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**PATENT**

A patent is a document, issued, upon application, by a government office (or a regional office acting for several countries), which describes an invention and creates a legal situation in which the patented invention can normally only be exploited (manufactured, used, sold, imported) with the authorization of the owner of the patent. “Invention” means a solution to a specific problem in the field of technology. An invention may relate to a product or a process. The protection conferred by the patent is limited in time (generally 20 years).

Patents are frequently referred to as “monopolies”, but a patent does not give the right to the inventor or the owner of a patented invention to make, use or sell anything. The effects of the grant of a patent are that the patented invention may not be exploited in the country by persons other than the owner of the patent unless the owner agrees to such exploitation. Thus, while the owner is not given a statutory right to practice his invention, he is given a statutory right to prevent others from commercially exploiting his invention, which is frequently referred to as a right to exclude others from making, using or selling the invention. The right to take action against any person exploiting the patented invention in the country without his agreement constitutes the patent owner’s most important right, since it permits him to derive the material benefits to which he is entitled as a reward for his intellectual effort and work, and compensation for the expenses which his research and experimentation leading to the invention have entailed.

Conditions of Patentability:

An invention must meet several criteria if it is to be eligible for patent protection. These include, most significantly, that the invention must consist of patentable subject matter, the invention must be industrially applicable (useful), it must be new (novel), it must exhibit a sufficient “inventive step” (be non-obvious), and the disclosure of the invention in the patent application must meet certain standards.

Patentable Subject Matter

In order to be eligible for patent protection, an invention must fall within the scope of patentable subject matter. Patentable subject matter is established by statute, and is usually defined in terms of the exceptions to patentability. The general rule being that patent protection shall be available for inventions in all fields of technology.

Subject matter which may be excluded from patentability includes the following. Examples of fields of technology which may be excluded from the scope of patentable subject matter includes the following:

- discoveries of materials or substances already existing in nature;

- scientific theories or mathematical methods;

- plants and animals other than microorganisms, and essentially biological processes for the production of plants and animals, other than non-biological and microbiological processes;

- schemes, rules or methods, such as those for doing business, performing purely mental acts or playing games;

- methods of treatment for humans or animals, or diagnostic methods practiced on humans or animals (but not products for use in such methods).

The TRIPS Agreement further specifies that Members may exclude from patent protection certain kinds of inventions, for instance inventions the commercial exploitation of which would contravene public order or morality.

Industrial Applicability (Utility)

An invention, in order to be patentable, must be of a kind which can be applied for practical purposes not purely theoretical. If the invention is intended to be a product or part of a product, it should be possible to make that product. And if the invention is intended to be a process or part of a process, it should be possible to carry that process out or “use” it (the general term) in practice.

“Applicability” and “industrial applicability” are expressions reflecting, respectively, the possibility of making and manufacturing in practice, and that of carrying out or using in practice.

The term “industrial” should be considered in its broadest sense, including any kind of industry. In common language, an “industrial” activity means a technical activity on a certain scale, and the “industrial” applicability of an invention means the application (making use) of an invention by technical means on a certain scale. National and regional laws and practices concerning the industrial applicability requirement vary significantly. At one end of the spectrum, the requirement of industrial applicability is met as long as the claimed invention can be made in industry without taking into account the use of the invention. At the other end of the spectrum, the “usefulness” of the claimed invention is taken into account for the determination of the industrial applicability. On the other hand, some countries do not require industrial applicability, but utility

Novelty

Novelty is a fundamental requirement in any examination as to substance and is an undisputed condition of patentability. It must be emphasized, however, that novelty is not something which can be proved or established; only its absence can be proved.

An invention is new if it is not anticipated by the prior art. “Prior art” is, in general, all the knowledge that existed prior to the relevant filing or priority date of a patent application, whether it existed by way of written or oral disclosure. The question of what should constitute “prior art” at a given time is one which has been the subject of some debate.

One viewpoint is that the determination of prior art should be made against a background of what is known only in the protecting country. This would exclude knowledge from other countries, if it was not imported into the country before the making of the invention, even if that knowledge was available abroad before the date of the making of the invention.

Another viewpoint is based on the differentiation between printed publications and other disclosures such as oral disclosures and prior use, and where such publications or disclosures occurred.

