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CONSIDERATIONS ON INTELLECTUAL PROPERTY IN AN ACADEMIC CONTEXT



Considerations on:

- The concept of **FREE COMPETITION** in relation to **INTELLECTUAL PROPERTY RIGHTS**
- What exactly is **INTELLECTUAL AND INDUSTRIAL PROPERTY?**
- What do I do and why should I seek for IP protection?
ACADEMIC INVENTIONS
 - **REQUIREMENTS FOR PROTECTING AN INVENTION.**



FREE COMPETITION vs INTELLECTUAL PROPERTY RIGHTS

Most political, economic-industrial and social systems in industrialized countries are based on free competition on the market.

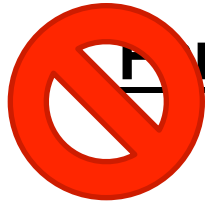
This basically implies the GENERAL PRINCIPLE that:

ONE HAS THE RIGHT TO COPY, IMITATE OR REPRODUCE ANY INNOVATION (I. E. SOMETHING NEW AND USEFUL) PUT FORWARD BY OTHERS.

THE CONCEPT OF INSPIRATION

BUT!!!!!! Be careful!!!!





FREEDOM DOES NOT MEAN UNLIMITED LIBERTY!!!!

No jungle law allowed!

Real freedom is to be found only where citizens exert their freedom in the frame of PROPER RULES respected by all (ideally, lets say by the most).

There are rules governing competition established at least since the Paris Convention of 1883, in order to regulate the economic/industrial activities in accordance with a

FAIR TRADING BEHAVIOUR

IMPLEMENTED IN NATIONAL LAWS, THE SO CALLED

UNFAIR COMPETITION LAWS



What exactly do UNFAIR COMPETITION LAWS allow?

They allow, within LIMITS, one to COPY, IMITATE AND REPRODUCE features of the innovation(s) made by third parties (or, more specifically, by the competitors), although it PROHIBITS UNFAIR COMPETITION PRACTICES.

The law on competition prohibits UNFAIR competition, such as **SLAVISH IMITATION** and any other form of unfair behaviour in conducting businesses.

As a consequence, FAIR COMPETITION IS ENCOURAGED, for it brings respectful and correct practices, ultimately producing the desirable effect of **CONTROLLING** and **LOWERING** the **PRICES** of goods and services made available on the market by the various competing manufactures-providers.



But !!!!

In order to promote innovations, however, it has been historically proved to be proper, fair and advantageous for the society as a whole

TO REWARD THE INNOVATORS-INVENTORS

by granting them **EXCLUSIVE RIGHTS**,
(i. e. rights not liable to undergo competition by others),
by granting **MONOPOLIES**
(i.e. patents, models, etc.) of exploitation of their innovations-inventions, although such **EXCLUSIVE RIGHTS OF EXPLOITATION** are given only **FOR A LIMITED NUMBER OF YEARS** specifically established by the law.



Granting exclusive rights of exploitation of an innovation (patents, designs, etc.):

- ❑ *is an EXCEPTION (contrary) to the general principle of freedom in undertaking entrepreneurial initiatives, and*
- ❑ *provides the innovator-inventor with a LEGAL TITLE (Patent certificate) for ENFORCING HER/HIS MONOPOLY, i.e. for bringing legal actions (as opposed to reckless actions) against alleged infringers.*



In conclusion

In a modern competitive economic system

ONE IS FREE IN HER/HIS ECONOMIC OR ENTREPRENEURIAL INITIATIVE (ACTIVITY), ALTHOUGH HE/SHE MUST ABSTAIN FROM:

- (i) **ACTING IN AN UNFAIR WAY** (unfair competition), and
- (ii) **INFRINGING VALID LEGAL TITLES** (patent, models, designs, trade marks etc.) of third parties.



Why should you be concerned about unfair competition law (UCL)?

