Australia and Germany.

PCT: (Patent Co-operation Treaty): application for foreign patent within Kenya.

ID: Industrial Design

UM: Utility Model

TM: Trade Mark

SM: Service Mark

2) Annual numbers of patents and other IPRs granted or registered in the last three years.

Table B2

Year	Patents	Industrial design	Utility Models	Registered TM, SM
2001	19	61	2	1239
2000	32	57	8	1877
1999	17	26	2	1013
1998	19	37	0	1006

NB: TM: Trade Marks
SM: Service Marks

Patents granted through PCT for the last three years totaled 41.

3) Level of backlog: The backlog is not considerable but there are no efficient means of measuring this hence the lack of figures.

4) The applications for overseas patents are made through the PCT and ARIPO of which Kenya is a member. The Number of applications filed is shown on table B1 and those granted are indicated in table B2.

5) Management of IPRs by the private and public sector:

Arrangements for access and licensing of protected property to third parties.

Section 53(1) of the Industrial Property Act provides that the applicant or the owner of an invention shall have the right to conclude licence contracts as provided in the Act subject to the following obligations:

(a) The disclosure of the invention in a clear and complete manner and in particular to indicate at least one mode for carrying out the invention, in accordance with the requirements, and subject to the sanctions applicable under the Act.

(b) To give information concerning corresponding foreign applications and grants.

(c) Pay fees to the Managing Director.

(d) In connection with licence contracts and contracts assigning patents or patent applications, to refrain from making undesirable provisions.

6) Extent of piracy and IPR infringement.

Number of seizures by custom authorities of counterfeit goods: 50

IPR legal cases brought:

- Criminal Act: 20
- Civil Suit: 1
- Pending cases: 29

It should be noted however that there is no law governing counterfeits on IPR related matters. Most seizures are conducted due to failure to pay customs duties or if IPR agencies have requested the customs authorities to do so.

- 7) No compulsory licenses have been issued though there are provisions in the law for the exploitation of patented inventions by the government or by third persons authorized by the government where the public interest, national security, nutrition, health, environmental conservation, the development of other vital sectors or national economy so require.

PART C ANALYSIS OF THE KEY IP INSTITUTIONS

The key IP Institution in Kenya is the Kenya Industrial Property Institute (KIPI) formerly Kenya Industrial Property Office (KIPO)

Human Resources

1. Structure of KIPI

The Kenya Industrial Property Institute has a Board of directors which consists of:

1. A chairman to be appointed by the Minister from a list of persons who shall be holders of university degrees in law or science and with at least seven years experience in the field of Industrial property, submitted to him by the Board of Directors during its first meeting, which shall be convened by the Minister.
2. The Permanent Secretary in the Ministry for the time being responsible for matters relating to industrial property or his representative.
3. The Permanent Secretary in the Ministry for the time being responsible for matters relating to finance or his representative.
4. The Permanent Secretary in the Ministry for the time being responsible for matters relating to industrial development or his representative.
5. The secretary to the National Council for Science and Technology.
6. The Attorney General or his representative.
7. Eight other members appointed by the Minister seven of whom shall be appointed as follows: -
 - a) One representative nominated by Kenya Industrial Research Development institute;
 - b) One representative nominated by the Kenya Association of Manufactures
 - c) One representative nominated by the Law Society of Kenya;
 - d) One representative nominated by the Kenya Medical Research Institute;
 - e) A renowned research scientist from the public universities appointed by the Minister for the time being in charge of education

- f) One representative nominated by the Institution of Kenyan Engineers;
 - g) One representative nominated by the Jua Kali Association
8. The Chief Executive of the Kenya Association of Manufactures or his representative.
 9. The Managing Director appointed under section 11
 - There shall be a Managing Director (Director) of the Institute who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment or otherwise in writing from time to time.

The Kenya Industrial Property Institute (KIPI) is headed by a Director, who is responsible to the Permanent Secretary, Ministry of Trade and Industry for the overall control and administration of the institute. The Director exercises the powers and performs the duties assigned by two Acts namely: The Industrial Property Act Cap. 509 and the Trade Marks Act Cap. 506 of the Laws of Kenya and is responsible for their administration.