The disclosure of an invention so that it becomes part of the prior art may take place in three ways, namely:

- by a description of the invention in a published writing or publication in other form;

- by a description of the invention in spoken words uttered in public, such a disclosure being called an oral disclosure;

- by the use of the invention in public, or by putting the public in a position that enables any member of the public to use it, such a disclosure being a “disclosure by use.”

Publication in tangible form requires that there be some physical carrier for the information, a document in the broad sense of the term, and that document must have been published, that is to say, made available to the public in any manner such as by offering for sale or deposit in a public collection. Publications include issued patents or published patent applications, writings (whether they be manuscript, typescript, or printed matter), pictures including photographs, drawings or films, and recording, whether they be discs or tapes in either spoken or coded language. Today, publication on the Internet must increasingly be taken into consideration.

Oral disclosure, as the expression suggests, implies that the words or form of the disclosure are not necessarily recorded as such and includes lectures and radio broadcasts.

Disclosure by use is essentially a public, visual disclosure such as by display, sale, demonstration, unrecorded television broadcasts and actual public use.

A document will only destroy the novelty of any invention claimed if the subject matter is explicitly contained in the document. The subject matter set forth in a claim of an application under examination is thus compared element by element with the contents of each individual publication.

Lack of novelty can only be found if the publication by itself contains all the characteristics of that claim, that is, if it anticipates the subject matter of the claim.

**COPYRIGHT**

Copyright law is a branch of that part of the law which deals with the rights of intellectual creators. Copyright law deals with particular forms of creativity, concerned primarily with mass communication. It is concerned also with virtually all forms and methods of public communication, not only printed publications but also such matters as sound and television broadcasting, films for public exhibition in cinemas, etc. and even computerized systems for the storage and retrieval of information.

Copyright deals with the rights of intellectual creators in their creation. Most works, for example books, paintings or drawings, exist only once they are embodied in a physical object. But some of them exist without embodiment in a physical object. For example music or poems are works even if they are not, or even before they are, written down by a musical notation or words.

Rights Comprised in Copyright

The owner of copyright in a protected work may use the work as he wishes—but not without regard to the legally recognized rights and interests of others—and may exclude others from using it without his authorization.

Therefore, the rights bestowed by law on the owner of copyright in a protected work are frequently described as “exclusive rights” to authorize others to use the protected work.

The original authors of works protected by copyright also have “moral rights”, in addition to their exclusive rights of an economic character.

What is meant by “using” a work protected by copyright? Most copyright laws define the acts in relation to a work which cannot be performed by persons other than the copyright owner without the authorization of the copyright owner.

Such acts, requiring the authorization of the copyright owner, normally are the following: copying or reproducing the work; performing the work in public; making a sound recording of the work; making a motion picture of the work; broadcasting the work; translating the work; adapting the work.

Right of Reproduction and Related Rights

The right of the owner of copyright to prevent others from making copies of his works is the most basic right under copyright. For example, the making of copies of a protected work is the act performed by a publisher who wishes to distribute copies of a text-based work to the public, whether in the form of printed copies or digital media such as CD-ROMs. Likewise, the right of a phonogram producer to manufacture and distribute compact discs (CDs) containing recorded performances of musical works is based, in part, on the authorization given by the composers of such works to reproduce their compositions in the recording. Therefore, the right to control the act of reproduction is the legal basis for many forms of exploitation of protected works.

Other rights are recognized in national laws in order to ensure that the basic right of reproduction is respected. For example, some laws include a right to authorize distribution of copies of works. The right of distribution is usually subject to exhaustion upon first sale or other transfer of ownership of a particular copy, which means that, after the copyright owner has sold or otherwise transferred ownership of a particular copy of a work, the owner of that copy may dispose of it without the copyright owner’s further permission, for example, by giving it away or even by reselling it. Another right which is achieving wider and wider recognition, including in the TRIPS

Agreement (see chapter 5, paragraph 5.241), is the right to authorize rental of copies of certain categories of works, such as musical works included in phonograms, audiovisual works, and computer programs. The right of rental is justified because technological advances have made it very easy to copy these types of works; experience in some countries has shown that copies were made by customers of rental shops, and therefore, that the right to control rental practices was necessary in order to prevent abuse of the copyright owner’s right of reproduction. Finally, some copyright laws include a right to control importation of copies as a means of preventing erosion of the principle of territoriality of copyright; that is the legitimate economic interests of the copyright owner would be endangered if he could not exercise the rights of reproduction and distribution on a territorial basis.

