



INNOVATION AND INTELLECTUAL PROPERTY

A Handbook for Teachers and Instructors

INNOVATION AND INTELLECTUAL PROPERTY
A Handbook for Teachers and Instructors

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INNOVATION AND INTELLECTUAL PROPERTY

A Handbook for Teachers and Instructors

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We welcome contributions for improving and building knowledge on the topic of "intellectual property"

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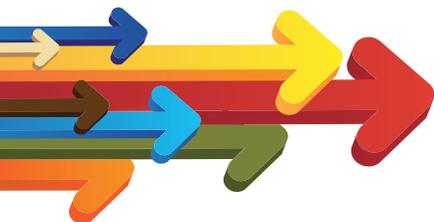
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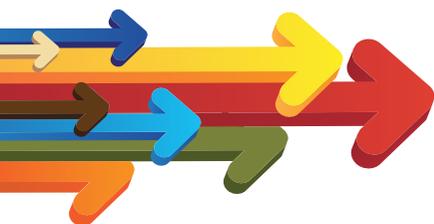


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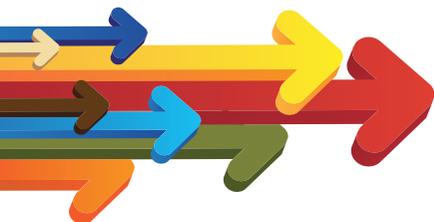
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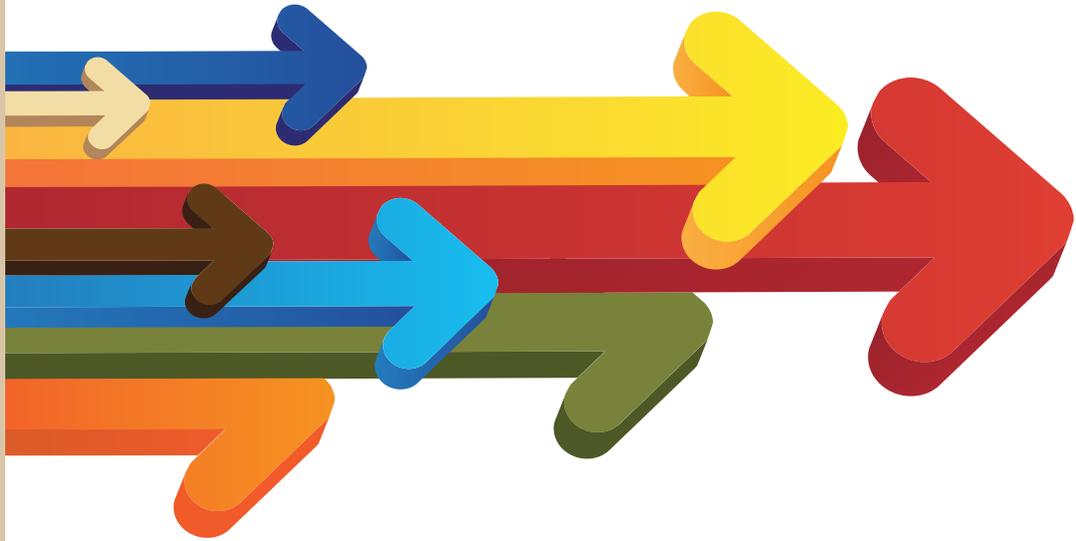
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PRESENTATION

As a major tool for promoting innovation in industry, the management of intellectual property is strategic for Brazilian companies to gain competitiveness in the global market. Through it, business leaders can seek out opportunities, monitor competition and identify, among other things, levels of investment and development of products and processes.

Aware of this need, the Euvaldo Lodi Institute (IEL), the National Industrial Apprenticeship Service (SENAI) and the National Institute for Industrial Property (INPI) joined forces and launched the Intellectual Property for Industry Program, the goal of which is to disseminate the importance of the matter for Brazilian Industry to grow.

One of the actions contemplated in the program is the publication of this handbook, which was designed to provide teachers and instructors of the entities linked to the Industry System with information on key aspects of industrial property. It is very important that they have this knowledge, as they are the ones who will convey it to future industrial workers.

Intellectual property, which is still very much associated with trademark registration and the issuing of patents, should be considered from a broader perspective. Enterprises need to understand its timeliness and relevance to maximize the correct ownership, protection and trade of these intangible assets, thus generating value and benefits for their business.

The National Confederation of Industry (CNI), leader of the project Mobilization for Business Innovation (MEI), recognizes that intellectual property should be given priority as a matter of great relevance for innovation. For this purpose, stimulating the development of new competences in enterprises is a must. This guide is a response to the commitment that was made. But other actions were also taken: IEL, SENAI and SESI professionals were trained to advise technicians and entrepreneurs on when, where and why their knowledge-based assets should be protected and to provide strategic and technological information contained in a database of patents, trademarks and industrial designs with the aim of monitoring trends and identifying partners that can contribute to innovation and competitiveness.

There is no doubt that innovation is key for Brazil's development. Innovation is a must for the economy to grow on a prosperous and sustainable basis, with higher productivity and better jobs and wages. Apart from all these gains for society, innovation is above all a business agenda that should also be given priority by government. Through it, our companies will be able to step up their competitiveness and include Brazil in the global market.

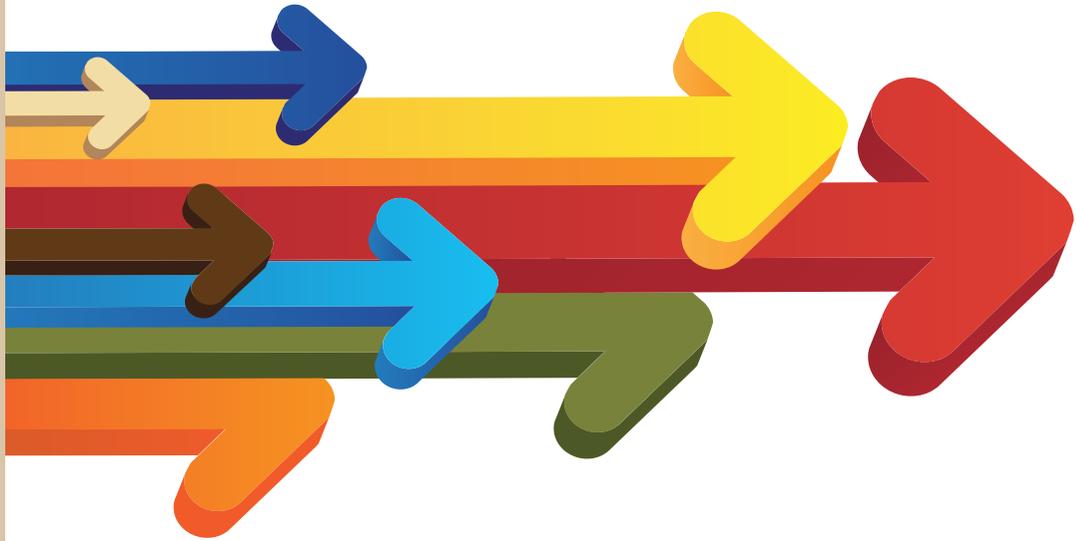
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FOREWORD

In today's society of knowledge and creativity, intellectual property is a topic of increasing importance for the economy of all countries and a means of inclusion in the international community. In this scenario, an agreement was signed between the National Institute for Industrial Property (INPI), the Euvaldo Lodi Institute (IEL/NC) and the National Industrial Apprenticeship Service (SENAI/DN) for implementing the "Intellectual Property Program for Industry," whose goal is to promote the strategic use of the system for protecting knowledge-based assets with the aim of enhancing the competitiveness of Brazilian industry.

Appropriate management of Intellectual Property involves a set of activities that require specific and sometimes complex expertise on the part of enterprises. These activities include those of identifying patentable technologies and of negotiating and contracting licenses and the use of trademarks, industrial designs and patents to increase value added, promote competitive differentiation and step up exports.

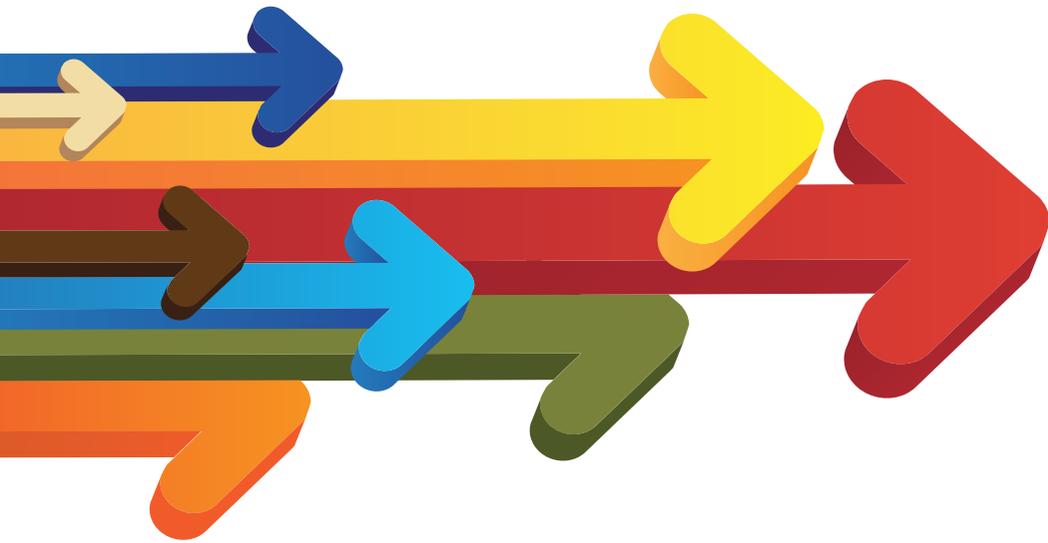
The INPI is the federal government institution in charge of industrial property and of other areas related to Intellectual Property of interest to industry. Offering expertise in these fields to Brazilian industry is the main purpose of this initiative and the learning and managerial and technological support systems coordinated by SENAI and IEL, which are particularly important for micro, small and medium enterprises, are the main channels for disseminating it.

The program was also designed to reach the community of media professionals, given their ability to clarify Intellectual Property management concepts and their importance to an even broader audience.

Considering the scope of the program being presented here, we can say that it is the most comprehensive dissemination and training initiative to promote strategic use of Intellectual Property in Latin America.

Jorge de Paula Costa Ávila

President of INPI



INTRODUCTION

1

The purpose of this publication is to provide inputs for teachers and instructors to develop lessons on intellectual property. The topics addressed here were organized from the most general to those that are unique, with the aim of achieving the following objectives:

- a) Defining what intellectual property is and identifying its importance to Brazilian industry;
- b) Conceptualizing what copyrights and related rights are and their implications;
- c) Explaining which rights are available for computer programs (software);
- d) Identifying what industrial property is and its applications: patents and utility models; registration of trademarks, industrial designs and geographical indications;
- e) Explain the types of sui generis protection available for cultivars, topographies of integrated circuit and traditional knowledge;
- f) Defining what unfair competition is.

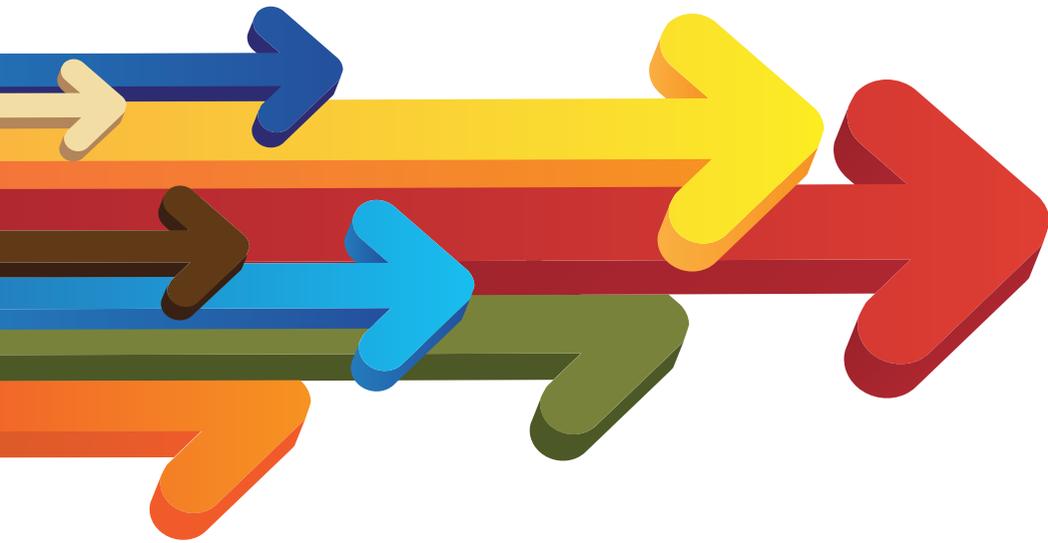
References to publications and websites were included throughout this handbook to allow teachers and instructors to deepen their research into the “Intellectual Property” topic, as well as suggested activities that can, at their discretion, be carried out with their students.

It should be mentioned that this publication is primarily based on relevant legislation, which was specified in ANNEX A, and on information made available by the World Intellectual Property Organization (WIPO) and by the National Institute for Industrial Property (INPI).

WIPO is a specialized agency of the United Nations Organization (UN) set up in 1967 with the mission of developing a balanced and accessible international intellectual property system designed to reward creativity, stimulate innovation and contribute to economic development and to safeguarding public interests.

The INPI is a Brazilian federal quasi-governmental agency established in 1970 and linked to the Ministry of Development, Industry and Foreign Trade that is in charge of processing all procedures related to the application for, granting and negotiation of industrial property in Brazil.

As support material for teaching, the publication *Propriedade Intelectual: Caça ao Tesouro* and the distance course *Propriedade Intelectual* are recommended (available at: <www.senai.br/ead>.), which are part of the “Competências Transversais” collection developed under an agreement between INPI, SENAI and IEL.



INTELLECTUAL PROPERTY

2

2.1 Since when do humans seek to protect intellectual property?

The history of the human race cannot be told without mentioning the discoveries and innovations that resulted from the creativity of the human intellect. This was the unique trait that led humanity to achieve our current level of technological development and quality of life.

In the fifteenth century, the Republic of Venice was an important trading center that was also dedicated to the arts and sciences. Many inventors lived there and in 1477 its local government enacted the first law designed to protect the rights of inventors and the first letters patents were granted¹. Later, many countries-states adopted similar laws.

According to Macedo and Barbosa (2000), between the fifteenth and the seventeenth century kings and rulers granted exclusivity for their peers to exploit their inventions, thus characterizing the “commercial monopoly of inventions.” However, the granting of letters patents did not become a practice, and they were not much used, for over a century.

Also according to Macedo and Barbosa (2000), the requirements of “novelty” and “industrial application” were already applied since the days of the “letters patents”² for inventors to be granted the privilege, besides that of bringing benefits to the State. Since the fifteenth century, agreements were signed to consolidate the industrial property system that was adopted by many countries, which through specific legal frameworks granted protection only to resident inventors. However, with the expansion of trade and piracy, the need for international protection arose, as a result of which the “International Union for the Protection of Industrial Property” or “Paris Convention” (CUP) was signed in 1883. This agreement set out rules for regulating the granting of patents, allowing them to be granted to non-residents and determining the territoriality of patents, i.e. their validity only in the country where they were granted.

The CUP was the first treaty designed to protect industrial property that was signed by several countries, and Brazil was one of the first 14 countries to join the Convention³. Later, in 1886, the Bern Convention for the Protection of Literary and Artistic Works was established. These conventions are still in force today to ensure recognition and fair economic compensation to creators for their creations, ensuring them the right to produce, distribute and disseminate them without fearing unauthorized copying or piracy. As shown in Figure 1, efforts were made to establish a system that would contribute to improving the quality of human life, expanding the access to the creations of human ingenuity and increasing the use of knowledge and culture around the world.

¹ The term “patent” was used for the first time in the first letters patents granted in the early fourteenth century in England to inventors or importers of new technologies and it ensured exclusive rights to use the technologies in question for a period long enough for them to establish their businesses (OECD, 2001).

² The same parameters are applied to this day.

³ In 2009, the Agreement had 173 signatory countries.

Virtuous Cycle of the Intellectual Property System	
Economic return Recognition	Wealth generation Dissemination of recognition
Creativity Innovation	Culture and technology Quality of life
CREATOR	SOCIETY

Figure 1 - Benefits of the intellectual property system

After the Second World War, with the world in a process of reconstruction and resuming of international trade, the GATT - General Agreement on Tariffs and Trade - was signed. As a result of the confluence of the international trade and intellectual property topics in the new post-war scenario, and because the Paris and Berne Conventions proved to be insufficient in that environment, the World Intellectual Property Organization (WIPO) was created in 1967.

