LITERATURE REVIEW

IPR – General


This paper examines how the role of patents and utility models in innovation and economic growth varies with level of economic development. Using a panel dataset of over 70 countries, it was found that patent protection is an important determinant of innovation and that patentable innovations contribute to economic growth in developed countries, but not in developing. Instead, in developing economies, a minor form of intellectual property rights (IPRs) – namely utility models – is conducive to innovation and growth, controlling for other factors. Using Korean firm level data as a case study, it was found that utility model innovations contribute to firm performance when firms are technologically lagging and that those minor innovations can be a learning device and thus a stepping stone for developing more patentable inventions later on. Upon reaching higher levels of technological capabilities, firms become more reliant upon patents and less on utility models. Thus the lesson here is that patent protection enhances innovation and economic growth in countries where the capacity to conduct innovative research exists. Where this capacity is weaker, a system that provides incentives to conduct minor, incremental inventions is more conducive to growth. The significance of this paper is to emphasize the importance not just of the strength of IPRs but of the appropriate type of IPRs for economic development.


This paper presents the results of a web-survey of scientists and researchers from India, Malaysia, Philippines, Thailand, and Vietnam, conducted to measure their awareness, attitudes and perspectives towards the new intellectual property rights (IPRs) paradigm in agriculture. Results indicate that respondents are aware on IPR and its features and have openness in answering IPR-related questions despite the current ambiguity and debate surrounding IPRs in public sector research. They also understand global policy trends and some of the risk factors involved. However, they need to have more exposure to, and training on, the use of the different IPR instruments. Interestingly, respondents disclosed that even with expanding IPR in agriculture, they did not have problems accessing new biological materials and genetic resources from local and international research centres. Results can serve as important reference for institutions implementing IP capability programmes for better appreciation of the importance of IPR for public research institutions.


The Indian pharmaceutical industry is one of the fastest growing industries in the world competing with the global pharmaceutical industries. It is in the front rank of India’s science-based industries with a wide range of capabilities in the complex field of drug manufacture and technology. In the post independence era (i.e. post 1947) the Indian pharmaceutical industry was completely dominated by multinational companies (MNCs) and drug price in India was among the highest in the world. In 1970, the Indian parliament passed the Indian Patents Act 1970 with provisions to allow only process patents for pharmaceutical molecules and new chemical entities (NCEs). The Indian Patents Act 1970 was the main reason for the fast and continuous growth of the Indian pharmaceutical industry. The Indian pharmaceutical industry until 2005, engaged in generic product development hence there was no significant activity in patenting in India. In 2005, the
Indian Patents Act was amended to include a ‘product patent’ regime to make Indian patent law compliant with TRIPS. This shifted the Indian pharmaceutical industry’s focus from generic products to research based ‘NCEs’ and ‘novel drug delivery products’. The post TRIPS era saw vigorous activity in patenting in India. The present review aims to study the growth and various transition phases in the Indian pharmaceutical industry in light of pharmaceutical patenting by members of the Indian pharmaceutical industry in India.


Rights pertaining to intellectual property have been mainly categorized, under Jordanian laws, to cover trademarks, patents, copyright, unfair competition and trade secrets, integrated circuits, geographical indicators, industrial designs and models, and the new plants classifications. Alternative dispute resolution (ADR) has also been categorized under Jordanian laws to cover arbitration, mediation and conciliation. This article examines the reliability and viability of alternative dispute resolution to resolve intellectual property disputes. It answers the question whether disputes arising over intellectual property rights can only be resolved using alternative dispute resolution. In other words, do intellectual and industrial property disputes have special nature which makes them different from the nature of other disputes to be resolved in a particular way? It is found that the disputes arising over the exploitation of the intellectual property rights can be resolved by alternative dispute resolution, and it is also found that it is possible to apply both arbitration and mediation laws to resolve intellectual property disputes as far as Jordan is concerned.


Both China and India have been experiencing a historical take-off in the use of intellectual property rights (IPR). In terms of trademark applications filed with domestic IP offices in 2009, the evidence demonstrates that China now ranks 1st worldwide and India 5th, while for patent filings China ranks 3rd worldwide and India ranks 9th. This performance is remarkable as both China and India experienced negligible demand for IPR protection as recently as two decades ago. The IPR take up trends in these two countries are analysed in detail, highlighting the structure of patent and trademark demand since 1990. Specifically, the available series are broken down and analysed according to: (i) national versus foreign origin of patents and trademarks; (ii) technological (IPC) and trademark (NICE) classes; and (iii) the major individual patent users in each country. The data used refers to applications in the Chinese and Indian IP offices although the demand from residents of these two countries in both the international and other national systems is also assessed. Beyond the existing momentum in IPR registrations by China and India and their capacity to maintain it into the near future, the paper addresses practical questions about the strategies, motives and benefits behind the current trends. In particular, the authors seek to evaluate the capacity of both China’s and India’s National Innovation Systems to internalize the potential returns of this increasing demand for IPR. The insight reached finds that should both China and India sustain their current IPR growth rates, they will be able to catch up with the most advanced economies within the time span of a few decades.


