

INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS



Intellectual Property?

TRADEMARK (MARKA)
PATENT
COPYRIGHT (TELİF HAKLARI)
TASARIM (DESIGN)
TRADE SECRET (TİCARİ SIR)



VS.

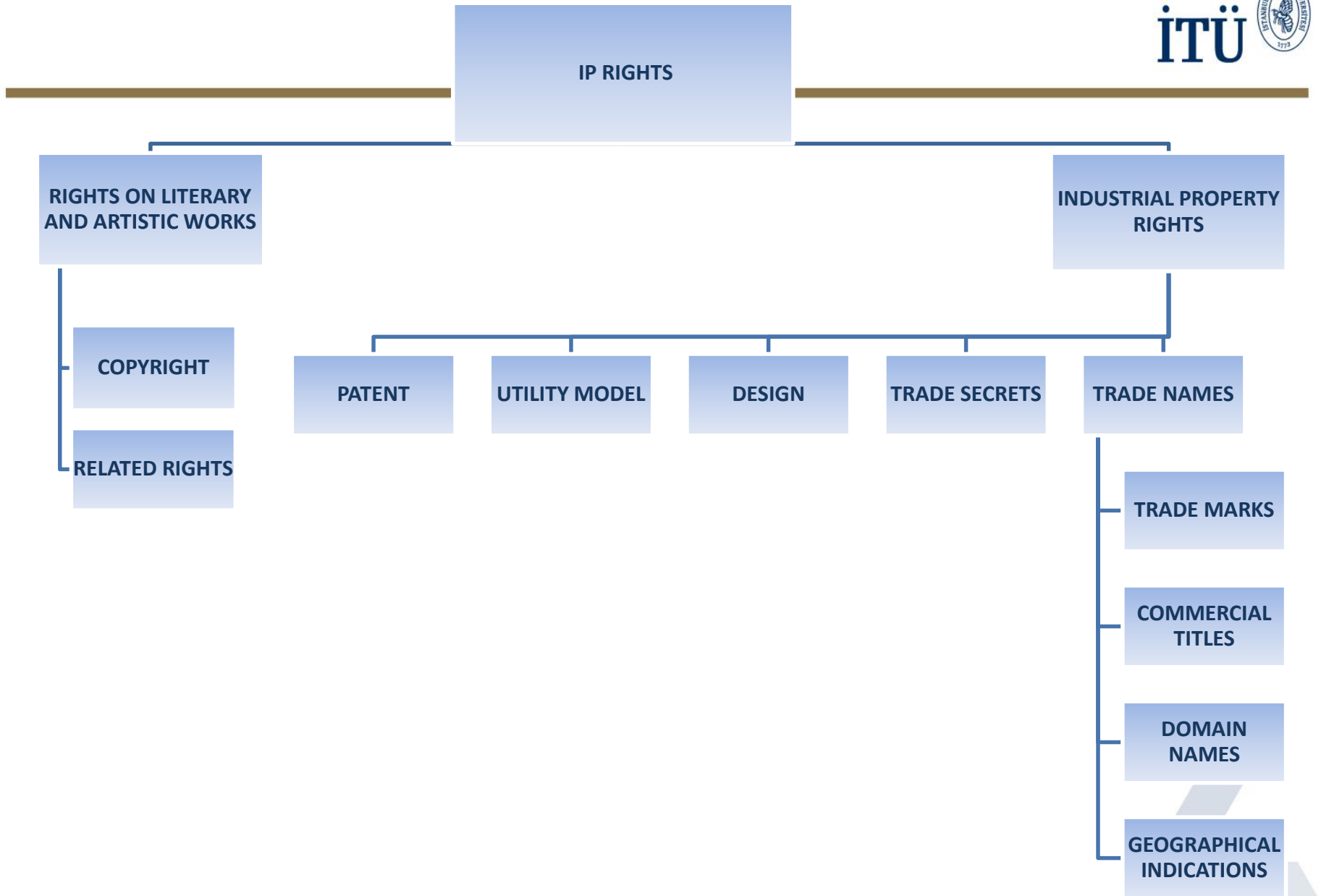


The IP system

- Whenever a new product is successful on the market, it is very likely that competitors will attempt to make similar or identical products.
- The innovator will probably have invested significantly in developing the new product, establishing the supply chain for production, running marketing campaigns and finding distributors.
- Competitors benefit from these efforts. They have greater market access, a better connection with distributors, and access to cheaper primary resources. As a result they are able to offer their products at a cheaper price.
- Innovators are then under heavy pressure and may be driven out of business, while competitors get a free ride on the back of their creativity.
- The IP system is there to help innovators protect their inventions, designs, brands, artistic works, and so on. It provides them with ownership over their work and the rights to exclude competitors from the production, import or sale of infringing goods.