In 1986, due to the pressure from the U.S., Europe and Japan, the so-called Uruguay Round of the GATT began, in which intellectual property was given more emphasis and amplitude. After eight years of discussions, the Uruguay Round culminated in the establishment of the WTO (World Trade Organization), which replaced the GATT. The agreement that established the WTO, known as the Marrakesh Agreement, incorporated a number of multilateral agreements, including the Agreement on Technical Barriers to Trade (TBT)⁴ and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)⁵.

There is no doubt that the TRIPS made it possible to include intellectual property in the multilateral trading system. Its benefits include:

- a) Greater legal certainty for companies, especially multinationals, as they can now rely on protection for their trademarks and patents in other countries;
- b) More investment and economic development as a result of such legal certainty;
- c) Availability of a dispute settlement mechanism in the WTO, which despite its flaws is better than a bilateral agreement, especially when the dispute is between a developed country and an underdeveloped or developing country.

⁴ The TBT applies to industrial and agricultural products and is intended to eliminate technical barriers that hinder international trade. The text of the TBT in English is available at: http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm. Accessed on: Dec. 15, 2008.

⁵ The TRIPS agreement provides for author's rights and related rights, trademarks, geographical indications, industrial designs, patents, integrated circuit topographies, protection of trade secrets and control over unfair competition. It sets out basic principles for the existence, scope and use of intellectual property rights. The text of the TRIPS in English is available at: http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm. Accessed on: Nov. 19, 2008.

On the other hand, according to Leis (2006), although the TRIPS agreement sets out that developed countries should provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to less developed countries, little has been done to make this happen in practice. Likewise, technical cooperation arrangements between developed and less developed countries are still incipient. Leis (2006) also believes that although the TRIPS agreement provides for measures to promote social well-being as a result of protecting intellectual property, this is not something that happens by itself, as intellectual property is just one component of a complex mechanism that requires, among other measures, appropriate public policies, investment in infrastructure, tax incentives, etc.

2.2 What is intellectual property?

For one to understand what intellectual property is, the meaning of each word in this term must be understood.

According to the *Novo Dicionário da Língua Portuguesa* (New Dictionary of the Portuguese Language), by Aurélio Buarque de Holanda Ferreira, the term “property” has the following meaning, among others: “the right to use, enjoy and dispose of property and to regain it from whoever holds it unfairly” and “the goods on which such right is exercised.” It can thus be said that the owners of property are free to use it in whatever they like, provided that such use is not contrary to law, and they are free to prevent someone from using it.

Adding the adjective “intellectual” to “property,” which according to the same dictionary means “possessing endowments of spirit, intelligence,” it can be seen that, according to WIPO [200-?d], intellectual property broadly refers to creations of the human spirit and to the rights to protect the interests of creators on their creations.

It should be emphasized that intellectual property rights are related to information or knowledge that can be incorporated, at the same time, to an unlimited number of copies of an object anywhere in the world, and not to the copied object itself. Therefore, intellectual property doesn’t lie in the objects and their copies, but rather in the information or knowledge reflected in those objects and copies, meaning that they constitute an intangible asset.

2.3 What does intellectual property cover?

The term “intellectual property” is divided into three main groups, namely:

Intellectual property	Copyrights	Author's Rights Related Rights Computer Programs
	Industrial Property	Trademarks Patents Industrial Designs Geographical Indications Industrial Secrets & Repression of Unfair Competition
	Sui Generis Protection	Integrated Circuit Topographies Cultivars Traditional Knowledge

copyright, industrial property and sui generis protection, as shown in Figure 2.

Figure 2 - Modalities of intellectual property rights

Copyrights comprise:

a) Author's rights, which in turn cover:

- literary, artistic and scientific works;
- computer programs (software);
- scientific discoveries.

b) Related rights comprise interpretations of performers and performances of performing artists, phonograms and broadcasts.

Industrial property covers:

- a) Patents that protect inventions in all fields of human activity;
- b) Trademarks, business names and designations;
- c) Industrial designs and models;
- d) Geographical indications;
- e) Industrial secrets and repression of unfair competition.

Sui generis protection covers:

- a) Topographies of integrated circuits;
- b) Cultivars;
- c) Traditional knowledge.

As can be seen below, according to a company's strategy, the same product can be protected in several different ways that cover different aspects of such product (Figure 3). A company can therefore prevent third parties, in all territories in which its products are protected, from copying, manufacturing, using, offering for

Product "A"		
Trademark	Patent	Industrial Design
Product "B"		
Trademark	Patent	Business Secret
Product "C"		
Trademark	Patent	Circuit Topography
Product "D"		
Trademark	Computer Programs	Circuit Topography
Product "E"		
Trademark	Author's Rights	Related Rights

sale, selling, importing or exporting its products without its consent.

Figure 3 - Protection available to products based on different combinations of intellectual property rights

There is specific legislation to address different forms of protection under copyright, industrial property and sui generis protection. This legislation is specified in Annex A and in the References.

Summary of Topic 2 (Intellectual Property)

Human beings have been adopting laws with the aim of building a system designed to help improve their quality of life, expand their access to creations of human ingenuity and increase the use of knowledge and culture, while ensuring recognition and economic rewards to creators for their creations. This system is known as the intellectual property system, which in its broadest sense refers to creations of the human spirit and to the rights to protect the interests of creators on their creations.

Intellectual property laws are not applied to the objects and their copies, but to the information or knowledge reflected in those objects and copies.

The term intellectual property is divided into three major groups, namely: copyright, industrial property and sui generis protection. In Brazil, there is a specific legal framework to address different forms of protection.

Suggested Activity with Students

This activity should be performed after the teacher or instructor presents the content of topic 2 - Intellectual Property.

Objective:

Demonstrate prior knowledge about the intellectual property system based on

information contained in the publication *Propriedade Intelectual: Caça ao Tesouro*, and on personal experience. (The teacher or instructor can collect evidence to diagnose how knowledgeable of the subject the class is and thus to plan subsequent lessons on the topic).

Time:

30 minutes.

Steps:

1. Divide the class into 4 groups - Each group should identify at least 10 inventions and creations contained in the following illustration. It should also report how it imagines its world without these inventions and creations. Time: 20 minutes.
2. The reporter of each group presents a summary of the findings of the group in 2 minutes. Time for reporting: 8 minutes.
3. The teacher or instructor concludes the activity by presenting a few more creations and inventions not mentioned by the groups. Time: 2 minutes.

Template:

List of creations and inventions that can be protected by intellectual property and were attributed to the illustration: magazines, photographs, paintings, performances and executions of music and movies, fixing and distribution of music and movies, broadcasting of television programs, the design of furniture and decorative objects, design of book covers, CDs and DVDs, of carpets and sofa fabric, architectural projects and projects of bolts, nuts, electric wires, wall paint, television, home theater, furniture and decoration accessories, etc.





COPYRIGHTS

3

3.1 What guarantees copyrights in Brazil?

In Brazil, Law no. 9,610 of February 19, 1998, known as the Copyright Act⁶, regulates this right, according to which copyrights comprise author's rights and their related rights.

Figure 4 shows the fields of application of copyrights.

	Author's Right
Copyrights	Related Rights
	Computer Programs

Figure 4 - Fields of application of copyrights

3.2 Author's Rights

What is the purpose of author's rights and what do they protect?

Author's rights protect authors (writers, artists, music composers, etc.) in relation to the works they create. In the field of science, what is protected is the literary or artistic form, not the scientific or technical content.

Author's rights comprise:

- a) Texts of literary, artistic or scientific works;
- b) Choreographic and pantomimic works;
- c) Musical compositions;
- d) Photographic and audiovisual works, including cinematographic works;
- e) Drawings, paintings, engravings, sculptures, lithography and kinetic art;
- f) Illustrations, geographic maps and other works of a similar nature;
- g) Projects, concepts and plastic works concerning geography, engineering, topography, architecture, landscaping, scenography and science;
- h) Adaptations, translations and other transformations of original works, presented as new intellectual creations;
- i) Collections or compilations, anthologies, encyclopedias, dictionaries, databases and other similar items that constitute a new intellectual creation;
- j) Computer programs.

⁶ Available at: <http://www.planalto.gov.br/ccivil_03/Leis/L9610.htm>. Accessed on: Oct. 20, 2008.

Besides being protected by the Copyright Act, computer programs are covered by specific legislation, i.e. Law no. 9,609 of February 19, 1998, known as the Software Act⁷.

What is not protected by author's rights?

The following items are not protected by copyright:

- a) Ideas, regulatory procedures, systems, methods, projects or mathematical concepts;
- b) Schemes, plans or rules for performing mental acts, playing games or doing business;
- c) Blank forms and their instructions;
- d) The texts of treaties or conventions, laws, decrees, regulations, judicial decisions and other official acts;
- e) Information of common use, such as calendars, diaries, registers or legends;
- f) Isolated names and titles;
- g) Industrial or commercial use of ideas contained in works.
- h) Is there any formality involved in getting copyrights?

A work enjoys protection by copyright from the moment it is created, regardless of any registration or formality. Albeit optional, registration facilitates, for example, the settlement of disputes involving ownership or authorship, financial transactions, assignments, licenses and transfers of rights. In Brazil, an author can register his or her works with the institutions listed in Table 1.

Table 1 - Where creations can be registered

Creations	Institutions in charge of registration
Books and texts	National Library Foundation, available at: < www.bn.br >.
Movies	National Cinema Agency, available at: < www.ancine.gov.br >.
Artistic works	School of Fine Arts, available at: < www.eba.ufrj.br >.
Sheet music	School of Music Available at: < www.musica.ufrj.br >. National Library Foundation, available at: < www.bn.br >.
Architectural plans/projects	Regional Council of Engineering and Architecture (CREA), Available at: < www.confed.org.br >.
Computer programs	National Institute for Industrial Property, available at: < www.inpi.gov.br >.

⁷ Available at: <http://www.planalto.gov.br/ccivil_03/Leis/L9609.htm>. Accessed on: Oct. 21, 2008.

What is the term and scope of an author's right?

In Brazil, copyrights protect a work from the date of its creation until 70 years after the year following that of the author's death. After this period, the work falls under public domain, i.e. any individual is free to use it without specific permission from the copyright holder. After the death of an author, his or her rights are transferred to his or her successors.

According to the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS)⁸, which was signed by Brazil, every author is protected by copyright in all countries that signed it.

What kinds of rights are obtained through author's rights?

Copyrights comprise two types of rights:

- a) Moral rights, which enhance the link between an author and his or her work; thus, the creator of a work cannot be separated from that which he or she created. For example, even if performed by another artist, songs composed by the Beatles will always belong to the Beatles. Moral rights are regarded as personal, inalienable and non-transferable rights, i.e. even if an author assigns rights on his or her work, the author has the moral right to see his or her name acknowledged and cited;
- b) Patrimonial rights, which allow an author to assign or license his or her work on a permanent or temporary basis and to exploit it economically as he or she wishes. For example, Michael Jackson paid US\$47.5 million for the rights to Beatles songs (Rolling Stone, 2008). In this case, the moral rights on the songs remain with the Beatles, but the right to market them, the patrimonial right, was transferred to Michael Jackson and, after his death, they were transferred to his heirs.

What do author's moral rights comprise?

As the creator of a work, an author has the right to:

- a) Claim, at any time, the authorship of the work;
- b) Have his or her name, pseudonym or sign indicated or announced as that of the author when his or her work is used;
- c) Keep the work unpublished;
- d) Ensure the integrity of the work, i.e. the right to reject changes in the work or its use in contexts that could harm the reputation or honor of the author.

What do patrimonial rights comprise?

Through patrimonial rights, the creators of a work can use it as they wish. They can authorize or prohibit the following acts:

- a) Partial or full reproduction of the work in various forms, such as, for example, in a printed publication, in a recording on cassette tapes, CDs or DVDs;

⁸ Available at: <http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm>. Accessed on: Nov. 19, 2008.

- b) Editing, adaptation, musical arrangement and any other transformations, e.g. the conversion of a novel or a of play into a screenplay;
- c) Translation of the work into any language;
- d) Distribution, such as through sale to the public of copies of the work;
- e) Interpretation and public performance, such as a musical interpretation during a concert or a play;
- f) Broadcasting and communication to the public via radio, television, cable or satellite;
- g) Inclusion in a database, storage in a computer, microfilming and other similar forms of filing.

According to WIPO [200-?c], there are international agreements that ensure that the holders of patrimonial rights will be adequately and effectively protected when their works are disseminated through new technologies and communication systems such as the Internet.

The © symbol, which means “copyright” (literally, the right to make copies), or texts such as “All rights reserved” indicate that the holder of patrimonial rights on a work wants his or her copyright to be protected.

But when a work is released for reproduction, we find texts like this one: “Any part of this publication may be copied, provided that the source is mentioned.”

In which situations can a work be used without the author’s permission?

Examples of what does not constitute a violation of copyrights include:

- a) Reproduction, in a single copy, of short extracts of a protected work for private use of the copyist, if made by him or her without gainful intent.
- b) Quotation of passages from any work for study purposes, indicating the name of the author and the origin of the work, provided that the source is cited;
- c) Theatrical and musical performances in family environments or exclusively for educational purposes in schools, without gainful intent;
- d) Reproduction of short extracts from existing works of any nature or of the whole work in the case of fine arts, where the reproduction itself is not the main objective of the new work.

How are patrimonial rights commercially exploited?

Many authors don’t know how to manage their patrimonial rights or lack the means to do it, as mass production, dissemination and distribution require financial investment and professional skills, as well as administrative organization and specialized legal support. Authors and creators usually transfer their patrimonial rights to companies, associations or professional organizations through contracts in exchange for a financial compensation such as a lump sum or

royalties⁹ based on a percentage of the revenues generated by the work. These royalties are charged on the use of the work in broadcasting, nightclubs, restaurants, libraries, universities, businesses and schools in all the member countries of the TRIPS Agreement.

What are the penalties applied for violations of copyrights?

Imprisonment of one to four years and a fine if the violation consists in the full or partial reproduction of a creation by any means for commercial purposes without the express permission of the author or his or her representative.

The same penalty applies to anyone who sells, offers for sale, introduces in the country, acquires, conceals or keeps in a deposit, for commercial purposes, the original copy of a creation or a copy thereof produced in violation of copyrights.

The law that deals with copyright violations¹⁰ is Law no. 10,695 of July 1, 2003.

3.3 Related rights

What are related rights?

Related rights are intended to protect performing artists, phonogram producers and broadcasters in cases of interpretation, execution, recording or broadcasting of creations.

This type of protection is linked to author's rights and does not affect the guarantees available for protecting their works. Author's rights and related rights protect different people. For example, in the case of a song, author's rights protect the composer and the creator of the lyrics; related rights, in turn, apply to the musicians and singers who interpret the song, the producer of the sound recording (also called phonogram) in which the song is included and the broadcasting companies that broadcast the song.

What rights are ensured to the holders of related rights?

The rights to authorize or prohibit vary according to the holder, namely:

Interpreters and executors - fixation, reproduction, broadcasting and public execution of their interpretations;

Phonogram producers - reproduction, distribution by sale or lease of copies of the reproduction and communication to the public through public execution, including broadcasting;

Broadcasters - retransmission, fixation and reproduction of their broadcasts.

What is the term of related rights?

⁹ According to Brazil's Internal Revenue Service (Receita Federal), royalties are the "Amounts paid [...] for exploiting patents, models, industrial designs, and for using trademarks or advertisements; remuneration for technical, technical assistance, administrative assistance and similar services; copyright, including in the case of purchase of computer programs (software), [...] except cinematographic films." Available at: <<http://www.receita.fazenda.gov.br/PessoaJuridica/DIRF/Mafon2002/rendresexterior/fioyalf/esPagAssistTec.htm>>. Accessed on: Oct. 23, 2008.

¹⁰ Available at: <http://www.planalto.gov.br/ccivil_03/Leis/2003/L10.695.htm>. Accessed on: Oct. 20, 2008.

Seventy years from January 1 of the year following fixing, for phonograms; following transmission for broadcasts of broadcasting companies; and following public execution and representation, for the remaining cases.

Related rights are subject to the same exceptions applied to author's rights, and free use of interpretations, executions, phonograms or broadcasts by broadcasters are allowed for certain specific purposes, such as in quotations and news reports.

What is the penalty applied for violations of related rights?

The penalty is the same applied to those who violate copyrights, namely, imprisonment of one to four years and a fine.

