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LEGAL PROTECTION OF INDUSTRIAL DESIGN

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Abstract

This term paper contemplates industrial design under the intellectual property law enacted in Myanmar. Besides, it views at the Law in a comparative context. Because of the increasing substance of the Intellectual Property through enormous foreign direct investment and local investment in manufacturing industries, Myanmar producers, manufacturers and industrialists should comprehend industrial design about their products. The law contributes reliable security guarantees, legal rights and procedures but it still need to be upgraded in accordance about industrial design with the present economic objectives, and political atmosphere and changing industrialization under modification for the interest of the Country. By the time, Myanmar becomes a developed nation, the Law will enrich with liberalization indeed.

Abbreviations

IP	-	Intellectual Property
TRIPs	-	Trade-Related Aspects of Intellectual Property Rights
WTO	-	World Trade Organizations
JIPO	-	Jamaica Intellectual Property Office
ID	-	Industrial Design
R&D	-	Research & Development
SMI	-	Small and medium-sized industries

Introduction

Nowadays, our country Myanmar is changing and improving day by day to move forward. As moving parallel to upgrade laws, our country lack in Intellectual Property related matters that are getting more and more important day by day; especially, as it is quickly appearing the globalization.

The Intellectual Property is becoming more extensive and more important in foreign trade, foreign investment and the fields of cooperation of science and technology.

Getting deeper for more details in Intellectual Property, there are types of intellectual property: Copyright, Patents, Trademarks, Industrial Designs, and Geographical Indications.

This Term paper aim on industrial designs for our future right in design that make more secure for design rights and how it works and how will we apply in Myanmar.

Actually, industrial design law is not available in Myanmar yet but we're making the law in progress as draft law.

Industrial Design study of this term paper has made each chapter with practical knowledge from internet, expert term paper as references as follow;

- Industrial Design
- World Intellectual Property Organizations
- Myanmar and International Organizations
- Industrial Design
- Protection of Industrial Design in Myanmar
- Registration
- Patents and Designs related to Industrial Design

Chapter 1
Industrial Design

1.1 What is Industrial Design?

Industrial design is the use of both applied art and applied science to improve the aesthetics, ergonomics, functionality, and/or usability of a product, and it may also be used to improve the product's marketability and even production. The role of an industrial designer is to create and execute design solutions for problems of form, usability, physical ergonomics, marketing, brand development, and sales. Industrial design can overlap significantly with engineering design, and in different countries the boundaries of the two concepts can vary, but in general engineering focuses principally on functionality or Utility of Products whereas industrial design focuses principally on *aesthetic and user-interface* aspects of products. In many jurisdictions this distinction is effectively defined by credentials and/or licensure required to engage in the practice of engineering. "Industrial design" as such does not overlap much with the engineering sub-discipline of industrial engineering, except for the latter's sub-specialty of ergonomics.[1]

History of Industrial Design is that the first use of the term "industrial design" is often attributed to the industrial designer Joseph Claude Sinel in 1919 (although he

[1] http://en.wikipedia.org/wiki/Industrial_design

himself denied this in interviews), but the discipline predates 1919 by at least a decade. Christopher Dresser is considered the world's first industrial designer.[2]

Therefore, Industrial designs are applied to a wide variety of products of industry and handicraft: from watches, jewelry, fashion and other luxury items, to industrial and medical instruments; from houseware, furniture and electrical appliances to vehicles and architectural structures; from practical goods and textile designs to leisure items, such as toys and pet accessories.

In general, an industrial design must be reproducible by industrial means. Otherwise it would constitute a “work of art”, protectable by copyright.

The object of protection of an industrial design is to be distinguished from that of a patent, primarily because the former relates to the *appearance* of an article. An industrial design consists precisely of that aspect of an article which is *ornamental* or *aesthetic* and which is not determined by technical or functional necessity. The object of patent protection, to the contrary, whether it is a product or a process, must first and foremost constitute an “invention”, which generally means that, among other requirements, it must be of practical use. An industrial design is to be distinguished from a mark (or trademark) primarily because it must not necessarily be distinctive. A mark, to the contrary, although it may consist of different elements which may or may not be ornamental, must always be distinctive, since a mark must be capable of distinguishing the goods or services of one enterprise from another. The functions of and therefore the requirements for protecting industrial designs and marks are quite different.

Finally, industrial designs can only be protected for a fixed period of time (usually for a maximum of 15 to 25 years, depending on the particular national law).[3]

[2] http://en.wikipedia.org/wiki/Industrial_design
[3] http://www.wipo.int/export/sites/www/freepublications/en/designs/429/wipo_pub_429.pdf

1.2 Why protect Industrial Design?

By protecting an industrial design, the owner is ensured an exclusive right against its unauthorized copying or imitation by third parties. Since industrial designs are that aspect of an article which makes it aesthetically appealing and attractive, they do not merely constitute an artistic or creative element; they also serve to add to the commercial value of a product and facilitate its marketing and commercialization. As such, an effective and modern system for the protection of industrial designs benefits:

- the *owner*, as industrial design protection contributes to the market development of his products and helps ensure a fair return on his investment;
- *consumers and the public at large*,as industrial design protection is conducive to fair competition and honest trade practices and encourages creativity, thus leading to more aesthetically attractive and diversified products; and
- *economic development*, as industrial design protection injects creativity in the industrial and manufacturing sector, contributes to the expansion of commercial activities, and enhances the export potential of national products.

Another interesting feature of industrial designs is that they can be relatively simple and inexpensive to develop and to protect; therefore, they are reasonably accessible to small and medium-sized enterprises, even to individual artists and craftsmen, in both industrialized and developing countries.