Performing Rights

Another act requiring authorization is the act of public performance—for example, public readings, dramatic and musical performances before an audience. The right to control this act of public performance is of interest not only to the owners of copyright in works originally designed for public performance, but also to the owners of copyright, and to persons authorized by them, when others may wish to arrange the public performance of works originally intended to be used by being reproduced and published. For example, a work written originally in a particular way in order to be read at home or in a library may be transformed (“adapted”) into a drama designed to be performed in public on the stage of a theater.

Recording Rights

The third act to be examined is the act of making a sound recording of a work protected by copyright. So far as music is concerned, sound recording is the most favored means of communicating a work to a wide public. This serves much the same purpose for musical works as books serve for literary works.

Sound recordings can incorporate music alone, words alone or both music and words. The right to authorize the making of a sound recording belongs to the owner of the copyright in the music and also to the owner of the copyright in the words. If the two owners are different, then, in the case of a sound recording incorporating both music and words, the maker of the sound recording must obtain the authorization of both owners.

Under the laws of some countries, the maker of a sound recording must also obtain the authorization of the performers who play the music and who sing or recite the words. This is another example of the fact that the owner of copyright in a work cannot use it or authorize the use of it in a way which is contrary to the legal rights of others.

Limitations on Copyright Protection:

Temporal

Copyright does not continue indefinitely. The law provides for a period of time, a duration, during which the rights of the copyright owner exist.

The period or duration of copyright begins with the creation of the work. The period or duration continues until after the death of the author. The purpose of this provision in the law is to enable the author’s successors to have economic benefits after the author’s death. It also safeguards the investments made in the production and dissemination of works.

In countries which are party to the Berne Convention, and in many other countries, the duration of copyright provided for by national law is the life of the author and not less than fifty years after the death of the author. In recent years, a tendency has emerged towards lengthening the term of protection.

Geographic

The second limitation or exception to be examined is a geographical limitation. The owner of the copyright in a work is protected by the law of a country against acts restricted by copyright which are done in that country. For protection against such acts done in another country, he must refer to the law of that other country. If both countries are members of one of the international conventions on copyright, the practical problems arising from this geographical limitation are very much eased.

Permitted Use

Certain acts normally restricted by copyright may, in circumstances specified in the law, be without the authorization of the copyright owner. Some examples of such exceptions are described as “fair use.” Such examples include reproduction of a work exclusively for the personal and private use of the person who makes the reproduction; another example is the making of quotations from a protected work, provided that the source of the quotation, including the name of the author, is mentioned and that the extent of the quotation is compatible with fair practice.

Non-Material Works

In some countries, works are excluded from protection if they are not fixed in some material form. In some countries, the texts of laws and of decisions of courts and administrative bodies are excluded from copyright protection. It is to be noted that in some other countries such official texts are not excluded from copyright protection; the government is the owner of copyright in such works, and exercises those rights in accordance with the public interest.

Miscellaneous

In addition to exceptions based on the principle of “fair use” other exceptions are to be found in national laws and in the Berne Convention. For example, when the broadcasting of a work has been authorized, many national laws permit the broadcasting organization to make a temporary recording of the work for the purposes of broadcasting, even if no specific authorization of the act of recording has been given. The laws of some countries permit the broadcasting of protected works without authorization, provided that fair remuneration is paid to the owner of copyright. This system, under which a right to remuneration can be substituted for the exclusive right to authorize a particular act, is frequently called a system of “compulsory licenses.” Such licenses are called “compulsory” because they result from the operation of law and not from the exercise of the exclusive right of the copyright owner to authorize particular acts.

**TRADEMARK**

A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors. This definition comprises two aspects, which are sometimes referred to as the different functions of the trademark, but which are, however, interdependent and for all practical purposes should always be looked at together.

In order to individualize a product for the consumer, the trademark must indicate its source.

This does not mean that it must inform the consumer of the actual person who has manufactured the product or even the one who is trading in it. It is sufficient that the consumer can trust in a given enterprise, not necessarily known to him, being responsible for the product sold under the trademark.