3.4 Computer programs (software)

How is a computer program protected?

Intellectual property protection for computer programs is the same granted to literary works by the law on copyrights and related rights (Copyright Act). Besides this law, there is specific legislation dealing with this matter: Law no. 9,609 of February 19, 1998, known as the Software Act¹¹.

Legal provisions on moral rights are not applied to computer programs, but their authors have the right to claim authorship of such programs at any time and to oppose unauthorized changes to them when they involve distortion, mutilation or other modification of the computer program that can harm their honor or reputation.

Are all computer programs protected by copyright?

A program that can be protected under the Copyright Act is one consisting of an organized set of necessary instructions for the operation of automatic data-processing machines, devices, instruments or peripherals, namely, a program that makes a computer or its peripherals operate in a specific way and for a specific purpose, such as a 3D drawing program or an operating system, such as Windows 7®.

The types of computer programs that can be protected by copyright can be found on the INPI website. Available at: <http://www.inpi.gov.br/menuesquerdo/programa/pasta_classificacao/tipo_programa_html>.

Information about the fields of application of computer programs is available at: http://www.inpi.gov.br/menu-esquerdo/programa/pasta_classificacao/index_html.

Is there any formality involved in obtaining intellectual property protection for computer programs?

Computer programs are protected by copyright and, as such, their registration is optional. However, they can be registered with the National Institute for Industrial Property (INPI) upon payment of the applicable fees¹², with the observation that, in the event of a dispute, the registration is a form of proof of authorship.

¹¹ Available at: <http://www.inpi.gov.br/menu-esquerdo/programa/pasta_custos>. Accessed on: Nov. 17, 2008.

¹² Available at: <http://www.inpi.gov.br/menu-esquerdo/programa/pasta_custos>. Accessed on: Nov. 17, 2008.

What is the term and scope of the protection available for computer programs?

The term is 50 years from January 1 of the year following that of its publication or, in the absence thereof, from the date of their creation. The term is valid internationally; thus, computer programs registered with the INPI don't need to be registered in other countries, provided that equivalent rights are granted to foreign holders. Similarly, programs owned by foreigners don't need to be registered in Brazil, except if the rights on them are transferred to provide a guarantee for the parties involved.

If the author of a computer program is an employee or a trainee of a company, who has the right to it? The employee/trainee or the company?

Unless otherwise agreed, the property rights on software developed and produced during the term of an employment contract belong exclusively to the employer or to the party that hired the programming services. The same treatment is applied to scholarship holders and trainees. In order to avoid future problems, companies and institutions should always include specific clauses on property rights on software in their contracts with employees, trainees or scholarship holders.

What is the penalty provided for in the Software Act for violations of author's rights on software?

Imprisonment of one to four years and a fine if the violation consists in the full or partial reproduction of software by any means for commercial purposes without the express permission of the author or his or her representative.

The same penalty applies to anyone who sells, exhibits for sale, introduces in the country, acquires, conceals or keeps in a deposit, for commercial purposes, an original copy of software or a copy thereof produced in violation of copyrights.

Summary of Topic 3 (Copyrights)

In Brazil, the Copyright Act provides for the protection of author's rights on their works and of related rights.

No formality is involved in obtaining this protection, which is valid in all countries that, like Brazil, signed the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

There are two types of copyrights: moral rights (the creator can never be separated from his or her work) and patrimonial rights (the author can assign or license such rights).

Author's rights remain in force for up to 70 years after the death of the creator of a work and related rights (interpretation, execution, broadcasting) remain in force for 70 years from January 1 of the year following fixing, for phonograms; following transmission, for broadcasts of broadcasting companies; and following public execution and representation, for the remaining cases.

Computer programs are protected by the Copyright Act and also by a specific law, known as the Software Act. In this case, no formality is involved in obtaining intellectual property protection, but it is advisable to register software with the

INPI. This protection is valid in all countries that grant the same right for 50 years from January 1 of the year following that of its publication or, in the absence thereof, of its creation.

Suggested Activity with Students

This activity should be performed in two stages: before and after the teacher or instructor presents the content of topic 3.

Objective:

Assess the learning of the students after a theoretical class.

Time:

30 minutes.

Steps:

1. Before the theoretical class, hand out the following exercise sheet to the students for them to work on individually. Collect the sheets after 10 minutes.
2. After the theoretical class, hand out the exercise sheet to the students again for them to answer the same questions in 8 minutes.
3. Correct them orally and ask the students to indicate the percentage of correct answers before and after the class. Time: 12 minutes.

Template: all statements are true.

COPYRIGHTS - EXERCISES

Mark true statements with a T and false statements with an F.

	QUESTIONS	ANSWERS	
		BEFORE THE CLASS	AFTER THE CLASS
1	An object can be simultaneously protected under the three main categories of intellectual property: copyright, industrial property and sui generis protection.		
2	Copyrights include author's rights and related rights.		
3	Musical compositions are protected by author's rights.		
4	Musical interpretations are protected by related rights.		
5	Cinematographic works are protected by copyright.		
6	The distribution of cinematographic works is protected by related rights.		
7	Copyrights don't cover ideas, but only concrete expressions of ideas.		
8	No formal registration is required to enjoy copyright protection.		
9	A copyright remains in force during the entire life of the creator plus 70 years after his or her death, and after this period it falls under public domain.		
10	Anyone is free to use a work after it falls under public domain.		
11	Patrimonial rights on a work can be assigned.		
12	Moral rights on a work cannot be assigned.		
13	Reproduction, in a single copy, of short extracts of a protected work for private use of the copyist, if made by him or her without gainful intent, is allowed.		
14	Quotation of passages from any work for study purposes, indicating the name of the author and the origin of the work, is allowed.		
15	Royalties are payments received by an author for transferring rights to companies or specialized organizations.		
16	The rights to a computer program belong exclusively to the employer or to the party that hired the programming services in question, unless otherwise agreed.		
17	Computer programs are protected by copyright.		
18	Computer programs are addressed by specific legislation.		
TOTAL OF CORRECT ANSWERS			



INDUSTRIAL PROPERTY

4

4.1 Who ensures and grants industrial property rights in Brazil?

In Brazil, Law no. 9,279 of May 14, 1996 regulates rights and obligations related to industrial property. It is known as the Industrial Property Law¹³.

The INPI is the agency in charge of each and every procedure involved in applying for, granting and negotiating industrial property in Brazil.

4.2 What does the term industrial property cover?

According to WIPO [200-?e], in the Paris Union Convention (CUP), which was created in 1883, it was defined that the term “intellectual property” can be applied, in the broadest sense, “not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured and natural products [...]”

In Brazil, rights relating to industrial property are protected by:

- a) Invention and utility model patents;
- b) Industrial design registration;
- c) Trademark registration;
- d) Registration of geographical indications;
- e) Registration of integrated circuit topographies; and
- f) Repression of unfair competition.

4.3 What is the use of industrial property?

Industrial property is an important tool for promoting a country’s development, as it is directly derived from the technological ingenuity and creativity of its people.

According to Sachs¹⁴ (apud VARELLA, 2005, p. 3), countries can be divided into three categories according to their technological production and interest in industrial property rights. The first category is that of technologically excluded countries, importers of technology, which don’t have any invention patent or only have a few of them. Most countries fall under this category. The second category is that of technology-adapting countries, which stand out in some sectors for some significant innovations but for the most part are only capable of adapting foreign technologies, reproducing them in their territory. This group includes some developed and developing countries. The third category is that of a few countries that are global leaders in technology and enjoy 93% of all benefits afforded by the industrial property protection system, including the United States, Germany, Japan, the Netherlands, France and the UK.

¹³ Available at: <http://www.planalto.gov.br/ccivil_03/Leis/L9279.htm>. Accessed on: Oct. 22, 2008.

¹⁴ SACHS, Jeffrey. A new map of the world. The Economist, London, April 19, 2001.

Especially in countries falling under the second category, which include Brazil, industrial property has a very important role to play in leveraging economic and social development.

According to Leonardos (2005, p. 173), several studies have shown that most of the income growth registered in the United States and in European countries resulted from increased technical knowledge and from the increased capacity of human beings to use accumulated technical information. In the long run, for a country that wants to develop itself, increased use of technical knowledge results from improvements in the habits and attitudes of the general population, that is, from the education of its people. In the short term, however, for new techniques to be adopted, relevant information must be accumulated in an organized manner to be used timely. This is what an industrial property system can provide, as it is not just a legal mechanism for recognizing inventors, but rather a system that contributes to the regulation, organization, dissemination and use of information on innovation for industrial application and, consequently, to promoting domestic industries.

According to WIPO, about 70% of all technologies available in the world are exclusively disseminated through patent documents, making this documentation one of the richest sources of technological information one can find. In addition, WIPO also estimates an annual growth of 600,000 patent documents published worldwide.

There are patents for virtually everything human beings ever created. Therefore, relying on a single source of information, one can have access to data related to a wide range of different technological fields. Moreover, patent collections are becoming increasingly available. The homepage of the European Patent Office, for example, provides free access to patents published in more than 70 countries.

It should be mentioned that there is a huge amount of documents that provide valuable information and were never protected by a patent or whose legal protection has expired. Until 1992, for example, Brazilian law did not allow patents to be granted for chemical-pharmaceutical products and processes. Consequently, all documents filed until that date contain valuable information that has never been effectively covered by patent protection.

4.4 Invention and Utility Model Patent

What is a patent?

A patent is a legal title that documents and legitimizes the right of the owner of an invention or a utility model for a certain period. It includes both new creations and the improvement of existing ones (Figure 5).

Figure 5 - Illustration of a patented product – Can crusher

What is an invention?

An invention is a new solution to technical problems. These problems may be old, but in order to be called an invention, the solution must possess the quality of absolute novelty, i.e., show some new characteristics which are not known in the body of existing knowledge (called "prior art") in its technical field.

According to WIPO [200-?a], the simple discovery of something that exists in nature, such as an unknown variety of a plant, is not an invention; however, the process of extracting a new substance from this plant can be an invention, as it involves a human intervention that is not an obvious result of what is already known. In other words, it involves an inventive step.

To be patentable, in addition to presenting the characteristics of absolute novelty and an inventive step, the invention must have industrial applicability, i.e., it should be able to be produced on a large scale.

Invention patents can be granted to a product or a process. The creation of a new metal alloy is an example of a product invention. The invention of a new method or process for manufacturing a metal alloy already known is a process invention. Patents are usually granted based on the distinction between product patent and process patent.

It is important to note that not every invention becomes an innovation. Innovation refers to the transformation of the invention into a profitable product or process, where the inventive idea has economic relevance. Innovation is therefore an economic activity performed in the production environment and is designed to give greater competitiveness to a technology or technological discovery to which it adds economic value and profitability, and may be protected by patents.

An invention can take two, five, ten, twenty or more years to become a viable technology capable of competing in the market. Often times this does not occur and the invention is ultimately abandoned. Therefore, from the technological standpoint, the risk of developing an invention is very high. However, investments tend to grow as this risk decreases and the knowledge of the market potential for a product increases. As a general rule, it is said that for every monetary unit involved in the idea stage, about 60 additional units will have to be invested until the product is placed on the market, i.e., when an invention truly becomes an innovation.

What is a utility model?

A utility model is the name given to the protection of a new form, arrangement or design that improves an existing product or brings an improvement in its application. The characteristics of absolute novelty and industrial applicability are also required, but with a lower degree of inventiveness. For example, a pair of pliers in which the shape of the handle has been modified (Figure 6) to cut and fold materials with greater efficiency and make its use more comfortable can be a patentable utility model.

Figure 6 - Illustration of a utility model – Pliers

What are the rights granted by an invention or utility model patent?

The holder of a patent has the right, in principle, to prevent others from

manufacturing, using, offering for sale, importing or selling the invention (product or process) without his consent in the country where the title was granted.

As the patent is an important business instrument, companies are generally responsible for their commercial exploitation. This exploitation of a patent can apply to patents developed in the company itself or to those acquired or licensed from third parties upon payment of royalties.

For example, although Korea dominates the market for monitors, the country did not discover either of the two screen technologies (thermionic emission valve and liquid crystal). The same applies to the cell phone technology, which was not discovered by Nokia®, Samsung® or Motorola®, to name just three manufacturers.

What is not patentable?

According to the Industrial Property Law, the following cannot be patented:

- a) Anything contrary to morals, standards of respectability and public security, order and health;
- b) Discoveries, scientific theories and mathematical methods;
- c) Purely abstract conceptions;
- d) Commercial, accounting, financial, educational, advertising, raffling, and inspection schemes, plans, principles or methods;
- e) Literary, architectural, artistic and scientific works, or any aesthetic creation;
- f) Computer programs per se;
- g) Presentation of information;
- h) Rules of games;
- i) Surgical techniques and methods, as well as therapeutic or diagnostic methods, for application to human or animal body; and
- j) All or part of natural living beings and biological materials found in nature, even if isolated therefrom, including the genome or germoplasm of any natural living being, and natural biological processes.

How to find out what can be patented?

The best way to determine whether an invention is new and does not obviously result from what is already known (prior art) is to carry out a preliminary search in patent databases.

When filed, patent documents are kept confidential for a period of up to 18 months. Thereafter, patent applications are published in an official journal and the information becomes available to those interested in the databases.

There are several computerized databases that can be accessed online or through media such as CDs or DVDs. Databases can be either free of charge or commercial.

Among the existing free databases, the most used are those of the United

States Patents and Trademarks Office - USPTO, the European Patent Office - EPO, the Japan Patent Office – JPO, and in Brazil the INPI database. Available at: <http://www.inpi.gov.br/menuesquerdo/patente/copy_of_index_html>, in addition to patents filed with the INPI, those interested can also access patents filed in the United States, Japan and countries in Europe and Latin America. There are other free databases on the Internet, such as the database on U.S. patents, available at: <<http://www.pat2pdf.org>>, and Patent Lens database, available at: <<http://www.patentlens.net/daisy/patentlens/patentlens.html>>, among others.

Among the commercial databases there are those of the national or regional patent offices themselves, marketed via CD or DVD, such as USPTO's CASSIS® and EPO's Espace Access®, as well as those available through subscription such as Dialog®, STN®, Questel Orbit® and Delphion®. Some commercial databases are available in Brazil in public universities and some research institutes through the Capes Portal, by agreement with the federal government, as is the case of the Derwent Innovations Index® database.

Another way to access patent information free of charge is on Google Patent Search, available at: <<http://www.google.com/patents>>.

An important tool to access the desired information is the International Patent Classification¹⁵ (IPC), used to classify the technical content of a patent document. It comprises over 70,000 listed categories, which allows a very precise recovery of the technology. Information and the complete IPC can be found on the INPI website, available at: <http://www.inpi.gov.br/menu-esquerdo/informacao/pasta_downloads>.

In order to ensure a thorough search of existing techniques and avoid rejection of the application for patent, the preliminary search can be conducted by INPI technicians upon payment of the corresponding fees. It can also be conducted by the SENAI Network of Information Technology (NIT) or by hiring expert professional assistance or services (intellectual property agent).

It is important to know that the searches include sources such as technical journals, magazines, newspapers, the Internet, etc., in order to confirm the character of absolute novelty of the invention.

How is a patent granted?

According to WIPO [200-?c], the first step in securing the right of ownership of an invention is to draft a patent application in accordance with legal regulations. The patent application generally contains the title of the invention, an indication of its technical field, as well as a sufficiently clear description of the invention, so as to enable an individual with technical expertise in the field to evaluate and reproduce the invention. These descriptions are usually accompanied by visual materials such as drawings, plans or diagrams to better describe the invention. The application also contains various "claims", that is, information which determines the exact extent of protection to be granted by the patent.

¹⁵ Additional information on the International Patent Classification, also known as Strasbourg Agreement on the International Classification of Patents is available on the WIPO website at: <<http://www.wipo.int/treaties/en/classification/strasbourg/>>. Access on: 19 Nov. 2008.

Again it is recommended that the task of preparing the application is entrusted to specialized professionals, as the technical description will also be subject to legal interpretation and enable covering possible variations of the invention that fall within the same concept.

The INPI website, which is available at: <<http://www.inpi.gov.br/menu-esquerdo/servicos-externos>> provides the list of intellectual property agents and authorized offices.

In Brazil, once drafted the patent application should be filed with the INPI and will be subject to an examination to verify compliance with the legal requirements.

Shortly after this examination, the application will await publication in the Intellectual Property Journal published weekly and available at: <<http://www5.inpi.gov.br/menu-superior/revistas>>, which should occur after 18 months from the date of filing of the application. During this period, the patent application is kept confidential. If deemed of interest, this period may be shortened upon request of the applicant.

