
UNIT 3 THE PARIS CONVENTION

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3.1 INTRODUCTION

During the last century, before the existence of any international convention in the field of industrial property, it was difficult to obtain protection for industrial property rights in the various countries of the world because of the diversity of their laws. Moreover, patent applications had to be made roughly at the same time in all countries in order to avoid a publication in one country destroying the novelty of the invention in the other countries. These practical problems led to some international efforts towards smoothening the patenting process across the nations.

The second half of last century saw the development in industrial sector with large flow of technology and trade across the international borders. This brought in an urgent need for harmonization of industrial property laws in both patent and trade mark field.

When the Government of the Empire of Austria-Hungary invited other countries to participate in an international exhibition of inventions held in 1873 at Vienna, participation was hampered by the fact that many foreign visitors were not willing to exhibit their inventions at that exhibition in view of the inadequate legal protection offered to exhibited inventions.

This led to two developments: firstly, a special Austrian law secured temporary protection to all foreigners participating in the exhibition for their inventions, trademarks and industrial designs. Secondly, the Congress of Vienna for Patent Reform was convened during the same year, 1873. It elaborated a number of principles on which an effective and useful patent system should be based, and urged governments to bring about an international understanding upon patent protection as soon as possible.

As a follow-up to the Vienna Congress, an International Congress on Industrial Property was convened at Paris in 1878. Its main result was a decision that one of the governments should be asked to convene an international diplomatic conference with the task of determining the basis of uniform legislation in the field of industrial property.

Following that Congress, a final draft proposing an *international union* for the protection of industrial property was prepared in France and was sent by the French Government to a number of other countries, together with an invitation to attend the

International Conference in Paris of 1880. That Conference adopted a draft convention which contained in essence those substantive provisions which are still today the main features of the Paris Convention.

A new Diplomatic Conference was convened in Paris in 1883, which ended with final approval and signature of **the Paris Convention for the Protection of Industrial Property**. The Paris Convention was signed by 11 States: Belgium, Brazil, El Salvador, France, Guatemala, Italy, the Netherlands, Portugal, Serbia, Spain and Switzerland. When it came into effect on July 7, 1884, Great Britain, Tunisia and Ecuador had adhered as well, bringing the initial number of member countries to 14. It was only during the first quarter of last century and then particularly after World War II that the membership of Paris Convention increased significantly.

The Paris Convention has been revised from time to time after its signature in 1883. Each of the revision conferences, starting with the Brussels Conference in 1900, ended with the adoption of a revised Act of the Paris Convention. The great majority of the countries are now party to the latest Act, of Stockholm of 1967.

There are number of international conventions and treaties which are open to the members of Paris Convention. These include Patent Cooperation Treaty (PCT), Budapest Treaty for deposition of micro organisms, UPOV (Union for protection of new plant varieties), Madrid Agreement for repression of false or deceptive indications of source on goods, Madrid Protocol Concerning registration of marks and Hague Agreement concerning deposit of industrial designs.

In Appendix A we have included the complete text of the Paris Convention.

Objectives

After studying this unit, you should be able to:

- understand basic provisions of Paris Convention;
- explain what is national treatment;
- describe the concept of the right of priority;
- explain the concept of independence in case of Patents and Trademarks; and
- describe various provisions of convention in regard to the patents, industrial designs.

3.2 PROVISIONS OF PARIS CONVENTION

The provisions of the Paris Convention may be sub-divided into four main categories:

- a first category contains rules of substantive law which guarantee a basic right known as the right to national treatment in each of the member countries;
- a second category establishes another basic right known as the right of priority;
- a third category defines a certain number of common rules in the field of substantive law which contain either rules establishing rights and obligations of natural persons and legal entities, or rules requiring or permitting the member countries to enact legislation following those rules;
- a fourth category deals with the administrative framework which has been set up to implement the Convention, and includes the final clauses of the Convention.

