



HANKEN

Introduction to the Course & Overview of IPRs

Intellectual Property Rights

(35E00800)

Aalto University, 30.10.2017

Rosa Maria Ballardini, Senior Lecturer, rosa.Ballardini@ulapland.fi

Max Oker-Blom, Docent, max.oker-blom@hanken.fi

Schedule

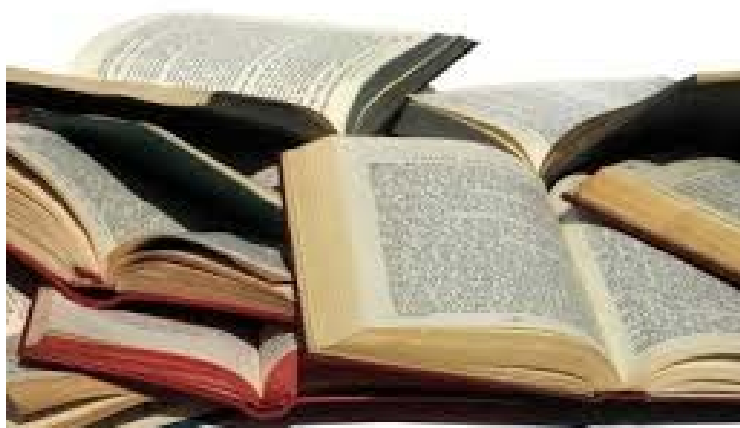


HANKEN

Date	Time	Lecturer	Topic	Room
30.10	13.15-14.45	Ballardini Oker-Blom	1. Introduction to the course 2. Overview and Introduction to IPL & Law and Economics	G-112
3.11	10.15-11.45	Oker-Blom	3. Intro to L&E of IP	G-112
6.11	13.15-14.45	Ballardini	4. European Copyright Law I	G-112
10.11	10.15-11.45	Ballardini	5. European Copyright Law II	G-112
13.11	13.15-14.45	Ballardini	6. European Patent Law I	G-112
20.11	13.15-14.45	Ballardini	7. European Patent Law II	G-112
24.11	10.15-11.45	Ballardini	8. European TM Law	
27.11	10.15-11.45	Oker-Blom	8. The Economics of Copyright, Patents & TM	G-112
1.12	10.15-11.45	Oker-Blom	10. The Economics of Copyright, Patents & TM	G-112
4.12	13.15-14.45	Ballardini Oker-Blom	11. Seminars: Term Papers Presentations	G-112
8.12	10.15-11.45	Ballardini Oker-Blom	12. Seminars: Term Papers Presentations	G-111

Readings for today

- » Kur, Annetter & Dreier, Thomas, *European Intellectual Property Law. Text, Cases & Materials* (EE Publishing, 2013), Ch. 1 & 2
- » William M. Landes & Richard A. Posner, *The Economic Structure of Intellectual Property Law* (2003), Ch. 1



Today's agenda

Part I

- » IP – Definitions
- » Rationale and Significance
- » Types of IP
- » History
 - » International framework
 - » EU framework

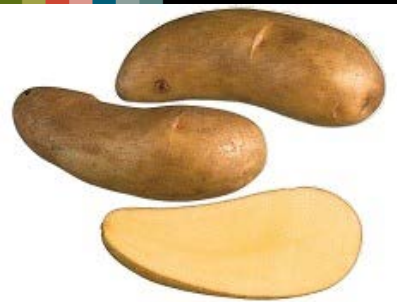
Part II

- » Introduction to law and economic approach

What is "Intellectual Property" (a.k.a. "IP")?

- » There is no uniform definition of IP
- » Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic field (WIPO Handbook, 2014)
 - » Essentially negative rights to stop others from copying or counterfeiting
 - » Legally enforceable
 - » Territorial in nature





Intellectual Property

- » Copyright & Related Rights
- » Industrial Property
 - » Patents
 - » Trademarks
 - » Utility models
 - » Industrial Designs
 - » Geographical Indications (GIs)
 - » Plant Varieties
- » 'Soft' IP
 - » Trade secrets
 - » Confidential information
 - » Know-how

Types of IP



HANKEN

TYPE	SUBJECT MATTER & PURPOSE
Copyright	Right related to original/creative works, including literary, dramatic, musical, artistic works (including software); right is only against copying, and lies in the expression of an idea rather than its general concept or character
Trademark	Right to exclusive use of any sign capable of graphical representation (e.g. words, letters, numerals, pictures, shapes, colours, sounds, smells, etc..) by which consumers can identify the source of goods or services
Patents	Right to exclude others from practicing inventions that are novel, inventive and industrially applicable in exchange for publishing this information
Industrial Designs	Right to the original, ornamental and non-functional feature (i.e. the appearance) of the whole or part of an industrial or handcrafted product resulting from the features in the lines, contours, colours, shape, texture, and/or materials used
Utility Models	Rights of protection for certain inventions that are technically less complex inventions or for inventions that have a short commercial life and normally do not meet the patentability criteria
GIs	Rights to signs used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin

Theories – Why do we have IPRs?