In general, an industrial design must be registered in order to be protected under the industrial design law.

As a general rule, to be registrable, the design must be “new” or, under some laws, “original”. What constitutes “new” or “original” may differ from country to country. The same is true for the registration procedure itself, in particular, whether an examination as to form only or also as to substance, especially to determine novelty or originality, is carried out. Once the industrial design is registered, a registration certificate is issued. In principle, the industrial design must be published, whether before, at the time, or within a period after registration, depending on the particular national law and/or on the decision of the applicant. The term of protection is typically five years, with the possibility of further periods of renewal, which may total, in many countries, up to a maximum of 15 to 25 years.

Depending on the particular national law and the kind of design, a design may also be protected as a work of art under copyright law. In some countries, industrial design and copyright protection can be "cumulative"; that is, these two kinds of protection can exist concurrently. In other countries, they are mutually exclusive: once the owner chooses one kind of protection, he can no longer invoke the other. Under certain circumstances, an industrial design may also be protectable under unfair competition law. Under copyright or unfair competition laws, the conditions of protection and the rights and remedies ensured can be very different.[4]

1.3 What cannot be protected by industrial design rights?

Designs that are generally barred from registration in many territories include:

- designs that do not meet the requirements of novelty, originality and/or individual character;
- designs that are considered to be dictated exclusively by the technical function of a product; such technical or functional design features may be protected, depending on the facts of each case, by other IP rights (e.g. patents, utility models or trade secrets);
- designs incorporating protected official symbols or emblems (such as the national flag);
- designs which are considered to be contrary to public order or morality.

Some countries exclude handicrafts from design protection, as industrial design law in these countries require that the product to which an industrial design is applied is "an article of manufacture" or that it can be replicated by "industrial means".

1.4 Protection of Industrial Design in International

International protection of industrial designs is provided by the Hague Agreement. This system gives the owner of an industrial design the possibility to have his design protected in several countries by simply filing one application with the International Bureau of WIPO, in one language, with one set of fees in one currency.

[4] http://www.wipo.int/export/sites/www/freepublications/en/designs/429/wipo_pub_429.pdf

Hague – The International Design System

The Hague System for the International Registration of Industrial Designs provides a practical business solution for registering up to 100 designs in over 60 territories through filing one single international application by means of a *single* international application filed with the International Bureau of the World Intellectual Property.

Thus, under the Hague Agreement, a single international application replaces a whole series of applications which, otherwise, should have been effected with different national (or regional) Offices.

The Hague Agreement is constituted by three international treaties:

- The Geneva Act of July 2, 1999 (the "1999 Act");
- The Hague Act of November 28, 1960 (the "1960 Act");
- The London Act of June 2, 1934 (the "1934 Act").

However, the application of the 1934 Act is frozen since January 1, 2010, so that no new designation under that Act may be recorded in the International Register. The freeze of the application of the 1934 Act does not affect the designations under that Act which were made before January 1, 2010.

The 1999 and the 1960 Acts of the Hague Agreement are autonomous and totally independent of each other. Both Acts consist of a fully fledged international treaty, so that a State may decide to become party to only one or to both Acts. (A list of the Contracting Parties, together with an indication of the respective dates on which they became bound by the 1999 Act, the 1960 Act or the 1934 Act, is available on the WIPO website (*www.wipo.int/hague/en*).

What are the Advantages of Using the Hague System?

The Hague system of international registration of industrial designs arose from a need for simplicity and economy. In effect, it enables design owners from a Contracting party to obtain protection for their designs with a minimum of formalities and expense. In particular, they are relieved of the need to make a separate national application in each of the Contracting Parties, in which they seek protection, thus

avoiding the complications arising from procedures and languages which differ from one State to another.

The Hague system also avoids the need for constant monitoring of the deadline for renewal of a whole series of national registrations, varying from one State to the other. In addition, it avoids the need to pay a series of fees in various currencies.

In effect, under the Hague Agreement, the same result can be obtained by means of a single international registration, made in one language, on payment of a single set of fees, in one currency and with one Office (the International Bureau of WIPO).

Moreover, by having a single international registration with effect in several Contracting Parties, the subsequent management of the international registration is considerably facilitated. For instance, a change in the name or address of the holder, or a change in ownership for only some or all of the designated Contracting Parties, can be recorded in the International Register and have effect by means of one simple procedural step carried out through the International Bureau of WIPO.

1.5 Case Study of Industrial Design in International

As a case study on industrial design about Ingelec Company from Morocco which was founded in 1975, Ingelec™ is one of the major international players in this industry. It designs, manufactures and sells electrical switches, intercoms, circuit breakers, power strips and fuses for residences, business and construction sites.[5]

Formed by the Sekkat family at the dawn of the Moroccan electrical industry, Ingelec's small size prohibited it from directly competing with large and established French corporations. With the Sekkat family's previous experience in the plastics industry, Ingelec decided to focus on the niche market of plastic switches for electrical components. The company utilized an Italian consultant for the design and began manufacturing the switches – including all associated metal parts – for the domestic market.

[5] http://www.wipo.int/ipadvantage/en/details.jsp?id=2649

The Ingelec logo, internationally protected under the Madrid system (Registration No. 875374)

For Ingelec, the value of its intellectual property (IP) is much more important than physical assets like buildings, factories and materials. The company strongly believes that through IP it can communicate the quality of its products with consumers, which then increases product value and fosters consumer loyalty. Ingelec's strategy is therefore to build up a strong brand through trademarks and logos. The company's strategy has been extremely successful, as its logo and brand name are very well known throughout Morocco and West African countries. Ingelec strives to associate its brand with safety and quality, which it believes is very important for the consumer because electricity is a dangerous resource and must be used safely. Not only do trademarks help the company create a strong brand and differentiate itself from its competitors, but they also protect the company from illegal use of its names and logos, which are vital to maintaining customer confidence and loyalty.

