МІНІСТЕРСТВО ОСВІТИ І НАУКИ УКРАЇНИ

НАЦІОНАЛЬНИЙ ТЕХНІЧНИЙ УНІВЕРСИТЕТ
«ХАРКІВСЬКИЙ ПОЛІТЕХНІЧНИЙ ІНСТИТУТ»

До друку дозволяю
Ректор проф. Товажнянський Л.Л..

ІНТЕЛЕКТУАЛЬНА ВЛАСНІСТЬ. АНГЛІЙСЬКА МОВА ПРОФЕСІЙНОГО СПІЛКУВАННЯ

НАВЧАЛЬНИЙ ПОСІБНИК

для студентів, магістрів та аспірантів

Затверджено
редакційно-видавничою
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Харків НТУ «ХПІ» 2006

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В навчальному посібнику подано систему вправ для формування навчальних навичок та умінь, а також розвитку вмінь комунікативного читання в галузі захисту інтелектуальної власності.

Призначено для студентів старших курсів вищих закладів освіти, які вивчають професійно-орієнтовану англійську мову.

Інтелектуальна власність. Англійська мова професійного спілкування: Навч. посібник для студентів, магістрів та аспірантів / Комова Г.В., Кириленко Л.Г. та ін. – Харків: НТУ «ХПІ».– 2006. – 148 с. – Англ. та укр. мовами/

ISBN

The course is aimed at developing skills in communicative reading of specialist literature in the field of intellectual property. The system of tasks also includes activities for building study skills.

The book is designed for senior students at tertiary level studying English for special purposes.

Табл. 2. Бібліог. 10 назв.

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ПЕРЕДМОВА

Навчальний посібник призначено для аудиторної та самостійної роботи студентів старших курсів, магістрів та аспірантів, що навчаються за спеціальністю «Інтелектуальна власність». Його мета – подальше вдосконалення навичок та умінь ефективного читання фахової літератури і на цій основі інтегративне формування комунікативних умінь усного і писемного мовлення. Поряд з навчанням різних видів читання (пошукового, переглядового, ознайомлювального та вивчаючого) передбачається паралельне оволодіння широким спектром навчальних умінь: виявлення головної думки тексту, постановка питань, складання плану й нотаток, аналіз та оцінка фактів, надання пояснень, наведення прикладів, порівняння та коментування інформації тощо. До посібника увійшли також завдання з технік анотування та реферування, спрямовані на краще розуміння змісту розділів і формування навичок академічного письма.

Навчальний посібник містить дві частини. Перша з них включає сім розділів, присвячених різним галузям інтелектуальної власності: «Авторське право», «Торгові марки», «Патенти» та ін. Вправи і завдання цієї частини розраховані на досягнення максимально повного і точного розуміння фактичної інформації, її критичного осмислення та обговорення, тому матеріал може бути використаний як додаткове джерело інформації з профілюючої дисципліни. Роботу над першою частиною посібника рекомендується проводити послідовно, щоб не порушувати логіку викладання матеріалу і цим полегшити його сприйняття.

Друга частина включає тексти для читання з розумінням основного змісту. Вправи цієї частини доцільно виконувати паралельно з вивченням матеріалу першої частини. Додаток має інформаційно-довідковий характер:

він містить рекомендації та зразки виконання завдань з розвитку навчальної компетенції.

Наявність англо-українського словника, який охоплює близько 800 термінів, мусить полегшити самостійну роботу студентів з матеріалом посібника.

При написанні роботи було використано таку літературу:

1. Collin P.H. Dictionary of Business. – Teddington: Peter Collin Publishing, 1997.
2. Collin P.H. Dictionary of Law. – Teddington: Peter Collin Publishing, 1998.
3. Introduction to Intellectual Property. – Geneve: WIPO, 2000.
4. Jordon R.R. Academic Writing Course. – Harlow: Longman, 2001.
5. Milton M. Creative Content For the Web. – Exeter, Portland: Intellect, 1999.
6. New Scientist, 2003-2005. Patents in the Knowledge-based Economy. – Washington: The National Academies Press, 2001.
7. Smith G., Smith M. Study Skills Handbook. – Oxford: OUP, 1993.
8. Wallace M.J. Study Skills in English. – Cambridge: CUP, 1993.
9. Тлумачний російсько-українсько-англійський словник з інтелектуальної власності. Основні терміни Уклад: М.Д. Гінзбург, Л.М. Дунаєвський, І.О. Требульова та ін.; За заг. ред. А.А.Рудника. – Харків, 1999.

PART ONE

Section A

Read the texts and do the tasks that follow.

INTELLECTUAL PROPERTY

I

1. We know that the inventor of a machine, the author of a book, or the writer of music somehow usually ‘owns’ their work. We can’t just copy or buy a copy of their works without consideration of their rights. Equally, original industrial designs of furniture, wallpaper and the like seem naturally to be owned by someone or some organization. Each time we buy such protected items, a part of what we pay goes back to the owner as recompense for the time, money, effort and thought they put into the creation of the work. This has resulted over the years in the development of industries such as the music industry growing worldwide and encouraging new talent to produce more and more original ideas and articles.

2. The following Table 1 suggests some of the things that are entitled to protection as intellectual property under national intellectual property laws and/or various international treaties:

Table 1

Discs	Designs for objects	Geographical indications of origin for certain types of products
Performances	Images	Companies’ names
Broadcasts	Logos	Industrial processes
Videos	Trademarks	Chemical formulas
Computer games	Integrated circuits	Materials
Computer programs	Inventions	Perfumes

3. The outstanding features that most types of property share are that the owner of the property is free to use it as she/he wishes, provided the use is not against the law, and to exclude others from so using that owned item of property.

Task 1. Translate the text in writing.

II

4. Now the term ‘intellectual property’ is reserved for types of property that result from creations of the human mind, the intellect. Interestingly, the term ‘intellectual property’ in the Convention Establishing the World Intellectual Property Organization, or WIPO, does not have a more formal definition. The States that drafted the Convention chose to offer an inclusive list of the rights as relating to: “Literary artistic and scientific works, performances of performing artists, phonograms, and broadcasts, inventions in all fields of human endeavor, scientific discoveries, industrial designs, trademarks, service marks, and commercial names and designations, protection against unfair competition and “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”. (Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967; Article 2).

5. For various administrative and historical reasons intellectual property is usually dealt with under the following main headings:

1) Literary, artistic and scientific works, e.g. books. Protection of this property is governed by laws concerning Copyright.

2) Performances, broadcasts, e.g. concerts. Protection of this property is governed by laws concerning Copyright’s Related Rights.

3) Inventions, e.g. a new form of jet engine. Protection of inventions is covered by laws concerning Patents.

4) Industrial designs, e.g. the shape of a soft drinks bottle. Industrial Designs may be protected by its own specialized laws, or those of Industrial Property or Copyright.

5) Trademarks, service marks and commercial names and designations, e.g. logos or names for a product with unique geographical origin, such as Champagne. Protection is normally available under various laws.

6) Protection against unfair competition, e.g. false claims against a competitor or imitating a competitor with a view to deceive the customer.

6. The term ‘laws’ includes national laws and international agreements: treaties, conventions and similar intergovernmental instruments. Treaties themselves may receive different treatment within various nations’ governments.

Task 2. Briefly summarize the information contained in the passage above and give your own definition of intellectual property.

III

7. The first reason is that it is both just and appropriate that the person putting in the work and effort into an intellectual creation has some benefit as a result of this endeavor. The second reason is that by giving protection to intellectual property many such endeavors are encouraged and industries based on such work can grow, as people see that such work brings financial return.

An example of this later point is given by the case of the world pharmaceutical industry.
An investment of many years, and R&D expenses (lab time for creation, testing, government or agency approval procedures) running into the hundreds of millions of pounds sterling (or yen, lira, dollars) may be necessary before any new medicine reaches the market. Without the IP rights to exclude competitors from also making such a new medicine, the pharmaceutical company creating such a new compound would have no incentive to spend the time and efforts outlined above to develop their drugs.

Without patent protection, such a company would face economic losses originating from the 'free-riding' of their competitors. Without trademark protection, this company, again, could not build 'brand loyalty' that, hopefully, would last beyond the years of protection granted by patents..

Without the protections given within IP laws and treaties, such pharmaceutical firms simply would not commit an effort to experiment, in searching for new health products.
As you can see from this brief example, without the protections outlined above, the world might well be literally less healthy than it is.

8. Intellectual property rights may also help to extend protection to such things as the unwritten and unrecorded cultural expression of many developing countries, generally known as folklore. With such protection they may be exploited to the benefit of the country and cultures of origin.

9. The reason for States to enact national legislation, and to join as signatories to either (or both) regional or international treaties governing intellectual property rights include:

- to provide incentive towards various creative endeavors of the mind by offering protections;

- to give such creators official recognition;
- to create repositories of vital information;
- to facilitate the growth of both domestic industry or culture, and international trade, through the treaties offering multi-lateral protection.

Task 3. Comment on the information given in the box.

Section B

COPYRIGHT

Study the section and:

1) Explain in about 250 words the rights that are protected by copyright. (Reproduction rights, related rights, moral rights, rights of performance, translation and adaptation rights).
2) Explain how the ownership of copyright can be obtained and transferred.
3) List 5 measures that can be used to enforce rights.

I

1. As with all fields of intellectual property copyright is concerned with protecting work of the human intellect. The domain of copyright is the protection of literary and artistic works. These include writings, music, works of the fine arts, such as paintings and sculptures, and technology based works such as computer programs and electronic databases. Note that copyright protects works that is the expression of thoughts, and not ideas. So if you imagine a plot it is not protected, but when you express it in a synopsis or in, say, a short story, the expression of the plot in that story will be protected. Still, other writers may build new stories based on a similar plot.

Task 1. Define copyright and give examples of the types of works that are covered by copyright.

II

2. The Berne Convention, which is the oldest international convention governing copyright, states the following: "The expression 'literary and artistic

works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works, to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science. Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work. Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections."

Task 2. Put down the names of the items for literary and artistic works on slips of paper and then take it in turns to comment on them.

III

3. There is no requirement that the literary and artistic work should be good or have artistic merits. It should, however, be original. The exact meaning of this requirement varies from country to country, and it is often determined by case law. In very generalizing terms one may say that in countries belonging to the common law tradition very little is required, other than that the work must not be a copy of another work. In countries belonging to the civil law tradition, the requirement is often stronger, for example that the work must bear the stamp of the author's personality.

4. Copyright protects literary and artistic works, as the title of the Berne Convention states. The two concepts need to be taken in a very broad sense. The term 'literary', for example, does not mean just novels, poems or short stories: it could cover the maintenance manual of a car, or even things that are written but not supposed to be understood by the average human being, such as computer

programs. The key to this expression in fact is the word ‘works’. What is meant by that is that expression, human expression, is the determining factor. So, if you have the idea of painting ‘sunset over the sea’, anyone else can use the same idea, which is not protected. But when you actually produce your painting of ‘sunset over the sea’ the painting itself is expression, and that is protected.

Task 3. In small groups, discuss the following: a) the kinds of works that can be protected by copyright laws; b) the meaning of the term ‘literary’.

IV

5. Copyright is a branch of intellectual property. The owner of copyright in a protected work may use the work as he wishes, and may prevent others from using it without his authorization. Thus, the rights granted under national laws to the owner of copyright in a protected work are normally ‘exclusive rights’: to authorize others to use the work, subject to the legally recognized rights and interests of others.

6. There are two types of rights under copyright: economic rights, which allow the owner of rights to derive financial reward from the use of his works by others, and moral rights, which allow the author to take certain actions to preserve the personal link between himself and the work.

7. The copyright holder has a set of different rights, which are governed partly by the Berne Convention, where there are minimum rights, and partly by national law, which often takes the rights even further. Traditionally and historically, the right of reproduction is the key, which incidentally is reflected in the word copyright. The right of reproduction would, for instance, cover the printing of books – and photocopying too – but it also covers more modern methods of reproduction such as tape recording and the copying of tape recordings. It covers the storage of works in computer memories and of course the copying of computer programs on diskettes, CD-ROMS, CD-writeable ROMS and so on.

8. Another right that has a long history is the right of performance. You perform a work when you play a tune, for example, or when you act on stage, and over the year that right has given rise to a number of other rights, such as the right of broadcasting and the right of communication to the public, the latter being sometimes defined differently in various national laws: broadcasting may actually form part of communication to the public, or they may be linked parallel concepts,

but typically all kinds of communication will be covered, broadcasting being one, but cable distribution could be another, and Internet distribution another again.

Task 4. Tell your partner about the types of rights under copyright and the rights of the copyright holder.

V

1. The right of the owner of copyright to prevent others from making copies of his works is the most basic right under copyright. 'For example, the making of copies of a protected work is the act performed by a publisher who wishes to distribute copies of a text-based work to the public, whether in the form of printed copies or digital media such as CD-ROMs. Likewise, the right of a phonogram producer to manufacture and distribute compact discs (CDs) containing recorded performances of musical works is based, in part, on the authorization given by the composers of such works to reproduce their compositions in the recording. Therefore, the right to control the act of reproduction is the legal basis for many forms of exploitation of protected works.

2. Other rights are recognized in national laws in addition to the basic right of reproduction. For example, some laws include a right to authorize distribution of copies of works; obviously, the right of reproduction would be of little economic value if the owner of copyright could not authorize the distribution of the copies made with his consent. The right of distribution is usually subject to exhaustion upon first sight or other transfer of ownership of a copy, which is made with the authorization of the rights owner. This means that, after the copyright owner has sold or otherwise transferred ownership of a particular copy of a work, the owner of that copy may dispose of it without the copyright owner’s further permission, by giving it away or even by reselling it.

3. However, as regards rental of such copies, an increasing number of national copyright laws, as well as the TRIPS Agreement, have recognized a separate right for computer programs, audiovisual works and phonograms. The right of rental is justified because technological advances have made it very easy to copy these types of works; experience in some countries has showed that copies were made by customers of rental shops, and therefore, that the right to control rental practices was necessary in order to safeguard the copyright owner’s right of reproduction. Finally, some copyright laws include a right to control importation of

copies as a means of preventing erosion of the principle of territoriality of copyright; that is, the economic interests of the copyright owner would be endangered if he could not exercise the rights of reproduction and distribution on a territorial basis.

4. There are some acts of reproducing a work, which are exceptions to the general rule, because they do not require the authorization of the author or other owner of rights; these are known as 'limitations' on rights. For example, many national laws traditionally allow individuals to make single copies of works for private, personal and non-commercial purposes. The emergence of digital technology, which creates the possibility of making high-quality, unauthorized copies of works that are virtually indistinguishable from the source (and thus a perfect substitute for the purchase of, or other legitimate access to, authorized copies), has called into question the continued justification for such a limitation on the right of reproduction.

Task 5. Outline briefly the right of reproduction.

VI

5. Normally under national law, a public performance is considered any performance of a work at a place where the public is or can be present, or at a place not open to the public, but where a substantial number of persons outside the normal circle of a family and its closest social acquaintances are present.

6. On the basis of the right of public performance, the author or other owner of copyright may authorize live performances of a work, such as the presentation of a play in a theater or an orchestra performance of a symphony in a concert hall. Public performance also includes performance by means of recordings; thus, musical works embodied in phonograms are considered "publicly performed" when the phonograms are played over amplification equipment in such places as discotheques, airplanes, and shopping malls.

7. The right of broadcasting covers the emission by wireless means for members of the public within range of the signal, whose equipment allows reception of sounds or of images and sounds, whether by radio, television, or satellite. When a work is communicated to the public, a signal is diffused by wire or cable, which can be received only by persons who have access to equipment connected to the wire or cable system.

8. Under the Berne Convention, owners of copyright have the exclusive right of authorizing public performance, broadcasting and communication to the public of their works. Under some national laws, the exclusive right of the author or other owner of rights to authorize broadcasting is replaced, in certain circumstances, by a right to equitable remuneration, although such a limitation on the broadcasting right is less and less common.

Task 6. Make a written summary of this part.

VII

9. The acts of translating or adapting a work protected by copyright also require the authorization of the owner of rights. Translation means the expression of a work in a language other than that of the original version. Adaptation is generally understood as the modification of a work to create another work, for example adapting a novel to make a motion picture or the modification of a work to make it suitable for different conditions of exploitation, e.g. by adapting an instructional textbook originally prepared for higher education into an instructional textbook intended for students at a lower level.

10. Translations and adaptations are works protected by copyright. Therefore in order to reproduce and publish a translation or adaptation, authorization must be obtained from both the owner of the copyright in the original work and of the owner of copyright in the translation or adaptation.

11. Economic rights of the type mentioned above can be transferred or assigned to other owners usually for a sum of money or royalties depending on the proposed usage of the work. However, the second type of rights, moral rights, can never be transferred. They always remain with the original author of the work.

12. Moral rights are different: they are made up of two things, the first being the right of authorship. That is the right to claim the status of author of a work, and to have that authorship recognized. It is basically the right to have your name mentioned, for instance when the work is reproduced. If you have written a book, then you have a right by law to have your name mentioned as its author and also to be named when the work is used. At least within reasonable limits. We can't expect a disc jockey in a discotheque to announce the composer, lyric writer, arranger and so on for every record he plays; it doesn't go that far obviously, but if you play a work at a concert - a classical concert of modern music - the composer

would clearly be entitled to have his name mentioned in the program. That would certainly be the practice for more important works such as those played in theaters or concert halls; indeed for all works in principle, we must name the author. This is also true of broadcasting in some cases, but not all the time. There again, the exact weighing of the details is something that is dealt with in national law, often with reference to practice or precedent.

13. Moral rights are the rights of respect, that is, the right to object to the work being distorted or used in contexts that are prejudicial to the honor and literary and artistic reputation of the author. The author can, for example, oppose the use of his work in a pornographic context, if the work is not pornographic in itself. And he can oppose the distortion of the work in such a way that its cultural or artistic integrity is adversely affected.

Task 7. Explain the difference between translation and adaptation and give a definition of moral rights.

VIII

14. However, under some national legislation, notably in countries with common-law traditions, the work does have to be written down or recorded before it is protected. You don't even have to record it yourself: if you compose a melody, hum it casually in the street and I manage to get it recorded, then it's fixed. But it also means that it's protected, so then if I use the recording of my melody, for further reproduction for example, I would be infringing your copyright. The difference here is really not that important: it is basically a question of the kind of proof you would need in a court in the very rare cases of works that are not fixed in the normal way, such as ballet routines. Nowadays you would fix a ballet on video and even use a special kind of writing to establish the choreography, but such things have not properly evolved until now. There could be a problem if you claimed that you had created a ballet and that somebody had made a play of it. The judge would then say, "Well, let me have some proof of the existence of your work." If it were not set down in some material form, proof would be hard to provide. And yet in civil-law countries, the work is typically protected from the moment of its creation. So even if you think up a poem in your head, it's protected. It would be your problem of course to prove what poem you thought up, how you

did it and so on. Under common law, on the other hand, you would have to have it fixed in some way, perhaps written down or recorded on tape.

15. In Bern Convention countries, all foreign owners of rights or authors from other Bern countries qualify for protection under the Convention without any formalities, so there's no need to make any registration. Some countries then impose formalities on their own citizens, which they can do as the international conventions are concerned only with how foreign citizens are treated. In principle a country can deal with its own nationals as it pleases, and then in the United States, for instance, there is a history of old requirements consisting on one hand in the registration of the work with the Copyright Office, which is part of the Library of Congress, and on the other hand in the claiming of copyright, by means of the reserved-rights notice, the circled letter 'c' that you probably have seen on a great many books, followed by the year date of first publication.

16. The copyright protection lasts as long as the national law says, but the minimum requirement under the Bern Convention is 50 years. The term is calculated from the end of year of the author's death, which is more practical: you don't have to enquire into the day he died; you only need to know the year. But there has been a tendency in recent years to prolong that protection. In the European Union and for countries of the European economic area, the term is now 70 years from the end of year in which the author died, and the same term has been written into the US legislation – so there too it is 70 years. There is thus a definite tendency to prolong protection from 50 to 70 years.

Task 8. Practice question-and-answer work based on the information above.

IX

1. The first limitation is the exclusion from copyright protection of certain categories of works. In some countries, works are excluded from protection if they are not fixed in tangible form; for example, a work of choreography would only be protected once the movements were written down in dance notation or recorded on videotape. In some (but not all) countries, moreover, the texts of laws court and administrative decisions are excluded from copyright protection.

2. The second category of limitations on the rights of authors and other owners of copyright concerns particular acts of exploitation, normally requiring the authorization of the owner of rights, which may, under circumstances specified in

the law, be done without authorization. There are two basic types of limitations in this category:

1) Free uses, which are acts of exploitation of works that may be carried out without authorization and without an obligation to compensate the owner of rights for the use;

2) Non-voluntary licenses, under which the acts of exploitation may be carried out without authorization, but with the obligation to compensate the owner of rights.

3. Examples of free uses include: the making of quotations from a protected work, provided that the source of the quotation, including the name of the author, is mentioned and that the extent of the quotation is compatible with fair practice; use of works by way of illustration for teaching purposes and use of works for the purpose of news reporting. In respect of the right of reproduction, the Bern Convention contains a general rule, rather than explicit detailed limitations: Article 9 (2) provides that member States may provide for free reproduction in 'certain special cases' where the acts do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. Numerous laws contain provisions allowing reproduction of a work exclusively for the personal, private and non-commercial use of individuals. However, the ease and quality of this individual copying, made possible by audiotaping or videotaping and even more recent technological improvements, has led some countries to narrow the scope of such provisions. Certain legal systems allow copying but incorporate a mechanism for payment to owners of rights for the prejudice to their economic interests, through a fee imposed on sales of blank tapes and/or tape recorders.

4. In addition to specific free uses enumerated in national laws, the laws of some countries recognize the concept known as fair use or fair dealing, which allows use of works without the authorization of the owner of rights, taking into account factors such as the following: the nature and purpose of the use, including whether it is for commercial purposes, the nature of the work used, the amount of the work used in relation to the work as a whole and the likely effect of the use on the potential commercial value of the work.

5. As noted above, non-voluntary licenses allow use of works in certain circumstances without the authorization of the owner of rights, but which, by operation of law, require that compensation be paid in respect of the use. Such

licenses are called ‘non-voluntary’ because they are authorized by the law and do not result from the exercise of the copyright owner’s exclusive right to authorize particular acts. Non-voluntary licenses were usually created in circumstances where a new technology for the dissemination of works to the public had emerged, and where the national legislature feared that owners of rights would prevent the development of the new technology by refusing to authorize use of works. This was true in the Bern Convention, which recognized two forms of non-voluntary licenses: firstly, to allow the mechanical reproduction of musical works and secondly for broadcasting. It should be noted, however, that the justification for non-voluntary licenses is called increasingly into question, since effective alternatives now exist for making works available to the public based on authorizations given by the owners of rights, including in the form of collective administration of rights.

6. Whatever the situation in your country relating to copyright there will inevitably be situations occurring where copyright is infringed so it is important to consider the types of remedies the copyright owner can take.

Task 9. Formulate the keynote of the passage and list the main points.

X

7. The Bern Convention contains few provisions concerning enforcement of rights, but the evolution of new national and international enforcement standards has been dramatic in recent years, due to two principal factors, The first is the galloping advances in the technological means for creation and use (both authorized and unauthorized) of protected material, and in particular, digital technology, which makes it possible to transmit and make perfect copies of any information existing in digital form, including works protected by copyright, anywhere in the world. The second factor is the increasing economic importance of the movement of goods and services protected by intellectual property rights in the realm of international trade; simply put, trade in products embodying intellectual property rights is now a booming, worldwide business. The TRIPS Agreement, which contains detailed provisions on the enforcement of rights, is ample evidence of this new link between intellectual property and trade. The following paragraphs identify and summarize some of the enforcement provisions found in recent national legislation.

8. Conservatory or provisional measures have two purposes: first, to prevent infringements from occurring, particularly to prevent the entry of infringing goods into the channels of commerce, including entry of imported goods after clearance by customs; and second, to preserve relevant evidence in regard to an alleged infringement. Thus, judicial authorities in some countries may have the authority to order that provisional measures be carried out without advance notice to the alleged infringer. In this way, the alleged infringer is prevented from relocating the suspected infringing materials to avoid detection. The most common provisional measure is a search of the premises of the alleged infringer and seizure of suspected infringing goods, the equipment used to manufacture them, and all relevant documents and other records of the alleged infringing business activities.

9. Civil remedies compensate the owner of rights for economic injury suffered because of the infringement, usually in the form of monetary damages, and create an effective deterrent to further infringement, often in the form of a judicial order to destroy the infringing goods and the materials and implements which have been predominantly used for producing them; where there is a danger that infringing acts may be continued, the court may also issue injunctions against such acts, failure to comply with which would subject the infringer to payment of a fine.

10. Criminal sanctions are intended to punish those who willfully commit acts of piracy of copyright and related rights on a commercial scale, and, as in the case of civil remedies, to deter further infringement. The purpose of punishment is served by the imposition of substantial fines, and by sentences of imprisonment consistent with the level of penalties applied for crimes of corresponding seriousness, particularly in cases of repeat offenses. The purpose of deterrence is served by orders for the seizure, forfeiture and destruction of infringing goods, as well as the materials and implements the predominant use of which has been to commit the offense.

11. Measures to be taken at the border are different from the enforcement measures described so far, in that they involve action by the customs authorities rather than by the judicial authorities. Border measures allow the owner of rights to apply to customs authorities to suspend the release into circulation of goods that are suspected of infringing copyright. The purpose of the suspension into circulation is to provide the owner of rights a reasonable time to commence judicial proceedings against the suspected infringer, without the risk that the

alleged infringing goods will disappear into circulation following customs clearance. The owner of rights must generally satisfy the customs authorities that there is prima facie evidence of infringement, must provide a detailed description of the goods so that they may be recognized, and must provide a security to indemnify the importer, the owner of, the goods, and the customs authorities in case the goods turn out to be non-infringing.

