06/06/1997

INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES

"An act prescribing the intellectual property code and establishing the intellectual property office, providing for its powers and functions, and for other purposes"



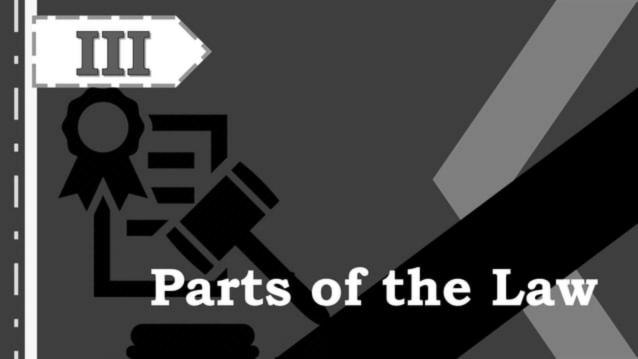
The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines.



- R.A. 165, as amended (An Act Creating a Patent Office, Prescribing its Powers and Duties, Regulating the Issuance of Patents, and Appropriating Funds Therefor)
- R.A. 166, as amended (An Act to Provide for the Registration and Protection of Trademarks, Trade-Names, and Service-Marks, Defining Unfair Competition and False Marking and Providing Remedies Against the Same, and for Other Purposes)
- Presidential Decrees No. 49 and 285, as amended (Decree on the Protection of Intellectual Property)
- Articles 188 and 189 of the Revised Penal Code of the Philippir es





- PART I The Intellectual Property Office
- PART II The Law on Patents
- PART III The Law on Trademarks, Service Marks and Trade Names
- PART IV The Law on Copyright
- PART V Final Provisions





The agency of the government in charge of the implementation of the Intellectual Property Code is the Intellectual Property Office which replaced the Bureau of Patents, Trademarks and Technology Transfer. It is divided into six [6] Bureaus, namely:

- Bureau of Patents;
- Bureau of Trademarks;
- Bureau of Legal Affairs;
- Documentation, Information and Technology Transfer Bureau;
- Management Information System and EDP Bureau; and
- Administrative, Financial and Personnel Services Bureau.

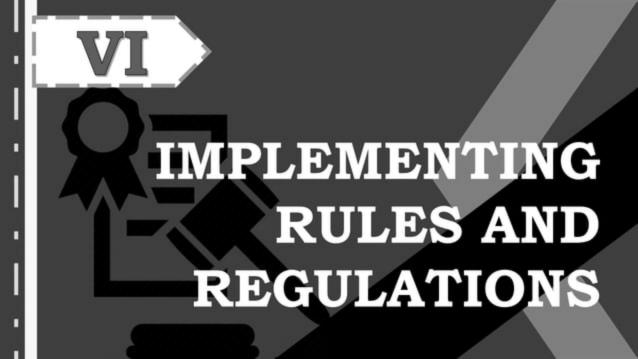






- A shift was made from the "first-to-invent system" under R. A. 165 (old law) to "first-to-file system" under the new law.
- In the case of inventions, the period of the grant was increased from 17 years from grant under the old law to 20 years from date of filing under the new law.
- In the case of utility models, the previous grant of 5 years plus renewals
 of 5 years each under the old law was changed to 7 years without renewal
 under the new law.

- Under the old law, publication is made after the grant; under the new law, publication is effected after 18 months from filing date or priority date.
- Under the old law, the penalties for repetition of infringement are: PhP10,000 and/or 5 years of imprisonment and the offense prescribes in 2 years; under the present law, the penalties range from PhP100,000 to PhP300,000 and/or 6 months to 3 years of imprisonment and the offense prescribes in 3 years.



<u>PATENTS</u>

WHAT IS PATENT?

A patent is a right granted to an inventor by the federal government that permits the inventor to exclude others from making, selling or using the invention for a period of time. The patent system is designed to encourage inventions that are unique and useful to society.

WHY IS PATENT IMPORTANT?

A patent is important because it can help safeguard your invention. It can protect any product, design or process that meets certain specifications according to its originality, practicality, suitability, and utility. In most cases, a patent can protect an invention for up to 20 years.

Rule 200. Patentable Inventions - Any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable shall be patentable (Sec. 21, IP Code).

What can be patented?