KIPI has three departments:

1. Administration Department
 - Headed by the Chief Administrative Secretary.
 - Sections:
 - a) General Administration;
 - b) Finance;
 - c) Personnel.
2. Technical Department
 - Headed by a Deputy Director Technical
 - Sections:
 - a) Mechanical/Civil Engineering;
 - b) Electrical Engineering;
 - c) Bio-Medical Services;
 - d) Natural Sciences;
 - e) Physical/Chemical Sciences
3. Legal and Documentation Department

Headed by a Deputy Director Legal and Documentation Services.

Sections:

- a) Legal Services;
- b) Information Services;
- c) Documentation Services.

THE MAIN FUNCTIONS OF KIPI:

- g) To examine applications and grant Industrial Property Rights, including Patents, Industrial designs and Utility Models.
- h) To screen technology transfer agreements and licences.
- i) To collect documents and disseminate patent information to the public.
- j) To promote inventiveness and innovative activities in Kenya.
- k) To institute infringement proceedings in relation to Industrial Property Rights.
- l) To register and renew Trade Marks and Service Marks.

Professional and Administrative staff

The total establishment is 97 personnel.

The professionals who include the Director, Deputy Director Technical, Deputy Director Legal and Documentation Services, lawyers, electrical, mechanical and chemical engineers comprise a total of 26 people.

The administrative staff, which includes the chief administrative secretary, secretaries, librarian, accountants, public relations officials consist of 71 people.

3. How patents granting decisions are made

How are patent granting decisions made and how are the applications for other forms of IPR protection processed?

There are three main requirements for an application for the issue of a patent.

-Novelty

-Inventive step

-Industrial application.

Novelty

For an invention to be granted a patent, the invention must be new. This means that it must not have been described sufficiently to enable the invention to be understood, by word of mouth, use in any printed publication, or in any other way, anywhere in the world before a first application is made for a patent. This type of novelty is known as absolute novelty. One can also obtain a patent in Kenya if the invention is made public before the filing of the application.

Inventive step

For an invention to be patentable, it must be a development or an improvement that would not have been obvious before hand to workers of average skill in the technology involved.

Industrial application.

A valid patent cannot be obtained for something that does not work or that has no useful application. The Industrial Property Act also requires that for an invention to be patentable, it must be capable of being applied in industry or agriculture.

Application for a patent

In Kenya, patents are given to the first inventor to file an application. Therefore, it is wise to file as soon as possible after the completion of the invention.

A patent application is made by filing a patent specification together with the necessary forms, and application fees at the Kenya Industrial Property Institute in Nairobi. The patent specification includes a description of the invention, one or more claims, drawings or formula where necessary for a clear understanding of the description, and an abstract.

A patent application consists of specification and often drawings or formulae and an abstract. The abstract is a brief summary of about a hundred and fifty words of the content of the specification. The specification comprises:

- (a) A clear and complete description of the invention and its usefulness
- (b) Claims which define the boundaries of patent protection

Filing of the application

Filing a patent application means preparing a formal application together with a written request. The following must be submitted alongside the application.

- (a) Request
- (b) Description
- (c) Claims
- (d) Drawings
- (e) Abstract

Once the application is accepted for filing, the application is assigned a number and a filing date. This is not a grant of patent. It simply means that the application will be published 18 months after the filing date. Kenya follows a “first-to-file-rule”. This describes a situation where two or more applications claiming the same invention are filed, only the earliest filed application has the right to be patented, regardless of whether the inventors or applicants are identical or not.

The applicant thereafter must formally request for preliminary examination and search and attach the examination fees. The request must be made within 3 years of the filing date otherwise the application will be regarded as abandoned.

Patent applications are made public 18 months after their Kenyan filing date, or an earlier foreign filing date if applicable. Questions may be raised by the public about the patentability of the invention or one of its claims by filing a “Prior Art”. The “Prior Art” can be patents or published material that has a bearing on the case.

An applicant in cases of imminent competition or any special circumstance may request a special order examination. In these exceptional circumstances an advanced examination by means of a special order may be conducted. A fee and an affidavit outlining reasons for the request must accompany special order request. However patents are not usually granted earlier than 20 months after their priority date.