Signs which May Serve as Trademarks:

If we adhere strictly to the principle that the sign must serve to distinguish the goods of a given enterprise from those of others, the following types and categories of signs can be imagined:

- Words: This category includes company names, surnames, forenames, geographical names and any other words or sets of words, whether invented or not, and slogans.

- Letters and Numerals: Examples are one or more letters, one or more numerals or any combination thereof.

- Devices: This category includes fancy devices, drawings and symbols and also two dimensional representations of goods or containers.

- Combinations of any of those listed above, including logotypes and labels.

- Colored Marks: This category includes words, devices and any combinations thereof in color, as well as color combinations and color as such.

- Three-Dimensional Signs: A typical category of three-dimensional signs is the shape of the goods or their packaging. However, other three-dimensional signs such as the three pointed Mercedes star can serve as a trademark.

- Audible Signs (Sound Marks): Two typical categories of sound marks can be distinguished, namely those that can be transcribed in musical notes or other symbols and others (e.g. the cry of an animal).

- Olfactory Marks (Smell Marks): Imagine that a company sells its goods (e.g. writing paper) with a certain fragrance and the consumer becomes accustomed to recognizing the goods by their smell.

- Other (Invisible) Signs: Examples of these are signs recognized by touch.

Criteria of Protect ability

The requirements which a sign must fulfill in order to serve as a trademark are reasonably standard throughout the world. Generally speaking, two different kinds of requirement are to be distinguished.

The first kind of requirement relates to the basic function of a trademark, namely, its function to distinguish the products or services of one enterprise from the products or services of other enterprises. From that function it follows that a trademark must be distinguishable among different products.

The second kind of requirement relates to the possible harmful effects of a trademark if it has a misleading character or if it violates public order or morality.

These two kinds of requirement exist in practically all national trademark laws. They also appear in Article 6quinquies B of the Paris Convention where it is stated that trademarks enjoying protection under Article 6quinquies A may be denied registration only if “they are devoid of any distinctive character” or if “they are contrary to morality or public order and, in particular, of such a nature as to deceive the public.”

**TRADE SECRET**

A trade secret is defined as any information that is:

(1) not generally known to the relevant business circles or to the public;

(2) confers some sort of economic benefit on its owner. This benefit must derive specifically from the fact that it is not generally known, and not just from the value of the information itself; and

(3) the subject of reasonable efforts to maintain its secrecy.

A trade secret continues for as long as the information is maintained as a trade secret.

Anything that is easily and completely disclosed by the mere inspection of a product put on the market cannot be a trade secret.

**Type of information that could be a trade secret**

Virtually any type of information may qualify as a trade secret

(1) A trade secret may consist of information relating to a formula, pattern, device or other compilation of information that is used for a considerable period of time in a business.

(2) Often, a trade secret is technical information used in the manufacturing process for production of goods.

(3) A trade secret may relate to marketing, export or sales strategies, or a method of bookkeeping or other business management routines or procedures, including software used for various business purposes.

Other examples of potential trade secrets may include technical, scientific or financial information, such as business plans, business processes, list of key customers, list of reliable or special suppliers, product specifications, product characteristics, purchase prices of key raw materials, test data, technical drawing or sketches, engineering specifications, proprietary recipes, formulas.

**Challenges and limitations of trade secret protection**

A trade secret cannot be protected against being discovered by fair and honest means, such as by independent invention or reverse engineering.

If a person not having legal access to the trade secret information, deciphers the information without taking recourse to any illegal means, such as by reverse engineering or as by independent invention, then such a person cannot be stopped from using the information so discovered. Under these types of circumstances, the owner of a trade secret cannot take any legal action against the other person.

Advantages of trade secret protection

1. Trade secrets involve no registration costs;

2. Trade secret protection does not require disclosure or registration;

3. Trade secret protection is not limited in time;

4. Trade secrets have immediate effect.

In the case of inventions that may be patentable the disadvantages of protecting such inventions as trade secrets.

1. The secret embodied in an innovative product may be discovered through “reverse engineering” and be legitimately used.

2. Trade secret protection only protects you against improper acquisition, use or disclosure of the confidential information.

3. A trade secret is difficult to enforce, as the level of protection is considerably weaker than for patents.

4. Another person may patent someone’s trade secret if he has developed the same invention by legitimate means.