- discoveries of materials or substances already existing in nature
- scientific theories or mathematical methods
- flora and fauna other than microorganisms, and biological processes for the production of flora and fauna other than microbiological processes
- schemes, rules or methods, such as those for doing business, performing purely mental acts or playing games
- diagnostic/non-diagnostic methods of treatment for, or practiced on, humans or animals (but not products for use in such methods)
- inventions of commercial exploitation of which would conflict with public order or morality.

Rule 201. Statutory Classes of Patentable Inventions – A patentable invention may be or may relate to:

- A product, such as a machine, a device, an article of manufacture, a composition
- of matter, a microorganism;
- A process, such as a method of use, a method of manufacturing, a non-biological process, a microbiological process;
- Computer-related inventions; and
- An improvement of any of the foregoing.

Rule 203. Novelty - An invention shall not be considered new if it forms part of a prior art. (Sec. 23, IP Code)

Rule 204. Equivalents – A strict identity test is required to be applied in assessing novelty. A single prior art reference must disclose each and every element of a claimed invention in order to destroy novelty. Equivalents are considered only in assessing inventive step.

Rule 205. Non-prejudicial Disclosure – The disclosure of information contained in the application during the twelve (12) months preceding the filing date or the priority date of the application shall not prejudice the applicant on the ground of lack of novelty if such disclosure was made by the inventor, a patent office, or a third party.

Rule 206. Inventive Step

- An invention involves an inventive step if, having regard to the 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 (Sec. 26, IP Code).
- Only prior art made available to the public before the filing date or priority date shall be considered in assessing inventive step.

Rule 207. Person Having Ordinary Skills in the Art – The person having ordinary skills in the art is presumed to be an ordinary practitioner aware of what is common general knowledge in the art at the relevant date.

Rule 208. Industrial Applicability – An invention that can be produced and used in any industry shall be industrially applicable (Sec. 27, IP Code).

For an invention to be patentable, the invention must have practical applicability and not purely theoretical. If an invention is a product or a part of a product, then it should be possible to make that product and if the invention is a process or a part of a process then the process should be executable or it should be possible to use the process in practice. Here, "applicability" and "industrial applicability" refers to the possibility of making or producing in practice, or carrying out or using in practice. The term "industrial" should be referred to in its broadest sense, which includes any kind of industry recognized by the country.

APPLICATION

Rule 500. Who may apply for a Patent? – Any person, natural or juridical, may apply for a patent. If the applicant is not the inventor, the Office shall require him to submit a proof of his authority to apply for the patent.

Rule 501. When the Applicant Dies, becomes insane or incapacitated. – In case the applicant dies, becomes insane, or incapacitated, the legally appointed administrator,

executor, guardian, conservator, or representative of the applicant may sign the application papers and other documents. He may also apply for and obtain the patent in the name of the applicant, his heirs, or assignee.

Rule 502. Assigned Invention and Patents. - In case the whole interest in the invention is assigned, the application may be filed by or in the name of the assignee who may sign the application. In case the assignee is a juridical person, any officer thereof may sign the application in behalf of the said person. In case of an aliquot portion or undivided interest, any of the joint owners shall sign the application.

PROCESS OF ACQUIRING A PATENT

Rule 400. The Patent Application – An application for a patent shall be in writing. It may be written in Filipino or English, and shall be filed by post or directly with the Bureau. Filing in electronic format or through the internet may also be done, if and when facilities therefor are made available by the Office. All applications shall be addressed to the Director. (Sec. 32, IP Code)

Rule 401. Payment of Fees – An application shall be subject to the full payment of the filing fee, the search fee, and the publication fee (1st publication) within one (1) month after the filing date of the application.

Rule 404. The Request - The request shall contain the following:

- · Petition for the grant of a patent;
- Applicant's name and address;
- Rule 410. Title of the Invention. The title of the invention shall be as short and specific as
 possible. It shall appear as a heading on the first page of the description. The title shall be in
 technical terms particularly referring to the technical feature or features of the invention. All
 fancy names are not permissible in the title.
- Inventor's name;
- If with claim for convention priority, it shall contain the file number, country of origin, and the
 date of filing in the said country where the application was first filed;
- Name and address of the resident agent/representative (if any); and
- Signature of the applicant or resident agent/representative.

GRANT OF A PATENT

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Rule 1000. Grant of Patent – If the application meets the requirements of the IP Code and these Regulations, the Office shall grant the patent; provided, that all the fees are paid on time. If the required fees for grant and printing are not paid in due time, the application shall be deemed withdrawn (Sec. 50, IP Code).

