

ЛІТЕРАТУРА



НАВЧАЛЬНО-МЕТОДИЧНА

Міністерство освіти і науки України  
Тернопільський національний технічний  
університет імені Івана Пулюя

Кафедра менеджменту інноваційної  
діяльності та підприємництва

**The course of lectures on discipline  
“Intellectual property”**

(for the 5 year students of the specialty  
8.03060101 “Management”)

Тернопіль – 2015

The course of lectures on discipline “Intellectual property” (for the 5 year students of the specialty 8.03060101 “Management”) / Н. Nahorniak. - Ternopil: TNTU, 2015. - 120 p.) / Nahorniak Н. – Тернопіль: ТНТУ, 2015. – 120 p.

У методичних вказівках, у відповідності до робочої програми, сформовано лекційний матеріал з дисципліни “Інтелектуальна власність” для іноземних студентів спеціальності 8.03060101 “Менеджмент організацій та адміністрування”.

**Укладач:** Нагорняк Галина Степанівна, кандидат технічних наук, доцент кафедри менеджменту інноваційної діяльності та підприємництва

**Рецензенти:** Кирич Наталя Богданівна, доктор економічних наук, професор, завідувач кафедри менеджменту у виробничій сфері

**Відповідальний за випуск:** Нагорняк Галина Степанівна, кандидат технічних наук, доцент кафедри менеджменту інноваційної діяльності та підприємництва

Затверджено на засіданні кафедри менеджменту інноваційної діяльності та підприємництва.

Протокол № 1 від 27 серпня 2015 р.

Рекомендовано методичною комісією факультету управління і бізнесу у виробництві ТНТУ імені Івана Пулюя.

Протокол № 6 від 26 лютого 2016 р.

Методичні вказівки призначені для допомоги іноземним студентам при вивченні курсу “Інтелектуальна власність”.

У методичних вказівках містяться загальні теоретичні відомості, необхідні до вивчення даного курсу.

Рекомендовано для іноземних студентів спеціальності 8.03060101 “Менеджмент організацій та адміністрування” з метою закріплення, поглиблення і узагальнення знань, одержаних студентами за час навчання та їх застосування до комплексного вирішення конкретного фахового завдання із дисципліни “Інтелектуальна власність”.

Складено з урахуванням робочої програми вивчення курсу, методичних розробок інших вузів, а також матеріалів літературних джерел, наведених у рекомендованій літературі.

# INTRODUCTION

In today's world of intellectual property rights such as patents, utility models, industrial designs, trademarks, geographical indications, trade secrets, computer programs, databases, literary and artistic works, phonograms and videograms etc. – play a significant role in ensuring the competitiveness of goods and services and are thus a decisive factor for economic development. Being introduced into the commercial circuit, they bring the company additional profits.

Rights to intellectual property rights may also act as a standalone product. Thus, the volume of world trade them in 2002 exceeded \$ 120 million. That is more than twice higher than the same period in 1990 put on accounting as intangible assets, these objects substantially increase the value of assets (business). But if the developed countries about 50% of the assets of enterprises constitute the right to intellectual property, in Ukraine this figure is less than 1%. Therefore, Ukraine is big business and have not used a reserve for market penetration, obtaining significant profit development of innovative processes. This concerns not only large but also small and medium enterprises.

Small and medium enterprises (SMEs) owned a significant role in the economic development of Ukraine for the innovative model. The key to this is the following benefits SMEs:

- Is characterized by small size, flexibility and low starting costs are already competitive;
- Increased dynamism and adaptation to technological and market change;
- High favorable to original innovation.

Since the ground of any innovation are intellectual property rights, it determines the commercial interest of enterprises in terms of use and legal protection of intellectual property rights.

At the same time SMEs as opposed to large firms tend to have insufficient funding to manually create and bring to the industrial use of intellectual property, and for property rights to them. They have specialized structural units - Patent licensing departments that deal with the creation, legal protection, commercialization of intellectual property, create innovative portfolio of enterprise and innovation strategy study competitors. Therefore, the use of intellectual property in SMEs carried out under insufficient awareness. It does not allow to fully utilize the great advantages that gives intellectual property in business. There is another side to the coin. Ignorance of the law regulating legal relations in the field of intellectual property may

violate other people's rights now to intellectual property rights which entails administrative, civil or even criminal liability.

The purpose of this book is to provide first aid to entrepreneurs in the creation, legal protection, commercialization and protection of intellectual property rights so that they knowingly used them to improve the competitiveness of goods and services, and were able, on the one hand, extra profits, on the other – to avoid infringing intellectual property rights of other individuals and entities.

Of course, intellectual property write based on abstract logic of the law. The authors of this book have attempted to move away from such a scheme and its foundation laid entrepreneurial, business principle. Central to the book is occupied by the process of creating the legal protection and commercialization of intellectual property. Much attention is paid to the protection of intellectual property rights against unfair competition, and provides advice on how to prevent violations of intellectual property rights of third parties. At the same time the possibility of improvement inventions protected, without prejudice to the rights of patent holders, using publicly available works that have no legal protection and use of intellectual property rights that have fallen into the public domain.

Intellectual property – a collection of civil law governing relations connected with creative activity. This civil law does not directly regulate the most creative work, because the creative process is beyond the limits of its rules. The functions of civil law is to recognize the authorship of the already established results of creative activity, establishing their legal regime, moral and material incentives and protection of the rights of authors and other persons having copyrights.

The term “intellectual property” means a series of exclusive rights to results of intellectual activity, which covers copyright and related rights, and the so-called industrial property. Intellectual property – the right businesses and individuals to own, use and management of copyright and related rights, inventions, trademarks and other intellectual property.

The term “intellectual property protection” means a set of economic, legal, political and other measures to prevent violations of intellectual property rights. Contrary protection, under the protection of Intellectual Property realize measures to restore the status of the owners of intellectual property rights if those rights were violated.

# **TOPIC 1. THE INTELLECTUAL PROPERTY SYSTEM**

- 1.1. The concept of intellectual property.
- 1.2. Justifications for intellectual property law.
- 1.3. Sources of intellectual property law.

## **1.1. The concept of intellectual property**

At the present stage of development of productive forces and formation of a postindustrial society, intellectual property relations turn from sphere of realisation of human potential to a basic source of social and economic development of the nation. Nowadays intellectual property relation transformed in important component of social and economic basis of a society, and objects of intellectual property turned into defining factor of a social reproduction.

Intellectual activity results being embodied in intellectual property objects turn in important components of intangible assets of the enterprise. Objects of intellectual property are used in different spheres of economic activities, provide manufacture of innovative products, promote development of sphere of services and increase profitability of enterprise activity. Besides, usage of intellectual property objects allows to increase and effectively utilize business reputations of enterprise, effectively administrate and develop intellectual capital of the enterprise.

At the same time, the openness of national economy under globalisation increases quantity of participants of intellectual property relations and forces enterprises to start economic rivalry with the foreign companies for national markets. In these conditions, usage of intellectual capital and effective commercialisation of intellectual property objects allow enterprises to support its competitiveness and keep steady position in the market. Simultaneously, practice testify growing rate of intellectual property rights infringements both in Ukraine, and in the European Union countries within last decade. The growing competition in the international markets creates preconditions for infringement by unfair businessmen of copyrights, related rights, industrial property rights, rights to individualization tools for the purpose of outlet expansion and greater profit reception. Besides, use of somebody else's intellectual product does not demand realisation of considerable expenses and, at the same time, allows to receive an additional revenue from trade in counterfeit goods. Thus, considering risks of application of administrative,

financial or criminal sanctions and high profitability of counterfeit activity, a part of economic players dare on intellectual property rights infringement.

In our opinion, under formation of postindustrial society active utilisation of intellectual capital in economic activities forms one of primary factors of enterprise competitiveness.

Thus, effective protection of intellectual property rights and defence of intellectual capital of the enterprise forms main precondition of economic safety of enterprise and basis for preserving of its economic potential and outlet expansion. At the same time, for intellectual property subjects protection of intellectual property rights connected with additional expenses for representation and judicial protection of their interests in court and state authorities. In these conditions, usage of intellectual property insurance allow intellectual property subject to compensate losses related to intellectual property rights protection.

The term intellectual property refers broadly to the creations of the human mind. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

Based on the above, *intellectual property – is the formalized result of creative intellectual activity that gives its author or person as defined by applicable law, the ownership of this result, which is acquired, implemented and protected in accordance with the statutory rules and regulations.*

One of the main characteristics of intellectual property is that it should offer financial or other benefits. This may be an additional profit from the use of intellectual property in the field of material production. Sometimes intellectual property explicitly, can not bring profit, but creates additional difficulties for competitors, thereby facilitating the promotion of their products and services to market products. Finally, it can contribute to the spiritual development of people.

Intellectual property law is that area of law which concerns legal rights associated with creative effort or commercial reputation and goodwill. The subject matter of intellectual property is very wide and includes literary and artistic works, films, computer programs, inventions, designs and marks used by traders for their goods or services. The law deters others from copying or taking unfair advantage of the work or reputation of another and provides remedies should this happen. There are several different forms of rights or areas of law giving rise to rights that together make up intellectual property.

*Peculiarities of intellectual property and its objects.* Intellectual property relations are system of social and economic relations which arise concerning appropriation and commercialisation of intellectual activity results.

Commercialisation of intellectual activity results is a system of procedures concerning their introduction in economic overturn for the purpose of creation of the added value and generating of additional profit. Involvement of intellectual activity results in the sphere of relations of appropriationalienation turns it to intellectual property objects. At the same time, in the process of commercialisation an intellectual property objects turns into major factor of production.

*In our opinion there are several types of intellectual property relations:*

- Relations of appropriation of intellectual activity results in the way authorised by a society;
- Relations of commercialisation which arise concerning introduction of intellectual property object in economic overturn for the purpose of profit reception;
- Relations of disposal of intellectual activity results which provide cession of intellectual property rights to other persons on different conditions and in different volume;
- Relations of possession which provide actual domination of the party to intellectual property relations over intellectual activity results that directly and indirectly is not connected with its use.

*It is necessary to notice that intellectual property characterized by several distinguishing features:*

- The intellectual property right is the sole right that arise from the law, and not from civil agreements;
- The intellectual property right is limited in time and space, that is protected during certain term and in certain territory;
- The overwhelming part of intellectual property objects demands the state registration for effective protection of corresponding intellectual property rights;
- Intellectual property objects are inexhaustible, that is they do not wear out and do not lose characteristics as a result of long use. At the same time, they are subject to an obsolescence and can lose an urgency as a result of scientific and technical progress;
- Intellectual property objects are non-material by the nature but stored on the material carrier;
- The property on intellectual property objects directly is not connected with the property on material objects in which they are embodied;
- As a result of non-material character intellectual property objects are inalienable, therefore within the limits of the order only intellectual property rights is alienated;

- Indispensable condition of granting of legal protection to intellectual property object is novelty (originality), and also their embodiment in the certain objective form;

- Intellectual property objects grow out of art, scientific, literary or technical intellectual activity of the person and consequently always have creative character;

- Intellectual property objects thanks to the non-material nature can be easily duplicated and consequently demand special legal, technical and organizational protection.

Considered above peculiarities of intellectual property transforms it into an especial kind of relations of the property to which it is difficult to apply traditional approaches of the political economic analysis. For this reason nowadays intellectual property relations represent a separate kind of relations of the property which is regulated by separate institution of civil law.

As it was marked above, under formation of a postindustrial society the intellectual property relations start to play defining role in a social production. In our opinion, it is connected with those functions, which carry out intellectual property relations (further – IPR) in public reproduction.

*First*, IPR provide distribution of results of a social production between all party to relations of appropriation of intellectual activity results: the subject of intellectual activity receives the income, the investor who puts means in commercialisation of intellectual property objects, receives percent on the invested capital, the state – receives tax revenues in the budget, the enterprise – receive the additional value created on the basis of use of the intellectual capital.

*Secondly*, IPR accelerates scientific and technical progress providing redistribution of a part of public product for benefit of creators of an intellectual product, stimulating them in such a way to the further intellectual activity.

*Thirdly*, IPR predetermine an innovative orientation of a social production and modernisation of economy on the ground of introduction of intellectual activity results in economic activities.

*Fourthly*, IPR modify class structure of a modern society therefore within the limits of economy the role of technocrats, representatives of branch of science and education who are engaged in intellectual activity, carriers of knowledge and creators of an intellectual product are significantly grows.

*Fifthly*, IPR carry out system function at the present stage of social production's evolution, they form basis of economic system, predetermine formation of the new factor of production – the intellectual capital, and provide



formation of preconditions of transition of a society on a new postindustrial stage of development.

*Objects and subjects of intellectual property relation.* It is necessary to notice that today, the legislation does not contain criteria of classification of intellectual property objects (further – IPO), and only defines them. According to Convention on creation of the World organisation of intellectual property signed in 1967, objects of intellectual property embrace: literary, art and scientific products; execution, sound recordings, on-air broadcasting transfers; inventions in all fields of activity of the person; discoveries; industrial samples; trade marks, service marks, company names and commercial designations; protection against an unfair competition; all other rights which concern intellectual activity in industrial, scientific, literary and art spheres.

At the same time, according to article 420 of the Civil code of Ukraine objects of intellectual property embrace: literary and works of art; computer programs; databases; execution; soundtracks, videogram, on-air broadcasting transfers; discoveries; inventions, utility models, industrial designs; configuration of integrated microcircuits; rational proposals; grades of plants, breeds of animals; commercial names, trade marks, geographical indications; trade secrets.

From our point of view, depending on its characteristics, which is based on the analysis of their most essential features, specificity of their protection, features of realization of property and sole rights, intellectual property objects could be divided on: copyright and relative rights objects, objects of industrial property, individualization tools, untraditional objects of intellectual property. After all individualization tools, objects of industrial property, copyrights and relative rights objects own important patrimonial features.

*Objects of copyrights and relative rights* embraces literary works and works of art, computer programs, execution, soundtrack, videogram, on-air broadcasting transfers. They belong to results of art-literary intellectual activity; registration of objects is not obligatory; property rights on noted objects are protected by the state during long term; copyright and relative rights extend only on the form of expression of intellectual activity result; a legal protection condition is originality, instead of novelty of product; protection is given irrespective of art level and art value of product.

*Objects of the industrial property* embraces inventions, utility models, industrial designs. They belong to results of scientific and technical intellectual activity of the person; their registration is obligatory; property rights on objects of the industrial property are protected by the state during rather short term; they should be suitable to use in the industry or other branch of manufacture;

they form the basic part of intangible assets of the enterprises; objects of the industrial property can be embodied in plane or volume forms, products or processes.

*Individualization tools* embraces commercial names, trade marks, geographical indications. In direct understanding individualization tools do not belong to results of intellectual activity as their value is defined not by a creative contribution of author, art or a product technological level, but depend on business reputation of the enterprise or region; their registration mainly is obligatory; property rights on individualization tools are continuously protected by the state; the intellectual property right on noted objects does not provide non-property right; they reduce uncertainty and carry out information function.

*To untraditional IPO can be referred:* scientific discoveries, rational proposal, grades of plants and breed of animals, trade secrets, know-how, configuration of integrated microcircuits.

*In our opinion, separate untraditional IPO – scientific discovery, rational proposal, trade secret, know-how, can be attributed to separate group of incorporeal objects.* Noted objects, in a counterbalance to configuration of integrated microcircuits or selection achievement, represent the information in the pure state, they can concern any field of activity, do not demand registration and do not provide reception of any certificates.

Party to relations of intellectual property (further – subjects of intellectual property – SIP) take part in relations concerning disposal of intellectual activity results. Active development of intellectual property relations predetermines attraction to participation in this relations growing quantities of economic subjects. Therefore necessity of profound discovery of a circle of participants of intellectual property relations does not lose an urgency.

In our opinion, subjects of intellectual property are physical and legal bodies who directly or indirectly take part in process of disposal and commercialisation of intellectual activity results, and also provided with corresponding rights and commitments within the limits of civil-law relations of intellectual property.

*Depending on their role in intellectual property relations subjects can be divided into four groups:*

1. Subjects that are initially provided with intellectual property rights thanks to direct participation in creation of intellectual property object (first of all it concerns objects of copyright, relative rights and industrial property);

2. Subjects that are initially provided with intellectual property rights due to passage of registration procedure and reception of the corresponding certificate (it concerns individualization tools which usually registered on legal

bodies and literally does not grow out of intellectual activity);

3. Subjects that provided with intellectual property rights as a result of inheritance or contract execution;

4. Subjects that represent interests of subjects of the two first groups or carrying out mediatory functions or acting as professional participants of intellectual property market;

5. Official bodies and the arbitrary organisations which regulate intellectual property relations.

It is necessary to notice that in the scientific literature is widespread the division of all intellectual property subjects on primary and secondary depending on the way of appropriation of intellectual property right. To primary subjects referred authors of science works, works of literature and art, executors, manufacturers of soundtracks, videogram, programs of on-air broadcasting, inventors, authors of the utility models, industrial designs, configurations of integrated microcircuits, grades of plants, breeds of animals. To secondary subjects referred assignees and successors who get intellectual property rights on the basis of the contract execution or inheritance. In our opinion, the given classification is ill-posed, after all is based on the assumption that subjects of intellectual property relations are only owners of corresponding property and nonproperty sole rights. The given approach to understanding of subject structure of intellectual property relations narrows a circle of participants of intellectual property relations and does not consider subjects who carry out regulating and mediatory functions in the intellectual property market.

Besides, being based on the definition of primary subjects of intellectual property given above, it is impossible to refer owners of individualization tools to whom concept “author” cannot be applied during to specificity of nature of trademark, geographical Indications and other individualization tools. At the same time, the classification of SIP on 5 groups covers all participants of intellectual property relations. Besides, primary SIP for individualization tools singled out in separate group which considers specificity of trade marks, geographical indications and company names as tools of individualization which reduce uncertainty, carry out information function and in direct understanding do not belong to intellectual activity results.

*Beside the approach considered above it is important to pay attention to classification of SIP depending on their economic functions.* In our opinion, in this context it is necessary to single out three groups of SIP:

1. Institutional subjects that take direct participation in creation of intellectual property objects (objects of copyright, related rights or industrial

property) or carry out primary registration of intellectual property rights on individualization tools. Noted subjects create object of intellectual property relations, constituting the market of intellectual property and forming institutional basis of existence of intellectual property relations.

2. Economically active subjects that take direct participation in commercialisation of intellectual property objects, that is carry out their introduction in economic overturn for the purpose of profit reception. To the given group mainly belong legal bodies who transform objects of intellectual property into the intellectual capital which takes part in a social reproduction and provides profit reception. Economically active subjects take up risks of commercialisation of intellectual property objects, provide production with use of objects of intellectual property, create innovative products and provide redistribution of a part of income for benefit of institutional subjects, stimulating them in such a way to the further intellectual activity.

3. Financial institutions which carry out mobilisation of financial resources of the separated small owners of the capital and their transformation in the investment into the intellectual capital, creating in such a way material basis for commercialisation of intellectual activity results. Mediate transactions of economic agents and providing movement of financial resources, financial institutions carry out accumulation of free financial resources of the separated owners of the capital by issue and sale of own financial assets, and then invest them in the financial instruments issues by economically active subjects of intellectual property relations.

It is necessary to notice that in modern conditions the role of financial institutions in the intellectual property market is defining. After all the considerable part of projects of IPO commercialisation is characterised as unsecured, and the enterprises which are engaged in intellectual activity constantly feel deficiency of own financial resources.

*Scientific and technical activity* has become a day-to-day activity for millions of experts involved in it; its results versatility influences the activity of billions of people on the planet, the processes of its development are the subject to the state regulation in the developed countries and those countries which try to intensify their social and economic develop human activity found.

Commercialization of intellectual property is a key factor of economic growth and development in a mid-term and a long-term prospect. Well balanced, available and reliable system of the state incentive of commercialization of intellectual property plays an important role in this process. In the times of modern economic competition those countries win, which provide favorable conditions for the development of intellectual

property, that is help in every possible way the scientists and inventors to commercialize the ideas and projects. Getting new knowledge and mastering new technologies as well as their effective use in social and economic development by a decisive measure defines the role and the place of a country in the world commonwealth, the level of national security and people's standards of living. In the industrially developed countries 80-90% of GDP gain comes to that new knowledge, realized in equipment and technologies. Despite the availability of considerable scientific developments and high education level of the research institutes staff, the scientific and technical sphere in Ukraine is not in its best situation. The sphere of scientific and technical activity in our country is one of the most complicated, in terms of providing legal regulation. Unfortunately, the state still has not taken any necessary steps to transform the scientific and technical activity into a fully-fledged branch of national economy.

In European countries such mechanisms that stimulate the transfer of technologies operate. There are different examples of programs which direct considerable financial resources at incentive of commercialization of intellectual property. These are the programs that work both nationwide and all over Europe (structural funds). For instance, the programs for joint financing of contract scientific researches, subsidizings of services in commercialization of technologies, granting the start capital for so-called "startup" companies etc. Foundation of the "start-up" companies focused on commercializing of knowledge and skills of research, is one of the main instruments of commercialization in Europe, therefore, this economic sector is focused on application of different incentives (tax, financial, economic).

National industry is in a great need of production updating (first of all, updating of technologies), the scientific and technical sphere possesses considerable capital funds and intellectual resources for resolving this problem, but there is no system of commercialization of scientific development and technologies in Ukraine. Still no accurate mechanisms for attraction and use of the results of scientific and technical activity, that is intellectual property, are developed to apply them into economic turnover. After all, it is the state who has to pay special attention to scientific and technical activity and create the regulatory and legal framework, that will be capable to provide commercialization of the objects of intellectual property.

Commercialization of the objects of intellectual property is a long and complicated process which is possible only on condition of close interaction of the state, science, industry and market, with informational support of all the stages of innovative cycle, taking into account the economic and social factors

of emergence and use of intellectual property, as well as modern trends in business and economy, conducting effective market researches.

Commercialization of technologies is the most important element of innovative process as it is the process of transformation of the results of scientific and technical activity into goods and their further effective commercial realization.

At the same time, in the given definition one important detail is emphasized: commercialization of innovations provides getting the profit from introduction or sale. Due to existence of specified inaccuracies I will give my own definition of the concept “commercialization”. Thus, commercialization is a system of actions aimed at transformation of RAD results, which save their market relevance and demand, into products and services in the market which are aimed at reforming of economic activity of enterprises and their achievement of strategic development objectives by means of implementation the necessary structural transformations adapted for changes of environment functioning factors in order to get the maximum profit from their sale, licensing or independent use. Thus, the process of commercialization allows searching, evaluation (expertise) and selection of innovations for financing, legal claiming for rights on future intellectual property, introduction of innovation in production, as well as its further modification and support of intellectual product.

