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INTELLECTUAL PROPERTY RIGHTS AND WTO TRIPS AGREEMENT

Dr. Sherry Stephenson

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INTELLECTUAL PROPERTY

- Industrial Property plus
- Copyright and related rights
- Definition of IPR

Involve intangible assets with economic worth that result from human intellectual effort or creativity. IPRs entitle the creator to an exclusive right over the use of this creation for a certain period of time.

INTELLECTUAL PROPERTY

- Industrial Property
 - i) patents
 - ii) trademarks
 - iii) geographical indications
 - iv) industrial designs, etc.

Copyrights traditionally compose a separate area.

INTELLECTUAL PROPERTY

Contained in:

- National Laws
- International Agreements
- WIPO Agreements
 - Source of Legal Protection
 - Facilitate International Protection
 - Classification Systems and Procedures

Justification for the protection of intellectual property rights

- Promote creativity and innovation
- Increase foreign investment and technology transfer
- Provide access to state of the art technology
- Promote socio-economic development
- Increase participation in the world economy

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

- **Most comprehensive international agreement on intellectual property**
 - Basic principles: National Treatment, Most Favored Nation Treatment
 - Minimum Standards Agreement: countries can have higher IPR standards if they wish
 - Members are free to determine the appropriate method of implementation within their own legal system and practice
 - Special transition arrangements

TRIPS: Main Features

- WTO Agreement covers IPR standards in respect of each of the main areas
 - Substantive obligations of major IP treaties are incorporated by reference. Plus substantial number of additional obligations.
- Enforcement
 - General principles, civil and administrative procedures and remedies, provisional measures, requirements related to border measures and criminal procedures
- Dispute Settlement
 - Disputes on TRIPS obligations are subject to the WTO Dispute Settlement Body

TRIPS: Substantive Standards of Protection

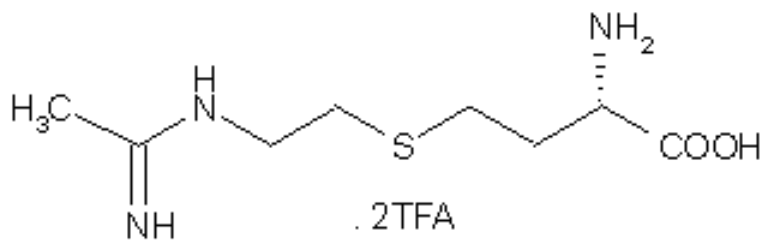
- Copyright and Related Rights
- Trademarks
- Geographical Indications
- Industrial Designs
- Patents
- Layout-Designs (Topographies) of Integrated Circuits
- Protection of Undisclosed Information
- Control of Anti-competitive Practices in Contractual Licenses

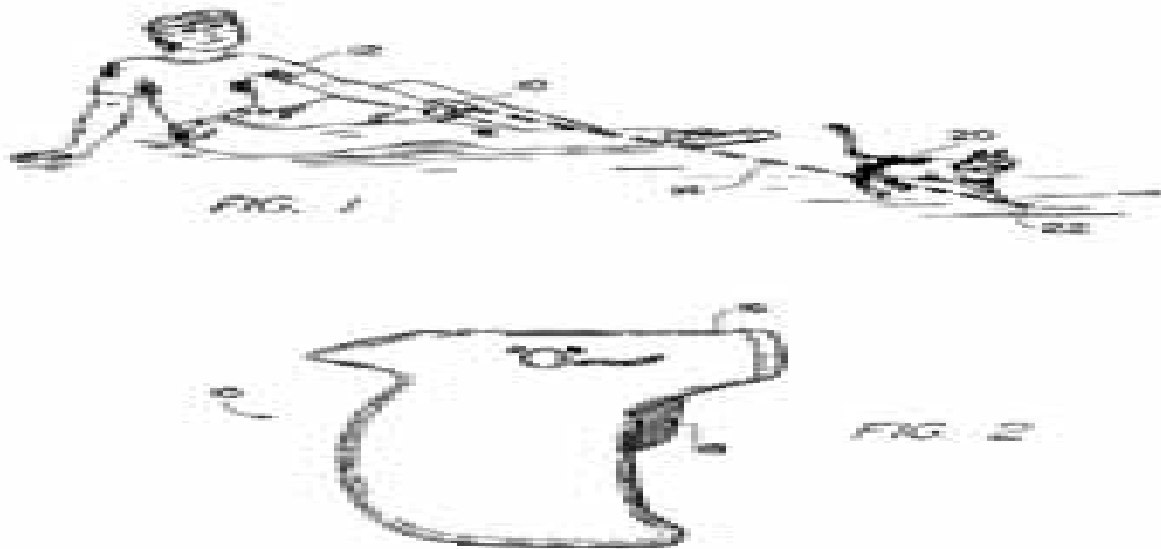
Other IPR Issues

- TRIPS and Public Health
- Expanded protection to Geographical Indications
- Access to Genetic Resources
- Protection of Expressions of Folklore
- Protection of Traditional Knowledge
- Transfer of Technology

