TRAINING COURSE:
INTELLECTUAL PROPERTY RIGHTS
AND
PHARMACEUTICAL PRODUCTS
AND PROCEDURES

THE NATIONAL SCENE
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Introduction to Intellectual Property Rights
INTRODUCTION

Types of Property Protected by Law:
- Fixed Property
- Movable Property
- Intellectual Property

VARIOUS TYPES OF PROPERTY

- **Fixed Property**
  - Land and housing plots
**VARIOUS TYPES OF PROPERTY**

**Movable Property**
- Goods such as electronic equipment and cars

**Intellectual Property**
- IP encompasses the changeable representations of intellect and creativity
## WHAT IS INTELLECTUAL PROPERTY?

- Relatively ‘modern’ type of property
- Recognition and compensation for creators and producers of new inventions, aesthetic or functional articles, literary or artistic works, symbols, names or images
- Rights which result from intellectual activity in the industrial, scientific, literary and artistic fields
- Granting of time-limited rights

## WHAT IS INTELLECTUAL PROPERTY? (CONT.)

- A form of intangible property – ownership
- IP provides an exclusive right, gives competitive advantage
- IP can be exploited, licensed or sold
- IP is a valuable asset on balance sheet and can generate income
WHAT IS INTELLECTUAL PROPERTY? (CONT.)

Growing recognition of importance of Intellectual Property (IP)

More important resource than land, energy and raw materials
- IBM has +40 000 patents and are registering +3 000 each year
- Nokia has +12 000 patents and +1000 innovations are in the process of being patented

Rising tide of infringement and fraud in IP context:
- Counterfeiting
- Pirating

IP highly valuable – all forms of human creativity

“If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it.”

- Thomas Jefferson
## TYPES OF INTELLECTUAL PROPERTY

IP is a generic term to refer collectively to intangible products -
- patents - Patents Act 57 of 1978
- trade marks - Trade Marks Act 194 of 1993
- designs - Designs Act 195 of 1993
- copyright - Copyright Act 98 of 1978
- plant breeders’ rights – Plant Breeders’ Rights Act 15 of 1976
  - all regulated by statute
- common law IP rights
  - regulated by principles of common law

## PATENTS
PATENTS (CONT.)

- A patent may be granted for an invention which is:
  - new;
  - involves an inventive step; and
  - can be used or applied in trade or industry or agriculture.

- Certain subject matter is excluded from patentability. For example:
  - discoveries, scientific theories and mathematical methods;
  - literary, dramatic, musical or artistic works and aesthetic creations;
  - schemes, rules or methods of playing games or doing business;
  - computer programs;
  - animals and plants; and
  - medical methods of treating humans or animals are not patentable as such.

PATENTS (CONT.)

Requirements for Patentability:

- **novelty**
  - invention deemed to be new if not part of the state of the art immediately before the priority date
  - state of the art: all matter/information available to the public in the Republic or elsewhere
  - also secret commercial use in RSA

- **inventiveness**
  - invention deemed to involve an inventive step if not obvious to a person skilled in the art
  - having regard to state of the art immediately before the priority date
Are there exceptions?

**YES**
- a disclosure made without the permission of the owner of the invention
- a disclosure as a result of reasonable technical trial by the owner

Effect of a patent:
- Exclusive right granted to protect an invention
- Offers incentive to individuals and companies
- Prevents others from commercially exploiting the owner’s invention by making, using, disposing, offering to dispose of or importing the invention
- Compulsory licences may be acquired by third parties in certain circumstances
  - in case of abuse of patent rights
  - in case of dependent patents
Patents as an asset:

- patents, although intangible, are assets
  - ensure that ownership of technology vests in business
  - ensure that valid applications are filed timeously
  - patents have territorial effect
- corresponding patent applications can be filed in other countries
  - create assets in other countries
  - gain market access, protect markets in other countries
  - use benefits of international treaties
    - Paris Convention: priority right
    - Patent Cooperation Treaty (PCT): multiple filing procedure
- patents grant exclusive rights
  - provide competitive advantage

How long does this right last?

- Duration of a patent
  - 20 years
  - subject to payment of annual renewal fees
DESIGNS

Features which can be protected:
- shape
- configuration
- pattern
- ornamentation

The article must be intended to be multiplied by an industrial process.

Protects, in principle, what an article looks like rather than the underlying technical idea.
### Types of Applications:

- **aesthetic designs (Part A of the register)**
  - for the pattern, shape, configuration, ornamentation of an article
  - features which appeal to and are judged solely by the eye
  - irrespective of the aesthetic quality

- **excluded are:**
  - features necessitated solely by function
  - methods or principles of construction

- **an aesthetic design registration endures for 15 years**

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### Types of Applications (cont.)