At the present stage of development, realization of innovations is a key task not only for the scientific and technical sphere of the country, but for the increase of domestic economic competitiveness within the national innovative system in overall. Final result of innovative activity is creation of innovation, but the process of commercialization not only has to be continuous, like innovative search itself, but it has to begin even before the end of research and development.

There is a great variety of mechanisms by means of which in the developed countries of the world the state takes part in creation of favorable innovative climate and promotes commercialization of the research activity results.

In general, the applied tools can be divided into three big groups. Firstly, it is a direct financial involvement of the state in the form of financing of certain projects (for example, participation in venture financing) or organizations (for example, small innovative firms). Secondly, it is support of connections between the public and private sector in the scientific innovative sphere (joint state-private partnership).

Thirdly, it is financing of creation of elements of production and

technological infrastructure (science and technology parks, incubators, offices to promote the technologies etc.).

Intellectual property is usually divided into *two branches*, namely *industrial property and copyright*.

*Industrial property* legislation is part of the wider body of law known as intellectual property. The term intellectual property refers broadly to the creations of the human mind. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

Industrial property takes a range of forms. These include patents to protect inventions; and industrial designs, which are aesthetic creations determining the appearance of industrial products. Industrial property also covers trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, as well as geographical indications, and protection against unfair competition. In some of these, the aspect of intellectual creation, although existent, is less clearly defined. What counts here is that the object of industrial property typically consists of signs transmitting information, in particular to consumers, as regards products and services offered on the market. Protection is directed against unauthorized use of such signs likely to mislead consumers, and against misleading practices in general.

The broad application of the term “industrial” is clearly set out in the Paris Convention for the Protection of Industrial Property (Article 1 (3)): “Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive 5Understanding Industrial Property industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour.”

Industrial property takes a range of forms, the main types of which will be outlined in this booklet. These include patents to protect inventions; and industrial designs, which are aesthetic creations determining the appearance of industrial products. Industrial property also covers trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, as well as geographical indications, and protection against unfair competition. In some of these, the aspect of intellectual creation, although existent, is less clearly defined. What counts here is that the object of industrial property typically consists of signs transmitting information, in particular to consumers, as regards products and services offered on the market. Protection is directed against unauthorized use of such signs likely to mislead consumers, and against misleading practices in general.

Intellectual property relates to items of information or knowledge, which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property is not in those copies but in the information or knowledge reflected in them. Intellectual property rights are also characterized by certain limitations, such as limited duration in the case of copyright and patents.

Thus the main forms of intellectual property are:

- copyright;
- patents;
- designs;
- trade marks.

These types of intellectual property will be considered in this work.

The Convention Establishing the World Intellectual Property Organization (1967) does not seek to define intellectual property, but gives the following list of the subject matter protected by intellectual property rights:

- literary, artistic and scientific works;
- performances of performing artists, phonograms, and broadcasts;
- inventions in all fields of human endeavor;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition;
- “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

Intellectual property relates to items of information or knowledge, which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property is not in those 4Understanding Industrial Property copies but in the information or knowledge reflected in them. Intellectual property rights are also characterized by certain limitations, such as limited duration in the case of copyright and patents.

The importance of protecting intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the Protection of Literary and Artistic Works in 1886. Both treaties are administered by the World Intellectual Property Organization (WIPO).

Countries generally have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and to the rights of the public in accessing



those creations. The second is to promote creativity and the dissemination and application of its results, and to encourage fair trade, which would contribute to economic and social development.

*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 rights. 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, author's 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.

## **1.2. Justifications for intellectual property law**

The reasons for which protection is afforded to intellectual property rights are twofold. One is to give expression to the moral sentiment that a creator, such as a craftsman, should enjoy the fruits of their creativity; the second is to encourage the investment of skills, time, finance, and other resources into innovation in a way that is beneficial to society. This is usually achieved by granting creators certain time-limited rights to control the use made of those products.

Various justifications have been put forward for the existence of intellectual property law and these have usually been set in the context of patents. The basic reason for intellectual property is that a man should own what he produces, that is, what he brings into being. If what he produces can be taken from him, he is no better than a slave. Intellectual property is, therefore, the most basic form of property because a man uses nothing to produce it other than his mind. It is claimed that investment should be stimulated by the presence and enforcement of strong laws that provide a framework ensuring that the publication of new works and the manufacture of new products will be profitable, assuming, of course, that they are sufficiently meritorious, useful and commercially attractive to attain a viable level of sales. If investment is stimulated this should lead to increased prosperity and employment. Another justification is that the existence of strong laws in this area encourages the publication and dissemination of information and widens the store of available

knowledge. For example, details of patents are published and are available for public inspection. In due course, when the patent expires, anyone is free to make the product or use the process, as the case may be. This would seem to be ample vindication for offering a monopoly protection in the case of patents.

Thus the substantiation of the necessity to make laws in the field of intellectual property falls into three main types:

*Financial incentive.* These exclusive rights allow owners of intellectual property to benefit from the property they have created, providing a financial incentive for the creation of an investment in intellectual property, and, in case of patents, pay associated research and development costs.

*Economic growth.* A joint research project of the World Intellectual Property Organization (WIPO) and the United Nations University measuring the impact of IP systems on six Asian countries found “a positive correlation between the strengthening of the IP system and subsequent economic growth”.

*Morality.* According to Article 27 of the Universal Declaration of Human Rights, “everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”. Although the relationship between intellectual property and human rights is a complex one, there are moral arguments for intellectual property.

The arguments that justify intellectual property fall into three major categories. Personality theorists believe intellectual property is an extension of an individual. Utilitarians believe that intellectual property stimulates social progress and pushes people to further innovation. Lockeans argue that intellectual property is justified based on deservedness and hard work.

As summary, intellectual property rights are vital to industry, business and commerce and may be justified on the basis that the protection afforded encourages financial, human and technological investment in the creation of new or improved works, inventions and designs.

### **1.3. Sources of intellectual property law**

Intellectual property law institutions. Main international intellectual property treaties.

Sources of I.P law includes intellectual property law institutions and international / local intellectual property treaties.

*Intellectual property law institutions*

Global Legal institutions:

- World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations. It is dedicated to developing a balanced and

accessible international intellectual property system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest";

- World Trade Organization (WTO);
- United Nations Educational, Scientific and Cultural Organization (UNESCO) has sponsored an number of international intellectual property agreements dealing with copyright, cultural property and the protection of the intellectual property of developing nations are the main global institutions that administer International Intellectual Property Treaties.

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 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.

## **TOPIC 2. THE CONCEPT, SUBJECT AND PRINCIPLES OF INDUSTRIAL PROPERTY RIGHTS**

2.1. Patents for Invention.

2.2. Utility Models.

2.3. Industrial Designs.

2.4. Intellectual Property with Regard to Integrated Circuits.

### **2.1. Patents for Invention**

The broad application of the term “industrial” is clearly set out in the Paris Convention for the Protection of Industrial Property (Article 1 (3)): “Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive 5Understanding Industrial Property industries and to all

manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour”.

Industrial property takes a range of forms, the main types of which will be outlined in this booklet. These include patents to protect inventions; and industrial designs, which are aesthetic creations determining the appearance of industrial products. Industrial property also covers trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, as well as geographical indications, and protection against unfair competition. In some of these, the aspect of intellectual creation, although existent, is less clearly defined. What counts here is that the object of industrial property typically consists of signs transmitting information, in particular to consumers, as regards products and services offered on the market. Protection is directed against unauthorized use of such signs likely to mislead consumers, and against misleading practices in general.

A patent is an exclusive right granted for an invention. In other words, a patent is an exclusive right to a product or a process that generally provides a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain; that is, anyone can commercially exploit the invention without infringing the patent.

## **What kind of protection does a patent offer?**

In principle, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner’s consent.

## **Patent topics and issues**

Patents are not just abstract concepts; they play an invaluable, practical role in everyday life. By rewarding ideas, patents encourage the development of innovations and new technologies in every field.

## Patents for Invention

Most laws dealing with the protection of inventions do not actually define the notion of an invention. A number of countries, however, define inventions as new solutions to technical problems. The problem may be old or new, but the solution, in order to merit the name of invention, must be a new one. Merely discovering something that already exists in nature, such as a previously unknown plant variety, is not an invention. Human intervention must be added. So the process for extraction of a new substance from a plant may be an invention. An invention is not necessarily a complex item. The safety pin was an invention which solved an existing “technical” problem. New solutions are, in essence, ideas, and are protected as such. Thus protection of inventions under patent law does not require that the invention be represented in a physical embodiment.

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 right granted to an inventor by a State, or by a regional office acting for several States, 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. These incentives encourage innovation, which in turn contributes to the continuing enhancement of the quality of human life. In return for the exclusive right, the inventor must adequately disclose the patented invention to the public, so that others can gain the new knowledge and can further develop the technology. The disclosure of the invention is thus an essential consideration in any patent granting procedure. The patent system is so designed as to balance the interests of inventors and the interests of the general public.

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.

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 (referred to as prior art ) in its technical field.

- Inventive 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. Many countries exclude from patentability such subject matter as scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, methods for medical treatment (as opposed to medical products), and any invention where prevention of its commercial exploitation is necessary to protect public order, good morals or public health.

The conditions of novelty and inventive step (non-obviousness) must exist at a certain date, generally the date on which the application is filed. There is an exception to this rule, covered by an applicant's right of priority, regulated by the Paris Convention for the Protection of Industrial Property. This exception relates only to applications made in countries party to the Paris Convention. The right of priority means that, having filed an application in one member country of the Paris Convention, the same applicant (or his successor in title) may, within 7Understanding Industrial Property a specified time period, apply for protection for the same invention in any of the other member countries. These later applications will be regarded as if they had been filed on the same day as the earliest application.

For example, if an inventor first files an application for patent protection in Japan, and later a second application, with respect to the same invention, in France, it is sufficient that the conditions of non-obviousness existed at the date on which the Japanese application was filed. In other words, the later, French application retains priority over any applications relating to the same invention filed by other applicants between the date of the inventor's first and the second application. This is subject to the period between the two dates not exceeding 12 months.

It is customary to distinguish between inventions that consist of products and inventions that consist of processes. The creation of a new alloy is an example of a product invention. The invention of a new method or process of making a known or new alloy is a process invention. The corresponding patents are usually referred to respectively as a product patent and a process patent.

The person to whom a patent is granted, is known as the patentee, the owner of the patent or the patent holder. Once a patent has been granted with

respect to a particular country, anyone who wishes to exploit the invention commercially in that country must obtain the authorization of the patentee. In principle, anyone who exploits a patented invention without the patentee's authorization commits an illegal act. The protection is granted for a limited period, generally 20 years. Once a patent expires, the protection ends, and the invention enters the public domain. The patentee no longer holds exclusive rights to the invention, which then becomes available for commercial exploitation by others.

The rights conferred by a patent are not described in the patent itself. Those rights are described in the patent law of the country in which the patent is granted. The patent owner's exclusive rights generally consist of the following:

- in the case of a product patent, the right to prevent third parties without the owner's consent from making, using, offering for sale, selling or importing for these purposes the product;

- in the case of a process patent, the right to prevent third parties without the owner's consent from using the process; and to prevent third parties from using, offering for sale, selling or importing for these purposes the products which were obtained directly by that process.

The patentee is not given a statutory right to exploit his own invention, but rather a statutory right to prevent others from commercially exploiting it. He may give permission, or grant a license, to other parties to use the invention on mutually agreed terms. The patentee may also sell his right to the invention to someone else, who will then become the new owner of the patent.

There are certain exceptions to the principle that a patented invention cannot legally be exploited without the authorization of the owner of the patent. These exceptions take into account the balance between the legitimate interests of the patentee and those of the general public. Patent laws may provide for cases in which a patented invention may be exploited without the patentee's authorization, for example, in the wider public interest by or on behalf of the government, or on the basis of a compulsory license.

A compulsory license is an authorization to exploit the invention given by a governmental authority. It is generally issued only in very special cases, defined in the law, and only where the entity wishing to exploit the patented invention is unable to obtain the authorization of the owner of the patent. The conditions regarding the granting of compulsory licenses are regulated in detail by laws that provide for them. The decision to grant a compulsory license must provide for an adequate remuneration of the patentee. The decision may be the subject of an appeal.



## 2.2. Utility Models

While not as widespread as patents, utility models are also used to protect inventions.

Utility models are found in the laws of more than 30 countries, as well as in the regional agreements of the African Regional Industrial Property Organization (ARIPO) and the Organisation africaine de la propriété intellectuelle (OAPI). In addition, some countries, such as Australia and Malaysia, provide for titles of protection called innovation patents or utility innovations, which are similar to utility models. Other countries, like Hong Kong, Ireland and Slovenia, have a short-term patent that is equivalent to the utility model.

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 9Understanding Industrial Property the countries and regions that have a utility model system, but utility models usually differ from patents for invention in the following main respects:

- The requirements for acquiring 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 a rather incremental nature, which may not meet the patentability criteria.

- 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).

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

## 2.3. Industrial Designs

An industrial design, in general terms, is the ornamental or aesthetic aspect of a useful article. This aspect may depend on the shape, pattern or color of the article. The design must have visual appeal and perform its intended function efficiently. Moreover, it must be able to be reproduced by industrial means; this is the essential purpose of the design, and is why the design is called industrial.

In a legal sense, industrial design refers to the right granted in many countries, pursuant to a registration system, to protect the original, ornamental and nonfunctional features of a product that result from design activity.

Visual appeal is one of the main factors which influence consumers in their preference for one product over another. When the technical performance of a product offered by different manufacturers is relatively equal, consumers will make their choice based on price and aesthetic appeal. So in registering their industrial designs, manufacturers protect one of the distinctive elements that determine market success.

By rewarding creators for their effort in producing new industrial designs, this legal protection also serves as an incentive to invest resources in design activities. One of the basic aims of industrial design protection is to stimulate the design element of production. This is why industrial design laws usually only protect designs that can be used in industry or that can be produced on a large scale.

This condition of utility is a notable difference between industrial design protection and copyright, since the latter is only concerned with aesthetic creations.

Industrial designs can generally be protected if they are new or original. Designs may not be considered new or original if they do not significantly differ from known designs or their combinations.

In most industrial design laws, designs that are dictated solely by the article's function are excluded from protection. If the design for an article produced by many manufacturers, such as a screw, is dictated purely by the function that the screw is intended to perform, then protection for that design would have the effect of excluding all other manufacturers from producing items intended to perform the same function. Such exclusion is not warranted, unless the design is sufficiently novel and inventive to qualify for patent protection.

In other words, the legal protection offered by industrial designs concerns only the design that is applied to, or embodied in, articles or products. This protection does not prevent other manufacturers from producing or dealing in similar articles or products, as long as these do not embody or reproduce the protected design.

Industrial design registration protects against unauthorized exploitation of the design in industrial articles. It grants the owner of the design the exclusive right to make, import, sell, hire or offer for sale articles to which the design is applied or in which the design is embodied.

The term for an industrial design right varies from country to country.

The usual maximum term is from 10 to 25 years, often divided into terms requiring the proprietor to renew the registration in order to obtain an extension of the term. The relatively short period of protection may be related to the association of designs with more general styles of fashions, which tend to enjoy somewhat transient acceptance or success, particularly in highly fashion-conscious areas, such as clothing or footwear.

## **2.4. Intellectual Property with Regard to Integrated Circuits**

The question of the type of protection to be granted to the layout design or topography of integrated circuits is relatively new. Although prefabricated components of electrical circuitry have been used for a long time in the manufacture of electrical equipment (such as radios), large-scale integration of a multitude of electrical functions in a very small component became possible as a result of advances in semiconductor technology. Integrated circuits are manufactured in accordance with very detailed plans or layout designs.

The layout designs of integrated circuits are creations of the human mind. They are usually the result of vast investment, of both expertise and financial resources. There is a continuing need for the creation of new layout designs that reduce the dimensions of existing integrated circuits and simultaneously increase their functions. The smaller an integrated circuit, the less material is needed for its manufacture, and the smaller the space needed to accommodate it. Integrated circuits are used in a wide range of products, including articles of everyday use, such as watches, television sets, washing machines and cars, as well as sophisticated computers and servers.

Whereas creating a new layout design for an integrated circuit involves a major investment, it is possible to copy such a layout design for a fraction of that cost. Copying may be done by photographing each layer of an integrated circuit and preparing masks for the production of the integrated circuit on the basis of the photographs obtained. The high cost of the creation of such layout designs and the relative ease of copying are the main reasons why layout designs need protection.

Layout designs of integrated circuits are not considered to be industrial designs in the sense of the laws providing for the registration of industrial designs. This is because they do not determine the external appearance of integrated circuits, but rather the physical location, within the integrated circuit, of each element with an electronic function. Moreover, layout designs of integrated circuits are not normally patentable inventions, because their creation usually does not involve an inventive step, although it requires a great

deal of work by an expert. Further, copyright protection may not apply if national law determines that layout designs cannot be copyrighted.

In response to the uncertainty surrounding the protection of layout designs, the Treaty on Intellectual Property in Respect of Integrated Circuits was adopted under WIPO's auspices on May 26, 1989. The Treaty has not entered into force but its 12 Understanding Industrial Property substantive provisions have, to a large extent, been incorporated by reference in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which was concluded in 1994.

## **TOPIC 3. PATENT INFORMATION AND PATENT PROTECTION IN VARIOUS COUNTRIES**

- 3.1. The rights provided by a patent.
- 3.2. Search patent laws of different countries.
- 3.3. Patent laws and treaties.

### **3.1. The rights provided by a patent**

A patent owner has the right to decide who may – or may not – use the patented invention for the period in which the invention is protected. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported, or sold by others without the patent owner's consent.

### **What kinds of inventions can be protected?**

Patents may be granted for inventions in any field of technology, from an everyday kitchen utensil to a nanotechnology chip. An invention can be a product – such as a chemical compound, or a process, for example – or a process for producing a specific chemical compound. Many products in fact contain a number of inventions. For example, a laptop computer can involve hundreds of inventions, working together.

### **How long does patent protection last?**

Patent protection is granted for a limited period, generally 20 years from the filing date of the application.

## **Is a patent valid in every country?**

Patents are territorial rights. In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region.

## **How are patent rights enforced?**

Patent rights are usually enforced in a court on the initiative of the right owner. In most systems a court of law has the authority to stop patent infringement. However the main responsibility for monitoring, identifying, and taking action against infringers of a patent lies with the patent owner.

## **What does it mean to “license a patent” and why is it done?**

Licensing a patent simply means that the patent owner grants permission to another individual/organization to make, use, sell etc. his/her patented invention. This takes place according to agreed terms and conditions (for example, defining the amount and type of payment to be made by the licensee to the licensor), for a defined purpose, in a defined territory, and for an agreed period of time.

A patent owner may grant a license to a third party for many reasons. The patent owner may not have the necessary manufacturing facilities, for example, and therefore opts to allow others to make and sell his/her patented invention in return for “royalty” payments. Alternatively, a patent owner may have manufacturing facilities, but they may not be large enough to cover market demand. In this case, he/she may be interested in licensing the patent to another manufacturer in order to benefit from another income stream. Another possible situation is one in which the patent owner wishes to concentrate on one geographic market; therefore the patent owner may choose to grant a license to another individual/organization, with interests in other geographical markets. Entering into a licensing agreement can help to build a mutually-beneficial business relationship.

Unlike selling or transferring a patent to another party, the licensor continue to have property rights over the patented invention.

## **Why are patents useful (to society, business, individuals etc.)?**

Patented inventions have, in fact, pervaded every aspect of human life,

from electric lighting (patents held by Edison and Swan) and plastic (patents held by Baekeland), to ballpoint pens (patents held by Biro), and microprocessors (patents held by Intel, for example).

Patents provide incentives to and protection for individuals by offering them recognition for their creativity and the possibility of material reward for their inventions. At the same time, the obligatory publication of patents and patent applications facilitates the mutually-beneficial spread of new knowledge and accelerates innovation activities by, for example, avoiding the necessity to “re-invent the wheel”.

Once knowledge is publicly available, by its nature, it can be used simultaneously by an unlimited number of persons. While this is, without doubt, perfectly acceptable for public information, it causes a dilemma for the commercialization of technical knowledge. In the absence of protection of such knowledge, “free-riders” could easily use technical knowledge embedded in inventions without any recognition of the creativity of the inventor or contribution to the investments made by the inventor. As a consequence, inventors would naturally be discouraged to bring new inventions to the market, and tend to keep their commercially valuable inventions secret. A patent system intends to correct such under-provision of innovative activities by providing innovators with limited exclusive rights, thereby giving the innovators the possibility to receive appropriate returns on their innovative activities.

In a wider sense, the public disclosure of the technical knowledge in the patent, and the exclusive right granted by the patent, provide incentives for competitors to search for alternative solutions and to “invent around” the first invention. These incentives and the dissemination of knowledge about new inventions encourage further innovation, which assures that the quality of human life and the well-being of society is continuously enhanced.

## **What conditions must be met to obtain patent protection?**

There are numerous conditions that must be met in order to obtain a patent and it is not possible to compile an exhaustive, universally applicable list. However, some of the key conditions include the following:

- The invention must show an element of novelty; that is, some new characteristic which is not known in the body of existing knowledge in its technical field. This body of existing knowledge is called “prior art”.

- The invention must involve an “inventive step” or “non-obvious”, which means that it could not be obviously deduced by a person having ordinary skill in the relevant technical field.
- The invention must be capable of industrial application, meaning that it must be capable of being used for an industrial or business purpose beyond a mere theoretical phenomenon, or be useful.
- Its subject matter must be accepted as “patentable” under law. In many countries, scientific theories, aesthetic creations, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, methods for medical treatment (as opposed to medical products) or computer programs are generally not patentable.
- The invention must be disclosed in an application in a manner sufficiently clear and complete to enable it to be replicated by a person with an ordinary level of skill in the relevant technical field.

### **Who grants patents?**

A patent is granted by a national patent office or by a regional office that carries out the task for a number of countries. Currently, the following regional patent offices are in operation:

- African Intellectual Property Organization (OAPI)
- African Regional Intellectual Property Organization (ARIPO)
- Eurasian Patent Organization (EAPO)
- European Patent Office (EPO)
- Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC Patent Office)

Under such regional systems, an applicant requests protection for an invention in one or more member states of the regional organization in question. The regional office accepts these patent applications, which have the same effect as national applications, or grants patents, if all the criteria for the grant of such a regional patent are met.

There is currently, no universal, international system for the grant of patents.

### **Do I need a patent attorney / agent to prepare and file a patent application?**

In general, applicants can prepare their patent applications and file them without assistance from a patent attorney. However, given the complexity of patent documents and the legal skills required, such as claim drafting, it is

highly advisable to seek legal assistance from a patent attorney / agent when drafting a patent application.

Furthermore, the legislation of many countries requires that an applicant, whose ordinary residence or principal place of business is outside the country, be represented by an attorney or agent qualified in the country (which usually means an agent or attorney who resides and practices in that country). Information on the qualified attorneys and agents can be obtained directly from national and regional IP offices.