Geographical indications (GIs) have assumed greater importance in terms of juridical development and economic diplomacy with their inclusion in Trade-Related Aspects of Intellectual Property Agreement (TRIPS) of World Trade Organization. Its importance for older economies and countries with strong agricultural base has become manifold. In this paper, the author has analysed the implementation of GI provisions of TRIPS Agreement in Pakistan where agriculture is a major chunk of its gross domestic product (GDP). Although there are hundreds of GIs in Pakistan, like India, yet paradoxically there is not a single registration of GIs under the prevailing legal setup. Hence inadequacies are examined, which hamper the development of GI legal regime in Pakistan. Comparative examples have been taken with regard to the development of the *sui generis* law of...
GIs in India and GI Regulations of European Union. The author has also analysed the potential of GIs in Pakistan and the economic aspect of GIs with respect to its correlation with development. At the end, are discussed the challenges, the role of the State and way forward.

**Patents**


The determination as to whether or not two algorithms in a computer programme are similar enough to be considered ‘the same’ algorithm can be crucial in patent prosecution and other legal disputes, from theft of trade secrets to patent infringement. Establishment of prior art by the responsible court involves consideration of the contemporary practices of software engineers and computer scientists who develop and implement algorithms. This paper, co-authored by two computer scientists and two legal professionals, reviews those arguments that can be used to assess the similarity of algorithms, in relation to the criteria of novelty for a grant of patent.


According to recent surveys, there exist numerous patent applications in countries, such as Japan and the USA. Out of the total granted patents, there are so many patents which are not utilized on the product and its market. In this research, the authors analysed the different levels of inventive step or non-obviousness especially focusing on the difference of the ratio of office actions made by EPO and JPO between European enterprises and Japanese enterprises whether the office actions include the prior arts related to the said invention filed as a patent application. Under the current patent law, all patents granted have the same level of protection. Considering the basic nature or level of improvement of patents, it is proposed based on this research to distinguish the level of inventive step or non-obviousness together with the level of protection, which gives big impact on legal structures together with how the patent law should be amended in the future.


The patent system is in a crisis. Bad patents being passed and patents being abused in court have currently made patents become ineffective. Congress has tried to find a unitary system for patents, but because different industries need patents for certain needs, this unitary system is ineffective. Burk and Lemley propose that the system needs to address each individual industry in order for the system to be more effective. The authors also propose that courts should take matters into their own hands and judge on a case-by-case basis. By doing so, each industry will fully benefit from patent systems. Issues that arise from this new approach include the courts’ role, how courts can begin to change the process through using certain policy levers and the issues of seemingly judicial activism.


In this article, the author examines if, and to what extent, a patent’s acquired characteristics can be used to determine whether that patent is likely to end up in litigation. Although only around 1 per cent of patents are ever litigated, patent lawsuits are disruptive and costly. Furthermore, their unpredictability makes patent litigation a practically uninsurable risk, causing companies to expend valuable resources accumulating patents that they believe might be asserted against them in the hope of preventing future litigation. To determine whether a patent’s acquired characteristics—those qualities that a patent develops after its issuance—can be used to enhance the predictability of patent litigation, the author examines the relationship between eventual litigation and several acquired characteristics: changes in ownership, continued investment in the patent by the owner, collateralization, and citation to the patent.

Finding that litigated patents have markedly different acquired characteristics than un-litigated patents along all dimensions studied, and that these characteristics develop prior to litigation, the author argues that acquired characteristics can be used to develop models that will enhance the predictability of patent litigation. The author also asserts that, by
highlighting the relationship between a patent owner’s identity and the likelihood of patent litigation, her findings argue in favour of reforming the patent-notice system to provide better information regarding patent ownership and transfer status in order to enhance the predictability of patent litigation.


This paper provides an empirical analysis of the technology market for patents in Japan, by using a novel firm-level dataset that combines a Japanese Patent Office survey titled ‘Survey of intellectual property activities’, the Institute of Intellectual Property patent database, and the ‘Licensing activity survey’ conducted by the University of Tokyo. In this paper, the authors use a two-step model to estimate a firm’s licensing propensities; the first step estimates the determinants of potential licensors (willingness to license) and the second step identifies the factors of the actual licensing out of technology (licensing propensity). It was found that a significant number of patents held by firms are not licensed out, although the owners are willing to do so. The econometric analysis reveals that a major factor behind this technology market imperfection is the potential licensors’ difficulty in finding licensing partners.


