



Topic 1 – Overview of Intellectual Property (IP) Law

National Workshop – Enforcement of IPRs for Law Enforcement Agencies

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Xavier VERMANDELE
Senior Legal Counsellor, Building Respect for IP

The Relevance of IP Rights

Universal Declaration of Human Rights, Art. 27:

- *“Everyone has the right (...) to enjoy the arts and to share in scientific advancement and its benefits”*
- *“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”*

The Relevance of the IP Rights

- IP = creations of the human mind
- *“Human genius is the source of all works of art and invention. These works are the guarantee of a life worthy of men. It is the duty of the State to ensure with diligence the protection of the arts and inventions.”*

The Relevance of the IP Rights

- IPR = legal rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.
- Protection of IPR
 - Statutory expression to the moral and economic rights of the creators, inventors, etc.
 - Promote creativity & innovation + dissemination & application of their results => economic & social development

The Relevance of the IP Rights

- IP = a potent force in the new knowledge-based economy ;
- Promotion of local innovation & creativity ;
- Attracts high-value foreign direct investments (FDI) ;
- Creates employments and tax revenues ;
- Increases high value exports.

The Various IP Rights

Registered rights

- Trademarks
- Industrial Designs
- Patents
- Plant Breeders' Rights
- Lay-out Designs of Integrated Circuits;
- Geographical Indications.

Unregistered rights

- Copyright
- Related Rights.

(Specificities:

- Commercial Names & Designations
- Unfair competition
- Undisclosed information)

Nature of IPR

The exclusive right of the right holder of an IPR is dual in nature:

- it usually entitles the right holders to exercise the right and exploit the object to which it relates, and
- it is negative since the right holders have legal remedies at their disposal (particularly actions for infringement) enabling them to prevent any unauthorized use of the exclusive right

The Various IP Rights

■ IPRs can overlap:

1.1



1.2



More than one IPR can be reflected or contained in one article

Some IP found in a mobile phone ©EPO

Trade marks:

- Made by "Nokia"
- Product "N95"
- Software "Symbian", "Java"

Patents:

- Data-processing methods
- Semiconductor circuits
- Chemical compounds

Copyrights:

- Software code
- Instruction manual
- Ringtone



Trade secrets:

Designs (some of them registered):

- Form of overall phone
- Arrangement of buttons in oval shape
- Three-dimensional wave form of buttons

Sources

- IPRs are generally based on local statute
- Laws are generally based on international conventions and are accordingly similar and comparative law is thus important
- There are no “common law” rights to inventions, registered trademarks, copyright and designs

Trademarks

Article 15 of TRIPS:

- Any sign, or any combination of signs
- capable of distinguishing the goods or services
- of one undertaking from those of other undertakings
- shall be capable of constituting a trademark.

Signs Eligible for Registration

- Signs, in particular:

- words (including personal names)

adidas

- letters

tve

- numerals



Signs Eligible for Registration

■ Signs, in particular:

■ figurative elements



■ shapes



■ combinations of colors



■ any combination of the signs mentioned



Distinctiveness

- Where not inherently capable of distinguishing the goods or services - may make registrability depend on distinctiveness acquired through use
- Members may require, as a condition for registration, that signs be visually perceptible
 - Sounds ?
 - Smells ?

Bars to Registration

- Contrary to morality or public order
- misleading - nature of goods / services; source; characteristics; or suitability for the purpose
- State emblems, etc. (Paris Art. 6*ter*)
- well known marks (Paris 6bis; TRIPS 16)
- existing third party rights



Exclusive Rights

- To prevent others from using identical or similar marks on identical or similar goods in respect of which mark is registered
- TRIPS - 7 years
- TLT - 10 years
- both - renewable indefinitely

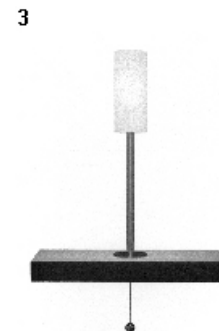
Rationale for Protection

- Variety of goods / services - marks identify and differentiate
- assist consumer in choice
- stimulate competition - greater attention to quality and safety of goods
- economic growth
- important aspect of commercial activity

Industrial Designs

Article 25 of TRIPS:

- the ornamental or aesthetic aspect of a useful article
- must be new or original
- design should not be dictated by functional considerations
- includes the protection of textile designs