After publication, the full text of the application will be available for public consultation in the patent database of the INPI, and any interested party may submit comments and documents to the person responsible for reviewing the technical merit of the invention. This review is not automatic and will only be conducted upon request by the interested party within 36 months from the date of filing of the application.

The Letter Patent will be issued after approval of the application.

Fees and annuities will be charged throughout this process. The amounts to be paid can be found at: <http://www.inpi.gov.br/menuesquerdo/patente/index_html-new-version>. The payment form can be obtained by prior registration with e-INPI, available at: <<http://www5.inpi.gov.br/menu-superior/e-inpi>>. It should be noted, however, that the costs involved in patent protection are not limited to the fees for filing a patent application with the patent office, as shown in Figure 7.

Filing Cost	Payment of costs at the Patent Office (in Brazil, the INPI)
Professional Advisory Costs	Payment of professional services for drafting and keeping track of the processing of a patent application
Translation Costs	Payments for professional services that are only applicable when protection is sought in other countries
Maintenance Costs	Payment of annual fees for preserving the right granted by the patent office (in Brazil, the INPI)

Figure 7 - Schematic view of the composition of the costs of a patent

Who can be the holder of a patent?

The author of the invention or utility model or a third party (individual or company), as a result of inheritance, succession, assignment, or an employment or service provision contract.

Where there are several owners, the application may be filed by one or all of them, with due protection of the respective rights.

Property rights to an invention or utility model for the duration of an employment or service provision contract are:

- Exclusive rights of the employer, when the object of the contract is research or inventive activity. In this case, payment for this type of work is limited to the salary and the employer, as the patent holder, may grant the employee, as the author of the invention or improvement, a share of the economic gains derived from the exploitation of the patent;
- Common, equally shared rights, unless specifically agreed otherwise in the contract, when resulting from the personal contribution of the employee whose employment contract is not intended to such development, and from resources, data, media, materials, facilities or equipment of the employer;
- Exclusive rights of the employee, when unrelated to the employment contract and when not deriving from the use of resources, media, data, materials, facilities or equipment of the employer.

What is the term and scope of a patent?

The term of an invention patent (IP) is 20 years from the filing date or at least 10 years from the date of grant of the patent. In turn, the term of a utility model patent (UM) is 15 years from the filing date or at least 7 years from the date of grant of the patent. This minimum term, counting from the date of grant, is intended to offset any slowdown that may occur in the review of the patent application.

At the end of the term of the patent, the invention falls into public domain, and anyone can use it freely.

The patent is valid only in the territory in which it was granted, but there are international agreements to which Brazil is a party that facilitate applying for patent protection abroad.

The Paris Convention¹⁶ (CUP) guarantees the right of priority (known as unionist priority) to those who file patent applications in the signatory countries, affording them the possibility of filing a corresponding application in all other member countries within a 12-month period, without prejudice as to acts occurring in that time frame.

The Patent Cooperation Treaty¹⁷ (PCT), which is managed by WIPO, allows for a patent to be filed in several countries simultaneously through a single international application, by indicating the countries of interest. Once the chances of

16 Available at: <<http://www.wipo.int/treaties/en/ip/paris/>>. Access on: 19 Nov. 2008.

17 Available at: <<http://www.wipo.int/treaties/en/registration/pct/>>. Access on: 19 Nov. 2008.

securing patent protection have been assessed, the applicant has a deadline of 30 months to file the application with the competent office of each country of interest.

Are there any exceptions to the exclusive right granted by a patent?

The Industrial Property Law defines some exceptions to the principle that an invention patent cannot be legally exploited without authorization from the patent holder, and provides for the grant of compulsory licenses. These licenses exist to prevent patent holders from using their rights improperly or in a way that does not exploit the object of the patent in Brazil, or for cases in which an inventor creates an object with substantial technical progress, but which in order to work requires another previously patented object whose use its owner does not authorize. Compulsory licenses may also be granted in cases of national emergency or public interest declared in an act by the federal government, as seen for example in the case of the production of anti-HIV drugs, published by *Folha Online* newspaper:

[...] President Luiz Inacio Lula da Silva signed the compulsory license for Efavirenz, which in practice means breaking the patent on the drug. The drug is used by 75,000 of the 200,000 AIDS patients treated by the Brazilian public healthcare network. The government estimates that breaking the patent will translate into a savings of \$30 million a year by 2012. (RIBEIRO, 2007)

Except for the patent, is there any other way to protect inventions?

The patent is an efficient way to protect an invention, but there are other means to protect the secrecy of the technology: resorting to the so-called “trade secrets”

The protection of trade secrets enables preserving the confidential nature of the information against undue disclosure and unauthorized use. The difficulty of this kind of “protection” lies in that a product placed on the market can be disassembled and the secrets unraveled by simply observing the product. The technological progress that allows the construction of computerized three-dimensional models and rapid prototyping cannot be disregarded either. Once the patent is granted, although the information on the technology involved in the invention is publicly available in the patent filing document, it is protected and therefore cannot be applied industrially without authorization.

The protection of the industrial secret, however, may prove to be strategic because often times the technology itself cannot be protected by the patent, but can be achieved in an obvious manner by a skilled technician. Thus, the simple fact of maintaining the secrecy of the know-how, i.e., the technical knowledge required to ensure the most effective possible use of a certain technology is a way to protect it.

The factory or industrial secret is widely used in research and technology-intensive areas, such as biotechnology, information and communication technology, petrochemical, beverage, food and cosmetics industries. The use of industrial secret is also common in highly competitive companies in the automobile, electronics and even the financial sectors, where new products are frequently launched. However, if there is an early leak of information, the competition may launch similar products and jeopardize the company’s competitive advantage.

The protection by industrial secret may last longer than a patent would. Furthermore, unauthorized disclosure or exploitation is defined as a crime of unfair competition (see item 4.8 herein). Coca Cola®, for example, has kept the formula of its syrup secret for over a hundred years and will continue to do so for as long as it remains a worldwide success.

Is it always advisable to patent an invention?

It should be noted that even if an invention is patentable, it will not always become a commercially viable technology or product. Thus, the filing of a patent application should be preceded by a careful technological and commercial assessment of pros and cons, since the process of obtaining and maintaining a patent is costly.

Here are some factors that should justify the decision to patent:

- a) Is there a market for the invention? What are the alternatives on the market and how do they compare to the invention?
- b) Is the invention intended to improve or develop an existing product or process? Is it compatible with the business strategy of the company?
- c) Are there potential investors willing to invest in the development of the invention?
- d) What is the value of the invention to the company's business and to competitors? Is its protection commercially usable?
- e) Is the invention easily susceptible of reverse engineering?
- f) What is the probability of competitors creating and patenting a similar invention?
- g) Are the sales expected from the exploitation of the invention compatible with the costs of patenting?
- h) What is the extent of the protection to be granted by one or more patents?
- i) Will it be easy to identify violations of the rights granted by the patent? Is there willingness to invest time and money to strengthen the inspection of these rights?

What is the purpose of a patent?

It is the instrument most widely used in the business innovation process. Its importance is paramount because the grant of this exclusivity right guarantees its holder the possibility of a return on the investment made in the development of new products and industrial processes. Moreover, the public disclosure of the invention, which is an essential step for granting the patent, helps to balance the interests of society in general.

What can be done with the information extracted from patents?

It enables carrying out a worldwide survey of technologies by company, inventor and subject matter to answer questions like: Which company dominates this type of technology? Who is the inventor with the largest number of patents in this area? Which country holds the largest number of patents in a given technology sector?

Patent documents, as well as scientific papers, mention other documents that have preceded them. These, in turn, will mention others. Thus, a company can map out patent mentions and temporally walk backward in technology, building a technology tree that can lead to the identification of blind spots, unperformed studies, products and processes that began to be studied and were discontinued.

Through the analysis of a patent family, i.e., the study of the set of documents formed by a main patent and derivatives thereof, a company can find out if a patent was filed in China, Europe, Japan or the United States.

From the technical-economic standpoint, searching the patent documentation can give the company inputs for various types of investment by allowing, for example, access to data that lead to better technology purchase conditions through the identification of business partners or market leaders in different technology sectors.

A company can identify emerging technologies by following the latest novelties through the analysis of patent documents and thus, as the case may be, redirect the development of new products or processes.

One of the most common uses for the information contained in patent documents is the analysis of the term of protection, since it informs the entrepreneur how long the patent protection will last or if the technologies are already in the public domain.

A company can still find out if a technology is protected in a particular country. This analysis can translate into business opportunities, since the company can produce and sell products in other countries where the technology in question has not been patented.

What is the legal penalty for violations of the rights of a patent holder?

The penalty is imprisonment from one month to one year or a fine, according to the Industrial Property Law.

Summary of Topic 4.4 (Invention and Utility Model Patent)

The industrial property system does more than just protecting and rewarding the inventor. It also contributes to the regulation, organization, dissemination and use of information related to the innovation for industrial application purposes. In Brazil, this system is regulated by a law known as the Industrial Property Law.

A patent is a legal title that temporarily documents and legitimizes the right of the owner of an invention or a utility model. To be patentable, in addition to presenting the characteristics of absolute novelty and an inventive step, the invention must have industrial applicability. A utility model is a new form that improves an existing product or brings an improvement in its application.

The holder of a patent has the right to prevent others from manufacturing, using, offering for sale, importing or selling the invention without his or her consent. The invention can be commercially exploited by the inventor him or herself, who can alternatively authorize others to use the patent upon the payment of royalties. The holder can also assign the rights on the invention for a fixed amount to

a third party which, then, becomes the new holder of the patent.

In Brazil, the patent application must be filed with the INPI. The term of an invention patent (IP) is 20 years from the filing date and the term of a utility model patent (UM) is 15 years. At the end of the term of the patent, the invention falls into public domain, and anyone can use it freely. The patent is valid only in the country where it was granted.

Suggested Activity with Students

The most common and effective way to protect an invention is to secure a patent, but one can also resort to the so-called “industrial secrets”

This activity should be done using the integrated panel technique. It replaces the theoretical class on the contents of topics 4 and 4.1.

Objectives:

1. To provide a description of industrial property and indicate the benefits of this system;
2. To distinguish between invention patent and utility model patent;
3. To specify the rights granted by a patent and what is patentable;
4. To explain the steps involved in obtaining a patent;
5. To identify the exceptions to the exclusivity right granted by a patent;
6. To establish comparisons between the protection granted by the patent and by the industrial secret and interpret the purpose of the patent.

Time:

100 minutes.

Steps:

1. Prepare a text summarizing topics 4 (Intellectual Property) and 4.1 (Invention Patent and Utility Model Patent). Deliver a copy of this text to each student for silent reading. Time: 10 minutes.
2. Divide into 6 groups: A, B, C, D, E and F. Based on the text, each group should prepare a summary related to the respective objective, among those listed for this activity. Identify the members of each group with numbers 1 to 5. Time: 15 minutes.
3. Redistribute into 5 groups: 1, 2, 3, 4 and 5, where group 1 should be formed by students identified with number 1 in the previous stage; group 2 by students identified with number 2 and so on. Each rapporteur of the previous group presents, in 3 minutes, the summary of his/her group. Based on these reports, the group prepares a new summary. Time: 33 minutes.
4. The rapporteur of each group presents the summary of his/her group in 5 minutes. Time: 25 minutes.

5. The teacher/instructor concludes the activity by highlighting the key ideas.
Time: 17 minutes.

4.5 Registration of an Industrial Design

What is an industrial design?

An industrial design is the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color. It must be able to be reproduced by industrial means, hence the name industrial design.

Industrial designs are applied to a wide variety of products of industry: from wrist watches, jewelry and fashion to industrial and medical implements; from house wares, furniture and electrical appliances to vehicles and architectural structures; from articles of apparel and textile designs to leisure goods such as toys.

The example in Figure 8 shows that between the design of the first and second telephones, there are no technological changes, only the shape is more distinctive and nicer.

Figure 8 - Illustration of different industrial designs for telephones

Companies often invest considerable time and resources to increase the attractiveness and appeal of their products' design to:

- a) Focus a visual appeal on each specific market segment by, for example, adapting the design of a wrist watch to different age groups, cultural or social patterns: children and adults usually have very different tastes in regards to the favorite design of their watches, although the main function, i.e., to show the time, remains the same;
- b) Create a market niche to differentiate their products from the competition: this can occur in the case of both trivial articles like cookies, pans, shoes, and more expensive products such as jewelry, boats, airplanes, computers, or automobiles;
- c) Strengthen brands: designs are also often exploited in combination with the trademarks of a company to enhance their distinctive character.

Many companies have succeeded, through design, in creating or redefining the image of their products. A classic example of a success story is the Coca-Cola® bottle.

What is the difference between the registration of an industrial design and a patent?

The protection of an industrial design refers to the appearance of the object, while a patent protects its functionality. The industrial design is primarily of an aesthetic nature, and its registration does not protect any technical functions of the device in which it is applied.

It is common, however, for a new product to combine functional improvements with aesthetic elements, such as for example a cell phone which, although it may be the result of a series of improvements to electronic components and could be protected as a patent, its original design can be equally registered and protected as an industrial design.

Both types of protection can be applied for (see Figure 3).

The example in Figure 9 clearly shows improvements in a flashlight, characterizing different technological stages and not just aesthetic renewal.

Figure 9 - Illustration of improvements in the industrial design applied to flashlights

How can industrial designs be protected?

An industrial design can be registered in order to secure legal protection. In Brazil, the Industrial Property Law provides for the protection of an industrial design, which is granted by the INPO through a certificate of registration.

As a general rule, to be registrable the design must be new and original. An industrial design is considered new and original when it has not been disclosed, used or claimed in prior art, meaning that no identical or very similar design is known to have existed by use or by any other means before the date of filing in Brazil or abroad.

An industrial design may also have rights guaranteed as a work of art under the Copyright Law. In this case, there is no need for any formal application for protection.

Why is it recommended to register an industrial design?

The registration of an industrial design is a commercially recommended measure because:

- a) It can prevent the design from being copied or imitated by competitors, thus strengthening the company's position on the market;
- b) It contributes to obtaining a return on the amount invested in the creation and marketing of the product, thus increasing the company's profits;
- c) Industrial designs are part of the assets of a company and can add to the commercial value of the company itself and of its products on the market in which the company operates;
- d) It enables licensing or assigning the design to third parties. For example, through the licensing of a protected design a company can have access to markets that would not be available to them otherwise;
- e) It encourages fair competition and honest trade practices, which, in turn, promote the production of a diverse range of aesthetically appealing products.

How to find out if an industrial design can be registered?

The best way to determine if an industrial design is new and original is to carry out a search in the designs database of the INPE at: <<http://pesquisa.inpi.gov.br/MarcaPatente/jsp/servimg/validamagic.jsp?BasePesquisa=Desenhos>>, before filing the application for registration.

An important tool to access the desired information is the International Classification for Industrial Designs, known as the Locarno Classification¹⁸, with more than 6,000 indications of different articles. This classification is available at: <http://www.inpi.gov.br/menuesquerdo/desenho/pasta_classificacao>.

¹⁸ Additional information on the Locarno Classification is available on the WIPO

It is important to know that the search to confirm the character of absolute novelty should include sources such as technical journals, magazines, newspapers, the Internet, etc.

For a thorough search of existing industrial designs and to avoid refusal of the registration, it is recommended that applicants rely on the advice or services of specialized professionals, who can perform searches in the INPI and in many other databases, issue an opinion on the registrability of the design based on the information available about prior art and monitor the process systematically, learn about any decisions and respond to them within the set deadlines, thus preventing the registration from being irreversibly refused.

The website of the INPI, which is available at: <<http://www.inpi.gov.br/menu-esquerdo/servicos-externos>> provides the list of intellectual property agents and authorized offices.

It is important to point out that when examining the application for registration the registering authority will not consider the existence of previous applications. The interested party may obtain the grant of a registration even where an application for the registration of a similar design has been filed by a third party. This situation may lead to the subsequent cancellation of the registration; hence the importance of conducting a preliminary search.

What rights are granted to the owner of an industrial design?

The owner of a protected industrial design has the right to prohibit unauthorized copying or imitation of his or her design by third parties, including the prohibition to produce, offer, import, export or sell any product in which the design is incorporated or in which it is applied, without the owner's consent.

The holder can license the use of the design by third parties upon payment of royalties. The holder can also assign the rights on an industrial design to third parties.

