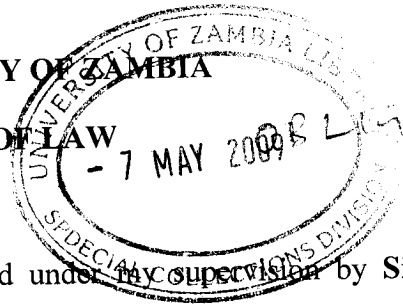


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I recommend that the obligatory essay prepared under my supervision by **Sikazwe Joshua Mitanga**, entitled,

“An Analysis of the Strategic Use of Intellectual Property as a Tool for Economic and Social Development in Zambia”,

Be accepted for examination. I have checked carefully and I am satisfied that it fulfils the requirements relating to laid down regulations governing Obligatory Essays.

Nkoloma

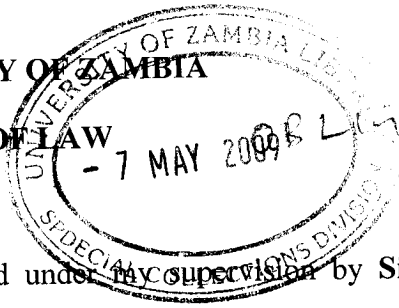
Mrs. Nkoloma Chanda Tembo

15.03.09

Date

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A handwritten signature in dark ink, appearing to read "Nkoloma".

Mrs. Nkoloma Chanda Tembo

15.03.09

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AN OBLIGATORY ESSAY ON

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TOOL FOR ECONOMIC AND SOCIAL DEVELOPMENT IN ZAMBIA”**

BY

SIKAZWE JOSHUA MITANGA

COMPUTER NUMBER: 25017489

**SUBMITTED TO THE UNIVERSITY OF ZAMBIA IN PARTIAL FULFILMENT OF THE
REQUIREMENTS OF THE BACHELOR OF LAWS (LL.B) DEGREE PROGRAMME**

SCHOOL OF LAW,

UNIVERSITY OF ZAMBIA, LUSAKA,

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All other people's work consulted has been duly acknowledged.

I therefore, declare that all errors and other shortcomings contained herein are my own.



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ABSTRACT

This research paper attempts to analyze the strategic use of Intellectual Property as a tool for social and economic development in Zambia. The legal analysis will be based on five statutes namely; the Patents Act, the Trade Marks Act, the Registered Designs Act, the Copyright and Performance Rights Acts, and the Plant Breeders Rights Act. Determination of compliance by these statutes with minimum international standards will be premised on the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, to which Zambia is a member.

The Intellectual Property Rights ostensibly exist primarily to benefit society. But this neither tells us much about the ends they are meant to serve nor how these ends ought to be achieved.

The various branches of intellectual property law confer legal exclusivity in the market-place. The right to prevent others from using ideas or information to their own commercial advantage is not easily delineated. Legal techniques of some sophistication are called for and this has, especially in developing countries, made intellectual property a somewhat esoteric specialism. But, particularly in industrial, free-market economies, these intangible property rights are becoming increasingly valuable in the right to secure and retain shares of a market. Globally, intellectual property is steadily being recognized as a tool for promoting social and economic development of nations. Industrialized countries have effectively embraced intellectual property as a tool for social and economic development while developing countries including Zambia have continued to lag behind in this area. Development of nations is gradually becoming dependent on the creations of the human mind and the applications of such knowledge and ideas in various areas of development have significantly contributed to the creation of wealth in these nations. Thus, a widening circle of people need some knowledge of what intellectual property rights involve, and how these rights can effectively contribute to Zambia's social and economic development. It is pertinent to note that this is dismally lacking in Zambia.

The goal of communicating a better understanding of intellectual property underpins a wide range of activities, from promoting the strategic use of Intellectual Property for development, to enhancing understanding among policy makers of the need to incorporate intellectual property in public policies. Promoting the development of balanced intellectual property policies that take into account the needs and interests of all stakeholders is a key challenge.

Policy makers therefore, need empirical evidence of how different Intellectual Property Strategies can affect innovation and Gross Development Product growth. Therefore, the lack of reliable economic research on the Intellectual Property needs to be addressed in Zambia by possibly developing methodologies and commissioning economic studies to assist policy makers in their decision making.

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GLOSSARY OF ACRONYMS

DC	:	Developed Country
GDP	:	Gross Domestic Product
IP	:	Intellectual Property
IPRs	:	Intellectual Property Rights
LDC	:	Least Developing Country
MIBS	:	Ministry of Information and Broadcasting Services
PACRO	:	Patents and Companies Registration Office
R & D	:	Research and Development
SME	:	Small-and Medium Enterprise
TRIPS	:	Trade Related Aspects of Intellectual Property Rights (TRIPS)
TWC	:	Third World Country
UNCTAD	:	United Nations Conference on Trade and Development
WIPO	:	World Intellectual Property Organisation
WTO	:	World Trade Organisation

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CHAPTER 1

EXPLANATION OF WHAT INTELLECTUAL PROPERTY IS

1.0 INTRODUCTION

Different scholars have varying opinions about the impact intellectual property (hereafter shortened as IP) has on a country's economic and social development. Some scholars describe IP as the engine that propels development in both developed and developing countries. They further suggest that in fact; IP is a powerful tool and has the potential to stimulate economic growth in developing countries. In accessory, other scholars are of the opinion that IP is a powerful tool of economic growth by stimulating creativity and innovation, generating revenue, promoting investment, enhancing culture, preventing brain drain and nurturing overall economic health. In the converse, other scholars contend that the question of how Intellectual Property Rights (hereafter referred to as IPRs) affect the process of economic development and growth is complex and based on multiple variables. They strongly assert that the effectiveness of IPRs in this regard depends considerably on particular circumstances in each country as most IPRs are territorial. While Lawyers and Economists are devoting more attention to this issue, evidence to date is fragmented and somewhat contradictory, in part because many of the concepts are not readily measured.

Nevertheless, since the coming into force of the World Trade Organisation Agreement and the conclusion of the Trade Related Intellectual Property Rights (hereafter referred to as TRIPS) Agreement, the role of IP in trade has increased significantly, with this the demand for IP Law professionals is also increasing. The aim of this chapter is to give a general introduction to this research paper, by attempting to offer an elaborate explication of what IP is.

1.1 WHAT IS INTELLECTUAL PROPERTY

The term "Intellectual Property" is reserved for types of property that result from the creations of the human mind, the intellect.¹ Other scholars define intellectual property

¹ WIPO Intellectual Property Handbook: Policy, Law and Use. (Geneva: WIPO Publication No.489 (E), 2001). p. 3

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very broadly, as meaning the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Furthermore, intellectual property has been defined as one that relates to items of information or knowledge which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property is not in those copies but in the information or knowledge reflected in them.² Therefore, generally speaking, intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions. As already alluded to, those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such.

Therefore, with respect to one of the characteristics of IP, the court in **Leather Cloth Company Limited v. American Leather**³ remarked that because IPRs are intangible, one cannot take physical possession of them by through legal action because they are choses in action. Thus, these intangible asserts can be classified into two categories, namely identifiable intangible asserts and unidentifiable intangible asserts. Examples of identifiable intangible assets include the name of the trademark, for instance, Nokia, which is protected under trademark law. Unidentifiable intangible assets include the goodwill, reputation and know-how of a company, with respect to the development or production of IP products or works.

1.2 RATIONALE AND JUSTIFICATION FOR INTELLECTUAL PROPERTY

There is a close nexus between the rationale for IP and its link to development. There are a number of reasons that have been advanced to justify the existence of intellectual property rights.⁴

The first justification of IP is that of a creative incentive. To develop or produce IP products or works calls for investment of money, skill and time. In order to encourage creators, inventors or innovators to take a risk of investing their capital, skill and time, they must be rewarded by being granted exclusive rights to control the use or exploitation

²WIPO, Understanding Industrial Property, (Geneva: WIPO Publication No. 895(E), 2006). p. 3

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of their inventions, innovations, creations or works. They must, therefore, be protected from free riders who might copy or reproduce the inventions, innovation or work at minimal costs or no cost at all.

The second rationale for IP is that of reward for labour. IP provides means for the authors or inventors of intellectual property products or works to obtain reward for the time, skill, money and patience which they have invested in production of intellectual property. The reward for labour is based on the participation principle that allows the author or creator of a work to participate in all economic benefits realised from the use of his work.

Further, in relation to the justification that IP has on the promotion of the economy, it has been re-echoed by different scholars that it encourages the publication and dissemination of information and widens the store of available knowledge. For instance, details of patents are published and are available for inspection. In due course, when the patent expires, anyone is free to make the product or use the process, as the case may be.

Additionally, IP is cardinal in the prevention of piracy and counterfeit. Piracy and counterfeit are a disincentive to the development and creation of intellectual property products and works. It may also present a serious danger to the public especially if the counterfeit goods are food, medicines or cosmetic products or spare parts. Where intellectual property is weak or not enforced so as to allow piracy and counterfeit to flourish, foreign owners of intellectual property rights avoid investing in the country and development of local industries is impeded. Furthermore, local intellectual property owners or authorised dealers of intellectual property rights can neither make a living from their work nor recoup their investment. Also local markets are flooded with inferior illegitimate products and technology is not incorporated in the country's base and infrastructure. Besides, government loses revenue as no taxes are paid where there is rampant piracy and counterfeit. This is detrimental to any country's social and economic development.

Finally, it has been opined that IP encourages Foreign Direct Investment. It is often argued that instituting a strong protection of IP will boost or attract foreign direct

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Finally, it has been opined that IP encourages Foreign Direct Investment. It is often argued that instituting a strong protection of IP will boost or attract foreign direct

investment in those countries with weaker intellectual property regime, especially developing countries.

1.3 CRITICISM OF INTELLECTUAL PROPERTY RIGHTS

There are a number of criticisms that have been advanced against the intellectual property rights by different scholars.⁵

Firstly, most scholars are of the view that there is a lot of abuse of IP. The owner of an important item protected by intellectual property law might be tempted to use his position to control a market to the disadvantage of competitors and consumers alike. He can prevent or deter potential competitors from developing products similar to his own and he can charge a high price of the product under the guise of recouping the money and time invested in developing the product, brand or creating the work. Another way in which the owner of an intellectual property can abuse his position is to threaten potential competitors with legal action. In some cases the threats may be groundless, but the victim might be prepared to cease the relevant activities or pay a royalty instead of risk the court action and its associated costs. As litigation can be costly, this may prevent the person threatened from challenging the validity of the right concerned or otherwise defend the alleged infringement

In accessory, restrictions on access to works of the mind are viewed as a criticism by some scholars. IP rights such as copyright, perpetuates unjustified monopoly by denying the public access to information which should otherwise be freely available. It also through the royalty system represents a tax on knowledge and increases the price of the materials such as books and music which are essential to the promotion of knowledge and dissemination of culture.

Finally, some critics contend that IP promotes the interests of the developed countries. IP is a means used by developed countries, which are the net exporters of patents, trademark, designs and copyright products, to extract money from developing countries, which are the net importers of the said intellectual property products or processes. This argument is strengthened first by the trade threats and sanctions that have at one time

⁵ Ibid pp.10-11

investment in those countries with weaker intellectual property regime, especially developing countries.