## **How much does it cost to patent an invention?**

The costs vary considerably from country to country (and even within a country). As the official fees vary widely from country to country, please contact the relevant national or regional patent office which will be able to give you details on the fee structure. Consult our list of national and regional intellectual property offices.

The cost of patenting an invention depends on factors such as the nature of the invention, its complexity, patent attorney's fees, the length of the application, and possible objections raised during the examination by the patent office. Some countries offer discounts to small- and medium-sized enterprises and applicants filing the application online. In addition, some countries allow expedited examination upon payment of additional fees.

In addition to the national official filing fees, once a patent is granted by the patent office, you must pay maintenance or renewal fees, generally on an annual basis, to maintain the validity of the patent.

In case you decide to patent your invention abroad, you should also consider the relevant official filing fees for each country in question, the translation costs, and the costs of using local patent agents, which is a requirement in many countries for foreign applicants.

## **How can patents be obtained worldwide?**

At present, you cannot obtain a universal “world patent” or “international patent”. Patents are territorial rights. In general, an application for a patent must be filed, and the patent granted and enforced, in each country in which you seek patent protection for your invention, in accordance with the law of that country. Therefore, one way of obtaining patents in a number of countries is to *file a national patent application with each relevant national patent office*.

In some regions, a regional patent office, for example, the European Patent Office (EPO) and the African Regional Intellectual Property Organization (ARIPO), accepts regional patent applications, or grants patents.



These have the same effect as applications filed, or patents granted, in the member states of that region. This means that, *in certain regions, you can obtain a regional patent from a regional patent office*, which is valid in some or all of its member states.

If you are seeking patent protection in a number of countries worldwide, a good option is to file an international application under the Patent Cooperation Treaty (PCT), administered by WIPO. Any resident or national of a state party to the PCT (contracting state) can file a single international application which has the effect of a national patent application (and certain regional patent applications) in some or all PCT contracting states. In some cases, this can be a more straightforward choice than choosing to try to submit individual applications in each and every country in which you require protection. Find out more about the PCT System.

## **What practical steps do I have to take to obtain patent protection?**

The first step in securing a patent is the filing of a patent application. Many patent offices provide a specific form to fill in. In some patent offices, you can file a patent application on line.

In the patent application, in general, you must describe the title of the invention, as well as provide an indication of its technical field. You must also include the background to and a description of the invention, in clear language and enough detail that a person with an average understanding of the field could use or reproduce the invention. Such descriptions are usually accompanied by visual materials such as drawings, plans, or diagrams to better describe the invention and an abstract, which contains a brief summary of the invention. You must also clearly and concisely define the matter for which patent protection is sought in the “claims” part of the patent application.

In addition, depending on the applicable patent law, you may need to submit various kinds of statements, declarations or supporting documents to a patent office. In view of the complexity it is recommended that you consult a patent attorney or a patent agent to prepare a patent application.

## **What happens after I’ve submitted my application?**

The procedures vary significantly from one country to another, so it is impossible to provide an exhaustive step-by-step overview. If you wish to research a country’s legislation in the field of patents independently, you can browse the WIPO Lex database of intellectual property (IP) legislation from

around the world.

However it is recommended that you consult either a practicing lawyer specializing in IP or the relevant IP office. Consult our directory of national and regional IP offices.

### **Can the decision to grant a patent be challenged?**

The grant of a patent can be challenged either via a patent office or in a court of law. A court may invalidate or revoke a patent upon a successful challenge by a third party. In addition, many patent offices provide administrative procedures that allow third parties to oppose to the grant of a patent (including so-called “opposition systems”), for example, on the basis that the claimed invention is not new or does not involve an inventive step.

Procedures for challenging patents differ from country to country. Find out more about opposition systems.

### **Is it possible to extend the term of patent protection?**

In some countries, patent protection may be extended beyond 20 years or a Supplementary Protection Certificate (SPC) may be issued in very specific cases. The extension aims to compensate for the time expended on the administrative approval procedure before products can be put on the market. The time taken for this procedure means that the patent owner may sometimes not be able to benefit from his right for a considerable period of time after the grant of the patent.

### **Can I obtain a patent for a software-related invention?**

Possibly, but laws and practices in this regard can differ from one country or region to another. For example, in some countries, “inventions” within the meaning of patent law must have a “technical character”. In other countries, such requirements do not exist, meaning that in these countries software is generally patentable subject matter.

However this does not mean that all software will be able to be patent protected. In order to obtain a patent, a software invention must not fall under other non-patentable subject matter (for example, abstract ideas or mathematical theories) and has to fulfill the other substantive patentability criteria (for example, novelty, inventive step [non-obviousness] and industrial applicability [usefulness]).

It is therefore recommended that you consult a practicing lawyer specializing in intellectual property or the intellectual property offices of those

countries in which you are interested in obtaining protection. Consult our directory of national and regional intellectual property offices to get in contact with a local IP professional, or browse the WIPO Lex database of intellectual property legislation from around the world.

***Find out more about using patents to protect software and business methods.***

Should a patent turn out not to be a viable option for your software-related invention, then using copyright as a means of protection may be an alternative. In general, computer programs are protected under copyright as literary works. The protection starts with the creation or fixation of the work, such as software or a webpage. Moreover, in general, you are not required to register or deposit copies of a work in order to obtain copyright protection.

However, according to a well-established principle, copyright protection extends only to expressions, not to ideas, procedures, methods of operation, or mathematical concepts as such. Thus many companies protect the object code of computer programs by copyright, while the source code is kept as a trade secret.

***Find out more about copyright.***

## **Can I patent my app?**

Whether you can obtain patent protection for an app depends on which element of your app you wish to protect. If you want to protect a technical idea or feature relating to the app, patent protection is a potential option. Depending on the applicable national law, the software that runs your app may be able to be protected by patents if it has certain technical features. You must be mindful however that your technical idea must meet all of the patentability requirements to obtain patent protection, and it may take years to get a patent.

In addition, it is important to ask yourself which element(s) of your app should be protected from free use by competitors. The software that runs your app can be protected by copyright (potentially also by patents, as described above). If you are interested in protecting logos or signs contained within your app however, you should consider protecting them using trademarks. Literary and artistic works included within your app, such as original databases, musical works, audiovisual works, works of fine art and photographs, are protected by copyright. Graphical objects and layouts can be protected using industrial designs.

***Find more about the various types of intellectual property rights.***

## **How can I search for inventions that have already been patented?**

Please see the questions and answers under the topic “Patent Information”, in particular, the answer to the question “Where can I find patent information?”.

### **3.2. Search patent laws of different countries**

WIPO Lex provides easy access to intellectual property legislation from a wide range of countries and regions as well as to treaties on intellectual property.

Many national or regional patent offices also provide information concerning national or regional legislation on their websites. Consult our list of national and regional intellectual property offices.

### **Can I obtain a patent and keep my invention secret?**

No. Patents are granted by patent offices in exchange for a full disclosure of the invention. In general, the details of the invention are then published and made available to the public at large.

It should be noted that publication can take place at various stages of the procedure. In some countries, the patent document is only published after the granting of a patent. In other countries, patent applications are generally published 18 months from the filing date or, where priority has been claimed, the priority date (for more details, see the website of your national IP office).

### **Can I discuss details of my invention with a potential investor before filing a patent application?**

It is important to file a patent application before publicly disclosing the details of an invention. In general, any invention which is made public before an application is filed would be considered “prior art” (although the definition of the term “prior art” is not uniform at the international level, in many countries, it refers to any information which has been made available to the public anywhere in the world by written or oral disclosure before the filing date).

In countries which apply the above definition of the term “prior art”, an applicant’s public disclosure of an invention prior to filing a patent application would prevent him/her from obtaining a valid patent for that invention, since the invention would not comply with the novelty requirement. Some countries,

however, allow for a grace period – usually between 6 and 12 months – which provides a safeguard for applicants who disclosed their inventions before filing a patent application. Further, the novelty criteria may be interpreted differently depending on the applicable law.

If disclosing your invention before filing a patent application is unavoidable – for example, to a potential investor or a business partner – then any disclosure should be accompanied by a confidentiality or non-disclosure agreement. It should also be kept in mind that applying early for patent protection will generally be helpful when seeking financial support to commercialize an invention.

## **How are patents relevant to my business?**

While it is certainly true that not all enterprises develop patentable inventions, it is a wrong to believe that patents only apply to complex physical or chemical processes and products or that they are only useful to large corporations. Patents can be obtained for any area of technology from paper clips to computers.

Moreover, when people think of patents, what usually comes to mind are major scientific breakthroughs such as Edison's first electric lamp, or large corporations investing in research and development. But, in fact, most patents aren't granted for groundbreaking scientific breakthroughs, but rather for inventions that make improvements to existing inventions. For example the second or third generation of a product or a process, that works in a more cost-effective or efficient manner.

Certain countries also have specific legal provisions for protecting incremental innovations. These are called utility models and they tend to have a shorter duration than patents and are generally easier to obtain.

## **Why should I consider patenting my inventions?**

- *Exclusive rights:* Patents provide you with an exclusive right to prevent or stop others from commercially exploiting an invention for twenty years from the date of filing of the patent application.
- *Return on investments:* Having invested a considerable amount of money and time in developing innovative products, through exclusive patent rights, you may be able to establish yourself in the market as the pre-eminent player and to obtain higher returns on investments.
- *Opportunity to license or sell the invention:* If you choose not to exploit the patent yourself, you may sell it or license the commercialization of

the patented invention to another enterprise, which could then be a source of income for your company.

- *Increase in negotiating power:* If your company is in the process of acquiring the rights to use the patents of another enterprise through a licensing contract, your patent portfolio will enhance your bargaining power. That is to say, your patents may prove to be of considerable interest to the enterprise with which you are negotiating, and you could enter into a cross-licensing arrangement where, simply put, your enterprise and the other agree to license respective patents to each other.

- *Positive image for your enterprise:* Business partners, investors and shareholders may perceive patent portfolios as a demonstration of the high level of expertise, specialization, and technological capacity within your company. This may prove useful for raising funds, finding business partners and raising your company's market value.

## **What happens if I don't patent my inventions?**

If you don't patent your invention, competitors may well take advantage of it. If the product is successful, many other competitor firms will be tempted to make the same product by using your invention without needing to ask for your permission. Larger enterprises may take advantage of economies of scale to produce the product more cheaply and compete at a more favorable market price. This may considerably reduce your company's market share for that product. Even small competing enterprises may be able to produce the same product, and often sell it at a lower price as they would not have to recoup the original research and development costs incurred by your company.

But that's not all. The possibilities to license, sell or transfer technology will be severely hindered if you don't patent your invention; indeed, without intellectual property (patent) rights, transfers of technology would be difficult if not impossible. The transfer of technology assumes that one or more parties have legal ownership of a technology and this can only be effectively obtained through appropriate intellectual property (IP) protection. Without IP protection for the technology in question, all sides tend to be suspicious of disclosing their inventions during technology transfer talks, fearing that the other side may "run away with the invention".

Finally, you have to consider the possibility that someone else may patent your invention first. The first person or enterprise to file a patent for an invention will have the right to the patent. This may in fact mean that, if you do not patent your inventions or inventions made the employees of your company, somebody else – who may have developed the same or an equivalent invention

later – may do so. Thus they could legitimately exclude your enterprise from the market, limit your activities to the continuation of prior use (where the patent legislation provides for such an exception), or ask your company to pay a licensing fee for using the invention.

However, to ensure that no one is able to patent your invention, instead of filing a patent application, you may disclose the invention to the public so that it becomes prior art for any patent application that will be filed after your publication, thereby placing it in the public domain (commonly known as defensive publication). Because of the existence of such prior art, later filed patent applications containing the same or similar invention will be refused by a patent office on the grounds of the lack of novelty or inventive step. At the same time, if you disclose your invention before filing a patent application, you will severely limit your possibility of obtaining patent protection on that invention.

### **How do I go about licensing my patent to a 3rd party?**

Each situation is unique, so there is no one “correct” way to go about licensing a patent. In some countries, a patent applicant’s intention to grant a license to third parties can be published in the official gazette. To find out more, get in touch with your national IP office.

In general however, it is possible to say that if you intend to license your patent, what is important is diligent preparation. Before starting negotiation with a potential licensee, you should be informed of the current situation and future prospects of the relevant market and technology. Moreover, you should find out about the commercial state of a potential licensee and the associated financial value of your patent, etc. You should reflect on your own business objectives and carefully consider how entering into a licensing agreement fits into your short- and long-term business strategies.

### **Are utility models and trade secrets alternatives to patent protection?**

In many cases, where an enterprise has merely improved an existing product and the said improvement is not sufficiently inventive to be deemed patentable, utility models may represent a good alternative, if available in the country in question. On occasions, it may be advisable for your company to keep its innovations as trade secrets which requires, in particular, that sufficient measures are taken to keep the information confidential.

Another alternative strategy could be to ensure that no one is able to

patent your invention by disclosing it (commonly known as defensive publication), thereby assuring its place in the public domain. However, you should carefully reflect on using this strategy, since if you disclose your invention before filing a patent application, you will severely limit your possibility to obtain patent protection.

***My employee has invented a new product or process: Who will own the rights to the patent?***

In most countries, if an employee has developed an invention in execution of his/her employment contract – i.e. usually during his/her working time within the enterprise – the invention (and the related patent rights) will belong to the enterprise. To avoid confusion and possible disputes, employers often specify issues of intellectual property ownership in employment contracts. Depending on the merits of the case, the employee may, however, have a right to equitable remuneration in accordance with legislative provisions or the employment contract. In any case, the employee will always retain the right to be mentioned as the inventor, unless he/she expressly renounces this right.

### **3.3. Patent laws and treaties**

The treaties WIPO administers, together with national and regional laws, make up the international legal framework for patents.

#### *PATENT-RELATED TREATIES*

**PARIS CONVENTION** The first major international agreement relating to the protection of industrial property rights, including patents. It outlines, in particular, national treatment, the right of priority, and a number of common rules in the field of substantive patent law.

***Find out more about the Paris Convention.***

**PATENT COOPERATION TREATY (PCT)** This treaty established an international patent filing system, making it possible to seek patent protection for an invention simultaneously in each of a large number of countries.

***Find out more about the PCT.***

**STRASBOURG AGREEMENT CONCERNING THE INTERNATIONAL PATENT CLASSIFICATION** A regularly updated international system for classifying inventions in patent applications, allowing



more efficient search and retrieval of patent information.

***Find out more about the Strasbourg Agreement.***

**PATENT LAW TREATY (PLT)** The PLT establishes common and, as a general rule, maximum requirements regarding many of the procedural formalities relating to national/regional patent applications and patents.

***Find out more about the PLT.***

**BUDAPEST TREATY** The Budapest Treaty concerns the international disclosure of biotechnological inventions. It stipulates that, for the purpose of the patent procedure, the deposit of microorganisms with an “international depository authority” must be recognized by any contracting state.

***Find out more about the Budapest Treaty.***

## **TOPIC 4. THE THEORETICAL FEATURES OF TRADEMARKS**

- 4.1. The essence and purpose of trademarks.
- 4.2. The Main Function of a trademark
- 4.3. Legal protection of trademarks.
- 4.4. Legal security trademark protection.
- 4.5. Making search to filing.

### **4.1. The essence and purpose of trademarks**

**Trademark** (trademark) is a duly registered designation assigned to the product for its differences from others and to indicate the manufacturer (firms). It is a pattern (symbol, sign), a combination of letters and numbers.

This is understood as a means of individualizing the manufacturer’s mark to be perceived as a trademark or logo. Registration of a trademark occurs in public institutions and making the mark protects the rights of the manufacturer (seller) to use the brand or logo.

The legal protection of a trademark is now in more than 160 countries, with more than 90 of those countries having it at the level of legislation.

From the perspective of industrial and commercial activity of the trademark, it is a special symbol of product liability, indicating who has the exclusive right to have this product, make a profit, but at the same time be responsible for the delivery of defective goods. A trademark gives the owner

tangible benefits, providing him a high reputation.

There are four types of symbol marks (brand) (Fig. 1):

1. **Brand name** -letter word or group of words, letters that can be uttered;
2. **Logo** is a symbol, a drawing or a distinguishing colour or mark;
3. **Shopping image** -personalized brand;
4. **Trademark** is the brand name, trade mark, trade or a combination of them, are protected legally.

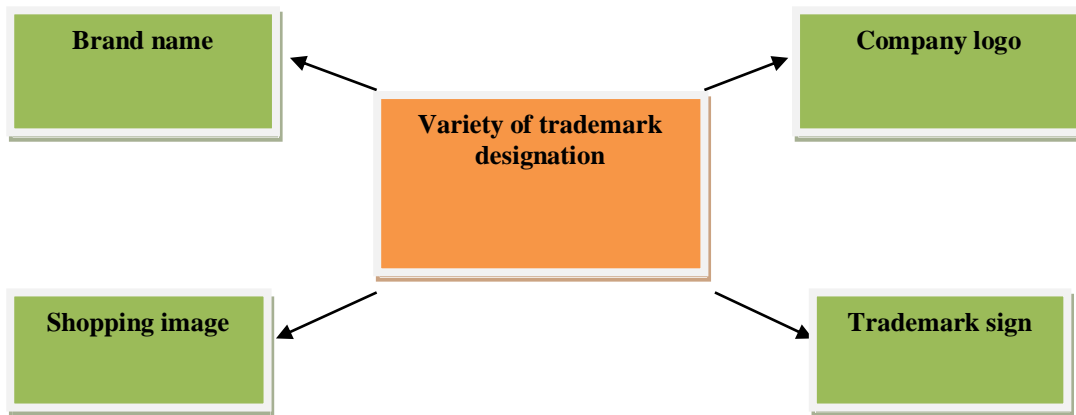


Figure 1. The trademark symbol types

It should be noted that a trademark is also part of the corporate identity, where it holds a leading position. In turn, **corporate identity** is a set of techniques that ensure the company's perceived image, including its products, in the external environment and at the same time differentiate themselves with their competitors. It is made up of such parts as brand color, sign, logo, fonts, etc.

By attracting and retaining consumers, successful brands ensure the prosperity of the company. Having won their loyal customers, the company gets a chance to strengthen its market position and maintain a level of acceptable prices and steady cash flows, which in turn increases the price of the shares of the company and provides the basis for its further growth.

The brand is not only one of the characteristics of the consumer market, it is essential for any business, markets and service providers, retailers and recruiting organizations.

As an increasing number of countries have created a system for the protection of inventions, trademarks, there is a need to harmonize legislation on industrial property rights at the international level. Since the end of the 19th century, there have been a number of international agreements signed in the field of industrial property protection-1883 Paris Convention, Madrid Agreement concerning the international registration of marks of 1891, etc.

A trademark is a sign capable of distinguishing the goods or services of

one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights. A trademark is a sign, or a combination of signs, which distinguishes the goods or services of one enterprise from those of another.

Such signs may use words, letters, numerals, pictures, shapes and colors, as well as any combination of the above. An increasing number of countries also allow for the registration of less traditional forms of trademark, such as three-dimensional signs (like the Coca-Cola bottle or Toblerone chocolate bar), audible signs (sounds, such as the roar of the lion that precedes films produced by MGM), or olfactory signs (smells, such as perfumes). But many countries have set limits as to what may be registered as a trademark, generally allowing only signs that are visually perceptible or can be represented graphically.

A trademark is a sign used on goods or in connection with the marketing of goods. The trademark may appear not only on the goods themselves but also on the container or wrapper in which the goods are sold. When used in connection with the marketing of the goods the sign may appear in advertisements, for example in newspapers or on television, or in the windows of the shops in which the goods are sold.

In addition to trademarks identifying the commercial source of goods or services, several other categories of marks exist. Collective marks are owned by an association, such as an association representing accountants or engineers, whose members use the mark to identify themselves with a level of quality and other requirements set by the association. Certification marks, such as the Woolmark, are given for compliance with defined standards, but are not confined to any membership. A trademark used in connection with services is called a service mark. Service marks are used for example by hotels, restaurants, airlines, tourist agencies, car-rental agencies, laundries and cleaners. All that has been said about trademarks applies also to service marks.

Broadly speaking, a trademark performs the following four main functions. These relate to the distinguishing of marked goods or services, their commercial origin, their quality and their promotion in the market place:

- To distinguish the products or services of one enterprise from those of other enterprises. Trademarks facilitate the choice to be made by the consumer when buying certain products or using certain services. The trademark helps the consumer to identify a product or service which was already known to him or which was advertised. The distinctive character of a mark has to be evaluated in relation to the goods or services to which the mark is applied. For example, the word "apple" or the image of an apple cannot distinguish apples, but it is distinctive for computers. Trademarks do not only distinguish products or

services as such, they distinguish them in their relationship to an enterprise from which the products or services originate.

- To refer to a particular enterprise, not necessarily known to the consumer, which offers the products or services on the market. Thus trademarks distinguish products or services from one source, from identical or similar products or services from other sources. This function is important in defining the scope of protection of trademarks.

- To refer to a particular quality of the product or service for which it is used, so that consumers can rely on the consistent quality of the goods offered under a mark. This function is commonly referred to as the guarantee function of trademarks. A trademark is not always used by only one enterprise, since the trademark owner may grant licenses to use the trademark to other enterprises. It is accordingly essential that licensees respect the quality standards of the trademark owner. Moreover, trading enterprises often use trademarks for products that they acquire from various sources. In such cases, the trademark owner is not responsible for producing the products but rather (and this may be equally important) for selecting those that meet his quality standards and requirements. This argument is supported by the fact that even where the trademark owner is the manufacturer of a particular product, he may frequently use parts which have not been produced by him, but which have been selected by him.

- To promote the marketing and sale of products, and the marketing and rendering of services. Trademarks are not only used to distinguish or to refer to a particular enterprise or a particular quality, but also to stimulate sales. A trademark that is to fulfill that function must be carefully selected. It must appeal to the consumer, create interest and inspire a feeling of confidence. That is why this function sometimes is called the appeal function. <sup>14</sup>Understanding Industrial Property The owner of a registered trademark has an exclusive right in respect of his mark. It gives him the right to use the mark and to prevent unauthorized third parties from using the mark, or a confusingly similar mark, so as to prevent consumers and the public in general from being misled. The period of protection varies, but a trademark can be renewed indefinitely on payment of corresponding fees. Trademark protection is enforced by the courts, which in most systems have the authority to block trademark infringement.

**Trade names.** Another category of industrial property covers commercial names and designations. A commercial or trade name is the name or designation that identifies an enterprise. In most countries, trade names may be registered with a government authority. However, under Article 8 of the Paris Convention for the Protection of Industrial Property a trade name must be

protected without the obligation of filing or registration, whether or not it forms part of a trademark. Protection generally means that the trade name of one enterprise may not be used by another enterprise either as a trade name or as a trade or service mark; and that a name or designation similar to the trade name, if likely to mislead the public, may not be used by another enterprise.

