

WIPO



WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WIPO/INDIP/RT/98/3

ORIGINAL: Spanish

DATE: July 8, 1998

E

ROUNDTABLE ON INTELLECTUAL PROPERTY AND INDIGENOUS PEOPLES

Geneva, July 23 and 24, 1998

INTRODUCTION TO PATENTS, UTILITY MODELS, INDUSTRIAL DESIGNS,
GEOGRAPHICAL INDICATIONS AND TRADEMARKS

Document presented by the International Bureau

Some Industrial Property Concepts**Inventions**

An invention is a new idea that permits a particular problem in the field of technology to be solved in practice. In most legislation for inventions that idea, in order to qualify for legal protection (to be patentable), has to be new in the sense of not having been publicized or publicly used; it must not be obvious, in other words it must not occur to any expert in the industrial field concerned who is asked to solve that particular problem; and it has to be applicable in industry, that is, it has to be possible to manufacture or use it industrially.

Trademarks

The trademark is a sign that serves to distinguish the goods or services of one firm from those of other firms. The sign may consist in particular of one or more distinctive words, letters, numerals, designs or images, emblems, colors or combinations of colors; it may be three-dimensional, like the shape of the container or packaging of the product (provided that it is not determined merely by its function). The sign may also be made up of combinations of the foregoing.

Industrial Designs

An industrial design is the ornamental appearance of a utilitarian article. The ornamental appearance may consist of three-dimensional elements (the shape of the article) or of two-dimensional elements (lines, drawings, colors), which must not however be dictated exclusively by the specific function of the utilitarian article. In order to qualify for legal protection, industrial designs have to be original or new, and have to be registered with a State office (usually the same one as grants patents). The protection of an industrial design means that it cannot be copied legally without the authorization of the registered owner, while any copies made without his authorization cannot be legally sold or imported). Protection is granted for a limited period of time (usually from ten to fifteen years).

Unfair Competition

The repression of unfair competition operates against acts or dealings in trade or in business transactions that are contrary to proper practice, and mainly against:

acts liable to cause confusion with a company's goods or services or its industrial or business activity;

false allegations that have the effect of discrediting a company's goods or services or its industrial or business activity;

statements or allegations liable to mislead the public, particularly regarding the process of manufacture of a product or the quality, quantity or other characteristics of goods or services;

acts associated with the unlawful acquisition, disclosure or use of trade secrets;

acts that have the effect of diluting or otherwise detract from the distinctive power of another trademark, or allow undue advantage to be taken of the goodwill or reputation of another company.

International Protection

Generally speaking, a State's laws on industrial property concern themselves only with acts perpetrated or occurring in the State itself. Consequently the patent or the trademark or industrial design registration will only have effect in the State in which the State Office granted the patent or registration, and not in other States. If therefore the owner of a patent, trademark or industrial design wishes to be protected in two or more States, he will have to secure that protection separately in each one of them.

[End of document]

Industrial Property Rights

- Origin, objectives and characteristics of the industrial property system
- Patents, trademarks, industrial designs, geographical indications, new varieties of plants
- How the industrial property system may be useful in the defense of the interests of indigenous communities

Origin, Objectives and Characteristics of the Industrial Property System

- individual/collective rights
- temporary rights/renewable rights
- acquisition of rights
- use of rights
- defense of rights

Patents and Trademarks

- Can indigenous knowledge be patented?
- Are patents useful to indigenous communities?
- Can the indigenous cultural heritage be protected by means of trademarks?

Industrial Designs, Geographical Indications and New Plant Varieties

- The link relating the quality and reputation of a product to its geographical origin:
the case of the *bogolá*
- Can indigenous communities protect their own plant varieties?

***How the Industrial Property System can be Useful in Defending
the Interests of Indigenous Communities***

- By protecting indigenous knowledge
- By enhancing the management and marketing conditions of indigenous products
- By protecting the cultural heritage
- By facilitating recognition of the origin and the quality of indigenous products
- By protecting biological diversity
- By giving impetus to the economic development of indigenous communities