1.3 CRITICISM OF INTELLECTUAL PROPERTY RIGHTS

There are a number of criticisms that have been advanced against the intellectual property rights by different scholars.⁵

Firstly, most scholars are of the view that there is a lot of abuse of IP. The owner of an important item protected by intellectual property law might be tempted to use his position to control a market to the disadvantage of competitors and consumers alike. He can prevent or deter potential competitors from developing products similar to his own and he can charge a high price of the product under the guise of recouping the money and time invested in developing the product, brand or creating the work. Another way in which the owner of an intellectual property can abuse his position is to threaten potential competitors with legal action. In some cases the threats may be groundless, but the victim might be prepared to cease the relevant activities or pay a royalty instead of risk the court action and its associated costs. As litigation can be costly, this may prevent the person threatened from challenging the validity of the right concerned or otherwise defend the alleged infringement

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been imposed on some developing countries such as India and Brazil (1988) which were considered to deny adequate and effective protection of intellectual property rights of United States companies, in particular pharmaceutical patents. Secondly, developed countries refuse to allow traditional-based innovations or traditional knowledge from being protected by intellectual property thereby denying income or royalties to developing countries that may result from the exploitation of traditional knowledge by the developed countries.

1.4 THE TWO BRANCHES OF INTELLECTUAL PROPERTY

Intellectual property is usually divided into two branches, namely “copyright and Industrial property”.

1.4.1. Copyright

In Zambia, copyright and performance rights are protected under the Copyright and Performance Rights Act, Chapter 407 of the Laws of Zambia. Copyright relates to artistic creations, such as poems, novels, music, paintings and cinematographic works. The expression copyright refers to the main act which, in respect of literary and artistic creations, may be made only by the author or with his organisation. That act is the making of copies of the literary or artistic work, such as a book, a painting, a sculpture, a photograph, or a motion picture. The second expression, author’s rights refers to the person who is the creator of the artistic work, its author, thus underlining the fact, recognised in most laws, that the author has certain specific rights in his creation such as the right to prevent a distorted reproduction, which only he can exercise, whereas other rights such as the right to make copies can be exercised by other persons, for example a publisher who has obtained a licence to this effect from the author.⁶

Thus, in a nutshell, it can be averred that copyright and related rights are legal instruments which protect the rights of creators in their works and thereby contribute to the cultural and economic development of nations.⁷ Therefore, copyright law fulfils a

⁶ Ibid p. 4

⁷ WIPO, An Overview. (Geneva: WIPO Publication No.1007E, 2007) p. 30

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decisive role in safeguarding the contributions and rights of the different stakeholders in the cultural industries, and the relation between them and the public.

1.4.2. Industrial Property

The wide application of the term “Industrial” is clearly set out in the Paris Convention of the Protection of Industrial Property under **Article 1(3)**. The article provides that “industrial property shall be understood in the broadest sense and shall apply not only to industries and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers and flour.”⁸

Industrial property therefore, takes a range of forms, the main types of which include patents to protect inventions, industrial designs, trademarks, and service marks, layout designs of integrated circuits, commercial names and designations, as well as geographical indications and protection against unfair competition. In some of these, the aspect of intellectual creation, although existent, is less clearly defined. What counts here is that the object of industrial property typically consists of signs transmitting information, in particular to consumers, as regards products and services offered on the market. Protection is directed against unauthorised use of such signs likely to mislead consumers and against misleading practices in general. This paper concentrates on patents, industrial designs and trademarks.

1.4.2.1 Patents for Invention

The law administering patents in Zambia is the Patents Act. **Sections 25 and 28 (4)** of the Act define a Patent as a document issued upon application, by a patent office which describes the invention and grants the patentee, subject to the conditions attached to the patent, full power, sole privilege and authority by himself, his agents and licensees during the term of the patent to make, use, exercise and vend the patent within Zambia, in such a manner as he sees fit, so that he enjoys the whole profit and advantage accruing by reason of the invention during the term of a patent, which is sixteen years in Zambia.

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An invention, which is a solution to a technical problem, may relate to either a product or a process. **Section 2** of the Patents Act defines an invention as any new and useful art (whether producing a physical effect or not), process, machine, manufacture or composition of matter which is not obvious or any new and useful improvement which is not obvious, capable of being used or applied in trade or industry.

It must be stated that not every new product or process qualifies as an “invention”. It is also not enough to have created an “invention” to be eligible for a patent. It has to be an invention that passes certain legal tests, that is, tests for “patentability”. Thus, for an invention to be eligible for patent protection, **Section 2** of the Act sets out conditions it needs to satisfy, namely novelty (new); involving an inventive step (be non-obvious); capable of industrial application; and must fall within patentable subject matter. Protection of petty patents or utility models is non existence under the Zambia patent system.

1.4.2.2 Trademarks

Under the Zambian law, the Trademark Act protects trademarks for goods. The use of service marks under the Zambian trade marks system is non-existence. The Trademarks Act defines a trademark⁹ as a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate, a connection in the course of trade between the goods and some person having the right as proprietor or as registered user to use the mark. A mark is defined as including a device, brand, heading, label, ticket, name, signature, word, letter, numeral or combination. It must be noted that the Trademarks Act does not limit the signs or symbols that may serve as a trademark. However, for a sign or symbol to qualify as a trademark, it must satisfy two conditions namely, it must be distinctive and it must not be deceptive or violate public order or morality. Therefore, in a nutshell, a trademark may appear not only on goods themselves but also on the container or wrapper in which the goods are sold. When used in connection with marketing of the goods, the sign may appear in advertisements, for example in newspapers or on television or in the windows of the shops in which the goods are sold.

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1.4.2.3 Industrial Designs

In Zambia, protection of registered industrial designs is administered under the Registered Industrial Designs Act.

“In a legal sense, industrial design refers to the right granted in many countries, pursuant to a registration system, to protect the original, ornamental and non-functional features of a product that result from design activity.”¹⁰

Section 2 of the Registered Designs Act defines design as meaning, “features of shape, configuration, pattern or ornament applied to an article by any industrial process or means being features which in the finished article appeal to and are judged solely by the eye.”

A registered design is a monopoly right to protect the outward appearance of an article or a set of articles which have been manufactured and to which a design has been applied. It is a well known fact that visual appeal is one of the main factors which influences consumers in their preference for one product over another.

When the technical performance of a product offered by different manufacturers is relatively equal, consumers will make their choice based on price and aesthetic appeal. So in registering their industrial designs, manufacturers protect the distinctive elements that determine market success.¹¹

1.4.2.4 New Plant Varieties

New plant variety protection regimes seek to recognise, protect and reward the IP of a breeder or group of breeders for the effort put into the development of a new plant variety which is distinct, uniform and stable.¹² Zambia’s Plant Breeder’s Rights Act No. 18 was enacted in 2002 to provide for the protection of plant breeder’s rights and the registration of new plant varieties. Plant breeders are entitled to rights arising out of their works and hence benefit from the recognition of the rights that accrue to them.

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1.5 STATEMENT OF THE PROBLEM

Paolo Bifani, a Consultant to the United Nations Conference on Trade and Development (UNCTAD) said, in 1989, “It is the development, rapid diffusion and mastery of technology that enables countries to create comparative advantage and to acquire competitiveness in international market.” Adequate and effective legal mechanisms for protecting such intellectual property as innovative products are indispensable in fostering the international trade that developing countries need to compete globally.

Zambia has not yet adopted the National Intellectual Property Policy which makes it incredibly difficult, for Zambia to fully exploit APRs for the development of this country. This could possibly contribute to the problem in issue as segments which can contribute to economic and social development are not fully being exploited.

1.6 PURPOSE OF THE STUDY

The intention or purpose of this research study is to establish whether Zambia has got adequate IP administrative structures and valid laws to ensure maximum exploitation and commercialisation of IP benefits from the enormous natural and raw materials and resources the country is endowed with. During the analysis, it will be established whether Zambia has adequate national intellectual property laws that are relevant to issues of protection and management of IP benefits and whether we have national and institutional IP policies that can facilitate enhancement of social and economic development in Zambia.

1.7 SIGNIFICANCE OF THE STUDY

The objective of this research study is therefore, to analyse, identify and suggest how best Zambia can genuinely exploit IP as an imperative tool in its national and economic development.

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desperately needs industrial policies to emphasise the establishment of small, medium and large scale industries in priority sectors, and commercial policies to promote a better balance of exports between raw materials, which tend to predominate and finished manufactured products as well as services.¹³

It can thus be confidently suggested that once Zambia has adequate national intellectual property laws that are relevant to issues of protection and management of IP benefits and also meets international obligations in IP legislation, including adopting of national and institutional policies that will ensure IP commercialisation, the country will not spend great amounts of money importing finished products and intangible IP products and asserts from developed countries which use the same raw materials we use to make the same finished products we import from them at exorbitant prices. This is only possible in a broad setting of appropriate complementary policies and transparent regulation.

The simple question to be asked is; why are most countries in Asia, like South and North Korea, including Japan and some countries in Europe so economically advanced and yet they hardly have the natural and raw resources and materials most developing countries in Africa have? The possible answer is that IP products and asserts have more value than raw materials and a critical economic and technological comparison between Zambia and a country like Japan can evidence that fact. It is high time, Zambia, using a strong and adequate IP regime, invested in research and development as research is a human activity based on intellectual investigation and is aimed at discovering, interpreting and revising human knowledge on different aspects of the world.

It must be appreciated that scientific research relies on the application of the scientific information and theories for the explanation of nature and the properties of humans.¹⁴ It makes practical applications possible and its output in form of innovations and inventions contribute to economic development. In this regard, research and development institutions play a vital role in the development of innovations and inventions. Once

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these innovations are completed, industry can use them to produce better and more advanced technologies. These in turn bring in more returns which contribute to the better performance of the economy. Further, the country will export more finished products including exporting the value of IP on the IP products and asserts produced by Zambia.

Most inventors work in research and development institutions where they conduct research and produce innovations and inventions to solve problems. Research and Development institutions including Universities should have their mandate enshrined in conducting research that must contribute to the intellectual development of Zambia. It is sad to note that Zambian Universities, the University of Zambia inclusive, are not fully exploiting the benefits of protecting IPRs, while universities in developed countries are using their knowledge to generate income through consultancy, technology transfer and commercialisation (through royalties or licence fees) paid to universities of their innovations, inventions and research findings.

In addition, one means for accomplishing economic development through the transfer of technology is the commercial transfer and acquisition of technology.¹⁵ Of course, technology can also be transferred and acquired by other than commercial methods. Personnel can be educated or trained at research and development institutions, technical institutes or centres of higher learning. Such personnel can in turn study books, periodicals or other publications on special scientific and technical subjects or read patent documents, especially those that have expired, and in that way, acquire knowledge of scientific technology.¹⁶ But these methods will inevitably fall short of enabling those personnel or others to apply that knowledge, especially the inventions described in patent documents, that have not expired, to manufacture products, produce goods or render services.

From the brief explication of the significance of this research study, it can be concluded that the potential contribution of intellectual property to social and economic

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development is immense. This contribution can become even larger if there is more awareness in intellectual property issues by a larger spectrum of stakeholders. Industry, research and development institutions and the general population need to work together if the benefits of IP are to improve the economy of the country. This awareness should go hand in hand with streamlining of all the legal provisions and the administrative framework of intellectual property so that the national IP regime is strengthened.

As has been seen, protecting intellectual property is essential to technology and industrial innovation and fundamental to social and economic growth. Guarantees for patents and trademarks will produce incentives for creative thinking. These will protect innovators and enterprising industries from the theft of their ideas and provide a financial return for the work that went into formulating and articulating those ideas aiding competition. Securing intellectual property rights can also help Zambia to compete economically in the international market as it is the development, rapid diffusion and mastery of technology that will enable Zambia to create comparative advantage and acquire competitiveness on the international level.

