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**DRAFT OF A MODEL CURRICULUM FOR THE TEACHING OF
INDUSTRIAL PROPERTY LAW AND RELATED RIGHTS**

by

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SUMMARY

This document contains the draft of a model curriculum for the teaching of industrial property law and related rights. The draft was initially prepared for meetings of the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), held in Munich and Geneva, in 1983 and 1984, respectively.

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GENERAL PART

I

Fundamental notions

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II

Administrative and Fiscal

Regime of Industrial Property Law

a)

Administrative regime

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b)

Fiscal regime

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III

The International
Regime of Industrial Property

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SPECIAL PART

A

Theory of Industrial Property rights

I. Industrial creations of utilitarian character

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1. General Notions. Various meaning of the word "invention". 2. The definition of the invention. Different criteria. 3. Invention and copyright. 4. Invention and discovery. 5. General Notions on inventor's rights. 6. Legitimacy of its protection. Its economic and political basis. 7. Juridical nature of the right of the inventor. Different doctrines. 8. Historic development of the protection of inventor's rights. The XIX Century Controversy. The present erosion of inventor's rights. Importance of patents for industrial progress and developing countries. Patents and transfer of technology. Patents between past and future.

V

The patent for invention
and the substantive conditions
of protection

1. The protection of the invention and the patent for inventions. 2. Definition of patent for invention. 3. Its characteristics. 3. Different classes of patents: a) in national law; b) in comparative law. 4. Patentable inventions. 5. Substantive conditions of patentability. 6. Exceptions to Patentability. 7. The question of inventive step. 8. Applicability of International Conventions. 9. Rights of foreigners. 10. Right of the true inventor to be mentioned as such.

VI

Acquisition and loss
of the right to the patent

1. Acquisition of the right on the patent. Various systems. 2. The inventor and the patentee. 3. Who can apply for a patent. Various systems. 8. Inventions made pursuant to a commission or by an employee. 9. Inventions made at a University. The question in comparative law. 10. Title, specification claims, abstracts of a Patent. Its contents. II. Unity of invention. II. Issuance and Registration of Patents and acts relating thereto. Publication of patents. 18. Surrender nullity and lapsing of a Patent. 19. Effects of declaration of nullity and caducity. 20. Expropriation of Patents.

VII

Rights conferred
by a Patent

1. Nature of rights conferred by the Patent. 2. Scope of Protection. Limitation of Rights under the Patent. Rights derived from prior use and manufacture. Duration of Patent: a) in national Law; b) in comparative Law.

Maintenance and
transfer of Patents

1. Maintenance of a Patent: The question in a) national law and b) comparative law. 2. Lapsing of patents because of non-working. Remedies. The question in a) national Law; b) in comparative Law. Lapsing of patents and the Paris Convention. Present state of the problem. 3. Assignment and transfer of Patent applications and Patents. Joint ownership of patents.

IX

License of patents

1. Contractual Licenses. General Notions. 2. Contractual licenses and transfer of technology. License Contract Rights of Licensor to grant further Licenses. Rights of Licensee. 3. Assignability of Licenses. 4. License contracts involving payments abroad. 5. Invalid clauses in License contracts. The position of developing countries on the subject. Registration of contractual license. Procedure. 3. Compulsory Licenses. Compulsory Licenses for non-working of Patents. Compulsory Licenses for Products and Processes declared to be of Vital Importance for the defence or Economy of the country or for Public Health. Scope of compulsory Licenses. Guarantee required from applicant for a compulsory license. Compensation. Transfer of compulsory Licenses. Registration of a compulsory License at Patent Office. Amendments and cancellation of compulsory License. Procedure. 4. Licenses of Right.

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Legal protections
of the patent

1. Civil Sanctions. Procedure. 2. Penal Sanctions Procedure. 3. The action replevin. 4. Presumption of use of a patented Process. Legal procedure by patentee. The question of the "possession antérieure". Theory and practice. Recovery of damages. Proceedings.