Also similar to the patent, the right on an industrial design is:

- An exclusive right of the employer, when the creation results from the contracted activity itself ;
- An exclusive right of the employee, when it is unrelated to the employment or service provision contract;
- A common right when the creation stems from the employee's personal contribution and from resources, media, data, materials, facilities or equipment of the employer.

Under the Paris Convention (CUP), the creator of an industrial design, even when licensing or assigning the use of said design, has the right to be mentioned as the author of the creation (moral right).

What is the term and scope of an industrial design registration?

In Brazil, the term of the registration is 10 years from the filing date of the application, with the possibility of extension for three additional successive periods of five years, up to a maximum of 25 years.

The INPO charges fees for registration services, plus a maintenance fee for each five-year period. The price list can be found on the INPO website at: http://www.inpi.gov.br/menu-esquerdo/desenho/pasta_custos.

The protection of an industrial design is restricted to the country in which the registration was granted.

Is there a difference between industrial design and design?

Design is a term that has no translation into Portuguese. It was introduced in England in the eighteenth century, as a translation for the Italian word *disegno*. In English, the word design means the design of any aspect of the shape or configuration of an article, which distinguishes it from the word drawing, which is the representation of shapes through lines and shadows. Only with the progress of industrial production it has come to characterize a specific activity in the product development process.

Currently, the design aims to improve the functional, ergonomic and visual aspects of products, increasing users' comfort, safety and satisfaction. By defining the form of the product, professionals seek more than just its aesthetic value. They are also concerned about the functionality of the article and what it represents in the user's imagination. Thus, the design involves activities such as planning, outlining, drawing, sketching, schematizing, creating, inventing and implementing, in repeated interactions and feedbacks that characterize the innovation process.

Therefore, the concept of design encompasses industrial design, although usually the two terms are used interchangeably.

What is the legal penalty for violations of the rights of the owner of an industrial design?

The penalty is imprisonment from one month to one year or a fine, according to the Industrial Property Law.

Summary of Topic 4.5 (Registration of an Industrial Design)

An industrial design is the ornamental or aesthetic aspect of an article, which can be reproduced by industrial means. The design consists of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

In Brazil, the Industrial Property Law provides for the protection of an industrial design, which is granted by the INPO through a certificate of registration.

The owner of a protected industrial design has the right to prohibit unauthorized copying or imitation of his or her design by third parties, including the prohibition to produce, offer, import, export or sell any product in which the design is incorporated or in which it is applied, without the owner's consent. The owner can also license or assign the right of use free of charge or in exchange for payment.

In Brazil, the term of the registration is 10 years from the filing date of the application, with the possibility of extension up to a maximum of 25 years. The protection of an industrial design is restricted to the country in which the registration was granted.

Suggested Activity with Students

This activity should be performed after the theoretical class on the subject of topic 4.2 (Registration of an Industrial Design).

Objective:

Assess the learning of students after a theoretical class.

Time:

40 minutes.

Steps:

1. Divide into six groups. Each group should prepare, in writing, two questions about the topic Registration of an Industrial Design, together with the respective answers. Time: 10 minutes.
2. One group is chosen by lot to start the activity. This group chooses a second group to answer one of the questions it has prepared. If the answer is correct, the second group scores 10 points and chooses a third group to answer one of its questions. If the answer is wrong, then the second group answers its own question, scores 20 points, and then chooses a fourth group to answer its second question.
3. The question and answer rounds continue until all questions have been answered or the 20- minute time is up. The activity should be monitored so that all groups have the same opportunity to both answer and ask questions. The “winner” is the group with the highest score.
4. The teacher/instructor concludes the activity, clarifying aspects which are still unclear to students. Time: 10 minutes.

4.6 Trademark Registration. What is a trademark?

A trade mark is a distinctive, visually noticeable sign which identifies a product or service. It also represents to consumers some features of the product manufacturer or service provider, such as reputation, quality control, investments in research and development, quality of the product design, and qualification of the professionals who provide the service. The trademark allows consumers to associate these qualities with the products and services identified by the mark; is also the most common way to protect an industrial design (see Figure 3 - Different types of product protection).

According to WIPO [200-?c], trademarks have existed since antiquity. For over 3,000 years Indian craftsmen used to engrave their signatures on their artistic creations before sending them to Iran. Later, the Romans used more than 100 different marks in their pottery, including the trademark FORTIS, which became so famous that it was copied everywhere. In the Middle Ages, the development of trade led to the increased use of trademarks.

Currently, trademarks (identified by the symbol ®) are frequently used, and

most people are able to distinguish between brands of similar products, such as the fictitious soft drinks shown in Figure 10.

Figure 10 - Illustration of trademarks of similar products

Why register a trademark?

The Industrial Property Law allows an individual or a company to secure ownership of a trademark in order to avoid the presence on the market of identical or similar trademarks that may confuse consumers as to the origin of a product or service.

The application for the registration of a trademark must be filed with the INPI, which in Brazil is responsible for issuing registration certificates. The registered trademark of a company can avoid confusion for consumers and prevent unfair competition due to similarity or imitation.

A carefully selected and developed trademark is a valuable asset for most companies. For some, it may be the most valuable asset. The estimated value of some of the world's most famous trademarks, such as Coca-Cola® or IBM® exceed 50 billion dollars. This is because consumers associate the symbol with a reputation, an image and a set of qualities that they value, and therefore are willing to pay more for a product bearing said trademark. Thus, the mere fact of having a trademark with a good image and reputation on the market is reason enough to give the company an edge against the competition.

What types of trademarks can be registered?

Trademarks can apply to products or services (See examples in Figures 11 and 12):

Figure 11 - Illustration of a product trademark

Figure 12 - Illustration of a service trademark

The trademark of products or services can be classified into two types: collective trademark and certification trademark.

The collective trademark (Figure 13) is a mark of a product or service used by different people who are part of the same collectivity. The collective trademark indicates that a certain product or service originates in any company of a collectivity, such as a cooperative.

Figure 13 - Illustration of a collective trademark

The certification trademark (Figure 14) is used to indicate that the products or services concerned meet specific standards or technical specifications, such as quality of the material used, energy consumption patterns and the methodology used.

Figure 14 - Illustration of a certification trademark

What are the ways to present a trademark?

Trademarks are also classified according to the way they are presented. The trademark may consist only of words and combinations of letters and numbers, including acronyms and neologisms. This form of presentation, as seen in the example shown in Figure 15, is called word mark.

Figure 15 - Illustration of a word mark

A trademark may also be comprised of drawings, symbols, images, graphics, and geometric shapes. This form of presentation, as seen in the example shown in Figure 16, is called figurative trademark. This also includes isolated letters and numbers.

Figure 16 - Illustration of a figurative trademark

The trademark that combines word elements and figurative elements is called combined word/figurative trademark.

Figure 17 - Illustration of a combined word/figurative trademark

Brazilian law also permits the registration of three-dimensional trademarks, which may be the shape of the product itself or of its packaging (provided that they are different), which may also contain word and figurative elements. See example in Figure 18.

Figure 18 - Illustration of a three-dimensional trademark

Is there a difference between trade name and trademark?

Many people believe that the trade name of the company is automatically protected as a trademark upon registration of the company and its business name with the trade registration office. This misconception is fairly common.

A trade name is the name of a company, whose protection is secured with the board of trade, which is a state-level entity linked to the National Trade Registration Department (DNRC. Available at: <www.dnrc.gov.br>), which in turn is linked to the Ministry of Development, Industry and Foreign Trade (MDIC). In Brazil, the trade name of a company often ends with: Ltda., S/A, ME, S/S or similar abbreviations that indicate the type of its corporate constitution. Thus, for example, the portfolio of trademarks of a company whose name is registered with the board of trade as NATURA COSMÉTICOS S/A involves the following: Natura®, Natura Ekos®, Natura Erva Doce®, among other products.

What are the steps for obtaining the registration of a trademark?

The first step for obtaining a registration is to choose a trademark susceptible of being registered, as provided for in the Industrial Property Law.

To be registered, a trademark must be distinctive, i.e., sufficiently different to be able to identify unambiguously the origin of the products or services indicated by the trademark. In addition, the trademark needs to be visually noticeable and cannot contain, among other legal prohibitions, coats of arms, medals, flags, insignias; isolated letters, numbers and dates; expressions, figures, drawings, or any other sign contrary to morals and standards of respectability; colors and names thereof; technical terms used in industry, science and art and related to the product or service to be distinguished.

The second step is to check if it has not already been registered by a third party. In this regard, it is advisable to conduct a preliminary search in the trademark database of the INPI, available at: <<http://www.pesquisa.inpi.gov.br/MarcaPatente/jsp/servimg/servimg.jsp?BasePesquisa=Marcas>>.

The INPI adopts an international classification of products and services for organizing registrations and applications for the registration of trademarks, known as the Nice Classification, which is available at: <http://www.inpi.gov.br/menu-esquerdo/marca/dirma_classificacao/menuesquerdo/marca/dirma_classificacao/oculto/NICE>.

For a thorough search of existing trademarks and to avoid refusal of the registration, it is recommended that applicants rely on the advice or services of

specialized professionals, who can perform searches in the INPI and in many other databases of trademarks, when the company adopts an international marketing strategy. This professional can also issue an opinion on the registrability of the trademark and draft the registration application, in addition to monitoring the process, as this requires technical, specific and legal knowledge.

The website of the INPE, which is available at: <<http://www.inpi.gov.br/menu-esquerdo/servicos-externos>> provides the list of intellectual property agents and authorized offices.

The registration application can be filed directly with the INPE or through the Internet system called e-Marcas, on the webpage available at: <http://www.inpi.gov.br/menu-superior/e-inpi>.

On the INPI website, which is available at: <http://www.inpi.gov.br/menu-esquerdo/marca/dirma_manual> there are manuals to assist applicants on how to complete the form.

The service fees charged by the INPE are available at: http://www.inpi.gov.br/menu-esquerdo/marca/dirma_custos.

From a financial standpoint, the costs involved in the process of registering and maintaining a trademark have the same structure as the costs involved in a patent application (Figure 7 - Structure of costs involved in patent protection), namely:

Filing cost;

Costs of professional expert advice;

Translation costs ;

Maintenance costs.

What are the rights of a holder of a trademark?

The holder of a trademark has the right to defend the registration and ensure the material integrity and reputation of the trademark. Any unauthorized reproduction of a trademark can be prevented through lawsuits.

The holder of a trademark can also authorize others to use the trademark under licensing agreements by registering them with the INPI. The ownership of the registration or of the application can be assigned to another person, and such assignment must be indicated by the INPE on the registration certificate and in the application itself, as appropriate.

The holder of a trademark can neither prohibit dealers or distributors from using, along with the trademark of the product or service concerned, their own trademarks in their promotion and marketing activities nor prevent manufacturers of accessories from using the trademark to indicate the destination of the product. In addition, the holder has no right to prevent the trademark from being mentioned in a speech, scientific or literary work or in any other publication, provided that this is done without any commercial connotation and without prejudice to the distinctive character of the trademark. The composition of a trademark involves a creative process, and the creators are automatically the holders of the copyright

on their artistic work. Therefore, if a company chooses to outsource the creation of its trademark, the assignment of ownership of said trademark (patrimonial rights - see Section 3.2 of this Handbook) to the company should be included in the service provision.

What is the term and scope of the registration of a trademark?

The term of the registration is 10 years from the date of grant, with the possibility of extension for equal and successive periods at the holder's request. The registration granted by the INPE is valid only in Brazil.

The Industrial Property Law provides that individuals or entities, including public institutions, may apply for the registration of a trademark. The only limitation imposed for a registration to be granted is that the trademark must be intended to identify products and services derived from the activity actually carried out by the individual or entity. This limitation is meant to prevent trademarks from being registered by individuals and companies that only want to sell them, that is, that have no plans to use the trademarks in their professional activities.

The registration of a trademark is granted to the first individual/entity to file an application with the INPE, except where the trademark has been used in Brazil for at least six months. Based on the right of precedence, the other applicant may object to the new application. The INPE will examine the objection and determine which applicant has been using the trademark the longest, together with the evidence submitted by both parties.

The registration of trademarks abroad is determined by the laws of each country. Moreover, foreigners may be required to appoint and maintain an attorney in the country where they wish to obtain and maintain a registration. To protect a trademark in European Community countries, an application for this purpose can be filed with the Office for Harmonisation in the Internal Market¹⁹ (OHIM). A registration granted by the OHIM ensures protection in all countries of the European Community.

Another instrument that facilitates obtaining and maintaining registrations abroad is the Madrid Protocol²⁰. The Protocol is an international treaty to which Brazil is not yet party. Through a management scheme centralized by WIPO, it enables submitting applications to any one of the participating countries and paying for the main fees charged in each country for processing an application.

Is Internet domain a trademark?

With the advent of the Internet, domain names have become a very valuable asset for companies to promote and sell their products and services globally in the digital world. Although they are usually associated with a brand made, domain names are not seen as trademarks and therefore cannot be registered with the INPI.

In Brazil, the Brazilian Internet Steering Committee (CGI) has set up working

19 For additional information visit the WIPO website, available at: <http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo016.html>. Access on: 27 Jan. 2010.

20 For additional information visit the WIPO website, available at: <http://www.wipo.int/treaties/en/registration/madrid_protocol/>. Access on: 19 Nov. 2008.

groups and coordinates several projects in areas of fundamental importance to the functioning and development of the Internet in the country. The CGI created a civil, non-profit organization called Center for Information and Coordination of Dot BR that, as part of its activities, registers “.br” domain names (available at: < www.registro.br >).

What is the legal penalty for violations of the rights of the holder of a trademark?

The penalty is imprisonment from one month to one year or a fine, according to the Industrial Property Law.

Summary of Topic 4.6 (Registration of a Trademark)

A trade mark is a distinctive, visually noticeable sign which identifies the origin of a product or service. The Industrial Property Law allows an individual or a company to secure ownership of a trademark in order to avoid the presence on the market of identical or similar trademarks that may confuse consumers as to the origin of a product or service.

The application for a trademark registration must be filed with the INPI, which in Brazil is responsible for issuing registration certificates, which are valid for 10 years from the date of grant. This period may be extended for equal and successive periods at the holder’s request.

The registration granted by the INPE is valid only in Brazil.

The trademarks of products or services can be classified into two types: collective trademarks and certification trademarks.

Trademarks are also classified according to the way they are presented, such as word, figurative, and combined word/figurative trademarks. Brazilian law also permits the registration of three-dimensional trademarks.

Suggested Activity with Students

This activity should be performed after the theoretical class on topic 4.3 (Registration of Trademarks).

Objective:

Assess the learning of students after a theoretical class.

Time:

20 minutes.

Steps:

1. Divide into five groups. Each group should list five trademarks found in objects located in the classroom and classify them into word, figurative, combined word/figurative, or three-dimensional trademarks and indicate a reason for formalizing their registration. Time: 5 minutes.
2. Oral presentation of the results of the trademark search conducted in the classroom. Each group has 2 minutes for its presentation. Time: 10 minutes.

3. The teacher/instructor concludes the activity, providing any addition information as may be necessary. Time: 10 minutes.

4.7 Registration of Geographical Indications

What is a geographical indication?

According to WIPO [200-?c], a geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or reputation attributable to that place of origin.

In Brazil, geographical indications are defined in the Industrial Property Law and classified into designation of origin and indication of origin.

Designation of origin is the geographical name of a country, region, or locality, which serves to designate a product or service originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors". Examples: Roquefort cheese, which is produced exclusively in that region of France; Bohemian glass, which applies only to crystal items produced in that region of the Czech Republic; or the sparkling wine Champagne, which is produced only in that region of France.

Indication of origin is the geographical name of a country, city, region or locality therein that has become known as a center of extraction, production or manufacture of a specific product or the provision of a specific service, but with no specific natural (climate, geography, etc.) or human characteristics involved in the manufacture of the product. In Brazil, some producing communities have already obtained the registration of their indications of origin, adding great value to their products and improving their trade performance (Table 2 and Figure 19).

Table 2 - Brazilian geographical indications granted by the INPI

Name of the Indication of Origin	Product	Applicant
Vale dos Vinhedos	Red, white and sparkling wine	Association of Fine Wine Producers of Vale dos Vinhedos (APROVALE)
Cerrado Region of Minas Gerais	Coffee	Council of Associations of Coffee Growers of the Cerrado Region (CACCCER)
Southern Plain (Pampa Gaúcho)	Beef and beef products	Association of Meat Producers of the Southern Plain
Paraty	Sugarcane rum, type of bluish cachaça and sugarcane rum.	Association of Cachaça Producers and Friends of Paraty
Valley of the Sub-medium São Francisco River	Table grapes and mango	Council of the Union of Associations and Cooperatives of Producers of Table Grapes and Mangoes of the São Francisco Valley (UNIVALE)
Vale dos Sinos	Finished Leather	Association of Tanning Industries of Rio Grande do Sul

Figure 19 - Illustration of Brazil's first geographical indication - Vale dos Vinhedos

What is the difference between a geographical indication and a trademark?

