The Role of Patent in Universities

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Abstract

A patent is a right allowing an inventor to exclude others from commercially using his or her invention for a fixed period of time. Patents shall be available for any inventions, whether they are products or processes in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Patent as a form of intellectual property has an important role in every area of invention because it will give public access to inform regarding new technologies in order to stimulate innovation and contribute to economic growth. It will also allow the creator or owner of the patent to get benefit from his or her own work or investment. To get these benefits, Universities should set up the "Technology Licensing Office or Technology Transfer Office", on campus or off-campus intermediaries that carry out a wide range of functions, from licensing patents to companies, to manage their research results that have potential for commercialization.

Introduction

A patent is an intellectual property right to protect inventions which created by a person with his or her own intellect granted by the government concerned as a territorial right for a limited period. A patent gives the owner (the patentee) the exclusive right to exploit the invention for a specified period. The patentee uses the monopoly only for the legitimate purpose of recouping the investment, and not for the purpose of purely blocking out competition.

Intellectual property rights are similar to other property rights and they allow the creator or owner of a patent, trademark or copyright to benefit from his or her own work or investment. Intellectual property is divided into two categories; "industrial property" and "copyright". Industrial property includes inventions patents for inventions, trademarks, industrial designs and geographical indications. Copyright includes literary works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

A patent is a statutory right granted by the Government to an individual who has invented a product or process.

Patent as an Intellectual Property Right

A patent is a part of intellectual property right. Intellectual property refers to creations of the mind. Intellectual property is divided into two categories such as industrial property and copyright. Industrial property includes patent for inventions, trademarks, industrial designs and geographical indications. Copyright includes literary works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

Patent means the right conferred by letters patent of the exclusive use and benefit of a new invention.[1]

The word patent originates from the Latin *patere*, which means "to lay open", and more directly as a shortened version of the term letters patent, which originally denoted an open for public reading royal decree granting exclusive rights to a person.[2]

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[1] WIPO, What is Intellectual Property? Intellectual Property Handbook, 2008, P. 2

[2] http://www.En. Wikipedia. Org/ wiki/ patent

The term patent usually refers to an exclusive right granted to anyone for the protection of any new, useful and non-obvious invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.

Patent provides its owner with the exclusive right to prevent others from commercially exploiting the invention for a limited period of time in return for disclosing the invention to the public. Thus, the owner of a patent can prevent others from making, using, offering for sale, selling or importing the patented invention without permission and can sue anyone who exploits the patented invention without his or her permission.[3]

Patent as an Intellectual property right is a monopoly right for the patent holder or patentee and no one can use, sell or distribute its rights without the consent of the patent owner.

Conditions Relating to be Protected by a Patent

An invention must in general, fulfill the following conditions to be protected by a patent. According to Article 27 of the Agreement on Trade Related Aspects of Intellectual Property Rights (hereinafter TRIPS Agreement), subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.

New (Novelty)

An invention is new (or) "novelty exists", if there is any difference between the invention and current knowledge or the "prior art".

A patentable invention must be new. In general, the invention must never have been made public in any way, anywhere in the world, before the date on which an application for a patent is filed. In some countries, the public disclosure of an invention in non-written form (oral presentation, public use of an invention, etc.) in a foreign country dose not affect the novelty.[4]

In addition, some countries such as the United States provide a grace period of up to 12 months from the moment an invention is disclosed by the inventor, during which the inventor may file an application for patent protection without the invention losing novelty.[5]

To be patentable an invention must be different from anything known before. It must not have been described in a prior publication and it must not have been publicly used or sold. If it is disclosed the invention in any way such as by word of mouth, demonstration, advertisement, article in a journal or any other way before applying for a patent, it will lose the possibility of being granted a patent. It is because to be granted a patent, the invention must be novel and once a public disclosure is made, the invention can no longer be novel.

Inventive Step (Non-obviousness)

After satisfying the test of novelty, the invention must be non-obvious or involve an inventive step.

This condition is met if the invention would not be obvious to someone with a general knowledge and experience of the subject so-called "person skilled in the art". An invention shall be considered as involving an inventive step if, having regarded to the state of a

[3] Secrets of Intellectual Property: a guide for small and medium-sized exporters, International Trade Centre, Geneva, 2004, p. 17

[4] WIPO, Marketing Crafts and Visual Arts: The Role of Intellectual Property, A practical guide, Geneva, 2003, p. 91

[5] WIPO, Secrets of Intellectual Property, A guide for small and medium-sized exporters, Geneva, 2004, p. 18

particular art, it is not obvious to a person skilled in that art. In other words, it must not be possible for an average expert to make the invention by mere routine work.[6]

Non-obviousness means that the new characteristic of an invention could not have been easily deduced by a person with average knowledge of that particular technical field.

Industrial Applicability (Utility)

An invention must be capable of being made or used in some kinds of industry. This means that the invention must take the practical form of an apparatus or device, a product such as some new material or substance, or an industrial process or method of operation. Industry is meant, in its broadest sense, as anything distinct from a purely intellectual or aesthetic activity.