## **4.2. The main function of a trademark**

The main *function of a trademark* is to testify to the high quality of the sold goods, the buyer's confidence, portray the good reputation of the trademark owner (not necessarily the manufacturer of product), and product quality control.

A trademark is the basis for advertising. At the same time, for the successful functioning of the trademark advertising is needed.

The main functions of a trademark are:

### **1. Function customization.**

The trademark contributes to the knowledge of the goods, to distinguish the goods and services of the manufacturers from similar goods and services produced by other vendors and facilitates consumers' choices when they purchase a product or service.

### **2. The function of indicating the origin of the goods.**

Trademark, without detailed examination of the goods, allows the identification of the manufacturer. Buying goods and services marked with the same trademark, the consumer is sure that they have the same manufacturer. A catchy trademark is intended to associate the consumer with a particular firm.

### **3. The function of indicating the quality of the goods.**

The trademark indicates to the consumer a guarantee of quality. The holder of trademark guarantees that all products and services offered under this trademark, meet certain quality standards.

### **4. The advertising function of the trade mark.**

Trademark is indispensable as a means of advertising and promoting products and services in the market.

## **4.3. Legal protection of trademarks**

Schematically, the relationship of the trademark with the economic interests of producers and consumers can be represented in the following figure (Fig. 2).

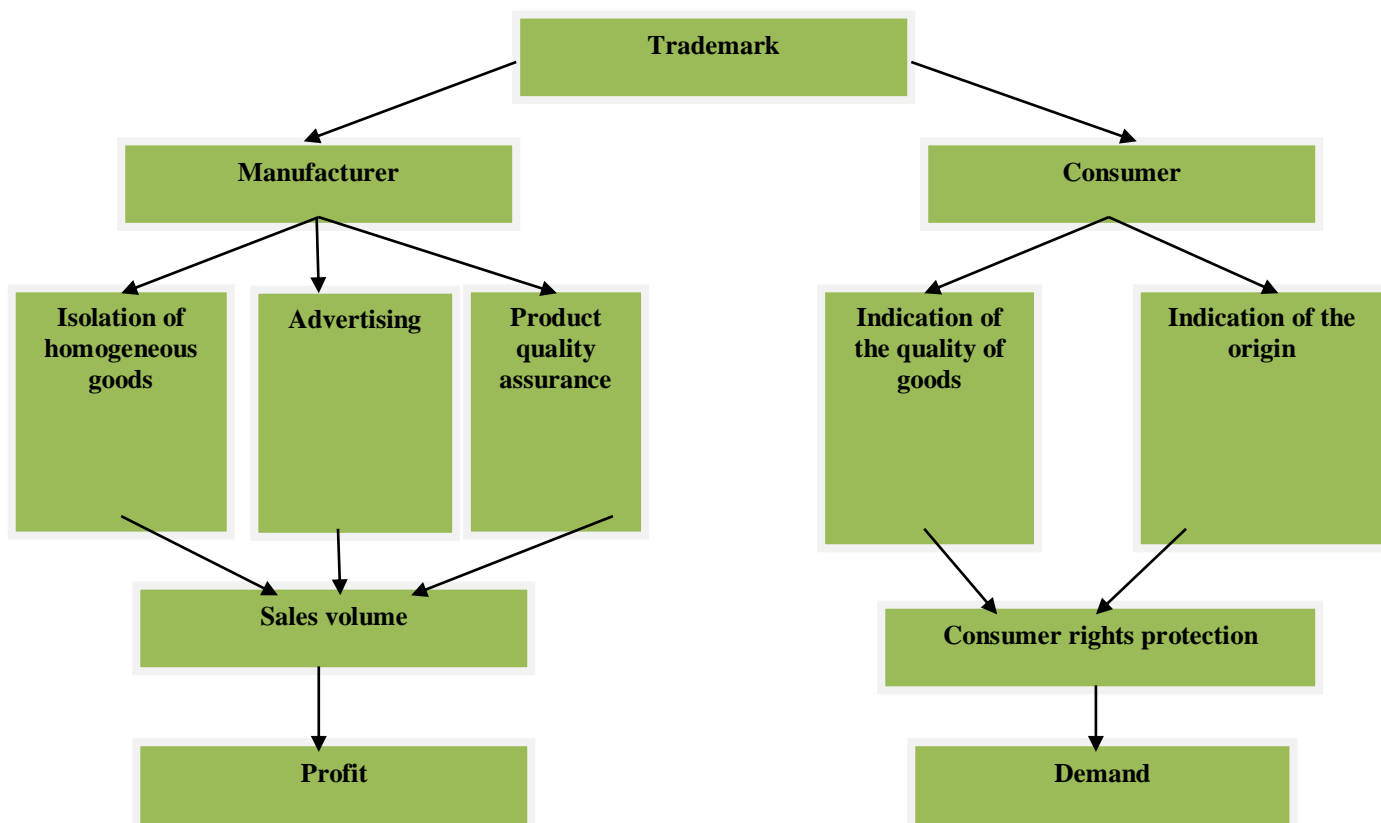


Figure 2. The relationship of the trademark

Subjects of rights to trademarks may be legal entities and individuals engaged in entrepreneurial activities.

Trademark rights are acquired and protected in the territory of each State by:

1. Registration in accordance with the provisions of this Act;
2. An international registration under the Madrid Agreement concerning the international registration of marks, of April 14, 1891, and the Protocol relating to the Madrid Agreement concerning the international registration of marks of June 27, 1989;
3. Recognition of well-known trademarks.

The right to use the trademark is protected under the civil code, according to which no one has the right to use the protected state trademark without permission of its owner. The owner of a trademark has the exclusive right to dispose of the sign/symbol, or to prohibit its use by others.

Protection of the exclusive rights to means of individualization is carried out in accordance with the Paris Convention for the Protection of Industrial Property. Under the Convention, any product illegally stocked with a trademark or trade name shall be seized on importation into those countries where the mark or trade name is entitled to legal protection. The arrest is imposed in a country where illegal marking has been carried out, or in

countries where the product was imported.

The arrest is imposed in accordance with the domestic legislation of each country at the request of the public prosecutor's office or any other competent authority, or the interested party-the physical or legal entity.

Signatory States of the Paris Convention have pledged to protect trademarks within their legislation.

**The use of the trademark.** The use of the trademark is absolute and subjective exclusive right. This means that only the owner has the exclusive ability to use the trademark and to dispose of it, and also has the right to prohibit the use of the trademarks by others. No one may use the protected trademark in the state without the authorization of the trademark owner.

The scope of this right is protected by:

- List of goods specified in the certificate;
- The territory of the state in which the mark was registered;
- The date and term on which the trademark is registered.

When protecting the rights of holders of trademarks and protecting of consumer interests, legislation has been written in each state declaring the right of the owner to attach a trademark warning label next to the trademark. This marking indicates that the received symbol is a trademark, registered in the state.

Precautionary labelling is a special designation in the form enclosed in a circle of the Latin letter "R", indicating that the trademark is protected and the consumer is purchasing goods precisely from this manufacturer.

**Transfer of rights in the trademark.** Transfer of rights may be exercised on the basis of the contract of assignment of rights (full broadcast) or license contract (partial transfer), as well as through legal inheritance.

**The assignment of a trademark** (i.e., sales) means the transfer of a trademark by its owner to another individual or entity with respect to part or all of the goods for which it is registered. However, the assignment shall not be allowed if it can lead to misleading the consumer about the product or its manufacturer.

In addition to the contract of assignment, the rights of the trademark owner (licensor) may grant license for the rights to use a trademark to another person (licensee) under a license agreement.

Unlike the agreement of assignment of the trademark, a license agreement grants the licensee the right to use a trademark for a certain time limit agreed in the contract.

**Violation of trademark rights.** In the case of designation, which is similar or identical to a previously registered trademark in relation to identical and similar goods or services, and this similarity misleads the consumer to the product or its manufacturer, is an infringement of the exclusive right of the

owner of a trademark previously registered. The similarity between a registered trademark and similar marking leads customers to wrong conclusions about the desktop brands that have minor differences, but belong to the separate manufacturers. It should be noted that often the quality of the goods from the manufacture and the violation of the rights of a trademark owner, differ significantly from the original product.

A serious violation of the rights of the trademark owner is the use of a trademark or similar designation for products to customize which the trademark has already passed the registration procedure, without the permission of its owner in the civil circulation. Such designations which violate the right to use a trademark can be found in the following variants:

- The documentation, which is written with the introduction of products into civil circulation;
- On labels, product packaging or the product, which is manufactured, offered for sale, sold, displayed at exhibitions and fairs or otherwise introduced into civil circulation, stored/transported to this end or is imported into the territory of the State;
- On the Internet, a domain name or other means of addressing;
- In promotional offers for the sale of goods.

Thus, labels and packaged goods on which the right to use the trademark is used illegally or is applied to a similar designation, therefore making it counterfeit. Such violations are punishable by and administrative penalty and the payment of damages in the form of lost revenue.

#### **4.4. Legal security trademark protection**

In principle, a trademark registration will confer an exclusive right to the use of the registered trademark. This implies that the trademark can be exclusively used by its owner, or licensed to another party for use in return for payment. Registration provides legal certainty and reinforces the position of the right holder, for example, in case of litigation.

#### **How long does trademark protection last?**

The term of trademark registration can vary, but is usually ten years. It can be renewed indefinitely on payment of additional fees. Trademark rights are private rights and protection is enforced through court orders.

#### **What kinds of trademark can be registered?**

A word or a combination of words, letters, and numerals can perfectly



constitute a trademark. But trademarks may also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances, or color shades used as distinguishing features – the possibilities are almost limitless.

## **Trademark topics and issues**

From a trip to the shopping mall to an hour in front of the TV, we encounter trademarks at every turn. They are an indispensable tool in today's business world.

### *Trademark-related treaties administered by WIPO:*

- Paris Convention;
- Madrid Agreement (Marks);
- Madrid Protocol;

---

- Nice Agreement;

---

- Vienna Agreement;
- Singapore Treaty;
- Trademark Law Treaty;

---

- Nairobi Treaty.

## **4.5. Making search to filing:**

### *How to search before filing: Global Brand Database*

WIPO's Global Brand Database enables you to search for trademarks registered under the Madrid System, Appellations of Origin registered under the Lisbon System, and Emblems protected under the Paris Convention 6ter. A number of national trademark collections are also included.

Through the Global Brand Database you can:

- Conduct one search covering multiple sources simultaneously
- Discover similar or identical word marks using a variety of search features including Boolean, proximity, word-stem, phonetic and “fuzzy” search features
  - Find similar or identical image marks using the search by image function

Although the Global Brand Database covers a number of large trademark collections, it does not include trademarks filed directly (i.e., outside the

Madrid System) with a number of Contracting Parties. It may be prudent to also search the registers of national/regional IP Offices.

### ***How to search before filing: National and Regional IP Office Databases and Registers***

The databases or registers of national / regional IP Offices provide records of trademarks filed and registered in those offices. WIPO maintains information on contracting parties, including links to IP Office websites. Follow these links to find national (regional) registers.

Remember that these Registers are not managed by WIPO and may be in national languages other than the three official languages of the Madrid System - English, French and Spanish.

### ***How to search before filing: if you discover a similar or identical mark***

Discovering an identical or similar mark prior to filing may be preferable to finding out afterwards. This knowledge will enable you to make appropriate filing decisions. It is important to determine if the identical or similar mark:

- is for the same or related goods and / or services
- is a live application or registration

If the identical or similar mark is for unrelated goods and/or services, you may decide to proceed with your application. Similarly, if the application has lapsed or the registration has expired, you may also wish to proceed.

Of course, you may also elect to proceed with your application even if there is an earlier application or registered mark in a Contracting Party of interest for the same or related goods and/or services. You should be aware that in such a case a provisional refusal may be raised by the concerned Office of a designated Contracting Party, on the basis that the mark conflicts with an earlier pending or registered mark. There are a number of ways to overcome this type of refusal, but a local representative in the Contracting Party may be necessary to respond to the provisional refusal.

**Remember** – If you need assistance to search prior to filing, or advice on strategies to avoid conflicts with already existing marks, you can consult a trademark attorney, agent or lawyer in your country or in the country of interest. National / regional IP Offices usually maintain lists of registered attorneys.

## ***How to search before filing: related links***

This section will walk you through the steps required to file an application for international registration of a mark (international application) through the Madrid System.

## **TOPIC 5. INTERNATIONAL TRADEMARK AND REGISTRATION**

5.1. Features of international trademarks.

5.2. International trademark registration.

5.3. The main stages of a trademark under the Madrid Agreement and Protocol.

5.4. The international trademark registration process

5.5. Submission of applications to obtain legal protection of trademark

### **5.1. Features of international trademarks**

Most often, a company's activities are unique to the country it is located in. In the case of commercial expansion, a company is not only required to registrar a trademark with appropriate evidence in legislature in their own country, but must register the same trademark on an international scale, i.e. abroad.

The legal protection of a trademark is confined to the territory of the country in which it is registered.

### **5.2. International trademark registration**

How to register an international trademark?

Currently, there are two options for assigning legal trademark protection in multiple countries. International trademarks can be registered under national procedure, or by the Madrid Agreement.

You can apply for trademark registration in the Patent Office of each country, but it will require considerable material costs, because each application requires the translation of the application and payment of the registered patent attorneys in these countries. In addition, the registration can take a lot of time; for example, the registration of trademark in Germany could amount to about three years.

To simplify and speed up the process of international registration of a trademark (tm) you can use the Madrid system for the registration of a trademark.

The Madrid system allows you to obtain an international registration of a trademark in multiple countries party to the Madrid Agreement and/or of the Protocol thereto.

The Member countries of the Madrid Agreement are: Albania, Algeria, Armenia, Azerbaijan, Austria, the Benelux countries (Belgium, Luxembourg, the Netherlands), Bosnia and Herzegovina, Bulgaria, Belarus, Bhutan, China, Kazakhstan, Kyrgyzstan, Kenya, Croatia, Cuba, Czech Republic, Democratic People's Republic of Korea, Egypt, France, Germany, Hungary, Italy, Lesotho, Liechtenstein, Principality of Monaco, Mongolia, Moldova, Morocco, Mozambique, Poland, Portugal, Romania, Russia, San Marino, Slovenia, Spain, the Sudan, Sierra Leone, Switzerland, Vietnam, Yugoslavia, Macedonia, Liberia, Slovakia, Tajikistan, Uzbekistan, Ukraine, Latvia.

The countries not participating in the agreement include the United States, Denmark, Sweden, Norway, Finland, United Kingdom, Japan and most countries in Latin America.

In accordance with legal regulations, an international application for registration of a trademark may be filed only by the competent national office of trademarks in WIPO IB (International Bureau of the World Intellectual Property Organization), through the national authority, with the power of the state of registration of trademarks.

Taking advantage of the *Madrid system for the international registration* of a trademark, the trademark entity receives the following *benefits*:

1. There is no need to submit multiple applications for the same trademark in a few selected countries, as long as one application in the system specifies the countries in which protection is sought;

2. The Application for international registration of a trademark is filed through the Patent Office of the country, that is, you do not need the services of foreign patent attorneys.

3. The cost of international trademark registration is significantly reduced by excluding the cost of royalties for foreign patent attorneys.

4. Pay a fee for filing an application for international registration of a trademark.

5. The term for examining an application for international registration of a trademark is limited to 18 months.

***Conditions of applications for international registration of a trademark:***

1. Application in the member countries of the Madrid Agreement is based on the national (basic) the registration of a trademark.

2. The application in the country of the Protocol relating to the Madrid

Agreement, served on the basis of an application for registration of a trademark in your country.

3. Application in member countries of the Madrid Agreement and the Protocol is filed on the basis of the application for registration of a trademark in your country.

The application for international registration of a trade mark shall contain:

- Information on the basic registration or basic application.
- The list of countries in which registration is sought.
- The list of goods and services for which registration is sought.

### **5.3. The main stages of a trademark under the Madrid Agreement and Protocol**

At the national (regional) level, trademark protection can be obtained through registration, by filing an application for registration with the national/regional trademark office and paying the required fees. At the international level, you have two options: either you can file a trademark application with the trademark office of each country in which you are seeking protection, or you can use WIPO's Madrid System. The Madrid System is a one stop solution for registering and managing marks worldwide. File one application, in one language, and pay one set of fees to protect your mark in the territories of up to 97 members. Manage your portfolio of marks through one centralized system. Prior to applying for an international registration through the Madrid System, it is wise to ensure your mark will not conflict with pending or registered marks in the territories of Contracting Parties (members) of interest.

WIPO and national/regional IP Offices provide databases that can be searched to find out if your mark is identical or similar to earlier marks for the same or related goods and/or services. Early discovery of potential conflicting marks will enable you to make an informed decision about your application strategy.

An application for international registration of a trademark shall be filed in the national trademark registration authority, which sends it to the International Bureau of WIPO (WIPO).

After receiving an application, WIPO International Bureau examines the validity of the application for international trademark registration and suitability of the list of goods and services International (Nitszkoy) classification; registers trademark, publishes information on the application in the International Register and send the owner sign a certificate, which contains information made in the International Register.

After the formal examination, WIPO International Bureau sends a request to the national authorities of countries in which the trademark registration. National authorities conduct an examination of the application for trademark registration in accordance with the current legislation in these countries in the field of trademarks.

After the examination by the national office of each country according to the International Bureau of WIPO decides on the possibility of providing protection for a trademark on its territory.

The International Bureau shall send to the owner a notice of changes in the international register records of preliminary and final refusals of protection, final decisions following a refusal, and notification of changes in the international register of registration as invalid entries, as well as a copy of the changes made in the international register about the changes.

The length of time given for examining an application for international registration of a trademark in the countries participating in the Madrid Agreement is 12 months, and in the countries of the Protocol-1.5 years

## 5.4. The international trademark registration process



## ***How to file your application: Basic requirements***

You may file an international application provided you meet the following two requirements:

### **1. Entitlement**

You must:

- have a business in a Contracting Party, or
- be domiciled in a Contracting Party, or
- be a national of a Contracting Party

The Office of the Contracting Party with which you have the necessary connection is your Office of origin. This office acts as your intermediary for filing an international application.

To check your entitlement to file an international application under the Madrid system, use the International Application Simulator.

### **2. Basic application/registration (“basic mark”)**

You must have already applied for or registered a mark with your Office of origin.

## ***How to file your application: Form and content***

Once you have applied for or registered a mark before your local Office, it can be used as the basic mark when filing an international application through the Madrid System.

To do so, Form MM2 (available in English, French and Spanish) must be used:

You must send the form MM2 to your local Office (Office of origin). Do not send this directly to WIPO.

E-Filing is available for international applications filed through the IP Offices of Australia and Benelux.

Your international application should contain at least the following information:

- Name and address of the applicant;
- A reproduction of **the mark**, which must be identical to your basic mark (your local application or registration);
- **Designation of the Contracting Parties** in which the mark is to be protected. Note that you cannot designate the Contracting Party of your Office of origin;
- A **list of the goods and services** for which the mark is to be protected. This list must be identical to or narrower than the list in the basic mark;
- The international application fees.

For further detailed information you may consult the explanatory notes on the form MM2.

You should classify the list of goods and services in accordance with the latest International Classification of Goods and Services (Nice Classification). For this purpose, use the Madrid Goods and Services Manager.

Note that you cannot expand or broaden the list of goods and services after you have submitted your international application, not even to cover goods and services mentioned in the basic mark. If you want to have a broader list, you would need to file a new international application.

For further information on international applications, please refer to paragraphs B.II.01.01 to 10.02 of the Guide to the International Registration of Marks under the Madrid Agreement and the Madrid Protocol.

1. Official forms MM1 and MM3 are **no longer** applicable since all members of the Madrid Union are at this time also members of the Protocol. All international applications shall be filed using the MM2 International Application form.

### ***How to file an international application: Fees***

The fees to be paid to obtain an international registration comprise:

- A basic fee;
- A supplementary fee (depending on the number of classes of goods and services to be protected); and a complementary fee (depending on the number of designated Contracting Parties),
- Individual fees depending on the designated Contracting Parties.

The Fee Calculator will help you to estimate your international application fees.

If your Office of origin is in a Least Developed Country (LDC), in accordance with the list established by the United Nations, you benefit from a 90 percent reduction in the basic fee for your international application.

Fees must be paid in Swiss francs (CHF) and via one of the following payment methods:

- Debit from a WIPO Current Account
- Bank transfer to the WIPO bank account
- Postal transfer to WIPO postal account (within Europe only)
- E-Payment by credit card or through a WIPO Current Account

Further information about the fees under the Madrid system and the payment methods is available under Fees.

For further information on fees, please refer to paragraphs B.II.07.83 to 07.96 of the Guide to the International Registration of Marks under the Madrid



Agreement and the Madrid Protocol.

### ***How to file your application: Watch your application***

Two tools will assist you in monitoring your application as it moves to registration:

- Madrid Real-Time Status provides the status in real time of trademark documents being processed by WIPO. This allows you to see what is happening to your request at any time. You only need to indicate your basic application or registration number.
- Madrid Portfolio Manager allows access to international trademark portfolios. This is especially helpful when new requests for registration are submitted. To access the Madrid Portfolio Manager, you need a WIPO User Account linked to an e-mail address.

### **How to file an international application: From application to registration**

The Madrid System is an international filing and registration system. WIPO performs merely a formalities examination, which includes the name and address of the applicant, the applicant's entitlement to file, the list of goods and services classified according to the Nice Classification, the reproduction of the mark, the designated Contracting Parties and the fees paid.

If your international application does not comply with the applicable formal requirements, WIPO will send an irregularity notice to you and to your Office of origin. This notice will detail the irregularities to be corrected and by whom. It will also set a time limit to remedy the irregularity.

Provided your international application complies with the applicable formal requirements, WIPO records the mark in the International Register and publishes it in the WIPO Gazette of International Marks. WIPO then notifies the Office of each Contracting Party in which protection has been requested and sends you a certificate of registration. This certificate is not equivalent to a certificate of registration issued by a National or Regional IP Office.

The Office of each designated Contracting Party conducts substantive examination of your international registration in the same way as it examines national/regional applications.

Whether or not a mark that is the subject of an international registration is protected in the territory of a designated Contracting Party, and the precise scope of that protection, is regulated by the law and practice of each designated Contracting Party.

The Office of each designated Contracting Party may grant or refuse protection to your mark within 12 or 18 months. This decision will be communicated to you and made available on the ROMARIN database.

For further information, please refer to paragraphs B.II.11.01 to 31.01 of the Guide to the International Registration of Marks under the Madrid Agreement and the Madrid Protocol.

### ***ROMARIN – International Trademark Search***

The ROMARIN database allows you to search detailed information on all international marks registered under WIPO's Madrid System.

The database is updated daily and contains all Madrid System marks currently in force, those which have expired within the last six months, and those still under examination.

