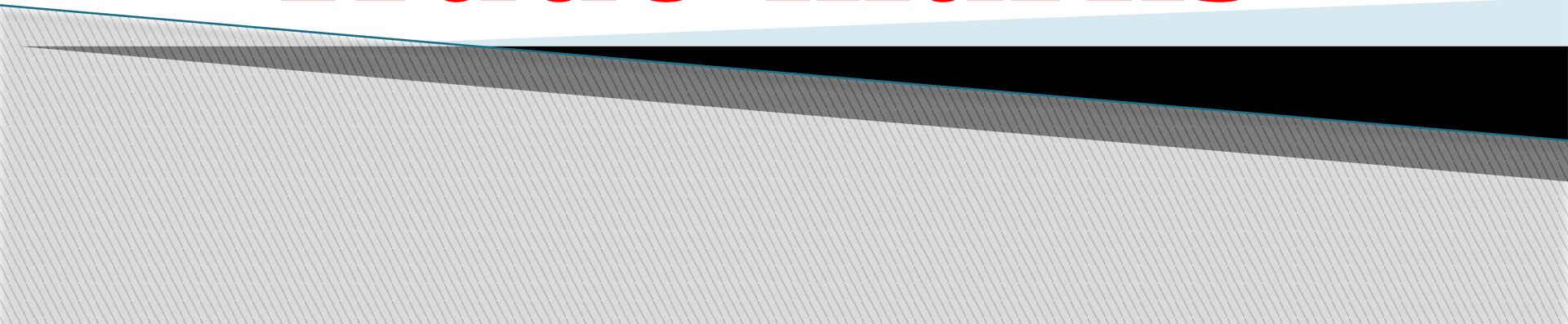


Chapter IV

Utility model , industrial design and Trade marks

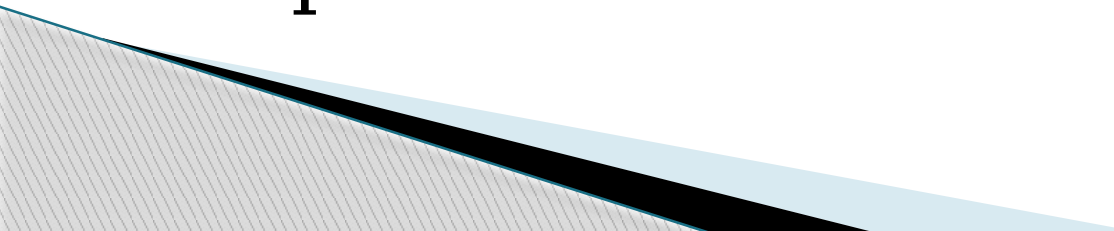


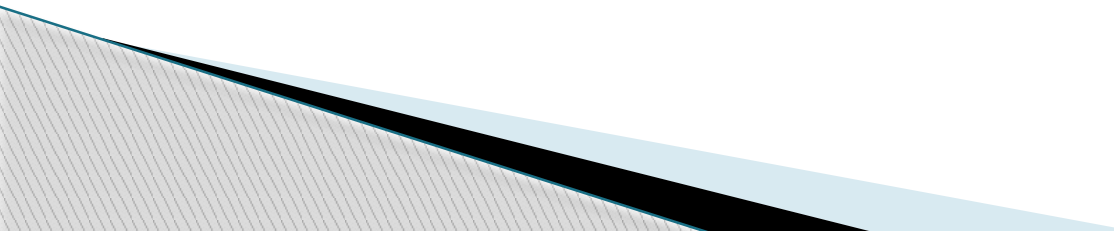
1. Utility model certificate

- ❑ In some countries, minor or incremental inventions protection is available in addition to protection for patents.
- ❑ In the context of developing countries, a patent may not be sufficient to encourage innovative activities because of the socio-economic and technological realities.

- ❑ The wish to **recognized** and **encourage** small or minor innovative activities not protected by standard patent law, leads to development of system known as **utility model** or **utility innovation** or **short term patents**.

- ❑ Utility model certificate is designed to afford protection to **small inventions** that don't meet the measure of standard patent.
- ❑ In other jurisdictions, it is known by other self-explanatory names such as **small patent**, **petty patent**, and **innovation patent**.