An idea in itself cannot be patented, unless it is an invention that is considered to have an industrial applicability. The definition of "industrial" includes agriculture.[7]

Industrial applicability or utility means that the invention can be made or used in any kind of industry or must have a practical use. It cannot be just an idea or a theory. If the invention is for a product, someone must be able to make that product. If the invention is for a process then it must be possible to carry out that process.

Non-patentable subject matter

In order to be eligible for patent protection, an invention must fall within the scope of patentable subject matter because not all inventions are patentable.

According to Article 27 of TRIPS Agreement, "Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

Members may also exclude from patentability:

a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.[8]

Terms of Protection

A patent is an exclusive right granted for the protection of an invention. Exclusive right is given for a limited period of time, generally for 20 years from the filing date as long as annual maintenance fees are paid by the patent-holder, and is valid only in the country where it has been applied for protection.

According to Article 33 of TRIPS Agreement, the term of protection available shall not end before the expiration of a period of twenty years counted from the filling date.

Patent is the right to exclude others from making, using, marketing, selling, offering for sale, or importing an invention for a specified period (20 years), granted by the federal government to the inventor if the device or process is novel, useful and non-obvious.[9]

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[6] Secret of Intellectual Property, op-cit, p. 19

[7] Ibid, p. 19

[8] Article 27(3) of the Agreement on Trade Related Aspects of Intellectual Property Rights, 1994

[9] Black's Law Dictionary, 3rd pocket edition, 2006, p. 526

A patent is granted by the national patent office of a country or a regional patent office for a group of countries. It is valid for a limited period of time, generally for 20 years from date of filing of the patent application, provided the required maintenance fees are paid on time.[10]

According to the draft patent law in Myanmar, the patent protection is given for a period of twenty years from the filing date

Patent and University

A Patent is the right provided to an inventor not for the use or practice of the invention but for preventing others from practicing or using the invention without the permission of the inventor. Patent provides a monopoly on a new and inventive product or process in a specific country. The main reason for applying a patent is the protection against imitation of information associated with a financial investment. Thus, patents promote technological development by disclosing a new technology and supporting R&D by businesses.

The basic function and role of the patent system is simple and reasonable. It is desirable in the public interest that industrial techniques should be improved. In order to encourage improvement, and to encourage also the disclosure of improvements in preference to their use in secret, any person devising an improvement in a manufactured article, or a method of making it, or a new substance and the process of making that substance, may, upon disclosure of the details to the Patent Office of a country, be given a set of exclusive rights for a certain period of time. After period expire, the invention passes into the public domain.[11]

Although the main focus of universities is to educate. They have to conduct technical research. And so, universities should protect their inventions for helping to raise additional funding for research and spurring new start ups.

Patents help universities to improve their ranking, establish an innovation ecosystem, incubate knowledge-based start-ups, earn additional revenue and measure research activity. It also provides incentives for economically efficient "research and development" (R&D).

Encouraging universities to commercialize research results by granting them title to IP can be useful but it is not sufficient to get researcher to become inventors. The key is that institutions and individual researchers have incentives to disclose, protect and exploit their invention.[12]

To bridge the gap between invention and commercialization, universities should establish "Technology Transfer Offices", on campus or off-campus intermediaries that carry out a wide range of functions, from licensing patents to companies to managing research contracts.

University Technology Transfer Office (TTO), or Technology Licensing Office (TLO), is responsible for technology transfer and other aspects of the commercialization of research that takes place in a university.[13]

To be established the Technology Transfer Office, Universities should stimulate the IP Policy in the University Charter.

[10] Inventing the future; An introduction to patents for small and medium-sized enterprises, Intellectual Property business series, WIPO, Number 3, 2006, p.3

[11] Intellectual Property, Reading Material, WIPO, Geneva, October 1, 1995, p. 9

[12] Mario Cervantes, Academic Patenting: How universities and public research organizations are using their IP to boost research and spur innovative start-up, WIPO, 2019

[13] http://en.m.wikipedia.org> wiki > university

Conclusion

Patent is an essential tool for stimulating the creation of new technologies and it will provide incentives for economically efficient R&D at universities. The reason is that patent can grant a set of exclusive right to the inventor for a specific period of time during which, in general, it is illegal for anyone else to copy, use, distribute or sell the invention without the approval of the inventor or owner. The person, to whom the patent is granted (the proprietor), is the only person entitled to manufacture, use, sell or import the product or process. If the proprietor does not wish to work the patent, the license can be assigned to another. After period expires, the invention passes into the public domain and it will give the effects on the development of the socio-economic in the community.

Universities are the main sources to cultivate the development of human resources. It can produce a number of researches that have the potential for commercialization. To commercialize from the outcome of the researches, "Technology Transfer Office" or "Technology Licensing Office" should set up as an intermediary between universities and business sectors.

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Convention

1. Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement), 1994

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2. http://en.m.wikipedia.org>wiki>university
3. http://www.En. Wikipedia. Org/wiki/patent