

INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES

[Republic Act No. 8293]

AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE
AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE,
PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES

PART I **THE INTELLECTUAL PROPERTY OFFICE**

Section 1. Title. - This Act shall be known as the "Intellectual Property Code of the Philippines."

Sec. 2. Declaration of State Policy. - The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines. (n)

Sec. 3. International Conventions and Reciprocity. - Any person who is a national or who is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to benefits to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise entitled by this Act. (n)

Sec. 4. Definitions.-

4.1. The term "intellectual property rights" consists of:

[a] Copyright and Related Rights;

[b] Trademarks and Service Marks;

[c] Geographic Indications;

[d] Industrial Designs;

[e] Patents;

[f] Layout-Designs (Topographies) of Integrated Circuits; and

[g] Protection of Undisclosed Information (n) [TRIPS].

4.2. The term "technology transfer arrangements" refers to contracts or agreements involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts; and the transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software except computer software developed for mass market.

4.3. The term "Office" refers to the Intellectual Property Office created by this Act.

4.4 The term "IPO Gazette" refers to the gazette published by the Office under this Act.
(n)

Sec. 5. Functions of the Intellectual Property Office (IPO). -

5.1. To administer and implement the State policies declared in this Act, there is hereby created the Intellectual Property Office (IPO) which shall have the following functions:

[a] Examine applications for grant of letters patent for inventions and register utility models and industrial designs;

[b] Examine applications for the registration of marks, geographic indication, integrated circuits;

[c] Register technology transfer arrangements and settle disputes involving technology transfer payments covered by the provisions of Part II, Chapter IX on Voluntary Licensing and develop and implement strategies to promote and facilitate technology transfer;

[d] Promote the use of patent information as a tool for technology development;

[e] Publish regularly in its own publication the patents, marks, utility models and industrial designs, issued and approved, and the technology transfer arrangements registered;

[f] Administratively adjudicate contested proceedings affecting intellectual property rights; and

[g] Coordinate with other government agencies and the private sector efforts to formulate and implement plans and policies to strengthen the protection of intellectual property rights in the country.

5.2. The Office shall have custody of all records, books, drawings, specifications, documents, and other papers and things relating to intellectual property rights applications filed with the Office.

(n)

Sec. 6. The Organizational Structure of the IPO. - 6.1. The Office shall be headed by a

Director General who shall be assisted by two (2) Deputies Director General.

6.2. The Office shall be divided into six (6) Bureaus, each of which shall be headed by a Director and assisted by an Assistant Director. These Bureaus are:

[a] The Bureau of Patents;

[b] The Bureau of Trademarks;

[c] The Bureau of Legal Affairs;

[d] The Documentation, Information and Technology Transfer Bureau;

[e] The Management Information System and EDP Bureau; and

[f] The Administrative, Financial and Personnel Services Bureau.

6.3. The Director General, Deputies Director General, Directors and Assistant Directors shall be appointed by the President, and the other officers and employees of the Office by the Secretary of Trade and Industry, conformably with and under the Civil Service Law.

(n)

Sec. 7. The Director General and Deputies Director General. -

7.1. Functions. - The Director General shall exercise the following powers and functions:

[a] Manage and direct all functions and activities of the Office, including the promulgation of rules and regulations to implement the objectives, policies, plans, programs and projects of the Office: Provided, That in the exercise of the authority to propose policies and standards in relation to the following: (1) the effective, efficient, and economical operations of the Office requiring statutory enactment; (2) coordination with other agencies of government in relation to the enforcement of intellectual property rights; (3) the recognition of attorneys, agents, or other persons representing applicants or other parties before the Office; and (4) the establishment of fees for the filing and processing of an application for a patent, utility model or industrial design or mark or a collective mark, geographic indication and other marks of ownership, and for all other

services performed and materials furnished by the Office, the Director General shall be subject to the supervision of the Secretary of Trade and Industry;

[b] Exercise exclusive appellate jurisdiction over all decisions rendered by the Director of Legal Affairs, the Director of Patents, the Director of Trademarks, and the Director of the Documentation, Information and Technology Transfer Bureau. The decisions of the Director General in the exercise of his appellate jurisdiction in respect of the decisions of the Director of Patents, and the Director of Trademarks shall be appealable to the Court of Appeals in accordance with the Rules of Court; and those in respect of the decisions of the Director of Documentation, Information and Technology Transfer Bureau shall be appealable to the Secretary of Trade and Industry; and

[c] Exercise original jurisdiction to resolve disputes relating to the terms of a license involving the author's right to public performance or other communication of his work. The decisions of the Director General in these cases shall be appealable to the Secretary of Trade and Industry.