### ***Chance to Clarify Scope of International Registrations Designating the EU***

If you are the holder of an international registration with an EU designation in force prior to June 22, 2012, and you relied on a NICE Class heading to define the scope of protection, it is in your interest to consider clarifying this scope before The Office for Harmonization in the Internal Market (OHIM).

A decision not to take advantage of this opportunity may mean that your scope of protection in the EU will be limited to the literal meaning of the NICE Class heading only.

In line with the provisions of Article 28(8) European Union Trade Mark Regulation (EUTMR), you have until September 24, 2016 to clarify the goods and services that fall outside the literal meaning of a NICE Class heading, through a declaration submitted to OHIM.

### ***5.5. Submission of applications to obtain legal protection of trademark***

Declarations must be filed directly with OHIM, in the language of the international application, using the Recordal Application Form. Modalities for filing the declaration are detailed in Communication No.1/2016 of the President of OHIM (the Communication). Declarations must not be filed with WIPO.

### ***What is the timeframe for submitting a declaration?***

Declarations should be submitted between March 23 and September 24, 2016, inclusive.

### ***Will WIPO publish information concerning the declaration?***

Where OHIM finds that declarations comply with the requirements of Article 28(8) EUTMR and the Communication, it will provide WIPO with a statement for each international registration concerned. WIPO will publish relevant information in Madrid System information products, including the WIPO Gazette of International Marks and in the ROMARIN database.

### ***Global Brand Database***

The Global Brand Database makes it easier to search over 24,920,000 records relating to internationally protected trademarks, appellations of origin and armorial bearings, flags and other state emblems as well as the names, abbreviations and emblems of intergovernmental organizations.

The Global Brand database allows free of charge, simultaneous, brand-related searches across multiple collections.

## **TOPIC 5. GEOGRAPHICAL INDICATION**

5.1. What is a geographical indication?

5.2. What rights does a geographical indication provide?

5.3. How are geographical indication rights enforced?

5.4. Applying for geographical indication protection.

5.5. What practical steps do I have to take to obtain geographical indication protection?

5.6. Geographical indications and business.

### **5.1. What is a geographical indication?**

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since

the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin.

Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. Whether a sign functions as an indication is a matter of national law and consumer perception. Geographical indications may be used for a wide variety of agricultural products, such as “Tuscany” for olive oil produced in a specific area of Italy, or “Roquefort” for cheese produced in a certain region of France.

The use of geographical indications is not limited to agricultural products. They may also highlight particular qualities of a product, which are due to human factors found in the place of origin of the products, such as specific manufacturing skills and traditions. That place of origin may be a village or town, a region or a country. An example for the latter is Switzerland or Swiss, which is widely perceived as a geographical indication for products that are made in Switzerland, in particular for watches.

An appellation of origin is a special kind of geographical indication, used on products that have a specific quality that is exclusively or essentially due to the geographical environment in which the products are produced. The concept of geographical indication encompasses appellations of origin. Examples of appellations of origin which are protected in states party to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration include “Habana” for tobacco grown in the Havana region of Cuba, or “Tequila” for spirits produced in particular areas of Mexico.

Geographical indications are protected in accordance with national laws under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks or special laws for the protection of geographical indications or appellations of origin. In essence, unauthorized parties may not use geographical indications if such use is likely to mislead the public as to the true origin of the product. Applicable sanctions range from court injunctions preventing the unauthorized use, to the payment of damages and fines or, in serious cases, imprisonment.

## **5.2. What rights does a geographical indication provide?**

A geographical indication right enables those who have the right to use the indication to prevent its use by a third party whose product does not conform to the applicable standards. For example, in the jurisdictions in which the Darjeeling geographical indication is protected, producers of Darjeeling tea can exclude use of the term “Darjeeling” for tea not grown in their tea gardens or not produced according to the standards set out in the code of practice for the geographical indication.

However, a protected geographical indication does not enable the holder to prevent someone from making a product using the same techniques as those set out in the standards for that indication. Protection for a geographical indication is usually obtained by acquiring a right over the sign that constitutes the indication.

### **For what type of products can geographical indications be used?**

Geographical indications are typically used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products.

### **How are geographical indications protected?**

There are three main ways to protect a geographical indication:

- so-called *sui generis* systems (i.e. special regimes of protection);
- using collective or certification marks; and
- methods focusing on business practices, including administrative product approval schemes.

These approaches involve differences with respect to important questions, such as the conditions for protection or the scope of protection. On the other hand, two of the modes of protection – namely *sui generis* systems and collective or certification mark systems – share some common features, such as the fact that they set up rights for collective use by those who comply with defined standards.

Broadly speaking geographical indications are protected in different countries and regional systems through a wide variety of approaches and often using a combination of two or more of the approaches outlined above. These approaches have been developed in accordance with different legal traditions and within a framework of individual historical and economic conditions.

## **How long does geographical indication protection last?**

In many sui generis legislations, registrations for geographical indications are not subject to a specific period of validity. This means that the protection for a registered geographical indication will remain valid unless the registration is cancelled.

Geographical indications registered as collective and certification marks are generally protected for renewable ten-year periods.

## **Who can use a protected geographical indication?**

The right to use a protected geographical indication belongs to producers in the geographical area defined, who comply with the specific conditions of production for the product.

### **5.3. How are geographical indication rights enforced?**

Like all intellectual property rights, the rights to geographical indications (GI) are enforced by the application of national legislation, typically in a court of law. The right to take action could rest with a competent authority, the public prosecutor, or to any interested party, whether a natural person or a legal entity, whether public or private. The sanctions provided for in national legislation could be civil (injunctions restraining or prohibiting unlawful acts, actions for damages, etc.), criminal, or administrative.

## **What is the difference between a geographical indication and a trademark?**

Geographical indications (GIs) identify a good as originating from a particular place. By contrast, a trademark identifies a good or service as originating from a particular *company*.

A trademark often consists of a fanciful or arbitrary sign. In contrast, the name used as a geographical indication is usually predetermined by the name of a geographical area.

Finally, a trademark can be assigned or licensed to anyone, anywhere in the world, because it is linked to a specific company and not to a particular place. In contrast, a GI may be used by any persons in the area of origin, who produces the good according to specified standards, but because of its link with the place of origin, a GI cannot be assigned or licensed to someone outside that place or not belonging to the group of authorized producers.

## **What is the difference between a geographical indication and an indication of source?**

An indication of source can be defined as an indication referring to a country (or to a place in that country) as being the country or place of origin of a product. In contrast to a geographical indication, an indication of source does not imply the presence of any special quality, reputation, or characteristic of the product essentially attributable to its place of origin. Indications of source only require that the product on which the indication of source is used originate in a certain geographical area. Examples of indications of source are the mention, on a product, of the name of a country, or indications such as “made in ....”, “product of ....”, etc..

## **What is the difference between a geographical indication and an appellation of origin?**

Appellations of origin are a special kind of geographical indication (GI). GIs and appellations of origin require a qualitative link between the product to which they refer and its place of origin. Both inform consumers about a product’s geographical origin and a quality or characteristic of the product linked to its place of origin. The basic difference between the two concepts is that the link with the place of origin must be stronger in the case of an appellation of origin. The quality or characteristics of a product protected as an appellation of origin must result exclusively or essentially from its geographical origin. This generally means that the raw materials should be sourced in the place of origin and that the processing of the product should also take place there. In the case of GIs, a single criterion attributable to geographical origin is sufficient – be it a quality or other characteristic of the product – or even just its reputation.

## **What is the relationship between traditional knowledge (TK) and geographical indications?**

Products identified by a geographical indication are often the result of traditional processes and knowledge carried forward by a community in a particular region from generation to generation. Similarly, some products identified by a geographical indication (GI) may embody characteristic elements of the traditional artistic heritage developed in a given region, known as “traditional cultural expressions” (TCEs). This is particularly true for tangible products such as handicrafts, made using natural resources and having qualities derived from their geographical origin.

GIs do not directly protect the subject matter generally associated with TK or TCEs, which remains in the public domain under conventional IP systems. However, GIs may be used to indirectly contribute to their protection, for instance, by preserving them for future generations. This can be done, for example, through the description of the production standards for a GI product, which may include a description of a traditional process or traditional knowledge.

### **What is a “generic” geographical indication?**

In the context of geographical indications, generic terms are names which, although they denote the place from where a product originates, have become the term customary for such a product. An example of a GI that has become a generic term is Camembert for cheese. This name can now be used to designate any camembert-type cheese.

The transformation of a geographical indication into a generic term may occur in different countries and at different times. This may lead to situations where a specific indication is considered to constitute a geographical indication in some countries, whereas the same indication may be regarded as a generic term in other countries.

### **What are “homonymous” geographical indications?**

Homonymous geographical indications (GI) are those that are spelled or pronounced alike, but which identify products originating in different places, usually in different countries. In principle, these indications should coexist, but such coexistence may be subject to certain conditions. For example, it may be required that they be used only together with additional information as to the origin of the product in order to prevent consumers from being misled. A GI may be refused protection if, due to the existence of another homonymous indication, its use would be considered potentially misleading to consumers with regard to the product’s true origin.

## **5.4. Applying for geographical indication protection**

### **Who can request protection for a geographical indication?**

Protection may be requested by a group of producers of the product identified by the geographical indication. The producers may be organized as an entity, such as a cooperative or association, which represents them and



ensures that the product fulfils certain requirements which they have agreed upon or adhered to. In some jurisdictions, protection may also be requested by a national competent authority (for example, a local government authority).

### **Who grants protection for geographical indications?**

Protection for a geographical indication (GI) is granted by a national (regional) competent authority upon request. In some countries the function of granting GI protection is carried out by a special body responsible for GI protection. In other countries, the national intellectual property (IP) office carries out this function. A directory of IP offices is available on the WIPO website.

### **What conditions must be met to obtain geographical indication protection?**

A sign must qualify as a geographical indication under the applicable law and not be subject to any obstacles to registering a geographical indication (GI). Generally, an important requirement under the definition, is that the good identified by the GI needs to have a link to the geographical origin. This link may be determined by a given quality, reputation or other characteristic essentially due to the geographical origin. In many legislation a single criterion attributable to geographical origin is sufficient, be it a quality or other characteristic of the product, or only its reputation.

### **Do I need a lawyer to protect my geographical indications?**

A request of protection for a geographical indication may be filed, depending on the applicable law, without assistance from an IP lawyer or specialized agent. However, in many countries an applicant whose residence or principal place of business is outside the country where the protection is sought must be represented by a lawyer or agent admitted to practice in that country. Information on the admitted lawyers and agents may be obtained directly from the national IP offices. A directory of IP offices is available on the WIPO website.

### **How much does it cost to obtain geographical indication protection?**

As the costs for filing for protection vary from country to country, it is best to contact your national (regional) IP office for details on the fee structure.

If protection abroad is sought, in addition to the ordinary filing fees, you should take into account the translation costs and the costs of using a local agent. It's worth remembering that in order to protect a GI abroad, there may be a requirement to first protect the GI in the country of origin.

## **Are there any obstacles to protecting a geographical indication?**

Firstly the following are generally excluded from geographical indication protection:

- signs that do not qualify as geographical indications under the applicable law.

From a legal point of view, potential obstacles to successfully registering a geographical indication (GI) may include the following:

- Conflict with a prior mark.
- Generic character of the term that constitutes the GI.
- The existence of a homonymous geographical indication, the use of which would be considered potentially misleading as to the product's true origin.
- The indication's name being that of a plant variety or animal breed.
- The lack of protection of the GI in its country of origin.

## **5.5. What practical steps do I have to take to obtain geographical indication protection?**

The practical steps to be taken vary depending largely on the purpose and the geographical scope of the protection you desire.

In the broadest terms, if you are considering protection limited to the national level, then your first port-of-call should be your relevant intellectual property (IP) office or the national (regional) competent authority in charge of GIs. A directory of IP offices is available on the WIPO website.

If, however, you are considering protection in more than one territory, then WIPO's Lisbon System could be one appropriate alternative, amongst others. See the question "Can I obtain geographical indication protection that is valid in multiple countries?" for more information and to learn about other alternatives.

## **Can I obtain geographical indication protection that is valid in multiple countries?**

Geographical indication rights are territorial. This means that these rights are limited to the country (or region) where protection is granted.

At present, no “world” or “international” geographical indication (GI) right exists. There are currently four main ways of protecting a geographical indication abroad:

- *By obtaining protection directly in the jurisdiction concerned:* In general, in order to protect a GI in their territory, many jurisdictions require that the GI already be protected in its country of origin. Once a GI is protected in its country of origin, it would be possible to seek its protection in other jurisdictions under the means of protection available in those jurisdictions. Contact your national intellectual property office to find out more.

- *By taking advantage of bilateral agreements concluded between countries:* Bilateral agreements are typically concluded between two countries on the basis of reciprocity. They may be limited to certain economic sectors or products, e.g. wine and spirit drinks, or form part of a wider trade agreement. Contact your national intellectual property office to find out more.

- *Through WIPO’s Lisbon System for the International Registration of Appellations of Origin:* The Lisbon System offers a means of obtaining protection for an appellation of origin already protected in one member state in the territories of all other members. This can be done through a single registration called “an international registration”. Find out more about the Lisbon System.

- *Through the Madrid System for the International Registration of Marks (i.e. as a collective or certification mark):* To avoid filing trademark applications in each and every country where protection is sought, it may be possible to file a single international application using WIPO’s Madrid System. Find out more about the Madrid System.

## **How can I search for geographical indications that have already been registered?**

There is no comprehensive way to search all geographical indications registered throughout the world.

You can, however, contact the relevant national intellectual property office, which may or may not offer a searchable database of GIs registered in their territory. A directory of IP offices is available on the WIPO website.

Also, you can consult WIPO’s Lisbon Express database to search GIs

registered under the Lisbon System.

## **How can I find the geographical indication laws of various countries?**

You can use the WIPO Lex search engine to browse the intellectual property (IP) laws of WIPO, WTO, and UN members. Just select the country(ies) you're interested in and choose "geographical indications" as a subject matter filter.

In addition, information on geographical indications may be provided by national or regional IP offices. A directory of IP offices is available on the WIPO website.

## **5.6. Geographical indications and business**

### **What are the advantages to my business of obtaining protection for a geographical indication?**

Protecting a geographical indication (GI) enables those who have the right to use the indication to take measures against others who use it without permission and benefit from its reputation ("free-riders"). A geographical indication's reputation is a valuable, collective, and intangible asset. If not protected, it could be used without restriction and its value diminished and eventually lost.

Protecting a GI is also a way to prevent registration of the indication as a trademark by a third party and to limit the risk of the indication becoming a generic term.

In general, GIs, backed up by solid business management, can bring with them:

- Competitive advantage
- More added value to a product
- Increased export opportunities
- A strengthened brand

### ***Laws and treaties***

A number of international treaties deal partly or entirely with the protection of geographical indications or appellations of origin. Below are links to relevant treaties administered by WIPO, as well as to the World Trade Organization's (WTO) Agreement on Trade Related Aspects of Intellectual

Property Rights (TRIPS).

*Relevant treaties administered by WIPO:*

- Paris Convention;
- Madrid Agreement for the Repression of False or Deceptive

Indications of Source on Goods;

- Lisbon Agreement;
- Madrid Agreement;
- Protocol Relating to the Madrid Agreement;
- Overview of the TRIPS Agreement on the WTO website.

### ***Paris Convention for the Protection of Industrial Property.***

*The Paris Convention, adopted in 1883, applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition. This international agreement was the first major step taken to help creators ensure that their intellectual works were protected in other countries.*

### ***Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods***

According to the Madrid Agreement, all goods bearing a false or deceptive indication of source, by which one of the Contracting States, or a place situated therein, is directly or indirectly indicated as being the country or place of origin, must be seized on importation, or such importation must be prohibited, or other actions and sanctions must be applied in connection with such importation.

### ***Lisbon Agreement for the Protection of Appellations of Origin and their International Registration***

The Lisbon Agreement provides for the protection of appellations of origin, that is, the “geographical denomination of a country, region, or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors”. The Bulletin “Appellations of Origin” is the official publication of the Lisbon system.

## ***Madrid Agreement Concerning the International Registration of Marks***

The Madrid System for the International Registration of Marks is governed by the Madrid Agreement, concluded in 1891, and the Protocol relating to that Agreement, concluded in 1989. The system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated Contracting Parties.

## ***Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks***

The Madrid System for the International Registration of Marks is governed by the Madrid Agreement, concluded in 1891, and the Protocol relating to that Agreement, concluded in 1989. The system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated Contracting Parties.

## ***Standing Committee (SCT)***

The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) is the forum where WIPO's member states discuss policy and legal issues relating to the international development of law and standards for geographical indications and appellations of origin.

## ***Geographical Indications for Development***



Peaches have held significance in Chinese culture for thousands of years

(Photo: Liz West)

**Background.** *Seventy kilometers northeast of Beijing is the Pinggu district, which bills itself as the biggest peach farm in the world. With a growing area of over 6,000 hectares and an annual output of 270 million kilograms of more than 200 varieties of peaches in four major categories in 2009, peach plantations in Pinggu stretch as far as the eye can see. As of 2010, China is the largest producer of peaches in the world, with an annual output of over eight million metric tons. Combined with China's long history of skillful cultivation and the unique geographical characteristics in which Pinggu peaches grow, they have become one of the most sought after peach types in the world. Providing employment for over 150,000 people, Pinggu peaches are also an important source of economic growth for the people in the region.*

**Goods with Specific Geographical Origin.** *Peaches originated in China and have been cultivated there for thousands of years. The peach tree has special significance in Chinese culture, with it being considered to be the "tree of life," and peaches are recognized as symbols of immortality and unity. Because of the Chinese people's long history of peach cultivation and the important role it plays in their culture, they are ever more adept at growing the world's finest peaches, which is clearly evident in the popularity and quality of Pinggu peaches. Many orchards in Pinggu have been around for hundreds of years, and growers have perfected techniques that capitalize on the geographical conditions of the region to make one of the most desirable kinds of peaches in the world.*

What sets Pinggu peaches apart from those cultivated in other regions are their beautiful colors, high sugar content, unique flavor and large size. These characteristics are a direct result of the unique geographical properties of Pinggu. With mountains on three sides and plains at its center, Pinggu's fresh air, low pollution, sandy soil, plentiful water supply and the marked difference between day and night temperatures make for ideal peach growing conditions. A growing Chinese economy brought increasing demand for Pinggu peaches, and by 2005 orchard owners were exporting them to over twenty provinces in China as well as foreign markets such as Brunei, the European Union, Russia Singapore and Thailand. The royal families of Brunei and Thailand are so partial to Pinggu peaches that they send their personal pickers to Pinggu each year to pick the best peaches.

The recognized quality resulting from unique geographical properties of Pinggu peaches mean that they can command a premium price. Zhang Yuan, a Pinggu orchard owner, pointed out that "In 2005, the price of peaches was about three to four Chinese Renminbi (RMB) per kilogram, but because we can

grow much better peaches with a large size and high sweetness, the wholesale price has risen to about five to ten RMB per kilogram.” By 2010, Pinggu peaches commanded prices in Beijing of between ten and twenty RMB per kilogram.

***Geographical Indications.*** *Because most Chinese farmers are small, disparate producers that lack the capital and know-how to create brand names or undertake mass production or operations, the use of a geographical indication (GI) give them a chance to share the added value of brand names without necessarily establishing their own. Li Yuquan, chairman of the Association of Scientific Research on Zhangqiu Scallion, states that “The registration and use of trademarks and geographical indications of feature produce has become a key tool in increasing farmers’ incomes and accelerating agricultural industrialization.” Mr. Yuquan maintains that farmers from across the nation are seeing solid benefits through registering their produce as GIs.*

The success of Pinggu peaches made possible by the region’s unique geographical properties prompted orchard owners and the government of Pinggu district to select Pinggu peaches as a candidate for registration as products of GI. Under Chinese law, GI registration is confined to a group, association or other organization, rather than an individual producer or trader. Such organizations must comprise of members who are native to the region that is specified by the GI. Therefore to register a GI for Pinggu peaches, orchard owners and the Pinggu government formed the Pinggu County Production and Distribution Service Center of Agricultural Products (PDSCAP). This alliance resulted in the Pinggu peach being the first agricultural product to have its GI registered in China in 2002. In 2007, China and the European Union (EU) signed an agreement aimed at protecting the GI status of certain agricultural products sold in each other’s markets. Ten products were chosen from China, and Pinggu peaches were among them.

***Commercialization.*** *The four main categories of Pinggu peaches sold include white peaches, flat peaches, yellow peaches and nectarines. Until PDSCAP was formed, commercialization of Pinggu peaches was mainly undertaken by the orchard owners and small enterprises, which totaled over 260 by 2009. Guo Lihong, an official with the Pinggu district Commission of Commerce, points out that after the Pinggu peach was registered as a GI product, the market value of the fruit increased greatly, both at home and abroad. To meet increased domestic demand, cut out the middlemen and shorten transportation from plantations to markets, Pinggu District set up twenty licensed wholesale outlets selling fresh Pinggu peaches in three major*



*communities in Beijing. An agreement reached with Tai Nai International Fruits Co., Ltd. (Tai Nai) of Beijing (a major fruit distributor, importer and exporter) in 2009 provided Tai Nai with its own orchard in Pinggu to directly supply the company's franchise stores with quality Pinggu peaches. To meet increased international demand, PDSCAP works with local orchard owners and companies such as Tai Nai to export and commercialize Pinggu peaches in major markets in Europe and Asia.*

***Business Results.*** *Registering Pinggu peaches as a GI has had a significant impact on the Pinggu region, its farmers and their families, and the reputation of fruit coming from China. The Pinggu government promoted the GI registration heavily both domestically and abroad. Following GI registration and the public relations campaign, the price of a Pinggu peach rose to a level thirty percent higher than others, while premium Pinggu peaches sell for double the price. Pinggu district exports over forty percent of China's fresh peaches, and in 2005 its peach sales hit RMB 420 million, earning each of the region's growers eighteen percent more than they did in 2004. As a result of the 2007 GI agreement with the EU, Pinggu peaches are now sold in over twenty-five countries in the EU for around five Euros each.*

***Fostering Economic Development with GI.*** *Registration of GI in China is a relatively new development, but it has already had significant positive results. Although Pinggu peaches were already well known and desirable, GI registration brought increased demand and a higher retail price for them, which in turn meant a better distribution of economic returns for producers. It has also increased the land value of the Pinggu region and has substantially helped the socio-economic development and sustainability of the region.*

## **Guranse Tea Estate Pvt. Ltd., Nepal**

Situated in the misty highlands in the Dhankuta District of the eastern part of the Federal Democratic Republic of Nepal (Nepal), the Guranse Tea Estate Pvt. Ltd (Guranse) was established in 1999 by the Vaidyas, a family of industrialists. High above Kathmandu – the capital of Nepal – and the picturesque Terai plains in the lowlands of the Himalayan Mountains, Guranse is a grower, producer and exporter of *finecamellia sinensis* (a plant species whose leaves and buds are used to produce tea).

