

IP Insights

By Dentons in South Africa

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Africa's Intellectual Property Sector

Businesses around the globe realize the monetary value in intellectual property and thus must create innovative products and services in order to be profitable. Everyone from the developer to the end-user is invested, which demands that business partner with experts to grow, protect, operate and finance their business

We address complex legal questions with advice tailored to clients' business needs. From protecting IP rights, through advising on data security issues, technology licensing and sourcing strategies, our clients receive practical and informed guidance.

Transforming the IP Practice through AI

“Time is money” a concept used by many, but best understood by those in the legal profession. As AI is increasingly threatening to automate and perhaps even fully replace some professional functions, it is imperative for legal professionals to determine how they will respond - an answer which can be found on the other side of perspective.

AI As An Ally

The world of law is specialised and can bring about highly complex matters for consideration, which is why legal professionals have decided to employ AI as a tool and an ally rather than viewing AI as a threat to the legal profession. This approach is clear when considering the recent Johannesburg Regional Court case where lawyers in a defamation suit argued their case using references to case law generated by ChatGPT. The case considered whether a body corporate could be sued for defamation and the legal representative of the plaintiff argued that the legal issue had precedent to refer to. However, the judgements presented to the court were generated by ChatGPT and referred to examples of cases whereof the citations were relevant to different cases entirely, with some not even relating to defamation. The lesson to be learned is that although AI can be a useful tool in assisting legal professionals, it remains just that – a tool. The presiding officer expressed the same sentiment in stating that “when it comes to legal research, the efficiency of modern technology still needs to be infused with a dose of good old-fashioned independent reading.” It is in this light that we will be considering how AI can be applied to assist in the practise of law, particularly for IP attorneys.

The practice of IP law requires a specialised level of knowledge, understanding and abilities. IP attorneys are expected to assist clients throughout the entire lifecycle of their IP, from initial advice to consideration of eligibility factors, to registration and continued protection. These processes are highly time consuming and require IP attorneys to conduct vast amounts of market research for each client and their respective creations. It is thus imperative that IP attorneys employ assistance that will be cost-effective, timely and reliable – what better way to employ AI solutions than this?

When considering the variety of IP rights available in South Africa, including patents, trade marks and registered designs, the first legal thought is eligibility. In order to establish whether a creation is eligible for protection, IP attorneys would have to conduct research on the market to establish whether the creation meets criteria such as novelty, commercial ability, or inventiveness. Each of these considerations can be time consuming, whether it requires sifting through a registration database or conducting prior art searches. Further to the eligibility considerations, applications for registration is required for a work to be legally protected in South Africa. Finally, it is important to consider the extent of protection that will be afforded to a creation as these can be limited in duration and bring about difficulties in ensuring continued protection for a protected work.



This is where the deployment of AI management systems in IP practices can be applied to automate and streamline processes resulting in attorneys saving time. AI management systems can be deployed to search through large amounts of data such as that contained in registration databases. These functions can be completed within minutes, allowing the attorneys to apply their minds to more complex legal questions such as the most suitable protection to apply for the creation concerned. Further value can be added by using AI management systems to automate the processes with the regulators, including completing application forms, keeping track of time frames wherein the registration remains valid and alerting attorneys of renewal dates which may be nearing. Finally, AI management systems can be deployed alongside commercialisation of IP to ensure that IP rights are protected at all times. This can be done by ensuring that AI systems follow digital IP and ensure that any possibility of exploitation is limited and that where exploitation does occur or is attempted, that such exploitation be alerted immediately. This ensures that infringements that do occur cause minimal damage to the commercial aspects of IP concerned.

The South African Context

The introduction of AI as an ally in IP legal practice can especially be of assistance in the South African context. South Africa is well-known for the country's strive towards transformation and digital transformation is no exclusion. Digital transformation of the public sector would imply that traditional paper-based approaches to the provision of public services and other governmental functions are substantially replaced by digital strategies, interactions, and processes. South Africa is not only well positioned to implement such digital transformation as one of 12 countries which are the most advanced digitally on the African continent as set out in a 2019 EU report but has also seen adoption of digital governance systems in many other departments.

