

# Transferring the Technology by Looking at the Intellectual Property Rights

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## **Abstract**

*A major part of a country's economic growth depends on its technological development and growth and technology transfer means a systematic chain of targeted activities in order to apply the set of technology elements in a place other than the initial place, and creating it is considered as an important step in path of industrialization and economic development in less developed and developing countries that are not able to produce advanced technologies.*

*Material needs and living level in today's society has been strongly enhanced. The advancement of science and technology has made inevitable the division of labor in the society, and almost no one, at the same time, can be involvement in employment and earn money from common businesses by a fundamental and profound examination of intellectual efforts in order to create new technology.*

*Contrary to the past, intellectual works have found material value and are known as the main means of meeting the material needs of the creators. On the other hand, the increasingly development and diversification of the communication tools has exposed these capitals which play an important role in the development of civilization, culture,*

*economy and the human industry to great dangers. That's why, governments and nations that have updated technology in the world have come up with rules and guidelines to protect and monitor the intellectual properties of technology creators and have forced other countries to comply with and enforce these rules. This paper describes and explains the aspects of intellectual property rights in relation to technology transfer after defining "Intellectual Property Rights".*

**Keywords:** *Technology, Technical Knowledge, Intellectual Property, Invention*

## **I. INTRODUCTION**

Difference in the level of knowledge and technology is one of the important factors that cause to create a

development gap between developed and developing countries. The rapid and sudden growth of technology in the last two decades and the prediction of its extraordinary growth in the not too distant future will surely intensify this difference. There are two ways to reduce this distance and access for developing countries to world's updated technology. One of them is the production of technology and other one is the transfer of it from countries that have such technology. Technology transfer is considered at least an attempt to enter the field of global competition and keep pace with the world's top economies in countries where have sufficient capability in the field of research and development, expert manpower, and capital. In general, technology is divided into two hardware and software sections. The hardware section of technology has been made of equipment and machinery, and its software section is caused by human intellectual disturbances, and the protection of this section is responsibility of "intellectual property rights".

Intellectual property rights include rules that create and support the right to material exploitation from an innovative and new activity. It also permits legal control over the way of distribution and commercialization of new technological information and innovations, and penalizes any misuse, unauthorized reproduction, and the forgery and distribution of it.

The rapid spread of technology and competition in the world today, given the importance of protecting the spiritual and intellectual property rights of the owners and producers of the software section of technology, on the one hand, has been caused that politicians and statesmen consider this right as a new tool in foreign policy of their countries and take steps with confidence and speed towards globalization considering the supportive power of these rights in the field of the exclusive right to sell or use a kind of goods or technology, the right to license, copyright and such cases, which leads to shortening the hands of competitors from any cheating and falsification types and, on the other hand, according to the development of economics and the growth of science and technology, which results in an increase in the

speed of industrialization of countries and the connection to the world trade network, the recognition of the concepts of intellectual property and potential capacities in this field can make the transfer of technology from developed countries along with more trust and guarantee, and to be therefore an effective step towards the development of developing countries.

## **II. DEFINITION OF INTELLECTUAL PROPERTY RIGHTS**

The difference in the definition and interpretation and determination of standards in the field of intellectual property rights is one of the biggest challenges facing marketers and stakeholders in technology transfer between two or more countries and nations, and effort to protect and support intellectual property rights and the harmonization of concepts related to these rights has been become a social puzzle.

This part of rights has been grown and expanded with the development of technology. The increasing use of computers and communications technology has been led to the development of the digital economy, and this new economy has revolutionized the production way of goods and services and, their nature and content, and the mechanisms for distributing goods and services. These deeper differences require different legal assumptions. Therefore, intellectual property rights have been important as a vital tool against the domination of such developments.

Intellectual property right means legal rights that relate to immaterial and intellectual activities in industrial, scientific, literary, and artistic fields. Most countries have developed laws to protect intellectual and spiritual property, which the first one is to induce the status and legal expression of the economic and moral rights of inventors in their inventions, as well as the rights of the public to achieve those inventions, and the second reason is the promotion of creativity and applying its results and also encouraging people's participation in social and economic development.

## **III. AUTHORITIES WHO INVESTIGATE INTELLECTUAL PROPERTY RIGHTS**

The support of intellectual property rights since the nineteenth century and with the ratification of two important international conventions means Paris Convention for support of Industrial Property and the Berne Convention for the Protection and support of Literary and Artistic Works has been institutionalized in 1886 and has been evolved by passing the time.

Undoubtedly the realization of the main objectives of the founders of these conventions in order to boost individual creativities and promote human biological standards with the gradual changes in the quality of

sciences and technologies depends on the existence of comprehensive regulations and the implementation of the international obligations of member states as described and prescribed in those International treaties, respecting the fundamental principle of the sovereignty of states.

Provisions that on the one hand due to the support of governments from inventors and creator in the domain of territorial jurisdiction, has the character of domestic law, and on the other hand, with respect to the obligations of governments to establish special supporting standards and to take protective measures with the trans-land nature has international aspect and these features and characters make intellectual property rights to have a unique character.

