

PATENT BASICS**DEFINITION OF PATENT**

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.

DEFINITION OF UTILITY INNOVATION

A utility innovation is an exclusive right granted for a “minor” invention which does not require to satisfy the test of inventiveness as required of a patent.

PATENTABLE INVENTIONS

- New, which means that the invention has not been publicly disclosed in any form, anywhere in the world;
- Involve an inventive step, that is to say the invention must not be obvious to someone with knowledge and experience in the technological field of the invention; and
- Industrially applicable, meaning it can be mass produced.

NON-PATENTABLE INVENTIONS

- Discoveries, scientific theories and mathematical methods;
- Plant or animal varieties or essentially biological processes for the production of plants or animals, other than man-made living micro-organisms, micro-biological processes and the products of such micro-organism processes;
- Schemes, rules or methods for doing business, performing purely mental acts or playing games;
- Methods for the treatment of human or animal body by surgery or therapy, and diagnostic methods practiced on the human or animal body.

IMPORTANCE OF PATENT REGISTRATION

- To exploit the patented invention
- To assign or transmit the patent
- To conclude license contracts

DURATION OF PATENT

A patent is protected 20 years from the date of filing.

DURATION OF UTILITY INNOVATION

A utility innovation is protected 10 + 5 + 5 years from the date of filing subject to use.

WHO MAY APPLY?

Any person may make an application for a patent or for a utility innovation either alone or jointly with another person. The word “person” is not limited to natural persons and thus also includes, for example, a company.

TRADEMARK BASICS

DEFINITION OF TRADE MARK

Trademark means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings.

Sign – any letter, [word](#), name, signature, numeral, [device](#), brand, heading, label, ticket, [shape of goods or their packaging](#), [color](#), [sound](#), [scent](#), [hologram](#), [positioning](#), [sequence of motion](#) or any combination thereof.

Collective Mark – A collective mark shall be a sign distinguishing the goods or services of members of the association which is the proprietor of the collective mark from those of other undertakings.

Certification Mark – A certification mark shall be a sign indicating that the goods or services in connection with which it shall be used are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics.

NON-REGISTRABLE TRADE MARK

1. **Prohibited Marks**

If the use of which is likely to confuse or deceive the public or contrary to law.

2. **Scandalous or Offensive Matter**

If it contains or comprises any scandalous or offensive matter or would not otherwise be entitled to protection in any court of law.

3. **Prejudicial to the Interest or Security of the Nation**

Registrar bears the responsibility of determining the trade mark, whether it might be prejudicial to the interest or security of the nation. It may be that a mark contains an inflammatory statement or words.

GROUND FOR REFUSAL OF REGISTRATION

1. Absolute grounds for refusal of registration
2. Relative grounds for refusal of registration

FUNCTIONS OF TRADE MARK

1. **Origin** – A trade mark helps to identify the source and those linked for the products and services trade in the market.
2. **Choice** – A trade mark assists consumers to choose goods and services with ease.
3. **Quality** – Consumers define a certain trade mark for its known quality.
4. **Marketing** – Trade mark play a significant role in promoting. It's common for consumers to make purchases based on continuous effect of advertising.

5. **Economic** – Recognized trade mark is a valuable asset. Trade marks may be licensed or franchised.

IMPORTANCE OF TRADE MARK REGISTRATION

Intellectual Proprietary privileges in relation to a trade mark may be established through actual use in the marketplace and registration provides for:

1. **Exclusive Rights** – Registered trade marks owners have exclusive right to use their marks in trading. They also have the rights to take legal action for infringement under the Trade Mark Law against others who use their marks without consent. They can either take civil action or lodge complaints to Enforcement Division for appropriate actions under the Trade Description Act 1972.
2. **Legal Evidence** – Registration certificate issued by Registrar Office is a prima facie evidence of trade mark ownership. A certificate of registration serves as an important document to establish the ownership of goods exported to other countries.

DURATION OF REGISTRATION

Trade mark registration is valid for ten years from the date of application and may be renewed every ten years.

MULTIPLE CLASS APPLICATION

An application may be made in a single application listing goods or services belonging to several classes of classification to the Registrar.