Building strong brands at home and abroad is a cornerstone of Ingelec's strategy and success. An early successful brand was the Atlas range of electrical switches, and over time high end brand names such as Ourika and Tichka (electrical switches and sockets) became even more popular. While customer loyalty due to the company's quality products has built up a brand base, the company also spends up to two percent of its earnings on brand promotion. It does so through marketing efforts such as television commercials, sponsoring sports teams and event organization.[6]

Experience in the plastics industry and a strong focus on R&D have led to the company to develop many unique industrial designs. Ingelec registers these designs with the Moroccan Industrial and Commercial Property Office (OMPIC) to ensure that they are not copied, and as of 2010 it had made 84 industrial design applications with OMPIC. The company has registered its designs since 1976, and in 2010 it made six new registrations. Ingelec relies on the Hague system for international registrations, and registered its single and double switch in 2004 and its switch and double socket design in 2005.

[6] http://www.wipo.int/ipadvantage/en/details.jsp?id=2649

In line with Ingelec's IP strategy, it also applies for trademark registrations with OMPIC. As of 2010 the company has registered 49 domestic trademarks, which include its name and logo. Beyond national registrations with OMPIC, Ingelec relies on the Madrid System for international trademark registrations. The Madrid System's ease of use, accessibility and ability to file trademark applications abroad from within Morocco are the primary reasons behind the company's choice. It is also much more cost effective for the company to use the Madrid system, and as such Ingelec uses it for approximately sixty percent of its trademark portfolio. It filed a Madrid system application for its name in 1995, its logo in 1999, and has made other applications for its more popular brand names such as Oruika and Tichka.

Therefore, successful use of IP and innovative R&D has led Ingelec to become the largest Moroccan company in the domestic market. On average, Ingelec sells over five million of its products per year. In 2007, the company enjoyed earnings of $373 million, over $100 million of which came from African markets, and has over 750 employees operating in numerous domestic and international locations.

The company has expanded its manufacturing capability from one facility when it started to four modern facilities by 2006. Ingelec's export oriented growth strategy has translated into 32% of its turnover coming from international markets. Ingelec has continued to expand into European markets, and in 2007 enjoyed turnover of $6 million. In recognition of the company's commitment to quality, in 2003 it received ISO 9001-2000 certification.

Innovative products in and of themselves do not guarantee success, and Ingelec recognized that a dialogue must be created with the consumer to build trust and loyalty. Ingelec has used trademarks and industrial designs to build and protect its brands, which are recognizable at home and abroad as innovative and quality products that are safely used every day throughout the world. This approach has given the company the resources it needs to continue R&D into new products, take on big name foreign competitors and expand in new markets around the world.[7]

[7] http://www.wipo.int/ipadvantage/en/details.jsp?id=2649

CHAPTER 2
CONVENTION

2.1 World Intellectual Property Organization

The World Intellectual Property Organization - referred to in abbreviated form as "WIPO" in English, and "OMPI" in French and Spanish - was established by a convention signed at Stockholm on July 14, 1967, and entitled "Convention Establishing the World Intellectual Property Organization." The WIPO Convention entered into force in 1970.[8]

The origins of what is now WIPO go back to 1883 when the Paris Convention for the Protection of Industrial Property was adopted and to 1886 when the Berne Convention for the Protection of Literary and Artistic Works was adopted. Both Conventions provided for the establishment of an "International Bureau" or secretariat. The two Bureaus were united in 1893 and functioned under various names until 1970 when they were replaced by the International Bureau of Intellectual Property (commonly designated as "the International Bureau") by virtue of the WIPO Convention.

WIPO is the global forum for intellectual property services, policy, information and cooperation. They are a self-funding agency of the United Nations, with 186 member states.

[8] http://www.jus.uio.no/lm/wipo/doc.html#41

WIPO mission is to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all.

WIPO became a specialized agency in the United Nations system of organizations in 1974.

History	established in 1967
Membership	186 member states
Director General	Francis Gurry
Headquarters	Geneva, Switzerland[9]

2.2 WIPO Objectives

(1) to maintain and increase respect for intellectual property throughout the world,

(2) to favour industrial and cultural development by stimulating creative activity and facilitating the transfer of technology and the dissemination of literary and artistic works.

"Intellectual Property" includes two main branches:
(1) Industrial property (patents and other rights in technological inventions, rights in trademarks, industrial designs, application of origin, etc.) and

(2) Copyright and neighboring rights (in literary, musical and artistic works, films, performance of performing artists, phonograms, etc.)

To aid in the protection of intellectual property, WIPO promotes the wider acceptance of existing treaties and their revisions and, where necessary, encourages the conclusion of new treaties. [10]

Article 2 of the TRIPs Agreement provides that the "intellectual property" refers to all categories of intellectual property, namely; copyright and neighboring rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits and undisclosed information.

[9] http://www.wipo.int/about-wipo/en/
[10] Business Law Text Book

Intellectual property rights are generic terms of exclusive rights gives to the results gained by Intellectual activities of human beings and to sign used for business activities, and they mean intangible rights which own economic values.

