THE LAW OF INTELLECTUAL PROPERTY
INDUSTRIAL PROPERTY AND COPYRIGHT LAW

A GENERAL INTRODUCTORY COURSE

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SUMMARY

This document contains suggestions for a curriculum on the teaching of intellectual property law. The suggestions were initially prepared for the meeting of the International Association for the Advancement of Teaching and Research in Intellectual Property, held in Geneva, in 1984.

This introductory course has been prepared for and held at the National University of Lesotho at the request of Professor Umesh Kumar, Dean of the Faculty, as part of his course on "Legal Aspects of Economic Development" during two weeks in April, 1984. The emphasis is on industrial property and, in particular, the law of patents for inventions. The importance of intellectual property protection for developing countries as well as special problems of these countries are discussed extensively at each chapter. The presentation of the law is based on a broad comparative law approach including the main legal systems and typical solutions in national, regional, and international legislation.

FIRST PART: Intellectual Property. General Introduction

I. The Notion of Intellectual Property

1. The definition in Art.2 (VIII) WIPO Convention: Protection of intellectual creations and activities in the industrial, scientific, literary, and artistic fields.

2. Historical and theoretical background: propriété industrielle, littéraire et artistique.

II. Intellectual Property as a Legal Instrument of Promoting Technical, Economic and Cultural Development and Exchange

III. The Main Fields of Intellectual Property:

1. Industrial property law: patents, utility models, plant varieties, scientific discoveries, industrial designs, trademarks, trade names, appellations of origin, indications of source, other distinctive signs, protection against unfair competition.

2. Copyright law and neighbouring rights: protection of authors of literary, artistic and scientific works. Protection of performing artists, producers of phono- and videograms, broadcasting organizations.

IV. Common Features

1. Immaterial character of intellectual property

2. International character of intellectual property rights

3. The principle of territoriality, National and international protection. Regional cooperation

V. The Present National Law of Intellectual Property in Lesotho

SECOND PART: Industrial Property Law

A. Introduction

I. The Concept of Industrial Property. Historical Development

II. Economic Significance. Statistical Datas

III. Place of Industrial Property Law in the Legal System

IV. The Two Main Parts of Intellectual Property

(a) Protection of industrial creations: Technical inventions, plant varieties, industrial designs

(b) Protection of economic activity and its symbols against unfair competition: trademarks, trade names, geographical designations, other distinctive signs, unfair trade practices

B. Industrial creations

I. The Law of Patents for Inventions

1. History of patent law

2. Basic objectives and economic justifications of patent protection. The four main "patent law theories".

3. Protection of inventions and economic order

   (a) Patents in developed (industrialized) and in developing countries, transfer of technology, protection of indigenous inventive activity

   (b) Protection of inventions in countries with free market economy and in planned economy systems, in particular socialist countries. Special forms of protection: inventors' certificates

4. International development of industrial property law

   (a) Paris Convention for the Protection of Industrial Property

   (b) Patent Cooperation Treaty

   (c) Other conventions

5. Regional Cooperation and Harmonization:

   (a) The European Patent System

   (b) African Cooperation: OAPI, ESARIPO

6. Patentable inventions

   (a) Inventions and scientific discoveries. Technical and industrial character

   (b) Exceptions to patentability

7. Conditions of patentability

   (a) Novelty

   (b) Inventive step

   (c) Industrial applicability, utility

   (d) Sufficient disclosure

8. Types and categories of patents and patent claims

9. The legal position of the inventor

   (a) Rights of the inventor: moral right and protection against misappropriation

   (b) Protection of inventions as trade secrets. Know how protection

   (c) Right of file for and to obtain a patent

   (d) First to invent v. first to file principle

   (e) Employee inventions

10. The administration of the patent system: Patent Offices, Patent Courts, Patent Attorneys

11. Patent application and granting procedure

    (a) The patent application: request, title, description, claims, abstracts. Formalities and costs

    (b) Granting procedure. The different systems and procedural stages

        aaa) Registration v. Examination systems. Intermediate solutions

        bbb) The main stages: filing, formal examination, search, publication of applications, substantial examination of conditions of patentability, ex officio or on opposition. Refusal or grant. Publication of the patent

        ccc) Appeals and other remedies

12. The rights of the patentee and its limitations

    (a) The exclusive right to make, sell and use the patented invention

    (b) Infringing and not-infringing acts

    (c) Prior use

    (d) Compulsory licenses

13. Scope of protection. Interpretation of patents

14. Civil and criminal sanctions of patent infringement

15. Exploitation of patents. Transfer of technology

    (a) Use by the patent owner

    (b) Assignment and licensing

    (c) Control of technology transfer transactions by antitrust or special legislation

    (d) Duration and loss of patent protection

II. The law of utility models

1. Historical development. The German model

2. The utility model as petty patent for smaller inventions. Common features with patents for inventions

3. Difference between utility model and patent law

    (a) Protectable subject matter: inventions of three dimensional forms or all inventions. Utilitarian character