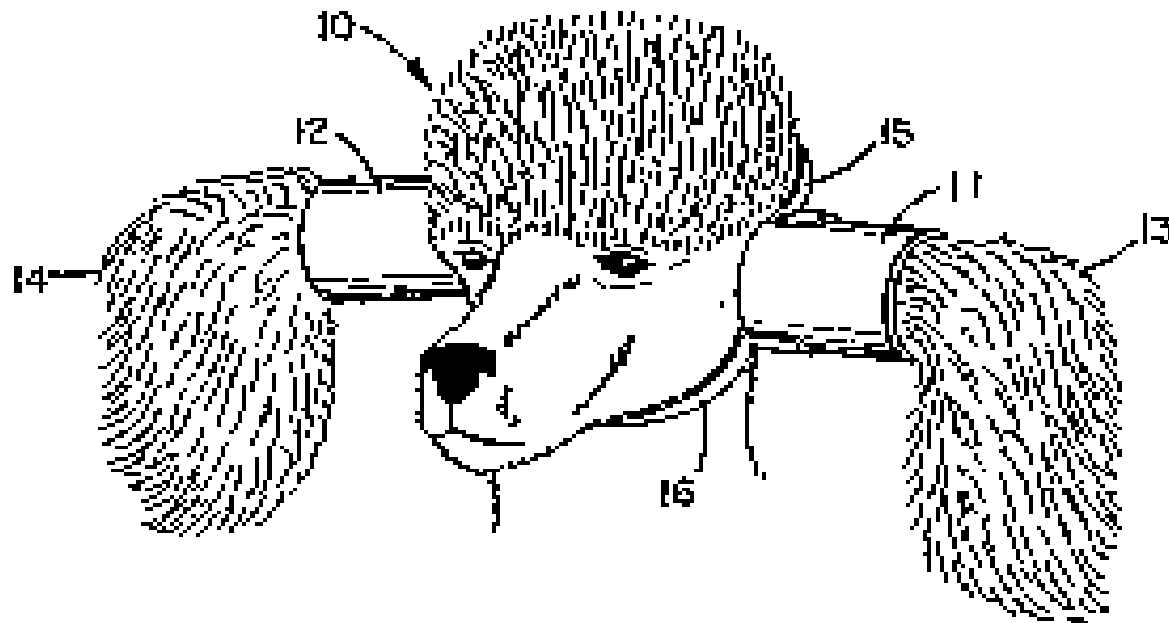
Patents

- -Inventions: Solution to a specific technical problem
- -Products or Processes
- -New, inventive step (non-obvious), capable of industrial application (useful).
- -Exclusive rights for limited term of protection: 20 years
- -Pharmaceutical, agrochemical and biotechnology industries