Intellectual property has become a central issue in international trade relations. Over 3.7 million patents, 11 million registrations trademarks and 1.3 million registrations of industrial design are in force around the world. Each year, around 1 million books and 5, 000 feature finals are produced and 3 billion copies of CD and tapes are sold.

2.3 Role of WIPO for Industrial Design

The World Intellectual Property Organization (WIPO) is an international organization dedicated to ensuring that the rights of creators and owners of intellectual property are protected worldwide and that inventors and authors are thus recognized and rewarded for their ingenuity.

As a specialized agency of the United Nations, WIPO exists as a forum for its Member States to create and harmonize rules and practices to protect intellectual property rights. Most industrialized nations have protection systems that are centuries old. Many new and developing countries, however, are now building up their patent, trademark and copyright laws and systems. With the rapid globalization of trade during the last decade, WIPO plays a key role in helping these new systems evolve through treaty negotiation, legal and technical assistance, and training in various forms, including in the area of enforcement of intellectual property rights.

WIPO also provides international registration systems for patents, trademarks, appellations of origin and industrial designs. These greatly simplify the process for simultaneously seeking intellectual property protection in a large number of countries. Instead of having to file national applications in many languages, these systems enable applicants to file a single application, in one language, and to pay a single[11]

[11] http://www.wipo.int/designs/en/

application fee. The WIPO-administered systems of international protection include four different mechanisms of protection for specific industrial property rights:

- The Patent Cooperation Treaty (PCT) for filing patent applications in multiple countries.
- The Madrid System for the International Registration of Marks for trade and service marks.
- The Hague System for the International Deposit for Industrial Designs.
- The Lisbon System for the International Registration of Appellations of Origin.

Anyone applying for a patent or registering a trademark or design, whether at the national or international level, needs to determine whether their creation is new or is owned or claimed by someone else. To make this determination, huge amounts of information must be searched. Four WIPO treaties have created classification systems, which organize information on different branches of industrial property into indexed, manageable structures for easy retrieval:

- Strasbourg Agreement Concerning the International Patent Classification.
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.
- Locarno Agreement Establishing an International Classification for Industrial Designs.

WIPO also provides an Arbitration and Mediation Center, which offers services for the resolution of international commercial disputes between private parties involving intellectual property. The subject matter of these proceedings includes both contractual disputes (such as patent and software licenses, trademark coexistence agreements, and research and development agreements) and non-contractual disputes (such as patent infringement).

The Center is also now recognized as the leading dispute resolution service provider for disputes arising out of the abusive registration and use of Internet domain names.[12]

2.4 Jamaica Intellectual Property Office[13]

The Jamaica Intellectual Property Office (JIPO) was established in January 2001. JIPO acquired its status as a statutory body on February 1, 2002 and is an agency of the Ministry of Industry, Investment and Commerce. As the national IP office, JIPO provides a central focal point for the administration of Intellectual Property (IP) in Jamaica and has the mandate of administering the following intellectual property systems in Jamaica –

- Copyright and Related Rights
- Trade Marks
- Geographical Indications
- Industrial Designs
- Patents
- Layout-Designs (Topographies)
- New Plant Varieties.
- Traditional Knowledge and Cultural Expressions

The services offered by and activities carried out by JIPO are geared towards enhancing the capacity of individual creators and innovators, micro, small and medium-sized enterprises (MSME's), corporations and institutions, to create wealth through the acquisition and maintenance of Intellectual Property Rights (IPR's).

JIPO is headed by an Advisory Board appointed by the overseeing Minister. The day-to-day activities of the Office are supervised by an Executive-Director assisted by the Managers of each IP Directorate.

[12] http://www.wipo.int/designs/en/
[13] www.jipo.gov.jm/?q=node/4

2.5 Responsibilities of JIPO[14]

- To contribute to national economic growth and development through the promotion, proper protection, administration and enforcement of Intellectual Property Rights (IPRs).

  This includes;
- providing a registration service for Geographical Indications, Industrial Designs, Patents and Trade Marks
- advising the Minister with portfolio responsibility for IP on matters relating to the administration of such laws
- making recommendations on IP policy development and implementation in the preparation of national development plans
- Where requested by other agencies, JIPO also advises on technical aspects of IPRs and cross-sector issues relating to IP such as; International Trade, E-Commerce, Bio-diversity, Science & Technology and Environmental Management.
- To provide Jamaican creators, investors, and commercial enterprises, as well as foreign rights holders with modern and comprehensive procedures and facilities for the protection of their IPRs.
- To facilitate the improvement of the IP system in light of new technologies and globalization of trade, through the modernization of the laws and the accession to relevant international treaties and agreements.
- To facilitate an international level of IP protection for Jamaican rights holders
- The Office also provides representation on IP at local, regional and international levels for and on behalf of the Government
- To heighten public awareness on the importance and economic value of IPRs and the need for the protection of these rights in order to earn from the commercial exploitation of the protected works.

JIPO conducts Public Education programmes for educational institutions, other Government agencies, community and business groups, and members of the creative community, as well as the enforcement arms of IP - the Police, Customs and the Judiciary on an on-going basis.

[14] www.jipo.gov.jm/?q=node/35

The Office also collaborates with public and private sector interest groups and WIPO to facilitate training, human resource development and institutional strengthening in various aspects of IPRs and developing sector-specific programmes.

CHAPTER 3

INDUSTRIAL DEISGNS IN MYANMAR

3.1 Practice of Industrial Design in Myanmar[15]

Industrial Design law to be in line with "Agreement on Trade-Related Aspects of Intellectual Property Rights, mostly called TRIPs Agreement made between World Intellectual Property Organization (WIPO) and WTO, (TRIPs).