3.2.1 National Treatment

National treatment means that, as regards the protection of industrial property, each country party to the Paris Convention must grant the same protection to nationals of the other member countries as it grants to its own nationals. The relevant provisions are contained in Articles 2 and 3 of the Convention.

The same national treatment must be granted to nationals of countries which are not party to the Paris Convention if they are domiciled in a member country or if they have a *real and effective* industrial or commercial establishment in such a country. However, for the *nationals of member countries* no requirement as to domicile or establishment in the country where protection is claimed shall be imposed upon as a condition for benefiting from an industrial property right.

This national treatment rule guarantees not only that foreigners will be protected, but also that they will not be discriminated against in any way. Without this, it would frequently be very difficult and sometimes even impossible to obtain adequate protection in foreign countries for inventions, trademarks and other subjects of industrial property.

The national treatment rule applies first of all to the *nationals* of the member countries. The term *national* includes both natural persons and legal entities. With respect to legal entities, the status of being a national of a particular country may be difficult to determine. Generally, no nationality as such is granted to legal entities by the various national laws. There is of course no doubt that State-owned enterprises of a member country or other entities created under the public law of such country are to be considered as nationals of the member country concerned. Legal entities created under the private law of a member country will usually be considered a national of that country. If they have their actual headquarters in another member country, they may also be considered a national of the headquarters country. According to Article 2(1), the national treatment rule applies to all advantages that the various national laws grant to nationals.

This further means, that any requirement of reciprocity of protection is excluded. Suppose that a given member country *X* has a longer term of patent protection than another member country *Y*. In such case country *X* will not have the right to provide that nationals of country *Y* will enjoy a term of protection of the same length as the term of protection is in the law of their own country. This principle applies not only to codified law, but also to the practice of the courts (jurisprudence) and to the practice of the Patent Office or other administrative governmental institutions, as it is applied to the nationals of the country.

The application of the national law to the national of another member country does not, however, prevent him from invoking more beneficial rights specially provided in the Paris Convention. These rights are expressly reserved. The national treatment principle must be applied without prejudice to such rights.

Article 2(3) states an exception to the national treatment rule. The national law relating to judicial and administrative procedure, to jurisdiction and to requirements of representation is expressly *reserved*. This means that certain requirements of a mere procedural nature which impose special conditions on foreigners for purposes of judicial and administrative procedure, may also validly be invoked against foreigners who are nationals of member countries. An example is a requirement for foreigners to deposit a certain sum as security or bail for the costs of litigation. Another example is expressly stated: the requirement that foreigners should either designate an address for service or appoint an agent in the country in which protection is requested. This last requirement is perhaps most commonly imposed on foreigners.

Article 3 provides for the application of the national treatment rule also to nationals of non-member countries, if they are *domiciled* or have an industrial or commercial establishment in a member country.

The term *domiciled* is generally interpreted not only in the strict legal sense of the term. A mere residence, more or less permanent as distinct from a legal domicile, is sufficient. Legal entities are domiciled at the place of their actual headquarters.

If there is no domicile, there may still be an industrial or commercial establishment which gives a person the right to national treatment. The notion of the industrial or commercial establishment in a member country of a national of a non-member country is further qualified by the text of the Convention itself. It requires that there must be actual industrial or commercial activity. A mere letter box or the renting of a small office with no real activity is not sufficient.

3.2.2 The Right of Priority

The right of priority means that, if you file a regular application for an industrial property right in one of the member countries, on its basis you may, within a specified period of time (six or twelve months), apply for protection in all the other member countries. These later applications will then be regarded as if they had been filed on the same day as the earliest application. Hence, these later applications enjoy a priority status with respect to all applications relating to the same invention filed after the date of the first application. They also enjoy a priority status with respect to all acts accomplished after that date (like patent publication) which would normally be apt to destroy your rights or the patentability of the invention. The provisions concerning the right of priority are contained in Article 4 of the Convention.