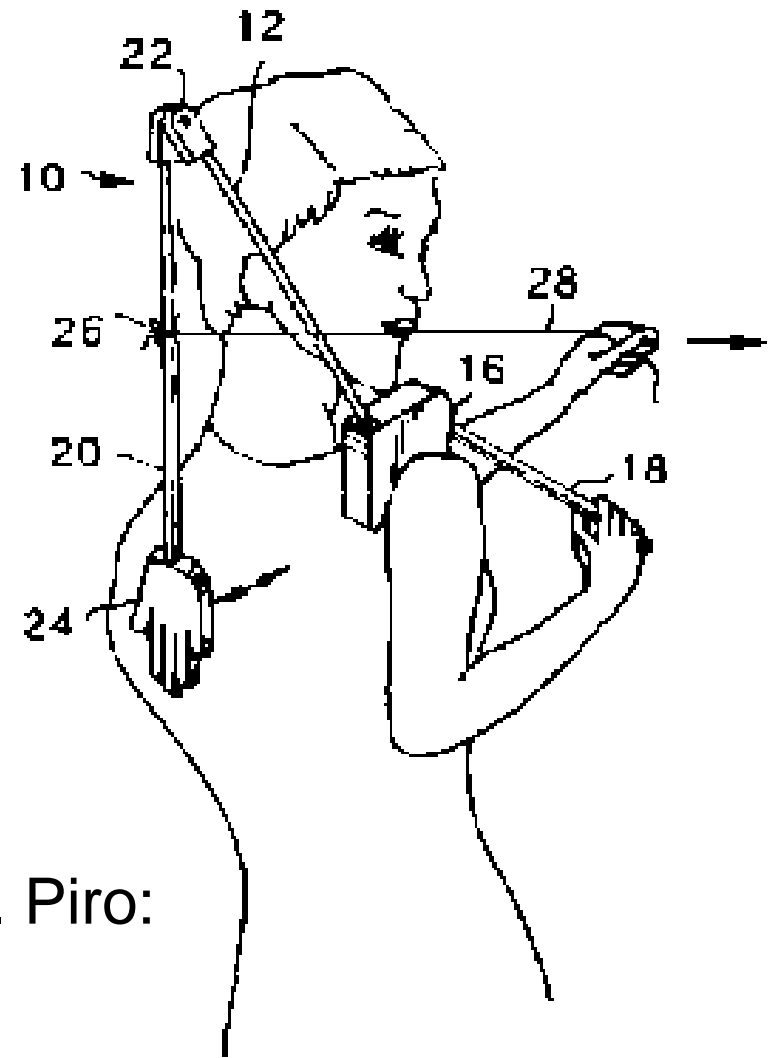


U.S. **Patent** No. 5,443,036: No yarn: "Method of exercising a cat" (using a laser). Issued: 1995. Inventors: Kevin T. Amiss, Martin H. Abbott. (Courtesy United States **Patent** and Trademark Office)



US Patent No. [US4233942](#). A device for protecting the ears of a long-haired dog from becoming soiled by food while it is eating. A tube contains and protects each of the dog's ears. The tubes are held away from the dog's mouth and food as it eats.

FIG. 1



January 1998

U.S. Patent 4,608,967 to Ralph R. Piro:
Pat On the Back Apparatus

This invention relates to an apparatus which is useful for providing a self-administered pat-on-the-back or a congratulatory gesture.

Patents

- International Protection
- -Paris Convention
- -National treatment
- -Right of priority
- -Minimum standards of protection
- -TRIPS
- -Patent Cooperation Treaty (PCT) Easier access to world wide patent protection, cost reduction
- -Patent Law Treaty (PLT)-Streamline and harmonize formal requirements

TRIPS: Patents

- Patents should be awarded for any inventions, whether products or processes, in all fields of technology without discrimination, as to the place of invention, the field of technology or whether products are imported or locally produced.
- • Exceptions to patentability:
- a) inventions contrary to public order or morality (inventions dangerous to human, animal or plant life or health or seriously prejudicial to the environment)
- b) diagnostic, therapeutic and surgical methods for the treatment of humans or animals
- Members may exclude 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

TRIPS: Patents

- Exclusive rights: making, using, selling, offering for sale, and importing for these purposes
- 20 year term from filing date
- Disclosure and best mode
- Rules on compulsory licensing
- Reversal of the burden of proof in process patents

TRIPS: Industrial Designs

- Protection for independently created industrial designs that are new or original
- Not designs dictated essentially by technical or functional considerations
- Textile sector especially
- 10 year term
- Through industrial design law or copyright

AUSTRALIAN REGISTERED DESIGN AU-S-98277

Application Number: 7953 / 1986

Date of filing application: 17 December 1986

Date from which industrial property has effect:

17 December 1986

Date of Registration: 22 October 1987

Article in respect of which the design is registered:

Tyre International Design Classification: 12-15

Name(s) of Applicant(s): Pacific Dunlop Limited

Dunlop Tyre



AUSTRALIAN REGISTERED DESIGN

AU-S-120955

Application Number:

92 / 1994

Date of filing application:

12 January 1994

Date of Registration:

18 July 1994

Article in respect of which the design is registered: Bedlinen

International Design Classification: 06-13

Name(s) of Applicant(s): Kenneth

Stephen Done



Trademarks

- Virtually any sign capable of constituting a trademark (words, letters and numerals, colored marks, audible, olfactory)
- Denied registration:
 - Contrary to morality or public order
 - Of such nature as to deceive the public



Trademarks

- -Sign or combination of signs capable of distinguishing goods or services
- -Distinctiveness
- -Likelihood of confusion
- -Should be protected at least 7 years; then protection renewable indefinitely
- Can apply to all industries

Always Coca-Cola.....



Did somebody say McDonald's?