This article addresses companies’ filing behaviour in respect of patents relevant for standard-setting (‘essential patents’). The authors discuss applicants’ incentives to achieve conformity of patent applications with technology standards under development. Based on these incentive structures, it was hypothesized that the claims of essential patents are amended more often than those of comparable patents. Additionally, the authors argue that applicants have incentives to delay the grant decision. As a result, essential patents are hypothesized to have longer pendency times than comparable patents. This implies more possibilities for applicants to exploit the flexibility within the patent application process to amend the claims of pending patent applications. For empiric validation, procedural patent data was used from the European patent application process. They adopted a one-to-one matching approach, pairing essential patents in telecommunications with control patents on the matching criteria of technology class, filing date and applicant name. Additionally, they compared these essentials with patents from companies that do not hold standards-relevant patents. The authors detected higher numbers of claims and amendments to claims as well as other relevant characteristics for the essential patents. Using survival analysis, it was shown that the higher numbers of amendments and claims and the higher share of X references are responsible for higher pendency times, since they significantly decrease hazard rates in the survival analysis. The authors discussed the general implications for the functioning of the patent system and addressed the detrimental effects caused by the high degree of uncertainty generated by these filing strategies. Possible solutions such as better coordination are devised.


This paper examines a number of forces that have possibly contributed to the explosive growth of Chinese patenting over the past decade. After a review of previous hypotheses and conventional wisdom, this study proposes an additional explanation and argues that patent subsidy programs implemented by each provincial region have played an important role in the growth of Chinese patenting. This institutional change, taking place at the province-level, has induced an increase in patent propensity among not only firms, universities, and research institutes, but also individuals. Empirical evidence based on publicly available data provides solid support for this argument. It was also found that a larger fraction of applications are granted patent rights since the implementation of such programs, suggesting that reduction in patent application quality may not be a serious concern, unless the criteria used for patent examination have been lowered.

**Copyright**


This article puts forward a new theory that reconceptualizes fair use as a collective user right in copyright law. It first argues that the fair use doctrine
has not yet unleashed its full energy in protecting the public interest. The failure is caused by a firmly ingrained notion in copyright law that treats fair use as an affirmative defense against allegations of copyright infringements. Such a fixed characterization of fair use has led legislators and judges to define it as merely an individual right enjoyed by each user of copyrighted works. This characterization has further reduced fair use to a procedural right enjoyed by each user of copyrighted works, significantly diminishing the substantive value of fair use in protecting the public interest.

Against this backdrop, this article explores the ways in which fair use can be revitalized to protect the public interest. It argues for repudiating the narrow-minded characterization of fair use as a mere individual right. The article then proposes that fair use should instead be redefined as a collective right held by the public, which facilitates and enhances their participation in communicative actions in what the author calls intangible public space. From this perspective, Section 107 of the Copyright Act should be read as conferring a collective right to fair use upon members of the public. Moreover, this article shows the power of the collective right to fair use in generating a set of new legal techniques to enrich copyright adjudication and policy-making discourse for protecting the public interest in the digital age.


Fashion is art. Fashion is a medium for designers to create new forms of expression and innovate ways to reflect on culture and society. Fashion is a reflection of culture, and like culture, it changes with time. It serves a utilitarian function and is part of our daily lives. Fashion is on the catwalk during a fashion show by one of the world’s leading designers. Fashion is one’s creative outlet to mix and match signature pieces to create a new way of personal expression.

This paper will explore the nature of the fashion industry and whether we, as a society, should grant design protection under copyright law. Congress is currently considering the Design Piracy Protection Act, which would extend a form of copyright protection to fashion designs. The industry is divided on whether the legislation will impede creativity and prevent the industry from changing and evolving over time. This decision really comes down to one question; will the benefit of extending protection outweigh the negative effects? This paper will attempt to answer this question through public policy, legislative history, and industry opinion.


Part I of this note describes the fair use doctrine, particularly the recent focus by the courts on the concept of transformativeness. Part II examines the divergent approaches to fair use law that courts have taken with respect, on the one hand, to parody and satire, and, on the other, to biographies. Part III defines celebrity satire in relation to parody, satire, and biography, and then examines a series of recent cases in which courts struggled dealing with instances of celebrity satire. Part IV offers a rationale to protect celebrity satire as a valid category of fair use, reconciling the Supreme Court’s reasoning in Campbell with the biography-related case law from the Second Circuit. Part V provides illustrative examples that demonstrate how courts can apply the framework proposed in Part IV. This note concludes by suggesting that, rather than being an expansion of the parody doctrine, the framework proposed by this note would put into place the reasoning expounded by the Supreme Court in Campbell in a manner that would strike a more sensible balance between copyright and fair use.