7.2. Qualifications.- The Director General and the Deputies Director General must be natural born citizens of the Philippines, at least thirty-five (35) years of age on the day of their appointment, holders of a college degree, and of proven competence, integrity, probity and independence: Provided, That the Director General and at least one (1) Deputy Director General shall be members of the Philippine Bar who have engaged in the practice of law for at least ten (10) years: Provided further, That in the selection of the Director General and the Deputies Director General, consideration shall be given to such qualifications as would result, as far as practicable, in the balanced representation in the Directorate General of the various fields of intellectual property.

7.3. Term of Office. - The Director General and the Deputies Director General shall be appointed by the President for a term of five (5) years and shall be eligible for reappointment only once:

Provided, That the first Director General shall have a first term of seven (7) years.

Appointment to any vacancy shall be only for the unexpired term of the predecessor.

7.4. The Office of the Director General. - The Office of the Director General shall consist of the Director General and the Deputies Director General, their immediate staff and such Offices and Services that the Director General will set up to support directly the Office of the Director General. (n)

Sec. 8. The Bureau of Patents. - The Bureau of Patents shall have the following functions:

8.1 Search and examination of patent applications and the grant of patents;

8.2 Registration of utility models, industrial designs, and integrated circuits; and

8.3 Conduct studies and researches in the field of patents in order to assist the Director General in formulating policies on the administration and examination of patents. (n)

Sec. 9. The Bureau of Trademarks. - The Bureau of Trademarks shall have the following functions:

9.1 Search and examination of the applications for the registration of marks, geographic indications and other marks of ownership and the issuance of the certificates of registration; and

9.2 Conduct studies and researches in the field of trademarks in order to assist the Director General in formulating policies on the administration and examination of trademarks. (n)

Sec. 10. The Bureau of Legal Affairs. - The Bureau of Legal Affairs shall have the following functions:

10.1. Hear and decide opposition to the application for registration of marks; cancellation of trademarks; subject to the provisions of Section 64, cancellation of patents, utility models, and industrial designs; and petitions for compulsory licensing of patents;

10.2. (a) Exercise original jurisdiction in administrative complaints for violations of laws involving intellectual property rights: Provided, That its jurisdiction is limited to complaints where the total damages claimed are not less than Two hundred thousand pesos (P200,000): Provided, further, That availment of the provisional remedies may be granted in accordance with the Rules of Court. The Director of Legal Affairs shall have the power to hold and punish for contempt all those who disregard orders or writs issued in the course of the proceedings. (n)

(b) After formal investigation, the Director for Legal Affairs may impose one (1) or more of the following administrative penalties:

(i) The issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the order;

(ii) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

(1) An assurance to comply with the provisions of the intellectual property law violated;

(2) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigation;

(3) An assurance to recall, replace, repair, or refund the money value of defective goods distributed in commerce; and

(4) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau of Legal Affairs.

The Director of Legal Affairs may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking;

(iii) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director of Legal Affairs, such as by sale, donation to distressed local governments or to charitable or relief institutions, exportation, recycling into other goods, or any combination thereof, under such guidelines as he may provide;

(iv) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;

(v) The imposition of administrative fines in such amount as deemed reasonable by the Director of Legal Affairs, which shall in no case be less than Five thousand pesos (P5,000) nor more than One hundred fifty thousand pesos (P150,000). In addition, an additional fine of not more than One thousand pesos (P1,000) shall be imposed for each day of continuing violation;

(vi) The cancellation of any permit, license, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director of Legal Affairs may deem reasonable which shall not exceed one (1) year;

(vii) The withholding of any permit, license, authority, or registration which is being secured by the respondent from the Office;

(viii) The assessment of damages;

(ix) Censure; and

(x) Other analogous penalties or sanctions. (Secs. 6, 7, 8, and 9, Executive Order No. 913 [1983]a)

10.3. The Director General may by Regulations establish the procedure to govern the implementation of this Section. (n)

Sec. 11. The Documentation, Information and Technology Transfer Bureau. - The Documentation, Information and Technology Transfer Bureau shall have the following functions:

11.1. Support the search and examination activities of the Office through the following activities:

(a) Maintain and upkeep classification systems whether they be national or international such as the International Patent Classification (IPC) system;

- (b) Provide advisory services for the determination of search patterns;
- (c) Maintain search files and search rooms and reference libraries; and
- (d) Adapt and package industrial property information.

