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INTELLECTUAL PROPERTY AND ECONOMIC DEVELOPMENT

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1. Technology and IP have a central role in global economic growth and competitiveness of countries. This fact can be supported by economic growth models some of which advocate that the efficiency with which inputs are turned into outputs or “technical progress,” is directly related to the extent to which countries invest in technological development and knowledge exploitation. For the purposes of this paper we shall take a look at how the strategic use of certain aspects of industrial property, namely patents, and in particular the use of distinctive signs such as trademarks, industrial designs or geographical indications can help companies and countries achieve greater competitiveness and economic growth.

2. In the past intellectual property (IP) has been crucial in providing a platform on which investments to develop, enhance and market products were based. However today, IP has become an important aspect of our daily lives and a range of IP based products -from antibiotics to motor vehicles-has impacted on the quality of our lives. When looking at the big picture, in both the developing and developed world, there is evidence that governments recognize both the importance of putting in place the necessary institutions to implement IP legislation as well as the importance of IP laws for promoting technological development and capitalizing on domestic innovative capacity.

PATENTS

3. A patent is an exclusive right granted by the State for an invention that is new, involves an inventive step and is capable of industrial application. It is a powerful business tool for companies to gain exclusivity over a new product or process, develop a strong market position and earn additional revenues through licensing. A patent is granted by the national patent office or a regional patent office for a group of countries. It is valid generally for 20 years from the date of filing of the patent application, provided that the required maintenance fees are paid on time.

4. The traditional patent strategy was about sole ownership of an invention, but due to the unpredictable nature of innovation, there has been the emergence of a complex set of models and relationships in creating value from patents. Patent holders must know the difference between patentability and freedom to use. They also need to know that a patent gives them the right to stop someone else using the technology they have patented. This however, does not give the holder the right to sell his patented product in any market, as it could still infringe someone else’s product due to differences in patent law in different countries. Companies today need to take on a more strategic view of their ideas/inventions. Due to the fact that a patent on a particular invention may be written in several different ways, depending on the use to which it will be put or the existence of other patents both inside and outside their company, it is essential for a company to know the context in which the patent will be used when finalizing that patent application. That is to say, there are different methods of getting to different markets and they may not all involve selling into those markets oneself. Some methods in fact involve very complex relationships/partnerships with other companies so as to have access to a wider range of markets for ones patent.

CASE IN ASIA

5. If one looks at growth figures of economies in some Asian countries, investments in technological development have been at the core of the spectacular growth a number of countries in the region have experienced over the past two decades. World Bank figures show that as annual GDP has been rising steadily for some countries of that region, so have investments in research and development (R&D) as a percentage of GDP. Increases in R&D investments have been reflected in the increasing number of patent applications filed by Asian companies not only domestically, but also in other key markets (e.g. the United States and member countries of the European Patent Convention). Strong evidence for this trend is provided by the increasing use of the Patent Cooperation Treaty by companies and research institutions from a number of Asian countries.

6. From a corporate perspective, IP and in particular patents, are gaining increasing importance in business strategy. What a lot of Asian companies have been doing is looking ahead to where the markets will be in the future and what technology products will be needed to thrive in those markets. They have been either filing their own patents, licensing-in technology or acquiring patents in order to enhance their technological expertise.

7. Take for example the case of Sony and its video format Betamax technology. Sony had refused to license its Betamax technology to other companies/manufacturers and kept it solely for its own products. Their competitor JVC however, licensed the use of their VHS technology to other companies worldwide. What was the result of that? VHS became the industry standard, dominated the global market place in home videos and cameras and Sony lost out to its competitor JVC. In order to avoid a similar fiasco, when Sony first started producing its “Nifty Memory Stick” it immediately licensed the technology to six Japanese electronics manufacturers to make and market its Nifty Memory Stick, and gadgets using the memory device. Sony’s aims was to popularize its new memory stick in the electronics industry by licensing other manufacturers to make video recorders, digital cameras and personal computers using their data storage device.

8. Therefore, a competitive and enforceable advantage can be derived from the strategic use of ideas/inventions that have been patented. This of course allows companies to have a higher sustainable return on their capital. Technology is one aspect but products are another. A product based on an extremely creative and valuable invention can only succeed in the market through a market identifier or distinctive sign. Consumers are neither seldom initially made aware nor are they even bothered whether behind a particular product there is patent protection. In fact the functional/therapeutic/appealing features of the product are initially learned by consumers through a distinctive sign.