12. The final category of enforcement provisions, which has achieved greater importance in the advent of digital technology, includes measures, remedies and sanctions against abuses in respect of technical means. In certain cases, the only practical means of preventing copying is through so-called 'copy-protection' or 'copy-management' systems, which contain technical devices that either prevent entirely the making of copies or make the quality of the copies so poor that they are unusable. Technical devices are also used to prevent the reception of encrypted commercial television programs except with use of decoders. However, it is technically possible to manufacture devices by means of which copy protection and copy-management systems, as well as encryption systems, may be circumvented. The theory behind provisions against abuse of such devices is that their manufacture, importation and distribution should be considered infringements of copyright to be sanctioned in ways similar to other violations.

Task 10. Give titles to the above paragraphs and take in it turns to talk about the points made.

XI

13. The most important treaty is the Bern Convention for the Protection of Literary and Artistic Works. It dates back to 1886, but has been revised several times, typically at about 20-year intervals. The latest version was adopted in Paris in 1971.

14. The Berne Convention deals with the protection of copyright. It is based on principles such as that of national treatment, meaning that under national law you cannot discriminate against works from other countries party to the Convention. It lays down very important minimum protection standards that have to be met by national law, although of course national law can go further, and establishes various other principles.

15. Recently, we had the TRIPS Agreement. This is the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is one of the Agreements that emerged from the Uruguay Round of trade negotiations and is administered by the World Trade Organization.

16. The TRIPS Agreement among other things contains a reference to the substantive provisions of the Bern Convention, leaving aside moral rights, which are not considered trade-related. In order to comply with the TRIPS Agreement, countries have to comply with the Bern Convention for a start, after which there are a number of additional norms of protection that are introduced by the TRIPS Agreement, most importantly regarding new kinds of exploitation. So, it is TRIPS that covers the use of work via the Internet, for instance, and makes it clear that such use has to be subject to exclusive rights. It also specifies the extent one can depart from that rule and make exceptions to it. It insists that technical protection devices have to be respected. So, in one way or another people have to be prohibited, for instance, from using fake decoders to get access to television programs, or devising software to break into encrypted programs or encrypted works that they are not supposed to have access to. Finally, it contains provisions on rights management information.

17. So countries that acceded to or ratified the TRIPS Agreement must also comply with the Berne Convention (although Berne's Article 6bis on moral rights is specifically excluded in the TRIPS language, as it does not concern trade by virtue of the moral right's inalienable nature); in addition the TRIPS Agreement seeks to address aspects of copyright relating to new technologies such as the Internet.

Task 11. Make notes and use them to retell the text.

XII

18. In December of 1996, a Diplomatic Conference was held, which concluded the newest international agreement protecting copyright: the WIPO Copyright Treaty (WCT). This treaty responded to the need to protect works that would possibly be transmitted by digital means, including via the Internet. The subject matter to be protected through copyright by the WCT includes, that of computer programs, whatever may be the mode or form of their expression, and compilations of data or other material, databases in any form, which by reason of

the selection or arrangement of their content constitutes intellectual creation. The rights of authors, for which the WCT also extends protections, include the previously mentioned rights of distribution, rental, and communication to the public. These rights, as is normal, are subject to certain limitations and exceptions.

19. Another treaty was concluded at that same Diplomatic Conference, which was designated the WIPO Performances and Phonograms Treaty. (WPPT)

There are cultural as well as economic benefits for developing countries in this area; we should not forget that copyright also has to do with culture. All developing countries have very strong artistic communities. There are no people on earth, who are not creative, but the options available to various people are different, and of course if there is no copyright protection the artistic community is going to be cheated and prevented from earning money from their efforts. Nowadays literary and artistic works have become a very broad concept, including of course the cultural part, the artistic community, but also the information technology industry, or more specifically computer program industry.

20. A large amount of money might be invested in making a program or an adaptation of an imported program in the local language, but as soon as one copy is out on the street, everybody will copy it and the earning potential is gone. That's one aspect. The response to that could be to say well, so local works should be protected; one should not have to protect foreign works, because then money would go out of the country, which developing countries can ill afford. That's a very dangerous line of reasoning, and particularly dangerous because it will mean, in principle, that when nationals use national works they have to pay so that authors can earn something, creativity can be stimulated, a new work made and so on. When they take foreign works, on the other hand, they take them for free. Now lowering the price of imported products as compared with national ones is called dumping in trade parlance, and this is dumping of a really dangerous kind: you may have a national music industry, for example, and are trying to earn money from that, but as long as people can get everything for free, or just for the price of a recordable CD or a blank cassette, that is going to poison the national industry, and of course, that goes for all sectors, publishing, computer programs, music and so forth.

Task 12. Speak on the main items covered by the recent treaties.

Task 13. Provide titles for parts I - XII in section B.

Section C

RELATED RIGHTS

Study the section and:

1) Describe in 100 words the purpose of related rights.
2) Explain the difference between the terms ‘related rights’ and ‘copyright’.
3) List the beneficiaries of related rights.
4) Give reasons why the three categories of beneficiaries mentioned in the section have been made eligible for related rights.
5) Say how legal protection of related rights beneficiaries is exercised internationally.
6) State the rights granted to a) performers, b) producers and c) broadcasters in national laws.
7) Cite the duration of related rights as given in the Rome Convention and the TRIPS agreement.
8) Explain in about 250 words how the concept of related rights may be extended to encompass ‘folklore’.

I

1. Related rights are rights that in certain respects resemble copyright. The purpose of related rights is to protect the legal interests of certain persons and legal entities who contribute to making works available to the public. One obvious example is the singer or musician that performs a composer’s work to the public. The overall purpose of these related rights is to protect those people or organizations that add substantial creative, technical or organizational skill in the process of bringing a work to the public. This section will explain to you the types of related rights, how they are obtained, the duration of the rights and the main international treaties or conventions that are concerned with related rights.

2. The first thing to say is that related rights is a fairly new term and some documents refer to the same rights under the term neighboring rights. Related rights are not copyright, but they are closely associated with it; they are derived

from a work protected by copyright. So the two are always, in some way, related. They offer the same kind of exclusivity as copyright, but they don't cover the actual works. They cover things that involve a work, and generally the sense of bringing it to the public.

3. Let's use the example of a copyright-protected song, and take it through the various stages. Assuming that we have an original song, it is, of course, protected for the composer and the lyric writer as original copyright holders; they in due course will offer it to a singer who performs it and he or she will also need a form of protection. If it is to be recorded, or if the singer hopes to have it broadcasted those acts involve engaging another company, which will want to be protected before it enters into an agreement. The first of these related rights then are the rights of those who perform the works, namely the performers, singers, actors, dancers, musicians and so on.

4. Then there is a second group, the phonogram producers, or more accurately producers of sound recordings as recording material moves on from vinyl phonograph records into the realm of CDs and digital recording media. Theirs is a more commercial kind of protection, in a sense, as the making of a quality sound recording has more to do with the protection of an investment, than with the artistic concerns involved in the making, writing or performance of a song. Nevertheless, even here, in the whole process of selecting the instrumental backing, repertoires, arranging the music and so on, there are some creative elements as well as the more obvious and important economic element. We should bear in mind that these producers are among the most immediate victims of piracy, as they don't get the money that is diverted to the pirate producers, but then of course their loss, their financial loss, is passed down the line to the performers and authors. This is why producers of sound recordings have also been granted specific rights.

5. The third group receiving protection for their related rights are broadcasters. Their rights derive from their creative input, namely the making of broadcasts, not the content of the broadcast, not the film, for instance, but the act of broadcasting it. The very fact that they have the ability to emit the signals constituting the broadcast gives them protection rights of a sort in those signals. And there again, it is the investments, the efforts that they make in putting together and broadcasting the various programs that are involved.

Task 1. List the main points discussed above.

II

6. Thus, related rights have been traditionally granted to three categories of beneficiaries; performers, producers of recordings and broadcasting organizations.

- The rights of performers are recognized because their creative intervention is necessary to give life, for example, to musical works, dramatic and choreographic works, and motion pictures, and because they have a justifiable interest in legal protection of their individual interpretations.
- The rights of producers of recordings are recognized because their creative, financial and organisational resources are necessary to make recorded sound available to the public in the form of commercial phonograms (tapes, cassettes, CDs Mini Discs, etc.) They also have a legitimate interest in having the legal resources necessary to take action against unauthorised uses, whether it be through the making and distribution of unauthorised copies (piracy) or in the form of unauthorised broadcasting or communication to the public of their phonograms.
- Likewise, the rights of broadcasting organizations are recognised because of their role in making works available to the public, and in light of their justified interest in controlling the transmission and retransmission of their broadcasts.

7. It should be noted that, the rights of broadcasters also have a very specific importance in relation to sports programs. In many countries, a sports program would not be considered eligible for copyright protection. There are countries, and the US is a prime example, that regard a football match, when it is filmed, as an audiovisual work, because it is considered sufficiently creative to be a work. But in many other countries the law provides that the game is the determining factor, and not creative to the point of qualifying for protection. The cameraman is merely following the action on the pitch and other incidental events. He might be a skilled manipulator of the camera, but he is not an artist. Very few such broadcasts, therefore, if any at all, would be considered worthy of protection.

And yet there is enormous interest in the television rights for the Olympic Games. Millions or billions of dollars, pounds, francs or yens can change hands. But it would be an unattractive investment, would it not, if those broadcasters, having paid enormous sums of money years in advance for an exclusive license to broadcast, or for exclusive access to other major sporting events for the benefit of a

given broadcasting area, were unable to invoke the protection offered by their related rights to prevent other companies from rebroadcasting their work or recording and selling videos of it.

Task 2. Briefly summarize the information contained in the passage above.

III

8. The first organised international response to the need for legal protection of the three categories of related rights beneficiaries was the conclusion, in 1961, of the Rome Convention, or more specifically, the 'International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations'. Unlike most international conventions, which follow in the wake of national legislation and are intended to synthesize existing laws, the Rome Convention was an attempt to establish international regulations in a new field where few national laws existed at the time. This meant that most States would have to draft and enact laws before adhering to the Convention. Since the adoption of the Convention in 1961, a large number of States have legislated in matters related to the Convention, and the laws of many such States exceed the minimum levels of protection established by the Convention. The most recent international response to meet these evolving legal protection needs came with the signing of the WIPO Performances and Phonograms Treaty (WPPT), concluded in Geneva on December 20, 1996. The development of this treaty was designed to offer further protection of the economic and moral rights of performers and producers of phonograms, in particular as regards their exploitation in digital form, including over the Internet.

Task 3. Practise question-and-answer work based on the information above.

IV

9. Now that you know the types of people and organizations that can have protection under related rights, the next thing to consider is 'what are those rights?' In principle they are similar to the rights covered on copyright holders. That is the right to prevent others from an unauthorized exploitation of the protected performance, recording or broadcast.

10. The rights granted to the three beneficiaries of related rights in national laws are as follows, although not all rights may be granted in the same law. Performers are provided the rights to prevent fixation (recording), broadcasting and communication to the public of their live performances without their consent, and the right to prevent reproduction of fixations of their performances. The rights in respect of broadcasting and communication to the public of fixations on commercial phonograms may be in the form of equitable remuneration rather than a right to prevent reproduction. Due to the personal nature of their creations, some national laws also grant performers moral rights, which may be exercised to prevent unreasonable omission of their name, or modifications to their performances, which present them in an unfavourable light.

11. Producers of phonograms are granted the rights to authorize or prohibit direct and indirect reproduction, importation and distribution of their phonograms and copies thereof, and the right to equitable remuneration for broadcasting and communication to the public of phonograms.

12. Broadcasting organizations are provided the rights to authorize or prohibit rebroadcasting, fixation and reproduction of their broadcasts. Under some laws, additional rights are granted: for example, in the countries of the European Union, producers of phonograms and performers are granted a right of rental in respect of phonograms (and, in respect of performers, audiovisual works), and some countries grant specific rights over cable transmissions. Under the TRIPS Agreement, likewise, producers of phonograms (as well as any other right holders in phonograms under national law) are granted a right of rental.

Task 4. Compare the rights granted to the beneficiaries of related rights with those enjoyed by copyright holders.

V

13. As was the case with copyright, the Rome Convention and national laws contain certain limitations on rights allowing, for example, private use, use of short excerpts in connection with the reporting of current events, and use for teaching or scientific research, of protected performances, phonograms, and broadcasts. Many countries allow practically the same kinds of limitations on related rights as their laws provide in connection with protection of copyright.

14. The duration of protection of related rights under the Rome Convention is 20 years from the end of the year in which:

- the performance took place, as regards performances not incorporated in phonograms;
- the fixation (recording) is made, in the case of phonograms , and performances included in phonograms;
- the broadcast took place.

15. You should note that many national laws, which protect related rights, grant a longer term than the minimal terms contained in the Rome Convention. In the more recent TRIPS Agreement, the rights of performers and producers of phonograms are to be protected for 50 years from the date of the fixation or the performance, and the rights of broadcasting organizations for 20 years from the date of the broadcast. So this means that countries adhering to the TRIPS Agreement would have to provide or modify their laws to offer longer protection than that required by the Rome Convention.

16. In terms of enforcement of rights, the remedies for infringement or violation of related rights are, in general, similar to those available to owners of copyright. These are conservatory or provisional measures; civil remedies; criminal sanctions; measures to be taken at the border; and measures, remedies and sanctions against abuses in respect of technical devices.

Task 5. Summarize the information contained in Pars 13-16 in 3 sentences.

VI

17. The idea of related rights has also attracted some attention as a way of protecting the unrecorded cultural expression of many developing countries, which is part of their folklore. Since it is often through the intervention of performers that these folkloric expressions are communicated to the public. By providing related rights protection, developing countries may also provide a means for protection of the vast, ancient and invaluable cultural expression, which is a metaphor for their own existence and identity; indeed, the essence of what separates each culture from its neighbors across the frontier or across the world. Likewise, protection of producers of phonograms and broadcasting organizations helps to establish the foundation for national industries capable of disseminating national cultural expression within the country and, perhaps more important, in markets outside it.

The enormous current popularity of what is called ‘world music’ demonstrates that such markets exist, but it is not always the case that the economic benefits from the exploitation of such markets return to the country where the cultural expressions originated. In summary, protection of related rights might serve the twin objectives of preserving national culture and providing a means for commercially meaningful exploitation of international markets.

Task 6. In pairs discuss how protection of related rights might serve the objective of preserving national culture.

Task 7. Give titles to all the passages above.

Task 8. Summarize the key points of Section C.

Section D

TRADEMARKS

Study the section and:

1) Give a definition of a trademark.
2) List and describe briefly those signs that may serve as trademarks.
3) Describe the two main requirements of a trademark in order to register it under the terms of the Madrid Agreement.
4) Explain the process for registration of a trademark and why registration is advantageous.

I

1.Trademarks existed in the ancient world. As long as 3000 years ago, Indian craftsmen used to engrave their signatures on their artistic creations before sending them to Iran. Later on over 100 different Roman pottery marks were in use, including the FORTIS brand that became so famous that it was copied and counterfeited. With the flourishing trade in the Middle Ages the use of trademarks increased. Today trademarks (often abbreviated as TM in English) are in common usage and most people on the planet could distinguish between the trademarks for

the two soft drinks Pepsi-Cola and Coca-Cola. In this section you will learn what sort of signs can be used for trademarks and what characteristics they must have. Also you will learn how trademarks can be protected against misuse.

2. A trademark is basically a sign that is used to distinguish the goods or services offered by one undertaking from those offered by another. That's a very simplified definition, but it does explain essentially what a trademark is. There are basically two main characteristics for a trademark: it must be distinctive and it should not be deceptive. Therefore a formal definition of the term trademark could be: "A trademark is a sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors".

3. There are word marks, consisting of words, letters, numerals, abbreviations or names, for instance, surnames. We need only think of a famous make of car, Ford – named, of course, after Henry Ford, who built the first one; then there is WH Smith, the booksellers and so on. We find many names used as trademarks. We also find abbreviations such as IBM, but trademarks can also be made out of devices or figurative elements, like that of the Shell oil company. The Shell logo is a two-dimensional device, whereas trademarks can also be three-dimensional – consisting of the packaging of goods or the goods themselves. The color features of trademarks can also be protected, and we are also, especially in recent times, seeing a new kind of trademark coming on the market. This is the hologram mark. If you look at a credit card for instance, you will see a small image, which changes, according to the angle from which you look at it. There are such things as sound marks: an advertising jingle can serve as a trademark. There are even smell marks in certain countries, where a particular scent could be protected as a trademark.

4. There is a wide variety of signs that can be used as trademarks, but always on the same two conditions: the mark must be distinctive and must not be deceptive. To be distinctive it must by its very nature be able to distinguish goods and services as we mentioned just now. A good example would be the word 'apple'. While 'Apple' is a very distinctive trademark for a computer, because it has absolutely nothing to do with computers, it would not be distinctive for actual apples. In other words, someone who grows and sells them could not register the word 'apple' as a trademark and protect it, because his competitors have to be able to use the word to describe their own goods. So in general terms a trademark is not

distinctive if it is descriptive. It is descriptive if it describes the nature or identity of the goods or services for which it is used.

5. But a trademark can also be deceptive, namely when it claims a quality for the goods that they do not have. Typically a deceptive trademark would be one that says that the goods for which it is used have certain qualities when they don't. An example would be the trademark "Real Leather" for goods that are not made of genuine leather. Alternatively, if the trademark claims a certain geographical origin for the goods that is not the true one for instance, the name Bordeaux is used for wine that is not really from the Bordeaux region, that would be another example of a deceptive trademark. When assessing the distinctiveness of a sign for a TM it has to be judged together with the goods or services it is to be associated with. Sometimes people seek to achieve a distinctive TM by using invented words. One of the most famous examples of this is the trademark KODAK.

Task 1. Draw a table showing what signs can be used as trademarks.

II

6. To get a trademark known and respected requires considerable investment and usually quite a period of time. Therefore, it is in the interest of anyone seeking to use a trademark to make sure it is protected as a valuable piece of intellectual property. Companies have to rely on trademark laws, but the most common way of protecting a trademark is to have it registered in the Trademark Register, and a great many countries make this a condition of trademark protection. It must first be registered, and once it has been registered it is protected, and its owner is entitled to prohibit others from using it. Registration is not the only way of protecting a trademark, however: unregistered trademarks are also protected in some countries but it is a less reliable form of protection. This is because an unregistered trademark is not protected until it has acquired sufficient distinctiveness and a reputation in the marketplace, which can take considerable time after the initial launch. So if you have an unregistered trademark that has been around a long time and everyone knows it, it would in some countries qualify for a measure of protection. However, if you start marketing your products under a new trademark that nobody knows, that trademark will be very vulnerable. It is possible to call on the protection conferred by the laws on unfair competition, but there too the most important thing is that the mark must have acquired a reputation.

7. Many companies wish to use their trademark in many different countries. Can you secure worldwide protection for a trademark with a single registration, or do you have to go to each country separately?

You have to go to each country separately as, like all intellectual property rights, trademarks are territorial rights, which basically means that their protection is obtained by national registration. There are certain regional registration systems which make for easier registration of the trademarks and of course, there are also the international treaties, but all these systems ultimately involve registration in every single country and indeed every single territory: we should not forget that, while trademarks can be registered in countries, they can also be registered in customs territories, and there are some other territories that are not recognized as countries. There are certain territories that are not recognized as States and cannot for instance, become members of the United Nations. However, there is a certain administrative structure in those territories and the registration of trademarks may be possible. A good example would be Hong Kong, which has a trademark registration system different from that of the People's Republic of China. If you want to protect your trademark in Hong Kong you have to go through the local registration procedure. So it is necessary to protect the TM in all of the countries that you would wish to use it in. Unfortunately, there are considerable differences between national systems.

8. WIPO has greatly contributed efforts to make both national and regional systems for the registration of trademarks more 'user-friendly' by harmonizing and simplifying certain procedures. The Trademark Law Treaty (TLT) was adopted in 1994, and sets out the information that nationals of one Member State must supply, and what procedures they must follow, to register trademarks in another Member State's TM Office. The basic principle is the same, whereby you file an application for registration, the application is processed and you wait until registration is granted. But when you come to the finer points of the registration procedure, you find an enormous amount of detail, especially as far as formalities are concerned. Some countries demand a great deal of information and other relevant material, which has to be filed together with the trademark application while others are more straightforward. Apart from that, the question whether a trademark is distinctive or not, or it has sufficient distinctiveness, depends very much on the countries and on the national authorities that process the trademark applications. To a certain extent, of course, this is fully justified, because whether or not a trademark is perceived as

being distinctive or deceptive depends on the socio-economic context, which can be different from one country to the next. For example, a common ground for exclusion from protection would be that of public policy or morality, but the question whether a trademark is or is not contrary to public policy or morality is dealt with differently or looked at differently in countries with different cultural backgrounds, so you do find a wide variety of approaches.

Task 2. State the main methods mentioned that a company can use to protect its investment in a trademark.

Task 3. Make a written summary of Section D.

Section E

GEOGRAPHICAL INDICATIONS

Study the section and:

1) Describe in 100 words the nature and purpose of a geographical indication.

2) Give three examples of a geographical indication.

3) Describe in 100 words the difference between the terms geographical indication and appellation of origin.

4) Describe one national method of protection for regionally produced goods or services.

5) Name the International Treaties that assist in obtaining protection in several countries.

I

Indicating the Origin of Goods and Services

1. The use of geographical indications is an important method of indicating the origin of goods and services. One of the aims of their use is to promote commerce by informing the customer of the origin of the products. Often this may imply a certain quality, which the customer may be looking for. They can be used for industrial and agricultural products. Protection of such indications is on a

national basis but there are various international treaties that assist the protection in a range of countries.

2. Basically, a geographical indication is a notice stating that a given product originates in a given geographical area. The best-known examples of geographical indications are those used for wines and spirits. For instance, the geographical indication Champagne is used to indicate that a special kind of sparkling wine originates in the Champagne region of France. In the same way, Cognac is used for brandy from the French region around the town of Cognac. However, geographical indications are also used for products other than wines and spirits, such as tobacco from Cuba, or for cheeses such as Roquefort. They may also be used for industrial products, as Sheffield is for steel.

3. What's the difference between a geographical indication and a trademark? A trademark is a sign that an individual trader or company uses to distinguish its own goods or services from the goods or services of competitors. A geographical indication is used to show that certain products have a certain regional origin. A geographical indication must be available for use by all the producers in that region. For instance, Bordeaux and Champagne can be used by all wine growers in the Bordeaux or Champagne area, but only Moet can call its Champagne "Moet ™ Champagne."

Task 1. Explain the difference between a geographical indication and a trademark and give 2 or 3 geographical indications and trademarks that are used in your own country.

II
Methods of Protection

4. Unlike trademarks and patents, there's a wide variety of types of protection available for geographical indications. They can be protected either through 'sui generis' legislation or decrees; that is the system used by France and Portugal, for instance. Another possibility is to have a register of geographical indications. Another possibility again is to rely on the law against unfair competition or the tort of 'passing off', which basically says that unfair trade practices should not be used. To use a geographical indication for a product that does not originate in the region named, would be a very good example of an unfair trade practice. If protection is sought under tort law, there are no formalities to be

observed such as registration or decree; the injured party goes to court and puts his case. Geographical indications can also be protected by the registration of collective marks or certification marks. Unlike individual trademarks, collective marks belong to a group of traders or producers. A certification mark, on the other hand, doesn't belong to anyone: it is registered on the understanding that anyone who meets the specified conditions is allowed to use it. For example, the use of the certification mark for Stilton cheese is restricted to certain farmers who comply with the rules that have to be observed for the use to be allowed.

5. So, there are a variety of different ways in which geographical indications can be protected depending on the national law and there are different ways in which this protection can be extended internationally. In theory it is quite possible to get protection worldwide, but in practice it is very difficult. Patents and trademarks have well-established application procedures, but the situation is quite different for geographical indications on account of the wide variety of protection systems available. Where a local system does not provide for registration of a geographical indication or the granting of the right to use an appellation of origin, there is a risk of problems. A distinction can usually be made between two situations, one bilateral and the other multilateral. In the bilateral context, one country enters into an agreement with another for the mutual protection of their geographical indications. The next stage is the exchange of lists of the geographical indications concerned, and protection is then granted on a reciprocal basis. For example, if France were to have a bilateral agreement with Spain, France would send its list of geographical indications to Spain and Spain would send its list to France, whereupon the geographical indications of each country would be protected by the other. This works for any two countries that enter into an agreement, but then not all countries have such two-way agreements. There are also multilateral agreements, of course, one of which is administered by WIPO, namely the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

Task 2. Make notes and give a brief overview of protection methods available for geographical indications.

III
Appellations of Origin

6. You may have also come across the term appellation of origin and the passage below explains the difference between this term and geographical indication. Appellations of origin are specific types of geographical indication. A geographical indication is a notice stating that a given product comes from a particular area. For example, the expression 'Made in Switzerland' is a geographical indication: the purchaser knows that the product has come from there. An appellation of origin is a more precise geographical indication which specifies that the product in question has certain qualities and that those qualities are due essentially or exclusively to its place of origin. The underlying idea is that certain products owe their special qualities to the place that they come from. This is very common with agricultural products such as Roquefort cheese. The people who make Roquefort, say it tastes the way it does because it is matured in the caves of the Roquefort region. And it is only because it is matured in that special place that it eventually acquires the taste for which it is famous. If you were to use the same method of cheesemaking in a different set of caves you would end up with a different taste, and the result would not be Roquefort cheese. The same applies to the natural conditions that influence wine growing such as climate, soils, and so on. Basically an appellation of origin is a geographical indication that declares the quality of the goods for which it is used to be derived essentially or exclusively from the area of production.

