

Chapter One: - Introduction to Intellectual Property Rights

The Concept of Intellectual Property

- Intellectual property, very broadly, means the legal property which results from intellectual activity in the industrial, scientific and artistic fields.
- Intellectual property rights are intangible in nature, different from the objects they are embodied in. The property right is not in those copies but in the information, which creates in them. These rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such.
- IP is legal protection accorded to works of the mind in distinction from manual work (result of physical labor). It is a legal protection accorded to incorporeal ownership.
- **IPL is a section of law which protects creations of the mind, and deals with intellectual creations (a legal regime governing the works of mind).**

Aim/ Purpose of IPL

- Countries have laws to protect intellectual property for two main reasons.
 - Safeguarding creators and producers of intellectual goods and services:
 - Protection to the intellectual creation (the protection is not to the physical object rather for the intellectual creation).
- Generally, IP law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time- limited rights to control the use made of those productions.

Scope of Intellectual Property Rights

- IP is a bundle of legal rights resulting from intellectual creativity like:

1. Patents

- A patent is a type of intellectual property right which allows the holder of the right to exclusively make use of and sale an invention when one develops an invention. Invention is a new process, machine, manufacture, composition of matter.
- It is not an obvious derivation of the prior art (It should involve an inventive step). A person who has got a patent right has an exclusive

right. The exclusive right is a true monopoly but its grant involves an administrative process.

- Patent is related with invention - technical solution to technical problems.

2. Copyright

- It's simply legal protection for artistic, literary creativity- creativity in scientific works, audio-visual works, musical works, software and others.
- **It gives protection for only new expression (of ideas) not for new ideas.** Copyright protects original expression of ideas, the ways the works are done; the language used, etc.
- There are neighboring rights which are different from copyright but related with it – performers in a theatre, dancers, actors, broadcasters, producers of sound recorders, etc.

3. Industrial Design

- A design is a kind of intellectual property which gives an exclusive right to a person who has created a novel appearance of a product. It deals with appearance: how they look like.
- It is exclusively concerned with appearance, not quality.
- Design rights protect the external, visible features of the appearance of a product. This can include some items in which the design is integral to the product performance; for example, this right protects the design of Semiconductor chips.

4. Trademarks Rights

- It is a regime of the law giving protection to graphic representation of products or services.
- Graphics includes: -
 - Words
 - Pictures or logos
 - Smells, etc.
- It is an association of any signs or marks for the goods and services that distinguishes the origin of such product from another product.

5. Geographic Indication

- It is indications on products of the geographic origin of the goods. It indicates the general source. The indication relates to the
 - Quality or
 - Reputation or
 - Other characteristics of the good.

6. Plant Variety

- It is intellectual right given for the work created by using the genetic resource of plants
- Example: - most cosmetics and medicines

7. Trade Secrets

- It gives the owner of commercial information that provides a competitive edge the right to keep others from using such information if the information was improperly disclosed to or acquired by a competitor and the owner of the information took reasonable precautions to keep it secret.
- It protects confidential secrets of some commercial value.

Nature of Intellectual Property

Intellectual properties have their own peculiar features. These features of intellectual properties may serve to identify intellectual properties from other types of properties.

1. Territorial

Any intellectual property issued should be resolved by national laws. Why is it an issue? Because intellectual property rights have one characteristic which other national rights do not have. In ownership of intellectual property of immovable properties, issues of cross borders are not probable. But in intellectual properties, it is common.

2. Giving an exclusive right to the owner

The creator or author of an intellectual property enjoys rights inherent in his work to the exclusion of anybody else. It means others, who are not owners, are prohibited from using the right.

3. Assignable

Since they are rights, they can obviously be assigned (licensed). It is possible to put a dichotomy between intellectual property rights and the material object in which the work is embodied. Intellectual property can be bought, sold, or licensed or hired or attached.

4. Independence

Different intellectual property rights subsist in the same kind of object. Most intellectual property rights are likely to be embodied in objects.

5. Subject to Public Policy

They are vulnerable to the deep embodiment of public policy. Intellectual property attempts to preserve and find adequate reconciliation between two competing interests. On the one hand, the intellectual property rights holders require adequate remuneration and on the other hand, consumers try to consume works without much inconvenience.

6. Divisible (Fragmentation)

Several persons may have legally protected interests evolved from a single original work without affecting the interest of other right holders on that same item.

E.g. a book-author-publisher-translator-adopter...may have respective right on the same property.