The patent examiner will examine the application to determine whether it is in the proper format. The next step is a study of the claims and a search among prior patents and other

technical literature to find what is most closely related to the features covered in the claim. The examiner may reject the whole application or only some claims, or may demand other changes in the application.

If the examiner rejects part of the application, the applicant may respond to the objections as long as this is done within the period specified in the Patent Office Action.

On receiving the response, the examiner will study it and prepare a Second Office Action. The exchange of office actions and responses may be repeated until the examiner allows the application or state that the Action is final.

An applicant whose application has been rejected by the examiner has a right of appeal to the Director of Kenya Industrial Property Institute. If the same is rejected by the Director a right of appeal lies with the Kenya Industrial Property Tribunal and from there a further appeal lies to the High Court of Kenya and the Court of Appeal respectively.

Summary of steps to obtain a patent in Kenya

- a) Find a patent agent
- b) Do a preliminary search (if there is an existing patent, consider ending the process now).
- c) Help agent prepare a patent application.
- d) Filing of application.
- e) Request for an examination.
- f) Search for prior patent and study of claims by examiner.
- g) Approval or rejection of application.
- h) Responding to examiner's objections and requirements.
- i) Examiner reconsiders and either approves or calls for further amendments.
- j) If final decision is rejection – appeal.
- k) If final decision is approval then a patent is granted.

How Trade Marks and Service Marks are registered:

1. Application for Trade Mark or Serviced Mark.
2. Similarity search for any similar Trade Marks or Service Marks (KShs. 2,000.00).
3. Formal application (KShs. 3,000.00) for conduction of exam.
4. Examination of Service Marks and Trade Marks to meet with standards

5. If exam is successful then the application is approved and registration fee of KShs. 1,500.00 paid
6. Gazetting of serviced mark or Trade Mark at a cost of KShs. 2,735.00. The general public has 60 days within which to object the registration of gazetted service or trade marks.
7. Registration of Trade or Service Mark.

PROFESSIONAL EDUCATION AND TRAINING:

There is no set professional education or training centres in the country though, intellectual property law is studied as one of the courses by law students at the University of Nairobi.

The main mode of training of examiners, is on the job training and this complemented by workshops and seminars attended by staff and trainees. It should be noted however that to apply for the position of an examiner one must hold a degree in any of the following fields: law, any engineering field, Chemistry, Physics, Natural Sciences, Medicine, Biology.

5. Human Resource bottlenecks and capacity constraints

- Lack of enough qualified personnel and professionals to work in the Institutions.
- General ignorance and lack of expertise by the staff working in the Institutions.
- Lack of incentive and motivation among the staff members

6. Institutional Development to comply with international I.P agreements

A lot of the developments in this area has been in the field of legislation. Very little has been done in institutional development to comply with international agreements. However under ARIPO, of which Kenya is a member, a patent granted by the organization is recognized by the Kenya Industrial Property Institute as having been issued by the institute.

7. What reforms are being considered?

The enactment of the Industrial Property Act 2001 , changed the Kenya Industrial Property office to the Kenya Industrial Property Institute. With the new name came a broader mandate of the Institute in dealing with IP matters.

The enactment of a new Copyright Act to cover all the new aspects of copyrights which have emerged .The process of writing the new Act ia already underway .

Streamlining the copyright section at the Attorney-Generals Chambers , by giving it a definite mandate , mission and functions .

Training of the managerial and administrative staff of KIPO through seminars and training workshops.

Enhancement of public awareness campaign as relates to Intellectual Property , by KIPI through public workshops and publication of newsletters.

Computerization of these institutions, which is already underway by the help of WIPO.

FINANCIAL RESOURCES**Approved annual expenditure and income for the last three financial years.**