There is no practical position of protecting patents and designs in Myanmar although there has been the Science and Technology Development Law since 1994. The Ministry of Science and Technology was newly established in Myanmar as the focal point ministry, but till now, there has not yet been Myanmar Patent & Design Office.

However, Myanmar Patents and Designs Act 1945 was repealed in 1993. The Attorney-General Office has accomplished the redrafts on the IP Laws in compliance with the TRIPS Agreement on account of the fact that Myanmar is a member of WTO, ASEAN and at the latest, WIPO in 2001.

Thus, in this interim period before enactment of the specific patent law, patent may be registered under section 18(f) of the Registration Act as an official record.

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[15] http://www.wipo.int/export/sites/www/ip-development/en/pdf/asean/myanmar.pdf

A patent may be registered with the Registry of Deeds and Assurances by means of declaration, which is a solemn statement of facts made by the patent owner.

Publication of cautionary notice in a local designated newspaper based on registration is the sole process to remind the public for any possible passing-off and infringement of the right of patent ownership during the period of lack of promulgated law, rules and regulations involved.

3.2 Laws relating to Incorporeal Personal Property (Intellectual Property) in Myanmar[16]

The Union of Myanmar once a British Colony naturally and inevitably had to accept and apply the laws in English, enacted in the British era. At the closing years of the 19th century, the modern Myanmar legal system emerged under the British control rule replacing the traditional one. Evidently, its development was in concurrence with British and Indian legal circumstances then, and was not far left behind in the field of Intellectual Property (IP) from the inception and up to the booming stage thereof. Relevant law as well as official ruling recognizing and enforcing the principles of IP rights in Myanmar of those periods looks very impressive and had timely developed to a substantial extent. As time passed, those laws were not kept modified. Some existing laws on or relating to Intellectual Property are as follows:

(1) The Penal Code:
(2) The Myanmar Merchandised Marks Act;
(3) The Registration Act;
(4) The Specific Relief Act;
(5) The Myanmar Patents and Designs (Emergency Provisions) Act, 1946;
(6) The Myanmar Copyright Act

The Attorney General Office of the Republic of the Union of Myanmar is now considering for drafting new IP laws specifically as

[16] Business Law Text Book

(1) Trademark law
(2) Copyright law,
(3) Patent law and,
(4) Industrial Design law to be in line with "Agreement on Trade-Related Aspects o Intellectual Property Rights, mostly called TRIPs Agreement made between World Intellectual Property Organization (WIPO) and WTO.

3.3 Protection of Industrial Design in Myanmar[17]

In Myanmar, there is presently no law or at least no law in operation on patents and industrial designs. This means that production, (commercial) use and trade in goods is possible without permission of the people/companies who may hold the patents or design rights outside Myanmar. Consequently, most entrepreneurs have to invest large amounts in their trademarks so that they can be registered under the present Act to protect them from any illegal action related to their business. Patent and design legislation is not enforced in Myanmar although the Myanmar Patents and Design Act and the Myanmar Patents and Designs (Emergency Provisions) Act were enacted as Myanmar Act No.5 of 1945 and Myanmar Act No.1 of 1946. The Preamble to the 1945 Act states: Whereas it is expedient to make legislative provision for the protection of inventions and designs, it is more essential for the present day than the time it was passed. The interesting point found in the 1945 Act is that, though section I (2) of that Act provides: “It shall come into force on such date as the President of the Union may, by notification, direct”., in the footnote it is mentioned that the Act was published in Commerce and Supplies Department Notification No.8 dated August 3, 1945 and republished in Myanmar Gazette 1946, Part I, Page 136, this Act had not yet come into force. But it came into effect later when it was repealed on March 31, 1993 for the second time and replaced with law No. 4/93 passed by the present Government.

[17] http://www.wipo.int/export/sites/www/ip-development/en/pdf/asean/myanmar.pdf

Having repealed the Patent and Design Act of 1945, the only law relating to patents and designs still in force is the Myanmar Patents and Designs (Emergency Provisions) Act 1946. It has been enforceable retrospectively due to section I (2) of this Act since July 1, 1941. Though section 2 of this Act provides "Until the Myanmar Patents and Designs Act, 1945 comes into operation, the India Patents and Designs Act 1911, shall continue to have effect in Myanmar, as if, notwithstanding the separation of India and Myanmar, Myanmar had continued to be a part of India and accordingly references in that Act to the Advocate-General, the High Court and to the District Court, shall be deemed to include references to the Attorney-General of the Union of Myanmar, the High Court and the District Courts in the Union of Myanmar and the President of the Union of Myanmar shall be regarded as one of the authorities to whom certain documents are to be sent under section 72 of that Act", nothing has been applicable since the replacement of the substantive Act of 1945.

With regard to pharmaceutical products, the national Drug Law has been promulgated since October 1992 and notifications were issued in August 1993 pertaining to drug registration, drug manufacturing, importing, selling and distribution, labeling and advertisements. In January 1995, The Food and Drug Administration Department was established under the Department of Health, Ministry of Health and there are two committees namely the Drug Advisory Committee to supervise drug registration matters and the Central Food and Drug Supervisory Committee to supervise drug manufacturing and importation. The highest Authority is the Myanmar Food and Drug Board of Authority which was formed to enable the public to buy high-quality, safe and effective drugs, to register drugs systematically, to enable the public to purchase high quality, safe food, to control and systematically regulate manufacture, import, export, storage, contribution and sale of food and drugs. Importers of medicines need separate drug importation licenses from the Ministry of Health. Licensing requirements and procedures for medical suppliers may need to be streamlined to allow for more suppliers to compete. Requirements for suppliers are that imported medicines should first be registered. However, these laws do not include patenting in the field of pharmaceutical process and products.