According to WIPO [200-?c], a geographical indication indicates to consumers that a product is produced in a certain place and has certain characteristics that are related to the place of production. It can be used by all producers who develop their activities in the locality designated by the geographical indication and whose products have those specific characteristics. For example, *Champagne* is a designation of origin that can be used by all sparkling wines produced in that region of France. In turn, *Veuve Clicquot®* and *Moët & Chandon®* are French brands of champagne.

What is the term of the registration of geographical indications?

The law establishes no time limit on the registration of geographical indications. However, it is understood that the registration will protect the rights for as long as the reasons why it was granted persist.

Why protect geographical indications?

Geographical indications are understood by consumers to denote the origin and the quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest commercial operators. False use of geographical indications by unauthorized parties is

detrimental to consumers and legitimate products. Consumers are deceived and led into believing to buy a genuine product with specific qualities and characteristics, while they in fact get a worthless imitation.

One could say that in Brazil producers are becoming increasingly aware of the high recognition and value that geographical indications add to the products of a region and, therefore, are working more actively to seek protection in this regard.

The “Valle dos Vinhedos” control stamp (Figure 20) is granted exclusively to wines and sparkling wines made from grapes grown in Vale dos Vinhedos and bottled at the source. The stamps have a control number and are used as a seal to secure the capsule to the bottle, thus distinguishing it from any other.

Figure 20 - Illustration of a geographical indication stamp from Vale dos Vinhedos

What is the legal penalty for violations of rights on geographical indications?

The penalty is imprisonment from one to three months or a fine, according to the Industrial Property Law.

Summary of Topic 4.7 (Registration of Geographical Indications)

A geographical indication is a sign used on products stating that they originate from a particular geographic area and possess qualities or a reputation related to the place of origin of the product. Examples: Wine from Vale dos Vinhedos; Coffee from Cerrado; Meat from the Southern Plain; Cachaça from Paraty.

In Brazil, geographical indications are defined in the Industrial Property Law and classified into designation of origin and indication of origin.

The law establishes no time limit on the registration of geographical indications. However, it is understood that the registration will protect the rights for as long as the reasons why it was granted persist. In Brazil this registration is granted by the INPE.

Suggested Activity with Students

This activity should be performed after the theoretical class on topic 4.7 - Registration of Geographical Indications

Objective:

Assess the learning of students after a theoretical class.

Time:

20 minutes.

Steps:

1. Divide into four groups. Each group will have 10 minutes to describe the characteristics contained in the geographical indications listed below and classify them into designation of origin and indication of origin:
 - a) Meat from the Southern Plain;
 - b) Roquefort cheese;

- c) Coffee from the Cerrado Region of Minas Gerais
 - d) Wine from Vale dos Vinhedos.
2. Oral presentation of the summary of the groups' work. Presentation time per group: 2 minutes. Total Time: 8 minutes.
 3. The teacher/instructor concludes the activity, clarifying aspects which are still unclear to students, if necessary: 2 minutes.

4.8 Repression of Unfair Competition

What is unfair competition?

The idea of unfair competition is very old and, according to WIPO [200-?a], back in 1900 it was mentioned as the subject of intellectual property protection during the revision of the Paris Convention, in Brussels.

An act of unfair competition is any act of competition contrary to honest practices that compromise the free functioning of the intellectual property system and the compensation offered by intellectual property.

Types of acts of unfair competition include, among others, those which:

- a) Create confusion with the indication of commercial origin and the appearance of the product, such as for example by using similar logos or packaging;
- b) Are misleading, conveying a false impression of the products or services themselves. For example: the label on product A reads "0% trans fat"; elsewhere on the same label it says that the product contains "hydrogenated vegetable fat", thus characterizing the advertising as misleading, since it is the same trans fat;
- c) Bring discredit to the competitor by spreading rumors that compromise its products or services;
- d) Violate industrial secrets (see Section 4.4 of this Handbook);
- e) Take advantage of the creation of third parties. For example, exploring the SENAE trademark with a subtle difference in relation to SENAI - a renowned and reliable entity - to advertise vocational courses;
- f) Use comparative advertising claiming that its product is as good as or better than the other.

Is there any legal penalty for the practice of unfair competition?

In Brazil, the Industrial Property Law provides for imprisonment from three months to one year or a fine for those who commit acts of unfair competition.

Summary of Topic (Repression of Unfair Competition)

Unfair competition is any act of competition contrary to honest practices that compromise the free functioning of the intellectual property system and the compensation offered by intellectual property.

Types of acts of unfair competition include, among others, those which:

- a) Create confusion;
- b) Are misleading;
- c) Bring discredit to a competitor;
- d) Violate industrial secrets;
- e) Take advantage of the creations of third parties;
- f) Use comparative advertising.

Suggested Activity with Students

This activity should be performed after the theoretical class on topic 4.8. (Repression of Unfair Competition).

Objective:

Express an opinion about acts of unfair competition.

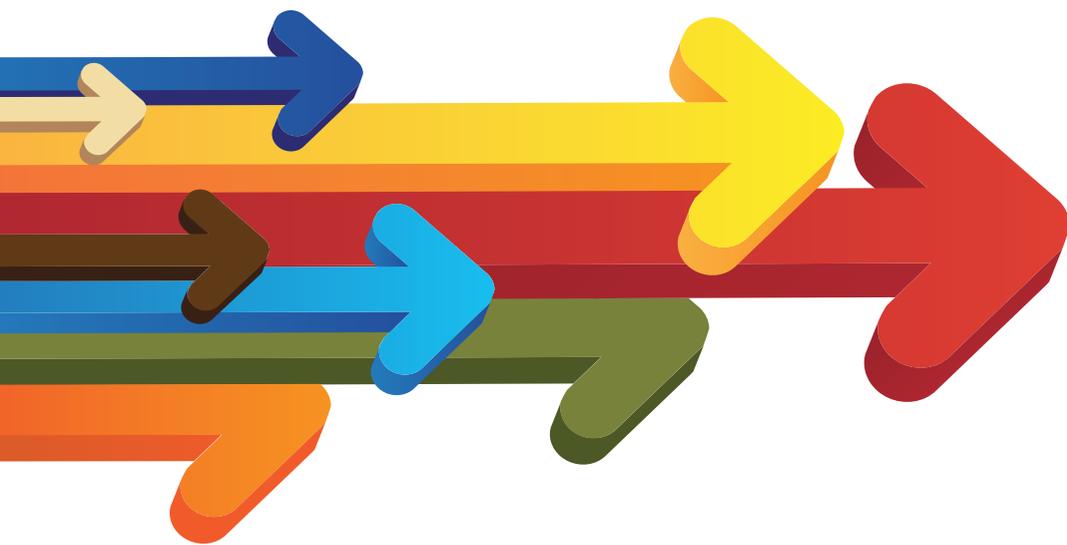
Time:

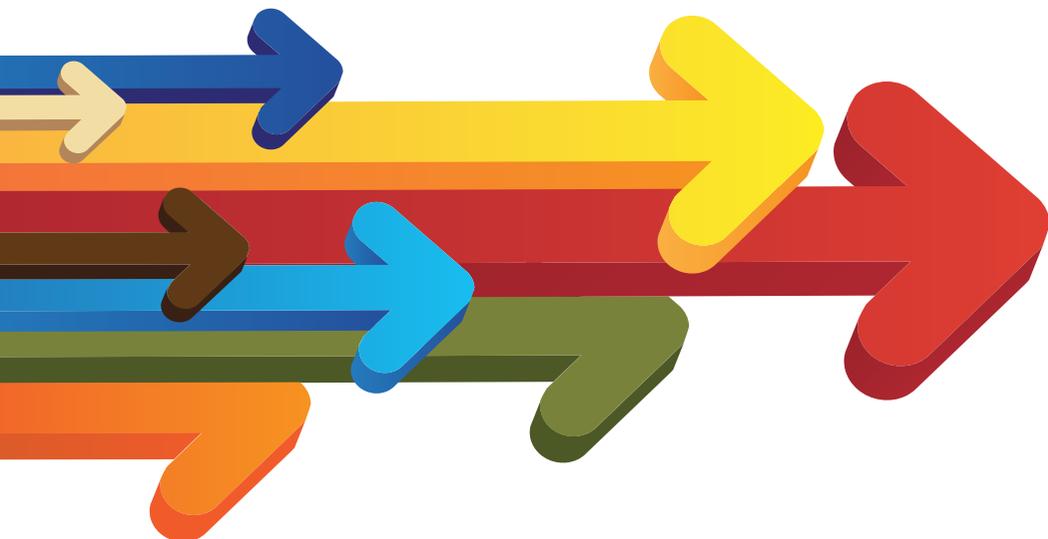
The activity should be performed within a maximum of 15 minutes, according to the receptivity of students.

Steps:

The teacher/instructor asks students to share experiences in which they were subjected to any act of unfair competition and how they felt in relation to it. Students can also be asked how they reacted to this type of act.

Sui generis protection includes the types of specific protection in the realm of intellectual property, which refer to the topography (layout-design) of integrated circuits, plant variety (cultivars) and traditional knowledge.





***SUI GERERIS* PROTECTION**

5.1 Registration of an Integrated Circuit Topography

What is an integrated circuit topography?

Integrated circuits are also known as chips. The topography of integrated circuits involves an organized set of interconnections, transistors and resistors arranged in three-dimensional layers on a platform of semiconductor material. In those layers, each image represents, in whole or in part, the geometrical layout or arrangements of an integrated circuit's surface at any stage of its design or manufacture. Among other purposes, these integrated circuits are used in computer memories or processors and are designed to perform electronic functions in a piece of equipment (Figure 21).

In Brazil, Law no. 11,484 of 2007 provides for the protection of integrated circuit topography, among other things. Because it is a specific type of protection in the realm of intellectual property, it is referred to as sui generis protection.

Figure 21 - Illustration of an integrated circuit plate

How can an integrated circuit topography be protected?

An integrated circuit topography may be registered for the purpose of securing legal protection. In Brazil this protection is granted by the INPE through a certificate of registration.

This protection applies only to a topography which is unique, resulting from the intellectual effort of its creator or creators, and which is not common or usual for technicians, specialists and manufacturers of integrated circuits at the time of its creation.

A topography resulting from the combination of common elements and interconnections or incorporating, with due authorization, protected topographies of third parties, will only be protected if the combination, as a whole, is not common or usual for technicians, specialists and manufacturers of integrated circuits.

Protection is not granted to concepts, processes, systems or techniques on which the topography is based or to any information stored as a result of using such protection.

What is the economic importance of integrated circuit topographies?

Today's technological world is characterized by the use of computers, the Internet, satellite navigation, wireless telephony, new forms of entertainment, and hundreds of other applications. In this world, there is a market with a turnover of hundreds of billions of dollars annually. In this cyber-digital era, semiconductor factories are the place where the capacity to transcend time, distances and material limitations for data storage is found. This entrepreneurial space is the point of contact between the physical world and the electronic world. Silicon (the basic component of sand) is transformed into integrated circuits, the hardware that moves the cyber world. The amount of knowledge required to boost this industry segment involves the incorporation of frontier technologies into the fields of optics, chemistry, metrology and mechanics, among others.

The challenge ahead is the increasing expansion of the semiconductor market. The electronics industry is under constant pressure to produce cheaper, smaller and more powerful components that can reach consumers faster. Thus, the sector requires large capital investments - both financial and intellectual.

Given the technological complexity and intensity involved in designing and manufacturing integrated circuits, knowing how to use the intellectual property system efficiently is essential to ensure companies the ownership of rights in their business transactions, thus contributing to preserving their competitive edge.

Who can apply for the registration of an integrated circuit topography?

Under the law, the applicant for the registration is presumably the creator of the integrated circuit topography. For a topography created jointly by two or more individuals or companies, the registration may be requested by all or any of them, in which case all the other parties shall be named and qualified in order to have their respective rights protected.

It should be noted, however, that unless otherwise agreed, when the creative activity stems from the nature of the employment or service provision contract or from a labor relationship, or when it involves the use of resources, technology information, industrial or business secrets, materials, facilities or equipment of the employer, of the party contracting the service or of the entity generating the labor relationship, the rights related to the integrated circuit topography will belong solely to the employer, service contracting party or entity generating the labor relationship. This treatment also applies to scholarship holders, trainees and the like.

What rights are granted to the holder of integrated circuit topographies?

The registration of an integrated circuit topography grants its holder the exclusive rights of exploitation; third parties being barred, without the holder's consent, from:

- a) Reproducing the topography, wholly or in part, by any means, including incorporating it into an integrated circuit;
- b) Importing, selling or otherwise distributing for commercial purposes a protected topography or an integrated circuit that includes a protected topography; and
- c) Importing, selling or otherwise distributing for commercial purposes, a product that incorporates an integrated circuit which includes a protected topography.

The rights on the integrated circuit topography may be subject to assignment or licensing for exploitation upon communication to the INPE.

What is the term of the registration of an integrated circuit topography?

The protection of the topography is granted for 10 years from the filing date or first exploitation, whichever occurs first.

The rights are guaranteed to Brazilians and foreigners domiciled in the country and to persons domiciled in a country which, through reciprocity, grants Brazilians or persons domiciled in Brazil equal or equivalent rights. They also apply to applications for registration from outside the country and filed by someone whose protection is ensured under a treaty in force in Brazil.

What is the legal penalty for violations of the rights of the holder of a protected topography?

The penalty is imprisonment from one to four years and a fine if the violation involves the reproduction, importation, sale, maintenance in stock, or distribution, for commercial purposes, of a protected topography or an integrated circuit incorporating said topography.

Summary of Topic 5.1 (Registration of an Integrated Circuit Topography)

An integrated circuit topography is defined as a series of related images built or encoded with any means or form that represents the three-dimensional configuration of the layers which compose an integrated circuit and in which each image represents, wholly or partially, the geometrical disposition or arrangements of the integrated circuit's surface at any stage of its design or manufacture.

The registration of an integrated circuit topography applies only to a topography that is unique, i.e., that results from the intellectual effort of its creator or creators and is not common or obvious for technicians, specialists and manufacturers of integrated circuits at the time of its creation.

The registration of an integrated circuit topography grants its holder the exclusive rights of exploitation; these rights can be assigned or licensed to third parties upon entry and recording at the INPE.

The protection of the topography is granted for 10 years from the filing date or first exploitation, whichever occurs first.

5.2 Protection of Cultivars

What is a cultivar?

A cultivar is the name given to a new plant variety with specific characteristics resulting from research in agronomy and life sciences (genetics, biotechnology, botany and ecology), not existing in nature. Therefore, human intervention is required to change the genetic composition of a variety in order to obtain a variety that is not found in the environment, which is called cultivar (Figure 22).

Figure 22 - Illustration of colored cotton cultivars

How can a cultivar be protected?

The protection of new varieties of plants is another aspect of intellectual property rights called sui generis protection and, as such, seeks to recognize the efforts and results of research in the area, granting its creator or creators exclu-

sive rights for a given time period.

In Brazil, according to Law no. 9,456 of April 25, 1997, known as the Plant Variety Protection Act²¹, to be protected a plant variety must:

- a) Be new, meaning that it must not have been commercially exploited abroad in the last four years and in Brazil in the last year;
- b) Be distinctive, meaning that it must be clearly distinguishable from any other variety whose existence is recognized;
- c) Be homogeneous, meaning that all plants of a variety must be equal or very similar, except for predictable variations, taking into account the unique features of their multiplication or reproduction;
- d) Be stable, meaning that the relevant characteristics of a variety must not change after successive reproductions or multiplications; and
- e) Have an appropriate denomination, meaning that it must have a name to designate it.

Who grants the protection of rights on cultivars?

In Brazil, the protection is formalized by a Plant Variety Protection Certificate²² issued by the National Service for Plant Variety Protection (SNPC) of the Ministry of Agriculture and Food Supply (MAPA) upon payment of applicable fees and an annuity.

The organization that oversees the protection of new plant varieties worldwide is the International Union for the Protection of New Varieties of Plants (UPOV), an international organization linked to the World Intellectual Property Organization (WIPO), headquartered in Geneva and which, under an international convention disciplines plant variety protection in 66 countries²³, including Brazil.

Why should cultivars be protected?

The establishment of an effective system for protecting cultivars is aimed at stimulating the development of new plant varieties for the benefit of society.

