UNIT-5

NEW DEVELOPMENTS OF INTELLECTUAL PROPERTY

NEW DEVELOPMENT IN TRADE MARKS LAW:

The Internet:

- Trademark owners throughout the world are struggling with new issues presented by increased electronic communication, primarily that occurring through the Internet.
- The Internet derives from a network set up in the 1970s by the Department of Defense to connect military and research sites that could continue to communicate even in the event of nuclear attract.
- In the 1980s, the National Science Foundation expanded on the system, and its first significant users were government agencies and universities.
- In the early1990s, however, it became apparent that the system could provide a global communication network, allowing people from all over the world to talk with each other; send written messages, pictures, and text to each other; and establish web pages to advertise their ware and provide information to their customers.

Assignment of Domain Names:

- A company's presence on the internet begins with its address or domain name not only serves as a locator for a company but also functions as a designation of origin and a symbol of goodwill---a trademark.
- There are two portions to a domain name: the generic top-level domain, which is the portion of the name to the right of a period (such as .gov or .com) and the secondary level domain, which is the portion of the name to the left of a period (such as "kraft" in Kraft.com").
- Disputes frequently arise between owners of registered mark and owners of domain names whose domain names similar or identical to the registered marks.

Internet Corporation for Assigned Names and Numbers [ICANN]:

- To help resolve the problems in the domain names registration and use process
- The government created the ICANN
- It is a nonprofit corporation
- It is governed by a board of directors elected in part by various members of the Internet community.

- ICANN are authorized to register domain names ending with .com, .org and .net
- Registrations usually last one year, at which time they can be removed or will expire.
- Registration requires a representation that the person seeing to register the name is not doing so far an unlawful purpose and does not know of any infringement
- ICANN recently added seven new top-level domains, including .biz and .info

PROTECTING A DOMAIN NAME:

- People register well-known marks as domain names to prey on consumer confusion by misusing the domain name to divert customers from the legitimate mark owner's site. This practice is commonly called cybersquatting.
- There are three approaches for against cybersquatter:
  - ✓ An action can be brought under the Federal Trademark dilution Act
  - ✓ A civil suit can be instituted under the recent Anticybersquatting consumer protection Act, or
  - ✓ An arbitration proceeding can be instituted through ICANN's disputs resolutions process
- Cybersqutter and the dilution doctrine: Federal trademark dilution Act (15 U.S.C § 1125 (C)
- Cybersquatters and Anticybersquatting consumer protection Act (15 U.S.C § 1125 (d) [**ACPA: Anticybersquatting consumer Protection Act**]
  - ✓ To prevail in a civil action under ACPA, a plaintiff must prove three thing:
    1. The plaintiff's mark is a distinctive or famous mark deserving of protection
    2. The alleged cybersquatter's infringing domain name is identical to or confusingly similar to the plaintiff mark
    3. The cybersquatter registered the domain name is bad faith
- Resolving Disputes through the Uniform Domain Name Dispute Resolution Policy: [UDRP] 1999
  - ✓ The allegedly wrongful domain name is identical or confusingly similar to the complainants' trademark;
  - ✓ The domain name registrant has no legitimate interest in the domain name and
  - ✓ The domain name is being used in bad faith

NEW DEVELOPMENT IN COPYRIGHT LAW:

- While acknowledging that clothing is a useful article and thus not subject to copyright protection, a New York Federal court ruled that lace design, copyrighted as writing and incorporated into wedding dresses, were protectable and enjoined another maker of wedding dresses from making or marketing copies. Similarly, detailed embroiders or

some other two dimensional drawing or graphic work affixed to a portion of a garment may be copyrightable.

- A federal court in California recently held that while type fonts themselves are not protectable under copyright law, a software program that generated and created the typefaces was protectable.

- As soon as Stephen King sold his book riding the Bullet exclusively in an Internet format, an individual cracked the copyright protection software and posted free copies of the book on the Internet. The publishers responded by adopting stronger encryption technology. Similarly, in 2000, Mr. King suspended online publication of a serial novel because too many individuals were downloading the work without paying it.

- It late 1997 President Clinton signed into law the No Electronic Theft [NET] Act [amending 18 U.S.C §2319] to enhance criminal penalties for copyright infringement, even if the infringer does not profit from the transaction. The act also extends the statutes of limitations for criminal copyright infringement from three to five years, and allows law enforcement officers to use federal copyright law against online copyright violation, thereby extending the same copyright protection to the Internet that is provided to other media.

- In September 1999, the Clinton administration relaxed government restrictions on the export of encryption products and simultaneously introduced new legislation to give law enforcement agencies greater authority to combat the use of computers by terrorists and criminals and to create a new code cracking unit within the FBI [Foreign Bureau of Investigation] .