Task 3. Choose from the list below those geographical indications that may also be considered appellations of origin.

a) Bordeaux wine
b) Stilton Cheese
c) Roquefort Cheese
d) Champagne
e) Sheffield steel
f) Made in Japan

Task 4. Summarize the key points of Section E.

Section F

PATENTS

Study the section and:

1) Describe in 100 words the purpose of a patent.
2) List the generally recognised conditions for patentability.
3) Enumerate the exclusive rights conferred by a patent.
4) State who is responsible for taking the initiative to enforce a patent.
5) Explain why a patent is required in any country before you can sue an infringer in that country.
6) Describe the procedures undergone when a patent application is filed nationally, regionally or via PCT.

I

1. Patents are one of the oldest forms of intellectual property protection and, as with all forms of protection for intellectual property, the aim of a patent system is to encourage economic and technological development by rewarding intellectual creativity. This section will explain to you: the purpose of a patent, the benefits of obtaining a patent, what sorts of things may be patented and what the term of protection is for a valid patent. Also explained will be the nature of international patent protection.

2. The purpose of a patent is to provide a form of protection for technological advances. The theory is that patent protection will provide a reward not only for the creation of an invention, but also for the development of an invention to the point at which it is technologically feasible and marketable, and that this type of an incentive would promote additional creativity and encourage companies to continue their development of new technology to the point at which it is marketable, useful to the public and desirable for the public good.

3. The system of patenting was developed over several centuries. There were patents back in the 1700s. The term patent is included in the United States Constitution, which empowers Congress to protect patents and works of authorship. The system has evolved in the intervening years and it is a very modern system. WIPO are still developing the international system to make it even

more modern and to keep it abreast of technological change and the changing economic system.

Task 1. Briefly summarize the information contained in the passage above.

II

4. By international agreement, patents are available for inventions in all areas of technology. This means that just about anything that you develop, if it has industrial applicability, can be patented. A chemical compound can be patented. A machine, of course, can be patented. Processes for developing or making things can be patented. Indeed there are very few things that cannot be patented, and these are usually included among the exceptions. Human genes, for instance, cannot be patented. Things that already exist in nature, with very few exceptions, cannot be patented. A perpetual motion machine, which goes against the laws of nature, cannot be patented unless someone can show it working. Then of course, the old rules are set aside and something new is created.

5. Other common exceptions under national laws, or the TRIPS Agreement, are: scientific theories or mathematical methods; schemes, rules or methods, such as those for doing business, performing purely mental acts or playing games; methods of medical treatment for humans or animals or diagnostics methods (but the products used in the diagnosis could be patented).

6. Patents are intended for breakthroughs in technology, but they are also intended for small technological increments, so the developments occurring in a given area of technology that are patentable may be great developments, like the discovery of penicillin, or very, very small improvements, such as a new lever on a machine that enables it to work just a little faster. These types of thing can be patented.

Task 2. Draw a table including things that can/cannot be patented and give a small description to the class.

III

7. There are several characteristics that a patent office will look at to determine whether the invention is patentable. At the outset, there has to be a patent application on file. In most cases the patent application is examined by a

technical expert to ensure that it meets the substantive criteria for patentability. The first of those criteria is that it has to be new, meaning that the invention must never have been made before, carried out before or used before.

8. The second criterion is that there must have been an inventive step. In other words, it must represent a sufficient advance in relation to the state of the art before it was made to be considered worth patenting. The term ‘non-obvious’ is also used: if it were obvious to a person of ordinary skill in the field concerned, it would not progress to the stage qualifying for patent protection.

9. The third criterion is that it needs to be industrially applicable. It has to be susceptible of use in some way. This is a very broad criterion. Almost anything can be used, even if it's in the research stage, but that does not apply to a perpetual motion machine, because it simply will not work.

Task 3. Formulate the keynote of the above paragraphs.

IV

10. In many countries an invention is regarded as a new solution to a technological problem. The protection provided under patent law does not necessarily require that the invention be represented in a physical embodiment. Moreover it must not fall into any categories of exceptions or exclusions found within the applicable national or regional law.

11. In order to obtain a patent, an applicant must first file an application for a patent. Depending on the applicable law(s), the Patent Office may examine the application to determine whether the criteria, listed above, have been satisfied, before deciding whether to issue a patent. As mentioned above there may be excluded categories, which could cause the patent application to fail. Examples of such categories can be found in many national legislations.

12. An Office may also examine the application to determine whether it sufficiently discloses the invention such that someone skilled in the area or field with which the invention is concerned could make or use the invention. Providing an adequate written description to enable someone to practice the invention is generally what the patent applicant must give in exchange for receiving the benefits conferred by a patent.

Task 4. List the main points discussed above.

V

13. The advantages of taking out a patent are very specifically and technically the fact that the owner of a patent can exclude all others in the territory covered by the patent from making, using, selling or importing the invention. That does not necessarily give the inventor or the owner of the patent the right to use the invention, if for instance such use would be illegal – as the use of a gambling machine would once have been – but the owner of the patent can prevent others from marketing and profiting from the invention for a period of years. The term of a patent is typically 20 years from the date on which the application is filed, and what that does is give the developer of the technology the right to have it to himself for a certain number of years in exchange for full disclosure to the public of how to use it. When the patent rights expire, the technology becomes public property, and the public are free to use it for their own good.

14. In all the countries in which a patent holder chooses to patent the claimed invention, the issue of enforcement would become important after the grant has been issued. It is the patent holder that must seize the initiative in the face of potential infringement. Detection of potential or actual infringements, and bringing these to the infringer's attention rests exclusively with the patent holder. In a majority of situations, a polite letter giving notice of the existence of the patent is sent. Carrying the implication that a lawsuit might follow, such letters often prove very successful, leading to either a suppression of infringement or a conclusion of a successful licensing arrangement. There are, however, cases in which no mutually advantageous negotiated solution can be found, even after lengthy attempts. During the course of an infringement action, in the pre-trial phase, negotiations may still take place, often through use of a conciliator or arbitrator. Interestingly, settlements often include the earlier-mentioned license.

Task 5. Practise asking sensible questions based on the information given above.

VI

15. In the current state of the international patent system, it is not possible to get a worldwide patent. There is no one patent that covers every country in the world, or even a large number of the countries of the world. The patent system is still a territorial system; in order to be protected in a particular country, you have to

be granted a patent in that country. Now, with the globalization of the world economy, the world is moving towards a more international system: we have the Patent Cooperation Treaty, which provides for the filing of a single international application that can become a multitude of national applications, not actual patents but applications, and they are then examined in each of the countries designated.

16. There are certain regional systems, like that of the European Patent Organization, under which a single examination, if successful, results in a bundle of national patents. There has been some discussion in Europe about having a single European patent – one that would cover all the countries of the European Union, although there are great difficulties with that. But discussions are going on to find ways of bringing down the cost of obtaining patent protection worldwide. Among other things there is the cost of all the examinations of the same invention that have to be conducted in different countries under present arrangements, the cost of translation and the cost of maintaining a patent, as to keep a patent in force one generally has to pay an annual fee, which can be quite substantial. If you have patents in ten countries, you have to pay the maintenance fees in each of those ten countries, because if ever you failed to pay in one of them, your patent would lapse and you would lose your patent protection in that country.

17. However, there is an international agreement administered by WIPO called the Patent Cooperation Treaty (PCT), for the filing, searching, publication and examination of International applications. The PCT makes it easier to obtain patents in the Contracting States by providing for the filing of one international application, which may be subsequently prosecuted in the different designated national or regional Offices of States party to the PCT. But, even under the PCT, the granting of patents is left to those designated Offices.

Task 6. In small groups, discuss the advantages of getting a worldwide patent.

VII

18. The patent is the most effective way of protecting an invention, but patent rights are granted in return for the inventor's full disclosure of the technology to the public. Another effective way of obtaining protection is to keep the technology secret, and to rely on what we refer to as trade secrets, to keep information concerning the invention confidential. The difficulty of that method is

that, once the product is put on the market and can be dismantled, the secrets can be learned merely by looking at the product, and the trade secret protection is lost. With a patent, it doesn't matter whether someone else knows how to make your product, indeed they will know simply from reading your patent application. So, no matter how public the information is, if you have a patent you will be protected. Trade secret protection is still available, however, and is very suitable, in particular, for what is referred to as the know-how, namely the technical expertise required to use a given technology in the most effective way. And very often, the technology itself will not be protected by patents, because it forms part of the expertise of people who are skilled in the art, and keeping the know-how as a trade secret is a way of protecting your technology.

19. The most famous example of a company that uses the trade secret method of protecting an invention is the Coca-Cola company. It keeps its formula for the Coca-Cola drink as a trade secret, and indeed has kept it that way since the company was founded more than a century ago. The advantage of keeping that secrecy is that there is no time limit on the protection. With patent protection, when the patent lapses 20 years from the filing date, the rights in the invention become public property and anyone can make it. With a trade secret, as long as you can keep the secrecy, as long as you take steps to maintain that secrecy, the protection can theoretically last forever.

Task 7. Outline the advantages and difficulties of the two methods stated above.

Task 8. Give titles to all the passages above.

Section G

WIPO Administered Treaties on International Registration Systems: Trademarks, Industrial Designs, Patents and the PCT

Study the section and:

1) List the systems of international registration operated by WIPO.

2) Draw a diagram explaining the process how an applicant can use the Madrid system to get protection for a trademark in different countries.

3) Describe the role of the WIPO International Bureau in the trademark registration process.

4) Explain what happens if the TM is refused in the home country after the international registration of the mark.

5) State how long a trademark can be protected for.

6) Describe in 100 words the characteristic of an industrial design.

7) Explain briefly in about 50 words the difference between industrial design protection and patent protection.

8) List the benefits of protecting an industrial design.

9) Explain the process of International protection offered to industrial design by the Hague agreements.

10) Explain in 100 words the purpose of the Patent Cooperation Treaty (PCT).

11) Describe in around 200 words the benefit of the PCT.

12) Draw a diagram of the process involved in using the PCT.

13) Explain in 200 words the role of WIPO in the PCT.

14) List the types of fees involved in a PCT application.

15) State the determinative criteria for reduced fees.

I

Registration Systems

1. There are actually three systems of international registration that WIPO oversees. There is what is known as the Madrid system, which is for the international registration of trademarks and is governed by two treaties which complement each other. They are the Madrid Agreement and the Madrid Protocol. Then there is the system of international registration or more correctly international deposit of industrial designs, which is governed by the Hague Agreement. The third is the system of international registration of appellations of origin under the Lisbon Agreement. The last-mentioned does not really affect private owners of industrial property rights, however, as appellations are registered at the request of governments, so that most of WIPO activities have to do with the protection of trademarks and industrial designs through international registration.

Task 1. Make notes and give a brief overview of the registration systems to your partner.

II
The Madrid System:
International Registration of Trademarks

2. This is how the international system for the registration of trademarks works. Somebody files an international application with the International Bureau of WIPO in Geneva, and in it they designate the countries that are party to the treaties in which they want the mark to be protected. The mark gets registered and then passed on to the countries that have been designated, which then have the possibility of refusing protection. They would normally examine it as though it were an application filed with them direct and apply their normal national criteria accordingly. If they refuse it, the refusal is notified to WIPO and entered against the mark for that country in the International Register. So in other words a person does secure international registration, but whether or not it is protected in a given country is determined by that country.

3. So the International Bureau has the role of receiving international application and then passing them on to the designated countries. But it doesn't examine as to substance. There are basically two substantive questions which are investigated by national offices. One is whether the mark is capable of functioning as a trademark, in other words whether it is capable of distinguishing goods and services, and the other is whether it conflicts with a mark already protected in someone else's name. And countries do actually differ very much in their approach to this examination. Some conduct a full examination and some do not. The International Bureau doesn't do any examination of these substantive aspects, but rather leaves them entirely to the laws of the countries concerned. It does, however, examine, first of all, whether the application complies with the formal requirements set forth in the treaties and regulations, mainly to make sure that the necessary elements of a trademark application are there. It also carries out an examination of the lists of protected goods and services that has to accompany any trademark application. Those goods and services should be classified according to an international classification, known as the Nice Classification, and the International Bureau has general responsibility for the consistent application of the Classification. So they do conduct an examination as to form and an examination

of the classification of goods and services, which means that those tasks do not have to be carried out by the Receiving Offices, because they know that they are receiving properly filed and properly classified application.

4. Under the Madrid system, it is necessary for a person to register his trademark in his home country before he can file an international application. This is a fundamental requirement of the international system of registration. When the system started, over a hundred years ago, now it was really intended to be a means of extending the protection provided by a domestic registration to the other countries of the Madrid Union. The system has become rather more sophisticated and more complex since then, but the principle continues that you must, in the first instance, either have a registration in your country of origin or, if the international application is made exclusively under the Protocol, at least have filed an application for registration in your home country.

5. If the national application is refused, that will of course have the corresponding effect on the international registration. There is a dependent relationship between the national protection and the international protection for a period of five years. Imagine that you have registered a trademark in your home country and then obtained an international registration having effect in a series of other countries, including Kenya. One year after filing your international application you learn that your home country has cancelled the registration of your trademark. Do you still have protection in Kenya via the Madrid system? The answer is no, if the basic registration ceases to exist for any reason (cancellation ex officio, or at the request of a third party, or non-renewal) during the first five years of the lifetime of the international registration, this effect leads through to the international registration. This is also the case where the international registration was based on an application in the home country and that application is refused within that period. However, after the expiry of this five-year period, the international registration becomes independent of the trademark in the home country, and continues to be effective even if the home country registration is cancelled.

6. If the refusal at the national level is only partial, then the cancellation would be correspondingly partial. You can actually protect a trademark indefinitely, but in the international system and indeed in national systems too you have to renew it from time to time. An international registration is renewed by paying the fees again every ten years, and this is becoming a standard term at the national level, but there is no limit to the number of times that it can be renewed.

Task 2. Produce brief notes of Pars. 2-6 and make a written summary.

III
The Hague System:
International Protection of Industrial Designs

7. The Hague System of protection deals with the protection of industrial designs. The term refers to the appearance of a product, for example the specific features or lines or contours, colors or shape or materials of a product or the ornamentation given to it. It's something that is essentially decorative as opposed to functional, something that appeals to the eye. An industrial design is a type of intellectual property concerned with the look and form of an object and should not be confused with a patent whose purpose is to protect an invention. A patent usually protects technical innovation, in other words an invention which must differ from what is already known by some new and non-obvious technical features, whereas a design protects the appearance of a product which from the strictly technical point of view may not be original, but from an aesthetic or appearance point of view is new and original.

8. Take a new corkscrew, for instance: we could imagine having one that works better than known corkscrews, is technically superior to them and makes it easier to remove the cork from the bottle. That is an invention, which you could protect with a patent. If on the other hand you have something that works in essentially the same way as known corkscrews, but has an improved appearance – such as a handle decorated in a particular way – it becomes something that you would protect as an industrial design. Of course, it follows that you could have something that is both technically innovative and decorated or designed in an individual way, in which case you could actually protect it with a patent or a design registration or indeed both.

9. As with all industrial property rights, you acquire the exclusive right to the use of the design. In other words, the designer of the new-look corkscrew described, or the creator of a new furniture style or a new range of fabrics, or garments made out of those fabrics, acquires the exclusive right to make and sell them in just the same way as a person with a patent has the exclusive right to work that patent.

10. Similar to a patent, an industrial design lasts for a fixed period of time, but the length of the period is not yet uniform. The shortest period in any country

is probably ten years. Periods of 15 and 20 years are common, and the new European Community Directive sets a term of 25 years, so that will become the standard term in the countries in the European Union once the Directive is implemented.

11. Industrial design protection is not worldwide, but the grant of international registration does give you protection in a number of countries. It works in the same way as the Madrid system in that you file an international application which is entered in the International Register, published by the International Bureau and notified to the countries concerned, who then have the right to grant or refuse protection. In fact, as far as the Hague Agreement is concerned, there are very few countries that actually examine applications, and consequently very few refusals. This is in sharp contrast to the position regarding trademarks.

12. Another difference between the protection of industrial designs under the Hague Agreement and the protection of marks under the Madrid Agreement and Protocol is that you don't need to start with protection in the country of origin. So, for example, a designer in France can make an international deposit and through it secure protection in France as well as in Switzerland, Italy, the Benelux countries and Spain, for instance.

Task 3. Translate Pars. 7-12, then practice back translation with your partner taking it in turns.

IV

The Patent Cooperation Treaty:

13. The Patent Cooperation Treaty (PCT) has a principal objective: to simplify, make more effective and economical, in the interests of the users of the patent system and the Offices that have the responsibility for administering it, the previous or traditional methods of applying for patent protection for inventions in several countries. It is a treaty that provides for the filing of applications with a view to obtaining patent protection in a large number of countries. It provides a simplified procedure for an inventor or applicant to apply for and eventually to obtain patents. One of its other aims is to promote the exchange of technical information contained in patent documents among the countries concerned and

also within the scientific community concerned, that is, the inventors and industry working in the relevant field.

14. So in addition to simplifying the process of getting patents, it is an aim of the PCT to disseminate more effectively the technical knowledge contained in patent documentation. It is worth stressing, however, that the PCT system does not provide for the grant of worldwide patents. Two points should be made here. First, it is not the PCT that grants patents; it is, in fact, the national offices at the end of the process, each of which, as far as it is concerned, grants a patent based on the PCT application. And secondly, there is no such thing as a worldwide patent. The PCT doesn't provide for this at all, and the result of the procedure mentioned earlier will be a number of regional and/or national patents. Maybe there will be only one, if the applicant completes the procedure in only one office, but there could be 10, 25, 50 or as many as the applicant eventually wishes to obtain.

Task 4. Practise question-and-answer work based on the information above.

V

15. The operation of the PCT requires a sequence of operations. First, the applicant would file the application with a so-called receiving Office. That is usually the office in the home country of the applicant. It can be another national office or a regional office and it can also be the International Bureau in Geneva. So, it can happen that the International Bureau gets involved at this very early stage, but in fact not for so many PCT applications from the outset. As for the second step, namely, international search, at present there are only nine offices specially appointed by the PCT Assembly that are entitled to carry out international search. They have been selected according to certain criteria, and they render services to applicants under the PCT system, depending, in the case of some of them, on the language in which they work. So they do not all become available to all PCT applicants who file PCT applications. For example, the Japanese Patent Office works only in Japanese, so it is not available to applicants who file their applications in English, French, or German. The same is true of the Spanish Patent and Trademark Office, which works only in Spanish. Some offices on the other hand work in four, five or six different languages. The next step, publication, is handled entirely by the International Bureau in Geneva. This is actually the only PCT function that we are exclusively responsible for. We publish all PCT

applications, wherever they come from and in whatever language they have been filed. The fourth step is international preliminary examination, and for that we would usually go back to the office that carried out the international search. Usually because applicants can and in some cases do switch to another office, as they are given that much flexibility; it is decided on a case-by-case basis. And at the end of the international phase – the applicant has to approach each of the offices directly and provide the necessary documentation.

Task 5. Make Par. 15 into a useful diagram.

VI

16. Under the PCT terms, the main advantage for the applicant is that, by filing one application at one patent office, which will in most cases be his home patent office, he will obtain an international filing date for his application, and that filing date will have the effect of a regular national filing in every country he has designated. So, as far as the mandatory requirements that the applicant has to comply with are concerned, they are very few – such as a specific request for the filing of a PCT application, and indication of his nationality or residence, so as to confirm that he is eligible to file such an application. Another advantage certainly worth mentioning is that the applicant, by filing his application, basically gains time, indeed quite a lot of time, before he has to decide whether to go ahead with his application. The average time gained by this process could be put at about a year and a half, which is what making use of the entire PCT procedure to the fullest extent possible would allow.

Task 6. Summarize the key information contained in Par. 16 in 2 sentences.

VII

17. There are a number of different kinds of fee. There are fees for the benefit of all the offices that get involved in the process for various purposes. So, if we take things from the beginning, there is a fee payable to the Receiving Office, called a transmittal fee, which is set by that Office itself to cover what it does. Then there is what is known as international fee, which in fact consists of two fees, the basic and the designation fee. The international fee is for the International Bureau, for the work that it does in preparing the application for publication, and

for all communications to the offices concerned and to the applicant. Then there is the search fee, which pays for the conduct of the international search, and it goes to the International Searching Authority. Similarly, there is an examination fee for the International Preliminary Examining Authority. And there will be fees for the national phase, but each of those will be set by the designated offices concerned.

18. There are reductions in certain fees associated with the PCT for some applicants from certain countries. Additionally, some national legislations have passed regulations or laws allowing their Offices to give reductions to individuals and companies from certain countries. The reduction available during the international phase is 75 per cent, and at present it applies to the international fee payable to the International Bureau. It is available only to persons who are nationals or residents of certain countries. The countries in question are those with a national per capita income below 3,000 US dollars. This figure is provided by the UN. Reductions can be granted on other fees, for instance, the 75 per cent reduction that is applied to search and examination fees, at the European Patent Office which is not restricted in the same way as the one mentioned before. This reduction is available not only to individuals, but also to companies, small businesses and so on, provided that they do not have any funding from or cooperate with companies or other types of applicant, including individuals, from countries not eligible for this reduction.

Task 7. Make a list of prompts for you to be able to speak on fees and reductions.

Task 8. Summarize the key points of Pars. 17-18.

Revision Tasks

I Copyright

a) What is the principal purpose of copyright laws?

(Include in your answer a description of the types of works that are protected and an example of the duration of such protection).

b) Describe three types of rights that a copyright holder may have.

c) What is the name of the oldest international convention concerning copyright?

II Related Rights

a) Describe the three categories of beneficiaries for related rights and give the duration of their rights as given by the Rome Convention and the TRIPS agreement.

III Trademarks and Geographical Indications

a) What are the differences between a trademark and a geographical indication?

b) Describe the two main requirements of a Trademark in order to register it under the terms of the Madrid agreement and explain the process for registration of a trademark and why registration is advantageous.

c) What are the main methods mentioned that a company might use to protect its investment in a trademark?

d) Explain how a geographical indication may be protected internationally.

e) What is the difference between a geographical indication and an appellation of origin?

IV Patents

a) Describe in 100 words or less the purpose of a patent and indicate the general conditions for the award of a patent.

b) What are the benefits of a patent and who is responsible for taking the initiative to enforce a patent?

c) Give two examples of the types of things that are not usually patentable and list 3 characteristics that an invention must have in order to be patent protected.

V WIPO Administered Registration Systems

a) In 100 words or less, describe the purpose of the Madrid System and draw a diagram explaining the process of how an applicant can use the Madrid system to get protection for a trademark in different countries.

b) What is the main difference between industrial design protection and patent protection?

c) What is the Patent Cooperation treaty (PCT)?

d) Describe the process of using the PCT. Include a diagram of the process involved using PCT, making sure to include the 4 necessary steps.

PART TWO

Read the texts and do the tasks that follow.

TEXT 1

Variation among examiners in their conduct of the examination process may arise from several sources. Two possibilities are suggested by the interviews. First, at a given point in time, or for a particular patent cohort, examiners necessarily vary substantially in their experience. Experience may affect the quality of patent examination, and this has been a source of concern in recent years, as the rate of hiring into the USPTO has increased, particularly into art areas with little in-house expertise. On the other hand, our qualitative research greatly emphasized the role of the systematic apprenticeship process within the USPTO, which is likely to reduce errors made by junior examiners. For the first several years of their career, examiners are denoted as Secondary Examiners and their work is routinely reviewed by a more senior Primary Examiner. Over time, the Secondary Examiner takes greater control over his/her caseload and the Primary Examiner focuses on teaching more subtle lessons about the practice of dealing with applicants and their attorneys and instilling the delicate 'not too much, not too little' balance that the USPTO is trying to achieve in the patent examination process.

Second, Art Units may vary substantially in their organization and functioning. In the most traditional group structure, the allocation to work promotes a maximal amount of specialization by individual examiners. For example, in many of the mechanical Art Units, an individual examiner may be responsible for nearly all of the applications within specific patent classes or subclasses. In other Art Units, however, the approach is more team-oriented. In these groups, there is less technological specialization (multiple subclasses are shared by multiple examiners) and there is likely a higher degree of discussion and knowledge sharing among examiners. In the more specialized organization, there are far fewer checks and balances on the practices of a given examiner. When the examiner has all of the relevant technological information, the cost for an auditor to effectively review his/her work becomes very high. By contrast, in less specialized environments, there are likely to be greater opportunities for

monitoring, although, obviously, decreased specialization may reduce examiners' level of expertise in any specific area.

In part because of specialization, primary examiners maintain substantial discretion in their approach to individual applications. This latitude may result in variation among examiners in how they balance multiple USPTO objectives. One may consider the impact of the Clinton administration program to establish the USPTO as a 'Performance-Based Organization'. Among other goals, this initiative encouraged examiners to treat applicants as customers and to cooperate with applicants' attorneys to define and allow legitimate claims. Although not changing the formal standards for claims assessment, this program encouraged examiners to use their discretion to increase the applicants' ability to receive at least some protection for inventions.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. Examiners should have similar experience.
2. Secondary Examiners become Primary Examiners after one- year period.
3. The Primary Examiner not only supervises the work of the Secondary Examiners, but also teaches them.
4. Art Units are necessarily homogeneous in their organization and functioning.
5. In team-oriented Art Units individual examiners have lower level of expertise.
6. The examiners are restricted in their approach to individual applications.

