Are Multi-Lateral IP Treaties a thing of the past?
Keri Johnston
Managing Partner, Johnston Law, Canada
*with the assistance of Melina McKenzie

Luiz Henrique Amara
Partner, Dannemann Siemens, Brazil

Patricia Collis
Partner, DLA Piper, United Kingdom

David Muls
Senior Director, Madrid Registry, Brands and Designs Sector, WIPO, Switzerland

Ray Zhao
Senior Partner, Head of International Trademark Team, Unitalen Attorneys at Law, P.R. China

Rowan Forster
Patent Attorney | Executive, IP, South Africa

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WTO in 2023

- Coalition building is a fundamental value
- Multilateralism matters

"nothing is agreed until everything is agreed"

aka
the "single undertaking" rule
The WTO’s Appellate Body does not have the quorum required as of December 10, 2018 when the terms of two of the remaining three Judges ended, effectively depriving the WTO of its ability to resolve international trade disputes. The last sitting Judge’s term expired on November 30, 2020.
“The WTO no longer guarantees access to mandatory, two-tier, independent and impartial trade dispute resolution. This is a clear violation of the WTO’s agreements”.

European commission.
Cited April 21, 2022.
Concurrently

From 2000 onwards there has been a growing tendency towards bilateral treaties between intergovernmental organizations like the EU and countries and regions outside of the EU which include IPRs.
Economist Jim O’Neill of Goldman Sachs creates the term “BRIC” believing the collective economies of Brazil, Russia, India/Bharat, and China would dominate global growth by 2050.
June 16, 2009 Russia
Inaugural "BRIC" Summit

Brazil
Russia
India/Bharat
China
April 16, 2010 - Brasilia, Brazil
2nd BRICS Summit

Brazil
Russia
India/Bharat
China
South Africa
WHY?

Interest in shoring up economic and trade mechanisms outside the "Western" framework.
Waiting in the wings 19 countries participate in an expanded BRICS format

“The marginalization of developing countries within the various institutions of global governance, constitutes a sure source of instability, inequality and development”.

Algerian President, Abdelmadjid Tebboune
BRICS Summit, Beijing, June 2022
June 2022/2023 BRICS
24 new applicant countries

Algeria
Argentina
Bahrain
Bangladesh
Belarus
Bolivia
Cambodia
Cuba
Egypt
Ethiopia
Fiji
Honduras
Indonesia
Iran
Kazakhstan
Kuwait
Malaysia
Nigeria
Palestine
Senegal
Thailand
Thailand
Uzbekistan
Venezuela
Vietnam
2023 – UN predicts the world economy will grow 2.3% in 2023

BRICS:
• Comprises: the world’s largest countries by population, area, GDP, and GDP PPP
• 26.7% of the land surface
• 41.5% of the population
• 26.6% of the nominal GDP (market rate of all goods/services produced)
• China leads with respect to GDP PPP (based on purchasing power parity – the value of goods/services produced in the country with respect to the USD.)
BRICS+ August 2023 - 15th Summit

Invited: African Union, Arab Maghreb Union, Organisation of Islamic Cooperation, United Nations, ASEAN + 34 countries.

Algeria
Angola
Argentina
Bangladesh
Belarus
Bolivia
Botswana
Cameroon
Central African Republic
China
Congo
Cuba
DR Congo
Egypt
Ethiopia
Equatorial Guinea
Eritrea
Ghana

Indonesia
Iran
Malawi
Macedonia
Namibia
Nigeria
Palestine
Sahrawi Arab Democratic Republic
São Tomé and Príncipe
Saudi Arabia
Senegal
South Senegal
Tanzania
United Arab Emirates
Zambia
Zimbabwe
BRICS+6 – January 1, 2024

Effective January 1, 2024

Brazil
Russia
India/Bharat
China
South Africa

Argentina
Egypt
Ethiopia
Iran
Saudi Arabia
United Arab Emirates
21st Open Forum
London, England
4-7 October 2023

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V7, Live link:
https://www.visualcapitalist.com/visualizing-the-brics-expansion-in-4-charts/
# G7 + G20 – “The West versus The Rest”?