With the support of the Vidya family, over six hundred local farmers, the Nepalese government and international partners, the producer has been able to establish a reputation for quality, enter the international market and compete successfully against established tea makers from around the world.



Sitting high above Kathmandu and the picturesque Terai plains in the lowlands of the Himalayan Mountains, Guranse is a grower, producer and exporter of fine *camellia sinensis* (pictured), a plant used to make tea (Photo: Flickr/Ola Waagen)

Subsequently, Guranse has improved its farmers' incomes and standard of living while marketing its high grade, aromatic teas to an international clientele in the Federal Republic of Germany (Germany), Japan and the United States of America (USA).

**Research and development.** Established and financed as a subsidiary of the Vaidya's Organization of Industries and Trading Houses (VOITH), an investment company in Nepal, the Guranse estate has gained a reputation for growing the finest "Nepalese Orthodox Tea" – or Orthodox Tea.

Orthodox Tea is a high grade variety of tea made by combining two fine plucked tea leaves and one bud (as opposed to CTC tea – or cut, tear, curl; a three stage process from which this machine made tea derives its name).

The Guranse tea garden has planted organic, young and vibrant clonal tea bushes (via a method of selective plant breeding for specific qualities such as a golden tipped leaf), which have been cultivated following years of extensive research and development (R&D) in collaboration with various organizations including the Specialty Tea Institute (STI).

The STI, whose membership includes Guranse, is a division of the Tea Association of the USA, Inc., a tea advisory and accreditation organization in the state of New York, USA.

Indeed, with the support of VOITH, STI and other partners, Guranse has been able to raise its tea gardens and factories to an internationally recognized standard for quality while ensuring the skill and economic future of its

managers and farmers.

One of the earliest developments by Guranse managers was the establishment of a state-of-the-art tea factory in 2003. Situated in Jabire, 18 kilometers (km) from Ilam town (a hilly area in the East of Nepal), the Mai-Ilam Guranse Tea Estate Industries Pvt. Ltd (Mai-Ilam Guranse) has had the capacity to produce 1,200 kilograms (kg) of tea annually.



Guranse gardens are located at an altitude of between 1,000m to 2,200m above sea level in the eastern park of Dhankuta region, making it one of highest tea gardens in the world (Photo: Flickr/Mike Behnken)

Designed by an expert on tea manufacturing who had extensive experience in renowned tea-houses in the neighboring Republic of India (India), the spacious, purpose-built factory is the epitome of precision and efficiency.

Clean and well organized (delivery trucks have to enter a sanitation ford to cleanse the tires, while visitors and workers have to wear protective footwear before entry), the factory represents the hub of the Guranse tea production process.

**Goods with specific geographical origin.** Tea growing culture in Nepal can trace its roots to 19th century tea farming practices and crops derived from neighboring countries such as India and the People's Republic of China (PRC). In addition to its long heritage, the country's geography and weather have been important factors giving Nepalese tea a particular taste and aroma.

Home to the Himalayas and some of the world's tallest mountains, including part of Mt. Everest (*Sagarmatha*, in Nepalese), Nepal is generally

classified into three geographical regions: the mountains, the hills (representing 70% of the country) and the plains. The country has distinct bedrock, geology, climate and hydrological characteristics. Moreover, only 20% of the country's lands, which lie mainly in the plains and hills of the districts of Ilam, Taplejung, Panchthar and Dhankuta, are arable.

Although the eastern hills are often rugged and require extensive irrigation and terracing, 10% of this area represents some of the most fertile, rain-rich and arable soil in the country. The Ilam district, for instance, has an average of between 1,500 millimeters (mm) to 1,800 mm of rainfall annually.

Guranse gardens are located at altitude of between 1,000m to 2,200m above sea level – in scenic gardens spanning 290 hectares (940 acres) – in the eastern part of Dhankuta region, making it one of the highest tea gardens in the world. The estate is ideally placed for tea production and it produces a rich *muscatel* flavored tea (from Muscat, a kind of grape whose flavor is suggestive of certain types of tea) with excellent aromas and a unique taste.

These tastes, in addition, are based on several local factors: the specifically warm and humid weather conditions; the particular acidity of the soil surrounding the Himalayan mountain range; the medium-fermenting techniques for processing the leaves (which transform green leaves into black tea leaves); and, the estate manager's strategic decision to plant organic and vibrant Chinese origin tea bushes (or *camellia sinensis*, as opposed to Indian originated tea plants, or *camellia assamica*).

Such plants are grown in the shade of a tea nursery for a year before being transplanted into gardens where they are exposed to the fullness of Nepalese weather and soil which is rich in moisture and nutriment. Indeed, the weather of the Himalayan mountain range – a variable that directly affects the taste of Guranse teas – is one of the most important aspects of the region. The year is divided between a dry (October to May) and wet (June to September) season with temperatures ranging from -2°C in higher attitudes in January to 40°C in May in the Terai.

This unique climate provides for four main seasons (or “flushes”) of the year that are ideal for producing high-grade teas. Tea harvesting at the estate consequently begins in March (called the spring flush), continues in June (the summer flush), August (the Monsoon flush) and culminates in November (the Autumnal flush) of each year.



In addition to its long tea-growing heritage, the country's geography and weather have been important factors giving Nepalese tea a particular taste and aroma.

Mt. Everest (pictured) In Nepal (Photo: Flickr/Rupert Taylor-Price)

Each season's harvest produces distinctly flavored tea. First flush harvested leaves are young and produce a light tea of intense muscatel with a sharp edge. Second flush tea, moreover, are more matured and produce a bright and well-rounded muscatel flavor. Monsoon harvest teas, furthermore, give an intensely flavored dark hued tea. Lastly, Autumnal teas, which are only harvested if the weather permits, usually provide a full, coppery taste.

Nepalese tea has become renowned for three kinds of high quality tea: (1) green tea made solely from the leaves of *camellia sinensis* (which is minimally oxidized or fermented); (2) white tea made from the young buds and leaves of *camellia sinensis* (which is allowed to wither under natural light then processed to prevent oxidization or further fermentation); and (3) black tea usually made of *camellia sinensis* (which is allowed to fully oxidize and is therefore stronger than other teas and contains more caffeine).

**Geographical indication.** Geographical Indication (GI) certification has been used by governments and agri-business in order to establish a strong, distinguishable and marketable reputation for certain producers and their goods based on their geographical location or farming tradition. With 86% of its 30 million inhabitants living in the countryside (2009 estimates, US Department of State) and agriculture providing 34% of GDP, Nepal's government and agri-businesses have sought ways to promote rural development and alleviate rural poverty in the country (55% of Nepalese live below the poverty line of US\$1.25 a day).

In order to establish a GI for Nepalese tea, the government of Nepal has worked with the country's tea growers and producers and international partners in three ways: (1) to incorporate cooperatives of farmers; (2) to frame the necessary domestic legislation for recognizing GIs and other intellectual property (IP) rights; (3) and, to establish tea governing bodies whose purpose is to support tea farmers.

Since the early 2000s, tea estates in Nepal have organized themselves into several cooperatives including the Himalayan Tea Producers Association (HOTPA, which was formed by Guranse and other hillside farmers). Working with HOTPA and other organizations, in 2010 the Nepalese government devised a new long term strategy for development called the Nepal Trade Integration Strategy (NTIS). Part of the NTIS initiative was the need to create the appropriate IP environment to facilitate economic progress.

Laws recognizing tea GIs would have to be enacted (by 2012), the government said, and IP laws within the country would have to be amended to take cognizance of other IP rights (IPRs) and related frameworks including collective marks and certification marks, traditional knowledge, establishment of databases for IPRs, fiscal incentives to encourage Nepalese firms to adopt IPRs, and establishment of an IP enforcement agency.

Motivated by the NTIS initiative, companies in Nepal have adopted various industry certifications such as International Organization for Standards (ISO), an industry lead standard to ensure product and procedural quality and safety. Other industry standards that are becoming popular in the country include Hazard Analysis and Critical Control Points (HACCP), a food safety system based on analysis of biological, chemical and physical dangers in all stages of the production and procurement process and Good Agricultural Practices (GAP), a locally defined, internationally recognized structure for safety practices in agricultural production.

Guranse has incorporated such certification marks and international standards into its tea growing processes. In so doing, the tea producer codified farming practices and made sure that its operations were fit for purpose and ready for a GI certification.

As of 2012, tea producers in the country, including Guranse, have awaited the enactment of a GI for Nepalese tea. With a GI registration, Guranse and other producers will be able to usher in a new dawn of professionalism and value added service. At the same time, they will be able to distinguish their products from those of rivals, confidently enter the international market with quality goods and improve the farming know-how, quality and standard of living of tea producers in the country.



Since the early 2000s, tea estates in Nepal have organized themselves into cooperatives including the Himalayan Tea Producers Association, which was formed by Guranse and other hillside farmers (Photo: Flickr/Romain Guy)

**Branding and commercialization.** After years of neglect, Nepali tea growers have become aware of the benefits of creating a brand image strategy that can be leveraged in order to enter a fiercely competitive and economically volatile global tea market. In 2003, for instance, Guranse representatives attended an STI symposium – the 15th Annual Conference and Exhibition (the Symposium) – that was held in conjunction with the Specialty Coffee Association of America. The Symposium offered seminars on “specialty tea” as a unique tea category with a niche market potential for Nepalese farmers. The event also featured training programs, attended by Guranse, which covered the fundamentals of how to source, brew and market specialty tea.

Moreover, during their stay in the USA, Guranse representatives were able to visit several businesses including tea salons and cafés, tea chain store buyers, gourmet outlets and other food-service organizations. Via such events, the tea estate was able to define its product development strategy, gain a firm understanding of its potential clients and customers and pave the way for future growth.

To reach new markets and win new customer, Guranse has focused on producing quality tea. Unlike many other gardens, Guranse farmers carefully fine pluck their teas in a precise fashion (by harvesting only the bud and the second and third leaves, hence the top grade Orthodox Tea) which provides for superior taste, compared to course plucked teas (where the bud and more than two leaves are plucked hurriedly and thus giving lower quality teas).

Moreover, HOTPA and other Nepali tea cooperatives have joined hands with internationally renowned personalities and other partners in order to create and market a new brand – called “Nepal Tea: Quality from the Himalayas”. Working with famous mountaineers who acted as the brand’s ambassadors (including an Italian climber, Reinhold Messner, who famously climbed all of the tallest peaks in Nepal), HOTPA and its partners (such as *Deutsche Gesellschaft für Internationale Zusammenarbeit*, GIZ, an organization for international development based in Germany) have created an internationally respected reputation for quality “Nepal Tea”.

In part due to this collaboration, “German investors are keen to visit Nepali gardens and more than a dozen of them will be visiting Ilam [...] to examine the potential of Nepali tea,” said Arun Rana, a consultant for GIZ.

Working with the German organization and others, moreover, Nepali tea producers, including Guranse, have created a separate brand called “Nepali Orthodox Tea” – a premium brand that was developed with the international market as the main target.



Nepali tea growers have become aware of the benefits of creating a brand image strategy that can be leveraged in order to enter a fiercely competitive global tea market (Photo: Flickr/Andre Hofmeister)

In addition, in 2005 HOTPA was able to augment its members’ brand image by devising a code of conduct (CoC) for its tea producers in collaboration with international partners such as the Japan International Cooperation Agency – an international development agency based in Japan.

In order to incorporate the CoC, the cooperative also worked with Winrock International (Winrock), a non-profit regeneration organization based in the USA; Helvetas, a development organization based in the Swiss



Federation; and local organizations including the Nepal Tree Crop Global Development Alliance, an entity founded in 2003 by the Nepali government in order to formulate tea related policies in the country.

HOTPA's CoC contained four core principles: (1) Respect for Nature (this required members to preserve biodiversity); (2) Respect for People (which demanded no child labor or gender discrimination); (3) Respect for the Production System (which required farmers to follow nationally and internationally approved production procedures); and, (4) Commitment to Quality (which urged consistent quality from producers).

Among the CoC's many positive innovations was the need to provide training for farmers. As a spokesperson for Guranse said, "We understood that quality could be better but farmers lacked knowledge. We selected farmers from seven tea-producing areas and put them through rigorous training. They went back and trained 10 more farmers from their villages and the multiplier effect was quite big."

Also entailed in the CoC is the requirement that gender inequality among farmers be eradicated. Although female workers in Nepal have traditionally been paid less than males in similar occupations (the minimum wage for male laborers in Nepal has been between 100-150 Nepal Rupees (Rs) and 80 Rs for women, in 2006), the CoC was intended to raise the status of women in Nepalese rural communities by putting them on equal pay footing with men.

Adopting a CoC has been a boost for the fortunes of Nepalese tea producers in other ways. Coupled with implementation of industrial certification standards, a requirement of the CoC, tea gardens in the country have branded themselves as modern organizations that are fit for purpose. The Mai-Ilam Guranse factory, for instance, has been (since 2001) ISO 9000:2000 certified by TUV Rhineland – an independent organization based in Germany that certifies products, equipment and processes.

The Guranse estate, moreover, is one of a handful of tea gardens in Nepal that is organic produce certified by several organizations including the National Association for Sustainable Agriculture, an organic certifier based in the Commonwealth of Australia (Australia).

With international standards at the core of its production and processing procedures, Guranse and other tea producers in Nepal are reaping the financial benefits – which include developing an entirely new income stream.

Quite apart from income directly derived from tea commercialization, tea tourism has become a potentially significant income generator for Nepalese tea managers and farmers and a major contributor to the success of tea branding and rural economic development in Nepal. Using the successful tea tourism

models of other areas such as Darjeeling (in the Republic of India – India), for inspiration, tea tourism manager at Guranse, Mr. KC Santosh said, “If we create the proper atmosphere, we can make five Darjeelings in Dhankuta and attract buyers and tourists at the same time.”

Indeed, the introduction of CoCs was a major turning point for many tea growers in Nepal. It was able to usher in a new dawn of professionalism and sense of purpose to an industry that had been neglected for many years due, in part, to political and socio-economic instability in the country.

The Guranse tea garden, meanwhile, has created and commercialized its own brands of tea that are manufactured in wooden chests weighing between 35 – 40 kg or, upon request, in smaller packages. There are several types of tea available from the producer including: Type Sample – Black Tea (TGBoP); Super Fine Tippy Golden Flowery Orange Pekoe (SFTGFOP); Golden Orange Fannings Type Sample (TGOF Fanning); and Type Sample – Black Tea (PD-Bust).

As of 2012, an influx of tourists have already visited tea gardens in Nepal where they can stay in specially made cottages or with farmers themselves, enjoy tea and explore the surrounding environment. In the same year, Nepal Tea, Nepal Orthodox Tea (or Orthodox Tea) and other tea brands from the country were traded at tea fairs or exported to a growing network of distributors and retailers in several countries around the world such as Australia, Austria, Denmark, France, Germany, Holland, India, Japan, Norway, the PRC, the UK and the USA.

**Environment.** The Nepalese government, its tea producers and international partners have prioritized environmental concerns, making sure that these issues are seared into the fabric of the country’s development strategy. Guranse, for example, is a member of the United Nations (UN) inspired “Global Compact” (GC) initiative, a policy framework calling on businesses around the world to align their operations with the 10 universally accepted principles in the realms of human rights, the environment, labor, and anti-corruption practices.

Derived from internationally agreed treaties such as the Universal Declaration of Human Rights, GC principles include the injunction that businesses are not complicit with human rights abuses or that organizations should support the use of environmentally friendly technologies.

In a 2009 letter (“Statement for the Continued Support for the Global Compact”) to the GC committee, Guranse’s president, Mr. Suraj Vaidya, said “We commit to making the Global Compact and its principles part of the strategy, culture and day-to-day operation of our company and undertake to

make a clear statement of this commitment – both to our employees, partners, clients and to the public.”

To this end, Guranse has sought ways to implement all elements of the GC into its CoC in a step-by-step process. To achieve its child labor eradication aims, for example, Guranse has provided funds for hiring two local teachers and for renovating the local school in an effort to ensure children in the area can go to school instead of staying at home or being employed to labor with parents on tea farms. By gaining an elementary education (rather than laboring), these children’s prospects for the future (such as entering higher education or seeking a variety of occupations other than manual work) would be opened.

Guranse, moreover, is committed to implementing environmentally friendly farming practices (as stated in its CoC). To this end, the company had, in 2009, used purely organic manure as fertilizer (therefore eschewing chemical pesticides and fertilizers) and created a microclimate on the farm by planting shade trees, shelter belts and tree avenues. The three latter measures ensure tea plants’ development while protecting other flora and fauna in the area, including native wild animals, plants and insects.

By using organic fertilizer, in addition, Guranse has been able to preserve the nitrate and nitrogen content of the soil and thereby maintain a sustainable environment for tea farming. Furthermore, land degradation and soil erosion has been a problem in Nepal (especially for hill-side farmers but also for plains dwellers) that has left some rural workers vulnerable to man-made hazards (such as a decline in soil nutrients) and natural disasters (including mud slides and floods).

By encouraging tea farming and establishing it as an alternative and viable economic pursuit (compared to increased livestock farming which puts pressure on the environment), rural migration has been better managed and hill side communities and their lands provided with an environmentally sustainable means of making a living. Because of the growth in tea farming “[Nepali farmers] could supplement local crops, like potato and maize, with tea,” said Mai-Ilam Guranse’s chief designer.

### **Business results**

Tea farming in Nepal has come a long way since a concerted and strategic effort for its development began in the early 2000s by the country’s government and producers in collaboration with international partners.

Through international marketing and branding campaigns, Nepal Tea and Nepal Orthodox Tea have become recognized premium brands retailing at 10,000 Rs per kg, its highest price on record.

Overall, the country produces 11,7 million kg of tea every year from estates employing 40,000 people planting over 15,000 hectares. Almost 2.0 million kg of the total tea produced is Orthodox Tea (the rest is CTC tea), and 70% of this premium tea is exported to India, France, Germany and the USA.

Tea tourists from the PRC, Japan, Sri Lanka, Switzerland and the USA, moreover, have visited several gardens in Nepal where they have interacted with farmers and stimulated the local economy.

Guranse, meanwhile, has seen its productions increased (the garden produced 1.5 million kg of tea in 2010), its international influence strengthened (the company participated in several trade fairs including the World Coffee and Tea Cup in Germany) and its profits increased to 10 million Rs (US\$ 142,000).

Because the Mai-Ilam Guranse factory has its own trading center, farmers have been able to sell tea and other crops at the site at a stabilized price, free of the price volatility and uncertainty of past years.

**Climbing the peaks of a tea mountain.** Having spent decades in the shadows of well-known tea gardens from India and other countries, the Nepalese tea industry has managed to break free into a new dawn. Through a branding and marketing strategy that included increased awareness and use of its human and natural resources, the industry has worked with government and international organizations to lay the groundwork for a comprehensive IP framework and (tea) promotion strategy.

Early supporters of this approach, including the Guranse tea estate, are already enjoying the benefits of professionally managed production processes using state-of-the-art equipment and relying on enthusiastic farmers and managers. Nepali tea is coming of age and is beginning to compete on the international market based on quality products and fair pay for producers premised on a fast developing IP framework.

# **OBJECTIVES FOR THE INDIVIDUAL SCIENTIFIC RESEARCH OBJECTIVES**

(Number of options to be chosen according to the number in journal)

## Option number 1

1. Intellectual property right as the result of creative activity.
2. Features marketing innovative products at different stages of their life cycle.
3. The research agreement.
4. Contracts accompanying technology transfer.

## Option number 2

1. The dual nature of intellectual property rights.
2. Selection stages of new ideas.
3. Policies and rules on intellectual property.
4. Types of infringements on intellectual property rights.

## Option number 3

1. Restrictions intellectual property rights.
2. The selection process ideas.
3. Raising awareness of the technology transfer office.
4. Prevention of abuse of rights to intellectual property rights.

## Option number 4

1. Implementation of intellectual property rights.
2. Technical Analysis competitor.
3. Key Success Factors implementation technology.
4. Monitoring violations of intellectual property rights.

## Option number 5

1. Classification of intellectual property.
2. The procedure for obtaining new ideas from external sources.
3. The processes of creation of intellectual property rights in scientific institutions of Ukraine.
4. The forms of intellectual property protection.

## Option number 6

1. Objects of copyright.
2. Objectives and prerequisites for generating new ideas.

3. Trends in the scientific potential of Ukraine.
4. Methods of protection of intellectual property.

#### Option number 7

1. Items related rights.
2. Analysis of trends generate ideas.
3. Management of Intellectual Property in higher educational institutions of Ukraine.
4. Protection of intellectual property rights under the agreement TRIPS.

#### Option number 8

1. The invention, utility model, industrial design.
2. Methods of expert assessments.
3. The problem of the distribution of rights to intellectual property rights in the management rights to research results.
4. The terms of validity of invention (utility model) for the acquisition of intellectual property rights in them.

#### Option number 9

1. The layout of integrated circuits.
2. multivariate analysis.
3. The role of intellectual property in business management.
4. The terms of validity of the industrial design for the acquisition of intellectual property rights to it.

#### Option number 10

1. plant varieties, animal breeds.
2. The need for and forecasting tasks.
3. The general approach to the formation of a portfolio of intellectual property.
4. Conditions of eligibility layout of integrated circuits for the acquisition of intellectual property rights.

#### Option number 11

1. Scientific discovery.
2. Basic methods of forecasting technologies.
3. Prevent the loss of trade secrets.
4. Registration of intellectual property rights for inventions, utility models, industrial designs, integrated circuit layout.

#### Option number 12

1. Innovative proposals.
2. Replacement Technologies.
3. Monitoring innovation companies - competitors.
4. The terms of validity of a plant variety for the acquisition of intellectual property rights to it and order registration of intellectual property for a plant variety.

#### Option number 13

1. Commercial secret.
2. The relationship of the stages of development of new products with patent research.
3. Creating a database of intellectual property.
4. Terms fitness brand for the acquisition of intellectual property rights to it.

#### Option number 14

1. Trademarks.
2. Patent research at the stage of finding new ideas.
3. Search for the analysis of firms - competitors.
4. The procedure for registration of intellectual property rights to the trademark.

#### Option number 15

1. Geographical indications.
2. Patent research at the stage of selection of ideas.
3. Search in order to establish product requirements of a particular species.
4. Conditions of eligibility geographical indication for the acquisition of intellectual property rights to it.

#### Option number 16

1. commercial name.
2. Patent research at the stage of new product concepts.
3. Inventory and accounting, intellectual property rights in the company.
4. The procedure for registration of intellectual property rights to geographical indications.

#### Option number 17

1. Subjects of the results of scientific - technical work.
2. Patent research at the stage of new product concepts.
3. Taxation of intellectual property rights.
4. Features of the acquisition of a computer program.