1 Do not forget that **YOU ARE LIKELY TO BECOME THE INNOVATORS-INVENTORS** of something.

2 **UNTIL** your innovation/invention **REMAINS ON PAPER** only, you will not be faced with UC matters. **BUT AS SOON AS IT IS IMPLEMENTED** and actually put on the market,**THINGS CHANGE...**

WHEN YOUR INVENTION (product, process, etc.) **ENTERS THE MARKET**, **YOU** (or your assignee or licensee) exercise an entrepreneurial activity, and thus **ARE BOUND TO, AND BENEFIT FROM, THE PROVISIONS OF THE UCL.**





IP rights

IP *rights* MAY be derived from many kinds of innovations in different fields of the human activities.



COPYRIGHT

Copyright is DIRECTLY AND AUTOMATICALLY ENJOYED BY THE AUTHOR(S) when her/his work (e. g. statue, book, film, composition, innovation etc.) is completed and published.



Requirements

OWNERSHIP RIGHTS on INDUSTRIAL innovations **ARE NOT**
AUTOMATICALLY VESTED ON, AND/OR RECOGNIZED TO, THEIR
CREATOR(S) - INVENTOR(S). (This does not apply to copyright)

For obtaining patent protection one **MUST DESCRIBE** and **CLAIM** his invention, has to **PAY OFFICIAL FEES**, must **FILE AN APPLICATION** to the Patent Office, the **INVENTION MUST COMPLY WITH THE VALIDITY REQUIREMENTS** of the future patent, etc., etc.

However, **THE INVENTOR(S) MAY NOT HAVE THE RIGHT TO APPLY FOR A PATENT**, etc. for her/his invention.



EXCLUSIVE IP RIGHTS can be provided for as

a patent for invention: solution to a technical problem. It must be NEW, INVOLVE AN INVENTIVE STEP and be susceptible of INDUSTRIAL APPLICATION.

Duration: maximum **20** years

a utility model : NEW MODELS which provide a particular ease of application or use to machines, their components, utensils and objects of use in general.

Duration: maximum 10 years

a registered design or model : APPEARANCE of the whole part of a product, resulting, in particular, from the features of the lines, contours, colours, shape, texture and/or the materials of the product itself and/or its ornamentation, on the condition that they are NEW and have INDIVIDUAL CHARACTER.

Duration: min.5 years –max25 years



an unregistered design

Duration: for **3** years only

a registered or unregistered trademark

Trademark: any SIGN which can be represented graphically....provided it is NEW, DISTINCTIVE, NON DECPETIVE,.
Duration: min 10 years

ALL TERRITORIAL TITLES!!!

as copyright: for example for software



SPECIFIC RULING AS TO THE OWNERSHIP OF THE INDUSTRIAL PROPERTY TITLES (patents, models, designs, etc.) on technological innovations.

general principle:

1. The right (ownership) to the PATENT FOR INDUSTRIAL INVENTIONS belongs to the AUTHOR(S) OR INVENTOR(S) OF THE INVENTION.
2. The RIGHTS DERIVING FROM AN INDUSTRIAL INVENTION, except the right to be acknowledged as inventor, are TRANSFERABLE AND TRANSMISSIBLE to third parties.



ENVIRONMENTAL CONTEST OF AN INNOVATION

3 MAIN SITUATIONS:

- a) the inventor-innovator is **SELF-EMPLOYED** or on his own,
- b) he/she is an **EMPLOYEE**,
- c) he/she is a **RESEARCHER** assigned to a University Institute or to a public administration institution.

When an invention or innovation has been sufficiently developed and, where necessary, tested (**IN SECRET**), one should **SEEK PATENT PROTECTION**



Marketing considerations: getting my patent out on the market!

either DIRECTLY, which might imply

- devising a proper strategy of FUND RAISING, and
- developing suitable strategies of BUSINESS RELATIONSHIP with suppliers, distributors, marketing operators, etc.,

or INDIRECTLY

through a LICENSEE(S),

which might involve a proper STRATEGY OF LICENSING (exclusive or not exclusive licence?; for which territory?, under what conditions?

Who is going to defend the patent and pays for it, etc.),

or through an ASSIGNEE (selling of the patent or model application).



Marketing considerations: getting my patent out on the market!

BRANDING: the importance of choosing the right trademark!

DEFENDING your rights should be part of your **INVESTMENT IN I.P.**

Monitoring the market;

IP specialists: taking proper actions: administrative actions, paralegal actions, legal actions.



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**THANK YOU FOR YOUR KIND
ATTENTION**

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