1.8 OPERATIONAL DEFINITION OF TERMS

Copyright means a legal term describing rights given to creators for their literary and artistic works. Copyright covers literary works such as novels, plays, reference works, newspapers, computer programs, databases, films, musical compositions and choreography, artistic works such as paintings, drawings, photographs and sculpture, architectural works, advertisements, maps and technical drawings. Copyright protection however does not extend to ideas, procedures and methods of operation or mathematical concepts but their expressions¹⁷

Development has a relative meaning. However, in very simple terms, it can be defined as the gradual growth of something so that it becomes among other things more advanced and stronger.

¹⁷WIPO, *Creative Expression: An Introduction to Copyright for Small and Medium Sized Enterprises*. (Geneva: WIPO Publication No. 918(E), 2006). p. 2.

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An expression of Folklore means the productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of such a community.¹⁸

Industrial Design means the ornamental or aesthetic aspect of an article. Industrial design rights are intellectual property rights that protect the visual design of objects that are not purely utilitarian. The design may be the shape, the patterns, lines or colour of an article. Industrial designs are applied to a wide variety of products of industry, handcraft, and technical, medical, house ware electrical and architectural drawings. Industrial designs are what make an article attractive and appealing; hence they add to the commercial value of a product and increase its marketability.¹⁹

Intellectual property refers to creations of the mind such as musical, literary, and artistic works; inventions; and symbols, names, images, and designs used in commerce, including copyrights, trademarks, patents and related rights. It is usually divided into two branches, namely industrial property and copyright.²⁰

Patent means a statutory privilege granted by a government to an inventor and to other persons deriving their rights from the inventor for a fixed period of 16 years and applies to inventions that are novel, of inventive step and are industrially applicable.²¹

Technology transfer and commercialisation initiatives are the means by which research and development and the market place can encounter one another and ideas be transformed into products and new businesses. This is because inventions are not of any use if they are not marketed and commercialised.²²

The term **economic** is synonymous to profitable. This is an adjective connected with the trade, industry and development of wealth of a country.

Trademark means a mark used or proposed to be used in relation to goods (and in Zambia with time services) for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any

¹⁸U. Suthersanen (International Centre for Trade and Development). Utility Models and Innovation In Developing Countries.) 13 (February, 2006).

¹⁹ Ibid. p. 299

²⁰ Ibid. p. 2

²¹ The Patents Act, Section 2

²² Ibid. p. 38

An expression of Folklore means the productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of such a community.¹⁸

Industrial Design means the ornamental or aesthetic aspect of an article. Industrial design rights are intellectual property rights that protect the visual design of objects that are not purely utilitarian. The design may be the shape, the patterns, lines or colour of an article. Industrial designs are applied to a wide variety of products of industry, handcraft, and technical, medical, house ware electrical and architectural drawings. Industrial designs are what make an article attractive and appealing; hence they add to the commercial value of a product and increase its marketability.¹⁹

Intellectual property refers to creations of the mind such as musical, literary, and artistic works; inventions; and symbols, names, images, and designs used in commerce, including copyrights, trademarks, patents and related rights. It is usually divided into two branches, namely industrial property and copyright.²⁰

Patent means a statutory privilege granted by a government to an inventor and to other persons deriving their rights from the inventor for a fixed period of 16 years and applies to inventions that are novel, of inventive step and are industrially applicable.²¹

Technology transfer and commercialisation initiatives are the means by which research and development and the market place can encounter one another and ideas be transformed into products and new businesses. This is because inventions are not of any use if they are not marketed and commercialised.²²

The term ***economic*** is synonymous to profitable. This is an adjective connected with the trade, industry and development of wealth of a country.

Trademark means a mark used or proposed to be used in relation to goods (and in Zambia with time services) for the purpose of indicating, or so as to indicate, a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark, whether with or without any

¹⁸U, Suthersanen (International Centre for Trade and Development). Utility Models and Innovation In Developing Countries.) 13 (February, 2006).

¹⁹ Ibid. p. 299

²⁰ Ibid. p. 2

²¹ The Patents Act, Section 2

²² Ibid. p. 38

indication of the identity of that person, and also includes a certification trademark and domain names.²³

Treaty (International Convention) – An agreement under international law entered into by actors in international law, namely states and international organisations. They are a form of substitute legislation undertaken by states.²⁴

Utility model means an invention which does not meet all the requirements for patentability in order to obtain patent protection in that it does not involve an inventive step or is not novel but has an industrial use. A utility model is also known as a petty patent.

In a nutshell, an attempt will be made to show how IP can be used in the gradual growth of trade, industry and development of wealth in Zambia. IP administrative structures, from a social perspective, will also be construed.

1.9 REVIEW OF RELATED LITERATURE

One of the critical challenges facing the Zambian IP regime is the lack of IP awareness by the majority of Zambians. Very few are aware of the IP institutional and legal framework. Moreover, despite having the IP legal framework in Zambia, an IP National Policy is yet to be adopted. However, in this paper, an ambitious attempt will be made for a critical analysis of five IP statutes namely:

The Patents Act, Chapter 400; The Trade Marks, Act Chapter 401; The Registered Designs Act, Chapter 402; The Copyright and Performance Rights Act, Chapter 406 and The Plant Breeders' Rights Act, No. 18 of 2007.

During the critical analysis, due to the limitation of pages to this research paper with respect to analysis of five statutes, more emphasis will be placed on the lacunas manifesting in the Zambian IP legal framework.

In accessory, the TRIPS Agreement will be referred to more frequently with respect to international compliance in order to measure compliance of Zambian IP statutes since

²³ WIPO, *Marking a Mark: An Introduction to Trademarks for Small and Medium Sized Enterprise*. (Geneva: WIPO Publication No. 492(E), 2001). p.2.

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1.10 METHODOLOGY FOR THE RESEARCH STUDY-

The main methods adopted for this research study will be:

- a) Literature review by desk work which will involve research on the internet and extensive review of the *Zambian IP statutes* to the research study, international conventions and policy documents on the topic in issue.
- b) Interviews with personnel from the Patents and Companies Registration Office, various ministries and research and development institutions among others.

1.11 CONCLUSION

Intellectual Property, once seen as a technical matter for legal experts, has today become a central concern for governments, for businesses, for civil society, for scientists and for individual creators. In a world where the economic growth of nations is driven increasingly by the creativity and knowledge of their people, effective IP systems, which create incentives for innovation and structures for sharing the results, are key to unlocking this human potential. A broad setting of appropriate complementary policies and transparent regulation is very necessary; in promoting the important and positive role IPRs could have on social and economic development in Zambia.

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CHAPTER TWO

INTELLECTUAL PROPERTY ADMINISTRATION IN ZAMBIA

2.0 INTRODUCTION

Intellectual property administration in Zambia is handled by two different government institutions. Industrial property is under the Ministry of Commerce, Trade and Industry and is administered by Patents and Companies Registration Office, a quasi government body, while Copyright falls under the Ministry of Information and Broadcasting Services and is under the jurisdiction of the Office of the Registrar of copyrights. There are other formal arrangements under the Ministry of Agriculture and Ministry of Health which need to be harmonized to avoid lacunas.

2.1 ADMINISTRATION OF INDUSTRIAL PROPERTY

The organisational structures which need to be established by the government of a country for industrial property laws to operate effectively fall into three categories.²⁵ These include bodies operated directly as part of the government machinery, namely an Industrial Property Office and a Policy Unit; secondly, bodies outside the government machinery but which may call for government supervision, namely patent and trademark agents; and finally special arrangements in courts. Administration of Industrial Property in Zambia espouses the first category. The government of the Republic of Zambia, through the Ministry of Commerce, Trade and Industry regulates and controls the intellectual property activities under the auspices of the Patents and Companies Registration Office (herein after called PACRO), which is a quasi government body. All industrial property activities in Zambia are under one authority, since this results in a more sufficient use of management skills and the changeability of a certain number of employees, particularly in the support areas.

With respect to the administrative structure at PACRO, the Registrar is the Directorate General responsible for the management of all operations related to Industrial property.

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In practically every industrial property office, this responsibility would be too vast for only one manager. Thus, the Assistant Registrar is also responsible for other specific operations. The industrial property operations are managed by the various centres under the Registrar. These centres are the ones which are involved with the activities leading to the grant of industrial property rights. They deal as appropriate, with patent, trade mark or industrial design examination, appeals and oppositions, Patent Cooperation Treaty (hereinafter called PCT), documentation and information.

In Zambia, the Ministry of Commerce Trade and Industry, through PACRO is formulating a National Intellectual Property Policy, which is yet to be adopted, in its pursuit to adequately administer IPRs in the country. This policy is aimed at encouraging investors, innovators and creators to work diligently knowing well that their rights will not only give those benefits in form of royalties but also contribute to national development. The subsequent paragraphs will discuss and analyse the administration of each IPR in Zambia, as each contributes differently in the social and economic development of the country.

2.2 The Patents Office

Firstly, in the field of patents for inventions, the main task at PACRO consists in receiving applications for the grant of patents and deciding, separately for each application, whether a patent should be granted or refused. There are two separate routes by which patent protection for an invention may be obtained in Zambia, namely the national route and the PCT route²⁶. These routes, though separate, have certain common features and the procedures are largely interrelated. Under the national route, the inventor makes an application for a patent for invention to the patent office under the Patents Act. **Section 11** of the Patents Act provides that an application for a patent for an invention, made in the prescribed form may be made by any of the following persons, either alone or jointly with any other person:

- (i) a person claiming to be the inventor of the invention who owns the invention in respect of Zambia;
- (ii) an assignee;

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- (iii) a national of the Paris Convention who makes an application for a patent in Zambia within twelve months subsequent to the filing of the first application in the convention country;
- (iv) the legal representative of any person who immediately before his death or disability was entitled to make an application for a patent.

Once a patent application has been lodged at the patent office and is given a filing date, the patents Act²⁷ provides that it has to be subjected to publication and advertisement in the patent journal. This therefore, means that the application form, the specification and other essential documents filed shall be open for public inspection. Further, preliminary examination, also referred to as examination as to form is normally conducted as soon as an application is given a filing date. Pursuant to **Section 16** of the Patents Act, the Preliminary examination is carried out to determine whether the application or specification complies with the formal requirements.

After the preliminary examination and search have been conducted and the patent applicant wishes to proceed with a substantive examination, a request will be made to the patent office for a substantive examination upon payment of a prescribed fee²⁸. The purpose of substantive examination is to ensure that the patent application satisfies certain conditions of patentability, namely, that the invention is new, involves inventive step and is of industrial applicability or usefulness²⁹. It is unfortunate that examiners at PACRO have no adequate training. Further, most examiners conducting substantive examinations have no scientific background which makes it difficult for them to adequately examine an invention. The Zambian IP system does not provide for utility models which are inventions which do not meet all the requirements for patentability in that they do not involve an inventive step or novelty, but have to be of industrial utility³⁰.

²⁷ Section 21, Patents Act

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A further administrative task at PACRO is to deal with the renewal of the patents granted, as exclusive rights granted with respect to a patent are limited to sixteen years, thereafter requiring renewal³¹.

Finally, PACRO may have functions of disseminating technological information to the general public and deciding as cases for compulsory licences.

2.3 The Trademark Office

In the field of trademarks, there are three main tasks related to administration of trademarks. The main task at PACRO consists in receiving applications for the registration of trademarks and deciding separately for each application, whether registration should be effected or refused.

There are various routes available for the registration of trademark³². The first is the national route, which requires the proprietor of the mark to apply for a trade mark under the Trade Marks Act. If the proprietor wishes to register and protect the trademark outside Zambia, an application to the trade mark office of each country in which the applicant is seeking protection must be made by filing the corresponding application in the required language and paying the required fees. The basis for this is that trade marks are territorial, meaning that a trade mark is only protected in the country where it is registered.