Therefore, it is currently not possible to apply for patent and design registration in

Myanmar. Drafting the new legislation for patents and industrial designs to come into line with the TRIPS Agreement has been carried out by the Attorney General's Office in cooperation with Ministry of Science and Technology. However, patent protection in the pharmaceutical area may not be possible,-at least-until the year 2016. Within Myanmar there are no restrictions on the use of pharmaceutical technology because of the total absence of pharmaceutical patent protection.

Besides the Patent and Design Law, which is not enforced, Myanmar has a legislative framework for science and technological development and technology transfer based on industrial development policy. New IPR legislation will have to be drafted in line with this framework.[18]

3.4 Patents and Designs in Myanmar[19]

Myanmar Patents and Designs Act, 1939 was first introduced to Myanmar after independence, in 1937, of then Myanmar from India. After the expiry of that Act then Legislature of Myanmar enacted Myanmar Patents and Designs Act, 1945 as a substitute for the 1939 Act. However the 1945 Act was never brought into force and it was replaced by the State Law and Order Restoration Council Law No. 4 of 1993. However, the Myanmar Patents and Designs (Emergency Provisions) Act, 1946, which came into force retroactively on July 1, 1941 is still in force with only two sections in it. Section 2 of this Emergency Provision Act provides that until the Myanmar's patent and Design Act, 1945 comes into operation, the Indian Patents and Designs Act, 1911 shall continue to have effect in Human as if notwithstanding the separation of India and Myanmar. Myanmar had continued to be a part of India," But the Indian Patents and Designs Act 1911 might have been unknown to some lawyers of the letter generation of the independent. Myanmar and this Act could not be found in law books for Myanmar presently in use. In these circumstances, it may be said that there is presently no law or at least any law in operation on patents and designs.

[18] http://www.wipo.int/export/sites/www/ip-development/en/pdf/asean/myanmar.pdf
[19] Business law textbook (7.3.3)Patents and designs

3.5 Patents under the TRIPs Agreement 1994[20]

An invention is an idea which permits the practical solution of a specific problem in a field of technology. Inventions are characteristically protected by patent, also called "patent for invention". Every country which give legal protection to inventions-and there are over 140 such countries-gives such protection through patents, although there are a few countries in which protection may also be given by means other than patents.

The essential elements of the standards concerning the availability, scope and use of patent rights include the following: -

- Patents shall be available for products and processes in all fields of technology, provided they are new, involve an inventive step and are capable of industrial application except that Members may exclude invention, the prevention within their territory of the commercial exploitation of which is necessary to protect order public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law and Members may further exclude diagnostic, therapeutic and surgical methods for the treatment of humans or animals plants and animals other than micro-organisms and essentially biological processes; however, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system by any combination thereof.

- Patents shall be available and patents rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

- Exclusive rights shall include for products. The right to prevent third parties from making using, offering for sale, selling or importing the patented product, and for processes, the right to prevent third, parties from using the process and from using, offering for sale, selling or importing for those

[20] Business law textbook (7.3.3.1) Patents under the TRIPs Agreement 1994

purpose the product obtained directly by that process subject to certain allowable exceptions

- Patents shall be assignable, transferable and shall be available for licensing. (Article 28 (2) of TRIPs Agreement, 1994)

- Certain conditions are imposed concerning the disclosure of the invention in a patent application. . (Article 29 of TRIPs Agreement, 1994)

- Any use allowed without the authorization of the right-owner (commonly known as a compulsory license) and such use by the government is made subject to certain enumerated conditions: such use in the case of semi-conductor technology is limited to certain enumerated purposes;

- Judicial review shall be available for decision to revoke or forfeit a patent;

- The term of protection shall be at least 20 years from the date of the filing of the application;

- The burden of proof concerning whether a product was made by a patented process shall in certain cases be placed on the alleged infringer. (Article 34 of TRIPs Agreement, 1994).

3.6 Cases related to Industrial Design in Myanmar[21]

A Case Study related to industrial design is NIBBAN Electric and Electronics that is located at No.8, Yan Naing Swe Lane (2), Tarketa Industrial Zone, Yangon, Myanmar.

In Myanmar, small and medium-sized industries (SMIs) have become a key component of the country's strategy towards broadening its industrial base as well as providing a linkage with large-scale enterprises. It is considered that the accelerated development of industry is crucial to Myanmar becoming a modern nation in the near future. Therefore the promotion of SMIs is given high importance.

[21] http://www.wipo.int/export/sites/www/ip-development/en/pdf/asean/myanmar.pdf

SMIs represent the most suitable platform through which indigenous entrepreneurs can progressively upgrade their investment and their management skills; principally as feeder industries for larger enterprises. They provide ready-made business networks and distribution channels on which further industrial progress and diversification can be built.

To gain greater impetus for the industrialization process, the Committee for Industrial Development (CID), of the small quantities ordered, etc.

In 2004, among the total registered SMIs, distribution figures the production of electrical goods stood at only about 0.08%. Myanma Machine Tools and Electrical Industries (MTEI) established under the Ministry of Industry is one of the state-owned industries and produces electronic goods in cooperation with foreign companies from countries such as Korea and Thailand. Others are small and medium-sized private industries and most of them produce electronic items for Myanmar's needs as a substitute for foreign products.