<table>
<thead>
<tr>
<th>G7</th>
<th>G20 – Sept. 9, 2023 admits AU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>Argentina *</td>
</tr>
<tr>
<td>France</td>
<td>Australia</td>
</tr>
<tr>
<td>Germany</td>
<td>Brazil *</td>
</tr>
<tr>
<td>Italy</td>
<td>Canada</td>
</tr>
<tr>
<td>Japan</td>
<td>China *</td>
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<tr>
<td>UK</td>
<td>France</td>
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<tr>
<td>USA</td>
<td>Germany</td>
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<tr>
<td></td>
<td>India/Bharat *</td>
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<tr>
<td></td>
<td>Indonesia</td>
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<td>Italy</td>
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<td>Japan</td>
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<td>Mexico</td>
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<td></td>
<td>Russia *</td>
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<td>Saudi Arabia *</td>
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<td>South Africa *</td>
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<td>South Korea</td>
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<td>United Kingdom</td>
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<td>United States</td>
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<td></td>
<td>European Union</td>
</tr>
<tr>
<td></td>
<td><strong>African Union</strong></td>
</tr>
</tbody>
</table>

* Denotes members of both G20 & BRICS+6
EU & UK (and Brexit...)

- regional intergovernmental organisation
  - EU enters into trade negotiations
EAEU Trademark and Appellation of Origin Treaty
(in force since April 26, 2021)

Armenia (January 2, 2015)
Belarus (January 1, 2015)
Kazakhstan (January 1, 2015)
Kyrgyzstan (August 12, 2015)
Russia (January 1, 2015)
A tour of Europe
Trade Marks (Madrid)

- UK (1995)
- EU (2004)
- 26 of the current 27 EU Member States
Designs (Hague)

- UK (13 June 2018)
- EU (1 January 2008)
- 19 of the 27 current EU Member States:
  - Belgium
  - Bulgaria
  - Croatia
  - Denmark
  - Estonia
  - Finland
  - France
  - Germany
  - Greece
  - Hungary
  - Italy
  - Latvia
  - Lithuania
  - Luxembourg
  - Netherlands
  - Poland
  - Romania
  - Slovenia
  - Spain
## Appellations of Origin (Lisbon)

<table>
<thead>
<tr>
<th>Territory</th>
<th>Lisbon Agreement</th>
<th>Stockholm Act</th>
<th>Geneva Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>France</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Hungary</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Italy</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
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<tr>
<td>Portugal</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>Slovakia</td>
<td>✓</td>
<td>✓</td>
<td>✗</td>
</tr>
<tr>
<td>EU</td>
<td>✗</td>
<td>✗</td>
<td>✓ (FEBRUARY 2020)</td>
</tr>
</tbody>
</table>
And the importance of cheese....
Latin America + The Caribbean

33 Countries or territories

Antigua and Barbuda
Argentina
Bahamas
Barbados
Belize
Brazil
Bolivia
Chile
Colombia
Costa Rica
Cuba
Dominica
Dominican Republic
El Salvador
Ecuador
Haiti
Honduras
Grenada
Guatemala
Guyana
Jamaica
Mexico
Nicaragua
Panama
Paraguay
Peru
Saint Kitts and Nevis
Saint Lucia
St. Vincent and Grenadines
Suriname
Trinidad and Tobago
Uruguay
Venezuela
Latin America: Are Multi-Lateral IP Treaties a Thing of the Past?

