**9th Lesson**

1. **Industrial Law**
	1. **Concept and object of Industrial Law**

The Industrial Law is a Commercial Law sub-branch whose purpose is the protection of the economic statement of the company and fair competition through two mechanisms:

- Assignment of private rights protected by exclusivity (patents, trademarks, etc.) and

- Prohibition of unfair competition.

* 1. **Patents**

The object of the patent is the protection of a new invention, implying inventive activity and susceptibility of industrial application. Through the patent is granted on its holder the exclusive right to exploit the invention, the right to prevent third parties without his consent, to manufacture, deliver, store, trade or use the invention.

The requirements for patentability are novelty, inventive activity and susceptible of industrial application of the invention.

First, an invention is considered novel when it is not in the state of the art. The state of the art consists, on the one hand, all that was made available to the public before the date of the patent request in the INPI (National Institute of Industrial Property), by description, use or any other means and, on the other hand, the content of patent and utility model requests not yet published.

Second, it is considered that an invention involves an inventive activity if, an expert in the area does not reach easily to the same invention.

Finally, an invention is susceptible of industrial application if its object can be manufactured or used in any kind of industry or in agriculture.

The Portuguese Industrial Property Code establishes some situations that legitimize a third party to exploit a patented invention, for example:

- Through the patent owner's consent can a third party who has obtained such consent exploit the patented invention.

- The exploitation can be performed by those who have obtained a contractual license from the patent owner.

Regarding the patent attribution process it consists, fundamentally, in the evaluation by the INPI (National Institute of Industrial Property) of the compliance with the requirements of patentability of the invention. A patent lasts for 20 years and is not renewed.

* 1. **Utility Models**

The object of the patent and utility model is exactly the same: protection of an invention as the technical knowledge with practical application that is new, that involves an inventive activity and is susceptible of industrial application.

The administrative procedure for the granting of the utility model is quicker and more simplified and less expensive than the patent. However, the duration of the utility model shall be six years and may be renewed twice for further periods of two years (term less than the patent: 20 years accordingly).

On the other hand, cannot be utility model object, but only patent, the inventions relating to biological matter or that relate to chemical or pharmaceutical substances or processes.

* 1. **Trademarks**

A trademark serves to mark or distinguish goods and services of a company relative to the other or others. In addition to the distinctive function a trademark takes the indirect guarantee function of the quality of products or services, reporting them to a non-misleading origin. Assume also an advertising function, contributing itself to the promotion of products and services which marks.

A trademark can be any word, sign, symbol or graphic. The trademark serves as a badge of origin for business and its brands (the name that a business chooses for one of their products), and can consist of words, logos, images, [slogans](http://www.novagraaf.com/en/services/trademarks-are-an-important-part-of-our-daily-lives/slogans-and-taglines-increasing-brand-name-recognition), shapes and colors, or a combination of all of these.

The exclusive use of the trademark is granted by its registration in the INPI and the registration duration is 10 years from its concession and can be renewed indefinitely for equal periods.

The trademark registration confers on its holder the exclusive use and therefore the right to prevent third parties without the owner’s consent, use, in the exercise of economic activities, any signal equal or similar in identical goods or services or related those for which the mark is registered, and that as a result of the similarity between the signs and the similarity of the products or services could cause a risk of confusion or association in the minds of consumers.

The trademark will be regarded as misleading if it consists of signs that are likely to mislead the public into error, in particular the nature, qualities, usefulness or geographical origin of the goods or services to which the mark is intended. If the mark is misleading its registration will not be accepted.

On the other hand it is considered a trademark imitation if cumulatively:

- The registered trademark has priority;

- Both identify identical or similar goods or services;

- Have such graphic, figurative, audio similitude or other that easily induce the consumer to error or confusion, or which carry a risk of association with a previously registered trademark, so that the consumer cannot distinguish but after close examination or comparison.

* 1. **Logos**

The trademark has the function to mark or distinguish the goods and services of one company relative to other, and may consists of a sign or set of susceptible signs of being represented graphically, by words, including personal names, designs, letters, numbers, sounds the shape of the product or its packaging.

The logo is intended to mark or distinguish the entity that sells products or provides services and can be used in establishments, ads, print or mail. The logo may consist of a sign or set of signs capable of being represented graphically, particularly by word elements, figurative or a combination of both. The logo is assigned upon registration that lasts 10 years and can be renewed.

For example the owner of “Good Food” restaurant decided to create “Good Wine” trademark to mark the wine he produces. “Good Food” is the restaurant logo and “Good Wine” a trademark.

Do not confuse the logo with the firm. The logo marks and distinguishes the entity that sells products or provides services and can usually be designated as the name of the establishment. The firm is the trade name of the trader that by which it is known in the trade.

**6.6 Transmission, Licensing and Merchandising**

The rights derived from patents, utility models, trademarks and logos may be transmitted or e object of an exploitation license.

The license agreement should adopt the written form.

Unless expressly stipulated otherwise in the agreement, the licensee has, for all legal purposes, the powers of the licensor.

The license is presumed to be non-exclusive.

