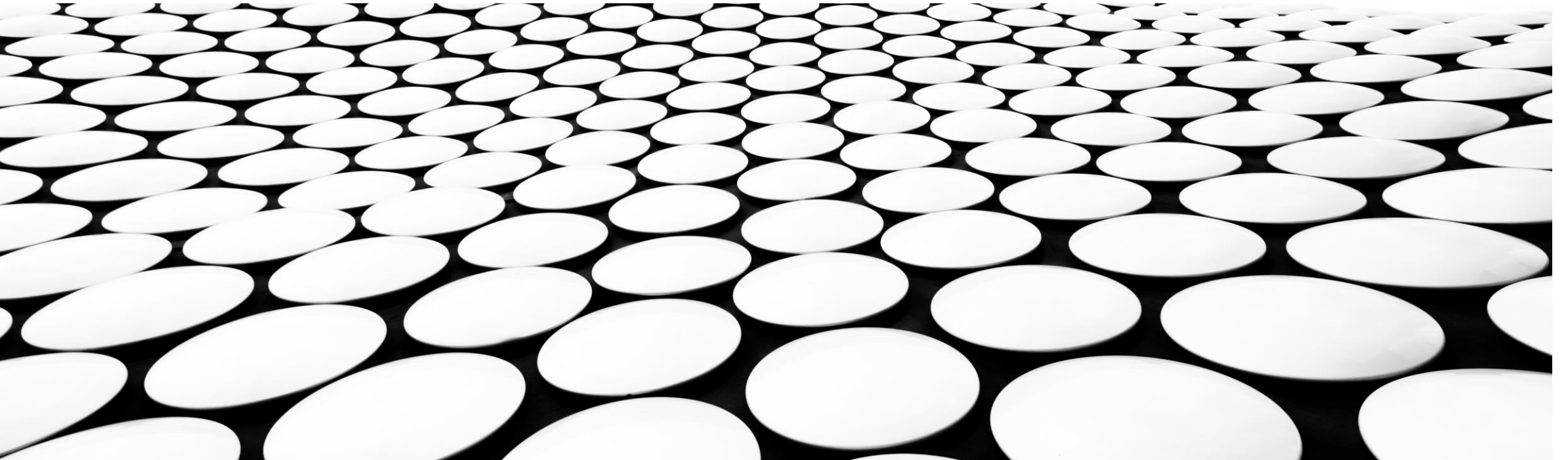

INTELLECTUAL PROPERTY LAW

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INTELLECTUAL PROPERTY LAW

- Governed by Republic Act No. 8293, otherwise known as the “Intellectual Property Code of the Philippines”, as amended.
- Authored by the late Senator Raul Roco.
- Signed into law on June 6, 1997, and took effect on January 1, 1998.
- Primarily implemented by the Intellectual Property Office of the Philippines (IPOPHL), headed by its Director General Atty. Rowel S. Barba.

INTELLECTUAL PROPERTY RIGHTS

- Intellectual Property Rights are rights given to persons over the creation of their minds.
- Under the IPC, we have several kinds of Intellectual Property Rights:
 - Copyright – exists over original and derivative intellectual creations in the literary and artistic domain protected from the moment of creation. (Term of protection: Lifetime of owner and 50 years after his/her death)
 - Trademark and service mark – any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. (Trademark: 10 years from approval of application)
 - Patent – any technical solution of a problem with any field of human activity which is new, involves an inventive step, and is industrially applicable. (Term of protection: 20 years from filing of application)



CHARACTERISTICS OF INTELLECTUAL PROPERTY RIGHT

- Statutory in nature - provided by law, hence subject to limitations under the law.
- Incorporeal right – separate and distinct from the material object to which it is attached.
- Private right – must be enforced by the owner of the right
- Not absolute



PATENTS



PATENT

- An exclusive right granted to an inventor over an invention to sell, use, and make the invention for commerce and industry.
- Threefold purpose: (1) seeks to foster and reward invention; (2) promotes disclosure of inventions to stimulate further innovation and permit the public to practice the invention once patent expires; and (3) ensure that ideas in the public domain remain there for the free use of the public and it is only after an exhaustive examination that a patent is issued.
- Not all inventions may be patented.
- To be patentable, the invention must be a technical solution of a problem in any field of human activity which is (1) **new or novel**, (2) involves an **inventive step**, and (3) must be **industrially applicable**.
- Examples: Drones, the iPhone, Global Positioning System (GPS), Bluetooth, Virtual Reality Generator



NOVELTY

- An invention shall not be considered new if it forms part of a prior art (i.e. everything which has been made available to the public anywhere in the world).
- Thus, if the inventor makes his invention available to the public but without obtaining a patent, he cannot restrain others from using his invention.



