



Marginalia
International

International Intellectual Property

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Konomark
Most rights sharable

General Principles

- “territoriality”
- dependence, independence, central attack
- procedural harmonization
- substantive agreements
 - national treatment
 - minima

WIPO



WIPO Building, Geneva
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PATENTS

International Aspects of Patents

- “territoriality”
- Paris Convention
 - national treatment
- Patent Cooperation Treaty
 - procedural harmonization
- TRIPS
 - substantive minima

Paris Convention

- Convention of Paris for the Protection of Industrial Property of 1884
- 177 signatories today
 - Cf. 195 internationally recognized sovereign countries
- Requirements:
 - national treatment, independence of patents, international priority

National Treatment

- Must treat foreign inventors who are nationals of a signatory no worse than domestic inventors
- E.g.:
 - No higher fees
 - No shorter durations

Independence of patents

- Before the Paris Convention, some countries applied foreign dependence against foreign inventors.
- Foreign dependence: If any foreign patent expired or was invalidated, the domestic patent was invalidated as well.
- Effect of independence: Victories and defeats in the courts of one country have no effect on validity in other countries

International Priority

- If a patent application is filed in any signatory, all subsequent applications in other signatories within one year are given priority back to the first-country filing date.

Patent Cooperation Treaty

- “PCT”
- 152 signatories today
- Procedural
- Provides a partially internationalized process
- One international application begins prosecution in all signatories.

TRIPS

- “Agreement on Trade-Related Aspects of Intellectual Property Rights”
- Negotiated during the the Uruguay Round of General Agreement on Tariffs and Trade (GATT) in 1994
- Covers other IP forms, as well as patent
- Agreement to TRIPS is a requirement of WTO membership
- 164 WTO members today
- Creates substantive “minimum standards” obligations for national patent laws

Minimum Standards of TRIPS

- 20 years from filing date is the minimum term
- Applicants must provide an enabling disclosure
- Protectible subject matter: inventions in “all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application”
 - Exceptions: certain methods of medical treatment, macro-organisms, immoral inventions
 - Pharmaceuticals, not patentable in many countries prior to TRIPS, are not an exception.
- Judicial review

Compulsory Licenses

- Compulsory licenses are essentially not used in the U.S. for inventions.
- Historically important in other countries, including for pharmaceuticals
- TRIPS has substantive limits on countries' powers to grant compulsory licenses:
 - Must have made unsuccessful efforts to license
 - Compulsory license must be revocable
 - Remuneration must be adequate
 - Must be predominantly for the domestic market

TRIPS and Drugs in Developing Countries

- TRIPS effectively denies new drugs to poor populations and countries to some extent, including those for large-scale public-health problems such as AIDS, malaria, and other diseases.
- Despite the downside of TRIPS patent rules, most countries sign TRIPS, as it is required for WTO membership and thus needed for exports.
- Many smaller, lesser developed countries cannot manufacture pharmaceuticals on their own, so the domestic-market limitation effectively eviscerates the compulsory licensing scheme for them.
- Many very poor countries have already acceded.
- While WIPO and developed-countries pressure less-developed countries to provide monopoly privileges on pharmaceuticals, the WHO has helped less-developed countries to navigate the red tape to provide cheap generics.

International Aspects of Copyright

- There is no “international copyright.”
- The major treaty is the Berne Convention.
- The Universal Copyright Convention was begun by the U.S. as an alternative to Berne. It has less stringent provisions. But the U.S. acceded to Berne in 1988, effective March 1, 1989.
- TRIPS, NAFTA, and other agreements also concern copyright to some degree.

The Berne Convention

- Established 1886
- Revised six times, most recently the Paris Revision in 1971
- U.S. did not join until March 1, 1989
- Requirements:
 - National treatment
 - Certain minima of protection
- Euro-centric
- Also called the “Berne Union”
- 177 contracting parties

National Treatment

- Must treat foreign authors no worse than domestic authors
- But can treat domestic authors at a disadvantage

Minima Under Berne

- Subject-matter:
 - “every production in the literary and artistic domain whatever may be the mode or form of its expression”
 - Includes architecture
 - Includes compilations and derivatives
 - Does not include “news of the day” or facts
- Moral rights
- Preclusion of formalities
- Minimum term of life + 50; 50 for anonymous
- Allows fair use and cover-version compulsory license limitations