Exclusive license is the one in which the right holder is prevented from granting other, while the first remains in force.

The exclusive license does not exclude the owner from also directly exploiting the licensed right, unless otherwise is stipulated in the agreement.

Unless otherwise agreed, the right obtained through the exploitation license cannot be alienated without the written consent of the right holder.

**Merchandising**

It is a license subspecies by which the trademark owner authorizes a person to use it as a sign for different goods or services from the original ones with a promotional purpose. Normally the merchandising respects to the trademarks who have acquired a particular publicity value.

For example movie merchandising includes toys based on buildings or vehicles in the movies, action figures based on movie characters, prints of the movie poster and T-shirts with catchphrases and images from the movie.

**6.7 Unfair Competition**

Unfair competition is the competition act contrary to honest acts, norms and practices of any branch of economic activity, namely:

 1- Acts likely to cause confusion with the company, the establishment, the goods or services of competitors, whatever the means employed;

 2- False statements made in the exercise of an economic activity, in order to discredit competitors;

 3- Statements or references unauthorized made in order to benefit from the credit or reputation of a name, establishment or extraneous trademarks;

 4- False indications of credit or own reputation, relating to capital or financial situation of the company or establishment, the nature or scope of its activities and business and the quality or quantity of its clientele;

 5- False descriptions or indications of the nature, quality or utility of the products or services as well as the false indications of origin, locality, region or territory, of factory, property or establishment;

 6- The elimination, occultation or alteration, by the seller or any intermediary, of the geographical origin of products or the registered trademark of the producer or manufacturer in products he intends to sale.

Constitutes an unlawful act, namely, disclosure, acquisition or use of trade secrets of a competitor without his consent, provided that such information:

* Is secret in the sense of not being generally known or readily accessible;
* Have commercial value because they are secret;
* Have been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

It will be punished with a fine of 3.000 euros to 30.000 euros, in the case of legal persons, and 750 euros to 7.500 euros, in the case of an individual who commit any of the acts of unfair competition being the entity responsible for the instruction of administrative offense processes and the application of fines the ASAE

It may also be mentioned measures and procedures aimed to protect industrial property rights. Thus, whenever there is violation or founded fear that another person cause serious damage and difficult to repair of the industrial property right, the court may, enact appropriate action to:

- Inhibit any imminent infringement; or

- Prohibit the continued violation.

Who, intentionally or recklessly, unlawfully violates the industrial property rights of other, is obliged to compensate the injured party for damages.

In addition to compensation for damages, the court may determine measures relating to the destination of the goods in which there has been infringement of industrial property rights including the destruction or removal, from the market, without any compensation to the offender.

It can still be imposed by the court inhibitory measures such as:

-A temporary ban of certain activities or professions;

-The deprivation of the right to participate in fairs or markets;

-The temporary or permanent closure of the establishment.

**Case studies**

1. **What is the role of the Industrial Law?**

The Industrial Law is a Commercial Law sub-branch whose purpose is the protection of the economic statement of the company and fair competition through two mechanisms:

- Assignment of private rights protected by exclusivity (patents, trademarks, etc.) and

- Prohibition of unfair competition.

1. **What is the patent´s object and which rights gives to his holder?**

The object of the patent is the protection of a new invention, implying inventive activity and susceptibility of industrial application. Through the patent is granted on its holder the exclusive right to exploit the invention, the right to prevent third parties without his consent, to manufacture, deliver, store, trade or use the invention.

1. **What are the requirements of patentability?**

The requirements for patentability are novelty, inventive activity and susceptible of industrial application of the invention.

First, an invention is considered novel when it is not in the state of the art. The state of the art consists, on the one hand, all that was made available to the public before the date of the patent request in the INPI (National Institute of Industrial Property), by description, use or any other means and, on the other hand, the content of patent and utility model requests not yet published.

Second, it is considered that an invention involves an inventive activity if, an expert in the area does not reach easily to the same invention.

Finally, an invention is susceptible of industrial application if its object can be manufactured or used in any kind of industry or in agriculture.

1. **Distinguish patent from utility model.**

The object of the patent and utility model is exactly the same: protection of an invention as the technical knowledge with practical application that is new, that involves an inventive activity and is susceptible of industrial application.

The administrative procedure for the granting of the utility model is quicker and more simplified and less expensive than the patent. However, the duration of the utility model shall be six years and may be renewed twice for further periods of two years (term less than the patent: 20 years accordingly).

On the other hand, cannot be utility model object, but only patent, the inventions relating to biological matter or that relate to chemical or pharmaceutical substances or processes.

1. **Establish the differences between trademark and logo.**

The trademark has the function to mark or distinguish the goods and services of one company relative to other, and may consists of a sign or set of susceptible signs of being represented graphically, by words, including personal names, designs, letters, numbers, sounds the shape of the product or its packaging.

The logo is intended to mark or distinguish the entity that sells products or provides services and can be used in establishments, ads, print or mail. The logo may consist of a sign or set of signs capable of being represented graphically, particularly by word elements, figurative or a combination of both. The logo is assigned upon registration that lasts 10 years and can be renewed.