NO... but there are challenges
Latin America: The Main Regional Agreements

**CAN**
The Andean Community of Nations (former Andean Pact)

<table>
<thead>
<tr>
<th>Members:</th>
<th>Associate Members:</th>
<th>Observers:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bolivia</td>
<td>Argentina</td>
<td>Panama</td>
</tr>
<tr>
<td>Colombia</td>
<td>Brazil</td>
<td>Mexico</td>
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<tr>
<td>Ecuador</td>
<td>Chile</td>
<td>Spain</td>
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<tr>
<td>Peru</td>
<td>Paraguay</td>
<td></td>
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<tr>
<td></td>
<td>Uruguay</td>
<td></td>
</tr>
</tbody>
</table>
Latin America: The Main Regional Agreements

CAN
• **Decision 486** September 14, 2000
• In force December 1, 2000
• IPR system of the Andean Community
• Incorporates the requirements of TRIPS (Paris Convention)

Court of Justice of the Andean Community (TJCA)
## Latin America: The Main Regional Agreements

### MERCOSUR

<table>
<thead>
<tr>
<th>Members:</th>
<th>Associate Members:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>Bolivia</td>
</tr>
<tr>
<td>Brazil</td>
<td>Chile</td>
</tr>
<tr>
<td>Paraguay</td>
<td>Colombia</td>
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<tr>
<td>Uruguay</td>
<td>Ecuador</td>
</tr>
<tr>
<td></td>
<td>Guiana</td>
</tr>
<tr>
<td></td>
<td>Suriname</td>
</tr>
</tbody>
</table>
Latin America: The Main Regional Agreements

MERCOSUR
Harmonization of IPRs, GIs, and Marks

 Protocols discussed but **NOT** ratified by all member states therefore **NOT** enacted.
Latin America: The Main Regional Agreements

UNASUR
Long-term goal: creation of a continental free trade zone, requiring rules on IP rights.

Members:
- Argentina
- Bolivia
- Brazil
- Chile
- Colombia
- Ecuador
- Guyana
- Paraguay
- Peru
- Suriname
- Uruguay
- Venezuela
Latin America: The Main Regional Agreements

ALADI (replacing ALALC)

Members:
- Argentina
- Brazil
- Bolivia
- Chile
- Colombia
- Cuba
- Ecuador
- Mexico
- Paraguay
- Peru
- Uruguay
- Venezuela

* Less important regionally than UNASUR
Latin America & The Caribbean: The Main Regional Agreements

Madrid Members:
Antigua and Barbuda
Belize
Brazil
Chile
Colombia
Cuba
Jamaica
Mexico
Trinidad & Tobago

• Multiclass system for national filings still pending

• **Perceived inequities:**

  national trademark applicants and registrants must appoint a legal representative in the country

  VS.

  holders of International registrations need only appoint a representative when there is the need to submit a petition to the BTO

• Non-traditional marks and slogans.

• “Dead wood” – implementation of a “no use” declaration has been implemented.
Madrid and the PCT in Latin America

YES?

WHY?

NO?

WHY NOT?
# Latin America and Caribbean

## PCT – 23 Members

<table>
<thead>
<tr>
<th>Country</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Barbados</td>
<td>Dominican Republic</td>
<td>Nicaragua</td>
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<tr>
<td>Belize</td>
<td>El Salvador</td>
<td>Panama</td>
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<tr>
<td>Brazil</td>
<td>Ecuador</td>
<td>Peru</td>
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<tr>
<td>Chile</td>
<td>Grenada</td>
<td>Saint Kitts and Nevis</td>
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<tr>
<td>Colombia</td>
<td>Guatemala</td>
<td>Saint Lucia</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Honduras</td>
<td>Saint Vincent + The</td>
</tr>
<tr>
<td>Cuba</td>
<td>Jamaica</td>
<td>Grenadines</td>
</tr>
<tr>
<td>Dominica</td>
<td>Mexico</td>
<td>Trinidad and Tobago</td>
</tr>
</tbody>
</table>
Latin America and Caribbean

PCT

- Countries hesitating to become members:
  Argentina
  Bolivia
  Venezuela
  Guyana
  Uruguay
  Paraguay
  Etc..

- Issues in the region
- Future Developments
June 28, 2019 Latin America
Mercosur and European Union

EU + Argentina, Brazil, Paraguay, Uruguay

• EU negotiating bilaterally beginning in 2000

GIs: wines, Spirits, beers and food products and protection of names of traditional Mercosur Products.