DISTINCTIVE SIGNS

9. Let us consider the case of agricultural goods. Although there is a tendency for such goods to become more uniform, a significant number of consumers continue to prefer locally produced or exotic goods. If the producer highlights these elements appropriately with a suitable distinctive sign, thereby facilitating the perception of the distinguishing features on the part of consumers, he may generate value added for his goods and services which will enter the market under better conditions and in a better position.

10. Now distinctive signs not only allow distinguishing features such as origin, quality, preparation and tradition to be communicated to the customer, but also constitute intangible assets or values belonging to companies. In fact, as a result of national or international registration, the holder of the distinctive signs is guaranteed a monopoly of use and marketing of the registered signs in order to communicate the distinguishing features to the public (exclusive rights which prohibit the unauthorized use of the trademark); subsequently, this will allow the benefits generated as a result of the registration and effective use of the distinctive signs to be recovered, either by the holder himself or by an authorized third party (license for use or franchise).

VARIETY OF DISTINCTIVE SIGNS

11. As mentioned earlier, distinctive signs are means of identification used by an employer (or group of employers or producers' association) to distinguish, in commercial transactions, his company, commercial institution, the goods which he manufactures or markets and the services he provides. Distinctive signs include trade or service marks, collective or certification marks and geographical indications.

12. A trademark is a sign which allows the goods or services of one company to be distinguished from those of other companies. In general, trademarks may consist of words, letters, numbers, drawings, photos, shapes, colors, logotypes or labels, or a combination of these elements which are used to distinguish goods or services. In some countries, advertising slogans are also considered to be trademarks and may be registered as such by the national industrial property offices. Similarly, there are an ever-increasing number of countries which permit the registration of less traditional types of trademarks such as unique colors, three-dimensional features (for example, the form of a product or its packaging), sonorous signs (sounds), and olfactory signs (smells).

13. The registration of a trademark is relatively economical. As trademarks are valid 10 years and may be renewed indefinitely, they may grant virtually continuous protection to their holders. The intellectual property registers in each country may provide more information on the procedures for the registration and use of distinctive signs.

14. In general, in order to create a solid trademark the following basic elements must be taken into account: it must be distinctive, easy to remember and pronounce, it must be suited to the product or service and to the image which is to be conveyed, there must be no legal restrictions (this would be the case if it had been registered previously for example), and it must have a positive connotation. In order to avoid excessive expenditure and reduce risks, it is therefore important to have access to professional advice (industrial property advisory offices, lawyers, graphic designers and so on), and it is also important to register the trademark far in advance of launching the new product onto the market in order to avoid the expenditure on advertising and other promotion activities in which they have been incurred being of no use, should the name which has been applied for in relation to the trademark not be available.

15. There are basically three types of marks: trade or service marks, collective marks and certification marks.

MARKS FOR GOODS AND SERVICES

16. Factory or trademarks: marks which indicate that a product has been manufactured by a particular company.

17. Service marks: marks which indicate that the product or service has been manufactured or is supplied by a particular company. The services may be of any class, i.e. financial, banking, travel-related, advertising, restaurant and so on (e.g. *NatWest*).

COLLECTIVE MARKS

18. Collective marks: marks which indicate that the product or service has been manufactured or is supplied by the members of an association. Collective marks may be effective when it comes to marketing jointly the goods of a group of companies which separately would have difficulties in terms of consumers recognizing their trademarks and for the main retailers to distribute them.

19. In specific terms, a collective mark is adopted by a collective entity, for example an association of producers, manufacturers or other organization of legally established persons, and which is used to distinguish the goods or services produced by the members of the association or group. The collective mark may be used insofar as the members respect the conditions established for use by the organization in “Regulations for Use”. The collective mark allows small producers to reduce their costs, develop an entrepreneurial vision through the adoption of a common strategy for the use and promotion of the goods or services bearing the mark, and may be an instrument for the development of specific regions or areas.