(b) Conditions of protection: novelty, inventive step

(c) Registration without or with substantial examination

(d) Shorter term of protection. Costs and legal enforcement

4. The attractivity of the utility model system

(a) for industrialized countries: Germany, Japan, France, United Kingdom

(b) for developing countries: China as a most recent example

III. Plant varieties and other biotechnological inventions

1. Protection by patent law. Special problems

2. Protection by special legislation

(a) National legislation. Plant variety protection

(b) International protection: The UPOV Convention of 1961

3. Recent developments: genetic engineering

IV. The law of industrial designs

1. The object of industrial design law: Protection of aesthetic, non-technical creations

2. Design law as compared with patent, utility model and copyright law. Patent and copyright approach. Industrial designs and works of applied art. Double protection

3. Notion of industrial design (designs and models)

4. Conditions of protection: Novelty, orginality, industrial application

5. Deposit and registration

6. Protection of the registered design

(a) against reproduction (imitation): copyright approach

(b) against unauthorized use of any identical or similar design (patent approach)

7. Duration of protection

8. International protection

(a) Paris Convention

(b) The Hague Agreement concerning the international deposit of industrial designs

C. Trademarks and unfair competition

I. The law of trademarks

1. Notion of trademark. Different categories of marks

(a) Definition: Sign to distinguish goods or services of an enterprise or a group of enterprises from those of other enterprises

(b) Different categories of marks

- marks for goods (product marks) or services (service marks);
- producers or merchants marks;
- individual and collective marks, certification marks;
- registered and unregistered marks

2. Functions of trademarks. Economic significance for developed and developing countries

3. Historical development of trademark law

4. Forms of protection

(a) Protection of unregistered marks by common law (passing-off) or unfair competition law, based on use and/or reputation

(b) Protection of registered trademarks by special trademark legislation, based on deposit and registration

5. Conditions of registerability. Absolute grounds for refusal

(a) Use, intent to use, existence of a business enterprise as general requirements

(b) Registerable and non-registerable signs: words and/or pictures, letters, numerals, three dimensional marks, shape and colour of goods or their packaging

(c) Inherent and acquired distinctiveness

(d) Non-distinctive and descriptiveness

(e) Illegal and deceptive marks

6. Conflict with prior trademarks or other distinctive signs: relative grounds for refusal

7. Application, examination ex officio, opposition procedure, registration

8. Rights of the trademark owner. Trademark infringement

9. Scope of protection

   (a) Similarity of signs (risk of confusion)

   (b) Similarity of goods and/or services

   (c) Protection of well-known and famous trademarks

10. Territorial scope of protection

11. Term of protection, renewal. Loss of trademark rights, in particular by non-use

12. Assignment and licensing. Use by related companies

13. Collective and certification marks

14. International trademark protection

   (a) Paris Convention

   (b) Madrid Agreement for the International Registration of Trademarks

   (c) Trademark Registration Treaty (TRT)

   (d) The proposed European trademark system

II. The protection of trade names

1. Definition of trade name. Terminology. Different categories of trade names

2. Legal basis: passing-off or unfair competition law, commercial law, private law

3. Protection by use, reputation or registration

4. Scope of protection

5. International protection of trade names: Art. 2, 8 Paris Convention

III. The protection of geographical designations: appellations of origin and indications of source

1. The different national approaches

2. International protection: Paris Convention, Madrid Agreement for the repression of false or deceptive indications of source on goods, Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

IV. The law of unfair competition

1. Historical development in Continental Europe and in Common Law Countries

   (a) Development within the common law of torts or civil responsibility

   (b) Special legislations against unfair competition

2. International development: Art.10bis Paris Convention

3. Recent developments

   (a) Unfair competition and free competition (antitrust law)

   (b) Unfair competition and consumer protection

4. Different acts of unfair competition or unfair trade practices

   (a) Exploitation of another's reputation

   (b) Misappropriation of another's work and organization

   (c) Attack on business reputation

   (d) Intervention in industrial activity

   (e) Deceptive advertising

   (f) Offensive and annoying advertising

   (g) Violation of contractual obligations

   (h) Violation of laws other than competition law

   (i) Premium and rebate law

   (j) Special sales

5. Civil, criminal and adminstrative sanctions

THIRD PART: Copyright Law and Neighbouring Rights

I. Copyright law

1. Objectives of copyright protection. Significance for cultural and economic development

2. Historical development of copyright law: from publisher's privileges to author's rights

3. International protection of copyright

   (a) Revised Berne Convention for the Protection of Literary and Artistic Works

   (b) The Universal Copyright Convention

4. Protected works

5. The author

6. Origination and duration of copyright

7. The rights of the author

   (a) Moral rights (droit moral)

   (b) Exploitation rights

8. Limitations of copyright protection

9. Transfer of copyright. Publishing and other copyright contracts

10. The role of individual authors, publishers and collecting societies. The interests of copyright users

11. Neighbouring rights (related rights)

    1. Notion of neighbouring rights, relation to copyright law

    2. Protection of performing artists

    3. Protection of producers of phono- and videograms

    4. Protection of broadcasting organizations

    5. International Protection: the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961

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