Task 2. Understanding details.

Answer these questions.

1. What are the two main sources of variation among examiners?
2. How are the errors made by junior examiners reduced?
3. What are the responsibilities of Primary examiners towards the Secondary Examiners?
4. What is the most traditional Art Units group structure?
5. What are the features of team-oriented Units?

6. In which cases the cost of the audit is higher?
7. What are the advantages and disadvantages of less specialized groups?
8. What are the changes in approach to individual applications encouraged by the administration program?

TEXT 2

The first key finding from the qualitative evaluation of patent examination can be summarized in the phrase: "There may be as many patent offices as there are patent examiners." In other words, although the examination process is relatively structured, and USPTO devotes considerable resources to quality control, substantial discretion is provided to examiners in how they deal with applications, and the extent to which they exercise this discretion can potentially vary substantially across examiners. Several features contribute to this potential for heterogeneity, including the formal emphasis on specialization, variation among Art Units and individual examiners in their approach to searching prior art, the fact that much learning is through an apprenticeship system with only a small number of mentors, and the existence of differences across groups and examiners in the time allocated to specific tasks and examination procedures.

This heterogeneity might manifest itself in several ways. First, there may be substantial variation across examiners in the breadth of patent grants – some examiners may have a propensity to systematically allow a more restrictive or more expansive set of claims. One potential consequence of this use of discretion may be that patents issued by examiners who tend to allow broader claims will impinge on a greater number of follow-on inventions and therefore receive more citations over time. Although the number of citations received by a patent is often an indicator of its underlying inventive significance, it is important to recognize that a given patent's propensity to receive future citations may also be related to the 'generosity' of the examiner in allowing a broad patent, relative to an average examiner's practice.

Second, examiners differ as a result of specialization. Perhaps the key consequence of the organizational structure of the USPTO is the existence of only a handful of examiners within a narrowly defined technological field at a point in time. Specialization confers several benefits, most notably the development of 'deep' human capital in established technology areas. At the same time,

specialization can bring its own challenges. By construction, specialization raises the costs of monitoring, because it is difficult to disentangle whether the 'practice' of a given examiner reflects the nature of the art under his or her purview or reflects idiosyncratic aspects of that examiner that are independent of the art. For example, examiners may vary in their observed propensity for self-citation. Self-citation is the practice by which examiners tend to include citations to 'their' patents, i.e., patents for which they were the examiner. A high degree of self-citation may reflect an examiner's reluctance to search beyond narrow set of prior art with which he is already familiar. But it may equally be driven by the technology area in which the examiner works. A high degree of self-citation is particularly likely for examiners working in technology areas that are highly compartmentalized, with little communication across examiners, and that are highly reliant on hard copy technologies for the prior art search process.

Another impact of specialization may be to reduce the sensitivity of the USPTO to new technology areas. Before the establishment and development of norms for new Art Units, patent applications in a new technology area may be 'shoehorned' into existing Art Units. As a result, in the earliest stages of a new technology (a time when the standards of patentability are being established), the examination process depends heavily on the idiosyncratic knowledge base of a small group of examiners with limited expertise in the new technology area. Although the establishment of new Art Units and the development of new standards can address such problems over time, relying on highly specialized examiners in the earliest stages of a new technology area may slow the rate at which USPTO can establish and implement such norms and procedures.

Third, examiners may vary substantially in their effective average 'approval time', the length of time between initial application and the date at which the patent issues. Although a large fraction of the lag between application and approval will, of course, be driven by external forces – the speed at which applicants respond to office actions, for example – differences across Art Units and across examiners in their workload and the type of applications they receive will likely lead to differences in average approval time.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. Dealing with applications is the same for all examiners.

2. The number of citations received by a patent is always an indicator of its underlying inventive significance.

3. In the case of narrow specialization the costs of monitoring are high.

4. A high degree of self-citation is not always a proof of an examiner's reluctance to do more broad research.

5. Patent applications in a new technology area are not examined till the norms for new Art Units are established.

6. The average 'approval time' depends on examiners' effectiveness and the external forces.

Task 2. Understanding details.

Answer these questions.

1. What are the features contributing to the potential for heterogeneity in dealing with applications?

2. What are the main ways of heterogeneity manifestation?

3. What are the consequences of some examiners' tendency to allow broader claims?

4. What is the main benefit of specialization?

5. Which difficulties can arise due to specialization?

6. When is there a high degree of self-citation?

7. What may slow the rate of establishing new technology norms and procedures?

8. What external forces drive the lag between application and approval?

TEXT 3

In the United States, inventors may claim a utility patent by making application to the USPTO. Before a patent issues, the USPTO is charged with ensuring that the invention is adequately specified, covers patentable subject matter, and is useful, novel, and nonobvious. Procedurally, the application must be filed within 1 year of the invention's public use or publication, contain an adequate description with one or more claims, and be accompanied by the payment of a fee.

The USPTO patent examiner is the arbiter of the patentability, novelty, usefulness, and nonobviousness requirements, judging these standards against the

‘prior art’, i.e., prior inventions, in the field. Prosecution of the patent has been characterized as a ‘give-and-take affair’, with negotiation and renegotiation between the patentee and the examiner that ordinarily continues for 2-3 years. The costs of prosecuting a patent through the USPTO range from $5,000 to $100,000 (including the USPTO issue fee), depending on the nature of the technology.

Re-examination, originally envisioned as an alternative to expensive and time-consuming litigation, was created by the 1980 Bayh-Dole Act. The legislative history of this act suggests that the re-examination was intended to be a mechanism that would be less expensive and less time-consuming than litigation. During the legislative process, however, the act was purged of its intended adversarial characteristics, reducing the usefulness of the procedure for opponents of a given patent.

Procedurally, the re-examination proceeding permits the patent owner or any other party to notify the USPTO and request that the grounds on which the patent was originally issued be reconsidered by an examiner. Initiation of a re-examination requires that some previously undisclosed ‘new’ and relevant piece of prior art be presented to the agency. Under the statute, a relevant disclosure must be printed in either a prior patent or prior publication – no other source can serve as grounds for the re-examination.

After being initiated by the proponent through a notification and the payment of a fee to the USPTO, the re-examination goes forward only if the USPTO finds a ‘substantial new question of patentability’. Such a determination was intended by lawmakers to prevent the reopening of issues deemed settled in the original examination. The USPTO must make this determination within 3 months of the request and, having made the determination, must notify the patent owner.

When the owner is not the re-examination proponent, the patentee is allowed to file a response to the newly discovered prior art within 2 months. If the owner chooses to respond, the requester is afforded an opportunity to reply within 2 months. By choosing not to respond, the owner can limit the requester's participation in the process. The re-examination is thus designed to be an ex parte proceeding between the patent owner and the USPTO, with limited opportunities for third-party involvement.

Any third party, such as a competitor or other opponent of the patent, thus has a limited role in the re-examination process. The requester is entitled to notify the USPTO of the triggering ‘prior art’, to receive a copy of the patentee’s reply to

the re-examination (if any), and to file a response to that reply. The owner's role in the process is much more involved. The re-examination statute contemplates a second examination, with the same type of 'give-and-take' negotiation between owner and patent office that occurs during the initial issuance of a patent. The examiner remains the final arbiter of the process, and it is not uncommon for the original examiner to be assigned the follow-up re-examination, thus putting the question of whether prior art was overlooked in the hands of the same government official who was responsible for ensuring that no prior art was overlooked in the previous search.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. The application should not be accompanied by the payment of a fee.
2. During the prosecution of the patent the patentee and the examiner do not contact with each other.
3. The re-examination is less expensive and time-consuming than litigation.
4. The main condition for re-examination is the payment of a fee to the USPTO.
5. If the owner chooses not to respond, the requester's participation in the process becomes unlimited.
6. The re-examination involves the same type of 'give-and-take' negotiation between owner and patent office that occurs during the initial issuance of a patent.

Task 2. Understanding details.

Answer these questions.

1. What is the USPTO responsibility before a patent issues?
2. What standards are judged by the patent examiner against the 'prior art' in the field?
3. How long does a 'give-and-take affair' continue and what does it imply?
4. How much does prosecuting a patent through the USPTO cost?
5. When was re-examination, originally envisioned as an alternative to expensive and time-consuming litigation, created?
6. What sources can serve as grounds for re-examination?
7. What are the rights of the requester?

8. What problem can arise if the original examiner is assigned the follow-up re-examination?

TEXT 4

In the United States, post-issue validity can be tested in court. The U.S. federal courts obviously are a unified system operating under the same substantive legal requirements, in contrast to the multistate system facing litigants in Europe. Because patent suits are filed at the District Court (trial) level, litigants have considerable control, e.g., through their choice of District Court, over the manner in which litigation unfolds. This opportunity for control is partially mitigated by the existence of the CAFC, which hears all patent appeals. However, only a very small percentage of patent cases are appealed to the CAFC, which means that any differences in judicial philosophy among the many U.S. District Courts may influence the outcomes of litigation.

Procedurally, litigation differs markedly from the re-examination procedure. Unlike the re-examination procedure, litigation is an adversarial appeal to a court-arbiter in which the litigant has a choice over the final arbiter of the dispute and may elect to have the case heard by either a judge or a jury. Because patent suits generally arise from a charge of infringement by the patent owner, the patentee exerts considerable control over the timing of enforcement and litigation in a patent dispute.

Legal standards create a relatively hostile environment in the federal courts for challengers seeking to invalidate an issued patent. Under the statute, patents are 'born valid', enjoying a strong presumption of validity during the court proceedings. Furthermore, the evidentiary standard for proving a claim invalid is 'clear and convincing' evidence, a standard considerably higher than the mere preponderance of proof required in the typical civil suit. Because judges and juries may have limited technical expertise, these presumptions and evidentiary barriers create high costs for challengers. The propatent environment signaled by the creation of the CAFC has compounded these barriers. According to one study, successful challenges to patent validity fell from 50 percent to 33 percent in the years after the creation of the CAFC.

Direct costs in litigation are also high compared with those of re-examination. Estimates of legal costs in patent litigation run from $1 million to $3

million per suit to $500,000 per claim at issue, per side. One important driver of these costs is the extensive use of pretrial discovery. The lag between filing a patent suit and reaching a resolution can also be considerable. One study estimates the average length of a District Court patent suit at 31 months. These relatively high costs and long lags have led a number of scholars to argue that a stronger post-grant challenge system could reduce uncertainty regarding the validity of individual patents and, arguably, contribute to higher patent quality in a less expensive and time-consuming manner. The adversarial elements originally contained in the legislation that established the U.S. re-examination system were largely removed from this procedure during congressional debate of the bill. In contrast, adversarial processes form the basis for the opposition procedure adopted by the EPO.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. There is a multistate system facing litigants in the United States federal courts in contrast to Europe.
2. The existence of the CAFC creates an additional opportunity for control.
3. In case of litigation the litigant can choose the final arbiter of the dispute and have the right to elect whether the case is heard by a judge or a jury.
4. Strong presumption of validity creates barriers for patent validity challengers during the court proceedings.
5. The resolution is usually reached soon after filing a patent suit.
6. During congressional debate in the United States, the adversarial elements were included in the procedure of re-examination system.

Task 2. Understanding details.

Answer these questions.

1. How is control over patent suits filed at the District Court level executed?
2. What is the difference between the litigation and re-examination procedure?
3. Why does the patentee exert considerable control over the timing of enforcement and litigation in a patent dispute?

4. Why might the costs for challengers seeking to invalidate an issued patent be rather high?

5. What consequences did the creation of the CAFC have for successful challenges to patent validity?

6. What is the reason of high litigation costs?

7. What lag can there be between filing a patent suit and reaching a resolution?

8. What are the obstacles to higher patent quality in a less expensive and time-consuming manner?

TEXT 5

Patent protection for European member states can be obtained by filing several national applications at the respective national patent offices or by filing one EPO patent application at the European Patent Office. The EPO application designates the EPC member states for which patent protection is requested. The total cost of a European patent amounts to approximately €29,800, roughly three times as much as a typical national application. Thus, if patent protection is sought for more than three designated states, the application for a European patent is less expensive than independent applications in several jurisdictions. This cost advantage has made the European filing path particularly attractive for applicants selling goods and services in multiple European markets. Increases in the number of patent applications and grants have given the EPO a level of economic importance that now resembles that of the USPTO.

EPO patent grants are issued for inventions that are novel, mark an inventive step, are commercially applicable, and are not excluded from patentability for other reasons. After the filing of an EPO application, a search report is made available to the applicant by the EPO. The search report is generated by EPO's search office in The Hague and then transferred to the examining staff in the Munich office. The search report describes the state of prior art regarded as relevant according to EPO guidelines for the patentability of the invention, i.e., it contains a list of references to prior patents and/or nonpatent sources. Within 6 months after the announcement of the publication of the search report in the EPO Bulletin, applicants can request the examination of their application. This request is a compulsory prerequisite for the patent grant. If examination is not requested, the patent application is deemed to

be withdrawn. Eighteen months after the priority date the patent application is published. At this point, the application is normally under examination; thus the patent owner is generally required to reveal some information about his/her invention before the grant of the patent and even if no patent is ever issued.

After examination (if requested) has been performed, the EPO presents an examination report. At this point, the EPO either informs the applicant that the patent will be granted as specified in the original application or requires the applicant to agree to changes in the application that are necessary for the patent grant. In the latter case, a negotiation process similar to that in the U.S. system may ensue. Once the applicant and the EPO have agreed concerning the scope of the allowable subject matter, the patent issues for the designated states and is translated into the relevant national languages. If the EPO declines to grant a patent, the applicant may file an appeal. On average, the issue of a European patent takes about 4.2 years from the date of filing the application. Within 9 months after the patent has been granted, any third party can oppose the European patent centrally at the EPO by filing an opposition against the granting decision. The outcome of the opposition procedure is binding for all designated states. If opposition is not filed within 9 months after the grant, the patent's validity can only be challenged under the legal rules of the respective designated countries.

The EPO opposition procedure is thus the only centralized challenge process for European patents. An opposition to a European patent is filed with the EPO.
The opponent must substantiate his opposition by presenting evidence that the prerequisites for patentability were not fulfilled, e.g., the opponent must show that the invention lacked novelty and/or an inventive step or that the disclosure was poor or insufficient. At the EPO, an opposition division determines the outcome. The examiner who granted the patent is a member of the three-person opposition chamber but may not be the chairperson. The opposition procedure can have one of three outcomes. The patent may be upheld without amendments, it may be amended, or it may be revoked. Revocation occurs in about one-third of all opposition cases.

Another interesting aspect of the opposition procedure concerns the restrictions imposed by this process on the opponent’s ability to settle out of court. Once an opposition is filed, the EPO can choose to pursue the case on its own, even if the opposition is withdrawn. Thus the opponent and patent holder may not be free to settle their case outside of the EPO opposition process once the

opposition is filed. This provision of the opposition proceeding may discourage its use by opponents seeking to force patent holders to license their patents.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. The cost of a typical national application is equal to the total cost of a European patent.
2. The European filing path has advantages for applicants selling goods and services in multiple European markets.
3. The applicants do not have access to a search report after the filing of an EPO application.
4. The request of the application examination is an optional condition for the patent grant.
5. If the applicant does not agree to changes required by the EPO the patent is granted as specified in the original application.
6. The opponents must provide sufficient proof that the prerequisites for patentability were not fulfilled.

Task 2. Understanding details.

Answer these questions.

1. When is the application for a European patent less expensive than independent applications?
2. What are the main conditions for issuing EPO patent grants?
3. What kind of information does a search report contain?
4. What is the term of the applicant's request for the application examination after the publication of the search report in the EPO Bulletin?
5. Why may a negotiation process between the EPO and the applicant ensue?
6. What are the main stages and the period from the date of filing the application to the issue of a European patent?
7. What are the three possible outcomes of the opposition process?
8. Why is it advantageous that EPO can pursue the case on its own, after the opposition is withdrawn?

TEXT 6

Although the EPO provides a centralized application and examination process, there is no supranational or centralized process of patent litigation in Europe. The attractiveness of the EPO opposition process stems in part from the fragmentation of patent litigation processes in Europe. Unfortunately, there have been very few systematic studies of patent litigation within the various European nations. Below is a brief review of the few facts that are known.

After the grant, the EPO patent becomes a bundle of national patent rights that are treated as 'normal' national patents, which can be attacked by third parties through legal means allowed for in the respective national legislation. Outcomes in these local litigation cases are restricted to the local level, e.g., the patent may be invalidated in Spain, but this does not affect its validity in Italy. During the past decade, national patent courts have increasingly taken evidence and decisions from litigation in other European nations into account, but no systematic study has analyzed such legal 'spillover' effects. Other spillover effects link the outcome of oppositions and those of subsequent litigation. The national authorities involved in the adjudication of these suits can refer to previous proceedings, which may make it more difficult for a plaintiff to win a national validity suit after having lost an EPO opposition proceeding. However, no systematic analysis of these spillovers has yet been undertaken.

The differences among national jurisdictions within Europe are enormous, requiring substantial investments in each national suit and driving up the costs of challenging the national patents emerging from an EPO grant in several of the designated states. The costs of litigation in any national court have been estimated to be between € 50,000 and € 500,000, depending on the complexity of the case. This cost structure makes an attack at the European level with the opposition procedure particularly attractive for a current or potential competitor of the patent holder. The litigation rate (computed as the number of cases for which a suit is filed divided by the number of patents) in most European countries is roughly 1 percent, slightly lower than the 1.9 percent reported for the United States. However, the quantitative evidence is too sparse to conclude from these figures that the existence of the opposition mechanism leads to a reduction in litigation.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. The All-European system for patent litigation is yet to be developed.
2. After the grant has been granted nobody can question the validity of the EPO patent.
3. Other European countries may not take into account the outcomes of national litigation cases.
4. The results of national validation suits are wholly dependent on the outcome of EPO opposition.
5. There is an obvious tendency for a reduction in litigation in Europe.

Task 2. Understanding details.

Answer these questions.

1. What are the two attractive features of the EPO opposition process?
2. On the basis of what legislation can national patents be opposed?
3. What kinds of 'spillover effects' are mentioned in the text?
4. How do the differences among national jurisdictions affect the process of litigation?
5. Why is the litigation rate in most European countries lower than that in the US?

TEXT 7

In July 1985, the Liposome Corporation (LC) submitted an application in the U.S. Patent and Trademark Office (USPTO) for a patent on their 'dehydrated liposome' innovation, enabling the use of liposomes – fatty bubbles – that carry drugs to concentrate at the site of an infection. Within a month, the firm submitted an application to the European Patent Office (EPO) to secure patent rights in Europe. The European application was published in August 1986, based on LC's claimed international priority date of August 1984.

After pending in the USPTO for 4 years and 4 months, the U.S. patent issued on November 14, 1989 (patent number 4,880,635 – hereafter 635 patent), with nine claims. During the next several years, LC began distributing its drug Abelcet, an antifungal treatment used for AIDS-related infections based on technology disclosed in its 635 patent. Rival Nexstar, Incorporated (formerly known as

Vestar) developed a competing liposomal drug, AmBisome, prompting LC to notify Nexstar that the antifungal AmBisome infringed its 635 patent. On May 11, 1993, Nexstar sued LC in the Federal District Court in Delaware, seeking a declaration that the 635 patent was invalid, and LC counterclaimed, charging AmBisome with infringement.

Presented with new prior art that created some likelihood that Nexstar would prevail in court, LC decided on July 13, 1993 to request an 'owner-initiated' re-examination on its '635 patent, thus gaining for itself an ex parte proceeding with the USPTO to determine the impact of the new prior art. This re-examination enabled LC to reenter negotiations with the USPTO over the patent's claims. If the USPTO upheld the suspect claims, the presumption of validity of the 635 before the court would be strengthened.

LC was awarded its equivalent European Patent, EP 190315, on October 17, 1993. LC designated Austria, Belgium, Switzerland, Germany, France, Great Britain, Italy, Liechtenstein, Luxembourg, and Sweden as states in which it intended to patent. Nexstar opposed LC's EPO patent on April 6, 1994, and was joined in opposition by Daiichi Pharmaceutical Company on September 21. On December 21, 1994, the Delaware U.S. District Court found that LC's patent was invalid and that Nexstar's product was not infringing. As of this date, no decision has been delivered in the Nextar/Daiichi opposition proceedings, thus suggesting that the cases are essentially closed.

Legal maneuvers kept the U.S. litigation alive through 1995 and on June 7, 1996 LC announced that it had been 'upheld' by the USPTO in its re-examination. Company officials declared that the patent's "presumption of validity was enhanced" and threatened Nexstar with an injunction to prevent it from selling AmBisome. LC shares were up 3.4 percent on the news that day, whereas Nexstar's shares dropped 21.5 percent.

The news also appears to have scuttled Nexstar's plans for a $60 million net share offering in June 1996 that would have financed the firm's acquisition of new drugs, marketing its newest product, and research and development. Nexstar's officer said that LC's announcement of the outcome of its patent re-examination had harmed the firm.

The USPTO certificate on the re-examination of the 635 patent finally issued on July 2, 1996, and the facts did not entirely support LC's press releases of a month earlier. In reality, Bl Certification 2,937 stated that 3 claims had been cancelled, 6

claims had been amended, and 19 new claims were added to the 635 patent. Nexstar returned to federal court in May of 1997, claiming that LC had purposefully misrepresented the re-examination results to gain advantage and injure Nexstar, and argued that the 635 patent was invalid.

EP 190315 was opposed at the EPO on Feb. 1, 1994 by Nexstar and Daiichi Pharmaceutical. The case is still pending on appeal, and the preliminary outcome is not known. It is probable, based on the events discussed immediately below, that they are not waiting for the final outcome and the case is essentially closed.

The two competitors ultimately reached a settlement in their U.S. court case on August 11, 1997, jointly stipulating to a dismissal. In the settlement, LC granted Nexstar immunity from future suits in connection with its worldwide manufacture and marketing of AmBisome. The firms agreed to grant reciprocal options to take licenses to the other's patented technologies, whereas Nexstar agreed to unspecified payments to LC. The following day, Nexstar's AmBisome was approved by the Food and Drug Administration for marketing in the United States.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. The Liposome Corporation patented its innovation both in the USA and Europe.
2. LC was awarded USPTO and EPO patents the same year.
3. The decision of the Delaware U.S. District Court was in favour of Nextar.
4. Daiichi Pharmaceutical Company was in opposition to Nextar during the court proceedings.
5. The litigation had an unfavourable effect on Nextar's financial position.
6. LC's press releases distorted some facts of the re-examination.
7. The litigation case of LC against Nextar is still not closed.

Task 2. Understanding details.

Answer these questions.

1. What products are made by the rival companies in the text?
2. Why did LC request re-examination on its 635 patent?
3. What was the outcome of this re-examination?

4. How long did it take LC to obtain its European patent?
5. Why did Nextar's shares drop?
6. What did Nextar expect to gain from its $ 60 million net share offering?
7. What was the reason for Nextar to return to federal court?
8. What were the two companies obligations arising from the settlement?

TEXT 8

By the early 1980s, monoclonal antibodies had been recognized as a remarkable advance in medical science. The discovery, which allows the identification of so-called T cell subsets of lymphocytes, a type of white blood cell, showed promise for enabling advancements in the treatment of infectious diseases, cancer, infertility, autoimmune disorders, heart disease, and other maladies. In 1984, sales of diagnostics and therapies using the technique grossed U.S. $500 million, with projections of annual sales of U.S. $2 billion by 1990. The founders of the technique were awarded the 1984 Nobel Prize in 'Physiology or Medicine', signaling its path-breaking nature.

On March 20, 1979, the Ortho Pharmaceutical Corporation (Ortho) applied for a U.S. patent on its invention entitled *Monoclonal antibody to human T cells, and methods for preparing same*. On March 19, 1980, presumably taking advantage of the 1-year application window allowed in the EPO, Ortho applied for its equivalent European patent, application number EP1980030082, using the U.S. application date as its priority date. On the basis of the application's March 1979 international priority date, the EPO published the application on October 15, 1980, signaling the existence of the pending patent. Ortho designated its European states of interest on that date as Austria, Belgium, Switzerland, Germany, France, Great Britain, the Netherlands, Italy, and Sweden.

On December 14, 1982, after some 2 years and 9 months pending in the USPTO, the U.S. patent issued, with 11 claims. Approximately 2 years later, on September 20, 1984, Ortho filed a complaint alleging patent infringement against Becton Dickinson Monoclonal Center, Inc. in the Federal District Court in Wilmington, Delaware. The complaint also covered 12 other patents owned by Ortho. Within 10 months, the European equivalent patent issued, on July 10, 1985.

During 1986, legal maneuvering on both sides of the Atlantic tested the validity of the Ortho patent. On June 4, 1986, an EPO opposition was filed by

Behringwerke AG and Sandoz AG. Within a week, on June 11, a second opposition was filed by Becton, Dickinson & Company and by Boehringer Mannheim Gmbh. On July 24, 1986, Ortho's U.S. infringement action against Becton Dickinson, an opponent to Ortho's EPO patent, was transferred to the U.S. Federal District Court in Northern California. On September 26, Ortho again asserted its patent in an infringement action against Coulter Corporation and Coulter Electronics Corporation in the Southern District of Florida.

By October 3, 1986, Ortho and Becton Dickinson had settled their California litigation. Each party stipulated to a voluntary dismissal of the case and the Court announced that the parties had "resolved their differences." But the EPO opposition proceedings continued, and after the two pending oppositions were consolidated, the EPO patent was revoked on October 17, 1986. Ortho immediately appealed the adverse decision to the EPO, but the appeal was finally rejected on January 8, 1991, 5 years after settlement of the firm's infringement suit against one of the EPO patent opponents.