EXPERIENCES WITH COLLECTIVE MARKS IN SOUTH AFRICA

DECIDUOUS AND CITRUS FRUIT

20. South Africa is among the 10 leading countries in the world with respect to agricultural exports. The Cape region is well known for its excellent climatic conditions, land formation and fertile soil.

21. The western Cape enjoys climatic conditions that are highly suitable to the production of deciduous fruit, whereas the eastern Cape such as the region of Mpumalanga, which means, “place where the sun rises”, is more suited to the production of citrus fruit. This varying landscape and climate have allowed farmers to optimize production of both deciduous fruit such as apples and grapes as well as citrus fruit, including tropical and sub-tropical fruit.

22. In order to capitalize on the high quality and freshness of the fruit, two groups were formed: Unifruco with the “cape” brand, to market deciduous fruit and Outspan with the “outspan” brand to market citrus fruit from the region. These collective marks allowed farmers to take advantage of the reputation and quality of products from the region and facilitate the exportation of their produce. Furthermore, and to complement the production of quality fruit of the region, the provincial government and national government developed breeding programs as well as efficient transport infrastructure for the region and country. In so doing it has made the markets, clients and exports for the fruit produce, accessible and allowed farmers to be more

competitive. In the case of the “cape” trademark, its origin dates back to 1892 although the trademark itself was only registered in 1950. This trademark was used for products grown in South Africa, called “from the Cape”, that is to say near the Cape of Good Hope.

23. Today “Unifruco” and “Outspan” are now part of what is called “Capespan”. The Capespan group of South Africa today, not only sells produce of South Africa but also of other countries in the world. Capespan group also possesses the marketing, logistic and technical capabilities for ensuring timely delivery of fresh fruit to the market and for maintaining a consistent image of the brands in the minds of consumers.

EXPERIENCES WITH COLLECTIVE MARKS IN PERU

A. In the sector of *milk derivatives*

24. We can mention the case of the Department of Cajamarca in Peru. Cajamarca is located 3000 meters above sea level, a geographical location that has allowed the place to develop an important production activity based on breeding. Its cheeses, yogurt and blancmange are famous. In Peru, the name Cajamarca is identified with this activity. The quality and fame of the products from that area made the producers from other cities in the country use the name Cajamarca to market products, by taking unfair advantage of the reputation of the products from Cajamarca and, in many cases, harming the prestige of the name, by supplying low quality products.

25. Following intensive work, it was possible to bring together 80 producers of milk derivatives from Cajamarca, whose common aims were as follows:

- to be able to release the product in Lima and market it in the main distribution chain (main supermarkets);
- to be able to export it in the future; and
- to preserve the quality linked to the origin (Cajamarca) and prevent others from taking advantage of the name.

26. The strategy adopted was that of working in accordance with the Collective Mark and finally 37 producers registered the collective mark in the name of their association.

B. In the agricultural sector

27. In the Cumbe Valley in Peru, excellent custard apples are produced, whose special characteristics are the result of the climatic conditions in the region in which they are grown.

28. In order to avoid other producers using the name Cumbe unlawfully to market their goods, the village of Santo Toribio de Cumbe registered the trademark “Chirimoya Cumbe” (Cumbe Custard Apple) and established regulations for use of the trademark. The name “Chirimoya Cumbe” now has a characteristic logotype and allows the Cumbe people to distinguish their

product and establish a competitive advantage in relation to their competitors in the wholesale fruit market in the capital.

C. Certification marks

29. Marks which indicate that goods or services meet a series of standards and which guarantee that they have been certified by a certification authority or mark owner, be it a public or private body, or a natural or legal person.

30. Certification marks are not restricted to a particular group. They may be used by any person who can certify that his goods meet certain standards established or adopted by the owner (technical standards, ISO or other international accreditations). They are used by means of licenses for use.

31. The effectiveness of the quality information function of certification marks requires the prior dissemination among public consumers of what a mark implies and, although the promotion of the mark is mainly in the hands of the owner, such promotion may be done jointly with the persons authorized to use the mark, who will refer to the certification mark in connection with the specific mark for the product or service.

Examples:

- The *Woolmark* symbol is the certification mark of the *Woolmark Company*. The *Woolmark* logotype is a symbol of the guarantee of quality, which denotes that the products to which it is applied are made with 100 per cent pure virgin wool and comply with the strict specifications stipulated by *Woolmark*.