- In mid-2000, president Clinton signed the Electronic signatures in Global and National Commerce Act, making digital execution, called e-signatures, as legally binding as their paper counterparts.

- In 2000, federal prosecutors in Chicago indicted seventeen people who called themselves "Pirates with Attitude" for pirating thousands of software program. The case was brought under the NET Act. Some of the individuals were former employees of Intel and Microsoft.

- The copyright office has recommended that congress amend section 110 of the copyright Act to grant educators the right to transmit copyrighted works for distance learning if certain conditions are met.

NEW DEVELOPMENT IN PATENT LAW:

The patent Act has proven remarkably flexible in accommodating changes and development in technology. Thus advisement in technology generally has not necessitated changes in the stately governing patent protection.

Business method and software patent:

Many of the cutting-edge issues in patent law related to patents for computer software. For several years, the conventional wisdom has been that unless a computer program had significant commercial value and application patent protection was often counterproductive or ineffective in that the PTO often took two years to issue a patent, roughly the same time it took for the software program to become absolute.

Biotechnology patent:

Medicines, Science, agricultural and pharmacology present the other cutting-edge issues in patent law. Research into genes may hold the key to curing disease throughout the world. Agricultural research may hold the key to providing sufficient food for the world's ever-increasing population.

The development of strains of plants and crops that are resistant to brought and disease has also led to an increasing number of patents issued, and attendant litigation. In the field of "agbiotech".

American Investors Protection Act of 1999 [AIPA]:

The AIPA was signed into law in 1999 and represents the most significant changes to patent law in twenty years. Although some of the provisions of AIPA have been discussed earlier, its key subtitles are as follows:

- Inventors' Right Act of 1999
- The First Inventor Defense Act of 1999
- The patent term guarantee act of 1999
- The domestic publication of Foreign filed patent application act of 1999
- The optional Inter parts reexamination procedure Act of 1999

Introduction of International Patent protection:

The rights granted by a U.S Patent extend only throughout the U.S and have no effect in a foreign country. Therefore, an inventor who desires patent protection in other countries must apply for a patent in each of the other countries or in regional patent office.

- The Paris convention (already it is in previous units)
- The European patent organization
- Agreement on Trade-Related Aspects of IPR (already it is in previous units)
- The patent Law Treaty
- Foreign Filling Licenses
- Applications for United States Patents by Foreign applicants

The European patent organization:

The European Patent Organization (EPO) was founded in 1973 to provide a uniform patent system in Europe. A European patent can be obtained by filing a single application with

the EPO headquartered in Munich (or its subbranches in The Hague or Berlin or with the national offices in the contracting nations). Once granted, the patent in valid in any of the EPO countries designated in the application and has the same force as patent granted in any one of the contracting nations.

INTELLECTUAL PROPERTY AUDITS:

Many companies believe that copyright extends only to important literary works and therefore fail to secure protection for their marketing brochures or other written materials. Similarly, companies often fail to implement measures to ensure valuable trade secrets maintain their protectability. Because clients are often unaware of the great potential and value of this property, law firms often offer their clients an intellectual property audit to uncover a company's protectable intellectual property. The IP audit is analogous to the accounting audit most companies conduct on an annual basis to review their financial status.

Another type of IP investigation is usually conducts when a company acquires another entity. At that time, a thorough investigation should be conducted of the intellectual property of the target company to ensure the acquiring company will obtain the benefits of what it is paying for and will not inherit infringement suits and other problems stemming from the targets' failure to protect its IP. This type of IP investigation is generally called a **due diligence** review inasmuch as the acquiring company and its counsel have an obligation to duly and diligently investigate the target's assets.

Conducting the Audit:

- The first step in the audit should be a face-to-face meeting of the legal team and company managers.
- The legal team should make a brief presentation on what Intellectual Property is, why it is important to the company, and why and how the audit will be conducted.
- Managers will be more likely to cooperate if they fully understand the importance of the audit.
- Obtaining this kind of "buyin" from the clints managers and employees will speed the audit and reduce costs.
- Moreover, education about the importance of intellectual property helps ensure that managers consider ways to further protect a company's valuable assets and remain alert to possible infringements of the company's Intellectual capital or infringements by the computer of other's right.
- Finally, having, outside counsel involved in the process will ensure that communications related to the audit are protected by the attorney-client privilege.
- Once the company's managers have been advised of the need for the audit, the legal team should provide a work-sheet or questionnaire to the company specifying the type of information that the firm is looking for so that company files can be reviewed and materials assembled for inspection by the firm and its representatives.