

## Chapter 10 Intellectual Property

### Article 117 General Provisions

1. The Parties shall ensure adequate and non-discriminatory protection of intellectual property, efficient and transparent administration of intellectual property protection system, and adequate and effective enforcement of intellectual property rights against infringement, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.

2. The Parties, recognizing the growing importance of intellectual property for promoting economic competitiveness in the knowledge-based economy, and of intellectual property protection in this new environment, shall develop and strengthen their cooperation in the field of intellectual property.

3. Intellectual property referred to in this Chapter shall cover all categories of intellectual property:

- (a) that are subject of Articles 123 through 128; and/or
- (b) that are under the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.

### Article 118 Definitions

For the purposes of this Chapter:

- (a) the term "Paris Convention" means the Stockholm Act of 1967 of the Paris Convention for the Protection of Industrial Property;

- (b) the term "rights management information" means information which identifies a work, performance or phonogram; the author of the work, the performer of the performance or the producer of the phonogram; the owner of any right in the work, performance or phonogram; or information about the terms and conditions of the use of the work, performance or phonogram; and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance or a phonogram or appears in connection with the communication or making available of a work, a fixed performance or a phonogram to the public; and
- (c) the term "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement.

#### Article 119 Cooperation

1. The areas and forms of cooperation referred to in paragraph 2 of Article 117 may include, but not be limited to:

- (a) exchange of information and experts in the field of intellectual property;
- (b) strengthening the intellectual property protection system;
- (c) promotion of mutual understanding of intellectual property protection system of each Party;
- (d) promotion of public awareness on intellectual property;
- (e) organizing international symposiums, workshops and fairs; and
- (f) technical assistance to be agreed upon between the Parties in the development of information and communications technology-related projects for efficient administration of intellectual property protection system.

2. The implementation of such cooperation shall be subject to the availability of appropriated funds and the applicable laws and regulations of each Party.

3. Costs of such cooperation shall be borne in as an equitable manner as possible between the Parties through efficient and effective utilization of resources.

4. The dispute settlement procedures provided for in Chapter 15 shall not apply to this Article. Any differences between the Parties as to the implementation of this Article may be, upon agreement between the Parties, referred to the Sub-Committee on Intellectual Property for appropriate action.

#### Article 120

##### Streamlining and Harmonization of Procedural Matters

1. For the purposes of providing efficient administration of intellectual property protection system, each Party shall endeavor to streamline its administrative procedures concerning intellectual property.

2. No Party may require the authentication of signatures or other means of self-identification on documents to be submitted to the competent authority of the Party, including applications, translations into a language accepted by such authority of any earlier application whose priority is claimed, powers of attorney and certifications of assignment, in the course of application procedure or other administrative procedures on patents, utility models, industrial designs, or trademarks except as provided in paragraph 3 below.

3. A Party may require as exceptions to paragraph 2 above:

- (a) the authentication of signatures or other means of self-identification, if the law of the Party so provides, where the signatures or other means of self-identification concern the surrender of a patent or a registration of utility models, industrial designs or trademarks; and
- (b) the submission of evidence if there is reasonable doubt as to the authenticity of signatures or other means of self-identification on documents submitted to the competent authority of the Party. Where the competent authority notifies the person that evidence is required, the notification shall state the substantial reason for requiring the submission.

4. Where the certification of a translation of an earlier application whose priority is claimed is required by a Party under its laws and regulations, such a requirement shall be deemed to be satisfied by the submission of a written statement by the translator that, to the best of his knowledge, the translation of the earlier application is faithful and accurate.

5. Applications for and registrations of relevant intellectual property rights and publications thereof shall be classified in accordance with the laws and regulations of each Party and, to the extent possible, in conformity with the international patent classification system and international classification system of goods and services for the purposes of the registration of marks under existing international intellectual property agreements administered under the auspices of the World Intellectual Property Organization.

