



# **Overview of IP Rights**

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# The Relevance of the 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.”*  
(WIPO building – inscription)

# 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 )

# The Various IP Rights

■ IPRs can overlap:

1.1



1.2



# 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**

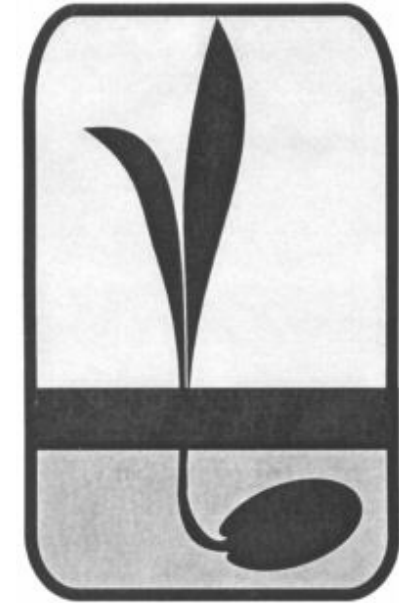
- numerals

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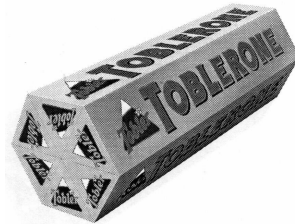
# Signs Eligible for Registration

- 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. 6ter)
- 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

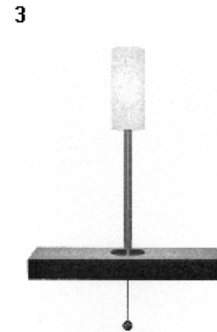
# Rationale for Protection

- 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

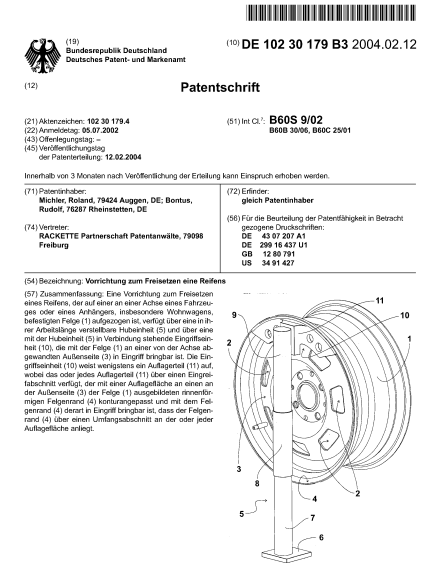


# Rationale for Protection

- Add extra-value to goods
- Encouragement of creativity
- Increase markets for creators and options for consumers
- tourism and export markets
- job creation - SMEs

# 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.

# Rationale of Patent Protection

- Reward creative activity
- stimulates creativity and investment in research and development
- results in technological growth
- encourages disclosure
- technology transfer

# Layout designs of Integrated Circuits

- also creations of the human mind
- the result of an enormous investment
- constant need to reduce the dimensions of existing IC and to increase their functions
- can easily be copied or reproduced for a fraction of the initial investment
- (Articles 35 to 38 TRIPS)



# Conditions for Protection

- Layout-design should be the result of the creator's own intellectual efforts
- should not be commonplace among creators of layout-designs and manufacturers of integrated circuits
- at the time of its creation

# Protection

- Term - at least 10 years
- exceptions (no infringement):
  - used for purposes of evaluation, analysis, research or teaching
  - if copied in order to prepare a second, original, layout-design



# Geographical Indications

- Indications which identify a good as originating in the territory of a Member
- or a region, or a locality
- where a given quality, reputation or other characteristic of the good
- is essentially attributable to its geographic origin
- (Articles 22-24 TRIPS)

# e.g., Cheese

- Dutch
- Swiss
- Hungarian



# Rationale of Protection

- Serves to identify goods to the consumer
- Prevents misleading of the consumer
- Promotes quality and builds regional industry
- Gives access to the international marketplace.

# 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.

# Copyright

- Moral Rights:
  - Right of paternity;
  - Right of integrity.
  
- Exceptions:
  - Free use ;
  - Compulsory license.

# 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).

# Copyright & Related Rights

- An adequate system can promote economic, social & cultural development:
  - Reward authors/performers and stimulate the creative process;
  - Boost copyright-based industries and technology-oriented business.

# Protection against Unfair Competition

- Art.10*bis* Paris Conv.: Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition
  - create confusion with activities of competitor
  - false allegations - to discredit competitor
  - misleading the public in relation to the goods

# Undisclosed Information

## ■ Article 39 TRIPS:

### ■ Secret information

- secret - not generally known or readily accessible
- commercial value because it is secret
- reasonable steps to keep it secret

→ Used in industry - fragrance, soft drinks, fast food, etc.

THANK YOU FOR YOUR ATTENTION!



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