- Adoption of the certification mark "*Authentic Caribbean*" by the Caribbean Export Promotion Agency to guarantee that the goods or services bearing this stamp satisfy a number of manufacturing and quality requirements, and that they are authentically Caribbean.

D. Geographical indications/Appellations of origin

32. In general, a geographical indication consists of the name or place of origin of the goods which possess qualities or a reputation derived from their place of origin. Geographical indications are protected in accordance with national legislations and under a broad range of concepts, such as the laws against unfair competition, consumer protection laws, the laws for the protection of certification marks or special laws for the protection of geographical indications or appellations of origin.

THE CONCEPT OF GEOGRAPHICAL INDICATIONS ENCOMPASSES APPELLATIONS OF ORIGIN.

33. An appellation of origin means one which uses the name of a geographical region or place in a country, which serves to designate a product originating from that place and whose quality or characteristics are due exclusively or essentially to the natural and human features of the

place. The use of the appellation of origin constitutes an effective means of informing consumers of the geographical origin of such goods and of their characteristics or qualities as implicit in that geographical origin.

34. Appellations of origin must necessarily have two types of connection:

(a) a geographical connection: the appellation of origin is an attribute which reflects the link existing between the place and a product. It constitutes the name of the particular country,

region, locality or geographical place which is adopted by a product that necessarily comes from said area; and

(b) qualitative connection: the product designated using the appellation of origin must necessarily possess specific qualities and features which are due to the geographical environment, including the human and natural factors which include tradition, form of production, labor, soil and water composition, climate, flora, fauna and so on.

35. In the same way as the trademark, the appellation of origin constitutes an instrument used to distinguish goods in terms of their origin and, just as the trademark demonstrates the entrepreneurial origin, the appellation of origin also expresses the geographical origin of the goods produced by the group of companies or individuals based in the area whose name constitutes the appellation.

36. The use of geographical indications may produce very good results in the promotion of regional and national companies. In fact, in the same way as trademarks, geographical indications may contribute to the marketing of the product and since they are owned collectively they may constitute an excellent tool for the economic development of a region or community.

37. The establishment of “regulatory councils” or producers’ associations is required if the system is to work properly. In fact, the direct participation of the beneficiaries in the administration and supervision of appellations of origin is fundamental to preserving origin and quality, and to making a product uniform by means of specific standards.

CASE IN PERU

38. In the case of Peru, the producers of Cumbe preferred to register the appellation “Chirimoya Cumbe” as a collective mark and not as an appellation of origin, although the appellation is more reminiscent of an appellation of origin. In the case of appellations of origin, the owner and the party that authorizes use is the State.

CASE IN MEXICO

39. Example of strategic use of geographical indications: case of tequila protected by an appellation of origin in Mexico

40. Tequila, the famous Mexican alcoholic drink, is produced in a particular area of Mexico, in which a specific variety of the agave plant grows, from which tequila is produced. On that basis, the name “tequila” has been protected as a geographical indication in Mexico since 1977. Within the framework of Mexican legislation, the name “tequila” can only be used in drinks that are produced in five Mexican States which are those that have the exclusive right to produce them. This prevents competitors from using the term “tequila” in drinks that do not come from that specific area of Mexican production or which do not comply with the applicable Mexican legislation (the aim of which is to guarantee the quality of the product and avoid it being used for products prepared with other ingredients, which might harm the reputation acquired by the original Mexican product).

41. The body responsible for supervising the use of the name “tequila” is the Tequila Regulatory Council.

CASE IN CUBA

42. Habanos SA is the only Cuban exporter of tobacco and uses Cuban tobacco appellations of origin in its trade. From a public policy perspective, very early in the 20th century, Cuban authorities began taking measures to protect the recognized prestige of Cuban tobacco. These measures included, the creation of a national warranty seal of origin to protect the product’s Cuban origin; the creation of the National Commission of Advertising and the Defense of Habano Cigars, the signing of bilateral agreements with several countries to protect their appellations of origins and the signing of the Lisbon Agreement for the protection of Appellations of Origin. In spite of these agreements signed, Habanos SA still has a legal offensive in place to protect their appellations of origin. In addition to its geographical indications and trademarks, Habanos has a network of sales outlets and franchises with more than 90 shops called “La Casa Del Havana” through out the world.