Theories/Justifications for Intellectual Properties Protection

Why we should protect intellectual works? There are three theories regarding this question.

1. Natural Right theory: Labor Theory (Locke's Theory)

- Property right is a natural right.
- Everyone has property right in the labor of his own body, and thus, the labor of his body and the work of his hands are properly his.
- A person has a right to own the creation of his mind in the same manner he owns creation of his labor.
- Generally, according to labor theory, a person has a natural right to the fruits of his labor and that this should be recognized as his property, whether in tangible or intangible term.

2. Personality Theory

- It is believed that the work is the personal expression of the author's or the inventor's thoughts.
- So, he should be given the right to decide when and how his work may be produced or performed in public, and the right to prevent mutilations and changes.
- Therefore, intellectual property laws are to be there to protect the author's or the creator's manifestation of his personality.

3. Utilitarian Theory

- It states that we have intellectual property systems because it has the effect on the betterment /economic/ of the society.
- IP is an incentive, to intellectual creators, for further creation and innovation. Works of the mind are very important to a given society for its social, cultural and economic development.

CHAPTER TWO: - COPYRIGHT AND NEIGHBORING RIGHT

The Definition and Nature of Copyright

Copy right is a legal protection for works of authors (creators) in the literary, scientific and artistic fields.

Copyright law is, in essence, concerned with the negative right of preventing the copying of physical material existing in the field of literature and the art. It is concerned only with the copying of physical material and not with the reproduction of ideas and it does not give a monopoly to any particular form of words or design.

Copyright protection is not in ideas but in the form of expressions (countenance) that has embodied the idea. The creativity protected

by copyright law is creativity in the choice and arrangement of words, musical notes, colors, shapes and so on.

Copy right under Ethiopian law: - see art. 2(8) of Procl. No. 410/2004.

The Subject Matter of Copyright Protection

Broadly speaking works are protected. Expressions of ideas on which a person has exercised his judgment (skill) are protected.

Copy right able works: - Art. 2 (30) & 4 of procl. No. 410/04 and Art. 1 of Proclamation 872/2015. Under Art 4(1) (Derivative works), the protection extends to the way (manner) the previous work has had been selected arranged and compiles, compilation. **What matters is the manner of compilation and not the content.**

Requirements for Copyright Protection

Art 6 provides that copyright protection is automatic-the protection comes upon creation of the work. There is no formality. However, there are two conditions:

A. Originality: - Art.6 (1) (a) - originality of the new expression, not the idea.

- Minimum level of intellectual creativity of the author on the work is enough to be a given work original because CR protection is for only new form of expression, not for new ideas.
- Originality is not novelty; it is absence of copying. So, identical works created independently may get same CR protection. E.g. Alemayehu Fanta V A. Esheta case.

B. Fixation: - Art. 6 (1)(b) and 2(11) [embodiment of the work on a device]

- It means works that enjoy copyright protection have to be reduced to a tangible medium. In order to attract copyright protection, a work that is a product of the creative activity of its author must exist in some objective form before it is considered an object of copyright. In other words, an expression of an idea is copyrightable when it is reduced to a concrete form from which reproductions can be made (a work in mind is not object of Ethiopian copyright law).
- Therefore, an author's work is protected as soon as a work is reduced in some concrete way because the law protects all expressions upon fixation in a tangible form.

- Fixation have **two** elements: -
 - o the embodiment should be sufficiently permanent, and
 - o stable to permit reproduction and dissimulation (distribution).
- **Reasons for fixation requirement**
 - ✓ Evidence; as a proof for creativity,
 - ✓ For the purpose of reproduction and distribution to the public.

Copy right Ownership: - Art. 21

- The original owner of the economic rights shall be the author who has created the work.
- Exceptions: - Art. 21 (2-6)

Exclusive Rights of CR

The bundles of rights of the author constituted in the “incorporeal rights of ownership” customarily fall into two categories;

A. Economic (property) right (Art. 7) which consists of a temporary monopoly over the exploitation of protected works. They relate to the right to exploit, put his work to economic purposes. The basis of economic rights is that the author should be compensated and rewarded, and is entitled to receive remuneration from the use of his work by others. It includes: -

- Reproduction of work- Art. 2(25),
- Derivative works -Art. 4,
- Public performance-Art 2(24). Exception- Art. 16.
- Broadcasting of the work- Art. 2(3), etc.