Delayed U.S. Acceptance of Berne

- “Back-door to Berne” for U.S. authors
 - Simultaneous publication in the U.S. and Canada
 - Many old books say they were published simultaneously in the U.S. and Canada – the back-door is why.
- Changes to U.S. copyright law for joining:
 - Deletion of notice requirement
 - Deletion of registration requirement
- Not changed in 1989:
 - Moral rights (deemed covered by unfair competition law)
 - Architectural works
- Later changes in Berne’s spirit
 - Coverage of architectural works
 - Visual Artists Rights Act of 1990
 - Retroactive protection for foreign works then in the public domain in the U.S. (NAFTA, TRIPS)

International Aspects of Trademark

- Paris Convention
- Trademark Law Treaty
- Madrid Agreement and Madrid Protocol

Paris Convention

- Procedural
- Works for trademark registration like it does for patents
- Priority period is six months instead of one year
- U.S. is a signatory

Trademark Law Treaty

- Harmonizes and simplifies application requirements, such as filing requirements, recordation of assignments, physical dimensions of paperwork, etc.
- U.S. is a signatory

Madrid Agreement

- Only 55 signatories (incl. China, France, Germany, and much of Europe)
- The U.S. is not a signatory (nor is UK or Japan)
- Effectively an “international trademark”
- Registration provides automatic protection in all signatories
- Use is not required
- Allows “central attack”
- The U.S. objects to because of central attack availability and because American use requirement puts domestic firms at a disadvantage

Madrid Protocol


- Eliminates central-attack and use-requirement problems to ease U.S. entry into Madrid framework.
- 104 signatories (incl. USA, UK, Japan)
- Effective in the U.S. in November 2003.

Forms of IP Not Recognized in the U.S.

- Database protection
- Geographical indications

Geographical Indications

- Not recognized in the U.S.
- Well-used in Europe
- Allows a monopoly for appellations of geographic origin
- Monopoly privileges inure to a place (not a firm, as with TM)
- Examples:
 - Champagne (a.k.a. “sparkling wine”)
 - Parmesan cheese
- Might be protected in the U.S.:
 - through specific regulation (e.g., alcohol regulation)
 - as collective marks or certification marks, if not currently generic



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Parmesan – The King of Cheeses

February 2011

Known as the “King of Cheeses”, Parmesan, or *Parmigiano Reggiano* was first produced by Benedictine and Cistercian monks a thousand years ago. Over the centuries, it has acquired global prominence and is now a hugely popular choice for food-lovers the world over. While this popularity translates into a persistent and healthy demand, it has also resulted in *parmesan* becoming one of the most imitated agricultural products in the world. As consumers, how can we be sure that we have purchased “the real deal”? In this article, *WIPO Magazine* explores how the producers of *Parmigiano Reggiano* have acquired legal recognition that their cheese is the “one and only” Parmesan.

About Parmesan


The method of producing this hard, grainy cheese, which is cooked and not pressed, has changed little over the centuries. Cheese-makers today use the same natural ingredients as their predecessors did (raw milk, rennet and salt) and employ “the same care and craftsmanship”. An iconic Italian food, *Parmigiano Reggiano* is produced in a well-defined area of northern Italy – the provinces of Parma, Reggio Emilia, and Modena and Bologna (on the left bank of the Reno River) and Mantova (on the right bank of the Po River). Many different factors determine the unique quality of *Parmigiano Reggiano* cheese – from the soils used to produce the fodder on which the cows graze to the skills used in the cheese-making process. Made from a mixture of full fat and skimmed milk, Parmesan is quickly digested and easily assimilated. Vaunted as “a miniature storehouse of concentrated” nourishment, it is rich in proteins, lipids, calcium and phosphorus and low in fat and cholesterol compared to other cheeses.

“The secret of the goodness originates in the place of origin, in the natural feed, and in the high quality milk with no additives.” (Conorzio del Formaggio Parmigiano-Reggiano)

AN HISTORICAL PRODUCT

Literary references to Parmesan date back to the 14th century. Boccaccio’s 1348 work *The Decameron* relates “...and there was a whole mountain of *Parmigiano* cheese, all finely grated, on top of which stood people who were doing nothing but making macaroni and ravioli”.

An entry by British Diarist, Samuel Pepys during the Great Fire of London in 1666 notes that he buried his “*Parmezan* cheese” to save it from the advancing fire.



Only cheeses produced according to the rules of the Production Regulation may bear the distinctive *Parmigiano Reggiano* mark.
(Photo: Conorzio del Formaggio Parmigiano-Reggiano)

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