Ortho's suit against Coulter Corporation and Coulter Electronics Corporation in the Southern District of Florida was finally settled in November 1993, with a consent judgment and a dismissal. Ortho's U.S. patent remains in force but has not been asserted in court since. The patent number is not withdrawn, although the patent is close to expiration.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. $500 million were spent on the discovery of monoclonal antibodies and as much as $2 billion went on further development.
2. Ortho was granted the European equivalent patent, which it lost a year later.
3. The word *path-breaking* means the same as *innovative*.
4. Ortho won the suit against Beckton Dickinson.
5. Ortho's case against Coulter Corporation and Coulter Electronics Corporation was closed after reaching a settlement.

Task 2. Understanding details.

Answer these questions.

1. In what areas can monoclonal antibodies be used?
2. What is the background of Ortho's patent application case?
3. How many companies were involved in the litigation process?
4. What courts considered the complaints and oppositions?
5. Is it true that Ortho' s US patent is still valid?

TEXT 9

In recent years, patent protection has extended into new areas, giving rise to serious concern about the lack of clear guidelines for patentability. It is important to analyze the effect of introducing a patent opposition process that would allow patent validity to be challenged directly after a patent is granted. In many cases, such a system would avoid costly litigation at a later date. In other cases, the opposition process would increase the cost of conflict resolution but would also reward holders of valid patents and limit the rewards for invalid patents. The analysis suggests significant positive welfare gains from the introduction of a patent opposition process.

In just over two decades, a succession of legislative and executive actions has served to substantially strengthen the rights of patent holders. At the same time, the number of patents issued in the United States has nearly tripled. Although the surge in patenting has been widely distributed across technologies and industries, decisions by the U.S. Patent and Trademark Office and the courts have expanded patent rights into three important areas of technology in which previously the patentability of innovations was presumed dubious: genetics, software, and business methods. As in other areas of innovation, patents in these fields must meet standards of usefulness, novelty, and nonobviousness. A serious concern, however, in newly emerging areas of technology is that patent examiners may lack the expertise to assess the novelty or nonobviousness of inventions, leading to a large number of patents likely to be invalidated on closer scrutiny by the courts.

Although similar examples could be drawn from the early years of biotechnology and software patenting, economists in particular will appreciate that many recently granted patents on business methods fail to meet a commonsense test for novelty and nonobviousness. Presumably, this occurs because the relevant prior art is unfamiliar to patent examiners trained in science and engineering. Consider U.S. Patent No. 5,822,736, which claims as an invention the act of classifying

products in terms of their price sensitivities and charging higher markups for products with low price sensitivity rather than a constant markup for all products. The prior art most relevant to judging the novelty of this application is neither documented in earlier patents nor found in the scientific and technical literature normally consulted by patent examiners. Instead, it is found in textbooks on imperfect competition, public utility pricing, or optimal taxation.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. The cost of litigation is the only concern in the patent opposition process.
2. Some additional actions have been taken recently to safeguard the rights of patent holders.
3. The number of patents issued in the areas of genetics, computer software and business methods have nearly tripled.
4. A lot of patents in newly emerging areas of technology are revoked by the courts' decisions.
5. The relevant prior art in the area of business methods can only be found in specific business literature.

Task 2. Understanding details.

Answer these questions.

1. What are the likely gains from the introduction of a patent opposition process?
2. What requirements should be met for a patent to be granted?
3. Why are many patents invalidated by the courts?
4. Why do patents on business methods fail to meet a test for novelty and nonobviousness?
5. What are the two serious concerns about patent protection mentioned in the text?

TEXT 10

Although the central purpose of the patent system is to encourage R&D investment, there is increasing concern among scholars and the business community that ‘patent thickets’ are beginning to impede the ability of firms to conduct R&D activity effectively. The perception is that patenting strategies have increasingly made disputes over rights unavoidable and that, as a result, research firms are burdened by growing enforcement costs. The fact that patent litigation has been growing rapidly encourages this view. The number of patent suits rose by almost tenfold, with much of this increase occurring during the 1990s. However, a focus on the level of litigation gives a misleading picture. The growth in patenting has been comparable to the growth in litigation, with the consequence that the rate of suit filings has been roughly constant over these two decades. Nonetheless, although the data indicate that the likelihood of litigation has not increased, survey evidence suggests that involvement in a patent suit has become substantially more costly over the past decade. Thus the overall burden of enforcement may well be on the rise.

The exposure to litigation varies widely across technology fields and patent profiles. Although the average rate is relatively low, 19.0 suits per thousand patents, rates vary from a low of 11.8 per thousand chemical patents to 25-35 per thousand computer, biotechnology, and nondrug health patents. Moreover, within any given technology field, probabilities of litigation differ very substantially and are systematically related to patent characteristics associated with their economic value and to characteristics of their owners. This variation in litigation risk across patents and their owners is a central issue for the enforcement of intellectual property rights and its economic consequences. For example, the evidence is provided that small firms avoid R&D areas where the threat of litigation from larger firms is high. But some argue that the use of preliminary injunctions by large firms can discourage R&D by small firms, and this may apply to other legal mechanisms. Even if parties can settle their patent disputes without resorting to suits, the threat of litigation will influence settlement terms and thus, ultimately, the incentives to undertake R&D. Using a comprehensive new data set covering all recorded patent litigation in the United States over the period of last 25 years, it is possible to determine the characteristics that affect the decision to begin a suit and the decision of whether to end with a settlement or to proceed to adjudication at trial.

Patentees have a number of mechanisms for settling disputes without resorting to litigation. They may ‘trade’ intellectual property. Trading takes various forms, including cross-licensing agreements and patent exchanges, sometimes with balancing cash payments. One motivation for accumulating patents may be to facilitate such trading. From this perspective, extensive patenting may be beneficial by lowering costs once a dispute arises. Settlement may also be promoted if patentees interact with each other often and expect to continue doing so in the future. Theoretical models suggest that repeated interaction increases both the ability and the incentive to settle disputes ‘cooperatively’– that is, without filing suits. However, there is very little econometric evidence to support this prediction.

The role of patent trading and the role of repeated interaction over time both imply that there may be economies of scale in resolving patent disputes. Greater research and patenting experience may speed settlement as parties become better able to anticipate the result should a dispute go to court. Experienced firms may also make higher-quality patent applications that give rise to fewer disputes in the first place. Three key findings support the importance of scale. First, it is a patent portfolio effect. Having a larger portfolio of patents reduces the probability of filing a suit on any individual patent, conditional on its observed characteristics. The quantitative effect is large. For a small domestic unlisted company with a small portfolio of 100 patents, the average probability of litigating a given patent is 2 percent. For a similar company but with a moderate portfolio of 500 patents, the figure drops to only 0.5 percent. Second, the marginal effect of patent portfolio size is stronger for smaller companies, as measured by employment. This is consistent with the idea that having a portfolio of patents to ‘trade’ is the key mechanism for avoiding litigation for small firms, whereas larger firms can also rely on repeated interaction in intellectual property and product markets to discipline behavior. Third, firms operating in technology areas that are more concentrated (in which patenting is dominated by fewer companies) are much less likely to be involved in patent infringement suits. Such firms are likely to have more interaction with one another. Together these results are consistent with the view that having either a portfolio of intellectual property to trade or other dimensions of interaction that promote ‘cooperative’ behavior confers important advantages in avoiding litigation. The asymmetry of firm size affects litigation risk. Patent owners who are large relative to the disputants they are likely to encounter less frequently resort to the courts to settle disputes.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. Scientists and business people think that the existing patent system hinders research and development.
2. R&D investment has dropped considerably because the number of patent suits rose by almost tenfold.
3. The highest rate of litigation is in new technology fields.
4. Small firms don't undertake R&D.
5. There is an inverse correlation between the size of a firm and litigation risk.

Task 2. Understanding details.

Answer these questions.

1. How do the patenting strategies affect R&D?
2. Does *enforcement* mean the same as *implementation*?
3. What does the rate of litigation depend on?
4. What are the main mechanisms for settling disputes without resorting to litigation?
5. What economies of scale are involved in resolving patent disputes?
6. Give the arguments in favour of the importance of scale.

TEXT 11

Firms in many industries utilize and build on the innovations of others, often in the face of short product life cycles. Recognizing this, scholars and industry representatives alike have started to question whether changes in the U.S. patent system over the past two decades are, in effect, hindering rather than promoting this cumulative process of innovation. Record numbers of patents are issuing from the U.S. Patent and Trademark Office (USPTO) in areas ranging from semiconductors and computer software to business methods and human gene sequences, raising concerns about the costs and feasibility of navigating through mazes of overlapping patent rights in these areas. At the same time, the past two decades have witnessed a noticeable rise in patent litigation in the United States as well as an escalation in the costs associated with enforcing patent rights in court.

Calling for reform, some have started to question whether the direct and indirect costs associated with obtaining and enforcing U.S. patent rights have started to outweigh the benefits provided by this system.

Additional light will be shed on the operation of the U.S. patent system by tracing the incidence and nature of patent-related legal disputes over the past three decades in one important cumulative technological setting – semiconductors. Much like software or computer firms, semiconductor firms typically require access to a 'thicket' of external intellectual property to advance technology or to legally manufacture and sell their products. In contrast to software business methods, or biomedical inventions, however, innovation in semiconductors was already highly cumulative and subject to patent protection prior to the 1980s 'pro-patent' shift in the United States. For example, over 20,000 U.S. patents had been issued on inventions pertaining to semiconductor devices and manufacturing processes by 1981. In contrast, few software or biotechnology-related patents had been awarded before 1980 in part because of the legal uncertainty over patentable subject matter in these emerging areas. The extent to which changes in the U.S. patent landscape during the 1980s have altered patterns of cooperation and conflict over patented technologies in semiconductors remains unclear.

The semiconductor industry is also an important empirical context within which to examine the broader incentives generated by the patent system in cumulative technological settings. In surveys on appropriability conducted in 1983 and 1994, R&D managers in semiconductors consistently report that patents are among the least effective mechanisms for appropriating returns to R&D investments. Driven by a rapid pace of technological change and short product life cycles, semiconductor manufacturers tend to rely more heavily on lead-time, secrecy, and manufacturing or design capabilities than patents to recoup investments in R&D.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. Scientists and manufacturers doubt that changes in the US patent system promote the process of innovation.

2. American inventors and innovators can easily understand their patent rights.

3. More patent rights were issued on inventions in biotechnology than in manufacturing processes before 1980.

4. The costs of enforcing patent rights in court are rising.

5. Patents are the most effective mechanism for appropriating returns to R&D investments.

Task 2. Understanding details.

Answer these questions.

1. What do semiconductor manufacturers rely on to recoup investments in R&D?

2. Why were few patents issued on inventions in software and biotechnology before 1980?

3. Why do semiconductor manufacturers rely more on lead-time, secrecy and manufacturing capabilities than on patents?

TEXT 12

The software industry is a knowledge-intensive industry whose output is information, the coded instructions that guide the operations of a computer or a network of computers. Both the inputs and much of the output of this industry consist of intangibles, the prices of which contain considerable Schumpeterian rents. The rewards to innovators in the software industry of the 1980s and 1990s were extraordinary, as illustrated by the meteoric rise of William Gates III to control of the largest personal fortune in the world. The modern computer software industry thus is an extreme example of an industry in which the returns to innovators' investments, and in many cases market structure, are influenced by the ownership of intellectual property. As such, it is hardly surprising that the legal framework establishing and regulating ownership of such property has attracted considerable attention and debate.

The ‘modern’ computer software industry of the twenty-first century differs from the software industry of the 1950s or 1960s, most notably in the growth of mass markets for so-called packaged software. These differences are reflected in the central importance of formal protection of intellectual property. The increased importance of formal intellectual property rights protection, as well as the changing

economic and legal importance of different instruments for such protection, create significant challenges for U.S. intellectual property rights policy.

Although the computer software industry is a global industry, significant differences remain among the software industries and the associated intellectual property regimes of the industrial economies. Domestic lobbying for the creation or modification of legal regimes covering this relatively new form of intellectual property has contributed to differences in the level and characteristics of intellectual property rights for computer software among major industrial economies. The recent controversies over business methods patents and the response by both Congress and the U.S. Patent and Trademark Office (USPTO) to these controversies are only the latest examples of this endogenous character of national intellectual property rights regimes.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. The rewards to innovators in the software industry of the 1990s were scanty.
2. William Gates II controls the largest personal fortune in the world.
3. Software industries and associated intellectual property regimes differ greatly throughout the world.

Task 2. Understanding details.

Answer these questions.

1. What are the returns to innovator's investments influenced by?
2. What is the difference between the modern computer software industry of the 21st century and the software industry of the 1950s?
3. What is the output of the software industry?
4. What helped William Gates III to earn his capital?
5. Why has the legislation establishing and regulating ownership of intellectual property attracted special attention?

TEXT 13

The growth of the global computer software industry has been marked by at least four distinct eras. The first era (1945-1965) covers the development and commercialization of the computer. The gradual adoption of standard computer architectures in the 1950s supported the emergence of software that could operate on more than one type of computer or in more than one computer installation. In the United States, the introduction of the IBM 650 in the 1950s, followed by the even more dominant IBM 360 in the 1960s, provided a large market for standard operating systems and application programs. The emergence of a large installed base of a single mainframe architecture occurred first and to the greatest extent in the United States. Nonetheless most of the software for mainframe computers during this period was produced by their manufacturers and users.

During the second era (1965-1978), independent software vendors (ISVs) began to appear. During the late 1960s, producers of mainframe computers 'unbundled' their software product offerings from their hardware products, separating the pricing and distribution of hardware and software. This development provided opportunities for entry by independent producers of standard and custom operating systems, as well as independent suppliers of applications software for mainframes. Unbundling occurred first in the United States and has progressed further in the United States and Western Europe than in the Japanese software industry.

Although independent suppliers of software began to enter in significant numbers in the early 1970s, computer manufacturers and users remained important sources of both custom and standard software in Japan, Western Europe, and the United States during this period. Some computer service bureaus that had provided users with operating services and programming solutions began to unbundle their services from their software, providing yet another cohort of entrants into the independent development and sale of traded software. Sophisticated users of computer systems, especially users of mainframe computers, also created solutions for their applications and operating system needs. A number of leading suppliers of traded software in Japan, Western Europe and the United States were founded by computer specialists formerly employed by major mainframe users.

During the third era (1978-1993), the development and diffusion of the desktop computer produced explosive growth in the traded software industry. Once

again, the United States was the ‘first mover’ in this transformation, and the U.S. domestic market became the largest single market for packaged software. Rapid adoption of the desktop computer in the United States supported the early emergence of a few dominant designs in desktop computer architecture, creating the first mass market for packaged software. The independent vendors that entered the desktop software industry in the United States were largely new to the industry. Few of the major suppliers of desktop software came from the ranks of the leading independent producers of mainframe and minicomputer software, and mainframe and minicomputer ISVs are still minor factors in desktop software.

Rapid diffusion of low-cost desktop computer hardware, combined with the emergence of a few dominant designs for this architecture, eroded vertical integration between hardware and software producers and opened up opportunities for ISVs. Declines in the costs of computing technology have continually expanded the array of potential applications for computers; many of these applications rely on software solutions for their realization. A growing installed base or ever-cheaper computers has been an important source of dynamism and entry into the traded software industry, because the expansion of market niches in applications has outrun the ability of established computer manufacturers and major producers of packaged software to supply them.

Estimates of the relative size of the ‘packaged’ and ‘custom’ software markets are extraordinarily scarce, reflecting the failure of public statistical agencies to collect reliable data on this rapidly growing component of the information economy. Nonetheless, the few existing estimates suggest that the market for ‘packaged’ software exceeded that for ‘custom’ software by the mid-1980s. Data reported in Mowery (1996), which summarize surveys compiled by the OECD and the International Data Corporation (IDC), indicate that global consumption of ‘packaged’ software amounted to roughly $ 18 billion in 1985 (current dollars) versus $11.6 billion for ‘custom’ software. U.S. consumption of ‘packaged’ and ‘custom’ software, both of which were overwhelmingly domestic in origin, amounted to $12.6 billion and $4.2 billion, respectively, in 1985. Global consumption of packaged software in 1996 reached $109 billion. More recent estimates of the size of U.S. or global consumption of ‘custom software’ unfortunately are unavailable; but most studies of the computer software industry suggest that consumption and shipments of packaged software have grown much more rapidly than those for custom software during the last two decades.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. Separating software products from hardware products occurred first in Japan.
2. The market for ‘packaged’ software is larger than that for ‘custom’ software.
3. Cost reduction of computing technology has expanded applications for computers.
4. Desktop computers appeared during the second era (1965-1978).

Task 2. Understanding details.

Answer these questions.

1. What are the four eras of the growth of the global computer software industry?
2. Who produced most of the software for mainframe computers during the period of 1945-1965?
3. When did independent software vendors begin to appear?
4. What made separation of pricing and distribution of hardware and software possible?
5. What opened up opportunities for independent software vendors?
6. What destroyed vertical integration between hardware and software producers?

TEXT 14

The packaged computer software industry now has a cost structure that resembles that of the publishing and entertainment industries much more than that of custom software – the returns to a ‘hit’ product are enormous, and production costs are low. And like these other industries, the growth of a mass market for software has elevated the importance of formal intellectual property rights. An important contrast between the software industry and the publishing and entertainment industries, however, is the importance of product standards and consumption externalities in the software market. Users in the mass software market often resist switching among operating systems or even well-established

applications because of the high costs of learning new skills as well as their demand for an abundant library of applications software to complement an operating system. These switching costs typically are higher for the less-skilled users who dominate mass markets for software and support the development of 'bandwagons' that create de facto product standards. As the widespread adoption of desktop computers created a mass market for software during the 1980s, these de facto product standards in hardware and software became even more important to the commercial fortunes of software producers than was true during the 1960s and 1970s.

The fourth era in the development of the software industry (1994 to the present) has been dominated by the growth of networking among desktop computers within enterprises through local area networks linked to a server and/or the Internet, which links millions of users. Networking has opened opportunities for the emergence of new software market segments, the emergence of new 'dominant designs', and, potentially, the erosion of currently dominant software firms' positions. Like previous eras in the industry's development, the growth of network users and applications has been more rapid in the United States than in other industrial economies, and U.S. firms have maintained dominant positions in these markets.

How has the growth of the Internet changed the economics of intellectual property protection in the software industry? At least three different effects are apparent thus far in the Internet's development. First, the widespread diffusion of the Internet has created new channels for low-cost distribution and marketing of packaged software, reducing the barriers to entry into the packaged software industry that are based on the dominance of established distribution channels by large packaged software firms. In this respect, the Internet expands the possibilities for rapid penetration of markets by a 'hit' packaged software product – in the jargon of the software industry, a 'killer application' – which enhances the economic importance of protection for these types of intellectual property. The Internet also is an important factor in the growth of patents on software-embodied business methods, many of which concern tools or routines employed by online marketers of goods and services.

But the Internet has also provided new impetus to the diffusion and rapid growth of a very different type of software, 'open source' software. Although so-called shareware has been important throughout the development of the software

industry, the Internet's ability to support rapid, low-cost distribution of new software and, crucially, the centralized collection and incorporation into that software of improvements from users has made possible such widely used operating systems as Linux and Apache. The Internet thus has increased the importance of formal protection of some types of software-related intellectual property while simultaneously supporting the growth of open source software, which does not rely on such formal instruments of intellectual property protection.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. The costs of switching to new operating systems are higher for skilled users.
2. The Internet has created new channels for low-cost distribution and marketing of packaged software.
3. The barriers to entry into the packaged software industry are caused by the dominance of established distribution channels by large firms.
4. The Internet has made it possible to create such operating systems as Linux and Apache.

Task 2. Understanding details.

Answer these questions.

1. What is the cost structure of the packaged computer software industry compared with?
2. What is the main difference between software industry and the publishing and entertainment industries?
3. Why are users in the mass software market reluctant to switch among operating systems?
4. What users dominate mass markets for software?
5. Where has the growth of network users and applications been more rapid?
6. Why is protection of packaged software products getting more important?

TEXT 15

Copyright protection for software innovation was singled out by policymakers during the 1970s as the preferred means for protecting software-related intellectual property. In its 1979 report, the National Commission on New Technological Uses of Copyrighted Works (CONTU), charged with making recommendations to Congress regarding software protection, chose copyright as the most appropriate form of protection for computer software. Because copyright protection adheres to an author-innovator with relative ease and has a long life – now upwards of 120 years for works created for hire – the Commission determined that copyright was the preferred type of intellectual property protection for software. Congress adopted the Commission's position when it wrote 'computer program' into the Copyright Act in 1980.

The federal judiciary's application of copyright to software in the aftermath of the CONTU initially promised strong protection for inventors. Apple Computer, Inc. v. Franklin Computer Corp. is an early and important case of copyright litigation in packaged software. Although the federal judiciary had long held that copyright protected only 'expression' in works, the court in Apple Computer held that Apple's precise code was protected by its copyright.

The court concluded that efforts by a 'follower' firm to use the copyright holder's code for purposes of achieving compatibility with the original software were inconsequential to the determination of whether infringement had occurred. This decision strengthened copyright protection considerably, making it possible for one firm's copyrighted software to block the innovative efforts of others. Subsequent decisions – the so-called 'look and feel' cases – extended traditional copyright protection of 'expression' to such 'nonliteral' elements of software as structure, sequence, and organization.

Subsequent court decisions, however, narrowed the protection provided by copyright for software-related intellectual property. The sweeping interpretation of copyright protection in Apple Computer was narrowed and weakened considerably in a series of copyright infringement cases brought by Lotus Development. Lotus successfully sued Paperback Software International over the latter's alleged imitation of the 'look and feel' of Lotus's spreadsheet software in a case that Lotus won in 1990. Lotus then sued Borland International over the alleged infringement by Borland's Quattro software of the 'look and feel' of Lotus's 1-2-3

spreadsheet software in a case that lasted for six years, producing four opinions in a federal District Court and appeals to both the Court of Appeals and the U.S. Supreme Court. The District Court found that Borland had infringed Lotus's 1-2-3 spreadsheet software. Borland rewrote its software to achieve partial compatibility with elements of Lotus's 1-2-3 software, but this modification also was met with infringement findings by the District Court and a permanent injunction banning its sale.

The Court of Appeals ultimately reversed some of the District Court's conclusions, arguing that 'second movers' in the software industry must be allowed to emulate and build on parts of the innovator's code and methods. The decision of the Court of Appeals was affirmed in 1996 by the Supreme Court in a 4-4 decision. The Borland decision weakened the strong protection for software inventions provided by Apple Computer, Inc. v. Franklin Computer Corp, and along with other decisions affirming the strength of software patents may have contributed to increased reliance by some U.S. software firms on patents in the 1990s.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. Since the 1970s, copyright protection for software inventions has been growing steadily.
2. In the early cases of the 1980s, little attention was paid to the innovative efforts of 'follower' firms.
3. Borland was charged with making illegal use of Lotus's software structure, sequence and organization.
4. The purpose of achieving compatibility with the original software has been overlooked in the majority of copyright infringement cases.

Task 2. Understanding details.

Answer these questions.

1. What are the benefits of copyright protection for software-related intellectual property?
2. How did the US legislature respond to the CONTU's 1979 report?
3. What other elements were added to the traditional copyright protection of software?

4. What are the ‘look and feel’ cases about?

5. Which two word combinations are used in the text to mean *companies that use the innovator’s original code and methods*?

6. In what way was the Borland decision special?

TEXT 16

In contrast to copyright, federal court decisions since 1980 have broadened and strengthened the economic value of software patents. Although some early cases during the 1970s supported the initial stance of the U.S. Patent and Trademark Office (USPTO) in stating that software algorithms were not patentable, judicial opinions have shifted since then to support the use of patents in software. In the cases of Diamond v. Diehr and Diamond v. Bradley both decided in 1981, the Supreme Court announced a more liberal rule that permitted the patenting of software algorithms, strengthening patent protection for software. The economic value of these patents was highlighted in several high-profile cases during the 1990s. For example, a 1994 court decision found Microsoft liable for patent infringement and awarded $120 million in damages to Stac Electronics. The damages award was hardly a crippling blow to Microsoft, but the firm’ infringing product had to be withdrawn from the market temporarily, compounding the financial and commercial consequences of the decision.

As the USPTO adopted a more favorable posture toward applications for software patents, the ability of patent examiners to identify ‘novelty’ in an area of technology in which patents historically had not been used to cover major innovations was criticized well before the surge of business methods software patent applications in 1998 and 1999. The celebrated multimedia patent issued by the USPTO to Compton Encyclopedias in 1993 is one example of the difficulties associated with a lack of patent-based prior art. On November 15, 1993, Compton’s Newmedia announced that it had won a ‘fundamental’ patent for its multimedia software that rapidly fetched images and sound. The patent was quite broad, covering a database search system that retrieves multimedia information in a flexible, user-friendly system. The search system uses a multimedia database consisting of text, picture, audio and animated data. That database is searched through multiple graphical and textual entry paths.

Compton's president, Stanley Frank, suggested that the firm did not want to slow growth in the multimedia industry, but he did "want the public to recognize Compton's Newmedia as the pioneer in this industry, promote a standard that can be used by every developer, and be compensated for the investments we have made". Armed with this patent, Compton's traveled to Comdex, the computer industry trade show, to detail its licensing terms to competitors, which involved payment of a 1 percent royalty for a nonexclusive license.