B. Moral right (Art. 8): -It includes non-property attributes of an intellectual and moral character, which give legal expression to the intimate bond that exists between a literary or artistic work and its author’s personality. Its objective is to assure respect for the author’s thought and personality. Moral right includes:

- The right to claim ownership of his/her work (paternity right) – Art. 8(1)(a) and 22(1),
- The right to publish-8(1)(a),

- Objecting any distortion, mutilation or alteration of his/her work-Art. 8(1)(c), etc.

Limitations on Copyright (Art. 9-20)

- We have seen that the law reserves certain acts or the authorization, thereof, to the author. Such exclusive rights of the author, however, are only apparently absolute. This is so because the law provides various exceptions and limitations to the rule that 'only the author enjoys those rights.
- **It's basically to reconcile between two polars- the author's right to get what he deserves and the society is interest to use the works with little cost.** Such acts are necessary to balance the monopoly on the side of the author on one hand and to keep public safety on the other hand.
- Among these limitations: -
 - **Reproductions for personal purposes-Art. 9**(the owner of copyright can't forbid private reproductions of a published work in a single copy by a physical person exclusively for his own personal purpose.
 - **Quotation of the published work-Art.10** (as long as the reproduction doesn't exceed fair practice and the extent justified by the purpose.)
 - **Reproduction for teaching-Art.11**
 - **Reproduction by Libraries, Archives and Similar Institutions-Art.12**
 - **Lapse of Duration of Economic Rights-Art.20** (life time plus 50 years, perpetual duration).

Infringement of Copy Right and its Remedies

- Infringement in copyright is the doing by any person without the consent of the owner of the copyright of anything the sole right of which is conferred by law on the owner of copyright.
- **Any unauthorized activity or usage by anyone other than the author or the owner, listed under Art. 7&8 of the proclamation is copy right infringement.**
- **Proof of infringement:**
 - Admission by the infringer,

- Showing evidence of authorship/ownership (e.g. notice of protection under Art. 29),
- Proving the existence of copy right infringement.

Enforcement Measures or Remedies

1. Civil Remedies

- are available for a right owner whose rights are infringed or endangered so that he will be reinstated in the position (economic position) in which he could have been had the infringement not occurred in cases where it occurred or in cases where infringement is going to occur, to prevent the harm from occurring.
- It includes: -
 - **Provisional Measures**-Art 33
 - **Injunctive relief**: - It is an order of the court directing a party to litigation to do or refrain from doing an act.
 - ✓ Preliminary injunctions: -Art.33(3)(a)(b),
 - ✓ Permanent (Final) Injunction-Art 34,
 - ✓ Damages-Art.34,
 - ✓ Destruction of Illegal Copies-Art. 34(6),

2. Border Measures-Art.35

- The duty to retain the infringing goods by the custom authority.

3. Criminal Sanctions-Art. 36

CHAPTER THREE: - PATENT LAW AND RELATED RIGHTS

Definition of Patent

- Patent is one of the major subject matters of intellectual property law that grants a limited monopoly in return for the disclosure of technical information.
- Patent protects ideas or inventive thought that brings a specific solution to a problem in the field of technology.

So, Patent system lies on disclosure of invention and the entitlements to exclusive right to use, make and exploit the invention over a certain period of time.

Justifications/why we need patent protection

1. **Utilitarian (economic) theory**: - attempts to justify intellectual property rights on the basis of the “good” consequences flowing from their recognition, which can be generally identified by the advancement in knowledge, industrial progress and economic efficiency.
 - Patent is justified in terms of its utility to the public.
2. **Natural law (philosophical perspective) justification**: - asserts that the inventor is rewarded for the idea incorporated in his invention because it is an expression of his natural rights, belongs to him and could otherwise be stolen.
 - The inventor has a natural right to the products of his mental labor.

Patent definition under proclamation no. 123/95-Art. 2 sub art. 5 and 3.

Invention: -

- ❖ New idea (novel),
- ❖ The idea must be problem solving, and
- ❖ It may be
 - ☆ Product (end by themselves) - is a finished good which is ready either for consumption purpose or for any other possible way of utilization.
 - ☆ Process (a means to an end) - is just the manner of conducting a certain action.
 - ☆ A composition of matters - is the equilibrium of the merger of units with the view of coming up with a specific outcome.
 - ☆ Improvements.

Grounds of Patentability-Art-3

A patent will not be granted if an application fails to meet any of the following requirements.