XI

Utility models

1. Definition. 2. Terminology. 3. Historical evolution. 4. Importance of utility models, particularly for Developing Countries. Its critics. 4. Relationship between utility models, patents for inventors, industrial design and "certificats d'utilité". 5. Substantive conditions for the protection of utility models; a) in domestic Law; b) in comparative law. 6. Acquisition of rights on a utility model. Procedure and contents of the right. 8. Transfer and assignments of utility models. 9. Licensing. 10. Maintenance and loss of the rights on a utility model. 11. Civil and penal protection of utility models. Procedure.

XII

New Varieties of Plants

1. General notions. Their importance. New varieties of Plants and Trademarks. New varieties of Plants and patents of invention. Protection of new varieties of Plants: a) in domestic law; b) in international law. The Paris Agreement of 1961 and its revisions.

XIII

Entrepreneurial Secrets

1. General notions. Their importance. 2. Structural elements and requirements of industrial and commercial secrets. 3. Juridicial nature. 4. Industrial and commercial secrets and patents for inventions, "know how" and "tour de main". 5. Substantive conditions for the protection of industrial and commercial secrets. 6. Transmission of an industrial or commercial secret. 7. Maintenance and loss of industrial and commercial secrets. 8. Their civil and penal protection. Procedure.

XIV

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1. Definitions. 2. Various classes. 3. Its characteristics. 4. Importance and meaning of know-how. 5. Juridicial nature. Various doctrines. 6. Know-how and other industrial property creations. 7. Conditions of protection of know-how. 8. Acquisition and transmission of know-how. 9. Know-how agreements. 10. Civil and penal protection of know-how. Procedure.

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Inventor's certificates

1. Definitions. 2. Juridicial nature. 3. Characteristics. Its economical importance. 4. Inventor's certificates, patents of invention "certificados de invención" and "le certificat d'utilité". 5. Acquisition and Loss of inventor certificates rights. 6. Rights and obligations of the applicant or the holder of the certificate. 7. Rights and obligations of the State. 8. Limitations of the rights. 9. Duration. 10. Transfer "mortis causa" of the application for an inventor's certificate or of the inventor's certificate. 11. Co-property of inventors certificates. Compensation to the holder of the certificate. 12. Nullity of the inventor's certificate. Effects. 13. Civil and penal protection of inventor's certificates. 14. Procedure.

XVI

Transfer of Technology Patents

1. Definition. 2. Economical importance. 3. Inventions which can be object of a Transfer of Technology Patent. 4. Right to a Patent of Transfer of Technology. 5. Acquisition of a Transfer of Technology Patent. Proceedings. 6. Rights and obligations of the applicants or the holders of a Transfer of Technology Patent. 7. Duration. 8. Assignment. Its limitations. 9. Contractual licenses. 10. Exploitation by the Government or by a third party authorized by the Government. 11. Loss of the rights on a Transfer of Technology Patent. Surrender. Nullity. Its effects. Lapsing. 12. Civil and penal protection of Transfer of Technology. Patents. Procedure.

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Tecnorations

1. Definition of each one of these institutions. Similarities and differences. 2. Economical Importance. 3. Right to a certificate of any one of them. Procedure. 4. Use of the insititutions. Remuneration. 5. Controversies.

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Industrial creations

with ornamental character

XVIII

Industrial Designs

1. General Notions. 2. Definition of an Industrial design. 3. Terminology. 4. Specific characteristics of Industrial designs. 5. Pure art. Applied art. Ornamentality. 6. Industrial design and artistic creations. 7. Industrial designs and trademarks. 8. Industrial designs and utility models. 9. Substantive conditions for Protection. 10. Acquisition of the rights on an Industrial design. Various systems. 11. Who can apply for an Industrial design. Industrial designs created by employees. 12. Non patentable designs. 13. Duration and renewal of registration of Industrial designs. 14. Rights conferred by the Registration of an Industrial design. Its limitations. 15. License agreements. 16. Assignment and transfer of Application or regulations. 17. Joint ownership of Rights conferred by Registration. 18. Surrender and nullity of Regulations. 19. The action of replevin. 20. Civil and penal protection of Industrial designs. Procedure.