The right of priority offers great practical advantages to you, as an applicant desiring protection in several countries. You are not required to present all applications at home and in foreign countries at the same time, since there are six to twelve months at your disposal to decide in which countries to request protection. You can use that period to organize the steps to be taken to secure protection in the various countries of interest in the particular case.

The beneficiary of the right of priority is any person entitled to benefit from the national treatment rule who has duly filed an application for a patent for invention or another industrial property right in one of the member countries.

The right of priority can be based only on the *first* application for the same industrial property right which must have been filed in a member country. It is therefore not possible to follow a first application by a second, possibly improved application and then to use that second application as a basis of priority. The reason for this rule is obvious: one cannot permit an endless chain of successive claims of priority for the same subject, as this could, in fact, considerably prolong the term of protection for that subject.

Article 4A(1) of the Paris Convention recognizes expressly that the right of priority may also be invoked by the successor in title of the first applicant. The right of priority may be transferred to a successor in title without transferring at the same time the first application itself. This allows the transfer of the right of priority to different persons for different countries.

The later application must concern the same subject as the first application the priority of which is claimed. In other words, the same invention, utility model, trademark or industrial design must be the subject of both applications. It is, however, possible to use a first application for a patent for invention as priority basis for a registration of a utility model and vice versa. The same change of form of protection in both directions

may also be possible, in accordance with national laws, between utility models and industrial designs.

The first application must be *duly filed* in order to give rise to the right of priority. Any filing, which is equivalent to a regular national filing, is a valid basis for the right of priority. A regular national filing means any filing that is adequate to establish the date on which the application was filed in the country concerned. The notion of *national* filing is qualified by including also the applications filed under bilateral or multilateral treaties concluded between member countries.

Withdrawal, abandonment or rejection of the first application does not destroy its capacity to serve as a priority basis. The right of priority subsists even where the first application generating that right is no longer existent.


The effect of the right of priority is regulated in Article 4B. It implies that, as a consequence of the priority claim, the later application must be treated as if it had been filed already at the time of the filing of the first application (in another country) whose priority is claimed. By virtue of the right of priority, all the acts accomplished during the time between the filing dates of the first and the later applications, i.e. during the priority period, cannot destroy the rights which are the subject of the later application.

For example, a patent application for the same invention filed by a third party during the priority period will not give a prior right, although it was filed before the later application. Likewise, a publication or public use of the invention, which is the subject of the later application, during the priority period would not destroy the novelty or inventive character of that invention.

The length of the priority period is different according to the various kinds of industrial property rights. For **patents for invention** and utility models the priority period is **twelve months**, for **industrial designs** and **trademarks** it is **six months**. In determining the length of the priority period, the Paris Convention had to take into account the conflicting interests of the applicant and of third parties. The priority periods now prescribed by the Paris Convention seem to strike an adequate balance between them.

The right of priority as recognized by the Convention permits the claiming of *multiple priorities* and of *partial priorities*. Therefore, the later application may not only claim the priority of one earlier application, but it may also combine the priority of several earlier applications, each of which pertaining to different features of the subject matter of the later application. Furthermore, in the later application, elements for which priority is claimed may be combined with elements for which no priority is claimed. In all these cases, the later application must of course comply with the requirement of unity of invention.

These possibilities correspond to a practical need. Frequently after a first filing further improvements and additions to the invention are the subject of further applications in the country of origin. In such cases, it is very practical to be able to combine these various earlier applications into one later application, when filing before the end of the priority year in another member country. This combination is even possible if the multiple priorities come from different member countries.

 Spend
4 min.

SAQ 1

What is the right of priority?

3.3 PROVISIONS CONCERNING PATENTS

3.3.1 Independence of Patents

Patents for invention granted in member countries to nationals or residents of member countries must be treated as independent of patents for invention obtained for the same invention in other countries, including non-member countries. The rule concerning the *independence* of patents for invention is contained in Article 4^{bis}.