According to WIPO [200-?a], the creation of new plant varieties requires substantial investments in terms of financial capital, skills, labor, material resources, and time. The possibility of having certain exclusive rights on a plant variety affords successful breeders (creators of new plant varieties) the opportunity to recover their costs and raise revenue for future investments. Without the rights granted to the creators, it would be more difficult to achieve these objectives, as nothing can prevent others from multiplying seeds or other propagating material

21 Available at: <http://www.planalto.gov.br/ccivil_03/Leis/L9456.htm>. Access on: 26 Oct. 2008.

22 Available at: <http://www.planalto.gov.br/ccivil_03/Leis/L9456.htm>. Access on: 26 Oct. 2008.

23 Available at: <http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=27>. Access on: 21 Nov. 2008.

of the creators and selling the variety on a commercial scale without any compensation to their creators.

Establishing exclusive rights is an incentive for breeders to develop new plant varieties for agriculture, horticulture and forestry.

What rights are granted to the holder of a plant variety protection certificate?

The protection affords the holder the right to commercial reproduction in the Brazilian territory; third parties being barred, during the term of protection, from producing for commercial purposes and offering for sale or marketing the multiplication or reproduction material without the breeder's consent.

If a breeder is unable to exercise his or her rights on the multiplication or reproduction material and the variety is multiplied or propagated without his or her consent, the breeder can exercise his or her rights on the harvest.

For granting authorization, breeders may require the payment of royalties. So when a farmer purchases seeds, for example, these royalties are included in the price of said seeds.

To what extent can a plant variety be used without the need for authorization?

It is important to note that the creator's authorization is not required for acts:

- a) Without commercial purposes;
- b) On a trial basis;
- d) Aimed at creating and exploiting other varieties.

The Plant Variety Protection Act allows farmers to use the product of their harvest for multiplication or reproduction purposes (for example, to set apart a portion of a harvested product to be used as seed in the following season and within their farms).

What is the term of the rights of breeders?

The law provides for the protection of cultivars throughout the Brazilian territory for a period of 15 years. For vines, fruit trees, forest trees, and ornamental trees the term is 18 years. After the term of protection has expired, the cultivar falls into public domain and no other right can prevent it from being used freely.

What is the scope of protection of cultivars?

As a result of its accession to the UPOV, an automatic reciprocity mechanism has been established between Brazil and the other member countries. Based on this fact, all signatory countries of the UPOV are under the obligation to protect Brazilian cultivars and, in return, Brazil also has the duty to protect cultivars from those countries, thus facilitating the exchange of new material generated by research in Brazil and abroad.

What is the legal penalty for violations of the rights of the holder of a cultivar?

Compensation, in amounts to be determined in a specific regulation, and confiscation of the material, as well as payment of a fine equivalent to 20% of the market value of the seized material and prosecution for the crime of violating the rights of a breeder.

Summary of Topic 5.2 (Protection of Cultivars)

The protection of new varieties of plants is another aspect of the intellectual property rights of *sui generis* protection, which seeks to recognize the research conducted by breeders aimed at obtaining new plants, granting them the exclusive right to commercial reproduction in the Brazilian territory; third parties being barred from marketing, multiplying or reproducing the variety without the breeder's consent.

In Brazil, the National Service for Plant Variety Protection (SNPC) of the Ministry of Agriculture and Food Supply (MAPA) is responsible for issuing the plant variety protection certificate.

The Plant Variety Protection Act protects breeders throughout the Brazilian territory for a period of 15 years. For vines, fruit trees, forest trees, and ornamental trees the term is 18 years.

An international agreement providing for automatic reciprocity between Brazil and the other member countries for the protection of cultivars facilitates the exchange of new material generated by research in Brazil and abroad.

5.3 Traditional Knowledge

What is traditional knowledge in the realm of intellectual property?

Traditional knowledge involves empirical knowledge, practices, beliefs, and customs passed from parents to children in indigenous communities or local communities (e.g. riverine communities) on the use of plants (Figure 23), microorganisms or animals whose samples contain information about genetic origin. Therefore, access to it is controlled in the national territory to prevent undue use in the research and development of new products or bioprospecting for industrial application and commercial exploitation.

Figure 23 - Illustration of a vegetable product obtained from traditional knowledge

The ownership of traditional knowledge is usually held collectively and the holders of such knowledge have been exploring ways to safeguard their interests under the intellectual property system, so as to protect themselves against misappropriation of their knowledge for economic purposes, as improvements in old technologies often generate valuable new products.

According to WIPO (200-?c), traditional knowledge used to indicate innovations and creations based on tradition and resulting from intellectual activity in the industrial, scientific, literary and artistic fields had been virtually ignored by the intellectual property community until very recently. However, today it is becoming increasingly

recognized that the economic value of assets in the rich collection of specific knowledge about the natural environment could be increased. Thus, local communities should be seen as beneficiaries of gains derived from the development fostered by them.

In Brazil, Decree no. 4,946 of 2003 regulates access to the genetic heritage and associated traditional knowledge.

Suggested Activity with Students

This activity should be performed after the theoretical class on topic 5 Protection (Sui generis protection).

Objective:

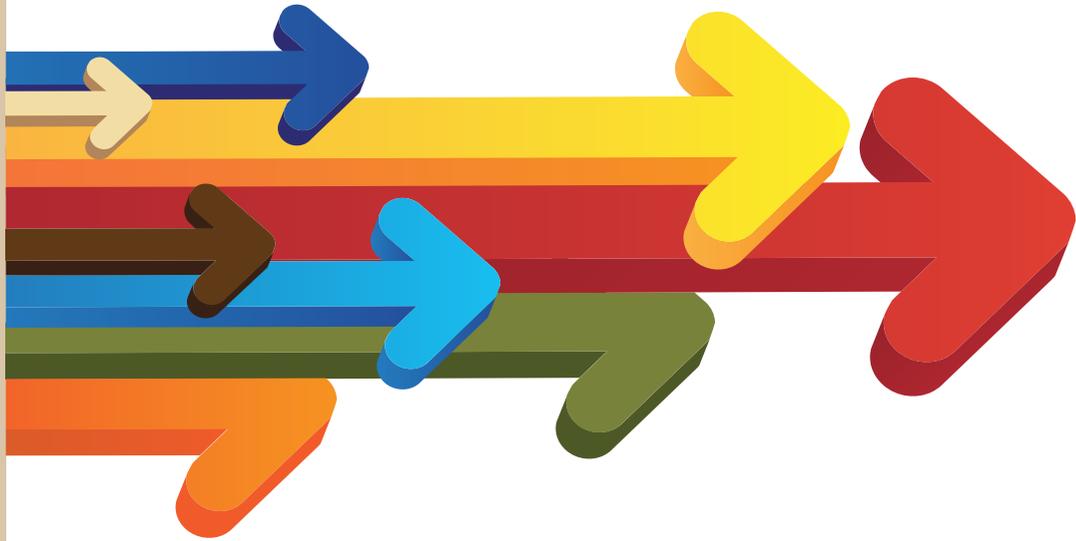
Assess the learning of students after a theoretical class.

Time:

40 minutes.

Steps:

1. Divide into three groups. Each group must identify three products containing an integrated circuit, three plant varieties (cultivars) and three plant or animal products used in health care, based on traditional knowledge. Time: 20 minutes.
2. Each group presents the list of identified products. Time: 3 minutes per group.
3. The teacher/instructor concludes the activity, providing any additional information as may be necessary. Time: 11 minutes.



REFERENCES

ANTHONY, Joseph. **Proteja seu nome com uma marca registrada**. [2008?]. Available at: <<http://www.microsoft.com/brasil/pequenasempresas/issues/running/retail/trademark.msp>>. Accessed on: Oct. 24, 2008.

BOTELHO, Rachel. Roquefort é maturado em cavernas francesas. **Folha de São Paulo**, Caderno Equilíbrio, Sept. 18, 2008, p.3.

BRAZIL. National Health Surveillance Agency – ANVISA. **Fórum consulta pública**. 2006. Available at: <http://www.anvisa.gov.br/forum/cp/post.asp?method=TopicQuote&TOPIC_ID=3519&FORUM_ID=247&CAT_ID=12&Forum_Title=Consulta+P%FAblica+n%BA+71%2C+de+10+de+novembro+de+2006.&Topic_Title=Alimentos+industrializados>. Accessed on: Nov 22, 2008.

_____. Brazilian Agricultural Research Corporation (EMBRAPA). **Girassol ornamental**. 2008. Available at: <http://www.cnpso.embrapa.br/index.php?op_page=68&cod_pai=156>. Accessed on: Nov. 24, 2008.

_____. National Institute for Industrial Property. **Banco de marcas**. Available at: <<http://pesquisa.inpi.gov.br/MarcaPatente/jsp/servimg/servimg.jsp?BasePesquisa=Marcas>>. Accessed on: Nov. 18, 2008.

_____. National Institute for Industrial Property. **Banco de patentes**. Available at: <http://www.inpi.gov.br/menu-esquerdo/patente/copy_of_index_html>. Accessed on: Nov. 18, 2008.

_____. National Institute for Industrial Property. **Base de desenhos**. Available at: <<http://pesquisa.inpi.gov.br/MarcaPatente/jsp/servimg/validamagic.jsp?BasePesquisa=Desenhos>>. Accessed on: Nov. 18, 2008.

_____. National Institute for Industrial Property. **Classificação de nice**. Available at: <http://www.inpi.gov.br/menuesquerdo/marca/dirma_classificacao/menuesquerdo/marca/dirma_classificacao/oculto/NICE>. Accessed on: Nov. 18, 2008.

_____. National Institute for Industrial Property. **Classificação Internacional de Desenhos Industriais**: Classificação de Locarno. Available at: <http://www.inpi.gov.br/menu-esquerdo/desenho/pasta_classificacao>. Accessed on: Nov. 17, 2008.

_____. National Institute for Industrial Property. **Classificação Internacional de Patentes CIP**. Available at: <http://www.inpi.gov.br/menuesquerdo/informacao/pasta_downloads>. Accessed on: Nov. 18, 2008.

_____. National Institute for Industrial Property. **Consulta de agentes da propriedade intelectual habilitados**. Available at: <<http://www.inpi.gov.br/menu-esquerdo/servicos-externos>>. Accessed on: Oct. 22, 2008.

_____. **National Institute for Industrial Property**. Consulta de escritórios habilitados. Available at: <<http://www.inpi.gov.br/menu-esquerdo/servicos-externos>>. Accessed on: Oct. 22, 2008.

_____. National Institute for Industrial Property. **Custos: patentes**. 2008. Available at: <http://www.inpi.gov.br/menu-esquerdo/patente/index_html-new-version>. Accessed on: Oct. 22, 2008.

_____. National Institute for Industrial Property. **Desenho industrial**. 2008. Available at: <<http://www.inpi.gov.br/principal?navegador=IE&largura=1024&altura=768>>. Accessed on: Oct. 23, 2008.

_____. National Institute for Industrial Property. **e-INPI**. Available at: <<http://www5.inpi.gov.br/menu-superior/e-inpi>>. Accessed on: Dec. 4, 2008.

_____. National Institute for Industrial Property. **E-Marcas**. Available at: <<http://www.inpi.gov.br/menu-superior/e-inpi>>. Accessed on: Nov. 18, 2008.

_____. National Institute for Industrial Property. **Manual do usuário do sistema e-marcas**. Available at: <http://www.inpi.gov.br/menuesquerdo/marca/dirma_manual>. Accessed on: Nov. 18, 2008.

_____. National Institute for Industrial Property. **Marcas: custos dos serviços**. Available at: <http://www.inpi.gov.br/menu-esquerdo/marca/dirma_custos>. Accessed on: Oct. 24, 2008.

_____. National Institute for Industrial Property. **Perguntas frequentes Patentes**. 2008. Available at: <http://www.inpi.gov.br/menuesquerdo/patente/copy_of_patentes>. Accessed on: Oct. 22, 2008.

_____. National Institute for Industrial Property. **Pesquisa base de desenhos**. Available at: <<http://pesquisa.inpi.gov.br/MarcaPatente/jsp/servimg/validamagic.jsp?BasePesquisa=Desenhos>>. Accessed on: Nov. 17, 2008.

_____. National Institute for Industrial Property. **Programa de computador: campos de aplicação**. Available at: <http://www.inpi.gov.br/menuesquerdo/programa/pasta_classificacao/index_html>. Accessed on: Nov. 17, 2008.

_____. National Institute for Industrial Property. **Revistas da Propriedade Industrial (RPI)**. Available at: <<http://www5.inpi.gov.br/menu-superior/revistas>>. Accessed on: Dec. 4, 2008.

_____. National Institute for Industrial Property. **Tabela de custos: indicação geográfica**. 2008. Available at: <http://www.inpi.gov.br/menuesquerdo/indicacao/copy3_of_index_html>. Accessed on: Oct. 24, 2008.

_____. National Institute for Industrial Property. **Tabela de Custos: registro de desenho industrial**. 2008. Available at: <http://www.inpi.gov.br/menuesquerdo/desenho/pasta_custos>. Accessed on: Oct. 23, 2008.

_____. National Institute for Industrial Property. **Tabela de custos: programa de computador**. Available at: <http://www.inpi.gov.br/menuesquerdo/programa/pasta_custos>. Accessed on: Nov. 17, 2008.

_____. National Institute for Industrial Property. **Tipos de programas de computador**. Available at: <http://www.inpi.gov.br/menuesquerdo/programa/pasta_classificacao/tipo_programa_html> .Accessed on: Nov. 17, 2008.

_____. Law no. 9,279 of May 14, 1996. Regulates rights and obligations related to intellectual property. **Diário Oficial da União** (Official Gazette), Brasília, DF, May 15, 1996. Available at: <http://www.planalto.gov.br/ccivil_03/Leis/L9279.htm>. Accessed on: Oct. 22, 2008.

. Law no. 9,456 of April 25, 1997. Establishes the Cultivar Protection Act and other provisions. **Diário Oficial da União** (Official Gazette), Brasília, DF, April 28, 1997 Corrected on August 26, 1997 and on September 25, 1997. Available at: <http://www.planalto.gov.br/ccivil_03/Leis/L9456.htm>. Accessed on: Oct. 26, 2008.

_____. Law no. 9,609 of February 19, 1998. Provides for intellectual property protection for computer programs and their marketing in Brazil and for other measures. **Diário Oficial da União** (Official Gazette), Brasília, DF, February 20, 1998. Available at: <http://www.planalto.gov.br/ccivil_03/Leis/L9609.htm>. Accessed on: Oct. 21, 2008.

_____. Law no. 9,610 of February 19, 1998. Amends, updates and consolidates the copyright legislation and provides for other measures. **Diário Oficial da União** (Official Gazette), Brasília, DF, February 20, 1998. Available at: <http://www.planalto.gov.br/ccivil_03/Leis/L9610.htm>. Accessed on: Oct. 20, 2008.

_____. Law no. 10,695 of July 1, 2003. Amends and adds a paragraph to article 184 and gives a new wording to article 186 of Decree-Law no. 2,848, of December 7, 1940, Penal Code, as amended by Laws no. 6,895 of December 17, 1980 and no. 8,635 of March 16, 1993, revokes article 185 of Decree-Law no. 2,848 of 1940 and adds provisions to Decree-Law no. 3,689 of October 3, 1941, Code of Criminal Procedure. **Diário Oficial da União** (Official Gazette), Brasília, DF, July 2, 2003. Available at: <http://www.planalto.gov.br/ccivil_03/Leis/2003/L10.695.htm>. Accessed on: Oct. 20, 2008.

_____. Law no. 11,484 of May 31, 2007. Provides for incentives for manufacturers of digital TV equipment and electronic semiconductor components and for means to protect the intellectual property of topographies of integrated circuits through the Technological Development Support for the Semiconductor Industry Program - PADIS - and the Program in Support of the Technological Development of the Digital TV Equipment Industry - PATVD. **Diário Oficial da União** (Official Gazette), Brasília, DF, May 31, 2007. Available at: <<http://www6.senado.gov.br/sicon/ListaReferencias.action?codigoBase=2&codigoDocumento=255721>>. Accessed on: Dec. 16, 2008.

_____. Decree no. 4,946 of December 31, 2003. Amends, revokes and adds provisions to Decree no. 3,945 of September 28, 2001, which regulates Provisional Measure no. 2,186-16 of August 23, 2001. **Diário Oficial da União** (Official Gazette), Brasília, DF, January 5, 2004. Available at: <http://www.planalto.gov.br/ccivil_03/Decreto/2003/D4946.htm>. Accessed on: March 18, 2009.