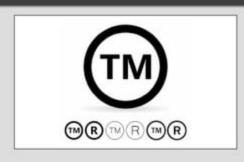
Rule 1001. Contents of Patent – The patent shall be issued in the name of the Republic of the Philippines under the seal of the Office and shall be signed by the Director of Patents, and registered together with the description, claims, and drawings, if any, in books and records of the Office (Sec. 53, IP Code).

Rule 1002. Publication upon Grant of Patent — The grant of the patent, together with other information, shall be published in the IPOPHL E- Gazette within six (6) months

Rule 1003. Any interested party may inspect the complete description, claims, a drawings of the patent on file with the Office (Sec. 52.2, IP Code).

Rule 1004. Term of Patent – The term shall be twenty (20) years from the filing date of the application. However, a patent shall cease to be in force and effect if any prescribed annual fees there for is not paid within the prescribed time or if the patent is cancelled in accordance with the provisions of the IP Code and these Regulations.

TRADEMARKS



WHAT IS TRADEMARK?

Trademark refers to a recognizable insignia, phrase, word, or symbol that denotes a specific product and legally differentiates it from all other products of its kind. A trademark exclusively identifies a product as belonging to a specific company and recognizes the company's ownership of the brand. Trademarks are generally considered a form of intellectual property.

WHY IS TRADEMARK IMPORTANT?

While it is not required by law, it is a good idea to register the name of your business as a trademark. If another business tries to use the same or similar name, you will have legal recourse to stop it. A trademarked name marks all your products and services as yours and no one else's and can also protect you from counterfeit products. Trademarks are also used as a way of protecting consumers. When businesses are responsible for any products or services bearing their trademark, they tend to take more pride in products. To maintain a good reputation, trademarked companies will often work harder to provide quality services and products.

TRADEMARK INFRINGEMENT

Trademark infringement is the unauthorized use in commerce of a registered trademark or a copy or colourable imitation thereof, which results in the likelihood of confusion among the consuming public. The elements of trademark infringement are:

(1) a registered trademark in the Philippines, (2) plaintiff's ownership of said mark, and (3) use of the trademark or imitation thereof by a third person, which results in likelihood of confusion.

Administrative fines ranging from Php 5,000 to Php 150,000 and an additional fine of up to Php 1,000 for each day of continuing violation

Popular Trademarks in the Philippines





Popular Trademarks in the Philippines





Trademark owner: Polaroid Corporation Generic name: Instant camera

<u>COPYRIGHTS</u>



WHAT IS COPYRIGHT?

A copyright is a collection of rights that automatically vest to someone who creates an original work of authorship – like a literary work, song, movie or software. These rights include the right to reproduce the work, to prepare derivative works, to distribute copies, and to perform and display the work publicly.

WHY IS COPYRIGHT IMPORTANT?

The importance of copyright is an essential component of the modern educational experience. Copyright is important as it helps to protect the value of an author/academic/researchers work, by giving the originator of the work the ability to protect it from unlicensed or uncredited usage. This leads to the prevention of their work being copied to the degree where they cannot sell it effectively or receive credit for it. In this way, copyright fosters intellectual creativity as it provides an incentive for a creator to work freely, allowing them to gain recognition for their work as well as protecting their livelihood.

How long do Copyrights last? Ans. 70 Years

Examples:

- Literary works 70 years after the author's death.
- Film 70 years after the death of the last of the major creators of the film, which
 include director and scriptwriter.
- Music 70 years from when it was officially released.
- Computer-generated works: 70 years after they were first created and distributed.

COPYRIGHT INFRINGEMENT

Copyright infringement occurs when there is a violation of any of the exclusive economic or moral rights granted to the copyright owner. It may also consist in aiding or abetting such infringement. The IP Code also provides for the liability of a person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the following purposes: (a) selling or letting for hire, or by way of trade offering or exposing for sale or hire, the article; (b) distributing the article for the purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or (c) trade exhibit of the article in public.

Copyright infringement is punishable by the following:

- Imprisonment of between 1 to 3 years and a fine of between 50,000 to 150,000 pesos for the first offense.
- Imprisonment of 3 years and I day to six years plus a fine of between 150,000 to 500,000 pesos for the second offense.
- Imprisonment of 6 years and 1 day to 9 years plus a fine ranging from 500,000 to 1,500,000 pesos for the third and subsequent offenses.