• Cachaca (Brazilian - spirit)
• Mendoza (Argentina - wine)
• Bilateral agreement recognizes that the vast majority of companies in EU & Mercosur are small and medium-sized enterprises (SMEs)
Country Scale

History

Population + diversity
Distinguishing features of China?

• Economic system
• Desire and efficiency in advancing innovation
• Adaptability
Internationally China joins WIPO in 1980...

- December 19, 1984 - TRIPs (came into force on January 01, 1995) - adopted in China on December 11, 2001
- Madrid in 1989 - most designated Madrid member since 2012
- PCT - became a PCT contracting state on January 01, 1994, becomes top filer in 2019
- May 5, 2022 - China joined Hague system; “Apostille Convention” will become effective in China on November 07, 2023
- July 2014 - WIPO opens a dedicated China office in Beijing
The Importance of China as a WIPO Signatory

China leads the world in IP applications (WIPO 2022)

Patents 46.6%
Trademarks 52.1%
Designs 53.2%
GIs 9,000 GIs (2021), up 6.8% on the previous year
Nationally China 1980...2023

- 2008 – Launch of China's national IP strategy.
- Amends the *Trademark Law* 4 times...
- Adopts the concept of punitive damages and malicious infringement
- TM 5 (Trademark 5)
- Outline for Building a Strong Intellectual Property Country 2021-2035” in September 2021
Regionally China + The ASEAN community

ASEAN IP Rights Action Plan 2016-2025
CHINA-ASEAN Cooperation and Development Forum on Combating Infringement and Counterfeiting in Guangxi Province on July 18, 2023

Exploration and Promotion of Internationalization Process of GIs
China 2023 looking forward...

- Diversity
- Vitality
- Globalisation
Africa

21st Open Forum
London, England
4-7 October 2023

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15

Gabon
Gambia
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Libya
Liberia
Madagascar
Mali
Malawi
Mauritania
Mauritius
Marocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
Sao Tome & Principe

Senegal
Seychelles
Sierra Leone
Somalia
South Africa
South Sudan
Sudan
Tanzania
Togo
Tunisia
Uganda
Zambia
Zimbabwe
IP Protection in Africa

- **African Union - AU**
  - Majority of AU member states have national IP laws
- **ARIPO** – African Regional Intellectual Property Organization
- **OAPI** – African Intellectual Property Organization
- **PAIPO** – Pan-African Intellectual Property Office.
  - Adopted in 2016 but yet to come in force
- **WIPO**
- **AfCFTA** 2018 - New opportunity for intra-African trade, including IP
AfCFTA + South Africa

The nine provinces of South Africa

Number of people per square kilometre

<table>
<thead>
<tr>
<th>Category</th>
<th>Less Than 1</th>
<th>1 to 3</th>
<th>3 to 10</th>
<th>10 to 30</th>
<th>30 to 100</th>
<th>100 to 300</th>
<th>300 to 1,000</th>
<th>1,000 to 3,000</th>
<th>More Than 3,000</th>
</tr>
</thead>
</table>

V17

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The Potential of AfCFTA

1.4 BILLION people in 54 countries (excluding Eritrea)

Real GDP growth @ 3.8% above Global average of 3.4%

Diversified Economies

18 African countries projected to experience growth rates > 5% in 2023 and that number of countries will increase to 22 in 2024

Africa includes 5 of the world’s fastest growing economies: Benin, Ivory Coast, Ethiopia, Rwanda, and Tanzania
The African Continental Free Trade Agreement (AfCFTA) 2018 (46 of 54)

• Effective January 1, 2021, entered into force May 2022
• Purpose: create a single market similar to the EU
• 3 protocols including an IPR Protocol
• Phase 1: goods, services, rules of origin
• Phase 2: investment, competition policy + IPRs included
• Octobr 7, 2022 AfCFTA Secretarial launched ACFTA Guided Trade Initiative
AfCFTA IPR Protocol
– Negotiations are ongoing