A. Novelty-Art.3 sub art.2&3. (Novelty is decided in light of prior art)

- The invention must be new and never existed before at the time when an application for obtaining patent is filed.
- An invention shall be considered new if it is not anticipated by prior art.
- Prior art refers to the state of art that forms civilization before the application date.

B. Inventive Step (or Non-obviousness)-Art.3 (4). (Above reasonable man knowledge).

- An invention should be sufficiently inventive, i.e., non-obvious, in order to be patented.
- The invention must not be clear for ordinary skilled person in the field.

C. Industrial Applicability-Art. 3(5); issue of tangibility

- A patentable invention is expected to solve a specified problem in the field of technology. Simply put, the invention must be useful.
- For a product- it must be possible to produce a product by using the invention,
- For process- must be used practically.

N.B. No patent protection for abstract ideas or ideas per se.

D. Disclosure of the Invention-Art.9 sub art. 4(b).

- the idea should be clear enough,
- Clearly described, means capable to be understood by ordinary person in the field.

Ownership of patents

An owner of a patent right will be:

1. An inventor-in principle-art. 7(1). Exceptionally others can be owner, among:
2. Joint ownership-Art. 7(2)-indivisible contribution.
3. Ownership by Employer, Employee and by both of them-Art. 7(3,4 and 5 respectively),
4. By agreement-Art. 8.

Application and examination of patents -Art. 9ff

- An owner of patentable invention, with the view of getting the grant of the title to patent is required to submit their application to the EIPO.
- A **patent application** is a request pending at a patent office for the grant of a patent for the invention described and claimed by that application.

Filing date-Art. 11&12-date of receipt of the application.

The filing date of an application is important as it sets a cutoff date after which any public disclosures will not form prior art.

There are two kinds of Approaches to grant patent for applicants with same invention.

1. First to file, and
2. First to invent-the true inventor should be rewarded. (Applied in USA).

Priority right-Art. 11(2)

A priority right or right of priority is a time-limited right, triggered by the first filing of an application for a patent. The priority right belongs to the

applicant or his successor in title and allows him to file a subsequent application in another country for the same invention within 12 months,

Examination-Art.13

- Grant and publication-Art.14

Exclusive Rights and Duties of Inventor

Our patent law, albeit broad, confers upon the patentee (i.e. owner of the patent) an exclusive right to make use and exploit in any other ways.

The rights granted to the patent owner cover most commercial uses of the patented invention and this makes them more expensive. Such exclusive rights include:

- The right to make the product; - right to manufacture and produce the patented invention.
- The right to use: - collecting the fruits of the invention.
- The right to exploit: - right to assigned, licensed, mortgaged, etc.- Art.6

Assignment

- An assignment implies transfer of the ownership of the patent (or application). Like any other personal property, it emanates from contract.

License

- A license provides a party with permission to do an act that otherwise is prohibited. In contrast with assignment, no proprietary interest is passed under a license.

Licenses may be exclusive or non-exclusive.

1. **An exclusive license** is an agreement under which the owner of a patent grants the licensee permission to use the patented technology to the exclusion of third parties including the patentee (the licensor).

2. **Non-exclusive license (mere license)** is simply an act that permits the licensee to use the patented, just as one of the licensee of the patent owner.

- As such, the non-exclusive license does not prohibit the licensor from using the patent for himself, or from granting further license.

Duty of Patent Owner-Art. 27-29

Limitations to Patent Right-Art. 22, 25, 26 and 16 (lapse of duration of patent right).

Patent Related Rights

They are certain areas that are related, but do not form part of the patent law. These includes:

1 Patent of introduction—Art. 18

- The requirement, and the right and obligations available to the standard patent are applicable to the patent of introduction.

2 Utility model certificate-Art.38. (Minor inventions)

- Essentially, utility model certificate is designed to afford protection to small inventions that don't meet the measure of standard patent.
- Under our patent law, utility model certificate is issued for minor inventions that possess novelty and industrial applicability.
- Principally, the duration of utility model certificate is five years. But, it can be extended by another five years where it is shown that the invention has been used sufficiently-Art. 44.

N.B. difference between patent and utility model

- ✓ Degree of innovation,
- ✓ Criterion of protection,
- ✓ Duration of protection.