DIVISIONAL

An application for the registration of trademark or the registration of trademark may, upon the request of the applicant or registered proprietor, be divided into two or more separate applications for the registration or registration of trademark.

MERGER

Two or more separate applications for registration of trademark or registration of trademark may, upon the request of the applicant or registered proprietor, be merged into one application for registration of trademark or one registration of trademark.

INDUSTRIAL DESIGN BASIC

DEFINITION OF INDUSTRIAL DESIGN

An industrial design means features of shape, configuration, pattern or ornament applied to an article by any industrial process which in the finished article appeal to the eye and are judged by the eyes.

REGISTRABLE INDUSTRIAL DESIGN

1. Fulfill the interpretation of Industrial design
2. New in Malaysia or elsewhere
3. Not contrary to public order or morality

NON-REGISTRABLE INDUSTRIAL DESIGN

1. A method or principle of construction
2. The designs of articles depend upon the appearance of another article which forms an integral part of the article
3. It differs only in immaterial details or features
4. The features of the article are dictated solely by function

IMPORTANCE OF INDUSTRIAL DESIGN REGISTRATION

Owner of a registered design has the exclusive right to make, import, sell or hire out any article to which the design has been applied.

PERIOD OF REGISTRATION

1. A registered industrial design is given an initial protection period of 5 years from the date of filing.
2. Extendable for a further four consecutive terms. The maximum protection period is 25 years.

WHO MAY APPLY?

1. Author
2. Company
3. Individual

COPYRIGHT BASIC

DEFINITION OF COPYRIGHT

Copyright is the exclusive right to control creative works created by the author, copyright owner and performer for a specific period governed under the Copyright Act 1987.

WORKS ELIGIBLE FOR COPYRIGHT

1. literary works;
2. musical works;
3. artistic works;
4. films;
5. sound recordings;
6. broadcasts; and
7. derivative works

DURATION OF COPYRIGHT

1. Literary, Musical or Artistic Works
Generally, this categories of copyright work reflects to the human beings which shall subsist during the life of the author plus 50 years after his death.
2. Film, Sound Recordings and Performer
This categories of copyright work shall subsist for 50 years from the work was published,

fixed in a fixation for the film and sound recording. For performer, the copyright work shall subsist from the performances was perform or fixation in a sound recording.

3. Broadcasts

For the copyright in broadcasts, its protection occurred in way of transmission either by wire or wireless means, the period for fifty years shall be computed from the which the broadcasts was first made.

THE RIGHTS OF COPYRIGHT OWNERS

1. Legal Rights

Author, copyright owner and performer is given an exclusive right to control under the copyright law. Legal rights that are given to them includes the rights to enforce their copyrighted works in cases for infringement either by civil or criminal action. In term of criminal prosecution, it is conducted by the Enforcement Division of Ministry of Domestic Trade, Cooperative and Consumerism (MTDCC) or Royal Malaysian Police.

2. Economic Rights

Economic rights that are given to rightholders includes rights of reproduction, rights of communication to public, rights to perform, showing or playing to the public, rights of distribution and rights of commercial rental. This rights can be exercised during the period of protection governed under Copyright Act 1987. Economic rights allows the owner of rights to derive financial reward from the use of his works by the user or commercial purposes. Form of economic rights can be by way of assignment, licensing and testamentary disposition.

3. Moral Rights

- Paternity Rights

This rights allows the author to claim the originality rights of his or her creation.

- Integrity Rights

This right authorizes the author to prevent any users from distortion, mutilation or other modifications of his or her works whereby the result of the modification will significantly alter the original work and adversely affect the author's honor or reputation.

COPYRIGHT INFRINGEMENTS

Whoever use any copyrighted works without consent or authorization from the author, copyright owner and performer, it may constitute an infringement under Copyright Act 1987. Amongst the act of infringement includes:

- reproduces in any material form, performs, shows or plays or distributes to the public,
- imports any article into Malaysia for the purpose of trade or financial gains;
- makes for sale or rent any infringing copy;
- sells, rent or by way of trade, exposes or offers for sale or rent any infringing copy;
- distributes infringing copies;
- possesses, otherwise than for his private and domestic use, any infringing copy;
- exhibits in public any infringing copy by way of trade;
- makes or has in his possession any contrivance used or intended to be used for the purpose of making infringing copies