#### Option number 18

1. Subjects of copyright.
2. Patent research at the stage of concept process.
3. Objectives and regulatory - legal framework for assessing the value of rights to intellectual property rights.
4. Acquisition of the related rights.

#### Option number 19

1. Subjects related rights.
2. Patent research under development products.
3. Valuation of rights to objects of copyright.
4. The concept of intellectual capital and its structure.

#### Option number 20

1. Exercising its right to commercial designation.
2. Strategy of protection from competitors.
3. Valuation of license.
4. Management and marketing of intellectual property.

#### Option number 21

1. Evolution of the legislation on intellectual property in Ukraine.
2. The strategy to attack competitors.
3. Valuation of "human capital."
4. The purpose of valuation of the rights to intellectual property rights.

#### Option number 22

1. The current state of the law of Ukraine on intellectual property.
2. Strategy of the company's image.
3. Types of infringements on intellectual property rights.
4. Approaches to valuation of rights to intellectual property rights.

#### Option number 23

1. The state system of intellectual property protection.



2. Strategy optimize financial - economic activity.
3. Prevent violations of human n6a intellectual property rights.
4. Methods for assessing the value of rights to intellectual property rights.

#### Option number 24

1. The structure of the state system of intellectual property protection.
2. The definition phase, which should be made legal protection.
3. Tracking infringements of intellectual property rights.
4. Consistency valuation of rights to intellectual property rights.

#### Option number 25

1. International treaties on intellectual property.
2. Testing decision to legal protection.
3. The forms of intellectual property protection.
4. Examples valuation of rights to intellectual property rights.

#### Option number 26

1. The World Intellectual Property Organization.
2. assess the feasibility of legal protection.
3. Methods of protection of intellectual property.
4. The mechanism of commercialization of intellectual property.

#### Option number 27

1. The concept of intellectual property management.
2. assess the feasibility of a patent.
3. Protection of intellectual property rights under the agreement TRIPS.

#### Option number 28

1. Principles of intellectual property.
2. The choice between patent protection and secrecy.
3. Objects and subjects of technology transfer.
4. Actions defined infringements of intellectual property rights.

#### Option number 29

1. The life cycle of a new product.
2. The distribution of rights to intellectual property rights between the entities.
3. Pre-agreement.
4. jurisdictional form of protection of intellectual property rights.

Option number 30

1. The life cycle of intellectual property.
2. Increase understanding of the role of intellectual property in today's economy and the need to manage it.
3. The content of agreements on the transfer of rights to use intellectual property.
4. Criminal legal protection of intellectual property rights.

# QUESTIONS FOR INDEPENDENT WORKING STUDENTAMTY AND MORE CAREFULLY AND DEEPLY STUDY OF DISCIPLINE

1. The concept of intellectual property.
  2. intellectual property rights.
  3. Subjects of intellectual property rights.
  4. The system of legislation in the field of intellectual property.
  5. The legal framework of Ukraine in the field of intellectual property.
  6. The structure of the state system of intellectual property protection.
  7. Registration of Rights to intellectual property rights.
  8. The need for legal protection of intellectual property rights.
  9. The right to intellectual property rights - an important resource for business development.
  10. Acquisition of inventions and utility models.
  11. Options decisions concerning the legal protection of invention or utility model.
  12. The objects of the invention (utility model).
  13. Conditions for patentability of an invention (utility model) to provide legal protection.
  14. Procedure for patenting. The term of the patent. Early termination of the patent.
  15. The rights of the patent owner. Patenting abroad.
  16. The acquisition of industrial design and geographical indications.
- Items law.
17. The procedure for obtaining protection for industrial design.
  18. The procedure for registration and right to use the geographical indication.
  19. The acquisition of trademark rights.
  20. The value of the brand for the company.
  21. The need for protection of trademark rights.
  22. The procedure for obtaining protection for trademarks.
  23. The cost of acquiring the rights to the trademark. Term of protection.
  24. Protection of trade secrets.
  25. Protection of copyright and related rights.
  26. Copyright and Related Rights.
  27. Form of copyright protection. The term of protection of rights of authors.

28. Protection of related rights.
  29. The purpose and basic methods of commercialization.
  30. The use of intellectual property in its own production.
  31. The transfer (sale) of rights to intellectual property rights.
  32. Adding intellectual property to the charter capital of the company.
  33. Valuation of rights to intellectual property rights. Sequence evaluation.
  34. Examination of the assessment and evaluation of goal. The choice of approach to assessment and evaluation methods.
  35. Formulation of intellectual property accounting.
  36. The life cycle of IP rights.
  37. The Office of the subject of intellectual property rights during its creation.
  38. The Office of the subject of intellectual property rights during the acquisition.
  39. The Office of the subject of intellectual property rights during use.
  40. The Office of the subject of intellectual property rights protection on the stage.
  41. The need for protection. Actions recognized rights violation.
  42. the right holders in case of violation of his rights.
  43. Settlement of disputes administratively.
  44. Test mark as an effective way of protecting audiovisual production.
  45. The authorities which should apply in the case of offender rights to object of intellectual property.
  46. Contents of unfair competition.
  47. The need for protection from unfair competition.
  48. The acts of unfair competition. Types of acts of unfair competition.
  49. Actions that cause confusion. Misleading. Defamation of competitors.
- Disclosure of classified information.
50. Unlawful use of the achievements of another person.
  51. Comparative advertising.
  52. Other acts of unfair competition.

## TOPICS SUMMARY

Control of independent work goes through the preparation and defense of the abstract discipline. Actual control is the organizational form of presentations in which students demonstrate their ability to practically implement intellectual property rights.

1. The concept of intellectual property.
2. The evolution of intellectual property.
3. Place and role of intellectual property in economic and social development.
4. Objects of intellectual property rights.
5. Subjects of intellectual property rights.
6. The system of sources of legislation in the field of intellectual property.
7. The state system of intellectual property protection.
8. International cooperation in the field of intellectual property.
9. Acquisition of intellectual property rights to the results of scientific and technical creativity.
10. Acquisition of intellectual property rights to commercial designation.
11. The emergence of (acquisition) of rights to objects of copyright and related rights.
12. Intellectual property as a component of intellectual capital.
13. Intellectual property system in economic activity.
14. Valuation of rights to intellectual property rights.
15. Mechanism commercialization of intellectual property.
16. The disposal of intellectual property rights.
17. The concept of intellectual property protection.
18. The actions recognized violations of intellectual property rights.
19. The forms of intellectual property protection.
20. Ways to protect intellectual property rights.
21. Intellectual Property Management.
22. Marketing of intellectual property.
23. The concept of intellectual property rights.
24. intellectual property rights.
25. Subjects of intellectual property rights.
26. The system of legislation in the field of intellectual property.
27. The legal framework of Ukraine in the field of intellectual property.
28. The structure of the state system of intellectual property protection.

29. Registration of Rights to intellectual property rights.
  30. The need for legal protection of intellectual property rights.
  31. The right to intellectual property rights - an important resource for business development.
  32. Acquisition of inventions and utility models.
  33. Options decisions concerning the legal protection of invention or utility model.
  34. The objects of the invention (utility model).
  35. Conditions of patentability of an invention (utility model) to provide legal protection.
  36. Procedure for patenting. The term of the patent. Early termination of the patent.
  37. The rights of the patent owner. Patenting abroad.
  38. The acquisition of industrial design and geographical indications.
- Items law.
39. The procedure for obtaining protection for industrial design.
  40. The procedure for registration and right to use the geographical indication.
  41. The acquisition of trademark rights.
  42. The value of the brand for the company.
  43. The need for protection of trademark rights.
  44. The procedure for obtaining protection for trademarks.
  45. The cost of acquiring the rights to the trademark. Term of protection.
  46. Protection of trade secrets.
  47. Protection of copyright and related rights.
  48. Copyright and Related Rights.
  49. Form of copyright protection. The term of protection of rights of authors.
  50. Protection of related rights.
  51. The purpose and basic methods of commercialization.
  52. The use of intellectual property in its own production.
  53. The transfer (sale) of rights to intellectual property rights.
  54. Adding intellectual property to the charter capital of the company.
  55. Valuation of rights to intellectual property rights. Sequence evaluation.
  56. Examination of the assessment and evaluation of goal. The choice of approach to assessment and evaluation methods.
  57. Formulation of intellectual property accounting.
  58. The life cycle of IP rights.

59. The Office of the subject of intellectual property rights during its creation.

60. The Office of the subject of intellectual property rights during the acquisition.

61. The Office of the subject of intellectual property rights during use.

62. The Office of the subject of intellectual property rights protection on the stage.

63. The need for protection. Actions recognized rights violation.

64. the right holders in case of violation of his rights.

65. Settlement of disputes administratively.

66. Test mark as an effective way of protecting audiovisual production.

67. The authorities which should apply in the case of offender rights to object of intellectual property.

68. Contents of unfair competition.

69. The need for protection from unfair competition.

70. The acts of unfair competition. Types of acts of unfair competition.

71. Actions that cause confusion. Misleading. Defamation of competitors.

Disclosure of classified information.

72. Unlawful use of the achievements of another person.

73. Comparative advertising.

74. Other acts of unfair competition.

75. Types of patent documents. The content of patent documents.

76. International Patent Classification.

77. Information retrieval systems and traditional patent search.

78. Methods and tools for search, collection and storage of scientific and technical information.

79. The method of the patent research technical level examination for patentability infringement.

80. Foreign and domestic patent database. Computer network of patent databases.

# TEACHING METHODS

In studying the discipline “Intellectual property”, the following methods of organizing and implementing teaching and learning of both verbal (conversation, explanation, lecture), visual (presentation), practical (practical assignments, essays, individual tasks).

Conversation – dialogical method of teaching in which the teacher successfully with the help of the questions encourage students to play previously acquired knowledge to make independent conclusions, generalizations based on actual material learned.

Explanation – verbal interpretation of concepts, events, words, terms, principles of action, examples and more. Its main task – opening of causality and the laws of nature, society and human thinking. Since the material can be explained in different ways or logical methods of reasoning.

The explanation may be inductive, deductive, traduktyvnyy. Induction - way of reasoning in which the conclusion are based on the analysis of certain facts. Inductive explanation provides the ability to transition from single facts to general provisions.

Deduction – reasoning method in which partial conclusion is only logical way of general provisions.

Lecture – the main form of instruction on theoretical material. Lecture – informative presentation of evidence of large volume, complex logical for the construction of educational material. Different severity of presentation. Lecturing provides thorough training instructor: defining objectives, drawing up a clear plan, selection of theoretical and visual aids, logical and consistent presentation of information. For the purpose of the lecture is divided into: entrance (give an overview of the objectives, content discipline, revealing the structure and logic of a particular science, promote the development of student interest in the subject for its creative learning); Theme (disclosure devote specific topics of the curriculum); Review (the main task is to promote good relationship and continuity between theoretical knowledge and practical abilities and skills of students.

The purpose of the lecture is:

- set out to students under the program and work plan of the main issues of intellectual property, paying most attention to the necessity and possibility of their use in practical professional activities;

- form students integrated system of theoretical knowledge course “Intellectual Property”.

The method of illustration – equipment illustrations static (fixed)



visibility, posters, drawings, paintings, maps, charts and others.

Method demonstration – showing the moving means visibility, equipment, experiments, technical installations and more.

Practical work – students use knowledge in situations close to life.

Workshop – form of instruction in which the teacher organizes detailed study of definite theoretical propositions discipline and skills of their practical application through individual performance according to defined objectives.

The main objective practical training course "Intellectual property - of students' knowledge assessment appropriateness of the legal protection of intellectual property rights, distribution rights for intellectual property rights between the entities, forming a portfolio of intellectual property in the company, monitoring innovation competing companies; the ability to implement patent search to assess the patentability of technical solutions; solving problems with the valuation of rights to intellectual property rights; evaluation of economic efficiency of innovative projects; determine the forms and methods of protection of intellectual property.

The task of the workshops:

- to acquire the necessary knowledge about the objects and subjects of intellectual property rights, current state legislation of Ukraine about intellectual property and the basic principles of intellectual property;

- learn to find and generate new ideas, analyze the main methods of forecasting technologies;

- strategies to use the legal protection of the results of research and development work;

- explore the trends of the scientific potential of Ukraine;

- study the information support of intellectual property;

- to carry out valuation of rights to intellectual property rights.

Independent work of students is an integral component of the discipline "Intellectual Property", its content is determined by the working curriculum, teaching materials, tasks and instructions of the teacher. Independent work on discipline for students may include: elaboration of theoretical foundations listened lectures; studying specific topics or issues that provided for self-study; homework.

## CONTROL METHODS

Evaluation of knowledge on the subject “Intellectual property” is held by the rating system. Overall rating of the course is 100 points. The total number of points between the types of control is as follows:

- 1st module (part 1) – 40 points (20 points assessed current work on student learning module, up to 20 points are measured on the test results of the module);

- 2nd module (part 2) – 35 points (20 points assessed current work on student learning module, up to 15 points are measured on the test results of the module);

- scientific, creative work of students (LDCs) estimated additional teacher in the rating evaluation (8 points);

- permanent visiting lectures and practical sessions (8 points).

Determination of the number of points for the current work, the final work on the module, for scientific, creative work of the student.

1. The number of points – 90-100%.

Knowledge: Student finds mastering all the material:

- understanding of knowledge, revealing the material provides the main provisions reveals causal, functional and other communications;

- fluent conceptual apparatus;

- actively uses are recommended to study the sources of knowledge (source, articles, manuals, etc.);

- demonstrate knowledge of factual material reveals his own attitude to the studied material;

- is able to give a reasoned assessment of the phenomenon, fact, theory, etc.

- presentation demonstrates a culture of knowledge: logical sequence of presentation, a clear formulation of ideas, language and speech literate.

Skills, fluent and skills of practical application of knowledge; performs practical tasks confidently and accurately, avoiding errors.

2. The number of points – 76-89%.

Knowledge: the student knows the entire story:

- the answers does not allow serious mistakes easily corrects some inaccuracies with additional questions of the teacher;

- meet without difficulty the questions of the teacher;

- answers using knowledge gleaned from additional sources recommended;

- quality of knowledge and form of presentation of evidence of a

sufficient level of assimilation, which guarantees their ability to practical use.

Skills, skills, abilities and skills has a practical application of theoretical knowledge (under the program); performs practical tasks with minor errors that are easy fixes.

3. The number of points – 76-100% indicate a high level of mastery of the basic concepts of course, profound assimilation of facts, examples and generalizations that follow from them. Typically, such a number of points indicates a high level of cognitive thinking skills and particular.

4. The number of points – 60-75%.

Knowledge: the main program material learned:

- the student knows the basic concepts of the training course and their definition;

- knowledge are at the level of ideas, combined with elements of scientific concepts;

- self-reproduction of knowledge is difficult, requiring additional and clarifying questions of the teacher;

- favors reproductive nature;

- has difficulty in answering the modified question;

- reveals an overwhelming capacity for reproductive activities;

- presentation of the culture of knowledge is low.

Skills, skills, abilities and has skills in solving most common practical problems with errors.

5. The number of points – 30-59%.

Knowledge: most of the program material is not digested:

- the student has some understanding of the course material;

- responses admits blunders.

Skills, skills, no.

6. The number of points – 0-29%.

Knowledge: complete ignorance of educational material.

Skills, skills, no.

For exam need to get 75 points or more.

Passed automatically billed to the student, who speaks of categories-conceptual apparatus; meaningful knowledge, reveals a high level of learning; actively uses are recommended to study the sources of knowledge (articles, tutorials); reveals his own attitude to the studied material; able to assess theories, facts, events; has the abilities and skills of practical application of theoretical knowledge, practical tasks properly perform confidently, accurately. During the period of study of the discipline came from 90 to 100 points.

## GLOSSARIES

*The author* – a natural person whose creative work created work.

*Copyright* – section of civil law that regulates legal relations arising from creation and use of science, literature and art.

*Copyright powers.* The creators have copyright works, consisting of separate copyright powers. Together copyright powers are subjective copyright on the work. Copyright owners can spread it to another person or entity, which thus becomes the successor. In this case, the copyright holder remains so, but gives entitlement to another person to use all or part of its rights to possible restrictions.

*Appeals board* – collegial body of the Office for complaints, disputes in the Office decision on issuance of protection of intellectual property rights and other issues within its competence.

*Analogue* – an object close to the technical nature, purpose or function object to the claimed invention and known from the prior art. When choosing analogues should be guided by the totality of its similarity to a set of attributes signs invention. The closest analogue called "prototype".

*Associative sign* – a trademark that is identical (similar) or similar to trademarks already registered the same person in respect of similar goods and (or) services. The result of the registration mark is impossible associative transfer of such a sign to others because of the likelihood of confusion based on the similarity.

*Audiovisual work* – work that is fixed at a particular physical medium (film, magnetic tape or magnetic disk, CD, etc.) as a series of successive frames (images) or analog or digital signals, reflecting (encoding) moving images (both with sound support, and without it), the perception of which is possible only through a particular type of screen (cinema, television screen, etc.) on which moving images visually with the help of certain technical tools.

*The database (compiling data)* – a set of works, data or any other independent information in any form, including – electronic, selection and arrangement of the components of which and its arrangement is the result of

creative work, and the components of which are available individually and can be found using a special search engine based on electronic computer) or other means.

*Bibliographic description of the patent document* – a set of bibliographic data of patent documents listed according to the rules established by relevant regulatory and technical documents necessary and sufficient for the overall performance, identify and search for the document.

*Types of works* – independent and captive. In the original form of independent works. Captive works are of two kinds: original (translations, processing, annotations, abstracts, summaries, reviews, staging, arrangements and other alterations of works of science, literature and art) and collections (encyclopedias, anthologies, databases and other composite works that for selection and a material is the result of creative work). Derivative works are protected by copyright, regardless of whether the objects of copyright works on which they are based or which they include.

*Recognition of copyright and related rights* – a way of civil protection of copyrights that occurs when a person presence copyright or related rights is questioned or denied is a real threat of such action. Recognition of rights as a means to protect it essentially can be realized only jurisdiction in order, not by making certain independent plaintiff unilateral action. In most cases, the requirement for recognition of copyright or related rights is a prerequisite for the use of other statutory means of protection.

*Exclusive rights* – rights that attach to those who has to carry out certain actions by law, which can not make the other person without the consent of the copyright owner.

*Use free* – the use of work resulting from the restrictions of copyright, free use of works in certain circumstances without obtaining permission, but under the conditions established by law, which are mainly related to the use and protection of the moral rights of the author. Free to use information primarily motivated by objectives or needs of education, science and culture.

*Compensation* – payments by persons who use the products of authors, execution of works, phonograms and radioteleperedachi in favor of authors, performers, producers of phonograms and broadcasting organizations and other

interested holders to the extent to which their rights are protected on the appropriate use. Remuneration may consist of a single payments (the so-called “full compensation” or “one-time benefit”) for certain uses.

*The invention* – a solution utilitarian tasks in any industry or other socially useful field of human activity that meets certain conditions legislation providing legal protection and recognized as an invention competent public authority.

*The inventor* – an individual whose creative work created invention.

*Inventive step* – the criterion of patentability of the invention that characterizes its non-obvious to the average professional in this particular area of expertise.

*Videogram producer* – a natural or legal person who has taken the initiative and is responsible for the first video performance or any moving images (both with sound and without it).

*Receiving office* – National patent office or intergovernmental organization to which the international application is filed.

*Play* – making one or more copies of a work, videogram, phonogram in any material form, as well as their entry for the temporary or permanent storage in an electronic (including digital), optical or other forms that can read computer.

*Alienation rights* – provide the authorized state body permission to use the patented object of intellectual property without the consent of the owner of protection, but with payment of appropriate compensation. Under the current legislation Ukraine such permission is granted by the Cabinet of Ministers of Ukraine. Permission may be granted to any legal person that is able to use the facility, which provided legal protection based on the public interest and the interests of national security of Ukraine in terms of non-exclusive licenses. Disputes concerning the terms of authorization and payment of compensation and its amount settled by the courts.

*Owner of protection* – a person (natural or legal) whose name issued protective document or its successor.

*The copyright and (or) related rights* – the author or performer, when property rights vested author or performer; the other, but not an author or performer, person or entity in cases where proprietary rights initially endowed with such natural or legal person who alienated property rights.

*WIPO* (World intellectual property organization, 1967) – the international body subordinated to the United Nations, whose main purpose is to promote the protection of intellectual property throughout the world and to help achieve the advantages and benefits that are all WIPO member states on the intellectual property system.

*Geographical location* – any geographical object with formally defined boundaries, including: country, region as part of the country, town, district and so on.

*The priority date of the object of industrial property* – the date to be taken into account in determining the championship in acquiring rights to industrial property. The priority date can be set for the date of application for the grant of protection to the national patent office or the appropriate authority of the party to Paris Convention for the protection of industrial property, if this application is not claimed convention or exhibition priority.

*Deposit manuscript* – the transfer of highly specialized work mainly in the form of typewritten original to the preservation of libraries and information centers to inform professionals about their presence and give copies to study. Deposition of manuscripts practiced in cases where it is impractical to propagate conventional printing methods, and to supplement the information assets and (or) as evidence of authorship and of the fact and date of writing.

*State scientific and technical expertise* – legally regulated research process which aims to test the stated patentability of industrial property, carried out the examination institute – institution authorized state institution (enterprise, organization) for review and examination of applications.

*The state system of intellectual property protection* – and the office of expertise, scientific, educational, informational and other state institutions of relevant specialization that are managed by the office.

*Sources of copyright* – a different legal acts of state bodies which are legal norms governing the relations on the creation and use of works of literature, science and art. Depending on the validity of acts containing norms of copyright, copyright sources are divided into the following groups: acts of public authorities; acts of local government; international acts.

*Good practice* – rules governing the admissibility of free use of works by illustrating educational purposes. As required by the Berne Convention for best practices should not conflict with a normal exploitation of the work and avoid unnecessary damage to the legitimate interests of the author.

*Examination of the application* – check application documents for compliance with the requirements established by law.

*Formal examination of an application* – research (analysis) application materials to check the availability of necessary documents, whether the applicant has established requirements for and consideration of the question of whether the alleged offer to facilities, which receive legal protection.

*Examination of a local novelty* – part of the qualifying examination, establishing a local novelty of the invention.

*Electronic application* – a proposal submitted to the Office in electronic form by computer networks using the Internet – technologies. Submission of electronic applications launched in a number of developed countries, but still needs to address a number of legal organizational and technical problems. In the future, electronic filing of applications has become the most convenient and common form of the submission of the application and other documents from the applicant.

*Known mark* – a mark that as a result of using a well-known wide range of consumers. According to Article 6vis Paris Convention for the Protection of Industrial Property all members of that Convention are obliged to provide protection on its territory signs that by the competent (administrative or judicial) authority of the country of registration or use acquired the status of known marks in relation to identical or similar goods and (or) services. The registration of a trademark, which is a reproduction, imitation or translation of the well-known mark, reject or identify invalid. The use of the mark, which can lead to confusion with the well-known mark.