#### Article 121 Transparency

For the purposes of further promoting transparency in the administration of its intellectual property protection system, each Party shall, in accordance with its laws and regulations, take appropriate measures to:

- (a) publish information on applications for and grants of patents, and applications for registrations of and registrations of utility models, industrial designs, trademarks, layout-designs of integrated circuits and new varieties of plants, and make easily available to the public information contained in the files thereof held by the competent authority; and
- (b) make easily available to the public information on intellectual property protection system including information on its efforts to provide effective enforcement of intellectual property rights.

#### Article 122 Promotion of Public Awareness Concerning Protection of Intellectual Property

The Parties shall take necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

### Article 123 Patents

Each Party shall, in accordance with its laws and regulations, ensure that any applicant for a patent may file a request to the competent authority that his application be examined promptly.

Note: For the purpose of this Article, the term "competent authority" means, for the Philippines, the Director of the Bureau of Patents of the Intellectual Property Office.

### Article 124 Industrial Designs

Each Party shall provide for the protection of industrial designs in accordance with the TRIPS Agreement.

### Article 125 Trademarks for Goods and Services

Each Party shall provide for the protection of trademarks in accordance with the Paris Convention and the TRIPS Agreement.

### Article 126 Copyright and Related Rights

1. Each Party shall provide to authors, performers and producers of phonograms the exclusive right of authorizing the making available to the public of their works, performances fixed in phonograms and phonograms, respectively, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

2. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights under the laws and regulations of the Party and that restrict acts, in respect of their works, performances or phonograms, which are not authorized by the authors, performers or producers of phonograms concerned or permitted by the laws and regulations of the Party.

3. Each Party shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of copyrights and related rights:

- (a) to remove or alter any electronic rights management information without authority;
- (b) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, works, copies of works, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.

#### Article 127 New Varieties of Plants

Each Party recognizes the importance of providing a system of protection of new varieties of plants and shall, within its capabilities, endeavor to increase the number of plant genera and species that can be protected under its laws and regulations. In this regard, each Party shall consider the concerns of the other Party.

#### Article 128 Unfair Competition

1. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

2. Each Party shall, in accordance with its laws and regulations, ensure that any acts of unfair competition, which shall include, but not be limited to, the following acts, are prohibited:

- (a) acts of selling goods which imitate the appearance of another person's goods; and
- (b) acts of such a nature as to create confusion by any means whatever with the services of a competitor.

3. Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with the TRIPS Agreement.

## Article 129 Enforcement

1. Each Party shall, in accordance with its laws and regulations consistent with the TRIPS Agreement, provide for procedures concerning the suspension by the customs authority of the release of infringing goods in cases of infringement of patents, utility models, industrial designs, trademarks or copyrights and related rights.
2. Each Party shall ensure that the right holder of intellectual property has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.
3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful trademark counterfeiting, copyright piracy, infringement of right relating to new varieties of plants or infringement or repetition of infringement, as the case may be, of patents, utility models, industrial designs or layout-designs of integrated circuits on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity as may be provided for in the laws and regulations of each Party.

## Article 130 Sub-Committee on Intellectual Property

1. For purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 13.
2. The functions of the Sub-Committee shall be:
  - (a) reviewing the implementation and operation of this Chapter;
  - (b) discussing the following issues, as appropriate, related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights:

- (i) scope of patentable inventions and of prior art;
- (ii) translation requirements of priority documents;
- (iii) scope of registrable industrial designs;
- (iv) protection of well-known trademarks;
- (v) international system for trademark registration;
- (vi) liability of internet service providers;
- (vii) collective management organizations for copyright and related rights;
- (viii) protection of new varieties of plants;
- (ix) adequate and effective enforcement; and
- (x) fair and equitable enforcement procedures, including procedures for border measures;
- (c) reporting the findings of the Sub-Committee to the Joint Committee;
- (d) making appropriate recommendations, as needed, to the Joint Committee; and
- (e) performing other functions as may be delegated by the Joint Committee pursuant to Article 13.

3. The Sub-Committee shall meet at such venue and times as may be agreed by the Parties.