- ❑ It is believed that utility model certificate provides a valuable addition to the existing intellectual property rights.
 - ❑ Its proponent further argues that in many cases patent law is **too difficult and expensive** to obtain, and that proper protection of innovations by **small and medium-sized** enterprises demands a cheaper, quicker system of protection.
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- ❑ The conditions for patentability of inventions are **stringent** and are **beyond the reach of small inventors**.
 - ❑ The patent system is complex and costly as well as time consuming.
 - ❑ Patents and utility models are **similar** as they both protect **technical innovations**
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- Their difference lies
 - ✓ In the degree of innovation,
 - ✓ Substantive criteria for protection,
 - ✓ Procedure for protection and
 - ✓ Duration of the period for protection.
- 

Requirements for protection

**Art 38 (1) - minor invention
possesses**

- **Novelty and**
- **industrial applicability**

Can have patent right

**No requirement of inventive
step**

Rights for Utility Model

- ❑ **Art 38 (3)- the grant of a utility model certificates confers on the right holder the **exclusive right to exploit** the **minor invention** and prevent third parties from exploiting it with out the authorization of the right holder.**

The requirement of Novelty

- ❑ In case of patent the requirement of novelty is **absolute/ any where in the world**, while in utility model it is **local/in Ethiopia**. **Art 3(2) Vs Art 39 (1)**
- ❑ Novelty will not destroyed even it disclosed 6 months prior to the filing of application. **(Art 39(2))**

- Another important difference between **patent** and **utility model** is certificate is that the decision to allow or refuse the grant of utility model is based on **formal examination** but in case of patent both **formal and substantive examination**. (Art 41 Vs Art 13 (1)&(3))

Duration of protection

- **Five Years**, possible extension of **five** year up on proof its workability (**Art 44**).

Limitations (things not protected) (Art 40)

- **A mere changes** in **shape**, **proportion** or **material of a patented object** or of **one that is public property**. (**not an improvement in altering the qualities or functions**) **Art 40 (1)**

- Mere replacement of elements in combination by other known elements having an equivalent function. (not an improvement in use or in function) (**Art 40 (2)**)

- ❑ **contrary to public order or morality. (Art 40 (3))**

Conversion of patent application to Applications for Utility model

- ❑ Before refusal or granting, an application for patent can be converted to utility model and vice versa, up on payment of prescribed fee. _

2. Industrial Designs

- 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.
- **An industrial design** can be a **two** or **three dimensional pattern** used to **produce a product**, **industrial commodity** or **handicraft**.

- ❑ The Ethiopian proclamation define the term industrial design as “any **composition of lines** or **colors** or any **three dimensional** form whether or not associated with lines or colors, provided that such composition or form gives a **special appearance** to a **product of industry** or **handicraft** and can serve as a pattern for a product of industry or handicraft.” Art 2 (2)

- The requirement of 'special appearance' is what is known as the **ornamental** or **aesthetic** aspects of product.

Requirements of protection

- **newness/novelty &**
- **Industrial applicability** (Art 46 (1))

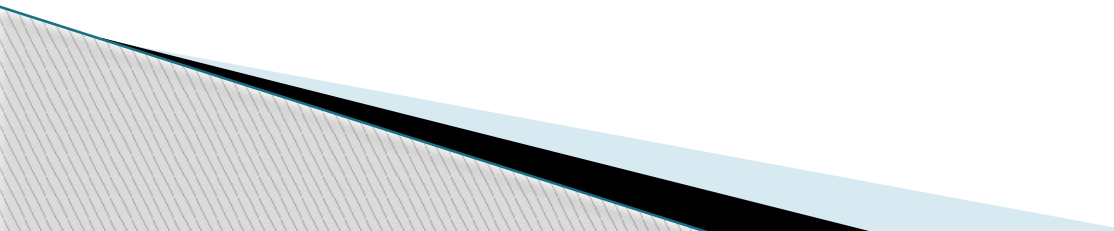
❑ To be new, industrial design should met two conditions

1. The design should differ in the sum total of its essential features from an existing design in any part of the world. Art 46 (2) (a)
2. The design should not have been **disclosed for more than one year** before the date of filing of the application of registration (unless a priority date is applicable)

□ Industrial applicability

:- it is deemed to have industrial applicability if it could be used for **repeated manufacture of production. Art 46 (2) (b)**

Limitation or exception

- ❑ an industrial design against **public order** or **morality**. (Art 46 (3))
 - ❑ Which serves solely **to obtain a technical result**. Art 46 (4)
- 

Application and examination

- ❑ Protection of industrial design is based on the system of registration. (Art 47 (1))
- ❑ **The content of an application**
 - ✓ **A request**
 - ✓ **A specimen of the article or pictorial representation &**
 - ✓ **An indication of the kind of product. (Art 47 (2))**

- ❑ The application is expected **related with one design** or **two or more** designs incorporated in products belonging to the same class and sold or used in sets. (**Art 47 (3)**)
- ❑ **payment of fee (Art 47 (4))**

Examination and registration

- ❑ **Checking up on the
complies of Art 2(2) and
Art 47 (formal
requirement) **Art 48 (1)****
- ❑ **registration Art 48(2)**

Rights conferred

- ❑ **Exclusive right to**
 - ✓ **Make**
 - ✓ **Use or**
 - ✓ **Other wise exploit the industrial design.**

Duration of protection

- ❑ **5 years, possible extension of 5 years, two times up on proof of the design is workable in Ethiopia .**