- **functional designs (Part F of the register)**
  - for the pattern, shape, configuration of an article
  - features necessitated by the function which the article is to perform

- **included are**
  - integrated circuit topographies
  - mask works, series of mask works

- **excluded are**
  - spare parts

- **a functional design registration endures for 10 years**
Requirements:

- Novelty – similar to patents, but 6 month grace period
- Useful complement to patent protection
  - Speed of registration (±9 months)
  - No inventiveness requirement

Who may apply?

- Author
- If the author of the design executes work for another person – that other person
- If a person makes a design for another person in terms of an agreement – that other person
- Where ownership has passed to another person from author – that other person
The following works are eligible for copyright:

- literary works;
- musical works;
- artistic works;
- cinematograph films;
- sound recordings;
- broadcasts;
- programme-carrying signals;
- published editions;
- computer programs;

Copyright is a non-registration right
- protection arises automatically when original work created
COPYRIGHT (CONT.)

- copyright works not limited to fine arts
- 'artistic works' include, irrespective of artistic quality
  - drawings of a technical nature
  - diagrams, charts, plans, maps
  - works of craftsmanship
- 'literary works' include, irrespective of literary quality
  - treatises, reports and memoranda
  - written tables and compilations (also stored in computer)
- computer programs are protected as copyright works

Ownership:

- Generally speaking, the first author is the owner or, if made in course and scope of employment, the employer is the owner
- Need to be careful with copyright ownership
  - "The outsider contractor"
COPYRIGHT (CONT.)

Rights afforded by copyright:

- the owner of the copyright in a work has the exclusive right to prevent all others (where applicable) from —
  - reproducing the work in any manner or form;
  - publishing the work;
  - performing the work in public or incorporating it in a film;
  - broadcasting the work;
  - making an adaptation of the work; or
  - in some cases, exercising commercial rental rights in respect of the work

TRADE MARKS
TRADE MARKS (CONT.)

Certain basic concepts:
- A ‘mark’ is defined as any sign capable of being represented graphically, including a device, name, word, letter, numeral, shape, configuration, colour, container for goods, etc.
- A ‘trade mark’ is defined as a mark used by a person in relation to goods or services for the purpose of distinguishing those goods/services from the same kind of goods/services connected in the course of trade with any other person.
- A trade mark is registered in respect of goods or services falling in a particular class or classes (Nice classification).
- Certification and collective marks may be registered.

Trademarks (cont.)

Requirements for registrability:
- A trade mark must be capable of distinguishing the goods/services of one person from those of another.
- A trade mark is capable of distinguishing if:
  - Inherently capable to distinguish, or
  - Capable to distinguish by reason of prior use.
- A mark which is inherently deceptive or likely to deceive or confuse cannot be registered.
- A mark which contains the national flag or the armorial bearings or a state emblem of SA or a Convention country cannot be registered.
certain marks are not eligible for registration and, if registered, may be removed
- a reproduction or imitation of a well-known foreign trade mark for similar goods/services
- a mark which the applicant has no bona fide intention of using
- a mark where the applicant has no bona fide claim to proprietorship
- a mark where the application was made *mala fide*
- a mark which is contrary to law, or *contra bonos mores*, or likely to give offence to any class of persons cannot be registered

Rights afforded by Trademarks:
- the owner of a registered trade mark enjoys the exclusive right to prevent all others from –
  - using the registered mark, or a mark so similar as to be likely to deceive or confuse, in the course of trade in respect of the same goods or services
  - using the registered mark or a similar mark in the course of trade in respect of goods or services so similar that there is a likelihood of deception or confusion
  - where the registered trade mark is also well-known in SA, using the mark or a similar mark in respect of any goods or services, if such use will be detrimental to the distinctive character or repute of the mark, notwithstanding absence of deception or confusion
SUMMARY

- Subject matter protected by different IP statutes distinguishable:
  - patents: protect technical innovations, the principle on which a device is constructed or works, processes, chemical substances, pharmaceuticals and medical devices
  - copyright: protects fine arts and some technical works (literary, artistic, musical works) and neighboring works (films, sound recordings, broadcasts) and computer programs
  - designs: protect aesthetic and functional shapes/configurations of articles intended for industrial multiplication
  - trade marks: protect distinctive marks/logos/signs used in respect of goods or services

COMMON LAW

- Information protected by Common Law:
  - information must in fact be confidential
    - not generally available
    - third party needs time and effort to acquire
  - owner of information must have expended time, effort, skill, money to acquire
    - body of information must have inherent value
  - effort must have been made to maintain confidentiality
    - if others need to know, only under obligation of confidentiality
    - limit number of third parties to whom disclosed
2009

Thank you for your attention

Questions?