Natural Rights Theory/Lockean Theory

- » The law should reward inventors/creators as the society benefits from "the fruits of their labour" (Jhon Locke's *Second Treatise of Government* (1690))
- » Inventors and creators have a natural right on their inventions and creations
 - » The law should acknowledge this natural right

Incentive theory (Utilitarian/Social planning/Policy)

- » IP law provides incentives for innovation and creation
- » Types of incentives:
 - » Incentives already existing in the market
 - » Incentives that are artificially created (e.g. By law)

Ref.: Hettinger, Justifying Intellectual Property, 18 Phil. And Pub. Aff. 31 (1989)

Elements of all IP Laws

- » Subject matter to be protected
- » Qualifications for protection
 - » Who can claim
 - » Procedure for claiming
 - » Substantive criteria
- » Set of exclusive rights (rights to exclude other people's uses of the IP)
- » Limitations & exceptions on exclusive rights
- » Infringement standards
- » Set of remedies



How does the IPR system function?

- » Complicated regulation on several levels (national, regional and global)
- » Regulation amended and changed several times
- » Enforcement slow, expensive, complicated and mainly national
- » At present, focus on bilateral agreements (FTAs) or arrangements for groups of States



HANKEN



Internationalization of IP

International IP Framework - History of Modern IP Law



- » **Bilateral treaties** in the 1840s and 1850s (see British International Copyright Act 1838, 1844, Prussia 1846, Saxony 1847, France 1851, Belgium 1854, Spain 1857)
 - » Result: Conceptual harmonisation and division - copyright protects art and literature, while trade and commerce are protected by other rights such as patents, trade marks and design rights
- » **First generation Conventions** (The Paris Convention (1883) for Protection of Industrial Property; The Berne Convention (1886) for Protection of Literary and Artistic Works)
 - » Result: bilateral Conventions were replaced; central principles: 1) National (regional) protection, 2) principle of *national treatment*, 3) *Priority date* of applications for registration made within a certain time limit from the first application (6-12 months), 4) The principle of *minimum standards of protection*

International IP Framework – History of Modern IP Law (cont')



- » **Second generation conventions** (The Strasbourg Agreement the Concerning International Patent Classification (1954); Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957); Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973); Locarno Agreement Establishing an International Classification for Industrial Designs (1968))
 - » Result: Definition and classification of IPRs

- » **Third generation conventions** (Madrid Agreement Concerning the International Registration of Marks (1891); Madrid Protocol (1989); Hague Agreement Concerning the International Deposit of Industrial Designs (1925); Patent Cooperation Treaty (PCT) (1970); Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1980); Lisbon Agreement for the Protection of Appellation of Origin and their International Registration (1958))
 - » Result: one application, several registrations

International IP Framework – History of Modern IP Law (cont')

- » **Fourth generation** (The Agreement on Trade-Related Aspects of Intellectual Property Rights – TRIPS (1994))
 - » Results: New relationship between trade and IPR (due to globalization); additional to minimum requirements (from Berne, Paris etc); Most Favoured Nation-principle (MFN); Focus on enforcement
 - » [MFN-principle: “..with regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the national of all other Members.”]



Europeanization of IPRs

- » From national (MS) to regional (EU) protection
 - » Promoting harmonization of IPR-systems in the Member States to enhance the Internal Market
 - » *Directives on trade marks and designs; Directives on copyright; Directive on Databases*
 - » Community-Wide IP Rights
 - » *Community Trade Mark; Community Design; Community Plant Variety Right; Community Patent (still pending)*
 - » Common rules on procedures, enforcement and sanctions
 - » *European Directive (2004/48/EG); Crossborder Enforcement (Brussels Regulation 44/2001); Centralisation of dispute solving procedures and courts (UPC – still pending)*

» TFEU, Article 118

» In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, **shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.**

» The Council, acting in accordance with a special legislative procedure, **shall by means of regulations establish language arrangements for the European intellectual property rights.** The Council shall act unanimously after consulting the European Parliament.

- » EU sources (secondary law)
 - » Directives
 - » Regulations
 - » Opinions & Recommendations
 - » CJEU case law
- » Non-EU sources of law, for e.g.:
 - » UPOV Convention (1961): *sui generis* system for new plant varieties
 - » Strasbourg Patent Convention (1963): aiming at harmonizing substantive patent law
 - » EPC (1973): centralized system for granting patents
 - » London Agreement (2000): aiming at reducing the translation costs of European patents
 - » National (EU member states) & regional (e.g. EPO BoA decisions) case law

Part II: *Law and Economics and the Economic Theory of Property*

Law and Economics of Intellectual Property Rights (IPR) - 1

- » Starting points
 - » The focus of law is rights
 - » The focus of economics is property
- » From an economics point of view importance is, inter alia, attached to
 - » Exclusivity
 - » Transferability
 - » Universality
- » IPRs are in the very center of innovation
 - » It is a matter of striking a balance between incentive and access

Law and Economics of Intellectual Property Rights (IPR) - 2



- » Applying micro economics on the formation, processes, etc. of law
- » A model of argumentation
 - » The market as a starting point
 - » The individual as a rational wealth maximizer
 - » Norms as incentives
 - » Efficiency – a cost benefit approach
 - » Transaction costs

Law and Economics of Intellectual Property Rights (IPR) - 3



- An **external** point of view
 - Using an efficiency perspective on legal norms (putting a 'roof' on rents)
 - Analysing legislation using public choice theory (plain packaging)
- An **internal** point of view
 - Using economic argumentation when applying law (e.g. on IPR's case law)

Next class

» Oker-Blom, Intro to L&E of IP, 3rd Nov, 10.15-11.45

Readings

» William M. Landes & Richard A. Posner, *The Economic Structure of Intellectual Property Law* (2003), Ch. 1