This principle is to be understood in its broadest sense. It means that the grant of a patent for invention in one country for a given invention does not oblige any other member country to grant a patent for invention for the same invention. Furthermore, the principle means that a patent for invention cannot be refused, invalidated or otherwise terminated in any member country on the ground that a patent for invention for the same invention has been refused or invalidated, or that it is no longer maintained or has terminated, in any other country. In this respect, the fate of a particular patent for invention in any given country has no influence whatsoever on the fate of a patent for the same invention in any of the other countries.

The underlying reason and main argument in favour of this principle is that national laws and administrative practices are usually quite different from country to country. A decision not to grant or to invalidate a patent for invention in a particular country on the basis of its law will frequently not have any bearing on the different legal situation in the other countries. It would not be justified to make the owner lose the patent for invention in other countries, on the ground that he or she lost a patent in a given country as a consequence of not having paid an annual fee in that country, or as a consequence of the patent's invalidation in that country, on a ground which does not exist in the laws of the other countries.

A special feature of the principle of independence of patents for invention is contained in Article 4^{bis}(5). This provision requires that a patent granted on an application which claimed the priority of one or more foreign applications, must be given the same duration which it would have according to the national law if no priority had been claimed. In other words, it is not permitted to deduct the priority period from the term of a patent invoking the priority of a first application. For instance, a provision in a national law starting the term of the patent for invention from the (foreign) priority date, and not from the filing date of the application in the country, would be in violation of this rule.

The Right of the Inventor to be Mentioned: A general rule states that the inventor must have the right to be mentioned as such in the patent for invention. This is stated in Article 4^{ter}.

National laws have implemented this provision in several ways. Some give the inventor only the right for civil action against the applicant or owner in order to obtain the inclusion of his name in the patent for invention. Others enforce the naming of the inventor during the procedure for the grant of a patent for invention on an *ex officio* basis. In the United States of America, for example, it is even required that the applicant for a patent be the inventor himself.

3.3.2 Importation, Failure to Work and Compulsory Licenses

The questions of importation of articles covered by patents, of failure to work the patented invention and of compulsory licenses, are dealt with in Article 5A of the Convention.

With respect to importation, the provision states that importation by the patentee, into the country where the patent has been granted, of articles covered by the patent and manufactured in any of the countries of the Union will not entail forfeiture of the patent. This provision is quite narrowly worded, and hence only applies when several conditions are met. Consequently the countries of the Union have considerable leeway to legislate with respect to importation of patented goods under any of the circumstances which are different to those foreseen in this provision.

This Article applies to patentees who are entitled to benefit from the Paris Convention and who, having a patent in one of the countries of the Paris Union, import to this country goods (covered by the patent) which were manufactured in another country of the Union. In such a case, the patent granted in the country of importation may not be forfeited as a sanction for such importation. In this context, the term *patentee* would also cover the representative of the patentee, or any person who effects the importation in the name of such patentee.

With respect to the goods that are imported, it suffices that they be manufactured in a country of the Union. The fact that the goods, having been manufactured in a country of the Union, are thereafter circulated through other countries and eventually imported from a country which is not a member of the Union, would not prevent this Article from being applicable.

Finally, it may be mentioned that the term *forfeiture* in Article 5A(1) includes any measure which has the effect of definitively terminating the patent. Therefore it would cover the concepts of invalidation, revocation, annulment, repeal, etc. Whether *forfeiture* may, in the light of the purpose of this Article or the spirit of the Paris Convention, be construed as covering also other measures that would have the effect of preventing importation (fines, suspension of rights, etc.) is left for the national legislation and courts to decide.

With respect to the working of patents and compulsory licenses, the essence of the provisions contained in Article 5A is that each country may take legislative measures providing for the grant of compulsory licenses. These compulsory licenses are intended to prevent the abuses which might result from the exclusive rights conferred by a patent for invention, for example failure to work or insufficient working.