ITEM	TITLE	APPROVED	APPROVED	APPROVED
		ESTIMATES	ESTIMATES	ESTIMATES
		1998/1999	1999/2000	2000/2001
	767 Kenya Industrial Office	Kshs.	Kshs.	KShs.
000	Personal Emoluments	-	6,090,160	6,683,279
050	House Allowances	-	1,340,940	2,030,130
060	Other Allowances	-	40,000	343,284
065	Medical Allowance	-	580,820	540,860
068	Training Expenses	-	-	1,047,800
080	Passage and leave expenses	-	120,000	140,000
092	Refund of Medical Expenses -in patient	-	50,000	60,000
093	Refund of Medical Expenses ex-gratia	-	300,000	300,000
100	Transport operating expenses	-	1,120,000	3,025,926
110	Travelling and accommodation expenses	-	550,000	1,018,496
112	External travelling and accommodation expenses	-	2,750,800	3,800,000
120	Postal and telegram expenses	-	220,000	466,860
121	Telephone	-	1,000,000	1,602,670
130	Official entertainment	-	100,000	200,000
131	Conferences and seminars	-	942,280	2,514,725
140	Electricity	-	-	-
141	Water and conservancy expenses	-	-	-
153	Purchase of fungicides insecticides and sprays	-	5,000	40,000
171	Publishing and p[rinting	-	350,000	744,000
172	Uniforms and clothing	-	24,000	79,300
173	Library expenses	-	116,000	515,000
174	Stationery	-	1,140,000	1,500,000
175	Advertising and publicity	-	120,000	500,000
176	Show expenses	-	80,000	286,000
182	Rents and rates - non residential	-	12,678,140	8,476,000
184	Contracted professional services	-	220,000	505,600
185	Computer Services	-	220,000	237,600
190	Miscellaneous	-	25,000	30,200
194	Training Expenses	-	500,000	-
200	Replacement of motor vehicles	-	-	-
210	Purchase of additional vehicles	-	-	-
220	Purchase of Plant and Equipment	-	-	271,770
225	Furniture and fitting	-	140,000	78,500
250	Maintenance of plant, machinery and equipment	-	-	500,000
260	Maintenance of buildings and station	-	197,000	3,200,000
263	World Intellectual Property Office	-	330,000	3,189,480
276	African Regional Property Organization	-	500,000	1,201,980
277	Industrial Tribunal	-	800,000	923,300
	GROSS EXPENDITURE	-	32,650,140	46,052,760
	Appropriations in aid			
650	Sale and Fees for services rendered	-	49,000,000	54,500,000
	Net Expenditure Head 767	-	(16,349,860)	(8,447,240)

Projected annual expenditure and income for the coming financial years.

ITEM	TITLE	ESTIMATES	PROJECTED ESTIMATES	
		2001/2002	2002/2003	2003/2004
	767 Kenya Industrial Office	KShs.	KShs.	KShs.
000	Personal Emoluments	12,982,260	13,241,905	13,506,743
050	House Allowances	4,410,130	4,498,333	4,588,299
060	Other Allowances	357,400	364,548	371,839
065	Medical Allowance	1,127,060	1,149,601	1,172,593
068	Training Expenses	2,090,800	2,132,616	2,175,268
080	Passage and leave expenses	145,600	146,512	151,582
092	Refund of Medical Expenses -in patient	62,500	63,750	65,025
93	Refund of Medical Expenses ex-gratia	320,500	326,910	333,448
100	Transport operating expenses	1,844,000	1,954,640	2,111,011
110	Travelling and accommodation expenses	2,635,644	2,793,783	3,017,285
112	External travelling and accommodation	5,778,700	6,125,422	6,615,456
120	Postal and telegram expenses	5,410,460	5,735,088	6,193,895
121	Telephone	1,698,830	1,800,760	1,944,821
130	Official entertainment	394,800	418,488	451,967
131	Conferences and seminars	2,806,489	2,974,878	3,212,869
140	Electricity	500,000	530,000	572,400
141	Water and conservancy expenses	300,000	318,000	343,440
153	Purchase of fungicides insecticides and sprays	43,220	45,792	49,455
171	Publishing and p[rinting	1,318,640	1,397,758	1,509,579
172	Uniforms and clothing	90,329	95,749	103,409
173	Library expenses	1,863,907	1,975,741	2,133,801
174	Stationery	2,215,364	2,348,286	2,536,149
175	Advertising and publicity	807,600	856,056	924,540
176	Show expenses	486,338	515,518	556,760
182	Rents and rates - non residential	14,000,000	-	-
184	Contracted professional services	678,500	719,210	776,747
185	Computer Services	940,082	996,487	1,076,206
190	Miscellaneous	70,712	74,955	80,951
194	Training Expenses	-	-	-
200	Replacement of motor vehicles	1,750,000	1,855,000	2,003,400
210	Purchase of additional vehicles	3,000,000	3,000,000	-
220	Purchase of Plant and Equipment	1,049,512	1,112,483	1,201,481
225	Furniture and fitting	196,734	208,538	225,221
250	Maintenance of plant, machinery and equipment	848,000	898,880	970,790
260	Maintenance of buildings and station	2,960,819	3,138,468	3,389,506
263	World Intellectual Property Office	8,084,638	8,569,716	9,255,294
276	African Regional Property Organization	5,830,520	6,180,351	6,674,779
277	Industrial Tribunal	1,836,840	1,947,050	2,102,814
	GROSS EXPENDITURE	90,936,928	80,511,272	82,398,823
	Appropriations in aid			
650	Sale and Fees for services rendered	54,500,000	57,770,000	62,391,600
	Net Expenditure Head 767	36,436,928	22,741,272	20,007,223