The privately owned NIBBAN Electric and Electronics Industry has become a successful producer of electric and electronic goods. NEE has made a success of its business due to the high-quality production standards of its inexpensive electronic items. NEE started trading under the name Shwe PAHO Industry in 1972, and entered the electronics market by introducing the PAHO ADAPTOR (an AC to DC converter). PAHO means "centre" and aims to be a reliable source of supply of quality electronic products to meet customer demand. The trademark PAHO was registered at the Registration Office of Deeds and Assurance under the law existing in Myanmar.

At that time, the marketplace was saturated with electronic products imported from foreign countries with very few manufactured locally. In 1973, although NEE distributed dynamic microphones for public address systems as its second product, it failed to compete with foreign companies because of lower quality and higher prices, stopping production a year later.

The high frequency DC to AC converters for fluorescent light was the first local product manufactured in 1975. The NEE converter was successful because it could compete with foreign products in quality as well as on price.
However, NEE had to stop production of converters when other local brands entered the market, offering the same quality at lower prices.

Around 1976, battery-powered fluorescent tube ballasts were used countrywide and NEE produced the PAHO battery charger that was urgently required in local markets. NEE was successful with this product and demand increased year by year.
In Myanmar, only water-forced electric generators had been used to supply electricity for the country for over one hundred years. Increasing demand for electricity because of the increasing population needs has caused shortages in the last decade.

As a result, a quota system was used to supply electricity. Sometimes, the voltage was out of the specified range (220V-240V) and so voltage regulators (step-up transformers) were needed to adjust it.

Safeguards for power-line interruptions for unstable voltages were also needed to prevent unexpected damage due to incorrect voltage supply for items such as refrigerators, air conditioners etc while using the voltage regulator.

The PAHO step-up transformer was put on the market and was able to compete with other local products due to its superior quality, durability and reasonable price. NEE produced different models of transformers according to market needs and adjusted its functions and sizes in keeping with the controlled standard to harmonize with the end use.

In later years, NEE has produced several types of safeguards (power line interruption for low and high voltages) for electronic items such as audio visual systems, computers, copiers, air conditioners, TVs, DVDs and VCDs, refrigerators, washing machines, radios, phones and overhead projectors. An uninterrupted power supply (UPS) for computers was also produced.

PAHO electronic items were accepted as quality products in the local market and attracted consumers with their quality and price.

In 1982, the Myanmar television program (MRTV) was first introduced by the Myanmar broadcasting organization and second-hand Japanese-made television sets which ran on 110/120 volts entered the market. NEE produced a step-down transformer which could convert 220 volts to 110/120 volts as the Myanmar power supply system only provided 220 volts. At that time NEE gained a reputation for its PAHO trademark in electronic markets. Japanese-made Television (TV) Antennae which help to receive good-quality pictures and sound also entered the market. Growing use of television around the country was due to progress in programming and led to an increasing demand for new TV models from Japan and other countries.

In 1984 NEE introduced its first model BXR TV Antenna onto the local market to compete with foreign products under its NIBBAN trademark. NEE tried hard to penetrate the market using different strategies as consumers thought more highly of foreign products than those produced locally especially in the field of electronics. Although the NIBBAN antenna could compete with foreign standards in quality it was sold at a very low price in order to attract consumers. After a year, people accepted the NEE antenna and its reputation spread throughout the country. NEE launched special promotional programs in order to publicize its products and improved their quality at the same time. Trade secrets, durability, and quality control (QC) are basic requirements for survival in business. Advertising is a way to attract the customer to new products.

NEE invested in its new brand name, NIBBAN, by advertising in several ways: attending exhibitions, delivering pamphlets, and advertising in newspapers, magazines, and journals, etc.

At that time, there was only trademark registration to protect the Company from unfair competition and infringing goods. NEE made a certain amount of profit from its antenna because of steadily-increasing demand in the local market which led to the possibility of investing more in its research and development programs, thus enabling it to offer a greater range of electronic products.

In 1991 NEE started to advertise the NIBBAN TV ANTENNA on television. Consequently, the antenna became well known throughout the country. In 1994, the second broadcasting station, Myawaddy (MWD) was established by the Government. As a result, a new type of TV antenna was required to receive the programs transmitted from both stations.

NEE created a new antenna called TXR series (TV antenna) in order to receive good-quality sound and vision from both MRTV and MWD broadcasting stations. It included a booster amplifier to offer visual clarity and higher volume as well as a noise filler to prevent interference.

Up to now, NEE has produced four electronic items: the PAHO battery-powered fluorescent tube, the PAHO step-up transformer, the PAHO battery charger, and the NIBBAN TV antenna, more for the purpose of meeting customer demand than making vast profits for the industry which has as its motto “Supplying the requirements of the market in time is our main duty”.

The Myanmar Government is actively seeking regional and international cooperation. Myanmar become a member of ASEAN in 1997 and signed agreements on economic cooperation. Cooperation plays an important role in the private sector according to the Hanoi Plan of Action, Bali Concord and Vientiane Action Program approved by the Head of State.

NEE realized that internationally-certified standards play a vital role in the quality of its products. It has endeavored to obtain certification from the ISO (International Organization for Standardization) for nearly seven years. It has invested time, money and energy in its work, based on the Japanese concept of a good house-keeping system (5S). It has tried to manage its production processes according to the standards laid down by the ISO and the following steps have been taken in order to obtain the ISO quality management standard.

1. NEE has managed to build up a clean and systematic environment in processing and storage of its goods in order to protect the high quality of its products.