Compulsory licenses on the ground of failure to work or insufficient working are the most common kind of coercive measure against the patent owner to prevent abuses of the rights conferred by the patent for invention. They are expressly dealt with by Article 5A.

The main argument for enforcing working of the invention in a particular country is the consideration that, in order to promote the industrialization of the country, patents for invention should not be used merely to block the working of the invention in the country or to monopolize importation of the patented article by the patent owner. They should rather be used to introduce the use of the new technology into the country. Whether the patent owner can really be expected to do so, is first of all an economic consideration and then also a question of time. Working in all countries is generally not economical. Moreover, it is generally recognized that immediate working in all countries is impossible. Article 5A therefore tries to strike a balance between these conflicting interests.

Compulsory licenses for failure to work or insufficient working of the invention may not be requested before a certain period of time has elapsed. This time limit expires either four years from the date of filing of the patent application or three years from the date of the grant of the patent for invention. The applicable time is the one which, in the individual case, expires last.

The time limit of three or four years is a minimum time limit. The patent owner must be given a longer time limit, if there are legitimate reasons for inaction like legal, economic or technical obstacles prevent working, or working more intensively, the invention in the country. If that is proven, the request for a compulsory license must be rejected, at least for a certain period. The time limit of three or four years is a minimum also in the sense that national law can provide for a longer time limit.

The compulsory license for non-working or insufficient working must be a non-exclusive license and can only be transferred together with the part of the enterprise benefiting from the compulsory license.

Compulsory licenses may also be granted for reasons of the public interest, in cases where there is no abuse by the patent owner of his rights. Such situations may be in the fields of military security or public health.

There are also cases where a compulsory license is provided for to protect the public interest in unhampered technological progress. This is the case of the compulsory license in favour of the so-called *dependent patents*. If a patented invention cannot be worked without using an earlier patent for invention granted to another person, then the owner of the dependent patent, in certain circumstances, may have the right to request a compulsory license for the use of that invention. If the owner of the dependent patent for invention obtains the compulsory license, he may in turn be obliged to grant a license to the owner of the earlier patent for invention.

It should be noted, however, that Article 31 of the TRIPS Agreement further provides a number of conditions with respect to the use of subject matter of a patent without the authorization of the right-holder.

This Article allows Members to authorize third persons to exploit a patented invention, even against the will of the patent owner, provided certain conditions are respected. The Agreement does not prescribe nor limit the grounds on which such authorizations may be granted.

Where the law of a Member State allows for such compulsory licenses, including compulsory licenses by or on behalf of the government, or provides for other uses of the patented invention without the authorization of the patent owner, the following conditions must be complied with:

- a) Authorization of a compulsory license must be considered on its individual merits. This means that applications for compulsory licenses must be considered on a case-by-case basis.
- b) A compulsory license can only be granted if the proposed compulsory licensee has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the cases of a national emergency or other circumstances of extreme urgency, or in cases of public non-commercial use.
- c) The scope and duration of a compulsory license must be limited to the purpose for which it was authorized. However, in the case of semiconductor technology a compulsory license may only be granted for public non-commercial use, or to remedy a practice determined to be anti-competitive.
- d) A compulsory license must be non-exclusive.
- e) A compulsory license may not be assigned without that part of the enterprise or goodwill which produces the product under that license.