The second route is the regional route. Under this route, the proprietor who wishes to protect his trademark in countries which are members of a regional trade mark system may apply for registration, with effect in the territories of all member countries, by filing an application for a trademark at the relevant regional office. The regional trademark office includes ARIPO for the Banjul Protocol on Registration of Trademarks.

With respect to the national route, which requires the proprietor of the mark to apply for a trade mark under the Trade Marks Act, there are four parts under which an application for

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registration of a trademark can be made³³. Part A is for registration of those marks that are adapted to distinguish. For instance, Apple is a very distinctive mark for use with respect to the function of a computer. Part B is for registration of those marks which are capable of being distinguished, either inherently or over time. Part D deals with registration of well known marks by way of defensive registration. For example, Nokia is a very well known mark and therefore no application will be allowed to register it as it would cause free riding on the reputation it has gained. Part C deals with registration of collective and certification marks. Collective marks are usually common to associations and members are allowed to use it. These are exclusive in terms of membership and not individually as with Part A and B. With respect to certification marks, an association or skills club certifies that when the product gets to the market, it is of high quality being approved by a standardising body. For instance, the Italian leather mark has been approved by a standardising body that it is of high quality pursuant to some Italian certification mark. **Section 14** of the Act provides that the application for registration of a trade mark requires the submission of the following items when registering either in Part A or in Part B of the register:

- (i) a request for registration;
- (ii) the name, address and signature of the applicant;
- (iii) a statement of goods in relation to which it is sought to register the trade mark;
- (iv) a representation of the trademark;
- (v) a statement that the trademark is being used by the applicant or with his consent, in relation to those goods, or that he has a bona fide intention to use it;
- (vi) prescribed fees

With respect to application for registration of a sign or symbol, based on the definition of a trade mark pursuant to **Section 2** of the Trademarks Act, it must be submitted that the Act does not limit the sign or symbols that may serve as a trade mark, as long as it is distinctive or distinguishable among different goods or products and that it does not violate public order or morality.

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³³ The Trade Marks Act

In **Unilever's Trademark**³⁴, the court refused to allow the registration of red and white stripes for tooth paste on the ground that the colours were deemed to be functional as they derived from the chemical components contained in the toothpaste. In Zambia, the Trade Marks Act under **section 21** makes provision for applications for colour or combination of colours. If in black and without limitation of any colour, this will be deemed to have been registered in any colour. But, if it is in gold for instance, the applicant will be restricted in terms of use. This section might explain why enterprises in the communication fraternity, like former Celtel and MTN have made efforts to register red and yellow respectively with respect to their services, despite the *Zambian Trademark* system not providing for protection of service marks.

After application for registration, examination of the application for a trademark follows, which is in two stages, namely the formal examination and substantive examination³⁵. The former makes sure that the application complies with the administrative requirements or formalities, where as the latter ensures that the trademark office examines the application for a trademark to verify whether it complies with all the substantive requirements namely absolute and relative grounds for refusal of registration. Applications for trademark registration are usually rejected on absolute grounds, in cases where signs or marks are not trademarks, lack distinctiveness; descriptive, like *Thirsty Mineral Water*, *bullet detergent soap*, *rocket detergent soap*, *boom*, which unfortunately negatively describe the products; generic terms; deceptive; offending public morality; made in bad faith; and specifically protected emblems.

With respect to relative grounds for refusal of registration, the Trademarks Act prohibits the registration of a trademark that is identical and resembles the earlier trademark³⁶. The case in point is **Trade Kings Limited v. The Attorney General**³⁷, where the applicant, Trade Kings Limited, filled an appeal to the High Court against the Refusal by the Registrar of Patents, Trademarks and Designs to register YEBO as a trademark in class 3. The Registrar's refusal was based on the assumption that if YEBO was registered as a

³⁴ [1984] R.P.C. 155

³⁵ Rule 31, Trade Marks Act

³⁶ Rule 17, Trade Marks Act

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trademark, it would conflict with EBU which is a registered design. Silomba, J. stated that the test to be used in deciding similarities or dissimilarities between two words marks was whether the ordinary sensible members of the public would be confused by the use of the two marks. In this regard, he was of the view that the ordinary sensible Zambian would, in his or her pronunciation of the word YEBO, tend to fuse Y and E into YEE and B and O into BOO. The result would be that trademark YEBO would be pronounced as YEEBOO which is phonetically different from the trademark EBU.

Thus **Silomba, J.** allowed the appeal and quashed the decision of the Registrar not to register the mark YEBO in class 3 of Part A of the register and ordered that the trademark application be registered as a trademark.

The researcher is of the view that this case illustrates lack of understanding of the law generally by the court, which makes it difficult for IP administration in Zambia. This is so because the researcher is of the opinion that there is no phonetic variance to vitiate possible consumer confusion between pronunciations YEEBOO and EBU. In the case of **British Sugar Plc v James Roberson and Sons**³⁸, **Jacob, J.** proposed factors that should be taken into account when determining similarity of trademarks. Firstly, he was of the view that uses of respective goods should be determined. Both YEBO and EBU are bathing soaps. Further, he was of the view that users of the respective goods must be determined. Consumers of EBU were likely to be consumers of YEBO. Thirdly, he was of the view that the physical nature of the goods was supposed to be determined. The researcher is of the view that the get-up of both EBU and YEBO is similar, due to the fact that packing is almost similar and both soaps are red in colour. Jacob, J. was further of the view that determination as to whether the two products or goods are rivals in the same market must be made.

Thus, the researcher is of the opinion that the criterion used by the court in the **Trade Kings Limited v. A-G** case was not enough. After examination, publication is next. The Trademarks Act requires the applicant of a Trademark to advertise the application as to enable those who may be affected by the registration of the trademark in question

³⁸ [1996] R.P.C. 281

³⁹ Section 23 (1), Trade Marks Act

trademark, it would conflict with EBU which is a registered design. Silomba, J. stated that the test to be used in deciding similarities or dissimilarities between two words or marks was whether the ordinary sensible members of the public would be confused by the use of the two marks. In this regard, he was of the view that the ordinary sensible Zambian would, in his or her pronunciation of the word YEBO, tend to fuse Y and E into YEE and B and O into BOO. The result would be that trademark YEBO would be pronounced as YEEBOO which is phonetically different from the trademark EBU.

Thus **Silomba, J.** allowed the appeal and quashed the decision of the Registrar not to register the mark YEBO in class 3 of Part A of the register and ordered that the trade mark application be registered as a trademark.

The researcher is of the view that this case illustrates lack of understanding of IP generally by the court, which makes it difficult for IP administration in Zambia. This is so because the researcher is of the opinion that there is no phonetic variance to vitiate possible consumer confusion between pronunciations YEEBOO and EBU. In the case of **British Sugar Plc v James Roberson and Sons**³⁸, **Jacob, J.** proposed factors that should be taken into account when determining similarity of trademarks. Firstly, he was of the view that uses of respective goods should be determined. Both YEBO and EBU are bathing soaps. Further, he was of the view that users of the respective goods must be determined. Consumers of EBU were likely to be consumers of YEBO. Thirdly, he was of the view that the physical nature of the goods was supposed to be determined. The researcher is of the view that the get-up of both EBU and YEBO is similar, due to the fact that packing is almost similar and both soaps are red in colour. Jacob, J. was further of the view that determination as to whether the two products or goods are rivals in the same market must be made.

Thus, the researcher is of the opinion that the criterion used by the court in the **Trade Kings Limited v. A-G** case was not enough. After examination, publication is next.³⁹ The Trademarks Act requires the applicant of a Trademark to advertise the application so as to enable those who may be affected by the registration of the trademark in question to

³⁸ [1996] R.P.C. 281

³⁹ Section 23 (1), Trade Marks Act

raise an objection. In **Trade Kings Limited v. The Attorney General, Silomba, J.** averred that advertisement was necessary to allow other interested parties to know whether what was being proposed for registration was injurious to their business interests.

A further task at PACRO, with respect to the Trade Marks Office, in its trademark administration is to deal with requests or the renewal of existing registrations.

Finally, the trade marks office at PACRO may be required to give information, at the request of any member of the public, on the existence in its register, of trademarks that are identical or similar to a sign in respect of which the member of the public requests the information. The activity performed by PACRO in this last respect is called “Search” or “Search for identical or similar trademarks”.

2.4 The Industrial Designs Office

In the field of industrial designs, the main task at PACRO consists of receiving applications for the registration of industrial designs and deciding, separately for each application whether registration should be effected or refused. There are two routes available for one to obtain a design protection in Zambia⁴⁰. Firstly, one can protect a design through an international route, by registering it under the Paris Convention for the Protection of Industrial Property, pursuant to **Section 13** of the Registered Designs Act. Secondly, one can secure the protection of the design by registering under the Registered Designs Act.

Section 7 of the Act provides that the person claiming to be the proprietor of the design, the assignee or the legal representative, are persons who may make an application for registration of a design in respect of any article or set of articles. Where it is desired to register the same design in respect of more than one article, a separate application must be made in respect of each article. Each application must be numbered separately and treated as separate and distinct.

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In accessory, the Registrar may, for the purpose of deciding whether a design is new or original, make such searches, if any, as he thinks fit. The House of Lords in **Stenor Limited v. Whitesides (Clitheroe) Limited**⁴¹, stated that in determining whether or not the design has been anticipated, it must be compared with previous designs applied to all other articles in the same class and a difference of purpose or use in articles of the same class was immaterial.

Section 9 of the Registered Designs Act states that the Registrar may refuse any application for the registration of a design or may register the design in pursuance of the application subject to such modifications, if any, as he thinks fit.

With respect to publication, though the Registered Designs Act⁴² provides that a design will not qualify for registration if the same has been registered or published before registration, the design should not be refused registration, firstly, where the disclosure of the design by the proprietor to any other person in such circumstances as would make it contrary to good faith for that other person to use or publish the design; secondly, where the disclosure of the design is in breach of good faith by any person other than the proprietor of the design; thirdly, in cases of a new or original textile design intended for registration, the acceptance of the first and confidential order for goods bearing the design; or where the communication of the design by the proprietor of the design to a government department or any person authorised by the Minister to consider the merits of the design, or anything done in consequence of such a communication.

The second task at PACRO with respect to the Industrial Design Office is to deal with requests for the renewal of existing registrations for industrial designs.

Finally, pursuant to **Section 25** of the Act, the Industrial Design Office may perform a task, through the Registrar, upon a request made in the prescribed manner by the registered proprietor, to cancel the registration of a design. At any time after a design has been registered, any person interested may apply to the Registrar for the cancellation of

⁴¹ [1948] 2 ALL E.R. 241

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the registration of the design on the grounds that firstly, the design was not, at the date of the registration new or original; secondly, that the design, at the time when it was registered, was a corresponding design in relation to an artistic work in which copyright subsisted under copyright law; further, that by reason of the previous use of that artistic work, the design would not have been registerable under the Registered Designs Act. Furthermore, that the copyright in that work under the written law relating to copyright has expired; or that the registered design is not a design within the meaning of the Registered Designs Act.

2.5 Plant Breeder's Rights

Section 3 of the Plant Breeder's Rights Act states that the Seed Control and Certification Institute within the Ministry responsible for agriculture is hereby designed as the plant variety protection authority and shall be responsible for the administration of the Act. Further, **Section 4** of the Act provides that the functions of the Institute are to; register plant varieties; promote and encourage the development of new plant varieties; protect the rights of plant breeders with respect to varieties of plants; document the characterisation of varieties; maintain catalogues of registered varieties of plants, seeds and germplasm; issue licences in accordance with the Act; compile and maintain statistics with regard to plant varieties, seeds and germplasm; and do all such things connected with or incidental to the foregoing.

