

Contents

<i>Preface</i>	<i>xiii</i>
<i>Acknowledgments</i>	<i>xv</i>
<i>Disclaimer</i>	<i>xvii</i>
<i>Acronyms and Short Forms</i>	<i>xix</i>
1 Introduction	1
2 African Countries' National Perspectives on Various Intellectual Property Issues	9
Introduction	9
Scope of Protection of Patents	10
Disclosure Requirements	13
Exclusions from Patentability	15
Exceptions to Patent Rights	19
Compulsory Licensing in the Field of Patents	22
Non-Traditional Marks	45
Well-Known Marks Protection	48
Trademarks and the Internet	54
Exceptions and Limitations to Breeders' Rights	56
Traditional Knowledge, Traditional Cultural Expressions, and Genetic Resources	58
Genetically Modified Organisms (GMOs)	69
Conclusion	73
3 African Regional Intellectual Property Systems and Regional Initiatives	75
The African Regional Intellectual Property Organization (ARIPO)	75
<i>Background</i>	75
<i>Protocol on Patents and Industrial Designs within the Framework of the ARIPO</i>	77
<i>The Banjul Protocol on Marks</i>	79
<i>The ARIPO–PCT Relationship</i>	81
African Intellectual Property Organization (Organisation Africaine de la Propriété Intellectuelle) (OAPI)	82

<i>Background</i>	82
<i>Patents</i>	84
<i>Trademarks and Service Marks</i>	88
<i>Protection of Plant Varieties</i>	92
African Regional Initiatives	93
<i>Protocol on the Protection of Traditional Knowledge and Expressions of Folklore adopted by the ARIPO on August 9, 2010</i>	94
<i>Introduction</i>	94
<i>Protection of traditional knowledge</i>	95
<i>Criteria of protection</i>	95
<i>Beneficiaries</i>	96
<i>Rights conferred</i>	96
<i>Equitable benefit-sharing</i>	97
<i>Exceptions and limitations</i>	98
<i>Compulsory licenses</i>	98
<i>Duration of protection</i>	99
<i>Protection of expressions of folklore</i>	99
<i>Criteria of protection</i>	99
<i>Beneficiaries</i>	100
<i>Protection of expressions of folklore against unlawful acts</i>	101
<i>Exceptions and limitations</i>	102
<i>Duration of protection</i>	103
<i>The ARIPO Draft Protocol on Plant Varieties Protection</i>	104
<i>Preamble</i>	104
<i>Purpose</i>	106
<i>Genera and species to be protected</i>	106
<i>Conditions of protection</i>	106
<i>Persons entitled to apply for protection</i>	106
<i>Granting and rejection of the plant breeders' right</i>	106
<i>Scope of the plant breeders' right</i>	107
<i>Exceptions to the plant breeders' right</i>	108
<i>Exhaustion of the plant breeders' right</i>	108
<i>Restrictions on the exercise of the plant breeders' right</i>	108
<i>Duration of the plant breeders' right</i>	108
<i>Appeals and enforcement procedures</i>	108
<i>Transitional provisions</i>	109
<i>The African Model Law for the Protection of the Rights of Local Communities, Farmers and Breeders, and for the Regulation of Access to Biological Resources</i>	109
<i>Objectives</i>	109
<i>Scope</i>	110
<i>Access to biological resources</i>	111
<i>Community rights</i>	113
<i>Farmers' rights</i>	114

<i>Plant breeders' rights</i>	115
<i>The AU Model Law on Biosafety</i>	119
<i>Preamble</i>	120
<i>Objectives</i>	120
<i>Scope</i>	120
<i>National Biosafety Committee</i>	121
<i>Application</i>	121
<i>Risk assessment</i>	121
<i>Identification and labeling</i>	121
<i>Export</i>	121
<i>Liability and redress</i>	122
<i>Community rights for GMO-free zones</i>	122
<i>Conclusion</i>	122
<i>The Establishment of the Pan-African Intellectual Property</i>	
<i>Organization</i>	122
<i>The African Intellectual Property Organizations: necessity</i>	
<i>of adopting one uniform system for all Africa</i>	123
<i>Discussions on the establishment of PAIPO</i>	125
<i>Background and premise to the adoption</i>	125
<i>Final Draft Statute of the Pan-African Intellectual</i>	
<i>Property Organization (PAIPO)</i>	127
<i>Preamble</i>	127
<i>The way forward</i>	131
<i>Conclusion</i>	132
4 African Initiatives at the International Level	133
<i>Introduction</i>	133
<i>Traditional Knowledge, Traditional Cultural Expressions or</i>	
<i>Expressions of Folklore, and Genetic Resources</i>	134
<i>Work Done Within WIPO</i>	135
<i>Background and premises to the debates</i>	135
<i>African initiatives, positions, and proposals in the</i>	
<i>context of the IGC</i>	136
<i>The pre-text-based negotiation period</i>	136
<i>Text-based negotiations</i>	148
<i>Current status of the negotiations</i>	150
<i>Traditional cultural expressions</i>	153
<i>Subject matter of protection</i>	153
<i>Beneficiaries</i>	155
<i>Scope of protection</i>	156
<i>Exceptions and limitations</i>	157
<i>Term of protection</i>	159
<i>Other matters</i>	159
<i>Traditional knowledge</i>	162