How to Utilize IP Rights

- Prevent others from making
- Use as a bargaining chip
- License in – license out



The different types of IP (I)

Legal right

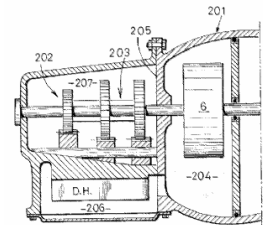
What for?

How?

Patents

New inventions

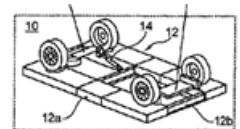
Application and
examination



Utility models

New inventions

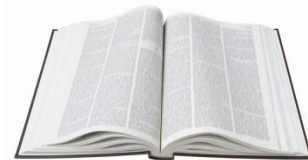
Application and
registration



Copyright

Original creative or
artistic forms

Exists
automatically



The different types of IP (II)

Legal right

What for?

How?

Trade marks

Distinctive identification
of products or services

Use and/or
registration



Registered
designs

External appearance

Registration



Trade secrets

Valuable information not
known to the public

Reasonable efforts
to keep secret



Common Features of IPR's

- Abstract nature (Soyut nitelik)
- Novelty (Yenilik)
- Exclusivity (Engelleme hakkı)
- Registration (Tescil)
- Territoriality (Ülkesellik)
- Exhaustion/First Sale (Tükenme)
- Term (Süreye tabi olma)

- IPR's are not tangible
- A person who owns the tangible property does not have to be (and usually isn't) the owner of the IPR
 - Eg.: A person who bought a smart phone has only the right to use the software on agreed terms

- IPR's are granted in exchange of new ideas shared with the society
- The nature of novelty may differ according to the various forms of IPR's
 - Novelty + Inventive step (Patents)
 - Novelty (Utility models)
 - Novelty + Individual character (Designs)
 - Originality (Copyrights)
 - Distinctiveness (Trademarks)

Right to Exclude

- Actions which may be prevented:
 - Manufacture
 - Sale
 - Importation
 - Use
 - Possession

Right to exclude does not necessarily mean right to make!!!!!!!!!!

Registration is required for the protection of IPR's



Protection and term starts from the date of the application, not registration

- Exceptions:
 - Copyright,
 - unregistered trademarks and designs (by unfair competition)
 - Trade secrets

Territoriality (Where to protect?) İTÜ



- IPR's are territorial
 - To acquire IP right in a country, the IP right must be registered in that country
 - Conditions of protection is evaluated by the country for which the registration is sought
- International efforts for stretching the principle of territoriality
 - 1886 Bern Convention
 - 1883 Paris Convention
 - Priority right
 - TRIPS Agreement
 - International agreements regulating common application
 - Single international application run by WIPO
 - Different agreements for different IP forms
 - Patents-PCT
 - Trademarks-Madrid
 - Designs- Hague (Lahey)
 - Examination run by each country according to its own domestic law
 - Single common examination system
 - EPO-EPC
 - Regional organizations and centralized registration
 - EU
 - Designs
 - Trademarks
 - Unitary patent

Priority Right

- The priority right allows the applicant to file a subsequent application in another country for the same invention, design, or trademark effective as of the date of filing the first application.
- The period of priority, i.e., the period during which the priority right exists, is 6 months for industrial designs and trademarks and 12 months for patents and utility models

Exhaustion of IPR (First Sale)

- Once a product protected by an IP right has been marketed with IPR owner's consent, the IP rights of commercial exploitation over this given product can no longer be exercised by the IPR owner.
- Exhaustion types and parallel imports:
 - National exhaustion
 - Regional exhaustion
 - International exhaustion
- Right to repair
 - Repair or manufacture?

- IPR protection limited to a certain term.
 - Patents 20 years
 - Utility mod. 10 years
 - Designs 5x5 years
 - Trademarks 10 years with the opportunity to renew
 - Copyrights Life+70 years
- At the end of the term the IPR falls in the public domain
- Some IPR registrations may be renewed