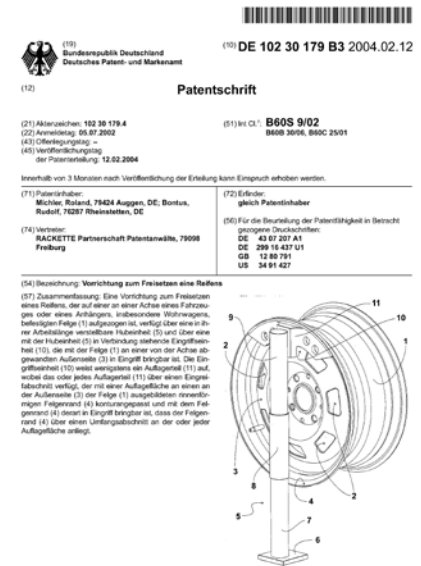
Exclusive Rights

Article 26 of TRIPS:

- right to prevent others
- from applying (making, selling or importing) the protected design to commercial products
- for a period of 10 years

Patents

- Statutory right granted by the State
- for a limited period of time
- in exchange of full disclosure of the invention
- invention could relate to a product or a process
- Art. 27-34 TRIPS



Conditions for Patentability

- **Novelty**: the invention not disclosed to the public anywhere in the world (prior art) prior to the filing or the priority date
- **Inventive step**: having regard to the prior art - invention must not be obvious to a person having ordinary skill in the art
- **Industrial applicability**: capable of application in industry in a general sense

Rights conferred

Art. 28 TRIPS:

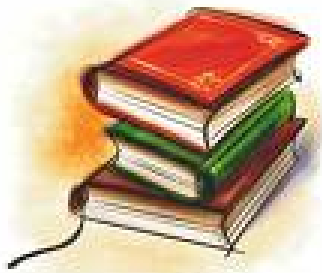
- right to exclude third parties
- from exploiting (making, using, selling or importing) the invention
- in the country in which the patent was granted
- for a period of 20 years from the filing date.

Copyright

- Exclusive right to use or authorize third parties to use protected works.
- Protected work: every original work of authorship expressed in whatever mode or form (no ideas), in the literary, artistic and scientific domain, irrespective of its literary, artistic or scientific merit (see Berne Convention, Art. 2)

Copyright

- e.g.: books, drawings, musical compositions, sculptures, architecture, maps, photos, ...+ computer programs



Copyright

■ Patrimonial Rights :

- Reproduction in various forms;
- Distribution of copies;
- Public performance;
- Broadcasting or other communication to the public;
- Translation & Adaptation.

■ Moral Rights:

- Right of paternity;
- Right of integrity.

Copyright

- Duration of Copyright: Minimum of 50 years after the author's death (Berne Convention, Art. 7).

Related Rights

- Link with Copyright
 - Performers ;
 - Producers of phonograms ;
 - Broadcasting organizations.

- Duration: 50 years from date of fixation/performance (TRIPS; WPPT); 20 years from date broadcast (TRIPS).

TRIPS: “Agreement on Trade-related Aspects of IP Rights”

- Administered by WTO
- One motivation: Lack of **enforcement** mechanisms
- Agreement between WTO and WIPO

TRIPS: “Agreement on Trade-related Aspects of IP Rights”

- General provisions + basic principles
- Standards Concerning the Availability, Scope and Use of IP Rights
- Minimum standards and options re. enforcement of IP Rights (TRIPS, Part III – Art. 41 to 61)

TRIPS Objectives (Art. 7)

Protection **and enforcement** of IP Rights should

- contribute to the promotion of technological innovation
- and to the transfer and dissemination of technology
- to the mutual advantage of producers and users
- be conducive to social and economic welfare
- should balance rights and obligations.

TRIPS and classic conventions

- Duplicates many of the provisions of the **Paris Convention** for the Protection of Industrial Property 1883 and the **Berne Convention** for the Protection of Literary and Artistic Works 1886
- **Paris, Berne** did not, however, deal with criminal law – **TRIPS** does (Art. 61)

Function of national law

The function of national law is to

- Create IP rights
- Determine remedies
- Provide structures for enforcement
- Provide procedures for enforcement

Principle of territoriality

- All conventions respect the principle of territoriality
- The main consequences of territoriality are that
 - IPR rights exist within any given jurisdiction by virtue of local law and
 - enforcement is a matter for local (/regional, like EU) law



National treatment

- Each country must treat the nationals of other member countries in the same manner as it treats its own citizens
- Thus: IP law and practice may not discriminate against foreigners

Thank you for your attention!



xavier.vermandele@wipo.int
www.wipo.int/enforcement