- f) A compulsory license must be authorized predominantly for the supply of the domestic market of the Member that grants the license.
- g) A compulsory license must be liable to be terminated, subject to adequate protection of the legitimate interests of the compulsory licensee, if the circumstances that justified its grant have ceased to exist and are unlikely to recur.
- h) The patent owner must be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the allowed use.
- i) The legal validity of any decision relating to the grant of a compulsory license must be subject to judicial review or other independent review by a distinct higher authority in the Member that granted the license.
- j) Any decision relating to the remuneration in respect of a compulsory license must be subject to judicial review or other independent review by a distinct higher authority in the Member that granted the license.
- k) A Member is not obliged to apply the conditions set forth in items (b) and (f) above where the compulsory license is granted to remedy a practice determined to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. The competent authority of the Member must have the power to refuse termination of a compulsory license if the conditions that justified its grant are likely to recur.
- l) In cases of dependency between two patents belonging to different owners, so that the later patent cannot be exploited without infringing the earlier patent, the following additional conditions must be applied:
 - the invention claimed in the second patent must involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
 - the owner of the first patent is entitled to a cross-license on reasonable terms to use the invention claimed in the second patent; and
 - the use authorized in respect of the first patent may not be assigned except with the assignment of the second patent.

3.3.3 Grace Period for the Payment of Maintenance Fees

Article 5^{bis} provides for a grace period for the payment of maintenance fees for industrial property rights and deals with the restoration of patents for invention in case of non-payment of fees.

In most countries the maintenance of certain industrial property rights, mainly the rights in patents for invention and trademarks, is subject to the periodic payment of fees. For patents, the maintenance fees must generally be paid annually, and in that case are also called annuities. Immediate loss of the patent for invention in the event that one annuity is not paid at the due date would be too harsh a sanction. Therefore, the Paris Convention provides for a period of grace, during which the payment can still be made after the due date to maintain the patent. That period is six months, and is established as a minimum period, leaving countries free to accept a longer period.

The delayed payment of the annuity may be subjected to the payment of a surcharge. In that case, both the delayed fee and the surcharge must be paid within the grace period. During the grace period, the patent for invention remains provisionally in force. If the payment is not made during the grace period, the patent for invention will lapse retroactively, that is, as of the original due date of the annuity.

3.3.4 Other Relieves

Patents in International Traffic: Another common rule of substantive importance, containing a limitation of the rights of the patent owner in special circumstances, is contained in Article 5^{ter}. It deals with the transit of devices on ships, aircraft or land vehicles through a member country in which such device is patented.

Where ships, aircraft or land vehicles of other member countries enter temporarily or accidentally a given member country and have on board devices patented in that country, the owner of the means of transportation is not required to obtain prior approval or a license from the patent owner. Temporary or accidental entry of the patented device into the country in such cases constitutes no infringement of the patent for invention.

The device on board the ship, aircraft or vehicle must be in the body, in the machinery, tackle, gear or other accessories of the conveyance, and must be used exclusively for operational needs.

The provision covers only the use of patented devices. It does not allow the making of patented devices on board a means of transportation, nor the sale to the public of patented products or of products obtained under a patented process.


Inventions Shown at International Exhibitions: A further common rule of a substantive nature is the provision concerning temporary protection in respect of goods exhibited at international exhibitions, contained in Article 11 of the Convention.

The principle stated in Article 11 is that the member countries are obliged to grant, in conformity with their domestic legislation, temporary protection to patentable inventions, utility models, industrial designs and trademarks in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any member country.

Temporary protection may be provided by various means. One is to grant a special right of priority, similar to that provided for in Article 4. This priority right would start from the date of the opening of the exhibition or from the date of the introduction of the object at the exhibition. It would be maintained for a certain period, say twelve months, from that date, and would expire if the application for protection does not follow the exhibition within that period.

Another means which is found in a number of national laws, in particular with respect to patents for invention, is that of prescribing that, during a certain period of, say, twelve months before the filing or priority date of a patent application, a display of the invention at an international exhibition will not destroy the novelty of the invention. When choosing that solution, it is important to protect the inventor or other owner of the invention during the same period also against abusive acts of third parties. This means in particular that the person exhibiting the invention must be protected against any copying or usurpation of the invention for purposes of a patent application by a third party. The owner of the invention must also be protected against disclosure, based on the exhibition, by third parties.