NB. The actual Expenditure or Income figures for the last three financial years were not available. However, it is believed that the actual expenditures were in line with the estimates approved by parliament.

Main financial resource bottlenecks and constraints.

1. Lack of adequate financial resources for intellectual property.
2. Annual Projected Expenditure is more than projected income from services rendered.
3. Reliance on government funding as the department has no authority to spend the income generated. The approved estimates have to be allocated to the institute before they can incur expenditure. It should also be noted that Intellectual Property is not a top government priority.

Estimated costs of developing IP system to comply with International IP agreements and undertakings

Cost-recovery and user charges

Policy and systems for cost-recovery from user charges: All income is remitted to the government. The institute has to submit a budget to the Ministry of Trade and Industry and they get allocations from the approved budget.

Technical and financial assistance

Main technical/financial assistance:

1. WIPO donated computers to computerize the filing system as before this was done manually.
2. WIPO carried out the networking of computers at KIPI to improve the information technology base.
3. WIPO organizes Seminars workshops and training programmes.
4. WIPO also sponsors staff of KIPI to attend international conferences.

Effectiveness of technical assistance:

Successful computerization and networking of KIPI, however recent relocation of offices has disrupted some aspects of the computer network.

Significant numbers of staff have attended workshops and seminars, which has enhanced their IP expertise. A number have attended international conferences, which has improved Kenya's participation in the international IP arena.

Participation in international rule making and co operation with other organizations.

1. There is a lot of participation by KIPI in international fora organized and sponsored by WIPO, as KIPI is a member of the General Assembly and is a member of most of the committees in WIPO.

WIPO has also organized training workshops, which have been attended by the staff of KIPO who have found such for a helpful in decision making and exchange of ideas in I.P. Kenya is also an active participant in ARIPO, which is a regional organization and based in Harare. WIPO also organized for the computerization of the Kenya Industrial Property Office now KIPI.

2. TRIPS has not provided notable support for I.P development in Kenya.

TRIPS being a mandatory regime embodies extremely controversial aspects of I.P e.g bio patents most of which have not been debated and resolved. It also lays a lot of emphasis on industrial property as compared with other aspects of I.P. It is felt that TRIPS only protects the interests of developed countries. Kenya would like to be more actively involved in decision making and debates other than being subjected to a mandatory regime, which they must comply with.

3. Level of cooperation with other national I.P offices.

Kenya has very few I.P offices i.e KIPI and the office of Attorney General, which deals with copyrights. The level of cooperation between these offices is high though they are not streamlined and are still in the development process thus necessitating a lot of consultation between them.

4. Involvement in regional co-operation agreements for IP policy administration and enforcement including national policy towards deeper regional co-operation.

Kenya is a member of the African Regional Industrial Property Organization (ARIPO) .The mandate of ARIPO is to facilitate transfer of technology especially of member countries, acquire technology, to promote and assist in the harmonization and development of Industrial Property in Africa; by working closely with WIPO and helping African countries to legislate.

It also examines, grants and registers Patents, Trade Marks and Industrial Design.

ARIPO also administers Intellectual Property generally and assists countries with the maintenance of patents.

Patents issued by ARIPO are under the Act, protected as if they had been issued in Kenya.

Kenya has a policy towards deeper regional co-operation.

The revival of the East African Community will enhance the exchange of ideas between member states especially in research and development, which will eventually develop IP systems in the community.