In this area, a discrepancy and difference in the interpretation of rules and not complete implementation or inappropriate implementation among different countries, in particular in the transfer of technology, always creates the disparity between the holders of intellectual property rights within countries and between States committed by conventions in the international community area. Therefore, existence of a resolution system of disputes with national and international dimensions seems to be necessary. Therefore, It has been appointed to refer to the International Court of Justice, if there is a difference in the implementation and interpretation of the laws between two member states of these two conventions.

In addition to the bilateral treaties, that provides and ensures the protection and support of intellectual property rights, which have predicted international settlement of disputes by referring disputes to "arbitration", some regional treaties and special international treaties with an economic nature, such as the "General Agreement on Tariffs and Trade" have been founded and established in 1947 and the "World Trade Organization" in 1994, which have established "common legal system now" in this area by having comprehensive and enforceable regulations among 150 countries in the area of resolving disputes arising from the interpretation and implementation of intellectual property rights that today, have great importance due to their effect on the rules of conflicts resolution and facilitating international trade.

It should be noted, however, that the Uruguay Round negotiations were concluded within the framework of the General Agreement on Tariffs and Trade in 2014, which the issue of intellectual property was among the various issues raised in the talks and its results were reflected in an agreement on trade aspects of Intellectual property rights that also ensures the trade in counterfeit goods. This agreement is commonly referred to as TRIPS TRADE RELATED OF

INTELLECTUAL PROPERTY RIGHTS = TRIPS, which confirms that intangible phenomena cover intellectual property rights protection in world trade, have worth like other goods and services.

Transfer of technology is one of the core concepts in the mentioned agreement. According to the provisions of this agreement, if intellectual property is protected and supported, technology transfer will be facilitated along with its commercial aspects.

In addition to the above mentioned cases, the International Organization of Intellectual Property (IPO), was recognized as one of the United Nations active units in 1967 and in Stockholm, was recognized in order to support and protect intellectual imagery, innovations, and inventions as first investigation authority to intellectual property rights.

#### **IV. INTELLECTUAL PROPERTY RIGHTS AND TECHNOLOGY TRANSFER:**

While technological advances are needed to maintain a competitive position in many industries. Turning technological advantages into competitive advantages also requires special prerequisites.

Managing and organizing technology transfer as one of the effective ways to achieve the required technology has been become an undeniable necessity in the development of technology in addition to creating technology through endogenous research and development.

Technology transfer is a special state of technological transformation that takes place in three stages of invention, innovation and dissemination. The field of intellectual property rights in the science of law protects and supports intellectual property, innovations, and inventions. These properties are among the rights that have been recognized by the legislator and custom throughout the world.

Host countries will also benefit from this technology in advanced technology based economies, as investors benefit from time, cost, and capital, if their intellectual property rights are properly protected.

#### **Types of Intellectual Property Rights:**

The available perspectives on the field of intellectual property rights divide these laws into two main sections that are:

1. The copyright or the right to artistic and literary ownerships and properties, including the collection of books and works of artists and authors, and all literary and artistic works.

The origin of the creation the work is thought and the flow of mind and soul and this flow has grown in the context of the history of human thoughts in the form of the production and re-production of intellectual and artistic works and in this way, thinkers and artists

have used their own previous works as their share and added something to it and have created a new work.

Hence, the creation of the work had been associated with the "use" of the works of others. More importantly, the work is basically created for the use of others, and if the element of "use" is extracted from the historical process of creating the work, then perhaps the created works would not have been what it is. Therefore, fair use" theory has been raised in order to counteract the injustice and unfairness in the field of law, which, since this is less relevant in the technology transfer, is not described.

2. Industrial property rights that cover industrial inventions and designs. Inventions are new solutions of technical issues, and industrial designs are associated with aesthetic creativity determining the appearance of industrial products.

Of course, in some texts, intellectual property rights have been divided into the following titles:

1. The patent
2. Commercial signs
3. Commercial Secrets
4. Copyright

Here we explain this due to the tangible relationship of initial division.

#### **V. INDUSTRIAL PROPERTY COMPONENTS:**

Industrial property is also a part of intellectual property that relates to human creativity and intellectual transmutation in industrial fields. "Industrial Property" specifies a legal entity whose objective is to allow a person or group, whether natural or legal, to work in business and industry confidently and to protect from any violation of others and it has been raised as well as to protect the individual's thought and initiative against third parties and to grant the monopoly the exploitation of the result of the thought and initiative to its owner for a specified period.

Industrial ownership can be examined and evaluated in two general areas of invention and technical knowledge.

#### **Invention**

Technology is formed in many cases around the axis of an invention. The owner of the technology is either the inventor himself or has obtained the right to use the invention from another inventor.

The use of the invention requires that the material rights of the invention, or at least the right to use it, to be transferred to the recipient. A technology transfer contract must specify the method of transferring the material rights or the right to use the invention and specify the registration of the patent.