Further, **Section 5** provides that there shall be a Registrar of the Institute who shall be a Registrar of the institute and who shall be responsible for the carrying out of the provisions of the Act. In addition, **Section 5** goes on to say that there shall be a Deputy Registrar who shall be a public officer and who shall exercise such functions and duties as are delegated to the Deputy Registrar by the Registrar.

2.6 Administration of Copyright and Related Rights

Since copyright does not protect ideas, but the original expression of those ideas, the general principle of copyright law is that copyright protection arises automatically on creation of the work and does not depend upon registration, which to a certain extent, makes administration of copyright and related rights an intricate process, especially in

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developing countries like Zambia. However, the Copyright and Performance Rights Act⁴³, makes registration of copyright work not mandatory. **Section 39** of the Act further provides that the existence and enforceability of copyright shall be independent of whether or not it is registered under the Act. However, **Section 8** of the Act also provides that copyright can only subsist in specified descriptions or works. The section lists the works in which copyright subsists subject to qualification requirements as being original literacy, musical, artistic works or computer programs; compilations; and is visual work; sound recordings; broadcasts, cable program; and typographical arrangements of published editions or literacy works.

From this section it is rational to conclude that although copyright protection arises automatically, there are some administrative tasks which should be performed in order to acquire the protection. In Zambia, copyright and related rights are administered by the Ministry of Information and Broadcasting, and are under the jurisdiction of the Office of the Registrar of Copyrights.

Thus, the administrative role of the state generally implemented in a government structure is the policy level function, monitoring legislation and enforcement strategies⁴⁴. Unfortunately, Zambia is yet to adopt an IP national policy to adequately implement this administrative role.

Further with respect to copyright administrative tasks, the Copyright and Related Rights Act, as stated earlier, makes registration of copyright work not mandatory. This means that there is a possibility of registering copyright works. In that case, the administrative task to that effect is to register the works and subject matter protected by copyright and related rights. This function may often be the most important and burdensome administrative task, the amount of burden depending on the prosperity of the copyright industry, on the popularity of the registration system and on the incentives for its use provided by national legislation. Another administrative task may be the issuing of compulsory licences such as translation and/or reproduction licences.

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Unfortunately, the Copyright and Performance Rights Act does not provide for an administrative control of the establishment and/or the operation of private organisations exercising copyright and/or related rights collectively or jointly on behalf of rights-holders represented by them. However, Mondo Music, though registered as a business enterprise at PACRO, attempted to exercise copyright and/or related rights on behalf of rights-holders represented by them in the music fraternity. Due to the weak copyright administrative system in Zambia, Mondo Music has ceased representing rights-holders due to the fact that the enterprise owner confessed that those involved in piracy were always a step ahead making the basic operation of collective management of copyright and related rights an extremely difficult task.

2.6 CONCLUSION

National laws and regulations in the field of IP are being adopted in a number of countries and are constantly being reviewed. Such laws and regulations take into account economic changes and the effects of technological advances. Most IP laws in Zambia have not been reviewed since independence in 1964. In addition, there are only two PACRO offices in operation, one in Lusaka and the recently opened one in Livingstone. This makes IP administration difficult, to a great extent. In accessory, the Zambia's IP system has not yet adopted the National IP Policy which further contributes to the difficulties in IP administration. Based on these drawbacks, the IP administrative system, has not, to a greater extent, contributed to the country's social and economic enhancement.

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CHAPTER THREE

ANALYSIS OF INTELLECTUAL PROPERTY PROTECTION IN ZAMBIA

3.0 INTRODUCTION

In the previous chapter, it was established that one of the most fundamental administrative task of an IP system in Zambia consists in receiving applications for registration of patents, trademarks, industrial designs, copyright and related rights and deciding separately for each application, whether registration should be effected or refused. Once registration is effected, exclusive rights accrue to the applicant and these rights therefore, need to be protected. Thus, protection of IPRs emanates from their registration. On that account, this chapter will further analyse what these rights are and how these rights are protected in Zambia. Further, the IPRs which are not protected by the Zambian IP system, like utility models, service marks and geographical indications will briefly be examined, during the legal analysis.

3.1 INDUSTRIAL PROPERTY PROTECTION

Generally, industrial property protection makes it possible for creators of innovations (among them goods, processes and apparatus) to establish themselves more readily, to penetrate new markets with a minimum of risk and to amortize the investments made in the research that led to the inventions⁴⁵.

3.1.1 Patents

The researcher is of the view that Zambia has a weak patent system that does not adequately cover all aspects of intellectual property. This suggestion is fortified by, for instance, comparing provisions relating to compulsory licenses between those in the TRIPS Agreement and those in the Patents Act. The comparison can be achieved by balancing the analysis among provisions in the Patents Act, the TRIPS Agreement and the DOHA Declaration, especially, **paragraph 6**. The Patents Act provides for two types of compulsory licenses. The first category is one granted to prevent abuse of a patent that

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might result from the exercise of the exclusive right. The second category is granted in cases where public interest, such as defence, health or food is deemed necessary. The second category captures a possible implementation of **paragraph 6** of the Doha Declaration, with respect to pharmaceutical products. **Section 40** of the Patents Act provides that any government department or any person authorised in writing by the Minister may do any of the acts in relation to a patent invention for the services of the State, without the consent of the patentee or proprietor of the patent, to articles which are no longer required for the purpose for which they are made; or secondly, to sell or offer for sale of inventions to a foreign country for defence purposes of that country.

Conversely, **Article 31(f)** of the TRIPS Agreement provides that a compulsory licence must be authorized predominantly for the supply of the domestic market of the member that authorises the license. Thus, **Section 40(6) (b)** of the Patents Act is in blatant contravention of **Article 31(f)** of the TRIPS Agreement. Further, **Paragraph 6** of the DOHA Declaration states that it is recognised that World Trade Organisation members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. Thus, the Council for TRIPS was instructed to find an expeditious solution to this problem and to report to the General Council.

In implementing **Paragraph 6**, the General Counsel stated that in the light of the foregoing, exceptional circumstances exist justifying the waiver from the obligations set out in **paragraphs (f) and (h)** of **Articles 31** of the TRIPS Agreement with respect to pharmaceutical products.

It is the researcher's opinion that as long as the Patents Act, under **Section 40(6)(b)**, provides for granting of compulsory licences in terms of sell or offer for sale of inventions to a foreign country for defence purposes of that country, exceptional circumstances which should be established to benefit from the implementation of **Paragraph 6** of the DOHA Declaration will extremely be difficult to ascertain since minimum standards set out in the TRIPS Agreement with respect to compulsory licenses are not complied with. This enormously contributes to the weakness of the IP system in Zambia.

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Additionally, **Paragraph (h) of Article 31**, of the TRIPS Agreement provides that the patent owner or right holder must be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorised use. **Section 40(3)** of the Patents Act remarks that the government is required to compensate the patentee or proprietor of a patent where any use of the said patent by a government department is made after the publication of the patent for the invention.

Section 40(3) of the Act further states that the said compensation must be made upon such terms as may be agreed upon either before or after the use, between the Minister responsible for finance, or in default of such agreement on such terms as may be determined by the court. The weakness of the IP system in this respect manifests in the lack of explanation by the Patents Act, of what constitutes adequate compensation.

In Zambia, there are very few patent attorneys which to a greater extent, contributes to the weakness of the patent system in Zambia, with respect to patent protection. Trade Kings and Unilever, which are among the leading business enterprises involved in inventions, have no Corporate Patent Attorneys. A patent department in a corporation like Trade Kings usually consists of both technical and clerical staff and is, in many cases headed by a patent attorney.

3.1.2 Utility Models

The use of utility models in the current Zambian IP system is non existence. It is feasible to include this area of IPR into the Patent Act⁴⁶, which stimulates the need for amendment of the Patents Act.

Zambia is a LDC. Therefore, it is highly unlikely for a patent system to adequately contribute to its social and economic development. Thus, there is need to utilise the use of utility models from which obtaining protection is usually shorter and simpler on comparison with obtaining protection of a patent. There is in place a national policy on science and technology. One of the specific policy objectives identified is to create a National petty patents mechanism through which utility certification will be granted in

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order to: firstly, help protect innovations not covered by the patent system and usually displaced by technologies; and secondly, to enable local innovations improve their technologies in order to be protected and enable them play a more significant role in the key economic sectors. Further, while the novelty requirement must always be met, that of inventive step” or non-obviousness may be much less or even absent altogether⁴⁷. It is indisputable that developing countries have technological advantage over developing nations, which creates unjustifiable monopolies to companies which often can be abused, especially where the patentee prevents or deters potential competitors from developing products similar to his own or threaten with legal action, or block access to new technologies especially by developing countries. Thus, the starting point would be to use protection of utility models for them to contribute to social and economic development in Zambia.

3.1.2 Trade Marks

The trademark right is said to be a vulnerable right⁴⁸. This is because trademarks are always in danger of turning into the generic name of an article or of being “diluted”. In fact, trademarks may easily turn into generic names, if the owner uses them in an inappropriate way, or if the competitors, consumers, or the mass media, such as newspapers or magazines are allowed to use them as if they were generic names. If a competitor is allowed to use any similar trademark on goods of the same kind, or if the use of the trademark is overlooked even on goods other than the one for which the trademark has been registered, the original character of the trademark will be diluted, thus impairing its value. It must be understood that in order to keep the trademark from running into a generic name and/or becoming diluted, trademark management must be conducted intensively⁴⁹. In such a situation, the trademark agent should keep watch on the use of the trademarks owned by the client and prevent them from being improperly used. In case such improper use is detected, the trademark agent should take appropriate action immediately or when the opportunity presents itself. With respect to duration of protection, **Section 25 of the Trade Marks Act** provides that a trademark registration is

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order to: firstly, help protect innovations not covered by the patent system and usually displaced by technologies; and secondly, to enable local innovations improve their technologies in order to be protected and enable them play a more significant role in the key economic sectors. Further, while the novelty requirement must always be met, that of inventive step” or non-obviousness may be much less or even absent altogether⁴⁷. It is indisputable that developing countries have technological advantage over developing nations, which creates unjustifiable monopolies to companies which often can be abused, especially where the patentee prevents or deters potential competitors from developing products similar to his own or threaten with legal action, or block access to new technologies especially by developing countries. Thus, the starting point would be to use protection of utility models for them to contribute to social and economic development in Zambia.

3.1.2 Trade Marks

The trademark right is said to be a vulnerable right⁴⁸. This is because trademarks are always in danger of turning into the generic name of an article or of being “diluted”. In fact, trademarks may easily turn into generic names, if the owner uses them in an inappropriate way, or if the competitors, consumers, or the mass media, such as newspapers or magazines are allowed to use them as if they were generic names. If a competitor is allowed to use any similar trademark on goods of the same kind, or if the use of the trademark is overlooked even on goods other than the one for which the trademark has been registered, the original character of the trademark will be diluted, thus impairing its value. It must be understood that in order to keep the trademark from running into a generic name and/or becoming diluted, trademark management must be conducted intensively⁴⁹. In such a situation, the trademark agent should keep watch on the use of the trademarks owned by the client and prevent them from being improperly used. In case such improper use is detected, the trademark agent should take appropriate action immediately or when the opportunity presents itself. With respect to duration of protection, **Section 25** of the **Trade Marks Act** provides that a trademark registration is

⁴⁷ Ibid
⁴⁸ Ibid. p. 420
⁴⁹ Ibid. p. 420

valid for seven years but may be renewed from time to time. **Article 18** of the TRIPS Agreement provides that the term of initial registration and renewals shall be no less than seven years, renewable indefinitely. Thus, Zambia is TRIPS compliant with respect to the term of protection.