2. Managed to train the workforce to follow the necessary rules and regulations in processing the products.
3. Managed to repair and maintain machines by using the TPM system (total productive maintenance) in order to maintain standards of quality.
4. Managed to set up a quality control circle (QCC) to solve problems or complaints related to the quality of its products and to find ways of improving quality.
5. Managed to control the quality levels of the products (TQM)

It has endeavored to fulfill the above requirements for nearly six years. After obtaining advice from an expert from Malaysia over a period of eight months, NEE finally obtained the ISO certificate (9001:2000) by passing the examination and inspection carried out by examiners from UKAS. ISO certification is one of many competitive advantages especially in export markets. NEE has to ensure the quality of its products as well as maintaining on-going improvements in its management structures.

NEE believes that the best way to penetrate markets is to meet consumer requirements. It has used this strategy and tried to keep its place in the local markets, bearing in mind the motto “supplying the requirements of the market in time is our main duty”.

It is well-known that the business plan is a mechanism to ensure that the resources or assets of a company are used profitably in all its activities in order to develop and retain a competitive edge. NEE studied many aspects of business as well as consulting with experts and has also learned from the business environment before setting up its business plan. The human resources department, finance department, procurement department, production department, marketing department, research and development department, quality assurance department, sales and service department are eight major departments in NEE’s business. It has trained its staff in the skills necessary in their respective areas in order to improve their knowledge of electronics and future inventions. Using qualified teachers, offering on-the-job training, reading technical papers, articles, magazines and books, surveying market environments, collaboration with other companies, encouraging physical and mental fitness, incentives, giving

weekly seminars, attending seminars or workshops both at home and abroad are important tools the NEE uses to train its staff.
It is very important to supply products of a consistent quality to meet the increasing demand. NEE has a quality assurance department to control specifications or standards of raw materials and components from its business partners during processing and also finally checking the products before marketing. It has tried to keep its machines in good order with a high-quality maintenance program. NEE has trained its staff (engineers and technicians) with special programs in collaboration with other companies in subjects such as technical training, management training, skill development training etc. The staff from the research and development departments have been striving hard to find solutions to the technical problems as well as fulfilling market requirements.

NEE has invested heavily in this area in order to enhance the quality of its products so as to come into line with technological developments as well as to produce new and modified products in accordance with market needs.

Market surveys play an important role. The analyzed data is extremely helpful in decision-making whether for launching further products or enhancing the quality or function of its present product line. The NEE TV ANTENNA has penetrated the local electronics market following a market analysis.

In Myanmar there is at present no statutory law to protect intellectual property assets such as trademarks, inventions or designs.

However, NEE registered the trademarks PAHO and NIBBAN at the Registration Office of Deeds and Assurance through a Myanmar trademark law firm.

NEE has tried to keep its good name for quality control and to satisfy consumers with its electronic products. It has invested heavily in advertising the trademark (brand) of its products by several means such as leaflet distribution, advertising on TV and FM radio, taking part in exhibitions, establishment of a showroom and service center and setting up a sales promotion program.

According to the present IP system in Myanmar, NEE has no chance of protecting its IP assets, especially for product design. However, it has used a special procedure to control the design of its software to prevent unauthorized copying. Moreover, agreements such as nondisclosure in order to protect its IP are included in contracts with employees or partners.

Myanmar changed her economic course from a centrally-planned economy to a market-oriented system in late 1988. Since then, a series of structural reforms has been introduced which were designed to open up and integrate the economy with the world economy. These reform measures were intended to lead to a more liberal market-oriented economic structure.

Accordingly, laws, orders, rules, regulations and notifications which prohibited or restricted the private sector from engaging in economic activities were replaced and many laws and rules which were kept in abeyance were revived and amended to be in line with the system and with the changing times and circumstances. New legal policy instruments giving the private sector as well as foreign investors and businesses the right to do business and to invest in the country were enacted. Myanmar has been enjoying considerable economic growth since it shifted to a market economy in 1989.

Myanmar became a fully-fledged member of ASEAN on July 23, 1997 and joined the ASEAN Free Trade Area (AFTA) to take advantage of the benefits accorded under the Common Effective Preferential Tariff Scheme (CEPT) which is a mechanism with a 15-year time frame running from January 1, 1993. Myanmar expects to achieve a free trade zone within the region by 2008. Moreover, a healthy Intellectual Property system that will be set up in the near future will be a key element in encouraging foreign direct investment (FDI).

Myanmar is anticipating that large amounts of products from the other ASEAN countries including electronic goods will enter its market in 2008 and will lead to an increase in foreign investment in manufacturing.

NEE is trying hard to keep abreast of market forces by controlling product quality, improving awareness of its trademark and applying new strategies especially in R&D.

Conclusion

If IP Law is going to apply in Myanmar, there'll be many more brand oriented business in Myanmar. A Brand is very important to every business. Not only design creativity but also invention ideas will have their own right of intellectual property. Sooner or later, industrial designs law will come out. Once it's published, it'll play an important role to every small and medium-sized industry (SMI).

For those who are unaware about IP, they will face a lot of problem when their products competing with foreign industry company who's experienced for industrial design of intellectual property.

Industrial designs are what makes a product attractive and appealing; hence, they add to the commercial value of a product and increase its marketability.

In conclusion to say that our country, Myanmar, development is going fast forward. There'll be a lot of problem during Intellectual Property Law comes out. Many law cases will be on IP too. On the other side, its makes one person, one business, one industry becomes unique products and ideas to protect their market share in world business. Also there'll be a new business that makes for Intellectual Property registration services. Because of IP, some product will get expensive for its brand name.

Moreover, Industrial Design of IP will be more essentials to get the products marketing for local or worldwide. It will stand as a guard to protect.

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