### **Definition of Invention**

The word invention in the word means something to recreate, make and create by your mind. An innovator with the creation of a new phenomenon, according to the law, gains a right that others are required to observe, and by giving such a right to innovators, there is a sense of security for them, and consequently the society benefits from the crystallization of their ideas. However, the definition of invention in the patent laws of most countries has not been explicitly stated, and in general, cases have been mentioned for patent registration.

In the legal model that the World Intellectual Property Organization has provided, the invention is "the idea of an inventor who practically solves a solution to a particular technological problem" and, more simply, the invention is called as a new solution to an industrial problem.

### **The Patent**

The patent is a monopoly right which creators and inventor of a means or industrial method obtains in a new initiative on a particular subject. Creating this right first requires the invention of a tool, process, or method of use that has never been before, and secondly, this innovation has been used in the industry means it all sense. The development and improvement of society is in the light of new ideas and policies of the inventors, and the law inevitably supports it. But this support is different in different countries.

### **Patent Assignment in Technology Transfer Contracts**

It should be noted in contracts of transfer the technology that if the invention has been registered, the patent specification of the contract to be explicitly mentioned. It also refers to the countries where the inventor has recorded his/her invention, and the period of validity of the registration and the presentation of a list of these countries is necessary. These matters are especially necessary for the manufacturer of goods made using the technology of the subject of the contract and are imported to other countries.

In addition to the above cases, the issue of the ownership and property of technology- recipient must be clearly stated. In other words, the right of recipient on the subject of invention is the property right and the material rights of the invention have been transferred to him/her or if the recipient of the technology has only the right to exploit it in external way.

In the end, it should be noted that the responsibility of the inventor to respond to the claims and potential

rights of third parties in the subject matter of the invention as well as the compensation of damages of the technology recipient if, for any reason, the invention paper is void or a person who give that forbids the use of rights arising from it should be predicted in the contract.

### **Technical Knowledge**

Technical knowledge is called a set of useful, confidential, inventive, valuable industrial information, that there is a set of technical and non-technical knowledge and skills in the design, construction and other operations of the industrial unit along with it for the production of products or the provision of materials that are needed for exploitation. This set is at the sole discretion of the technology owner and is used by him/her.

If this set is available to the technology applicant, he will be able to design and build the desired productive unit and produce a specific product with specified materials in specified volume and with determined specifications.

### **Transfer of Documents**

As it was said, technical knowledge is a set of information that is usually recorded and documented in written documents. Therefore, they objectivize a set of books, publications, technical and executive maps, photographs, laboratory results, material compound formulations, and technical knowledge.

The condition for the transfer of these documents is among the basic and obvious principles and at the same time the most basic and most sensitive measures in the contracts for the transfer of technology. Failure to access these documents will definitely result in the inability to produce the desired product or its quality defect.

Therefore, the full arithmetic of the technology receiver is necessary on the type of technology to be transmitted and the relevant documents and evidence, and the prediction of guarantees for necessary implementation to delay in the presentation or non-presentation of the technology in complete way.

### **Secrets Keeping**

From the perspective of the technology assignor, an important part of his technical knowledge value lies in its confidentiality. In many cases, the technology assignor wants to continue to produce the product and also assignor claims secretly to have the power of trading, the high quality of the product, the reduction of production costs, and so on by keeping that information, the .

Assignor wishes to adopt and anticipate arrangements that guarantee the non-disclosure of the technology in

this case, and especially since the technical knowledge, unlike the patented invention, does not contain the invention paper. Consequently, the condition of secrecy, or a separate contract for the fulfillment of this requirement and the obligation of the technology, is to protect the secrets of the received technology in many of the technology transfer agreements.

The requirement to be secret or confidential the matter should only extend to information that:

1. It has been given in the form of written or other acceptable methods to the recipient or, it is presented orally, to be confirmed and confirmed later.
2. To be considered confidential.
3. It should not be known to the recipient before disclosure.
4. It should not be known to the public at that time.
5. Subsequently, it cannot be received from third parties who do not have the concessionaire to keep confidential information by recipient.

Obviously, the technical knowledge receiver should try to keep industrial secrets according to the lower level of low standards and the abilities to protect.

Therefore, the unconditional acceptance of the applying of safety standards having technology that can observed in some contracts, due to the inability and lack of discipline in industrial environments, usually encounters the recipient of technology and technical knowledge with large financial claims from the technology transferor..

## VI. CONCLUSION

Protecting intellectual property rights is one of the most important concerns of today's global society. The breadth and extent of its support have many uses for investors and technology transmitters, transferees, employees of these organizations, consumers of manufactured goods of these organizations and even a future generation that may benefit from the innovations and improvements of today's generation.

Today, protecting and supporting the intellectual property rights is critical to innovators of the world's top technology, and it is undeniable for importers of this technology, and it is not only a positive step towards the interests of transmitters

and technology transferees to facilitate global trade and international development but also, it can be considered with greater insight and future prospects as a global movement in the welfare path of humanity.

Issues of technology transfer and intellectual property are raised to assist developing countries to participate in international technology transfer and intellectual property activities and are effective help to identify the appropriate political options for successful integration of these countries with global economy.

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