With respect to rights conferred by a trademark, the proprietor of a registered trademark acquires the exclusive right to use the trademark and the right to exclude others from using it. **Section 9** of the Trade Marks Acts stipulates that the registration of a person in part A and part B of the register of trademarks as proprietor of a trademark in respect of goods must, if valid, give or be deemed to have given that person the exclusive right to use the trademark in relation to those goods. **Article 16.1** of the TRIPS Agreement fortifies this provision by stating that the rights conferred by registration shall include the exclusive right to prevent third parties from using identical or similar signs for identical or similar goods and services, where such use would result in a likelihood of confusion, the latter to be presumed where the goods or services are identical, subject to certain allowable exceptions such as the fair use of descriptive terms as stipulated under **Article 17** of the TRIPS Agreement and **Section 13** of the Trademarks Act.

Thus, in a nutshell, the right to use a trademark implies, first the right of the owner of the mark to affix it on goods among them containers, packaging and labels, or to use it in any other way in relation to the goods for which it is registered. Secondly, it implies the right to introduce the goods to the market under the trade mark. Thirdly, it implies the trademark's owner's right to use his mark in advertising, promotional activities, business papers, documents and so on⁵⁰.

In addition to the exclusive right to use, the registration of a trademark grants to the proprietor of the trademark the right to exclude others from using his mark⁵¹. The right to exclude others from using the trademark emanates from the basic function of a trademark which is to distinguish goods of one enterprise from those of other enterprises. It is pertinent to understand that for trademark protection to contribute efficiently in

⁵⁰ Kanja, G.M. (2006). Intellectual Property Law. (Lusaka; UNZA Press, 2006). p. 369

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social and economic development in Zambia, great investment in legally establishing the mark needs to be practiced. Trade Kings Limited and Unilever hardly have trademark attorneys because if they did, trademarks like bullet, rocket or boom would not be suggested for protection as these negatively describe the products thereby, making these products to contribute less to development, as they are less recognised on the global market.

3.1.3 Service Marks

Service marks play an important role in the field of commerce and trade. Currently, about 35 percent of services contribute to economic development in Zambia⁵². As an indicator of source, it identifies the service provider and also acts as a symbol of quality in distinguishing the services being provided by one undertaking from those of a competitor. The use of service marks in the current Zambian IP system is non existence. Since Zambia is abundantly endowed with tourist attractions, service marks can play a pivotal role in service ingenuities relating to tourist agencies, hotels and restaurants. But since this type of IPR is not protected under the Zambian IP system, its potential to contribute to social and economic development is vitiated.

3.1.4 Industrial Designs

Industrial designs are extensively used in the course of commerce and trade in Zambia. They add commercial value to the product and increase its marketability⁵³. At present, industrial designs are extensively used by SMEs, the local handcraft industry and by large scale businesses but the owners of these designs do not appreciate the importance of protection. A good example is Kabwata handcraft, which sometimes displays products at Arcades with designs of extremely good cultural handcrafts, of different variety. The researcher is with the knowledge that these beautifully designed products are not protected, feasibly due to lack of awareness of the benefits accruing from protecting these designs. This greatly contributes to the lack of positive impact industrial designs have on the Zambian social and economic development.

⁵² Interview: T. Simfukwe, (Economist, Ministry of Trade, Commerce and Industry). 28/12/08

⁵³ WIPO, *Looking Good: An Introduction of Industrial design for Small and Medium Sized Enterprises*. (Geneva: WIPO Publication No. 498 (E), 2006). p.1

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With respect to term of protection, **Section 15** of the Registered Designs Act provides that the right in a registered design lasts in the first instance for five years, followed, on application in the prescribed form and on payment of a prescribed fee, by two further periods of five years. **Article 26.3** of the TRIPS Agreement provides that the duration of protection shall amount to at least 10 years. Zambia therefore, is not yet TRIPS compliant, with respect to term of protection. With regard to rights of the proprietor, **Section 14** of the Registered Designs Act stipulates that the registration of a design gives the registered proprietor the exclusive right in Zambia to make or import for sale or for use for the purposes of any trade or business, or to sell, hire or offer for sale or hire, any article in respect of which the design is registered, being an article to which the registered design or a design not substantially different from the registered design has been applied, and to make anything for enabling any such article to be made.

In the same breath, **Article 26.1** of the TRIPS Agreement provides that the exclusive rights shall include the right to prevent third parties from making, selling or importing, for commercial purposes, articles bearing or embodying a protected industrial design. For industrial designs to contribute to Zambia's economic and social development, SMEs, which are the engine of economic growth in most countries, should be made aware of the benefits accruing from protection of industrial designs. Lack of an IP national policy contributes to the lack of awareness businesses enterprises have, relating to the benefits of protecting industrial designs.

3.1.5 Geographical Indications

Geographical indications play an important role in preserving the rights of indigenous people in relation to products produced within a given geographical area⁵⁴. These can provide protection and indications of source of local agricultural products, wines and spirits that originate from specific regions of Zambia. However, the use of geographical indication in the current Zambian IP system is non existence. It is indisputable that Zambia is abundantly endowed with water resources. This makes it feasible for agriculture to adequately contribute to the country's social and economic betterment. But

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for agriculture to effectively contribute to social and economic development of Zambia, the agricultural products which meet the protection criteria of geographical indications must be protected. Zambia has enterprises which produce products like Kawambwa tea, Kasama Sugar, Kafue Sugar and Mongu rice among other products. The use of geographical indications in the current Zambia IP system can enhance the capability these products have, in contributing to the country's social and economic development. This would to a greater extent, reduce the secondary effects caused by the global economic crisis as the quality of most of the people's well being would depend on sustainable agricultural production of the nation.

3.1.6 Plant Breeders Rights

With respect to duration of plant breeder's rights, **Section 11** of the Act provides that a plant breeder's rights in respect of a plant variety shall exist for a period of twenty years in the case of any annual crop and twenty five years in the case of any tree and any other perennial commencing on the date on which the successful application for a plant breeder's rights in respect of the plant variety is granted in accordance with this Act. All these provisions are very similar with those of the 1991 Act of the International Union for the Protection of New Varieties of Plants Convention. In other words, Zambia has based its Act on UPOV 1991, as a *sui generis* mode of protection though not a member. The availability of growers of improved, new plant varieties is critically important to the agricultural and horticultural industries of all countries, Zambia inclusive. Improved disease resistance, higher yields and improvements in a host of other features of plants can dramatically affect the economics of the production of a crop and its acceptability to its final consumer. Food security for a rapid growing national population, sustainable agricultural production, the need to raise farm incomes and to subsequently enhance social and economic development call for a sustained effort in breeding new varieties. The Plant Breeder Rights Act is relatively new in Zambia. Therefore, its adequate application depends squarely on making relevant institutions, enterprises and farmers to be aware of the benefits of having their plant breeder's rights protected.

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3.2 Protection of Copyright and Related Rights

Copyright protection is above all one of the means of promoting, enriching and disseminating the national cultural heritage⁵⁵. Copyright protection, from the view point of the creator of works, makes sense only if the creator actually derives benefits from such works, and this cannot happen in the absence of publication and dissemination of his works and the facilitation of such publication and dissemination, hence the need for protecting related rights as well⁵⁶.

Thus, copyright confers moral and economic rights to its owners. The Copyright and Performance Rights Act does recognise moral rights. **Section 24** of the Act provides that notwithstanding the transfer of the copyright, or any part of it, the author or director of audiovisual work shall have the right to be identified as author or director of the works, and to object to any distortion, mutilation or other modification or derogatory action in relation to the work that would be prejudicial to his honour or reputation. The Act also recognises economic rights which are associated rights of the copyright holders to derive economic benefits from their works. All performers and producers of literary and artistic works are entitled to a bundle of rights in recognition of their works. Performer's rights include reproduction, broadcasting live performances or inclusion in a live broadcast in a cable program service, distribution and public performance. Producer's rights include adaptation, reproduction, publication, broadcasting or inclusion in a cable program, communication to the public by any means and prohibition of importation of sound recording copies into Zambia.

Protection of copyright and related rights in Zambia has not adapted to considerable socio-economic and political changes on the one hand, and rapid strides in technological development on the other, which has brought about substantial changes of the outlook in relation to copyright. This is so because Zambia is yet to adopt an IP national policy which will facilitate lobbying for enforcement of rights through development of appropriate legislation.

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For instance, with respect to duration and transmission on death of rights, **Section 24** of the Copyright and Performance Rights Act provides that moral rights shall expire on the death of the author or director of the audio visual work. Zambia is party to the Berne Convention which stipulates that the duration of copyright provided for by national law is the life of the author and not less than fifty years after the death of the author. This is to enable the author's successors to have economic benefits after the author's death. But in Zambia, the author's moral rights cannot be infringed when he or she is dead. This is unfair to the author's personal representative who might see others, for instance, distort, mutilate or modify the work, but can do nothing about it as the moral rights do not exist in the work in question and hence no legal right to enforce them.

3.3 CONCLUSION

With the evermore widespread application of digital technology, including the advent of multimedia productions and the use of digital networks like the internet, the exercise and the management of IPRs are facing new challenges. A renewed awakening of the role of intellectual property in Zambia has to lead to the adoption or revision of national legislation on patents for inventions, industrial designs, trademarks, copyright and related rights and the transfer of technology, as well as to the establishment or modernisation of government structures that administer such legislation. Thus, the IP legal framework in Zambia must attempt to respond to the need for a better understanding of the problems presented by the new technologies and by the new technological means of communication of information and ideas and of their impact on industry and commerce and on the quality of life, which is currently missing under the current Zambian IP system.

In a nutshell, for IP protection to contribute to Zambia's social and economic development, there is need to introduce in its IP system, the protection of utility models, service marks and geographical indications and generally complying to international treaties, especially the TRIPS Agreement, which sets out minimum standards to its members as per **Article 9** of the TRIPS, which should subsist in each member's national IP legislations. To a greater extent, Zambia is yet to attain international standards with respect to IP protection, which to a great extent, hinders IP's contribution to Zambia's social and economic development.

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CHAPTER FOUR

INTELLECTUAL PROPERTY RIGHTS AND ECONOMIC DEVELOPMENT

4.0 INTRODUCTION

The previous chapter analyzed what Intellectual Property Rights (IPRs) are protected in Zambia, and how these Intellectual Property Rights are protected. The aim of this chapter is to further analyze the nexus between protection of these rights and economic development. The analysis will place more emphasis on the lessons that Zambia can possibly learn from countries which have thrived in using adequate IP systems to enhance their economic development, thereby establishing how IP has improved people's lives in terms of wealth creation. During the analysis, a case study with the Republic of Korea will be made on how IP has improved its social and economic development. Statistics will be referred to in an attempt of establishing empirical evidence that indeed, IPRs can positively affect the processes of economic development and growth.

4.1 ANALYSIS

As a starting point, the goal of communicating a better understanding of IP underpins a wide range of a country's activities, from promoting the strategic use of IP for development, to enhancing understanding among policy makers of the need to incorporate IP in public policies. Promoting the development of balanced IP policies that take into account the needs and interests of all stakeholders is a key challenge⁵⁷.