_____. Ministry of Agriculture. **National Service for Plant Variety Protection**. Available at: <http://www.agricultura.gov.br/pls/portal/docs/PAGE/MAPA/SERVICOS/CULTIVARES/PROTECAO/MENU_LATERAL_PROTECAO/INFORMA%C7%D5ES%20AOS%20USU%C1RIO%20DO%20SNPC%20%20OUT-UBRO%202004%5B1%5D64343.PDF>. Accessed on: Oct. 26, 2008.

_____. Ministry of Science and Technology. Emilio Goeldi Museum. **Direito autoral**. Available at: <http://www.museu-goeldi.br/institucional/i_prop_direitoautoral.htm>. Accessed on: Oct. 20, 2008.

_____. Ministry of Science and Technology. Emilio Goeldi Museum. **Proteção de cultivares**. [2008?]. Available at: <http://www.museugoeldi.br/institucional/i_prop_protectcult.htm>. Accessed on: Oct. 26, 2008.

_____. Ministry of Finance. Internal Revenue Service (Receita Federal). **Royalties e pagamento de assistência técnica: 0422**. [2008?]. Available at: <<http://www.receita.fazenda.gov.br/PessoaJuridica/DIRF/Mafon2002/rendresexterior/RoyaltiesPagAssistTec.htm>>. Accessed on: Oct. 23, 2008.

_____. Federal University of Bahia. Center for Technological Innovation. **Propriedade Intelectual**. 2nd ed. magazine. Salvador, UFBA/NIT, 2007.

_____. Federal University of Santa Catarina. **Introdução ao design**. [2008?]. Available at: <<http://www.lsc.ufsc.br/~edla/design/conceitos.htm>>. Accessed on: Oct. 23, 2008.

_____. Federal University of Rio Grande do Sul. Office for Technology Transfer and Interaction. **Cultivares**. [2008?]. Available at: <http://www.sedetec.ufrgs.br/eitt/prop_conc_eitt_fim.php?area=5>. Accessed on: Oct. 26, 2008.

CHIARI, Tatiana. Todos querem a fórmula. **Veja OnLine**, Dec. 20, 2000. Available at: <http://veja.abril.com.br/201200/p_072.html>. Accessed on: Oct. 22, 2008.

DANNEMANN, Gert Egon. **Marca: um guia prático e didático sobre como proteger sua marca no Brasil**. Rio de Janeiro: SEBRAE/RJ, 2003.

_____. **Patentes: um guia prático e didático sobre o sistema de patente, direitos e obrigações**. Rio de Janeiro: SEBRAE/RJ, 2004.

FERREIRA, Aurélio Buarque de Holanda. **Novo dicionário da língua portuguesa**. 1st. ed. 15th print. Rio de Janeiro: Nova Fronteira publishing house, 2009.

KRUGLIANSKAS, Isak. **Tornando a pequena e média empresa competitiva**. São Paulo: IEGE. 1996.

LEIS, Sandra. **Organização Mundial do Comércio e da propriedade intelectual**. Boletim ASIPI Informa, October 2006. Available at: <<http://www.dannemann.com.br/site.cfm?app=show&dsp=sle7&pos=5.51&lng=pt>>. Accessed on: Dec. 15, 2008.

LEONARDOS, Luiz. O sistema de propriedade intelectual como fomentador da inovação tecnológica. In: **TECNOLOGIA Industrial Básica: trajetória, desafios e**

tendências no Brasil. Brasília: MCT, CNI, SENAI, IEL, 2005.

MACEDO, M.F.G. BARBOSA, A.L.F. **Patentes, Pesquisa e Desenvolvimento: um manual de propriedade intelectual**. Rio de Janeiro: Editora Fiocruz publishing house, 2000.

MANARA, Maria da Graça G. **Patente – Desenho Industrial**. [2008?]. Available at: <<http://www.papear.com.br/palestra/gracapatentes.pdf>>. Accessed on: Oct. 23, 2008.

MELLO, Henrique S.I. de. **Patentes e desenhos industriais**. Dannemann, Siemsen, Bigler & Ipanema Moreira, 2003. Available at: <http://www.ids.org.br/files/20040525_HIM.ppt>. Accessed on: Oct. 23, 2008.

NASCIMENTO, Paulo César. **Novo software revoluciona os procedimentos cirúrgicos**. *Jornal da Unicamp*, April 24-30, 2006. Available at: <http://www.unicamp.br/unicamp/unicamp_hoje/ju/abril2006/ju320pag3.html>. Accessed on: Oct. 27, 2008.

NEVES, Gabriela Siqueira. **Propriedade industrial**. Dannemann, Siemsen, Bigler & Ipanema Moreira, 2004. Available at: <http://www.dannemann.com.br/files/GSN_Cietec.ppt>. Accessed on Oct. 23, 2008.

NICOLSKY, Roberto. **Os desafios para transformar conhecimento em valor econômico**. SBPC/Labjor. 2001. Available at: <<http://www.comciencia.br/reportagens/cientec/cientec12.htm>>. Accessed on: Nov. 25, 2008.

NÚCLEO DE P&D EM DESIGN. **ParqTec Fundação Parque de Alta Tecnologia de São Carlos**. Available at: <<http://www.parqtec.com.br/nucleodesign.php>>. Accessed on: June 12, 2008.

OLIVEIRA, Maria Helena Lima. **Propriedade intelectual**. [2008?]. Available at: <<http://homepages.dcc.ufmg.br/~becker/empreendimentos-2005-2/PI.ppt>>. Accessed on: Oct. 26, 2008.

BRAZILIAN BAR ASSOCIATION/RIO DE JANEIRO. **Cartilha da propriedade industrial**. Rio de Janeiro.

ORGANIZATION FOR ECONOMIC COOPERATION FOR DEVELOPMENT (OECD). **Science, Technology and Industry Scoreboard 2001: Towards a knowledge based economy**. Available at: <<http://www.oecd.org/dataoecd/59/52/35465901.pdf>>. Accessed on: Oct. 08, 2009.

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM). Available at: <<http://oami.europa.eu/ows/rw/pages/CTM/index.en.do>>. Accessed on: Nov. 20, 2008.

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO). **Contracting Parties: UPOV Convention**. Available at: <http://www.wipo.int/treaties/en/ShowResults.jsp?treaty_id=27>. Accessed on: Nov. 21, 2008.

_____. **Curso Geral da Propriedade Intelectual**. DL101. [200-?a]. Available at: <http://www.wipo.int/academy/en/courses/distance_learning/catalog/pt/c_index.html>. Accessed on: Nov. 5, 2008.

_____. **Intellectual Property Handbook: Policy, Law and Use.** [200-?b]. Available at: <<http://www.wipo.int/about-ip/en/iprm/index.html>>. Accessed on: Nov. 5, 2008.

_____. **Introdução ao Curso Inicial de Propriedade Intelectual:** DL 001. [200-?c]. Available at: <http://www.wipo.int/academy/en/courses/distance_learning/catalog/pt/c_index.html>. Accessed on: Nov. 5, 2008.

_____. **Locarno Agreement Establishing an International Classification for Industrial Designs.** <<http://www.wipo.int/treaties/en/classification/locarno/>>. Accessed on: Nov. 19, 2008.

. **Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.** Available at: <<http://www.wipo.int/treaties/en/classification/nice/>>. Accessed on: Nov. 19, 2008.

_____. **Paris Convention for the Protection of Industrial Property.** Available at: <<http://www.wipo.int/treaties/en/ip/paris/>>. Accessed on: Nov. 19, 2008.

_____. **Patent Cooperation Treaty (PCT).** Available at: <<http://www.wipo.int/treaties/en/registration/pct/>>. Accessed on: Nov. 19, 2008.

_____. **Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.** Available at: <http://www.wipo.int/madrid/en/legal_texts/trtdocs_wo016.html>. Accessed on: Nov. 19, 2008.

_____. **Strasbourg Agreement Concerning the International Patent Classification.** Available at: <<http://www.wipo.int/treaties/en/classification/strasbourg/>>. Accessed on: Nov. 19, 2008.

_____. **Understanding Copyright and Related Rights.** [200-?d]. Available at: <http://www.wipo.int/freepublications/en/intproperty/909/wipo_pub_909.pdf>. Accessed on: Nov. 5,

_____. **Understanding Industrial Property.** [200-?e]. Available at: <http://www.wipo.int/freepublications/en/intproperty/895/wipo_pub_895.pdf>. Accessed on: Nov. 5, 2008.

_____. **What is Intellectual Property?** Available at: <<http://www.wipo.int/about-ip/en/>>. Accessed on: Nov. 5, 2008.

PATENT LENS. **Initiative for Open Innovation.** Available at: <<http://www.patentlens.net/daisy/patentlens/patentlens.html>>. Accessed on: April 4, 2009.

CATHOLIC UNIVERSITY OF RIO GRANDE DO SUL. Technology Transfer Office. **Diferença entre direito moral e direito patrimonial.** Available at: <http://www.pucrs.br/prppg/ett/define_diraut_dif.php>. Accessed on: Oct. 20, 2008.

RIBEIRO, Ana Paula. **Quebra de patente não deve gerar retaliação de laboratório.** Folha Online, May 4, 2007. Available at: <<http://www1.folha.uol.com.br/folha/cotidiano/ult95u134982.shtml>>. Accessed on: Nov. 17, 2008.

ROLLING STONE. **Michael Jackson comprou o catálogo dos Beatles há 23 anos.** 2008. Available at: <<http://www.rollingstone.com.br/secoes/novas/noticias/3200/>>. Accessed on: Nov. 8, 2008.

SACHS, Jeffrey. A new map of the world. **The Economist**, London, April 19, 2001.

WEBSITE OF BRAZILIAN WINE. **Vale dos Vinhedos.** Available at: <http://www.sitedovinhobrasileiro.com.br/folha.php?pag=mostra_regiao.php&num=VAL>. Accessed on: Oct. 24, 2008.

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV). **International Convention for the Protection of New Varieties of Plants.** Available at: <<http://www.upov.int/en/publications/>>. Accessed on: Nov. 21, 2008.

US PATENTES. **A free patent search tool.** Available at: <<http://www.pat2pdf.org/>>. Accessed on: April 4, 2009.

VARELLA, Marcelo Dias (org). **Propriedade intelectual e desenvolvimento.** São Paulo: Lex Editora publishing house, 2005.

WILKINSON, J.; CASTELLI, P. G. **A Transnacionalização da indústria de sementes no Brasil:**

biotecnologias, patentes e biodiversidade. Rio de Janeiro: ActionAid Brasil, 2000.

WORLD TRADE ORGANIZATION (WTO). **Agreement on Technical Barriers to Trade.** Available at: <http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm>. Accessed on: Dec. 15, 2008.

_____. **Agreement on Trade-Related Aspects of Intellectual Property Rights.** Available at: <http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm>. Accessed on: Nov. 19, 2008.



ANNEXES

APPENDIX A - CURRENT REGULATORY FRAMEWORK FOR INTELLECTUAL PROPERTY IN BRAZIL

Legislation	Object	Synopsis
Constitution of the Federative Republic of Brazil	Fundamental Rights and Guarantees	Chapter I - Individual and collective rights and duties.
Decree-Law no. 2,848/40	Penal code	Crimes against Intellectual Property
Decree-Law no. 3,689/41	Code of Criminal Procedure	Prosecution and judgment of crimes against Intellectual Property
Law no. 9,279/96	Industrial Property.	Regulates rights and duties related to industrial property.
Law no. 9,456/97	Cultivars	Establishes the Cultivar Protection Law and provides for other measures.
Law no. 11,484/07	Integrated Circuits	Provides for incentives for manufacturers of digital TV equipment and electronic semiconductor components and for means to protect the intellectual property of topographies of integrated circuits through the Technological Development Support for the Semiconductor Industry Program - PADIS - and the Program in Support of the Technological Development of the Digital TV Equipment Industry - PATVD amends Law 8,666 of June 21, 1993; and revokes article 26 of Law no. 11,196 of November 21, 2005. Veto message
Law no. 9,609/98	Intellectual Property.	Provides for intellectual property protection for computer programs, their marketing in Brazil and other measures.
Law no. 9,610/98	Copyrights.	Amends, updates and consolidates the legislation on copyright, among other provisions.
Decree no. 2,553/98	Regulates article 75 and articles 88-93 of Law no. 9,279 of May 14, 1996.	Regulates article 75 and articles 88-93 of Law no. 9,279 of May 14, 1996, which regulates rights and duties related to intellectual property.

Decree no. 2,556/98	Intellectual Property protection for computer programs.	Regulates the registration provided for in article 3 of Law no. 9,609 of February 19, 1998, which provides for Intellectual Property protection for computer programs and their marketing in Brazil and for other measures.
Decree no. 3,201/99	Provides for the granting of compulsory licenses.	Provides for the granting of compulsory licenses in cases of national emergency and public interest contemplated in article 71 of Law no. 9,279 of May 14, 1996.
Provisional Measure 2,186-16/01	Traditional Knowledge	Articles 1, 8, paragraph "j" 10, paragraph "c" 15 and 16, and paragraphs 3 and 4 of the Convention on Biological Diversity provide for access to genetic heritage, protection and access to associated traditional knowledge, sharing of benefits and access to technology and technology transfer for its conservation and use, among other measures.
Decree of August 21, 2001	Creates the Interministerial Group on Intellectual Property.	Creates, within CAMEX (Foreign Trade Chamber), the Interministerial Group on Intellectual Property, disciplining its composition and functioning, and provides for other measures.
Law no. 10,603/02	Protection of undisclosed information.	Provides for the protection of undisclosed information submitted for approving the marketing of products and contemplates other measures.
Decree no. 4,533/02	Regulates article 113 of Law no. 9,610 of February 19, 1998.	Regulates article 113 of Law no. 9,610 of February 19, 1998 for phonograms and provides for other measures.

Law no. 10,973/04	Incentives to innovation and research.	Provides for incentives to scientific and technological innovation and research in the manufacturing environment and for other measures.
Decree no. 5,244/04	Composition and functioning of the National Council to Combat Piracy and Crimes against Intellectual Property.	Provides for the composition and functioning of the National Council to Combat Piracy and Crimes against Intellectual Property and for other measures.
Decree no. 5,563/05	Regulates Law no. 10,973 of December 2, 2004.	Regulates Law no. 10,973 of December 2, 2004, which provides for incentives to scientific and technological innovation and research in the manufacturing environment and for other measures.
Biosafety Law, no. 11,105/05	Stem Cells, Transgenics	Regulates sections II, IV and V of paragraph 1 of article 225 of the Federal Constitution, sets out safety standards and mechanisms for the inspection of activities involving genetically modified organisms - GMOs - and derivatives, creates the National Biosafety Council - CNBS, restructures the National Technical Commission on Biosafety - CTNbio, provides for the National Biosafety Policy - PNB, revokes Law no. 8,974 of January 5, 1995, and Provisional Measure no. 2,191-9 of August 23, 2001, and articles 5, 6, 7, 8, 9, 10 and 16 of Law no. 10,814 of December 15, 2003 and provides for other measures. Veto message

Year	Regulatory Framework	Object
2004	Industrial, Technological and Foreign Trade Policy	Brazil's Industrial, Technological and Foreign Trade Policy is aimed at enhancing the economic efficiency and development and dissemination of technologies with the greatest potential to boost activity levels and competition in international trade. It is focused on increasing the efficiency of the production framework, enhancing the innovation capacity of Brazilian enterprises and expanding exports.
2004	Innovation Law, n ^o 10,973/2004	Provides for incentives to scientific and technological innovation and research in the manufacturing environment and for other measures.
2005	Law on Tax Incentives, no. 11,196/2005	Establishes the Special Tax Regime for the Export of Information Technology Services - REPES, the Special Regime for the Acquisition of Capital Goods by Exporting Enterprises - RECAP and the Digital Inclusion Program; provides for tax incentives for technological innovation; and provides for other measures.
2007	Action Plan: Science, Technology and Innovation	The main objective of the plan is to define a wide range of initiatives, activities and programs designed to enhance the role of science, technology and innovation (ST & I) in promoting Brazil's sustainable development. Several of the contemplated initiatives are aimed at encouraging companies to incorporate research, development and innovation (RD & I) activities into their production process.

2008	Productive Development Program	The ultimate goal of this Policy is to ensure the continuity of Brazil's growth in several areas on a sustainable basis and with an emphasis on innovation, competitiveness, entrepreneurship support and increased exports.
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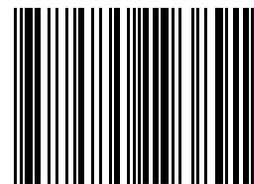
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