"The IPR Protocol can serve as a catalyst for technology transfer, technology diffusion and the economic transformation of Africa's economy from one that is primarily resource-based, to one that is driven by knowledge information and ideas"

Secretary-General of the African Continental Free Trade Area (AfCFTA)
Mr. Wamkele Mene
Africa “Post-Covid”

Africa’s potential in trending sectors for IP and investment:

Digital Education  Fintech  Healthcare  Telecommunications

The Promise: IPRs and 90% of the Value of S+P 500 companies
IP Rights in AfCFTA

- Ultimate goal – all African economies will be highly developed
- Technology transfer and unhindered movement of goods and services
- Extended markets for IP owners to earn income
- Opportunities for least developed countries to learn from inventions and products from more developed ones,
- Awareness that large percentage of businesses are SMEs

Risks?
Exposure of these IP assets in markets where creators have minimal controls . . .
MUST have universal standards for protection, as enshrined in TRIPS
Effective Implementation of AfCFTA?

Balancing the needs of countries at different stages of economic and IP development + maintaining their engagement + interest in these systems:

**HOW??**

- **Policy coherence - harmonization**
- **“Wiggle-room” flexibility to deviate (guidelines from TRIPS)**
- **Central dispute resolution body legislation backed by effective administration = effective protection of IP**
### Challenges to AfCTFA

1. War, drought, famine, poverty, health, education issues....
2. Diverse Legal Systems
3. Varying Development Levels
4. Capacity / infrastructure Constraints
5. Lack of Awareness of protections available
6. Cultural and Traditional Knowledge
7. Global vs. Regional Obligations
8. Technical Complexity
9. Lack of Enforcement Mechanisms
10. Political and Policy Priorities
11. Resistance to Change
12. Negotiation and Consensus Building
13. Post-COVID Disillusionment
14. Cultural Diversity across 54 countries
Benefits of AfCFTA to African IP?

• Acceleration of Harmonization and alignment
• Stronger bargaining power - WIPO
• Collective negotiation power
• Common development goals which resonate with WIPO’S objectives
• Influence over global IP agenda
• Capacity building and collaboration
• BRICS+6 (August 2023)
• G20+AU (September 9, 2023)
How Does the IP World Contribute to AfCFTA?

- Organizations like FICPI, AIPPI, INTA etc. to engage with WIPO and Regional and National offices;
- WIPO – technical support to National Offices;
- Practitioners – continue to drive awareness of IP matters both domestically and internationally
- Pro-bono support of SMEs, etc…
Have multilateral IP treaties become a thing of the past?
WIPO Treaties & Accessions

- # of International IP Treaties
- # of National IP Treaty Accessions

- 1880-1899: 5
- 1900-1919: 7
- 1920-1939: 9
- 1940-1959: 6
- 1960-1979: 323
- 1980-1999: 9
- 2000-2019: 8

- 1880-1899: 42
- 1900-1919: 17
- 1920-1939: 51
- 1940-1959: 28
- 1960-1979: 684
- 1980-1999: 906
Share of world GDP accounted for by treaty members

- PCT
- Madrid
- Hague
Keri Johnston
Managing Partner, Johnston Law, Canada

*with the assistance of Melina McKenzie

Luiz Henrique Amara
Partner, Dannemann Siemens, Brazil

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Senior Partner, Head of International Trademark Team, Unitalen Attorneys at Law, P.R. China

Rowan Forster
Patent Attorney|Executive, IP, South Africa
References


https://www.imf.org/en/Home


Reading list

- **European Commission**: *Key elements of the EU-Mercosur trade agreement* (June 28, 2019)

- **WIPO**: *The PCT now has 157 Contracting States*

- **World Trade Organization**: *Accession of the people’s Republic of China* (November 23, 2001)
  https://docs.wto.org/dol2fe/Pages/FE_Browse/FE_B_009.aspx?TopLevel=779