

Concept of intellectual property and competition law commercial essay

Law



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Abstract

Ability to think by virtue of being human is a key element to the development of innovations in the world. As a result of innovations and inventions, concept of intellectual property is revealed. Concept of intellectual property protects owners of intellectual property by providing rights to them. However, while these rights ensured certain privileges, a number of anti-competitive situations sometimes can be revealed. In this article, have tried to examine some concepts which are related to the concept of intellectual property will be by scrutinizing definitions of the concept of intellectual property in the literature. Then, some strategic goals for the development of the concept of intellectual property has been analyzed which set by WIPO one of the most important international intellectual property organizations. Finally, I have tried to present the relationship between intellectual property rights and competition policy by looking at the situation in some country samples. Key words: Intellectual Property, Competition Policy, Rights, Competition Laws.

Introduction

Nowadays concept of intellectual property is becoming more and more important, and also it became the main source of technological developments, innovation and inventions from the past to the present. At this point, the protection of intellectual property rights is becoming necessary for the continuation of all these innovations. On the one hand, policy makers trying to protect the owners' rights of intellectual property this time, on the other hand policy-makers are beginning to encounter problems

particularly in the area of competition. Different ways are tested for ensuring delicate balance between competition policies and intellectual property rights, and also many non-governmental organizations and international organizations continue to study on this issue. Another important issue is when the concept of intellectual property is mentioned, which concepts have entered into the concept of intellectual property. Especially common definitions in the literature are possible to find on different issues which are associated with the concept of intellectual property. Better understanding of these definitions will provide acting more carefully about intellectual property rights while making competition policies.

Intellectual Property Concept and Some Concepts Related with Intellectual Property

Intellectual property, in a way parallel to the developments in many areas, especially with the developing technology is a concept that started to gain importance. Before defining the concept of intellectual property, explaining other concept in the literature which are associated with the intellectual property, would be helpful for a better understanding of the subject. These are, respectively, patent, copyright and trademark. Because, by definition, intellectual property includes the concepts listed. Firstly, explanation of copyright could be defined as right which covers literary work such as novels, poems, films, music and artistic works such as drawings, paintings and photographs (WIPO, 2008, p. 41) Patent is a concept which is more than related with inventions. It refers to rights of guaranteeing the owners of the invention. Thus, we can say about copyrights, a set of rights which encourage inventing (WIPO, 2008, p. 17). Finally, a trademark is a unique

symbol or a sign that identifies certain goods or services produced or provided by an individual or a firm (WIPO, 2008, p. 68). Now we can define intellectual property more clearly. Firstly it is need to divide intellectual property into two categories which one of is in a broad sense and other one is in a narrow sense (WIPO, n. d, p. 2). Intellectual property, in a broad sense, refers to legal rights arising from the activities of industrial, scientific, literary and artistic fields. The exception of intellectual and artistic works like patents, trademarks, industrial models and paintings are refer to industrial rights which are in this broader form of intellectual property. (Kirlangiç, 2004, p. 1)In a narrow sense, " intellectual property" or " copyright" as a different definition which is used in practice refers to owners' rights on intellectual and artistic works. In this definition artistic works covers all literary, music, fine arts and cinema products which include character of the owner. (FSEK, 1951, p. 2393)As the last word on the definition of intellectual property, according to second article of convention which established World Intellectual Property Organization (WIPO), we can collect products and works which are related with intellectual property, in seven titles (KTB, 2004, p. 2). These are, Literary, artistic and scientific works, Executive artists' performances, phonograms and publications, All inventions which are product of human labor, Scientific discoveries, Industrial designs, Trademarks, trade names and titlesAll other rights which are deriving from creating activities on trading, scientific, literary and artistic areas.

What are Intellectual Property Rights?

After mentioning definitions in the literature about intellectual property and other concepts which generate intellectual property, what kind of rights

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revealed by intellectual property and how these rights are protected, have been tried to study under this title. By definition, intellectual property rights are set of rights which protect owners of trademark, patent or copyright in relation to gaining benefit from their business or investing. About these rights there is an article at the Universal Declaration of Human Rights. According to second part of the article 27 of the UDOHR;"(27/2)Everyone has the right to the protection of the moral and material interests resulting from any scientific literary or artistic production of which he is the author (UDOHR, 1948, p. 6)."

3. 1. Historical Development Process of Concept of Intellectual Property

When we examine the literature, the importance of intellectual property rights firstly emphasized in the " Paris Convention for the Protection of Industrial Property" at 1883. Particularly, second part of the first article is closely related with definition of intellectual property concept which is,"(1/2) The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition (PCPIP, 1883, p. 2)." Second important convention is organized after three years at 1886 in Berne which is called " Berne Convention for the Protection of Literary and Artistic Works". In the same way, there are some articles about intellectual property rights especially at the fifth and sixth part of second article. In briefly, these are,"(2/5).... Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations

shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections (BCPLAW, 1886, p. 4)." and,"(2/6).... The works mentioned in this Article shall enjoy protection in all countries of the union. This protection shall operate for the benefit of the author and his successors in title (BCPLAW, p. 5)." After these conventions finally World Intellectual Property Organization (WIPO) was established with an agreement in Stockholm at 1967. It has 185 members and Turkey is one of the members of this union since 1976. The aim of this organization is first to develop and placing the concept of intellectual property in the world. For this purpose, cooperating with states and international organizations in this direct if it is necessary (WIPO, 2012).