Distinctive Signs

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Trademarks

1. Ownership marks and trademarks. 2. Definitions. 3. Historical background. Specific factors of trademark law evolution. 4. Juridicial and economical conception of trademarks. 5. Trademarks in capitalistic and socialist countries. 6. The role of trademarks in the economic development of developing countries. 7. Functions of trademarks. 8. Juridicial nature of trademarks. 9. Comparison between trademarks and other industrial property rights. 10. Various types of trademarks. 11. The question of notorious trademarks. 12. Who can apply for a trademark registration. 13. Goods and services that may be object of trademarks. 14. Signs and means that may constitute a trademark. 15. Marks inadmissible on objective grounds. 16. Marks inadmissible by reason of Third Party Rights. 17. Substantive conditions for protection. 18. The question of acquired novelty. The "secondary meaning" doctrine.

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Acquisition, maintenance

and loss of the

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1. Acquisition of the right to a mark. Various systems. 2. Maintenance of the right to a mark. 3. The question of the use of a mark: a) in domestic law; b) in comparative law. 4. Registered users. 5. The loss of the right to a mark. Renunciation of registration. Nullity of registration. Its causes. Lapsing of trademarks because of non use. Effects of nullity and lapsing of trademarks registrations. 6. Duration and expiration of trademarks rights. 7. Expropriation of trademarks. 8. The exhaustion of the rights of trademarks. 9. Trademarks and economic unions. The subject of the European trademarks and of the Cartagena Agreement.

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Licensing and transfer

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Trademark protection

1. Civil and penal protection of non-registered trademarks. Application of unfair competition rules. 2. Civil protection of trademarks. Various actions according to the different legal systems. Procedure provisions and rules. Statute of limitations. 3. Penal protection of trademarks. Infringements. Procedure provisions and rules. 4. Penalties. Recovery of damages.

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Tradenames or Trade styles

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1. Definition and terminology. 2. Elements and characteristics. 3. Historic evolution. 4. Double function of the slogans a) as a distinctive sign; b) as an advertising means. 5. The slogan and the other distinctive signs. 6. Civil and penal protection of slogans: a) application of trademark law; b) copyright law; c) unfair competition law. 7. The question in a) domestic law, b) in comparative law.

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3. Confusion of trademarks and tradenames. The Dilution Doctrine.
4. Parallel Importation. Doctrine of international exhaustion of rights.
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6. Generic names.
7. Different problems in assignment and licensing of trademarks.
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10. Restrictions in conditions with respect to the use of marks.
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12. Consumer protection and collective and certification marks.
13. Consumer protection and tradenames.
14. Consumer protection and Geographical indications.
15. Consumer protection and different acts contrary to honest practices.
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17. Consumer Information and Education, testing and self regulation.
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Industrial Property

and

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4. The problematic of the acquisition by developing countries of Technology: a) economical, b) technical, c) juridicial, d) cultural and e) political aspects of the transfer of technology to developing countries.
5. Methods for the transfer of technology to developing countries.
6. Transfer of Technology Agreements. Juridicial nature. Characteristics. a) Licensing of patents for inventions, trademarks and other Industrial Property Rights. Various aspects. Rights and obligations of Licensor and Licensee. Other questions.
7. Transfer of information or technical know-how agreements. Technical services and assistance agreements. Various aspects. Rights and obligations of grantor and recipient. Other questions.
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9. Specific nature of such Agreement. Its problematic.
10. Governmental intervention and different systems related to it.
11. Permitted and forbidden clauses in transfer of technology agreements.
12. Transfer of Technology Agreements in national law and in comparative law.
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