<i>Subject matter of protection</i>	162
<i>Beneficiaries</i>	166
<i>Scope of protection</i>	167
<i>Scope of protection and sanctions</i>	170
<i>Exceptions and limitations</i>	170
<i>Term of protection</i>	173
<i>Other matters</i>	175
<i>Genetic resources</i>	178
<i>Traditional knowledge and the public domain</i>	179
<i>Conclusion</i>	182
<i>Work Done Within the WTO</i>	182
<i>Background and premises to debates</i>	182
<i>African main positions relating to the review of Article 27.3(b), the relationship between the TRIPs Agreement and the CBD, and protection of traditional knowledge and folklore</i>	187
<i>The relationship between the TRIPs Agreement and the CBD</i>	188
<i>An effective sui generis system</i>	190
<i>Protection of traditional knowledge and folklore</i>	191
<i>Current status of the debate</i>	192
<i>Proposal on the Disclosure of Origin of Biological/ Genetic Resources and/or Associated Traditional Knowledge</i>	192
<i>Draft Modalities Text for TRIPs related issues</i>	196
<i>Conclusion</i>	197
<i>Patents and Public Health</i>	197
<i>Introduction</i>	197
<i>African Contributions within the WTO in the Context of Patents and Public Health</i>	199
<i>Background and premises to the debates</i>	199
<i>The Doha Declaration on the TRIPs Agreement and Public Health</i>	206
<i>Decision of the General Council of WTO of August 30, 2003 implementing Paragraph 6 of the Doha Declaration on the TRIPs Agreement and Public Health</i>	208
<i>The Protocol Amending the TRIPs Agreement</i>	213
<i>Conclusion</i>	219
<i>African Contributions within WHO in the Context of Public Health, Innovation and Patents</i>	219
<i>Background and premises to the debates</i>	219
<i>Final report and recommendations of the Commission on Intellectual Property Rights, Innovation and Public Health of 2006</i>	220
<i>The Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property</i>	222
<i>Collaboration among WHO, WTO, and WIPO on public health and patents</i>	231

<i>Draft Resolution on Counterfeit Medical Products</i>	231
<i>Conclusion</i>	233
<i>Patents and Public Health within WIPO</i>	234
<i>Tripartite cooperation between WHO–WIPO–WTO</i>	234
<i>Patents and health in the WIPO Standing Committee on the Law of Patents (SCP)</i>	235
<i>Joint proposal by the African Group and the Development Agenda Group, SCP Work Program on Patents and Health</i>	235
<i>Patents and Health: the US proposal</i>	237
<i>Other Contributions of WIPO in the Field of Patents and Health</i>	238
Exceptions and Limitations to Copyright	239
<i>Background and Premises to the Debates</i>	239
<i>Proposals on Exceptions and Limitations and Debated Issues from 2009 to 2012</i>	241
<i>Exceptions and limitations for visually impaired persons/persons with print disabilities and other reading disabilities</i>	243
<i>Proposal of Brazil, Ecuador and Paraguay</i>	244
<i>Proposal of the United States of America</i>	246
<i>Proposal of the European Union</i>	247
<i>International Instrument on Limitations and Exceptions for Visually Impaired Persons/Persons with Print Disabilities: Proposal of the Chair</i>	250
<i>Exceptions and limitations for libraries and archives</i>	260
<i>Proposal on Limitations and Exceptions for Libraries and Archives submitted by Brazil, Ecuador and Uruguay</i>	260
<i>Proposal on Objectives and Principles for Exceptions and Limitations for Libraries and Archives submitted by the United States of America</i>	261
<i>The Case for a Treaty on Exceptions and Limitations for Libraries and Archives: Background Paper by IFLA, ICA, EIFL, and INNOVARTE</i>	263
<i>Provisional Working Document Containing Comments on and Textual Suggestions Towards an Appropriate International Legal Instrument (in whatever form) on Exceptions and Limitations for Libraries and Archives</i>	265
<i>Exceptions and limitations to copyright for educational, teaching, and research institutions</i>	270
<i>The proposal of Brazil</i>	271
<i>The proposal of Ecuador, Peru, and Uruguay</i>	272
<i>Provisional Working Document</i>	272
<i>Proposal of the African Group: Draft WIPO Treaty on Exceptions and Limitations for the Disabled, Educational and Research Institutions, Libraries and Archive Centers</i>	274

African Positions on Selected International Intellectual Property Issues	278
<i>Protection of Life Forms</i>	278
<i>Patenting of Micro-organisms and Non-Biological and Microbiological Processes</i>	279
<i>Research Exemption/Exception</i>	280
<i>Genetically Modified Organisms (GMOs)</i>	281
Conclusions on Chapter 4	283
 5 General Conclusions	 285
 <i>Bibliography</i>	 291
<i>Index</i>	305