INVENTIVE STEP

- An invention involves an inventive step if, having regard to prior art, it is not obvious to a person skilled in the art at the time of the filing date or priority date of the application claiming the invention.
- The phrase “skilled in the art” means the criterion is only limited to a person with an average level of skill in the concerned field. It excludes the best expert available.



INDUSTRIAL APPLICABILITY

- An invention that can be produced and used in any industry shall be industrially applicable

NON-PATENTABLE INVENTIONS

- Discoveries, scientific theories and mathematical methods, and in the case of drugs and medicines, the mere discovery of a new form or new property of a known substance which does not result in the enhancement of the known efficacy of that substance, or the mere discovery of any new property or new use for a known substance, or the mere use of a known process unless such known process results in a new product that employs at least one new reactant;
- Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers;
- Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body;
- Plant varieties or animal breeds or essentially biological process for the production of plants or animals;
- Aesthetic creations;
- Anything which is contrary to public order or morality;



WHO HAS A RIGHT TO A PATENT?

- The right to a patent belongs to the inventor, his heirs, or assigns.
- When two (2) or more persons have jointly made an invention, the right to a patent shall belong to them jointly.
- First-to-File Rule - If two (2) or more persons have made the invention separately and independently of each other, the right to the patent shall belong to the person who filed an application for such invention, or where two or more applications are filed for the same invention, it shall belong to the applicant who has the earliest filing date or, the earliest priority date.
- A patent, once issued, is presumed valid.



INVENTIONS CREATED PURSUANT TO A COMMISSION AND EE-ER RELATIONSHIP

- Commission - The person who commissions the work shall own the patent, unless otherwise provided in the contract.
- EE-ER Relationship - In case the employee made the invention in the course of his employment contract, the patent shall belong to: a) the employee, if the inventive activity is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer; b) the employer, if the invention is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.



GROUNDS FOR THE CANCELLATION OF PATENT

- The following are the grounds for the cancellation of a patent: a) the invention is not new or patentable; b) the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by any person skilled in the art; or c) the patent is contrary to public order or morality, or granted when the product or the process is non-patentable.
- Once cancelled, the rights conferred by the patent shall terminate.

REMEDIES OF THE TRUE AND ACTUAL INVENTOR

- If a person (true inventor) other than the applicant is declared by final court order or decision as having the right to the patent, such person may, within three (3) months after the decision has become final: a) prosecute the application as his own application in place of the applicant; b) file a new patent application in respect of the same invention; c) request that the application be refused; or d) seek cancellation of the patent, if one has already been issued.

RIGHTS CONFERRED BY A PATENT

- A patent, once issued by the IPOPHL, is presumed valid.
- A patent shall confer on its owner the following exclusive rights:
 - a) where the subject matter of a patent is a product, to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling or importing that product;
 - b) where the subject matter of a patent is a process, to restrain, prevent or prohibit any unauthorized person or entity from using the process,
- Patent owners shall also have the right to assign, or transfer by succession the patent, and to conclude licensing contracts for the same.

LIMITATIONS TO PATENT RIGHTS

- Where the act is done privately and on a non-commercial scale or for a non-commercial purpose: Provided, that it does not significantly prejudice the economic interests of the owner of the patent;
- Where the act consists of making or using exclusively for experimental use of the invention for scientific purposes or educational purposes and such other activities directly related to such scientific or educational experimental use;
- Any prior user, who, in good faith, was using the invention or has undertaken serious preparations to use the invention in his enterprise or business, before the filing date or priority date of the application on which a patent is granted, shall have the right to continue the use thereof as envisaged in such preparations within the territory where the patent produces its effect;
- The public interest, in particular, national security, nutrition, health or the development of other sectors, as determined by the appropriate agency of the government, so requires.

PATENT INFRINGEMENT

- Intellectual property infringement basically means performing any act in violation of the rights granted by law to the owner or holder of the intellectual property right.
- The tests to determine infringement of patent are:
 - a) Literal Infringement Test; and
 - b) The Doctrine of Equivalents Test.
- Civil and Criminal Action.
- Malum prohibitum



LITERAL INFRINGEMENT TEST

- If accused matter clearly falls within the claim, infringement is made out and that is the end of it. The Court must juxtapose the claims of the patent and the accused product within the context of the claims and specifications to determine whether there is exact identity of all material elements.



DOCTRINE OF EQUIVALENTS TEST

- Under the doctrine of equivalents, infringement also occurs when a device appropriates a prior invention by incorporating its innovative concept and albeit with some modifications and change, performs substantially the same function in substantially the same way to achieve substantially the same result. It requires satisfaction of the Function-Means-and-Result Test.



END

THANK YOU AND STUDY WELL