3. 2. WIPO and Strategic Goals about Intellectual Property

In parallel with the rapid development of the concept of intellectual property, WIPO identified nine strategic goals. It is aimed to the realization of the strategic goals during the period between the years 2010-2015. These are, Balanced Evolution of the International Normative Framework for Intellectual Property Provision of Premier Global Intellectual Property Services Facilitating the Use of Intellectual Property for Development Coordination and Development of Global Intellectual Property Infrastructure World Reference Source for Intellectual Property Information and Analysis International Cooperation on Building Respect for Intellectual Property Addressing Intellectual Property in Relation to Global Policy Issues A Responsive Communications Interface between WIPO, its Member States and All Stakeholders An Efficient Administrative and Financial Support Structure to Enable WIPO to Deliver its Programs Sixth and seventh strategic goals are

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crucial to understand the subject. And also these both goals are more related with policies which are about protecting intellectual property rights. So they were examined more detailed under this title." International cooperation on building respect for intellectual property" is relevant for all countries in the world. So strategic outcome for sixth goal is defined as mutual understanding and cooperation between the member states and ensure the development of respect for intellectual property. Outcome indicators of this goal were stated as increased international cooperation with member states, NGOs and the private sector. Another goal which is counted as important that "addressing intellectual property in relation to global policy issues". This is particularly related with global public policies and intellectual property. Strategic outcome of this goal emphasized that when global policies are designed if they take into account intellectual property; these policies play a role in encouraging new inventions and technologies.

4. Intellectual Property and Competition Policy

Relationship between the concept of the intellectual property and competition policy is gaining importance in recent years. On the one hand intellectual property rights provide protection for the intellectual property owners against idea stealing and imitations. Also intellectual property laws give option to owners of intellectual property how to use their product or artistic work. On the other hand, there are a lot of laws about competition especially focused on antitrust or preventing agreements that restrain competition (Gilbert, 2008, p. 519). For an instance, licensing agreements is an area which intellectual property and competition policy are in the intersection. Intellectual property owners can let the using of their products

or works by someone else under the conditions determined by them.

However, under certain circumstances, licensing agreements may be anti-competitive. Against this case, different mechanisms are developed to prevent this situation in many countries. (WIPO, 2009, p. 3) Therefore, while protecting intellectual property rights is essential for continuation of inventions and using new technologies especially in terms of consumers, a balance between competition policy and intellectual property rights is also required for protecting competition. For reviewing this balance in more detailed, at this part of the article have been tried to examine some country examples by benefiting from the OECD reports and tried to scrutinize what policies developed to ensure that this balance.

4. 1. Example of Australia

In Australia the most important issues related to intellectual property emerged at the production of car spare parts. Australian Law Reform Commission (ALRC) has studied on this issue for three years but they haven't still presented report to government. Manufactures which supply less expensive spare parts and designers of them sell parts cheaper than originals part price and this situation is favorable for consumers but original car spare parts providers cannot sell any product and cannot surface their stocks. (OECD, 1997. p. 75) In order to establish a balanced relationship between competition and intellectual property rights in Australia laws and their contents issued in chronological order, as follows (OECD, 1997. pp. 81-82); The Patents Act 1990 was edited in 1994 to increase the standard patent duration from sixteen to twenty years" The Trade Practices Commission (TPA)" and " Prices Surveillance Authority (PSA)" are merged in <https://assignbuster.com/concept-of-intellectual-property-and-competition-law-commercial-essay/>

November 1995 to form the " Australian Competition and Consumer Commission (ACCC)". Several changes were made to the TPA after the ' Hilmer' Report and resultant enactment of the " Competition Policy Reform Act 1995". Trademarks Act was changed in 1995 and substitute with the old one which was published in 1955. It makes certain provision for the ACCC to have a role in the endorsement of " Certification Trade Marks".

4. 2 Example of Italy

There is an example in Italy which is involving an intellectual property licensing agreement. There is a conflict between Panini Spa Company and the Associazione Italiana Calciatori (AIC) which is the trade association of the professional soccer player. One of Panini's competitors in order to produce the football player stickers complains Panini Company to the Italian Anti-trust Authority. After this complaining, AIC made a decision that any firm who gains rights to use pictures of football players on any object cannot make a license agreements more than three years (OECD, 1997. p. 146).

4. 3 Examples of United Kingdom

The main laws related to intellectual property in the UK are " Patents Act" which is enacted in 1977, and " Designs and Patents Act" which is enacted in 1988. The owner of the intellectual property granted have certain rights only if creates a product or artistic work which is innovative and possible to develop. According to these acts, the patent holders have the right to use their own patents for over 20 years. No one can produce the same product in 20 years without the permission of the patent owner or license agreement. (OECD, 1997. p. 195)Copyright protection for artistic works continue during

author's life and plus twenty years. Functional objects do not benefit from copyright protection, but may be protected under the unregistered design right, which extends for a maximum of 15 years, with provision for obtaining a license of right during the last five years. Designs with "eye appeal" may be protected under the registered design right, with a duration of up to 25 years. The 1988 Act contains provisions which are particularly relevant to the interface between competition policy and IPRs, conferring upon the Secretary of State the power where the MMC finds that the terms of a license for copyright, design right or registered design, or a refusal to grant such a license, is against the public interest to order that the license should be modified, or that licenses should be available as of right. In default of agreement, the terms are to be settled by the relevant authorities the Copyright Tribunal and the Comptroller General of Patents, Designs and Trade Marks. The Act also revised the power to modify or compel the grant of patent licenses contained in the 1977 Act (OECD, 1997. p. 195).

5. Conclusions

It is important to grasp what is intellectual property exactly. It is necessary to balance between competition policy and intellectual property rights for problems which are particularly raised from intellectual property which restrict competition. To do this, policy makers should take into account some concepts which are covered by intellectual property rights and also used in a daily life, while editing competition policies. Opinions and suggestions of international non-governmental organizations, such as WIPO and other international organizations which are interested in the concept of intellectual

property will help to the researchers, academics and policy makers who want to study in this issue.