*Public information* – the information contained in the sources of information, which any person can read or learn the content of which may legally.

*The end of the term of protection.* After the expiration of the term of protection works are public domain and can be freely used for free by anyone. If the work is in the public domain, copyright on it is lost forever.

*The patented industrial design* – industrial design for which patent issued.

*Protection of copyright and related rights.* For the protection of their copyright or related rights holders apply in the prescribed manner to the court and other bodies under their jurisdiction. Rights holders have the right to demand: the definition of copyright or related rights; cessation of actions infringing copyright and related rights or threaten their violation; damages, including lost profits; recovery of income earned by the infringer owing to infringement of copyright and related rights, instead of compensation; compensation, as determined by the court, instead of damages or collection of income considering the merits offense; take further stipulated by legislative acts of measures related to the protection of copyright and related rights.

*Data protection* – a set of organizational and technical measures and regulations to prevent prejudice to the interests of the owner or the automated information system and those who use information, including as a result of misuse or damage data. In connection with the creation of digital libraries of intellectual property within the WIPO standing committee on information technology, a working group on information security, which will consider the issue of security in automated systems provided access to global information via the Internet.

*Protection of property rights* – is the use of legal means to eliminate or prevent the violation of this right. Provides standards of different areas - civil, labor, administrative, patent. Any unauthorized use of the object protected is a violation of human rights of the owner of industrial property. At the request of the owner of such violations should be suspended and the offender must pay damages to the owner, including not received income. Require remedy can also be the person acquiring the license, unless otherwise provided in the license agreement. Protection of rights is carried out in accordance with legislation or administrative court. In case of a violation of the offender may be subject to

disciplinary, civil, administrative or even criminal liability.

*Application* – a collection of documents drawn up in accordance with the applicable legislation submitted to the office for the grant of protection.

*Applicant* – a natural or legal person applying for the grant of protection for industrial property.

*The transfer of rights.* The transfer of copyright in different countries governed by different branches of law: civil, commercial and more. Freedom of contract gives rise to all sorts of problems and the corresponding diversity of their decision. In fact, in many countries, freedom of contract to some extent limited by certain rules set by the collecting societies. Typically, the contract concluded on transfer of rights in any form at will of the parties. It can be verbal, but in some countries necessarily required written form. Some laws required registration of contracts. Some legal copyright laws contain specific provisions on the rights and obligations of the parties under the agreements for different types of use.

*Star copyright protection.* The owner exclusive rights to notify their rights may use the copyright protection sign that is placed on each copy consists of three elements: Latin letter “C” encircled; the name (title) of the owner of an exclusive copyright; the year of the first publication of the work.

*Marks related rights.* Executive producers of phonograms and for notification of their rights may use related rights protection sign that is placed on each copy of the phonogram and (or) its package consists of three elements: Latin letter “R”, encircled; the name (title) of the owner of exclusive related rights; the year of the first publication of the work.

*Intellectual property in the broadest sense means securing legal rights to the results of human intellectual activity in the industrial, scientific, literary, artistic and other areas.* These rights do not belong to the material object and the displayed information in it. As for the property in the form of movable and immovable property and intellectual property are some restrictions, such as limiting the term of copyright and protection documents (patents, certificates). Intellectual property and industrial property combines works protected by copyright.

*Information rights management* – information, including electronic (digital) form that identifies the object of copyright and (or) related rights and author or another person who is the object copyright and (or) related rights, or information about the conditions of use of copyright and (or) related rights, or any numbers or codes that have provided such information, when any of these items of information is attached to a copy of the object of copyright and (or) related rights or placed in his or appears in connection with his message to the public.

*Information as a commodity* – information products and services of citizens and legal entities in the information sphere; may be subject to commodity relations regulated by law.

*A collective mark* – a trademark which serves to designate goods (services) that have common characteristics and quality produced (provided) by enterprises linked to the economic and legal organizational or legal terms.

*Collective management of copyright and related rights* – control system, under which these entities specially created broadcast rights organizations to conduct negotiations to conclude agreements on the conditions of operation works, performances and phonograms authors of different categories of users, right permits and monitoring such use , collecting appropriate remuneration and its distribution between copyright and related rights, the right to perform other powers to ensure implementation of personal (moral) and proprietary rights of copyright and related rights.

*Commercial secret* – information that is secret in the sense that it generally or in a particular form and the aggregate of its components is unknown and is not easily accessible to persons usually dealing with the type of information to which it belongs, in connection ‘connection with it has commercial value and has been subject to the circumstances of adequate measures to preserve its secrecy taken by a person legally controlling the information.

*Convention* – an international treaty (agreement) with any specific issues (eg, the protection of literary and artistic works).

*Competition* – competition entrepreneurs when their independent actions limit the ability of each to influence the general conditions of sale of goods in

the market and stimulate the production of those goods required by the consumer.

*Unfair competition* – any actions of economic entities that are contrary to the rules and fair customs in business.

*Counterfeiting* – forgery; infringement of copyright and (or) related rights as a result of reproduction and distribution of someone else's work, infringement of the exclusive right of the patentee, unauthorized use of trademarks, typically products that have proven so. Regarding visual recordings, phonograms or duplicates, the production of counterfeit copies can also be a violation of the relevant related rights. These copies are usually subject to confiscation.

*Utility model* – the result of human intellectual activity in the field of technology related to the design using the device. Utility models differ from inventions, mainly in two aspects: first, for the utility model is not required inventive step, and secondly, the maximum term of protection provided by law, less than the term of protection of inventions.

*Criminal legal way to protect* – criminal liability for intellectual property infringement occurs if the holder inflicted material damage on a large scale or a large scale.

*Literary work* – any original written work of fiction, scientific, technical or practical regardless of value or destination.

*Property rights* – subjective rights of relationships associated with the possession, use and disposal of property, as well as with the material requirements that arise over the distribution of property and exchange. Property rights – the right owner, the person who has the right of economic management of property, rights and obligations (eg damages), author's remuneration, inheritance rights. Property rights may arise from actions and other legal facts stipulated by civil legislation, as well as actions which, although not required by law but on the basis of general principles and substance of civil law give rise to civil rights and obligations. The basic property rights of authors of inventions, utility models, industrial designs, topographies of integrated circuits and innovations are entitled to compensation.

*The international application* – an application filed under the international treaty.

*International searching authority* – a body that conducts an international search on the international application under the Patent Cooperation Treaty (PCT).

*International classification for industrial designs* (Locarno, 1968) – adopted on the basis of a two-tier Locarno Agreement (Class-class) classification of products intended for classification in the design, examination and registration of declared or recognized as industrial designs.

*Scientific discovery* – the establishment of laws, properties and phenomena of the material world.

*Uncertain circle of people* – those who are the essence of the object of industrial property may become known not for their official activities.

*Innocent infringement of exclusive rights* – a violation in which the perpetrator did not know and had no reason to know that it violates the exclusive rights to work, soundtrack and more. This violation occurs without awareness. The burden of proof rests on innocent infringement defendant.

*Moral rights* – rights of the subjective relationships that have no economic content, provide some intangible interests of persons belonging to the category of absolute rights.

*Indirect protection* – a statutory rule in some countries, according to which the validity of a patent granted for a method of obtaining the product extends to the product directly obtained by this method.

*Novelty* – patentability criteria, defined by a set of knowledge, so-called “prior art”. Addressing recognize new job if it is not part of the art.

*Novelty local* – meaning that disclosure facility, claimed unacceptable in one state, namely, countries patenting.

*Of intellectual property* – literary and artistic works, computer programs, compilations of data (databases), performance, phonogram, videogram,

transmission (program) broadcasting organizations, scientific discoveries, inventions, utility models, industrial designs, layout (topographies) of integrated circuits, innovations, plant varieties, animal breeds, commercial (corporate) names, trademarks (goods and services), geographical indications, trade secrets.

*Items that are not protected by copyright.* It is not subject to copyright: official documents (laws, regulations, decisions, etc.), as well as their official translations; official symbols and signs (flags, emblems, orders, banknotes, etc.), works of folk art; news of the day or the reporting of current events that constitute regular information; results obtained by technical means intended for the production of a certain kind, without the implementation of creative activities directly aimed at creating individual works.

*Objects protected by copyright.* National laws and international conventions protecting works of literature, science and art. Guarded scientific works meant to protect their “literary” or “artistic” form, not actual scientific ideas. Circle these works is very wide and national laws defining them in very broad terms. These common definitions often accompanied model list works.

*The scope of legal protection.* Under the current legislation of Ukraine the amount of legal protection is defined by:

- for the invention (utility model) – invention (utility model);
- for industrial design – a set of attributes of the design, shown in the photographs of the product (the layout drawing);
- for plant variety - the description of the variety;
- for the topography of IP – IP topography image on a physical medium.

*Disclosure (public disclosure) work* – the implementation of the consent of the author or other copyright and (or) related rights of action for the first time makes the work available to the public by publication, public performance, public display, public display, public broadcasting and so on.

*Published work* – work that is assigned permission of the author and copies of which were made available to the public.

*The publication of the work, phonogram, videogram* – the release into circulation with the consent of the author or other copyright and (or) related rights made print, electronic or other means of copies of a work, phonogram,

videogram in an amount capable of satisfy, given the nature of the work , phonogram or videogram, the reasonable requirements of the public through their sales, renting property lease, home or commercial rental, making available to them through electronic information systems so that any person can get it from any place and at – what time of their choice, or transfer of ownership or possession of them in other ways. The publication of the work, phonogram, videogram also means depositing a manuscript of a work, phonogram, videogram in storage (depository) with open access and the possibility of obtaining a copy of it (copies) of a work, phonogram, videogram.

*Organization broadcasting* – TV and radio broadcasting radio or television transmissions and programs (both own production and production of other organizations) by broadcasting via radio waves (and laser rays, gamma rays, etc.) at any which frequency band (including by satellite).

*Organization of cable broadcasting* – TV and radio broadcasting radio or television transmissions and programs (both own production and production of other organizations) through remote transmission signal using a particular type of surface, underground and underwater cable (conductor, optovoloknystoho or other).

*Originality* – this author’s own work, not copied in whole or mainly from other work. Originality should not be confused with novelty. The existence of similar work previously unknown author, does not affect the original independent creation. If the original work is originality in the individual method of processing a pre-existing work.

*The basic property rights.* The author has the exclusive right to authorize certain actions concerning works protected and are divided into two main categories: the right of reproduction and the right to publication.

*Moral rights of performers.* Regardless of the economic rights of performers and even in case of transfer of performer about his unrecorded oral performances or performances fixed in phonograms or videograms may request to be recognized as the performer of his performances, except where the failure of the law dictated way of using execution and denial against any distortion, mutilation or other changes in their performances that may harm his reputation.

*Individual rights* – rights granted to protect the interests belonging to the

individual. These rights are indirectly related requirements authors or performers for the use of their works or performances.

*Official patent bulletin* – is an official publication of the patent office, which includes the publication of the law on industrial property rights under national patent legislation or international agreements on the protection of industrial property.

*Official acts of a legislative, administrative or legal nature* – this legislation, court orders and other decisions of the authorities; norms and standards relating to industrial products and various services; Resolution of administrative bodies and their official translations; official acts are not protected by copyright.

*Protecting databases (compilations of data)*. The database (data compilation) or other information or ordering through the selection of its contents constitute intellectual creative activity protected by copyright. Protection does not extend to the actual data or information and not to any copyright that already exists in the data or information.

*Security software*. Computer programs in the source code or the objective are protected like the protection afforded to literary works under the Berne Convention (1971).

*Privacy names work*. In case the title has original character, she is protected by copyright. Even if the work is no longer protected, no one can use the name to refer to other works of the same kind if such use may be misleading.

*Health translations*. Translation is based on the original work. His goal - to pass as closely as possible the original text in a foreign language. To perform this task required special skills and knowledge not only used two languages, but also the subject of translation. Copyright interpreter does not affect the rights of the original author. To use the translation must obtain the consent of both authors – original work and translation.

*The security document* – a document that provides legal protection of intellectual property.



*Paris convention* (1883) – Paris convention for the protection of industrial property. The international agreement that provides for the general principles of the protection of industrial property, which is open to any states. The basic principles of industrial property is the principle of national treatment principle and priority. Ukraine participates in the Paris convention of 25.12.1991 p.

*The patent* – a protective legal and technical document issued by the competent public authority (State Department of Intellectual Property) and what the government certifies the exclusive right of the owner to set up his industrial property (invention, utility model, industrial design, plant variety). This legal document establishes as the owner of the patent rights by law. However, a technical document, since it gives a technical description of the object. A patent certifies on behalf of the state:

- stated that the offer is subject oboronospromozhnym;
- Eestablishing authorship rights to the object;
- determination of ownership of the object;
- determination of priority on the object.

*Letters patent* – the official registration form for the patent. Letters patent issued in one instance regardless of the number of patent holders.

*Patent documentation* – a set of patent documents.

*Patent information* – any information contained in patent documents.

*Novelty* – legal property of the object technology, is the ability to use it in the country without violating operating in its territory the exclusive right of protection.

*Patent attorney* – a representative for intellectual property, which allows individuals and corporations support services related to the protection of intellectual property represents their interests before the office and the judicial authorities, credit institutions, in relation to other natural and legal persons.

*Patent foundation* – an ordered collection of patent documents and reference search engine to it, as well as regulatory and other instructional materials for the protection of industrial property.

*Patent* – the person or entity that owns the patent for industrial property.

*Patentability* – a complex of measures for protection of the following industrial property: inventions, utility models, industrial designs, plant varieties.

*Patenting* – a complex of measures for protection of the following industrial property: inventions, utility models, industrial marks, plant varieties.

*Transfer (assignment) of copyright.* The property rights of the author may be alienated in whole or in part and may be transferred for use by the author's contract.

*Transfer of ownership and copyright.* It is necessary to distinguish between actions for the transfer of ownership and action to transfer copyright. When an author gives to another person or entity a copy of his book, he passes only ownership of the copy, but not copyrights.

*Transfer of use.* The right to use the work can be transferred only with the consent of the author. The author can not without good reason to refuse such consent.

*Piracy* – the reproduction of published works or phonograms in any way for public dissemination and radioteleperedach retransmission without authorization.

*Plagiarism* – unauthorized borrowing, playing a strange literary, artistic or scientific work (or part thereof) under his own name or a pseudonym, is incompatible with both creative work and rules of morality and law that protects the copyright. Plagiarism is punishable by law.

*The plaintiff* – the person filing the claim; party complained or filed suit in civil proceedings.

*The lawsuit* – filed in court or arbitration of claims arising from the proper plaintiff rights under the contract or other statutory grounds.

*The concept of copyright.* Copyright in the objective sense is the body of law governing relations on the creation and use of works of literature, science

and art. Copyright in the subjective sense – these are moral and property rights belonging to individuals who have created works of literature, science and art.

*Encroachment on work* – all forms Efficiency product or its use harmful to the artistic value of the work or the reputation of its author. Such actions are in violation of moral rights.

*The original work* – work that is creative processing of other existing work without compromising its protection (annotation, adaptation, arrangement, processing folklore, other processing work) or a creative translation into another language. Derivative works shall not include audiovisual works obtained by dubbing, subtitling, Ukrainian or other languages other audiovisual works.

*Origin of goods* – goods belonging to a place from which they come, that place of production, extraction or processing. The origin of goods can be geographic and non-geographic. In particular, the geographical origin - a country, region or specific area and non-geographic origin - is directly related (belonging to a particular product manufacturer (company) that it manufactures, produces or processes.

*The rights of the author.* According to the legal copyright law all existing components of copyright related aspects or different ways of using the product. They define the actions on which the holder must be protected. In exercising these rights, he can use the work himself or give that permission to others. In addition to property and personal non-property rights, there are also rights belonging to both these categories, such as the right to processing and translation, reflecting the moral interests related to the integrity of the original work and property interests related to the use of modified work forms.

*Afterusing of rights* – the right to free use within a specified territory invention if its use began or made necessary preparations for its use during the period of suspension of the patent to this place. If appropriate annual fee for maintaining the patent is not paid on time or within the grace period, the patent lapse since the end of the grace period. But when late payment fee was inevitable, that took place with the independent patent reasons, the patent may be considered valid. The patent, action which saved due to payment of a fee after the grace period does not limit the rights of individuals or their successors, who produced, sold or used in its business activities the object

protected by patent, after the grace period, but the actual payment of the fee. The right to receive pilyakorystuvannya persons who during this period have significant production or preparation of investment-related industrial development of the protected object.

*The right of prior use.* Under the current legislation of Ukraine the right of prior use – the right of any person or entity which prior to the date of filing the patent office or, if priority is claimed, before the priority date for the benefit of their activities in good faith used or made the necessary arrangements for the use of the claimed invention, utility model, industrial design to free the continuation of such use or to use, provided the said training. The right of prior use may be transferred to any person with the enterprise or business practice or that part of the enterprise or business practices, which have been used or declared in respect of which the object was made considerable and serious preparation for such use.

*Succession* – a transfer of rights and obligations from one person to another.

*Priority* – championship time in carrying out any activity.

*The program* – a set of live performance and (or) records, consisting of images and (or) sounds, embodied in signals emitted and for further distribution.

*Industrial property* – a kind of intellectual property rights covering such industrial property like inventions, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition.

*Industrial applicability* – the ability of the invention to be applied in industrial production.

*Industrial design* – the result of human creativity in the field of artistic design.

*Prototype* – is next on substantial grounds to subject matter counterpart, known from the prior art. When choosing a prototype with several unique take into account the essential features that match or are close to features of the

object of the invention, and the technical result of the use of both facilities. Signs prototype used in the preparation of claims, which they defined together with generic features of the invention.

*Public performance* – filing the consent of copyright and (or) related rights works, performances, phonograms and broadcasts of broadcasting organizations by recitation, playing, singing, dancing and otherwise directly (live performance) and by any -yakyh devices and processes (except broadcast or cable) in areas that are or may be present persons who do not belong to the circle of family or close friends of the family, regardless of whether they are present in one place at the same time or in different places and at different times.

*The public display* any demonstration of the original or copy of a work, performance, phonogram, videogram, broadcasting organization's transmission with the consent of copyright and (or) related rights, or directly on the screen using film, slide, television frame, etc. (except broadcast or cable) or with other devices or processes in places that are or may be present persons who do not belong to the circle of family or close friends of the family of the person who carries the show, regardless of whether they are present in the same place at the same time or in different places and at different times. Public display of an audiovisual work or a videogram also means demonstration of individual frames of an audiovisual work or a videogram without observance of their sequence.

*The innovative proposal* – a proposal that is new and useful to enterprises, organizations, institutions, ministries, departments to which it is filed, and requires modification or improvement: design choice; production technology; of material.

*Register* – the State Register of relevant patents (certificates) of intellectual property.

*Registration* – state registration of intellectual property rights.

*Background* – modern stage of development of a particular field of technology, which compared new invention. Claims for recognition of the invention or utility model patentability must submit a new dimension that takes them beyond the currently known scientific and technical knowledge.

*Employer* – a person who has hired an employee under an employment agreement (contract).

*Distribution of copyright and (or) related rights* – any act by which objects of copyright and (or) related rights directly or indirectly available to the public, including proof of these objects known to the public such so that its representatives can access them from any place and at any time of their choice.

*Development* – now use the results of research and other knowledge for planning and design of new or significantly improved materials, devices, products, processes, systems or services before the start of their mass production or use.

*The manuscript* – the original copy of a work written in the form in which the author recorded. In a broader sense manuscript is sometimes seen as a category opposed to instances of written work published, containing all copies of the original unpublished.

*Secret invention (secret utility model)* – an invention (utility model) containing information classified as state secret.

*Call invention* – an invention created in line of duty or on behalf of an employer-inventor.

*Distortions work* – any changes made to the product that distort the true meaning or form of its expression and a violation of moral and property rights.

*Related rights.* Along with the protection of the rights of authors of works of science, literature and art of national laws protecting the rights of performers, phonogram and videogram producers and broadcasting organizations (related rights). The essential feature of most of them is related rights pohidnist and dependence on the rights of authors works only when executed, written by human authors works. Only when executed, recorded on the soundtrack, videohramu transmitted or broadcast or cable work that is not protected by law, or an object that is not the result of creative activity, related rights have an independent character. Protection of objects of related rights shall be without prejudice protection of copyright works. Subjects related rights are as authors the exclusive right to use their facilities in any form.

*An intellectual property rights* – the founder (founders) of the intellectual property rights (author, artist, inventor, etc.) and others who are moral and (or) intellectual property rights under the Civil Code of Ukraine or other law or agreement.

*Public domain* – works and objects of related rights, copyright and (or) related rights which expired.

*Term of protection* – the statutory period of legal protection of intellectual property.

*Security technology* – technical equipment and (or) technological developments designed to create a technological obstacle to the infringement of copyright and (or) related rights in the perception and (or) copy-protected (encrypted) recordings in phonograms (videograms) and broadcasts of broadcasting organizations or for access control to the use of copyright and related rights.

*Product* – the product of (including work, services, and securities), intended for implementation.

*Trademark* – is any designation, including the combination of symbols designed and suitable for distinguishing goods and services of one person from the goods and services of others. These signs may be words, including personal names, letters, numerals, figurative elements, combinations of colors, volume and voice tags as well as any combination of such signs and so on.

Ukrpatent (state enterprise “Ukrainian institute of industrial property”) – the authorized state body for review and examination of applications.

*Conditions of patentability* – conditions under which industrial property may acquire legal protection. The invention – if it is new, involves an inventive step and is industrially applicable. For utility model – if it is new and industrially applicable. For industrial design – if it is new. For a variety of plants – if the display of signs generated by a particular genotype or combination of genotypes to some, it is new are the essential, uniform and stable.

*Intellectual property management* – activity that aims to get the final

result – profit or other benefit through the creation and use of intellectual property rights in all sectors of the economy.

*The institution* – central executive body on intellectual property protection (Ministry of education, youth and sports of Ukraine).

*Phonogram* – sound recording on the appropriate medium (tape or magnetic disk, gramophone record, CD, etc.) performance or any sounds other than in the form of sound recording that is part of an audiovisual work. Phonogram is the starting material for the manufacture of copies (copies).

*The form or mode of expression of the work* – the method by which the possible perception of a work, such as performance, recitation, fixing, creating material forms and more.

*The formula in the patent application or patent* – patent claims, a brief description that contains a set of essential features of an invention (utility model) that is sufficient to achieve the said applicant technical result. The formula used to determine the scope of legal protection provided by the patent.

*Civil legal way to protect rights* – legislation provided substantive measures of coercion through which the recognition or restoration of violated or disputed rights and interests of authors, copyright and related rights or owners of them, stop violations and property impact on offenders. The main purpose of civil liability – compensation for damage.