Trademarks

- **International Protection**
- -Paris Convention
- National Treatment
- Minimum standards of protection
- Protection of well-known marks
- Right of priority
- -Madrid Agreement, Madrid Protocol
- -Trademark Law Treaty
- WIPO Joint Recommendations on WK marks and Licenses

TRIPS: Trademarks

- Definition of trademark-Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registration depend on distinctiveness acquired through use.
- Actual use not a condition for registration. Minimum of three years to be a ground for refusing the application
- Protection for service marks
- Increased protection for well known marks
- Renewable 7 year term

TRIPS: Geographical Indications

- Indications which identify a good as originating in the territory of a WTO Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
- Eligibility: -Origin
-Quality, Reputation or other characteristics
- Legal means to prevent misleading use or registration
- Wines and spirits
- Unlimited term of protection

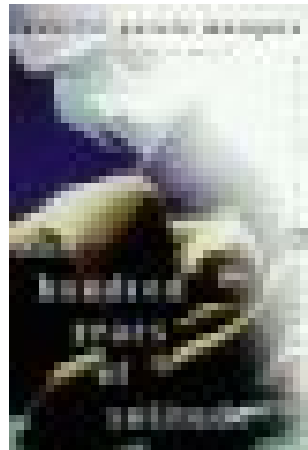
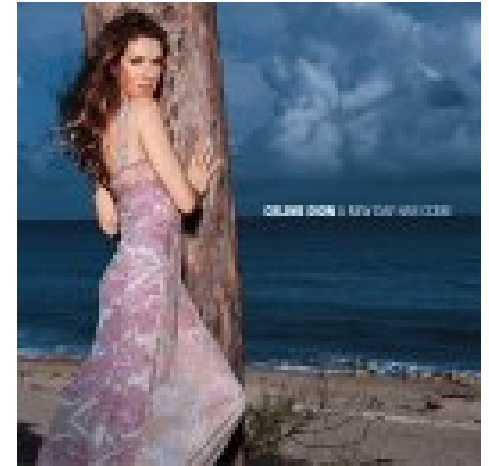


THE CHAMPAGNE
REGION



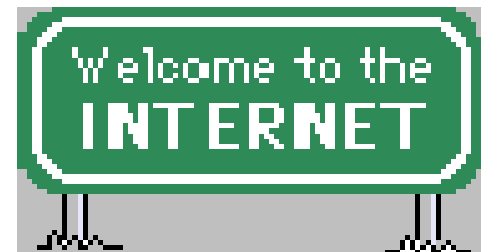
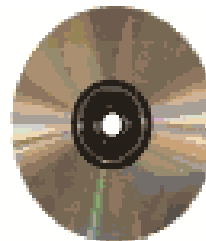
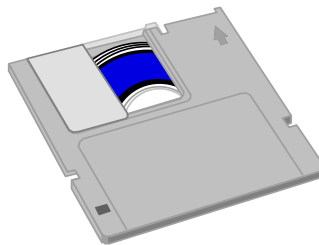
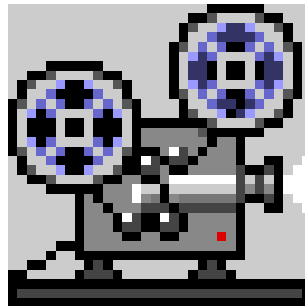
Copyright

- -Literary and artistic works (original creations in the fields of literature and arts/works of authorship)
- -Protection to expressions and not ideas
- -Categories of works protected
- -Protection for the life of the author / artist plus 50 years
- -Important for music recording industry, motion picture industry, radio and television, publishing, computer software



Copyright

- Literary Works (novels, poems, etc., published or unpublished)
- Musical Works (songs, musicals, operas)
- Artistic Works (drawings, paintings, sculptures)
- Maps and technical drawings
- Photographic Works
- Cinematographic Works
- Computer Programs



Copyright: exclusive rights

- Right of Reproduction (prevent others from making copies)
- Right of Distribution
- Right of Rental
- Performing Rights (act of public performance)
- Recording Rights (making a sound recording)
- Motion Picture Rights
- Broadcasting Rights (Communication to the public by wireless means)
- Translation and Adaptation Rights

Copyright

- **International Protection**
- - Berne Convention
- National Treatment
- Right of enforcement
- Standards of protection
- Minimum term (life of the author plus 50 years)
- - Rome Convention-Protects sound recordings, performers, broadcasting organizations.
- - TRIPS
- - WIPO Copyright Treaty
- - WIPO Performances and Phonograms Treaty

TRIPS: Copyright and related rights

- Berne Convention
- Computer programs protected as literary works
- Protection for databases and other compilations of data
- Rental right (for computer programs and cinematographic works)
- Minimum term of protection of no less than 50 years of a work
- Related Rights: increased protection for performers, producers of phonograms and broadcasting organizations.