3 industrial designs-Art. 46ff plus Art. 2(2)

- It protects visual design of objects/ static appearance of products.
- An industrial design consists of the creation of a
 - ✓ shape,
 - ✓ configuration or composition of pattern or color, or
 - ✓ Combination of pattern and color containing aesthetic value.
- Industrial design rights can be acquired through registration, or by use (like prior user in trade mark law). However, in our patent proclamation registration is the only means of obtaining industrial design rights. (Art.47)

Requirements for industrial design protection-Art.46

- An industrial design to be protected, the design must be
 - ❖ New (special appearance), and

- ❖ Possess practical applicability: - the industrial design should enable the industry to produce a product, industrial commodity or handicraft.

CHAPTER FOUR: - PROTECTION OF TRADEMARKS

Definition-Art. 2(12) of proclamation no. 510/2006.

- Trademark is any sign or mark that distinguishes the origin of one product from another.
- Any sign or any combination of signs capable of distinguishing the goods or services of one undertaking from other undertaking.

Basic features of trademark

Trademark is widely known by its two related features:

- ❖ **Sign:** - it must be a sign that is capable of distinguishing one undertaking from another.
- ❖ **Distinctiveness:** - it must be identifiable and different from other marks. it is to serve its function of identifying the origin of goods and services.
 - The most distinctive marks are **arbitrary** or **fanciful** marks. Arbitrary and fanciful marks are naturally unrelated marks to the goods they are applied to. As such, they convey nothing about the nature of the product except through knowledge of the market.

Types of Trademarks

A. Well-known TM-Art.23

A given TM is well known where it has:

- Protection under int'l. treaty to which Ethiopia is a party,
- Known by relevant sectors,
- Known as a result of promotion/advertisement,
- Even if it is not used in Ethiopia.

B. Collective TM-Art. 2(1) + 18ff.

- Collective trademarks are conventional marks in the sense that they indicate the origin of the product or service, which is a member of the group.

Justifications for the legal protection of TM

- **Information to the customer**: the capacity of the trademarks to supply information on the quality of the goods or services that the mark is applied.
- **Equity (fairness)**: the protection of traders against unfair competition and unjust enrichment.

Acquisition of rights-Art. 4ff.

Trademark right is not automatic to the use of the mark over goods or services. In many countries right in trademark emanates from prior use, and registration, or only from registration of the mark.

- ❖ **Prior use** is understood as the actual use of a mark in the market place over a reasonably extended period of time.
- ❖ **Registration**: rights in trademark become effective only after a duly established authority registers it.

Registration of trade mark

It may be used for two main purposes:

- Informing third parties: enables them to discover whether other traders had claimed the right to use a particular sign, and
- To locate the proprietor of the sign.

The registration process involves the following procedural steps-Art.8ff.

- i) Filing of the application,
- ii) Examination,
- iii) Publication, opposition, and
- iv) Registration.

Eligibility of trademarks for registration

Since the purpose of TM is indicating the origin of goods and/or services, the main standard for the eligibility of trademarks for registration is basically determined whether the mark is distinctive or not.

Generally, a trademark shall be eligible for registration if it fulfills the following conditions:

- a) It must be a sign as defined under Art.2 (12),
- b) It must be capable of being represented graphically as envisaged under Art.8(3)(a);

- c) It must be capable of distinguishing goods or services of one person from those of others;
- d) It must be used or proposed to be used in relation to goods and services;
- e) The use must be for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be,
- f) And some person having the right, either as proprietor or by way of permitted user, to use the mark.

Trademarks ineligible for registration-Art.6

Generally, trademarks are inadmissible for registration if they fail to meet one or more of the conditions for eligibility of trademarks for registration.

Trademarks inadmissible for registration includes:

- i. Non-distinctive-Art.6 (1a) cum 5
- ii. Descriptive marks: - marks which directly describes the quality, kind, etc. of the product.
- iii. Deceptive marks-Art. 6(1h).
- iv. Marks contrary to public morality-Art.6 (1d).

Rights Arising from TM Registration-Art. 26 +28

- ✓ Ownership-Art.4 and 28(3).
- ✓ Right to use-Art.26
- ✓ Right to transfer the registered TM or an application for registration through assignment or licensing-Art. 28.

Duration and Renewal of registration of TM-Art.24 +25.

Cancellation and Invalidation of TM

- 1. Failure to renewed-Art.25(5)
- 2. Application for renunciation-Art. 34(1),
- 3. Unjustified non-use-Art. 35.
- 4. Failure to meet the registration requirement-Art.36(1)