A case study with the Republic of Korea presents an illustrative development model⁵⁸. In Korea, until the turn of the century, the technology transfer situation at national universities looked somewhat disorganized, with a variety of institutions for industry-university' (the common phase in Korea) collaboration institutions coming into play, each

⁵⁷ WIPO, An Overview (Geneva: WIPO Publication No.1007E, 2007). p.9

⁵⁸ WIPO, Technology Transfer, Intellectual Property and Effective University-Industry Partnerships: The Experience of China, India, Japan, the Republic of Korea, Philippines, Singapore and Thailand. (Geneva: WIPO Publication No. 928(E), 2006). p 6

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one of which was backed up by some government ministry. As a result, overall efficiency was lost.⁵⁹ The situation improved when the law for Industry Education Promotion and Industry University Cooperation Boost was amended to pave the way for the establishment of the Industry University Cooperation Foundation.⁶⁰ To narrow the gap quickly with Japan and other industrialized countries, Korea began to recognize the importance of closer working relations between universities and businesses⁶¹. The industrial sectors of strategic importance to Korea changed quickly from labour-intensive products to high tech machinery and information sectors. In the recent past, a number of laws were introduced and amended to make way for a broad range of collaboration between universities and businesses.⁶²

Four laws were of particular importance to facilitating university-industry partnerships⁶³: the Science-Technology Basic Law, the Technology Transfer Promotion Law, Patent Law and the Law for Industrial Education promotion and Collaboration Boost. Seeing that Korea's innovation system was based upon the catch-up model, the World Bank and the Organization for Economic Co-operation and Development advised Korea to redirect its strategy towards long-term basic research and to open up its innovation system to foreign participation. Strengthening the university industry relationships was thought to be the right step towards achieving this end as illustrated in table 1 below⁶⁴.

TABLE 1-TECHNOLOGY TRANSFER OF 19 PRIVATE UNIVERSITIES IN THE REPUBLIC OF KOREA

	2001	2002	2004
NO. of technology transfers	58	102	133
Income from technology transfer	473 million won	983 million won	1,913 million won

Source: I, H., Development of University-Industry Partnerships for the Promotion of Innovation and Transfer of technology: Republic of Korea.

⁵⁹ Ibid. p.23

⁶⁰ Ibid. p. 23

⁶¹ Ibid. p. 6

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⁶² Ibid. p. 6
⁶³ Ibid. p. 6
⁶⁴ Ibid. p. 34

In the Republic of Korea, in the year 2003, 133 cases of technology transfers were reported from 19 Korean private universities. This represents a significant increase, up from 102 in 2002 and 58 in 2001. Parallel to this, the income for these universities from technology transfers more than tripled; from 0.473 billion won in 2001 to 1.913 billion Won in 2003. Patent applications by national universities seem to have increased drastically as well. This began after establishment of the Industry University Cooperation Foundation, which is responsible for the management for IPRs at each university. Seoul National University and Kyungpook national university obtained 260 and 36 patents respectively just in 2004. Prior to the set up of the Industry University Cooperation Foundation, Korean universities were inactive in protecting their inventions. Up until May 2001, only 44 patents were filed by the Korean National Universities.

Therefore, Korea has learned that it must strengthen its basic research, which now accounts for 13.9 per cent. Because the country has already reached a high level of technology, it has and will continue to become more and more difficult for the country to continue to import technologies from abroad.

Government funding is evenly split between public universities and private universities, but private universities get greater funding from the private sector, reflecting their greater willingness to work with the industry⁶⁵. The funding mechanism in Korea looks complex. There are numerous institutions that funnel research funds from the government to individual research laboratories. Apart from the Research Foundation which supports pure basic research and therefore has little to do collaboration with industry, the Korean Science and Engineering Foundation administers several different programs such as Basic Research Grants, Centre for Excellence, Special Research Materials Bank and Fellowship, whose entire funding amounts to 297 billion won (nearly US\$250 million). The Foundation collects projects at universities with a view to supporting the activities of university researchers who are engaged with international cooperation and university industry collaboration. In addition, the Ministry of Commerce, Industry and Energy covers part of the project costs that are deemed necessary to improve the competitiveness

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of the Korean industry. The Ministry runs several programs including Industry Innovation Technology Development, Parts and Material Technology Development projects, Regional specialized Development Business, and Small and Medium Business Administration. In some cases, part of the funding must be returned if the project turns out to be a success and profits are realized by the companies that participated in the collaborative projects.

After the patent has been granted for an invention or an innovation, the patented product or process must be given a brand or a trademark. There are about seventy-five brands worth 1 billion United States Dollars each.⁶⁶ Among them is Coca Cola, Microsoft and the Disney brands. Therefore, countries in which these brands originate from are benefiting from the reputation, good will and know how these marks have created on the products and manufacturers of these products. In that way, these trade marks have a positive economic impact on the development of their nations, as international trade, with respect to the products having these brands increases.

It has been said that one is not qualified to be a trademark agent either in name or in reality unless one is proficient in the selection and registration of trademarks and their effective use in trade and commerce.⁶⁷

In countries which have managed to establish the trademark systems that contribute positively to economic development, their enterprises have trademarks agents who are skilled in trade mark management.⁶⁸ In this trademark management, choosing or selection of a trade mark is cardinal.

A challenging problem faced world-wide with respect to trademark management is trade in counterfeit goods, which is a big problem and getting bigger. It is pervasive, it involves some petty unsavory characters and it has serious implications for health, safety, living standards and jobs. In an attempt to combat counterfeiting, **Dr. Dora Akunyili**

⁶⁶ *Interbrand.com*

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After the patented product or process has been registered as a trademark, its visual design must also be protected. In Korea, there has been an introduction to the protection of industrial designs for Small and Medium-sized Enterprises (SMEs).⁶⁹ Statistics show that over 90 per cent of enterprises in these countries are SMEs, which make a vital contribution to their national economies.⁷⁰

In Korea for instance, SMEs often devote a significant amount of time and resources to enhancing the design appeal of their products. Thus, new and original designs are often created to firstly, customize products to appeal to specific market segments. This therefore means that small modifications to the design of some products, for instance a watch, may make them suitable for different age groups, cultures or social groups.⁷¹ While the main function of the watch remains the same, children and adults have very different tastes in designs. Secondly new and original designs are often created to create a new niche market.⁷² In a competitive market place, many companies seek to create a niche market by introducing creative designs for their new products to differentiate them from those of their competitors. This is the case for ordinary items such as locks, shoes, cups and saucers to potentially expensive items such as jewelry, computers or cars. Finally, new and original designs are often created to strengthen brands. Creative designs are often also combined with distinctive trademarks to enhance the distinctiveness of a company's brand(s). Many companies in Korea have successfully created or redefined their brand image through a strong focus on product design. Thus, in **Reckitt and Colman products Limited v. Benden Incorporation**,⁷³ the plaintiff, Reckitt and Colman had for a number of years sold lemon juice in yellow plastic containers shaped

⁶⁹ WIPO, An Overview. (Geneva: WIPO Publication No. 1007E, 2007). p.12

⁷⁰ Ibid. p.12

⁷¹ WIPO, Looking Good: An Introduction of Industrial Design for Small and Medium-sized Enterprises. (Geneva: WIPO Publication No. 498 (E), 2006) p.1

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like lemons. There competitors produced a similar shaped container which was slightly larger in size and with a flat side to prevent the container rolling away. **Lord Oliver**, of the House of Lords stated that the trial judge found as a fact that the natural size squeeze pack in the form of a lemon had become so associated with Jif lemon juice that the introduction of the appellant's juice in any of the proposed get-ups will be bound to result in many customers purchasing that juice in the belief that they were obtaining Jif juice. He further stated that the plastic lemon shaped container had acquired, as it were, a secondary significance. It indicated not merely lemon juice, but specifically Jif lemon juice. Further, though the House of Lords in **Coca Cola Trademark Applications**,⁷⁴ restrained the manufacturers of Coca Cola to register the shape of the Coca Cola bottle as a trademark, it must be submitted however, that trademark law now extends the protection to devices or shapes, and as such, the Coca Cola bottle qualifies for trademark registration and protection. Premised on these case illustrations, the contention can be sustained that indeed, many companies or manufacturers have successfully created or redefined their brand image through a strong focus on product design.

Additionally, the music, film, publishing and other cultural industries, which are largely built on copyright protection, are major drivers in the knowledge economy.⁷⁵ Copyright based industries, such as film, can contribute significantly to a country's economic growth as well as to cultural wealth.⁷⁶ In the United States, the motion picture and television industry provided jobs for more than 1.3 million people in 2005. In India, the two billion United States Dollars film industry is projected to grow at a compound annual rate of 16 per cent for the next 5 years. South Korean blockbusters, with ticket sales over 10 million, have fueled the explosion of "Kim chic" popular culture in the region. Nigeria's "Nollywood" produces over 1,000 films per year which are avidly consumed throughout Africa and beyond.⁷⁷

In a global economy, collective management societies are of great value to the holders of copyright and related rights, such as authors, performers, artists and the publishing and

⁷⁴ (1986) R.P.C. 421, H.L.

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phonographic industry, by helping them to manage and benefit from their rights.⁷⁸ Membership of collective management organizations is open to all owners of copyright and related rights. On joining the collective management organization, members provide some personal particulars and declare the works that they have created. The information collected forms part of the documentation of the collective management organization that allows the link between the use of works and payment for that use to be made to the real owner of the rights. The works declared by the organization's members constitute what is known as the "national" or "local" repertoire, as opposed to the international repertoire which is made up of the foreign works managed by collective management organizations. Therefore, the essential role of a collective management organization is to collect copyright fees and to distribute the appropriate amount to the copyright owners, after deducting the sum required to cover expenses, on a non-profit making basis.⁷⁹

The most challenging task faced by countries in the management of copyright is how to combat piracy, which greatly hinders the capacity of copyright protection to adequately contribute in its economic development and growth.

Malaysia's new anti-piracy champions attracted international media coverage. Funded by the Motion Picture Association, the dogs, namely Flo and Lucky are trained to sniff out hidden consignments of DVDs and CDs. Brazil's National Council against Piracy and Intellectual property Crimes (CNCP) leads a well co-ordinate national campaign to combat piracy, with action spanning four fronts: enforcement, education, economic, initiatives and institutional policies.⁸⁰ Under the Zambian copyright system, a well coordinated national campaign to combat piracy is non-existence. People are freely indulging themselves in a business of selling cheap pirated DVDs and CDs. Thus, there are very few people in Zambia buying original DVDs and CDs from Sounds Arcades, for instance, which is one of the enterprises legally authorized to sell original DVDs and CDs. The public destruction of over 80,000 pirated DVDs, CDs and tapes by the Romanian Copyright Office on World Intellectual property Day, 2007, sent a clear

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CONCLUSION

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The outline of lesson learnt from other countries in their use of IP in its adequate contribution in those countries' economic development, will be highlighted in the next chapter where the researcher will suggest recommendations to be undertaken in Zambia, for IP to have positive impact on its economic development.

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CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 CONCLUSION

In a broad setting of appropriate complementary policies and transparent regulation, IPRS could play an important and positive role in promoting social and economic growth. The general IP National Policy Objectives are firstly, to recognize and domesticate relevant international instruments that relate to IP; secondly, to encourage the use and development of IP in Zambia; thirdly, to provide for the development of appropriate IP protection systems; and finally, to recognize and appreciate international instruments that relate to IP⁸¹.

Based on the above mentioned policy objectives and the research conducted by the researcher, this research paper is of the conclusion that in order to achieve the general policy objectives, the strategies to pursue, among others include; firstly, creating public awareness on IP issues; secondly, improving IP Education in schools and tertiary institutions; further, by providing incentives for innovations and creativity; fourthly, by enactment and amendment of legislation; furthermore, by domestication of relevant international instruments; and finally, by creation of incubation gardens.