Compton's appearance at Comdex launched a political controversy that culminated in an unusual event – the USPTO reconsidered and invalidated Compton's patent. On December 17, 1993, the USPTO ordered an internal re-examination of Compton's patent because, in the words of the Commissioner, "this patent caused a great deal of angst in the industry". On March 28, 1994, the USPTO released a preliminary statement declaring that "all claims in Compton's multimedia patent issued in August 1993 have been rejected on the grounds that they lack 'novelty' or are obvious in view of prior art". This declaration was confirmed by the USPTO in November of 1994.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. Over the past few decades, court decisions have narrowed and weakened the potential of software copyright.
2. The USPTO has always been reluctant to award patents for software protection.
3. Absence of previously patented inventions in the software domain can be a good reason for patent refusal.
4. The main concern of the 'innovator' firm in seeking software patent protection is to impede other firms' advancement in the field.

Task 2. Understanding details.

Answer these questions.

1. What was the trend in patenting software products in the late 1900s?
2. Why has it always been problematic to apply patent protection to multimedia software?
3. What were the purposes of Compton's taking part in the trade show?

4. How did the industry respond to Compton's patent?

5. What was the outcome of the USPTO's subsequent enquiry into the Compton's patent?

6. What is meant by a 'fundamental' patent in Par.2?

TEXT 17

Recent federal judicial decisions have continued to support the rights of patent holders and have expanded the definition of 'software' subject to protection by patent. On August 23, 1998, the Court of Appeals for the Federal Circuit (CAFC) upheld the validity of a business methods software patent in State Street Bank v. Signature Financial Group. In ruling that the software was patentable, the court announced that the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application of a mathematical algorithm, formula, or calculation, because it produces "a useful, concrete, and tangible result". The opinion has been criticized for supporting the patentability of common methods and systems previously considered unpatentable.

Since the State Street decision, business methods patenting has expanded rapidly, especially for Internet-based transactions and marketing techniques. It was noted in March 2000 that the number of applications for such patents had expanded from 1,275 in fiscal 1998 to 2,600 in fiscal 1999, resulting in the issue of 600 business methods patents in 1999. The proliferation of Internet-based business methods patents has been facilitated by a lack of patent-based prior art available for review by USPTO examiners. Although the doubling in business methods patent applications during fiscal 1998-1999 is noteworthy, issued patents in this class accounted for less than 0.5 percent of all issued patents in 1999.

Political reactions to the surge in business methods patents and the controversy surrounding their validity were swift and involved both Congress and the USPTO. In late 1999, Congress passed the American Inventor Protection Act (AIPA). The AIPA was originally drafted to revise the U.S. patent system to be consistent with the World Trade Organization (WTO) agreements that concluded the Uruguay Round of trade negotiations, but additional provisions were added specifically to address the business methods patent controversy. One provision of the AIPA that brought U.S. patent policy into conformity with WTO requirements

stipulated the publication of most U.S. patent applications within 18 months after their submission to the USPTO. This publication requirement should make it easier for a would-be inventor to verify that he or she is not infringing pending patents. A second provision of the AIPA that was inserted in response to the business methods patenting controversy created a 'first-to-invent' defense against infringement claims. Defendants who can show that they were practicing the relevant method or art one year or more before the filing of the patent application are protected against infringement suits. This provision also should reduce the exposure of inventors to infringement suits based on their use of long-established nonpatented prior art.

Administrative responses to the business methods controversy included the USPTO's Business Methods Patent Initiative, unveiled in the spring of 2000. The Initiative included several provisions:

1. Hiring more than 500 new patent examiners specializing in software, computer, and business methods applications.
2. Tripling the number of examiners assigned to examine applications in Class 705, the primary locus of business methods patenting activity.
3. Expanding the number of nonpatent 'prior art' databases to which these examiners have access.
4. Requiring that nonpatent and foreign prior art be searched systematically for all applications in Class 705.
5. Requiring examination of all applications in Class 705 by a second examiner in addition to the primary examiner assigned to the application.

This administrative initiative has raised the level of scrutiny devoted to business methods patent applications and may have reduced the rate of issue of new patents in this class. The USPTO reported in 2001 that the number of examiners assigned to business methods patents increased from 45 at the beginning of fiscal 2000 to 82 by the end of fiscal 2001. The same report predicted that roughly 10,000 applications would be filed in Class 705, which covers most business methods patents, in fiscal 2001, an increase of nearly fourfold since fiscal 1999. However, the USPTO issued approximately 433 patents in Class 705 in fiscal 2001, a decrease of more than 25 percent from the number issued in this class in fiscal 1999. The lags involved in review of patent applications (18 months to *2* years) and the rapid growth in applications during fiscal 1999-2001 mean that the number of business methods patents issued by USPTO almost certainly will increase in the future. Nevertheless, the drop in the number of issued business

methods patents during 1998-2001 in the face of swelling applications suggests that the intensified scrutiny of applications in this class may indeed have reduced the rate of issue of business patents somewhat.

The economic significance and validity of U.S. business methods patents ultimately will be determined through litigation. The 're-examination' system instituted in 1980 allows for interested parties to request that an issued patent be re-examined by the USPTO, but this procedure bears little resemblance to the more elaborate 'opposition' process of the European Patent Office (EPO) and a number of European countries. In particular, re-examinations affect a smaller share of issued patents and result in the invalidation or amendment of a smaller share of challenged patents than is true of the EPO opposition process.

Although litigation provides rigorous scrutiny of patent claims and validity, it is a costly system for maintaining 'patent quality' – the costs of a typical infringement suit are estimated to run to $1 million to 3 million. Moreover, litigation is a lengthy process, meaning that the validity of key 'foundational' patents in software or business methods, those on which subsequent inventors may rely (and for which they are either paying royalties or risking costly infringement penalties), may take years to be established. In fields that are evolving as rapidly as software, such delays could contribute to high uncertainty, high transactions costs, and impediments to innovation.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. There was a 0,5 percent increase in the number of patents issued during fiscal 1998-1999.
2. The US patent system was strongly criticized by the Congress as recently as 1999.
3. Business methods patenting made it necessary to use the re-examination procedure.
4. It can be argued that the rate of issue of business methods patents is gradually decreasing.
5. 'Foundational' patents in software or business methods are to be scrutinized in litigation.

Task 2. Understanding details.

Answer these questions.

1. What is the scope of business methods patenting?
2. Why was it urgent for the Congress to introduce the AIPA?
3. What did the USPTO's administrative initiative entail?
4. To what extent is litigation different with the USPTO and the EPO?
5. What are the pros and cons of litigation with regard to patents in software and business methods?

TEXT 18

The large number of Internet business method patents applied for and received since the mid-1990s has raised considerable concern among policymakers, academics, business, and other interested observers. That business methods are patentable subject matter seems to be beyond question. Nonetheless, criticisms of these patents have been numerous. Some commentators attack the practice of patenting business methods rather than technology, with Internet business methods taking the brunt of the criticism given that they make up the bulk of newly granted business method patents. At another level, many critics argue that granting patents on Internet-related software and business methods 'closes' the Internet environment, making it more difficult for the diffusion of ideas, innovation, and entrepreneurial activity that are often associated with the Internet. This criticism is especially relevant for those who argue that larger business organizations are patent mills, able to squeeze out small entrepreneurs with new property rights over Internet business activities. Others see Internet-related patents as an expansion of software patents more generally, something critics have attacked as duplicative of copyright protection and harmful to innovation. There are also concerns from the international community that U.S. firms may be gaining an unfair advantage in patenting in this area, especially over Japan and Europe, who have been slower to adopt a pro-patent stance to business methods.

Critics from all sides argue that Internet business method patents are too easily granted and are 'weaker' than other patents because of inadequate reference to prior art in the patent applications. The main target of this criticism has been the U.S. Patent and Trademark Office (USPTO), the institution in charge of granting patents and ensuring the quality of the patents that eventually issue. There is

special concern about whether the USPTO has adequately reviewed Internet business method patent applications and whether the prior art references in those patent applications are sufficient to warrant patent issuance. In the areas of software patents generally, and business method patents particularly, there has been much concern that the corps of patent examiners has been insufficiently populated with those qualified to seek out nontraditional sources of prior art and to knowledgeably examine these patents. Some observers argue that examiner inexperience has been and continues to be a major problem in these areas. Only recently has the USPTO begun to hire examiners in software and related fields and, even more recently, to institute programs for training and providing more access to literature on the business disciplines.

Many criticisms of Internet business method patents rely on perceived differences between Internet business method patents and the more general set of patents that issue from the USPTO. Those criticisms are focused primarily on the perception that Internet business method patents have not been properly researched for relevant prior art. For the time period studied (primarily late 1990s), researchers found little support for those criticisms when they compared Internet patents with a large sample taken from the general population of patents. Internet-related patents overall, Internet business method patents, and Internet patent subtypes that they identified all proved to have as much, if not more, prior art as patents in general. The major difference in Internet patents and general patents with respect to prior art was the amount of nonpatent prior art cited in Internet patents, with those patents having significantly more nonpatent prior art citations than the general population of patents. Although some observers criticize Internet business method patents for other reasons (such as allowing them to be patentable subject matter at all), criticisms focused on prior art and the USPTO's handling of these particular types of patents are not well supported by undertaken analysis of the data.

It was also established that individuals and small companies do quite well, compared to large business organizations, in getting Internet business method patents. In other words, when compared to the distribution of a set of general patents, the result of the research do not support the contention that large business organizations are dominating Internet business method patents. It has been found, however, that U.S. inventors and companies overwhelmingly dominate their Japanese and European counterparts in receiving Internet business method patents,

while Japanese and European inventors and companies receive a far greater share of total U.S. patents than Internet business method patents.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. The share of US total patents issued to Japanese and European inventors and companies is smaller than that of Internet patents.
2. It is still quite difficult to single out sources of prior art for business methods patents.
3. Internet business methods patents are granted more readily to smaller business entities.
4. Internet business methods patents constitute a tiny part of newly granted business methods patents.
5. There are concerns about bigger organizations driving small entrepreneurs out of Internet business activities.

Task 2. Understanding details.

Answer these questions.

1. Why do critics of Internet-related patents find them weak and inadequate?
2. What are the steps taken by the USPTO to ensure knowledgeable examination of patent applications?
3. What did the comparative analysis of Internet patents and general patents with regard to prior art show?
4. What is the main concern of the international community in the area of business methods patenting?
5. How can Internet patents ‘close’ the Internet environment?

TEXT 19

Have you ever wondered how the U.S. Patent and Trademark Office (PTO) decide whether to award you a patent? It's quite simple. Your application is assigned to an examiner. The examiner searches the PTO's existing U.S. and

foreign patent files, commercial databases, various sources for non-patent literature and the numerous PTO libraries for prior art references that are relevant to the invention defined by your claims. The examiner then identifies the differences between your claimed invention and the prior art, and judges whether those differences are obvious or not. If the differences are not obvious, you will be awarded a patent.

To issue an uncontestable patent requires a comprehensive prior art search and examination. Examiners perform a prior art search within the limits of the resources at their disposal and usually within the time assigned to the technology being examined. The applicant often performs an additional independent search. While you are not required to perform a search, you are required to discuss and to provide copies of relevant prior art references of which you are aware.

Since 1836, the PTO has employed a large corps of professional examiners who apply their specialized knowledge of their technology area to examine patent applications. Today, more than ever, the PTO faces examiner training challenges to keep pace with fast-moving technologies and train new examiners as they mature into the examiner corps.

To meet these challenges, Technology Center 2700 (telecommunication and information processing) operates a flexible program by which a guest lecturer from industry can present basic to advanced information in subjects that match the technology training needs of the Technology Center. The audience usually ranges from a small to medium-sized group of examiners. You can participate in this program.

Technology subjects of interest to the examiner corps are identified by the senior and supervising patent examiners, and these subjects change from time to time. Recently, subjects of interest to Technology Center 2700 included electronic compression, image enhancement, half toning and telecommunications. Often, a time line of technology development with names of innovators, and titles of seminal papers and publications are of value to examiners. The PTO wants only information in the public domain; they do not want your trade, secrets. The examiners will ask questions but will not divulge the subject matter of any patent application.

This guest lecturer program has been developed to be as flexible as possible. You can be a participant in the program if you are in Washington, D.C., USA, on other business and can stay another day of give just an afternoon or

morning of your time, and can give the PTO sufficient advance notice of your schedule. You will receive the gratitude of the PTO and Technology Center 2700 for your trouble since they currently have no budget to defray any expenses incurred. You also will feel good about helping advance the progress of the sciences by helping the U.S. Patent and Trademark Office fulfill their mission "to secure protection on worthy inventions so as to reduce some of the risks inherent in commercial ventures."

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. The PTO has called a meeting of professional examiners to discuss the policy of Technology Centre 2700.
2. Patent applicants are expected to make a certain contribution to the examination process.
3. The greatest challenge faced by the PTO has been to find enough technical specialists.
4. Guest lecturers need to be innovators and authors of numerous publications.
5. Participation in the programme is on a non-commercial basis.
6. Professional examiners are basically specialized in patent law.

Task 2. Understanding details.

Answer these questions.

1. Will a patent be awarded if it is obvious to a person of ordinary skill in the field concerned?
2. What does an applicant need to do in the process of examination?
3. What is the regular procedure for granting a patent?
4. Which phrase in Par. 5 means *to sort out problems*?
5. What kind of expertise is called upon in the programme?
6. In what way can the PTO benefit from the programme?

Text 20

The marriage of intellectual property (IP) and life sciences creates one of those niche practices of law that most solicitors like to avoid. But two events recently brought home the importance of this area of law.

First, the recommendation by the UK Human Fertilization and Embryology Authority to permit human cloning for 'spare parts' is likely to create a huge wave of research leading to a flood of patent registrations and subsequent litigation. Penny Gilbert, of the IP firm Bristows, says that though the European Commission Biotechnology Directive specifically excludes human cloning processes from patentability, it does not apply to such parts of the human body as tissue. "There are", she says, "potentially valuable patents in this field and litigation between rival researchers is almost inevitable".

Elsewhere in the market, the pharmaceutical companies Zeneca and Astra were deep in talks about a merger. Both face the imminent end of the patent on several drugs, and need more resources to plug the gaps. Patents are probably these companies' most important single resource and the big pharmaceutical companies and life sciences firms jealously guard them. Larger law firms such as Cameron McKenna and Herbert Smith are often engaged in litigation to protect rights that may have been infringed.

Smaller research-based companies are not always so alert to the dangers and opportunities of patent law. A recent report, commissioned by Taylor Joynsen Garrett from the London Business School, says: "There is evidence of a surprising lack of recognition of the importance of IP protection." Almost a third of companies think their investors "understand little or not at all" the nature of their IP rights.

Only two-thirds of companies said that when it came to IP, due diligence had been undertaken by their investors where it was relevant before financing their most recent investment.

Just over half the smaller companies have a programme in place to ensure that all IP rights produced by their research development are adequately protected. And many that have an IP protection programme do not produce a complete set of contractual documentation to cover dealings in IP rights, even though this is potentially the most critical component of all.

The report is a wake-up call to smaller research-based companies to take the legal implications of their work seriously. While there are bound to be ethical debates about the right to make money out of this kind of activity, there is no question that larger companies will have little hesitation in capitalizing on discoveries not properly protected. Ms Gilbert believes that we are only starting to scratch the surface of developments in this field. How it turns out will be shaped as much by the application of the law as by the inventiveness of scientists. And though the Biotechnology Directive excludes human cloning processes from patentability, commercial companies will not stop doing the work, nor stop generating complex and puzzling legal issues.

Task 1. Understanding main points.

Mark these statements T (true) or F (false) according to the information in the text above. Find the part of the text that gives the correct information.

1. Solicitors like very technical and specialized areas of law.
2. It is legal to clone humans for spare parts at present in the UK.
3. Patents protect the formulae of drugs forever.
4. Patent law is well understood by most small research companies in the UK.
5. The most critical part of an Intellectual Property protection programme is a complete set of contractual documentation.
6. The inventiveness of scientists will have to be matched by the changes in the law.

Task 2. Understanding details.

Answer these questions.

1. What were the *two events* referred to in line 2?
2. How many official bodies are named that deal with cloning and genetics? What are they?
3. What do the firms need to produce if they want complete IP protection?
4. What kind of effect should this report have on the small research-based companies?
5. What kind of discussions are there likely to be about making money out of scientific research?

6. What might larger companies do if they find a discovery is not patented?

7. Which phrase in the last paragraph means the same as *see only the tip of the iceberg?*

8. What kind of legal issues does the cloning debate cause?

Revision Tasks

Piracy Threatens Digitized Art

A scheme to digitize famous paintings that has been unveiled by the National Gallery in London may be placing the collection at risk of digital piracy. Now music and movie makers are warning the world of fine arts to act quickly if it wants to prevent the same kind of high-tech piracy that is crippling their industries.

The National Gallery has been working with computer giant Hewlett-Packard for 8 years on a scheme to digitize all of its 2300 paintings. The images have been captured with a digital camera that steps backwards and forwards over the painting, a technique that improves the resolution of the image to 100 megapixels, 20 times that of the best consumer cameras. When someone places an order, a six-colour printer in the gallery's shop will print out a high-quality copy in just five minutes.

The gallery hopes to generate extra revenue by allowing accredited print shops around the world to sell copies as well. "The music industry has gone digital. We want to see the same process in the world of fine arts," says Vyomesh Joshi, executive vice-president of HP's Imaging and Printing Group. This will mean sending the images over the Internet, giving pirates a chance to make illegal copies.

The music industry has been hit hard by digital piracy. It says the poor security of the CD system now means that one in three music CDs is a pirate copy. "If we had ever envisaged the ability to make perfect copies of CDs we would have pressed for greater protection in the CD system," says Jay Berman, who runs the International Federation of the Phonographic Industry (IFPI), the world trade body for the record industry.

The gallery seems resigned to a similar fate. “There is nothing we can do about it,” says Jennifer Lea, a spokeswoman for the gallery. It is not even bothering to protect the images. Huw Robson, manager of HP’s Digital Media Systems Laboratory, says the digitized images and hard-copy prints will not be protected by digital watermarks. If a file is hacked or a high-quality print scanned and copied, the gallery will be unable to prove the source.

Owning the copyright to digital images will give the gallery some protection under the law. But it won’t be easy to enforce, if the music industry’s attempts to tackle piracy are anything to go by. It sued the file-sharing website Napster for breach of copyright but only after pirated copies of music files had swept the world. The IFPI says that the music piracy industry is now worth $4.6 billion a year.

Michael Kuhn, who helped Polygram and Philips launch the first CDs, says: “Looking back, record companies should have spent every day thinking about piracy. Film studio brass should be doing that now. So too the fine art bosses.”

Task 1. Answer the questions:

1. Why did the National Gallery decide to digitize its collection?
2. What apprehensions has this step caused?
3. What is being done to protect the paintings?

Task 2. Write a short summary of the article above.

Europe Fights Tide of Absurd Patents

THE European Parliament wants to make it uncomfortable for multinationals hoping to use their legal muscle, rather than innovative products, to stifle competition. Within the next few weeks, the parliament is likely to approve a European Commission directive to outlaw patents on computer software and business methods. Previous attempts to do this have foundered, and the problems may be far from over.

What Europe wants to avoid is the situation in the US and Japan, where patents are routinely granted on what many regard as obvious ideas that serve only to restrict competition. Some of the more sweeping patents granted in the US cover the ordering of gifts over the Internet, and the shopping cart metaphor

used on e-commerce sites. Probably the most infamous patent covers the idea of searching through a multimedia database.

Such patents have been condemned for the fear of litigation they breed, which discourages development of rival products. In Europe, programmers and politicians have long agreed that such broadly applicable patents are undesirable because software is already protected by copyright, which forbids copying of the program code.

Patent protection spreads far wider, as it allows the holder to claim ownership of variations on the original idea. The owners of the patent on a speech-driven word processor program, say, might claim the patent covers variations in which the software is driven by eye blinks, toe taps or finger clicks - even if they had not intended to develop such variations.

Software and business methods have never been patentable in Europe. But computer-enabled devices, such as a cellphone with a graphical user interface, and computer-enabled processes like a car's engine management system, can be protected by a patent. The problem is that it has proved hard to draw the line, and this has allowed lawyers to get patent protection for software by dressing it up as a computer-implemented invention. It is this backdoor route that the draft directive aims to block.

In the US, the floodgates for patents on business methods – and by extension, patents on software – opened in July 1998, when the Court of Appeals ruled on the validity of a patent on a particular method of banking. The court decided that virtually any idea was patentable as long as it had not been patented before. The Japanese Patent Office followed suit – its website even explains how to patent a way of persuading guests to come early to a party.

Peter Hayward of the UK Patent Office says the planned directive is intended to stop any drift towards this happening in Europe. But the task of bringing it into existence hit a series of stumbling blocks. The trouble began in February 2002, when the EC's first draft failed to draw a clear distinction between software-controlled inventions and the software that does the controlling.

In September 2003 the parliament amended the draft to clearly outlaw pure software patents. The Foundation for a Free Information Infrastructure (FFII), a pressure group supported by the open source movement, liked the draft.

But the makers of cellphones computers and consumer electronics devices were up in arms. Their trade association, EICTA, pointed out that it was worded in a way that allowed a patented technique to be used without infringement if it had a 'significant purpose'. "It was crazy. It meant patents could only be enforced for trivial purposes," says Hugh Dunlop, a patent attorney in London.

The commission and parliament are now discussing a new draft that could become law in the next few weeks. EICTA warns that if the directive contains any more accidents of wording, it risks rendering unenforceable the 30,000 patents on computer-implemented inventions its members already hold.

The new draft is expected to say that computer-implemented inventions can be patented only if they include a 'technical contribution'. But such terms are vague, and the definition may well hinge on lawyers' interpretation. Rufus Pollock of the FFII fears that 'technical contribution' could be interpreted far too broadly, allowing software patents to be granted and threatening programmer's creativity.

Not everyone agrees that software patents are a bad thing. Greg Aharonian is a San Francisco patent buster who is hired by corporations to find old inventions – 'prior art', in patent jargon – that invalidate patents filed by rivals. He sees copyright as the problem, and has filed a lawsuit asking a US court to declare software copyright unconstitutional. "Software copyright might be politically expedient, but it is scientifically and legally illogical," Aharonian says.

When a program steps through its lines of code, the process is no different from the events in a machine. He argues that novel software, like a novel machine, should be patentable, not subject to copyright. Software patents will work, he says, if patent examiners are given more resources. And they must seek prior art outside of patents.

Task 1. Mark the following statements T (true) or F (false) according to the information in the text above.

1. The European Parliament wants to stifle competition in the field of computer software and business methods.

2. In the US and Japan patent granting systems, the principle of nonobviousness is not always observed.

3. In Europe, they don't favour patents in software and business methods.

4. A representative of the UK Patent Office says it will be easy to approve the new directive.

Task 2. Write a summary of the article above.

Copyright, Plagiarism and Unfair Practices

The World Wide Web, in its facility through the hyperlink to bring together related content, articles and web sites, contains within it the mechanisms for potential and real infringement of intellectual property rights. Indeed, a web site without hyperlinks is a very bare one indeed, and content on the web differs from traditional linear content in the richness that such horizontal and vertical relational hyperlinks add. A web site on any given subject can expand and amplify its depth of content not necessarily by researching and creating unique and original content itself but simply by linking to other existing web sites that cover that ground, and without even asking permission from that site's creator to do so. Generally, few content creators, moreover, seem to object, as links to and from a site are an accepted convention of web publishing.

In the early days when the web was non-commercial, something of a communal spirit of generosity reigned between content creators, allied with a seemingly inherent culture of sharing: content, like knowledge, was there to be passed around and nobody seemed to be too overly possessive about it. The web browser, after all, offers the built-in facility to display a content creator's raw HTML (Hypertext Markup Language) code, thus effectively offering for gratis the complex inner structure of a web site that a designer may have taken days or weeks to create.

Now that the web has become big business, unscrupulous practices have begun to creep in. The technology that has empowered individuals and organisations to become publishers with minimal distribution costs has, at the same time, facilitated digital commercial piracy on a scale never before imaginable or conceivable. Indeed, it has never been so easy both to steal, as well as to distribute globally that stolen material, all at the mere touch of a button or two. Content can be copied and pasted and so does not usually need even to be re-keyed in; colour images and complex graphics can be lifted; and documents can be distributed without recourse to a printing press or even so much as a photocopier. Indeed, as in other media where the stealing of intellectual property through the pirating of books, magazines, audio CDs,

and videos is a multimillion-dollar international problem yet to be solved, the stealing of content on the Internet has become a real and vexing problem.

Moreover, there may be considerably more subtle grey areas where it is not always clear where the sharing of content crosses over that fine line between acceptable conduct and copyright infringement. If, for example, you come across an interesting site and e-mail a friend or colleague its URL (Uniform Resource Locator), then that is fine. But should you copy and paste an article or snippet of content from that site and send it by e-mail (and technologically it is possible to do so with the greatest ease to any number of e-mail addresses, say hundreds or even thousands, thus in effect republishing that material), then technically you are infringing copyright, just as you would be if you made multiple photocopies of a newspaper or magazine article to share with others. It would probably be impossible to enforce such an infringement, and indeed, in those cases where people are sharing content but not actually making money out of doing so, then a blind eye is often, though not always, turned (the concept of 'fair use' is based on common sense – small sections of works can be quoted without the copyright holder's permission).

The practice known as 'framing' can be a more dubious if not downright illegal means of lifting content. In web site design, frames are used to allow a screen to display two or more pages of information; the frames can display information from within the same site, or they may contain information from different, external sites hyperlinked by their URLs. Thus, by creating a navigational frame that gives a site its thematic and corporate identity, then causing content from another site to open within that site's main body window, users can be deluded into thinking that the content itself originated from the original site creator, especially since its title, site address and contact information may appear prominently at the 'top' of the page. There have been recent legal cases where just such occurrences have taken place. So-called news filtering services seek to offer content from a variety of sources simply by collecting hyperlinks to them, while framing that content so that it appears within the site's own windows. Clearly, if this same thing happened in print, then it would be a blatant case of plagiarizing. However it is not yet conclusive by any means whether or not framing is technically illegal (it will certainly vary from individual instance to instance), though in many cases it may certainly be morally so.

