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Intellectual Property Rights

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1 Basic Definition

Intellectual property (IP) refer to creations of the mind, such as inventions, literary and artistic works, designs and symbols, names and images used in commerce.

IP is protected in law by, for example *patents*[2], *copyright*[6] and *trademarks*[7] which enable people to earn recognition or financial benifit from what they invent or create. By striking the right balance between the interests of innovators and wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

2 History

Although many of the legal principles governing IP and IPR have evolved over centuries, it was not until the 19^{th} century that the term *intellectual property* began to be used, and not until the late 20^{th} century that it became commonplace in the majority of the world.[8] *The Statue of Monopolies (1624)*[9] and the British *Statue of Anne (1710)*[10] are now seen as the origin of *patent law*[11] and *copyright*[12] respectively,[8] firmly establishing the concept of intellectual property.

The history of patents does not begin with inventions, but rather with royal grants by *Queen Elizabeth I (1558 - 1603*[13] for monopoly privileges. Approximately 200 years after the end of Elizabeth's reign, however a patent represents a legal *right*[14] obtained by an inventor providing for exclusive control over the production and sale of his mechanical or scientific invention demonstrating the evolution of patents from royal prerogative to common - law doctrine.

3 Branches of Intellectual Property

Intellectual Property is usually divided into two branches, namely *industrial property* and *copyright*[12].

3.1 Industrial Property

Industrial property typically consists of patents to protect inventions and industrial designs, which are aesthetic creations determining the appearence of industrial products. It also covers *trademarks*[7], trade names and desgnations, as well as geographical indications, and protection against unfair competition. They are described as follows:

3.1.1 Trademarks

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprise. Trademarks are protected by *intellectual property*[8] rights.

3.1.2 Trade names

Trade names are used by profit and non - profit entities, political and religious organizations, industry and agriculture, manufacturers and producers, wholesalers and retailers, partnerships and coorporations and a host of other business association. A trade name may be the actual name of a given business or an assumed name under which a business operates and holds itself out to the public.[3]

3.1.3 Geographical indications

A geographical indication (GI) is a name used on certain products which corresponds to a specific geographical location or origin (e.g. a town, region, or country). The use of GI may act as a certification that the product possesses certain qualities, is made up according to traditional methods, or enjoys a certain reputation, due to its geographical origin.[4]

3.2 Copyright

Copyright relates to artistic creations, such as poems, novels, music, paintings, and cinematographic works. In most European languages other than English, copyright is known as author's right. The expression copyright refers to the main act which, in respect of literary and artistic creations, may be made only by the author or with his authorization. That act is the making of copies of the literary or artistic work, such as a book, a painting, a sculpture, a photograph, or a motion picture. The second expression, authors rights refers to the person who is the creator of the artistic work, its author, thus underlining the fact, recognized in most laws, that the author has certain specific rights in his creation, such as the right to prevent a distorted reproduction, which only he can exercise, whereas other rights, such as the right to make copies, can be exercised by other persons, for example, a publisher who has obtained a license to this effect from the author.

4 How Intellectual Property Works

4.1 Patents

Patents, also referred to as patents for invention, are the most widespread means of protecting the rights of inventors. Simply put, a patent is the

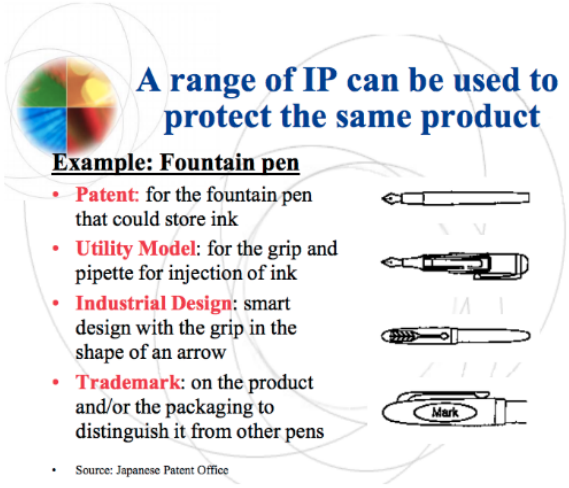

Figure 1: How Patent works[5]

right granted to an inventor by a State, which allows the inventor to exclude anyone else from commercially exploiting his invention for a limited period, generally 20 years. By granting an exclusive right, patents provide incentives to individuals, offering them recognition for their creativity and material reward for their marketable inventions.

The word patent, or letters patent, also denotes the document issued by the relevant government authority. In order to obtain a patent for an invention, the inventor, or the entity he works for, submits an application to the national or regional patent office. In the application the inventor must describe the invention in detail and compare it with previous existing technologies in the same field in order to demonstrate its newness.

4.1.1 Conditions of patentability

Not all inventions are patentable. Laws generally require that an invention fulfill the following conditions, known as the requirements or *conditions of patentability*.

Industrial Applicability (utility) The invention must be of practical use, or capable of some kind of industrial application.

Novelty It must show some new characteristic that is not known in the body of existing knowledge in its technical field.

Intensive step(non-obviousness) It must show an inventive step that could not be deduced by a person with average knowledge of the technical field.

Patentable subject matter The invention must fall within the scope of patentable subject matter as defined by national law. This varies from one country to another.

4.2 Utility Models

The expression utility model is simply a name given to a title of protection for certain inventions, such as inventions in the mechanical field. Utility models are usually sought for technically less complex inventions or for inventions that have a short commercial life. The procedure for obtaining protection for a utility model is usually shorter and simpler than for obtaining a patent. Substantive and procedural requirements under the applicable laws differ to a large extent among the countries and regions that have a utility model system, but utility models usually differ from patents for invention in the following main respects:

1. The *requirements* for accquiring a utility model are less stringent than for patents. While the "novelty" requirement must always be met, that of "inventive step" or "non-obviousness" may be much less or even absent altogether. In practice, protection for utility models is often sought for innovations of rather incremental nature, which may not meet the patentability criteria.

2. The maximum term of protection provided by law for a utility model is generally shorter than the maximum term of protection provided for a patent for invention (usually between 7 and 10 years)

3. The *fees* required for obtaining and maintaining the right are generally lower than those for patents.

5 Objective of IP Laws

5.1 Financial incentive

These exclusive rights allow owners of intellectual property to benifit from the property they have created, providing a financial incentive for the creation of an investment in intellectual property.

5.2 Economic Growth

The WIPO treaty and several related international agreements underline that the protection of intellectual property rights is essential to maintaining economic growth.

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