In the furtherance of this objective, the African Union ("AU") adopted a comprehensive digital transformation strategy for 2020-2030 based on principles of general solidarity and cooperation, comprehensive integration and promotion of sustainability and digitally inclusive and transformative solutions. The 2020 AU digital transformation strategy comprises a framework that envisages full digital governance by 2030. As a member of the AU, and leading African country in digital transformation, South Africa is well positioned to apply this initiative towards its own digital governance integration. With a fully digital government, IP can be managed and contained within an online secure platform that can ensure digital unification for IP management within South Africa.

Conclusion

AI has the potential to be a powerful ally for legal practitioners, particularly those working to protect IP in a fast-paced digital world where time is money and skilled legal professionals can apply their minds to the more complex considerations that accompany the protection of these rights. At Dentons, we believe in offering our clients a high standard of work while leveraging resources and tools to provide competitive pricing, ensuring that our clients receive value. As the law firm of the future, Dentons systems are AI integrated and our professionals are trained to utilise AI in a beneficial manner that is advantageous to our clients.





Navigating the Complex Terrain of Intellectual Property: Key Lessons from ANC v Umkhonto Wesizwe and Vodacom v Makate

Understanding the nuances of rights and enforcement is critical for innovators, organisations and legal practitioners. Recent legal battles offer valuable lessons on how Intellectual Property (“IP”) law can be applied and challenged in different contexts, recent cases such as African National Congress v Umkhonto Wesizwe Party and Another (D153/2024) [2024] ZAKZDHC 13 and Vodacom (Pty) Ltd v Makate and Another (401/2022) [2024] ZASCA 14 offer essential insights into the complexities of trademark and IP protection. Although vastly different in nature, the principles of understanding these cases are crucial for anyone involved in or affected by IP infringement matters, as they shed light on significant legal principles and practical considerations for safeguarding intellectual property.

Protecting Historical and Political Symbols

In African National Congress (“ANC”) v Umkhonto Wesizwe, the court grappled with the issue of protecting political symbols and historical materials associated with the ANC’s military wing, Umkhonto Wesizwe (“MK”). While the public was fixated with this case for multidimensional socio-political reasons, the case was pivotal in defining how IP enforcement and interpretation apply to politically and historically significant content.

Trademark and Symbol Protection

The court's decision highlighted the difficulty in applying traditional trademark principles to symbols with deep historical and political meanings. It became clear that the court had to balance the protection of these symbols with the broader context of their public significance. This case further illustrates that IP protection extends beyond commercial interests to include cultural and historical value, a public argument that has no novelty but has found its path once again in the political historical paradigm. In its judgement, the court emphasized the need to respect and preserve the national heritage while also enforcing IP rights. Their approach reflects a nuanced understanding of the role that IP plays in safeguarding not just commercial assets but also national identity and historical legacy.

The Fight for Fair Compensation

The well known Vodacom v Makate case centres on a dispute over the famous "Please Call Me" service which to date, serves as one of the most innovative telecommunications' innovations of the 21st century, created by Nkosana Makate. The question on whether he received fair compensation for his innovative idea has fundamentally challenged the notion of IP when one is under a contract of employment against what fair compensation or acknowledgment of such IP is. Thus, this case is a critical example of the intersection between IP rights and commercial agreements.

The judges focused on the contractual aspects of IP protection by illustrating that legal clarity and documentation are vital for safeguarding IP rights in commercial settings.

Both cases demonstrate the broad application of IP laws, whether dealing with historical symbols or commercial innovations. For businesses and individuals, this means recognizing that IP protection is not just about securing trademarks but also about understanding the cultural and contractual dimensions of intellectual property. The ANC case shows that IP protection can involve complex considerations when dealing with historical and political elements whereas the Vodacom case highlights the need for meticulous documentation and formal agreements to ensure that IP rights are fully protected and disputes are minimized.

These cases illustrate the real-world impact of IP law on protecting assets, whether they are cultural symbols or commercial innovations. They underscore the importance of proactive measures in securing your IP, whether through trademarks, patents, or contracts. Navigating the complexities of IP law requires expert guidance. At Dentons, we understand the intricacies of both protecting historical and political symbols and ensuring fair compensation for commercial innovations. Engage with us to navigate these complexities and secure your intellectual property effectively.

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