Furthermore, while the sharing of URLs of other sites may be acceptable and indeed an essential part of the web, the use of 'deep' hyperlinks to stories or content buried within web sites may not always be acceptable. In giving deep hyperlinks,

content can be accessed without users having to go through the linked site's Home page. If the site was funded by advertising on that Home page, then such a deep link could result in the potential loss of revenue. In other cases, unscrupulous content creators have registered misleading domain names that are similar to the names of rival or popular companies in order to attract users unwittingly to their own site or sites.

The use of the <META> tag, that is, the invisible informative tag that is included in web sites for robot search engines to catalogue, is another area open to abuse. Commercial sites can put in names and descriptions of their competitors so that when someone types in that name or description, then their site comes up alongside, ahead of, or sometimes even instead of the competitor's site. Protected names and trademarks may also be used in such invisible <META> tags to attract users to a site in an unwarranted or misleading way.

It is important for the content creator to be aware of some of these issues to avoid falling foul of both accepted ethics and the law, which is still very much evolving on these matters as cases are brought to the fore. And certainly it may also be reassuring for content creators to know that should their work be plagiarized or infringed upon in any of these or other ways, there may be legal recourse to protect their electronic intellectual property rights.

Such issues, though, need to be kept in perspective. Most content creators need not fear that there are cyber-thieves waiting anxiously for their next new content to appear in order to pinch it. Yet, a recurring concern with writers is the fear that by publishing on the web, one's work will suddenly be at the mercy of all those unscrupulous pirates that lie out there in wait, ready to pounce and plagiarize at will. That incipient novel that you've been working on for the past six years might all of a sudden appear verbatim under the name or pseudonym of someone else. Well, yes, perhaps this could in theory happen. In practice, the sheer surplus of content on the World Wide Web is likely to be a major self-regulating force. For indeed one of the greatest challenges is not in creating more content, but in finding a way to filter and distinguish the most valid from the merely self-indulgent.

It should be reassuring, too, for content creators to know that there may be electronic means to protect content. Digital watermarking can be carried out on images, photographs and graphics, whereby invisible codes are embedded thus identifying the creator, copyright holder and/or any other relevant information. Should a user wish to reproduce that image, he can get in contact with the creator or

copyright holder and negotiate a fee. Perhaps we will even find means to remunerate content creators whose work is 'borrowed'. Just as it may be possible to filter acceptable and unacceptable content using tags to identify, say, adult sites, so may it be possible to use such tags or meta-information available in XML (Extensive Markup Language) to identify commercial content (images or text) when it is accessed and downloaded, so that the content creator automatically receives a micro payment from the e-account of the user.

What is clear is that the technology of the web is challenging us to reconsider the way we view and interact with intellectual property. It is likely that this process will continue to evolve with the web.

Task 1. Answer these questions:

1. What facility of the WWW can easily lead to infringement of IP rights?
2. List the advantages of using the hyperlink for creating content for a website.
3. What was the attitude of content creators to sharing in the early days of the web?
4. How has the situation changed nowadays?
5. What is the main difficulty of enforcing copyright infringement?
6. What threat does the practice of framing cause to site creators?
7. Why is the use of deep hyperlinks not always acceptable?
8. What is the <META> tag designed for?
9. How can the use of <META> tag infringe on electronic IP rights?
10. Name some electronic means for protecting content?

Task 2. Summarize the text in note form.

Task 3. Write an abstract of the text.

Reference Section
Summarizing

Why is a summary so important? Firstly, it makes you bring together all the ideas you have just been reading about. It will show up what you do not

understand, and you can sort it out there and then while everything is fresh in your mind. If you cannot do a summary of what you have just read, you can be sure you haven't really understood it.

Secondly, when you come to put all your ideas together for that important class paper, or when you come to sit down to revise all your work for the examination, the material is all to hand, neatly summed up on one side of paper, easily digestible. If there is anything you cannot remember when you read your one-page summary, you can quickly go to your notes, or even to the text itself, and sort it out.

Sample Summary 1

This section has addressed the general structure of copyright law and has provided an overview of:

- the 'literary and artistic works' protected by copyright;
- the rights granted to the owner of copyright;
- the limitations on such rights;
- the ownership and transfer of copyright;
- the enforcement of rights.

The Berne Convention expansively listed 'literary and artistic works' so that included were "every production in the literary, scientific and artistic domain, whatever may be the mode or form of expression". Covered under this broad term is every original work of authorship, irrespective of its literary or artistic merit.

The owner of copyright in a protected work may use the work as he wishes, and may prevent others from using it without his authorization. Thus, since the holder may exclude others from acting against the holder's interests, these rights are referred to as 'exclusive rights'. There are two other types of rights covered under copyright: economic rights and moral rights. Within the umbrella of economic rights are those several rights and applicable limitations, which may be alienable from the original holder. Moral rights will always remain with the original holder no matter whether the economic rights have been transferred.

In addition to the categories of works mentioned above, a new genre of work to be covered under copyright has emerged. This is multimedia production and although there is no legal definition, there is a consensus that the combination of sound, text, and images in digital format, which is made accessible by a computer

program is considered an original expression of authorship and is therefore covered under the umbrella of copyright.

Sample Summary 2

This section has introduced the patent area of intellectual property. Patents are one of the oldest forms of intellectual property protection and, as with all forms of protection for intellectual property, the aim of a patent system is to encourage economic development by rewarding intellectual creativity. The aim of a patent is to encourage economic and technological development by giving reward to intellectual creativity.

Under patent protection, both new creations and the further development of existing ones are covered. A breakthrough in science like the invention of penicillin is as equally important and protected as a new lever on a machine invented to make the machine run faster. Patents protect inventions and in general, an invention may be defined as a new solution to a technical problem. The solution is the 'idea' and protection under patent law does not require that the invention be represented in a physical embodiment. However, there are rules and exceptions to those things that cannot be patented. These include things discovered in nature and machines that defy the laws of nature, such as a perpetual motion machine. Other exclusions, which are commonly set out within the applicable law, are scientific theories and mathematical methods; schemes, rules and methods for doing business; and methods of treatment for humans or animals or diagnostic methods.

Once a patent application is on file, there are two general approaches: in some countries it is reviewed only as to formalities, while other jurisdictions also examine the application substantively by a technical expert to ensure that it meets the requirements of patentability. Characteristics that an invention must have are:

- it must be new or novel,
- it must involve an inventive step,
- it must be capable of industrial application.

Abstract Writing

An abstract is a kind of summary providing the reader with a brief overview of the study. Readers depend on the abstract to give them enough information about the material to decide if they will read the entire report or not.

Abstracts are usually written to be as brief and concise as possible. For journal articles the editor often establishes a word limit for the abstract that authors cannot exceed.

The abstract typically focuses on several main elements, with the emphasis placed on the results of the study. Information concerning the purpose and method is presented first (background information is sometimes also included). Then the most important results are summarized. Finally, conclusions and recommendations may be included in one or two sentences.

Sample Abstract
Patent Examination Procedures and Patent Quality

This study examines a detailed panel data set of patent examination procedures that affect patent quality. The most important of these inputs (examiner hours and examiner actions) are shown to have remained largely consistent over time despite an increasing examination workload. Other measures of examination quality (pendency and interference hearings), however, have been found to be declining. It is also emphasized that inputs to examination quality are inversely correlated with the rate at which patents are involved in legal complaints, and the expense of increasing examination inputs may be more than offset by the consequent reduction in litigation costs.

Taking Notes

There are usually three main reasons for taking notes:

1. To have a record of the speaker's or writer's main ideas;
2. To help your memory when revising, e.g. before an examination;
3. To make what the speaker or writer says a part of your knowledge.

Taking notes from the text

The first thing to do is to survey the text. The purpose of the survey is to acquaint yourself with the text, so that you can quickly find out what the writer's main points are, what he is driving at.

Then read the text again quickly making a note of the main points and how they relate to one another. This can be done mentally (if the text is short, uncomplicated one), or directly into your notebook.

If you are writing the main points in a notebook, put them down in some way that relates them to one another. If you can put the information in the form of a diagram, do so. Diagrams are usually easier to remember. If you decide to use a list (which is often the most convenient method) there are various listing systems one can use – the table below gives some examples.

Listing and Numbering

Arabic numerals	1, 2, 3, 4, 5, etc.
Decimal system	1.1, 1.2, 1.3, 2.1.1, 2.1.2, etc.
Large roman numerals	I, II, III, IV, V.
Small roman numerals	(i), (ii), (iii), (iv), (v).
Capital letters	A, B, C, D, E, etc.
Small letters	(a), (b), (c), (d), (e), etc.

When you are listening to a lecture or reading a text, watch out for the use of semantic markers. These are words or phrases that serve as signals for the meaning and structure of the lecture or text. They tell us how the ideas are organized.

The main semantic markers are grouped below according to the similarity of their meaning with the three basic connectives *and, or, but.*

AND

Listing:

Enumeration indicates a cataloguing of what is being said. Most enumerations belong to clearly defined sets:

first,...	furthermore,...	finally,...
one,...	two,...	three,... etc.
first (ly),...	second (ly),...	third (ly),... etc.

above all	*mark the end of an ascending order*
last but not least	
first and foremost	*mark the beginning of a descending order*
first and most importantly	

to begin/start with,...	in the second place,...	moreover,...	and to conclude,...
next,...	then,...	afterward,...	lastly/finally,...

Addition to what has been previously indicated:

a) Reinforcement (includes confirmation):

also
again
furthermore
further
moreover
what is more
then
in addition
besides
above all
too
as well (as)

b) Equation (similarity with what has preceded):

equally
likewise
similarly
correspondingly
in the same way

Note: The truth of a previous assertion may be confirmed or contradicted by:

indeed
actually
in (actual) fact
really
in reality

Transition can lead to a new stage in the sequence of thought:

now
with reference/respect/regard to
regarding
let us (now) turn to ...
as for
as to
incidentally
by the way
come to think of it,
talking/speaking of . . .
apropos
that reminds me . . .

Summation indicates a generalization or summing up of what has preceded:

in conclusion
to conclude

to sum up briefly
in brief
to summarize
altogether
overall
then
therefore
thus

Apposition used to refer back to previous sentences to parallel or related references:

i.e., that is, that's to say
viz. namely
in other words
or, or rather or better
and
as follows
e.g., for example, for instance, say,
such as, including, included,
especially, particularly, in particular,
notably, chiefly, mainly, mostly (of)

Result expresses the consequence or result of what was said before:

so
therefore
as a result/consequence
the result/consequence is/was...
accordingly
consequently
now
then
because of this/that
thus

hence
for this/that reason

Inference indicates a deduction from what is implicit in the preceding sentence(s):

then
in other words
in that case
else
otherwise
if so/not...
that implies
my conclusion is

OR

Reformulation to express in another way:

better
rather
in other words
in that case
to put it (more) simply

Replacement to express an alternative to what has preceded:

again
alternatively
rather
better/worse (still)...
on the other hand
the alternative is...
another possibility would be

BUT

Contrast with what has preceded:

instead
conversely
then
on the contrary
by (way of) contrast
in comparison
(on the one hand)... on the other hand

Concession indicates the unexpected, surprising nature of what is being said in view of what was said before:

besides
(or) else
however
nevertheless
nonetheless
notwithstanding
only
still
while
(al)though
yet
in any case
at any rate
for all that
in spite of/despite that
after all
at the same time
on the other hand
all the same
even if/though

Using abbreviations

Abbreviations can be of three kinds:

1. Field abbreviations. The student specializing in a certain field will learn certain abbreviations as part of the study of that field. Such abbreviations are very useful since they are widely used within each field but not ambiguous, or liable to be misunderstood (e.g., ltd – limited, GNP – gross national product).

2. Commonly understood abbreviations. These are abbreviations in common use, or else easily understood. Some examples are *i.e.* meaning *that is*, and = meaning *is equal to*, or *is the same as*. For more examples see table 2 below.

Some useful abbreviations and symbols for note taking

Table 2

	From Latin		**Symbols**		
cf.	compare (with)	∴	therefore, thus, so	←	results from
e.g.	for example	∵	because	≤	much less than
etc.	et cetera, and so on	=	is equal to, the same as	→	from ... to, leads to, results in, causes
et al.	and others	≠	is not equal to, not the same as	%	per cent
ibid,	in the same place (in a book or article)	+	plus, and, more	÷	divide, divided by
i.e.	that is	—	minus, less	x	multiply, multiplied by
N.B	note well (something important)	>	greater than	∧	insert (something which has been omitted)
viz.	namely (naming someone or something you have just referred to)	<	less than		

c./ca.	about, approximately	&	and		
no.	number	/	or		

3. Personal abbreviations made up by the student himself. If you find yourself having to frequently note down a certain word it is sensible to find a way of abbreviating it (e.g., info – information, probs – problems, poss. – possible).

Branching notes

` This is a type of note taking (also called Mind-mapping technique) which is especially useful when you have not been given an outline of the lecture. It enables you to develop your notes as the lecture proceeds, in a flexible way. It is also argued that this type of layout makes it easier to recapture the speaker's original message and to see the relationships between ideas more clearly.

The use of branching notes is one of the most important techniques one can learn. Essentially they try to reconstitute the totality of the speaker's or writer's thought by showing how his ideas relate to one another. They have the added advantage that the structure of even a badly presented lecture can be revealed by this flexible technique. For the same reason they are very valuable during discussions and seminars, where ideas very often do not follow one another in a logically ordered fashion.

It may be a good idea to have more than one colour of pen/ pencil at your disposal. Colour contrasts can do a lot to make information stand out.

There are no golden rules about the 'correct' form of the branching. Two students may put the information down in different ways and still have good notes. PRINT your headings (i.e. write them in capital letters) if at all possible – it will make it easier to follow your notes when you are revising. Make your headings as concise as possible (this applies to list notes too, of course).

Taking notes from a lecture

Positive note taking starts before a lecture. If you have already received some lectures on the same subject, glance through your notes on the last one to refresh your memory.

If you know the topic or title of the lecture in advance, try asking yourself some questions about it:

Do you know anything about the topic at all?

What do you expect to learn?

How will it relate to other topics that have been discussed?

Questions like these will give a positive attitude even before you put pen to paper. They will therefore make it easier to integrate the new information, i.e. to make it a part of your knowledge.

Here is a procedure that you might try to follow:

1. Have, if possible, a double-page spread of notepaper in front of you. You may find it better to have the pages spread breadthwise: i.e. with the broad part going from left to right.
2. Take notes only on one of the double pages. The blank facing pages can always be used for adding more information, or for 'reconstituting' notes, i.e. re-writing your notes in a fuller or more convenient form.
3. For any kind of note taking, always make a habit of noting the subject and date of the lecture. (Dating lectures helps to keep them in the correct sequence.)
4. Put the topic of the lecture in the centre of the page.
5. Relate all the other topics to it, and to one another, by lines.

Look at the short article below.

Acquiring Information

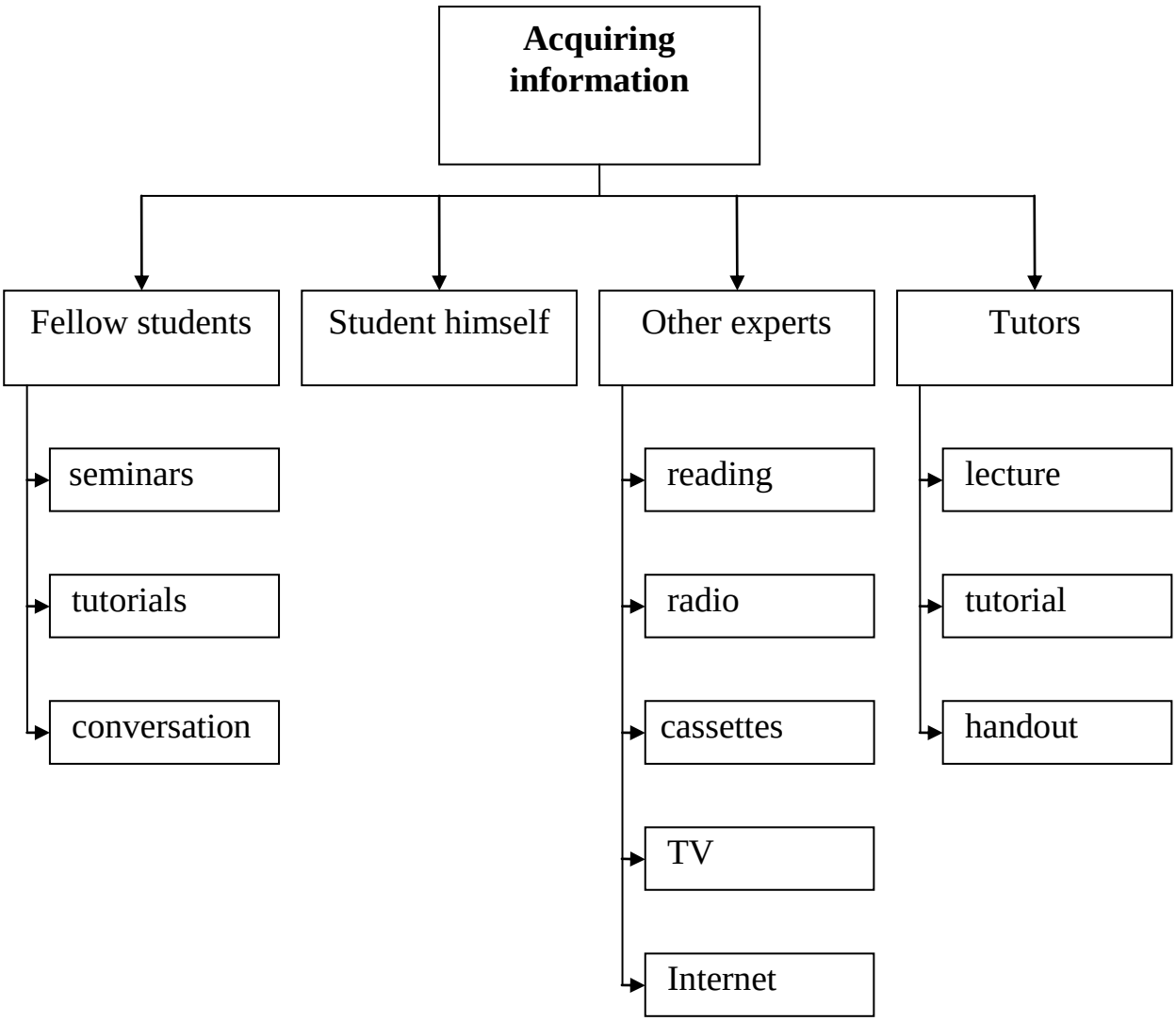
What are the basic ways in which you, as a student, can acquire information? Firstly, you will acquire information from your tutors, in three main ways – by lecture, by tutorial and by handouts that the tutor may give you. Secondly, you may acquire information from 'other experts' outside your college: principally by reading but also by listening to the radio and cassette recordings, or watching educational TV programmes and video cassettes, or perhaps browsing through the Internet. Thirdly, you will get information from your fellow students: in student-led seminars, in the contributions of other students in tutorial, or just in informal conversation. Lastly, you can acquire information from yourself! By thinking about the subject you study and linking together what you have heard and seen, you may come up with new ideas.

Here is the information in list form:

Acquiring information

1 from tutors
   a) lecture
   b) tutorial
   c) handout
2 ‘other experts’
   a) reading
   b) radio
   c) audio cassettes
   d) TV
   e) video cassettes
   f) The Internet
3 fellow students
   a) seminars
   b) tutorials
   c) conversation
4 student himself

Now look at the notes below. You will see the same in branching form.



Discussing

Below are some ways to express views.

1. Introducing your own point of view:

First of all we have to consider…
The first thing to be considered is…
It is a fact that/There is no doubt that…
One of the main arguments in favour of/ against X is that…

2. Agreement:

I agree with X when he writes/ says that…

3. Partial agreement:

…but…
…however,…
…on the other hand,…

4. Emphatic agreement:

X is certainly correct when he says that…
I completely agree with X when he writes that…

5. Cautious agreement:

X may be correct when he says that/ in saying that…

6. Disagreement:

I disagree/ can’t agree with X when he says that…

Англо – український термінологічний словник

abatement відміна
abatement of patent agreement відміна патентного договору
abuse зловживання
accreditation акредитація
act акт
legislative acts акти законодавства
normative-legal act нормативно-правовий акт
action дія
notarial actions нотаріальні дії
activity діяльність
economic activity господарська діяльність
information activity інформаційна діяльність
scientific activity наукова діяльність
administration використання
administration of law використання закону
administration of rights використання прав
addendum адендум
advertisement реклама
outdoor advertisement зовнішня реклама
domestic advertisement внутрішня реклама
unfair advertisement (Syn. unscrupulous advertisement) недобросовісна реклама
agreement (Syn. arrangement) угода, договір
agreement of transfer of author's right договір про передачу авторського права
arbitration agreement арбітражна угода
compensative licensing agreement компенсаційна ліцензійна угода
licensing agreement (Syn. license agreement) ліцензійна угода
option agreement опційна угода
patent agreement патентна угода
aim (Syn. purpose) мета
aim of market study мета кон'юнктурних досліджень

aims of patent information activities мета патентно-інформаційної діяльності

aim of the invention мета винаходу

appeal апеляція

patent appeal апеляція щодо патентного спору

appellation присвоєння імені

appellation of origin апеляція щодо походження

application (Syn. request) заявка

accepted application for an invention акцептована заявка на винахід

application for innovation proposal заява на раціоналізаторську пропозицію

auxiliary application допоміжна заявка

convention application конвенційна заявка

divisional application відокремлена заявка

industrial design application заявка на видачу патенту на промисловий зразок

invention application заявка на видачу патенту на винахід

international application міжнародна заявка

joint application спільна заявка

preliminary application попередня заявка

reissued application заявка, що замінює попередню

published application опублікована заявка

trademark application заявка на знак для товарів і послуг

approval затвердження

arrangement угода

licensing arrangement ліцензійна угода

arbitration (arbitrage) арбітраж

arbitrator арбітр, третейський суддя

asset актив

fictitious assets нематеріальні активи

assignee правонаступник

assortment асортимент

assortment of product асортимент продукції

attorney (Syn. agent) повірений, юрист

patent attorney (Syn. patent agent) патентний повірений

author автор
author of the trademark автор знака для товарів і послуг
author of the invention автор винаходу
author of the utility model автор корисної моделі
author of the industrial design автор промислового зразка
author of the innovation proposal автор раціоналізаторської пропозиції
author's abstract автореферат
author's emoluments авторська винагорода
authority адміністрація
customs authorities митна адміністрація
authorize уповноважувати, дозволяти
authorship авторство
beneficiary особа, що одержує користь, бенефіціарій
bulletin бюлетень
patent bulletin патентний бюлетень
buyer (Syn. purchaser) покупець
cancellation (Syn. annulment, abrogation) анулювання
cancellation ex officio анулювання через посаду, що обіймається
с**apacity** здатність
active capacity дієздатність
catalog (Syn. directory) каталог
certificate (Syn. registration, passport) паспорт, свідоцтво, посвідчення, акт
author's certificate авторське свідоцтво
industrial design certificate посвідчення на промисловий зразок
invention certificate посвідчення на винахід
licensing certificate ліцензійний паспорт
patent agent certificate свідоцтво патентного повіреного
patent certificate патентний паспорт
product certificate паспорт виробу
proposal certificate свідоцтво на раціоналізаторську пропозицію
test certificate акт випробувань
trademark certificate свідоцтво на знак для товарів і послуг
utility model certificate посвідчення на корисну модель
circumstance обставина
civil procedure цивільне право

claim (Syn. assertion) домагання
false claim необґрунтоване домагання
patent claims патентні домагання
claimant (Syn. complainant, suitor, plaintiff) позивач
classification класифікація
classification of inventions класифікація винаходів
international classification of industrial designs міжнародна класифікація промислових зразків (МКПЗ)
international classification of goods and services міжнародна класифікація товарів та послуг (МКТП)
international patent classification (IPC) міжнародна патентна класифікація (МПК)
universal decimal classification (UDC) Універсальна десяткова класифікація (УДК)
co-authors (Syn. joint authors) співавтори
co-authorship співавторство
common co-authorship нероздільне співавторство
separate co-authorship роздільне співавторство
co-executor співвиконавець
collection (Syn. fund) фонд, колекція
branch collection of patent documents галузевий патентний фонд
national collection of patent documents національний фонд патентних документів
reference information collection довідково-інформаційний фонд
company (Syn. association) товариство
stock company (Syn. joint stock company) акціонерне товариство
compatibility сумісність
compensation (Syn. reimbursement) відшкодування
competence правочинність
competition конкуренція
unfair competition несумлінна конкуренція
competitor (Syn. fellow applicant) здобувач
competitiveness конкурентоспроможність
compilation компіляція