Universities and other institutions will continue to contribute to the training of the persons who will be legislators, judges, administrative officials, legal practitioners and even teachers and researchers of tomorrow. Research institutes will continue to the analysis of the IP system and make suggestions for its improvements. Universities and other institutions of training contribute in the teaching and research activities in the development and production of IP products such as literary workers, industries designs and innovation.

Universities and other training institutions require to be capacitated in order to derive value through the exploitation and commercialization of the said IP assets. From the case study analysis with the Republic of Korea, it was identified that apart from the Research Foundation which supports pure basic research, and therefore has little to do with

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Thus, it can further be concluded that the process of IP teaching and research can only be effective if sufficient resources are committed to them and to the effective organization of educational and research programs, including the management, protection, exploitation and commercialization of IPRS through a centre that would encourage and promote Research and Development creativity, innovation and awareness of IP asserts.

IP national and institutional policies and an appropriate legal framework are therefore, necessary for industries to collaborate with training and Government agencies in Research and development activities in utilizing knowledge as a commodity for wealth creation and economic growth. This in turn would lead to increased employments and increased standard of living of the population.

5.1 RECOMMENDATIONS

Firstly, development of the National Intellectual Property Policy should be developed and adopted as soon as possible. Using the case study with the Republic of Korea, it has noted that a National Policy on Intellectual Property and University-Industry Technology Transfer has been established. This Policy ensures there is an efficient IP system⁸³. It allows for universities to be in a position to own and manage IPRs and to transfer technology to industry for commercialization. To do so, universities are given the necessary legal status. Further, clear and transparent rules carrying the ownership of any

⁸² WIPO, Technology Transfer, Intellectual Property and Effective University-Industry Partnerships: The Experience of China, India, Japan, the Republic of Korea, Philippines, Singapore and Thailand. (Geneva: WIPO Publication No. 928(E), 2006). p.24

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IPRs developed within public universities or funded with public funds are clearly outlined in the policy afore mentioned. In accessory, research-funding agencies actively promote the patenting of research result, where appropriate, and in some cases include funding for the protection of research result as part of the funding package. The ultimate goal of policies and legislation in this field is generally to facilitate the transfer of technology to industry in order to ensure its commercialization for the benefit of the public interest. With this in mind, and considering that university research is generally publicly funded, IP policies in Korea often contain provisions to ensure that certain public interests are safeguarded. Therefore, Policies and law relating to IP should be put in place to stimulate industrial growth and create incentives for industries to work with academic institutions in the areas of teaching and research.

Further, in the Fifth National Development Plan 2006-2010, the chapter dealing with manufacturing does not recognize the role of Research and Development in industrial development. It is necessary to establish a strong industrial base in the country that would require and facilitate research and development. This could further lead to industries using the manpower and facilities at the academic institution for research in general. This is in the light of the Commerce, Trade and Industrial Policy, which prioritizes the development of an enabling economic environment. The key objectives of this policy are to facilitate the acquisition of industrial processes by domestic firms and to assist domestic firms to increase their levels of efficiency and competitiveness and therefore withstand increasing competition in domestic and international markets. Generally, the private sector's involvement in the teaching and research in the academic institutions of IP is dismally absent. Thus, in order to stimulate the partnership between academic institutions and the private sector, the University Policy on Intellectual Property and Technology Transfer should be put in place. The Republic of Korea has established a clear and transparent University Policy on IP and Technology Transfer⁸⁴. This is a crucial first step for any university intending to build partnerships with the private sector for the transfer of protected inventions. IP policies are as a result of a participatory process involving all stakeholders within the institution. University IP policies in Korea generally

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IPRs developed within public universities or funded with public funds are clearly outlined in the policy afore mentioned. In accessory, research-funding agencies actively promote the patenting of research result, where appropriate, and in some cases include funding for the protection of research result as part of the funding package. The ultimate goal of policies and legislation in this field is generally to facilitate the transfer of technology to industry in order to ensure its commercialization for the benefit of the public interest. With this in mind, and considering that university research is generally publicly funded, IP policies in Korea often contain provisions to ensure that certain public interests are safeguarded. Therefore, Policies and law relating to IP should be put in place to stimulate industrial growth and create incentives for industries to work with academic institutions in the areas of teaching and research.

Further, in the Fifth National Development Plan 2006-2010, the chapter dealing with manufacturing does not recognize the role of Research and Development in industrial development. It is necessary to establish a strong industrial base in the country that would require and facilitate research and development. This could further lead to industries using the manpower and facilities at the academic institution for research in general. This is in the light of the Commerce, Trade and Industrial Policy, which prioritizes the development of an enabling economic environment. The key objectives of this policy are to facilitate the acquisition of industrial processes by domestic firms and to assist domestic firms to increase their levels of efficiency and competitiveness and therefore withstand increasing competition in domestic and international markets. Generally, the private sector's involvement in the teaching and research in the academic institutions of IP is dismally absent. Thus, in order to stimulate the partnership between academic institutions and the private sector, the University Policy on Intellectual Property and Technology Transfer should be put in place. The Republic of Korea has established a clear and transparent University Policy on IP and Technology Transfer⁸⁴. This is a crucial first step for any university intending to build partnerships with the private sector for the transfer of protected inventions. IP policies are as a result of a participatory process involving all stakeholders within the institution. University IP policies in Korea generally

⁸⁴ Ibid. p. 41

cover all IP rights, in particular Patents and copyrights, and may also regulate the transfer of know-how. The IP policy is a dynamic document that is reviewed as necessary providing clarity on the number of issues. Some of the main objectives of an internal IP policy are to⁸⁵: Provide rules and guidelines for the commercial exploitation of IP generated within the University; ensure that discoveries, inventions and creations generated by staff and students are utilized in ways most likely to benefit the public; establish ownership criteria; define the responsibilities, rights and obligations of all stakeholders; develop basic guidelines for the administration of the IP policy; and define rules for revenue sharing if the commercialization of the IP generates income.

Additionally, technology transfer activities within Korean universities are saved through the establishment of a dedicated office⁸⁶. The advantage of having an office that is specialized in technology transfer is that it enables universities to professionalize their technological transfer activities. Thus, there is urgent need for a cooperation agreement between the World Intellectual Property Organization and the University of Zambia to be executed. Through this agreement, understanding of IP and realization of its development potential will to a greater extent be promoted

Further, it is the recommendation of the researcher that the legal framework relating to Intellectual Property should be reviewed and made more comprehensive. There is need to include in the legal framework, protection of service marks; petty patent and utility models; traditional knowledge and folklore; Geographical indications; and modified Organisms.

In accessory, the position or role of Multinational Companies should not be overlooked. Multinational Companies conduct their Research and Development mainly in developed countries. However, there should be strategies or policies to ensure that although Multinational Companies may not conduct Research and Development in Zambia, they should contribute and enhance transfer of technology. One of the key objectives the

⁸⁵ Ibid. pp. 41-42

⁸⁶ Ibid. p. 44

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Commerce Trade and Industry policy is to facilitate the acquisition of modern technology to support value adding.

As a way of creating awareness of IP, an IP Working Group Zambia, which is a Multi-disciplinary working group, must be established. Public outreach activities, which aim to increase awareness of how IP works, should become a priority for Zambia. For this to be achieved there is need to focus emphasis on the ministry of Education' mission statement as outlined in the National Policy on Education. The mission statement is to guide the provision of education for all Zambians so that they are able to pursue knowledge and skills. IP plays a vital role in education as it is in schools and other higher learning institutions that creative minds begin to work. Thus, IP working Group Zambia, in its awareness campaign, must advocate inclusion of IP issues in the national school curricular, at primary, secondary and tertiary levels, so that the aim of increasing awareness about IP and how it works can be achieved.

The Intellectual Property Academy/Research Centre must be established to, furthermore, create awareness of Intellectual Property and provide for teaching materials on the field of Intellectual Property and to act as a centre for coordinating the management, exploit and commercialization of Intellectual Property Rights.

Finally, there is need to modernize IP institutions. Firstly, with respect to industrial property, since there are only two PACRO offices in Zambia, electronic filing and registration must be established. Once IP offices automate their business procedures, they will be able to deliver timely, cost effective services for patent applications, trade mark registration and other IP rights. Secondly, with respect to copyright and related rights, collective management societies must be established, possibly through legislation, as these are of great value to the holders of copyrights and related rights. This is in light of the vision statement of the Information and Communication Technology Policy, which is to transform Zambia into an information and knowledge based society and economy supported by consistent development, and pervasive access to Information and Communication Technologies by all citizens by 2030. The policy has embraced Information and Communication Technologies as an enabler of social and economic development.

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BIBLIOGRAPHY

EXTS

anja, G.M. Intellectual Property Law. Lusaka: UNZA Press, (2006).

WIPO, Creative Expression: An Introduction to Copyright for Small and Medium Sized Enterprises. Geneva: WIPO Publication No. 918(E), (2006).

WIPO, Looking Good: An Introduction of Industrial design for Small and Medium Sized Enterprises (2nd Ed.). Geneva: WIPO Publication No 498 (E), (2006).

WIPO, Marking a Mark: An Introduction to Trademarks for Small and Medium Sized Enterprise. Geneva: WIPO Publication No. 492 (E), (2006).

WIPO, An Overview. Geneva: WIPO Publication No. 1007E, (2007).

WIPO, Technology Transfer, Intellectual Property and Effective University – Industrial Partnerships: The Experience of China, India, Japan, Philippines, the Republic of Korea, Singapore and Thailand. Geneva: WIPO Publication No. 928(E), (2006).

WIPO, Understanding Industrial Property. WIPO Publication No. 895(E), (2006).

WIPO Intellectual Poverty Handbook: Policy, Use and Law. Geneva: WIPO Publication No. 489 (E), (2001).

OLICIES

ommerce, Trade and Industrial Policy

raft of an Intellectual Property National Policy

formation and Communication Technology Policy

BIBLIOGRAPHY

TEXTS

Kanja, G.M. Intellectual Property Law. Lusaka: UNZA Press, (2006).

WIPO, *Creative Expression: An Introduction to Copyright for Small and Medium Sized Enterprises*. Geneva: WIPO Publication No. 918(E), (2006).

WIPO, *Looking Good: An Introduction of Industrial design for Small and Medium Sized Enterprises* (2nd Ed.). Geneva: WIPO Publication No 498 (E), (2006).

WIPO, *Marking a Mark: An Introduction to Trademarks for Small and Medium Sized Enterprise*. Geneva: WIPO Publication No. 492 (E), (2006).

WIPO, An Overview. Geneva: WIPO Publication No. 1007E, (2007).

WIPO, Technology Transfer, Intellectual Property and Effective University – Industrial Partnerships: The Experience of China, India, Japan, Philippines, the Republic of Korea, Singapore and Thailand. Geneva: WIPO Publication No. 928(E), (2006).

WIPO, Understanding Industrial Property. WIPO Publication No. 895(E), (2006).

WIPO Intellectual Property Handbook: Policy, Use and Law. Geneva: WIPO Publication No. 489 (E), (2001).

POLICIES

Commerce, Trade and Industrial Policy

Draft of an Intellectual Property National Policy

Information and Communication Technology Policy

National Policy on Education

INTERNET

Interbrand.com

OTHER WORKS

Fifth National Development Plan, *National Implementation Framework* (2006-2010)

Suthersanen, U. (International Centre for Trade and Development). Utility Models and Innovations in Developing Countries 13 (February, 2006).

Interview: T. Simfukwe, (Economist, Ministry of Trade, Commerce and Industry),
28/12/08

Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement

National Policy on Education

INTERNET

Interbrand.com

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