TRIPS: Layout-Designs of Integrated Circuits

- Incorporates provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty)
- Protection for *original* layout designs
- Exclusive rights of reproduction and the right of importation, sale and other distribution for commercial purposes
- 10 year protection
- protection to articles containing infringing integrated circuits
- treatment of innocent infringers

Other Issues:

- TRIPS and Public Health
- Access to Genetic Resources
- Protection of Expressions of Folklore
- Protection of Traditional Knowledge
- Transfer of Technology

New IPR Agenda

- Emerging IP stakeholders – developing countries
- Need to increase awareness of the value of IPR, biotechnology, traditional knowledge and expressions of Folklore
- Cover concerns related to the environment, agriculture and food security, traditional medicine and indigenous knowledge, preservation of cultural heritage, sustainable development
- No international system for effective legal protection of these areas

Expressions of Folklore

- Traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of such community.
- Definition of subject matter, right holders, exclusive rights and enforcement mechanisms
- Limitations and cost. Enable use of existing IPR systems, facilitating access, reaching out and lowering fees
- Documentation: identification, preservation, research and prevent misappropriation
- Develop a sui generis system

Access to Genetic Resources

- Relationship between the Convention on Biological Diversity (CBD) and TRIPS.
- Use of biodiversity by pharmaceutical and agricultural sectors
- Basic understanding:
 - TRIPS and CBD should be implemented in a mutually supportive manner. Objectives of the Agreements do not conflict
 - Acknowledge National Sovereign Rights over natural resources
 - Right to regulate access to genetic resources
- Through IPR?

TRIPs and Public Health

- CONCERN of developing countries non-producers of generic medicines
- Declaration of 31 August 2003
- Developing countries allowed to import generic medicines made under compulsory licensing if they are unable to manufacture them domestically
- --Waives their obligations under a provision of the TRIPS (Art. 31)
- TRIPS should not prevent governments from taking measures to protect public health
- Designed to address problem of endemic diseases such as AIDS, tuberculosis, malaria & others

IPR protection and Egypt: Recent Law

- **Egypt member of most IPR treaties (Berne Convention for the Protection of Literary and Artistic Works; Geneva Convention for the Protection of Producers of Phonograms; Convention establishing the World Intellectual Property Organization; Madrid Agreement on the International Registration of Marks; Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; Hague Agreement Concerning the International Deposit of Industrial Designs; Paris Convention for the Protection of Industrial Property; Trademark Law Treaty; and Patent Cooperation Treaty)**
- **First IPR Law dated 1949 – not in conformity with TRIPS obligations**
- **New Law passed in 2002 (82/2002) to ensure TRIPs compliance**

IPR and Egypt: Trademarks

- Egypt joined the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks on 18th June 2005
- Trade marks and industrial designs can be registered with the Commercial Registry Department of the Ministry of Supply and Internal Trade. Granted trade marks are published in the Gazette of Trademarks and Industrial Designs
- Trade marks may contain geographical indications
- Trademark registrations in Egypt, which had a backlog resulting in delays reaching over five years, are now by over 40%
- The target is that registration of a trademark takes under two years

IPR and Egypt: Patents

- Egypt began implementation of the Patent Cooperation Treaty, which it joined and ratified in 2004
- Compulsory licenses may be granted for a patent that has not been worked for 3 years – none since 1992
- For pharmaceutical patents, Egypt opened a mailbox for patents and begun examination of applications in January 2005
- Egypt receives around 1,000 patent applications per year; 500 issued

IPR protection and Egypt: Software

- Software piracy a problem – however progress made:
 - Estimated to account for around 50% of Egypt's software market
 - Losses by software makers from piracy estimated to be US \$13 million in 1997
 - Enforcement of IPR in computer software:
Establishment of a new Unit for Licensing Software in the Ministry of Information and Telecommunication
- ✓ Egypt trying to develop as regional hub for high-technology applications, including biotechnology and IT products

IPR protection and Egypt: Scrutiny

- No formal DS complaint against Egypt IPR practices
- However, In addition to China and Russia, USTR is giving the highest level of IPR scrutiny to 11 other countries placed on what it calls the priority watch list: Argentina, Belize, Brazil, **Egypt**, India, Indonesia, Israel, Lebanon, Turkey, Ukraine and Venezuela.

Source: International Information Programs, usinfo.state.gov, US Department of State