11.2. Establish networks or intermediaries or regional representatives;

11.3. Educate the public and build awareness on intellectual property through the conduct of seminars and lectures, and other similar activities;

11.4. Establish working relations with research and development institutions as well as with local and international intellectual property professional groups and the like;

11.5 Perform state-of-the-art searches;

11.6 Promote the use of patent information as an effective tool to facilitate the development of technology in the country;

11.7. Provide technical, advisory, and other services relating to the licensing and promotion of technology, and carry out an efficient and effective program for technology transfer; and

11.8. Register technology transfer arrangements, and settle disputes involving technology transfer payments. (n)

Sec. 12. The Management Information Services and EDP Bureau. - The Management Information Services and EDP Bureau shall:

12.1. Conduct automation planning, research and development, testing of systems, contracts with firms, contracting, purchase and maintenance of equipment, design and maintenance of systems, user consultation, and the like; and

12.2. Provide management information support and service to the Office. (n)

Sec. 13. The Administrative, Financial and Human Resource Development Service Bureau. -

13.1. The Administrative Service shall:

- (a) Provide services relative to procurement and allocation of supplies and equipment, transportation, messengerial work, cashiering, payment of salaries and other Office's obligations, office maintenance, proper safety and security, and other utility services; and comply with government regulatory requirements in the areas of performance appraisal, compensation and benefits, employment records and reports;

(b) Receive all applications filed with the Office and collect fees therefor; and

(c) Publish patent applications and grants, trademark applications, and registration of marks, industrial designs, utility models, geographic indication, and lay-out designs of integrated circuits registrations.

13.2. The Patent and Trademark Administration Services shall perform the following functions among others:

(a) Maintain registers of assignments, mergings, licenses, and bibliographic on patents and trademarks;

(b) Collect maintenance fees, issue certified copies of documents in its custody and perform similar other activities; and

(c) Hold in custody all the applications filed with the office, and all patent grants, certificate of registrations issued by the office, and the like.

13.3. The Financial Service shall formulate and manage a financial program to ensure availability and proper utilization of funds; provide for an effective monitoring system of the financial operations of the Office; and

13.4. The Human Resource Development Service shall design and implement human resource development plans and programs for the personnel of the Office; provide for present and future manpower needs of the organization; maintain high morale and favorable employee attitudes towards the organization through the continuing design and implementation of employee development programs. (n)

Sec. 14. Use of Intellectual Property Rights Fees by the IPO. -

14.1. For a more effective and expeditious implementation of this Act, the Director General shall be authorized to retain, without need of a separate approval from any government agency, and subject only to the existing accounting and auditing rules and regulations, all the fees, fines, royalties and other charges, collected by the Office under this Act and the other laws that the Office will be mandated to administer, for use in its operations, like upgrading of its facilities, equipment outlay, human resource development, and the acquisition of the appropriate office space, among others, to improve the delivery of its services to the public. This amount, which shall be in addition to the Office's annual budget, shall be deposited and maintained in a separate account or fund, which may be used or disbursed directly by the Director General.

14.2. After five (5) years from the coming into force of this Act, the Director General shall, subject to the approval of the Secretary of Trade and Industry, determine if the fees and charges mentioned in Subsection 14.1 hereof that the Office shall collect are sufficient to meet its budgetary requirements. If so, it shall retain all the fees and charges it shall collect under the same conditions indicated in said Subsection 14.1 but shall forthwith, cease to receive any funds from the annual budget of the National Government; if not, the provisions of said Subsection 14.1 shall continue to apply until

such time when the Director General, subject to the approval of the Secretary of Trade and Industry, certifies that the above-stated fees and charges the Office shall collect are enough to fund its operations. (n)

Sec. 15. Special Technical and Scientific Assistance. - The Director General is empowered to obtain the assistance of technical, scientific or other qualified officers and employees of other departments, bureaus, offices, agencies and instrumentalities of the Government, including corporations owned, controlled or operated by the Government, when deemed necessary in the consideration of any matter submitted to the Office relative to the enforcement of the provisions of this Act. (Sec. 3, R. A. No. 165a)

Sec. 16. Seal of Office. - The Office shall have a seal, the form and design of which shall be approved by the Director General. (Sec. 4, R. A. No. 165a)

Sec. 17. Publication of Laws and Regulations. - The Director General shall cause to be printed and make available for distribution, pamphlet copies of this Act, other pertinent laws, executive orders and information circulars relating to matters within the jurisdiction of the Office. (Sec. 5, R. A. No. 165a)

Sec. 18. The IPO Gazette. - All matters required to be published under this Act shall be published in the Office's own publication to be known as the IPO Gazette. (n)

Sec. 19. Disqualification of Officers and Employees of the Office. - All officers and employees of the Office shall not apply or act as an attorney or patent agent of an application for a grant of patent, for the registration of a utility model, industrial design or mark nor acquire, except by hereditary succession, any patent or utility model, design registration, or mark or any right, title or interest therein during their employment and for one (1) year thereafter. (Sec. 77, R. A. No. 165a)