complaint скарга
conciliator мировий посередник
confer вести переговори
conformity відповідність
products conformity відповідність продукції
consent згода, дозвіл
consolidation об'єднання
consolidation of applications об'єднання заявок
constraint (Syn. restriction, limitation) обмеження
consumer споживач
content вміст
contract (Syn. agreement, treaty) договір, контракт
author contract авторський договір
agency contract агентський договір
author license contract договір на право використання твору
convention конвенція
Convention on the European patent system Конвенція про Європейську систему видачі патентів
European Patent Convention Європейська патентна конвенція
International convention on patent protection Міжнародна конвенція в області патентної охорони
Luxembourg convention Люксембурзька конвенція
Paris Convention on Protection of Industrial Property Паризька Конвенція з охорони промислової власності
conversion переоформлення
conversion of author's certificates переоформлення авторських свідоцтв
copyright авторське право
cost accounting (cost calculation) калькуляція
counterfeit підробка, фальсифікація
court суд
arbitration court (Syn. arbitration tribunal) арбітражний суд
court of arbitration третейський суд
court of cassation касаційний суд
court of first instance суд першої інстанції
court of supervisory instance суд наглядової інстанції

creation (Syn. making) створення
products creation створення продукції
creative творчий
creativity творчість
criminal procedure кримінально-процесуальне право
criterion критерій
criteria of invention patentability критерії патентоспроможності винаходу
relevancy criterion критерій семантичної відповідності
decision (Syn. conclusion) висновок
customer клієнт
customs митниця
customs clearance очистка від митних зборів
damage шкода, збиток
material damage матеріальний збиток
moral damage моральна шкода
property damage майновий збиток
reparation of damages відшкодування шкоди
date строк
contract date строк виконання договору
date of application for design patent дата подання заявки на видачу патенту на промисловий зразок
date of application for utility model patent дата подання заявки на видачу патенту на корисну модель
date of patent application дата подання заявки на видачу патенту
date of priority дата пріоритету
date of trademark application дата подання заявки на знак для товарів і послуг
filing date дата подання заявки
first filing date дата подання попередньої заявки
deal (Syn. bargain) угода
dealings ділові відносини
fair dealing чесна угода
decision рішення, висновок
decision as to patentability документальний висновок
expert's decision (Syn. expert finding) експертний висновок

deed (Syn. act) діяння
defendant (Syn. respondent) відповідач
degree (Syn. extent, level, rate) ступінь, міра
confidentiality degree ступінь секретності
delivery постачання
demand попит
customer demand споживчий попит
potential demand потенційний попит
depth глибина
depth of a patent collection глибина патентного фонду
search depth for patent clearance глибина пошуку перевірки об'єкта на патентну чистоту
description (Syn. declaration, specification) опис
technical description технічний опис
design проект, дизайн
industrial design промисловий дизайн
detail design технічний проект
draft design (Syn. preliminary design,. conceptual design) ескізний проект
designation позначення
developer розроблювач
disclosure розкриття
disclosure of the industrial design розкриття інформації про промисловий зразок
disclosure of the invention розкриття інформації про винахід
disclosure of the utility model розкриття інформації про корисну модель
full disclosure повне розкриття
discovery відкриття
scientific discovery наукове відкриття
discrepancy (Syn. nonconformity, mismatch, contradiction, disparity) невідповідність
discrepancy of production (Syn. products nonconformity) невідповідність продукції
dispute (Syn. controversy) спір
economic dispute господарські спори
distribution розповсюдження

cable distribution кабельне розповсюдження програм
Internet distribution розповсюдження через Інтернет
document документ
audio-visual document аудіовізуальний документ
base design document базовий конструкторський документ
design document конструкторський документ
draft document чернетковий документ
fair document чистовий документ
graphic document графічний документ
iconic document зображальний документ
incoming document вхідний документ
internal document внутрішній документ
maintenance design document експлуатаційний конструкторський документ
official document офіційний документ
outgoing document вихідний документ
patent document патентний документ
patent-legal document патентно-правовий документ
personal document особовий документ
technological document технологічний документ
text document текстовий документ
unified document уніфікований документ
written document письмовий документ
duplicate дублікат
duplicate of the invention patent дублікат патенту на винахід
duration (Syn. period, term, time) термін
duration of copyrights термін охорони прав
patent duration of the industrial design термін дії патенту на промисловий зразок
patent duration of the invention (Syn. patent life of the invention) термін дії патенту на винахід
patent duration of the utility model термін дії патенту на корисну модель
duration of trademark термін дії свідоцтва на знак для товарів і послуг
duty (Syn. due, fee) мито
effect ефект

economical effect економічний ефект
positive effect позитивний ефект
scientific-and-technological effect науково-технічний ефект
efficiency (Syn. effectiveness) ефективність
absolute efficiency абсолютна ефективність
comparative efficiency порівняльна ефективність
technical efficiency технічна ефективність
effectiveness (Syn. efficiency) ефективність
cost-effectiveness (Syn. economical effectivity) економічна ефективність
effects (Syn. estate, possession, property) майно
embodiment втілення
physical embodiment фізичне втілення
emolument (Syn. remuneration, reward) винагорода
author's emolument авторська винагорода
employer роботодавець
encouragement (Syn. incentive, motivation) заохочення
enforce виконати, надати законну силу
enforcement примус до виконання
enterprise підприємство
venture enterprise венчурна фірма
entitle давати право
entrepreneurship підприємництво
essence (Syn. gyst) суть
essence of the invention суть винаходу
evidence докази, свідоцтва
prima facie evidence презумпція доказу
examination експертиза
deferred examination (Syn. postponed examination, suspended examination) відстрочена експертиза
examination of patentability експертиза по суті
patent examination патентна експертиза
preliminary patent examination попередня патентна експертиза
scientific- and-technical examination науково-технічна експертиза
exclusion виняток
exercise здійснення

expenditure (Syn. costs, expenses) витрати
patenting expenditure витрати на патентування
expenses витрати
research and development expenses (R & D expenses) витрати на дослідження та розробку
expert експерт
patent expert (Syn. patent examiner) експерт патентного відомства
export експорт
expropriation (Syn. alienation) відчуження
compulsory expropriation of rights примусове відчуження прав
expropriation of a patent примусове відчуження патенту
fair ярмарок
international fair міжнародний ярмарок
wholesale fair оптовий ярмарок
feature (Syn. sign, attribute) ознака
alternative features альтернативні ознаки
characteristic features (Syn. distinctions) відрізнювальні ознаки
essential features of the invention (Syn. critical limitations of the inventions) суттєві ознаки винаходу
equivalent features еквівалентні ознаки
external features зовнішні ознаки
feature of product ознака продукції
identical features ідентичні ознаки
similar features подібні ознаки
fee (Syn. tax, due, duty) збір
application fee заявочний збір
patent fee патентний збір
search fee збір за пошук
forfeit штраф
forfeiture конфіскація, позбавлення прав, штраф
form форма
form of search routine форма регламенту пошуку
patent form патентний формуляр
formula формула
formula of invention формула винаходу

formula of utility model формула корисної моделі
multi-claim formula of invention багатоланкова формула винаходу
single-claim formula of invention одноланкова формула винаходу
force major форс-мажорні обставини
fund (Syn. collection) фонд
depreciation fund амортизаційний фонд
capital fund (Syn. basic assets, capital assets, key assets, fixed capital stock) основні фонди
fund of developing production фонд розвитку виробництва
gain прибуток
goods товари
infringing goods контрафактні товари
holder (Syn. owner) власник
certificate holder власник свідоцтва
copyright holder власник авторського права
patent holder власник патенту
security document holder власник охоронного документа
imprisonment позбавлення свободи
incentive стимул
income прибуток
per capita income прибуток на душу населення
indemnify відшкодувати збитки
indication ознака
geographical indication географічна ознака
industrial design промисловий зразок
information інформація
alert patent information сигнальна патентна інформація
commercial information комерційна інформація
confidential (Syn. privileged) information конфіденційна інформація
public information (public data) відкрита інформація
patent information патентна інформація
statistical information статистична інформація
infringement (Syn. violation) порушення
actual infringement фактичне порушення
copyright infringement порушення авторського права і суміжних прав

patent independence незалежність патентів
patent infringement порушення прав власника патенту
potential infringement потенційне порушення
innovation (Syn. pioneering work) новаторство, інновація
innovator раціоналізатор
instance інстанція
intermediary (Syn. middleman, mediator) посередник
interpretation тлумачення
broad interpretation of the patent claim розширювальне тлумачення патентної формули
introduction впровадження
invention винахід
additional invention додатковий винахід
claimed invention оголошений винахід
combination invention комбінаційний винахід
invention of application винахід на застосування
joint invention спільний винахід
private invention вільний винахід
secret invention секретний винахід
service invention (Syn. employee's invention, company's invention) службовий винахід
unused invention невикористаний винахід
inventor винахідник
inventory (Syn. list, schedule) опис
inventory of estate (Syn. levy of execution) описування майна
investment інвестиція
investor інвестор
court instance судова інстанція
judicial proceedings судочинство
jurisdiction юрисдикція
justice юстиція ярмарок
justification правомірність, виправдання, обгрунтування
know-how ноу-хау
administrative know-how ноу-хау управлінського характеру
commercial know-how ноу-хау комерційного характеру

financial know-how ноу-хау фінансового характеру
scientific-and-technical know-how ноу-хау науково-технічного характеру
label (Syn. sticker, ticket, tag) етикетка, ярлик
manufacturer's label фабричний ярлик
labeling (Syn. marking) маркування
lapse (Syn. cessation, discontinuance) припинення
pre-term lapse of a patent дострокове припинення дії патенту
law (Syn. right) право
administrative law адміністративне право
case law прецедентне право
civil law цивільне право
commercial law (Syn. business law) комерційне право
copyright law авторське право
criminal law кримінальне право
financial law фінансове право
inventor's law винахідницьке право
labor law (Syn. law of master and servant) трудове право
merchant law торговельне право
patent law патентне право
succession law (Syn. law of descents) спадкове право
lawsuit судовий процес
lead першість
lease оренда
leaseholder орендатор
leasing лізинг
legislation законодавство, законодавча діяльність
economical legislation господарське законодавство
patent legislation патентне законодавство
legitimate легітимний
lessor орендодавець
letter лист
letter of authority (Syn. power of attorney; letter of attorney) доручення
liability (Syn. Responsibility, accountability) відповідальність
civil liability цивільна відповідальність
criminal liability кримінальна відповідальність

legal liability юридична відповідальність

liability of copyrights infringement відповідальність за порушення авторських прав

library loan бібліотечний абонемент

interlibrary loan міжбібліотечний абонемент

license ліцензія

accompanying license супутня ліцензія

complete license повна ліцензія

compulsory license вимушена ліцензія

cross license перехресна ліцензія

exclusive license виключна ліцензія

free license безкоштовна ліцензія

license of right ліцензія за правом

non-patent license безпатентна ліцензія

non-voluntary license примусова ліцензія

official license офіційна ліцензія

open license відкрита ліцензія

ordinary license невиключна ліцензія

package license пакетна ліцензія

partial license часткова ліцензія

patent license патентна ліцензія

returnable license зворотна ліцензія

license-holder (Syn. licensee) ліцензіат

licensor ліцензіар

limitation (Syn. prescription) 1) давність

limitation of action позовна давність

limitation 2) обмеження

limitation of rights обмеження прав

list (Syn. inventory, schedule) опис

list of documents опис документів

trade list торговельний асортимент

litigation судовий спір

patent litigation (Syn. patent dispute) патентний спір

logotype (Abbr. logo) фірмовий знак, торговий знак

loss збиток

lot (Syn. batch) партія
trial lot дослідна партія продукції
maintenance (Syn. operation, exploitation) експлуатація
product maintenance експлуатація виробу
manual (Syn. instruction, guide, instruction book) настанова
maintenance manual (Syn. service instruction, operating manual) настанова з експлуатації
manufacturer (Syn. producer, maker) виробник
mark знак
certification mark знак сертифікації
service mark знак обслуговування
trade mark знак для товарів і послуг
market ринок
information market інформаційний ринок
measure захід
merit достоинство
aristic merits художественные достоинства
misdemeanor адміністративне правопорушення
name ім'я, назва
commercial name торгівельна назва
nature (Syn. character) характер
prohibitive nature of a patent заборонний характер патенту
need потреба
network мережа
network of patents блок патентів
non-resident нерезидент
notary нотаріус
notice повідомлення, попередження
reserved-rights notice позначка про збереження прав
notification (Syn. warning) сповіщення
novation новація
novelty новизна
novelty of design новизна промислового зразка
novelty of invention новизна винаходу
novelty of innovation proposal новизна раціоналізаторської пропозиції

object об’єкт

basic object базовий об’єкт

object of author’s right об’єкт авторського права

object of economic activity об’єкт господарської діяльності

object of license об’єкт ліцензії

object of patent investigation об’єкт патентного дослідження

object of the invention об’єкт винаходу

public domain object in the invention об’єкт загального надбання у винаході

industrial property object об’єкт промислової власності

unique object унікальний об’єкт

unregistable object неохороноздатний об’єкт

obligation (Syn. responsibility, duty) обов’язок

legal obligation юридичний обов’язок

offense правопорушення

repeat offense повторне правопорушення

office відомство

State Patent Office Державне Патентне Відомство

operation чинність

operation of law чинність закону

organization організація

World Intellectual Property Organization (WIPO) Всесвітня Організація інтелектуальної власності

origin походження

own власний, володіти

parlance мова

trade parlance професійна мова

part (Syn. section, portion, fraction, proportion) частина

constituent part складова частина виробу

distinctive part of claim (Syn. characterizing clause) відрізнювальна частина патентної формули

functional part of a scheme функційна частина схеми

limiting part of claim обмежувальна частина патентної формули

party (Syn. side) сторона

contracting parties договірні сторони

injured party сторона, яка понесла збитки
party of origin сторона походження
third party третя сторона
patent патент
additional patent додатковий патент
analog patent (Syn. corresponding patent) патент-аналог
blocking-off patent гальмівний патент
confirmation patent підтверджений патент
defensive patent захисний патент
design patent патент на промислову модель
europatent європейський патент
fraudulent patent дезінформаційний патент
invalid patent (Syn. void patent) недійсний патент
invention patent патент на винахід
national patent національний патент
paper patent паперовий патент
patent advertising сповіщення про патент
patent science патентознавство
patent specialist (Syn. patent engineer) патентознавець
purchase-sale of patent купівля-продаж патенту
utility model patent патент на корисну модель
issue a patent видати патент
patentability патентоспроможність
patentability of industrial design патентоспроможність промислових зразків
patentability of inventions патентоспроможність винаходів
patentability of utility models патентоспроможність корисних моделей
patent clearance патентна чистота
absolute patent clearance абсолютна патентна чистота
pay (Syn. charge) плата
payment платіж
flat payment паушальний платіж
payment of damages відшкодування збитків
payment of license fee (Syn. license fee, license duty) ліцензійний платіж
penalty неустойка

penetration проникнення
market penetration проникнення на ринок
perfection (Syn. improvement) удосконалювання
period (Syn. duration, term, time) термін
guarantee period гарантійний термін
retention period термін зберігання документів
permission дозвіл
person особа
legal person (Syn. juristic person, artificial person) юридична особа
natural person фізична особа
third person (party) третя особа
piracy піратство
possession (Syn. ownership) володіння
power повноваження, право
emergency powers надзвичайні повноваження
general power of attorney генеральне доручення
once-only power of attorney разове доручення
resulting powers повноваження, які маються на увазі
special power of attorney особове доручення
practicability (Syn. applicability) придатність
industrial practicability (Syn. exploitability) промислова придатність
practice практика
legal practice юридична діяльність, юридична практика
presentation презентація
price ціна
know-how price ціна ноу-хау
license price ціна ліцензії
principal довіритель
priority пріоритет
convention priority конвенційний пріоритет
exhibition priority виставочний пріоритет
industrial design priority пріоритет промислового зразка
invention priority пріоритет винаходу
partial priority частковий пріоритет
trademark priority пріоритет знака для товарів і послуг

utility model priority пріоритет корисної моделі
privilege пільга
novelty privilege пільга по новизні
priority privilege пільга по пріоритету
tax privileges (Syn. tax concessions, tax credit) податкові пільги
production (Syn. manufacture) виробництво
batch production (Syn. scale production, serial production, production manufacturing) серійне виробництво
individual production одиничне виробництво
mass production (Syn. quantity production) масове виробництво
pilot production дослідне виробництво
stable production усталене виробництво
profit (Syn. benefit) вигода
missed profit (Syn. loss of profit) упущена вигода
profitability рентабельність
prohibit забороняти
promotion (Syn. advancement, progression) просування
market promotion (Syn. sales promotion) просування продукції
proof доказ
property власність
collective property колективна власність
community property комунальна власність
industrial property промислова власність
intellectual property інтелектуальна власність
nationwide property загальнодержавна власність
private property приватна власність
property of foreign states власність інших держав
state property державна власність
proposal (Syn. proposition, offer) пропозиція
innovation proposal раціоналізаторська пропозиція
technical proposal (Syn. technical proposition) технічна пропозиція
proposition (Syn. proposal, offer) пропозиція
technical proposition (Syn. technical proposal) технічна пропозиція
proprietor (Syn. property owner) власник
protection захист

ad interim protection (provisional protection) тимчасова правова охорона
information protection захист інформації
license object protection захист об’єкту ліцензії
patent protection of an object патентний захист об’єкту
product protection захист продукції
protection of an investment захист інвестицій
protection of industrial property захист об’єктів промислової власності
trade secret protection захист комерційної тайни
prototype прототип
prototype model головний зразок
prototype of the invention прототип винаходу
prototype of the utility model прототип корисної моделі
publication (Syn. publishing, issuance) публікація
punishment покарання, стягнення
purchase купівля
qualification кваліфікація
quality якість
product quality якість продукції
quire друкований лист
range (Syn. assortment, range) асортимент
production range промисловий асортимент
rate (Syn. index) показник
rates of competitiveness пошуки конкурентоспроможності об’єкта
recall відкликання
recall of application відкликання заявки
reciprocity взаємність, відносини на засадах взаємності
registration реєстрація
documents registration реєстрація документів
registration of the industrial design реєстрація промислового зразка
registration of the invention реєстрація винаходу
registration of the trademark реєстрація знака для товарів і послуг
registration of the utility model реєстрація корисної моделі
relations відносини
labor relations (Syn. employment relationship) трудові відносини
non-property relations немайнові відносини

property relations майнові відносини
remedy засоб захисту права
remuneration (Syn. reward, emolument) винагорода
equitable remuneration справедлива винагорода
renewal відновлювання
rent (Syn. rental fee, rent charge) орендна плата
renting рентинг, здавання в найом
repository довірена особа
reproduction (Syn. playback) відтворення
reprographic reproduction репрографічне відтворення
reproducibility відтворюваність
reproducibility of the design відтворюваність технічного рішення
requirement вимога
mandatory requirements обов'язкові вимоги
research (Syn. study) дослідження
applied research прикладні наукові дослідження
fundamental research фундаментальні наукові дослідження
patent-information research патентно-інформаційне дослідження
patent research патентне дослідження
responsibility (Syn. liability, accountability) відповідальність
managerial responsibility адміністративна відповідальність
retrieval (Syn. search) пошук
document retrieval документальний пошук
firm retrieval фірмовий пошук
information retrieval (Syn. information search) інформаційний пошук
name retrieval іменний пошук
numerical retrieval нумераційний пошук
patent information retrieval пошук патентної інформації
patent-legal retrieval патентний пошук
reference retrieval довідковий пошук
retrospective retrieval ретроспективний пошук
. **subject retrieval** тематичний пошук
reward (Syn. emolument, remuneration) винагорода
financial reward фінансова винагорода
right (Syn. law) право

assignee's right право правонаступника
corporate right корпоративне право
equality of right рівноправність
exclusive right виключне право
information right право на інформацію
inventor's rights права винахідника
moral right моральне право
neighboring rights суміжні права
non-property rights особисті немайнові права
property right майнове право
proprietary right (Syn. proprietary interest, right of ownership, right of property) право на власність
related rights пов'язані між собою права
right of broadcasting право на трансляцію
right of communication to the public право на представлення публіції
right of first applicant право першого заявника
right of performance право на виконання
right of possession право володіння
right of prior use право попереднього користування
right of private property право приватної власності
right of production право на виробництво
right of rental право на оренду
right of reproduction право на відтворення
right on name право на ім'я
right on property майнові права
shop right право роботодавця
special title right право на спеціальне найменування
translation and adaptation right право на переклад та адаптацію
royalty періодичний платіж
rule (Syn. regulation) правило
safeguard гарантувати, охороняти
sample (Syn. specimen, pattern) зразок
author's sample авторський зразок
base sample базовий зразок

experimental sample (Syn. experimental prototype) експериментальний зразок

product sample (Syn. item sample) зразок виробу

production sample (Syn. production specimen) зразок продукції

sanction санкція

economic sanctions економічні санкції

legal sanctions in case of patent infringement судові санкції у випадку порушення прав власника патенту

saving економія

cost saving зниження собівартості

saving in material економія матеріалів

search (Syn. retrieval) пошук

infringement search пошук на патентну чистоту

patentability search пошук на патентоспроможність

prior art search пошук на визначення рівня техніки

search for novelty пошук на новизну

subject search (Syn. subject retrieval) тематичний пошук

secret таємниця

state secret державна таємниця

commercial secret комерційна таємниця

seizure конфіскація, накладення арешту

sentence вирок, кара

sheet лист, аркуш

author's sheet авторський аркуш

publisher's sheet обліково-видавничий аркуш

sign підписувати, ставити підпис

signature підпис, підписання

signatory сторона, яка підписалась, доручення на право підписання документів

source джерело

source of information джерело інформації

specification (Syn. declaration, description) опис, специфікація

specification of the industrial design опис промислового зразка

specification of the innovation proposal опис раціоналізаторської пропозиції

specification of the invention опис винаходу
specification of the utility model опис корисної моделі
specimen (Syn. sample, pattern) зразок
reference specimen контрольний зразок
standard specimen (Syn. master copy) зразок-еталон
stage стадія, етап
research stage стадія наукових досліджень
step ступінь, міра
inventive step винахідницький рівень, неявність
storage (Syn. keeping) зберігання
information storage зберігання інформації
study (Syn. research) дослідження
market study кон'юнктурне дослідження
subject суб'єкт
subjects of copyright суб'єкти авторського права
subject of economic activity суб'єкт господарської діяльності
subject of entrepreneurship суб'єкт підприємницької діяльності
subject of law (Syn. person in law) суб'єкт права
sublicense субліцензія
subscription абонемент
substantiation (Syn. ground) обґрунтування
substitute представник
succession наступництво
legal succession правонаступництво
partial succession часткове правонаступництво
universal succession універсальне правонаступництво
sue пред'являти позов
suit (Syn. action, claim) позов
supervision (Syn. inspection) нагляд
supplier постачальник
suppression утаювання
suppression of infringement утаювання порушень
survey огляд, розвідування
suspension відстрочка
system система

inventions classification system система класифікації винаходів
legal system система права
registration patent system явочна система патентування
suspended patent system (Syn. deferred patent system) відкладена система патентування
system of legislation система законодавства
tax податок
technology технологія
information technology інформаційна технологія
test (Syn. check) випробування
acceptance test приймальні випробування
bench test стендові випробування
check test контрольні випробування
development test доводжувальні випробування
environmental test кліматичні випробування
field test експлуатаційні випробування
preliminary test попередні випробування
products test випробування продукції
verification test натурні випробування
testament (Syn. will) заповіт
ticket (Syn. label, sticker, tag) ярлик, етикетка
sales ticket (Syn. trading ticket) товарний ярлик
tool (Syn. apparatus) апарат
reference tools довідково-пошуковий апарат
trade торгівля
trade in objects of the copyright торгівля об'єктами авторського права
trademark торгова марка
acoustic trademark звуковий знак
collective trademark колективний знак
combined trademark комбінований знак
deceptive trademark оманний знак
illuminated trademark світловий знак
shape trademark об'ємний знак
word trademark словесний знак
transaction (Syn. operation) операція

treatment (Syn. mode, duty, conditions, routine, regime) режим
national patent treatment національний патентний режим
national treatment національний режим для продукції інших країн
national treatment of equal preference національний режим однакового сприяння
equal treatment режим однакового сприяння
treaty (Syn. contract, agreement) договір
Patent Cooperation Treaty (PCT) Договір про патентну кооперацію
unambiguity однозначність
unambiguity of the patent claim однозначність формули винаходу
undertaking 1) підприємство
2) зобов'язання, угода
unification уніфікація
unification of products уніфікація продукції
updating (Syn. modernization) доопрацювання, модернізація
pilot sampling updating доопрацювання дослідного зразка
use (Syn. utilization, exploitation) застосування, використання
authorized use санкціоноване використання
fair use законне використання
public use of the industrial design відкрите застосування промислового зразка
public use of the utility model відкрите застосування корисної моделі
public use of the invention відкрите застосування винаходу
unauthorized use несанкціоноване використання
use of known object for new purpose застосування відомого об'єкта за новим призначенням
utility корисність
utility model корисна модель
utility of the invention корисність винаходу
utility of the innovation proposal корисність раціоналізаторської пропозиції
value цінність
commercial value комерційна цінність
potential value потенційна цінність
real value of a proposal дійсна цінність пропозиції

verification (Syn. check, test, examination) перевірка

operational verification of proposal дослідна перевірка пропозиції

verification of novelty перевірка новизни

verification of conformity перевірка відповідності

warning попередження, сповіщення

IPC (International Patent Classification) МПК (Міжнародна патентна класифікація)

PCT (Patent Cooperation Treaty) ДПС (договір про патентне співробітництво)

R & D expenses (Research and Development expenses) витрати на дослідження та розробку

UDC (Universal Decimal Classification) УДК (Універсальна десяткова класифікація)

WCT (WIPO Copyright Treaty) договір про авторське право ВОІВ

TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) угода про пов'язані з торгівлею аспекти прав на інтелектуальну власність

WIPO (World Intellectual Property Organization) ВОІВ (Всесвітня організація інтелектуальної власності)

Література для подальшого читання:

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