INDUSTRIAL DESIGNS

43. An industrial design refers to the ornamental aspect of a product. This specific connotation pertains to the visual appeal- that is, the features of shape, configuration, pattern or ornament, or any combination of these features- of a finished article made by hand, tool or machine, as opposed to the functional features which may be protected by other types of intellectual property rights, such as patents, utility models and trade secrets.

44. Industrial designs may consists of three dimensional features such as the shape of a product; two-dimensional features such as ornamentation, patterns, lines or color of a product; or a combination of one or more such features.

45. Several enterprises often devote a significant amount of time and resources to enhance the design and appeal of their products. In so doing they add value to their products by making them more attractive and appealing to customers. The main aim of creating new designs is to customize products to appeal to specific market segments, create a new niche market and strengthen brands and brand image.

Experiences of Industrial Designs in Pakistan

46. Brimful Designs, a textile design studio is a small entrepreneurial venture based in Lahore, Pakistan. It had been successfully producing and marketing a designer brand of lawn under the label *Yahsir Waheed Designer Lawn*. *Yahsir Waheed Designer Lawn* is a 100% cotton printed lawn product for women's summer attire and is produced by the company in limited print-run. It is sold in three main cities of the country. Recently, the designs of the Spring/Summer Collection of *Yahsir Waheed Designer Lawn* got copied for the first time on a massive and organized scale. These illegal copies/fake designs were sold under a different label at 1/3rd of the price of the original product. The original designs of Yashir Waheed were being produced on inferior quality material and fake designs.

47. Following the advice of the Small and Medium Sized Agency (SMDA), Brimful registered their Intellectual Property under the Industrial Design Ordinance of Pakistan. In the following year Brimful's designs of Yashir Waheed Spring/Summer Collection were registered under the Designs Ordinance. This allowed for a clear identification of their designs, prevented them from being copied and imitated by competitors and thereby strengthening the competitive position of Brimful.

AIMS OF STRATEGIC INTEGRATION OF DISTINCTIVE SIGNS(IN PARTICULAR TRADEMARKS) IN A GLOBAL COMMERCIAL STRATEGY AT THE ENTREPRENEURIAL LEVEL

48. In addition to promoting the sales of goods and services and consolidating the customer base, trademarks:

- help the holders to obtain greater benefits: consumers value trademarks, their reputation, image and the series of features which they associate with the trademark, and are ready to pay more for a product bearing a trademark which they recognize (with whose origin they are familiar), and that meets their expectations. The trademark allows the consumer to be informed of the superiority of the product, be it in terms of the product's high quality or specific characteristics;
- encourage companies to invest in the maintenance or improvement of the quality of a product, since a trademark guarantees the sound reputation of the goods related to the trademark. This guarantees the loyalty of existing customers and the chance to attract new ones;
- allow companies to face up to unfair competition (the registration of a trademark grants the company the exclusive right to prevent third parties from marketing identical or similar goods with the same trademark or using a trademark which is so similar that it can create confusion). It should be pointed out that the trademark is registered in the relevant market(s);
- allow companies to broaden and maintain their market share, or even to obtain a share of a pre-existing market by introducing new product ranges;
- distinguish their goods;

- obtain royalties by means of licensing programs; trademarks may be the subject of licenses granted and provide a direct source of income through royalties. The use of the trademark may be extended to other markets by means of a license: e.g. if a license is granted for use of the name “Chirimoya Cumbe” to a producer of fruit juices made from Chirimoya Cumbe custard apples;
- represent a determining factor in franchising agreements (the granting of a license for use of the trademark is the central element of a franchising agreement);
- support strategic associations and commercial alliances (joint ventures and joint marketing activities). In fact, a company’s trademarks may complement those of a different company;
- justify the value of a company in commercial transactions (which may be used to obtain funding from financial institutions which are evermore aware that companies’ commercial success depends to a large extent on trademarks);
- allow a commercial presence to be established on the Internet, if they are registered as domain names.

49. In conclusion, in many regions of the world, one can observe that economic growth and technological development of those countries have been going hand in hand with an active use of the IP system. Thus, the growing importance of IP is not only a key trend for the future development but it is also increasingly clear that intellectual property strategy is going to be the driver of corporate strategy.

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