Article 11 applies only to official or officially recognized exhibitions. The interpretation of that term is left to the member country where protection is sought. An interpretation corresponding to the spirit of Article 11 is to consider an exhibition as *official*, if it is organized by a State or other public authority, to consider it as *officially recognized*, if it is not official but has at least been recognized as official by a State or other public authority, and to consider it as *international*, if goods from various countries are exhibited.

 Spend
3 min.

SAQ 2

What are the principal features of the Paris Convention?


3.4 PROVISIONS CONCERNING INDUSTRIAL DESIGNS

The Paris Convention deals with industrial designs in Article 5^{quinquies}. This provision merely states the obligation of all member countries to protect industrial designs. Nothing is said about the way in which this protection must be provided.

Member countries can therefore comply with this obligation through the enactment of special legislation for the protection of industrial designs. They can, however, also comply with this obligation through the grant of such protection under the law on copyright or the law against unfair competition.

The normal solution, chosen by a great number of countries for compliance with the obligations under Article 5^{quinquies} is, however, to provide for a special system of protection of industrial designs by registration or by the grant of patents for industrial designs.

There is a special provision dealing with forfeiture in the case of industrial designs. It is contained in Article 5B, and states that the protection of industrial designs may not in any circumstance be subject to any measure of forfeiture as sanction, in cases of failure to work or where articles corresponding to those protected are imported. *Forfeiture* in this provision includes equivalent measures, such as cancellation, invalidation or revocation. Member countries could, however, provide other sanctions for those cases, such as compulsory licenses in order to ensure working. *Working* means here the manufacture of products representing or incorporating the industrial design.

 Spend
3 min.

SAQ 3

What is the difference between the concept of *forfeiture* in respect of patents and industrial designs?



3.5 SUMMARY

- Paris Convention signed in 1883, came into effect on July 7, 1884. It was subsequently revised in 1900 at Brussels, in 1911 at Washington, in 1925 at the Hague, in 1934 at London, in 1958 at Lisbon and in 1967 at Stockholm.
- Membership of Paris Convention is the eligibility condition for participation in many other conventions and treaties.
- National treatment, right of priority, independence of protection and protection against unfair competition are the principle feature of the Paris convention.
- National treatment implies same treatment to a foreign applicant from a Union country as it would be for the own nationals of the country.
- Right of priority allows to obtain same date of priority for the subsequent applications filed with in specified period of time to other member countries, as that of the first application.
- Convention provides independence of patents.

- There is a provision of compulsory licensing in case of non-working of patents.
- There is special protection provided for the exhibits in the official exhibitions.

3.6 TERMINAL QUESTIONS

Spend 20 min.

1. Discuss briefly the scope of industrial property.
2. What do you understand by the national treatment with reference to the Paris Convention?
3. What is independence of patents?
4. What is the provision concerning the compulsory licensing of patents?

3.7 ANSWERS AND HINTS

Self Assessment Questions

1. Each country grants the industrial property right for a fixed period of time. The date of filing of complete specification is usually the date of start of patent protection. To obtain rights in other member countries, the application must be filed on the same day in the member countries if it is desired to have the rights started from the same day. However, it is very difficult to synchronize the activities in all countries. For facilitating simultaneous protection in member countries, the Convention provides that within 12 months of national filing, if patent applications are filed in member countries, the patents, if granted in member countries, will be effective from the date of national filing. This right is known as the right of priority.
2. The principle features of Paris Convention include:
 - National Treatment;
 - Right of priority;
 - Independence of Patents;
 - Parallel Importation;
 - Protection against false indications; and
 - Unfair competition.
3. In case of patents, the forfeiture includes measures that effect in terminating it. In case of industrial designs, there is no measure of forfeiture as a sanction, though other measures could be used for forcing its working.

Terminal Questions

1. The Industrial property, in general, applies to all kinds of manufacturing and agricultural industries and commerce. The industrial property to which the Paris Convention applies includes the patents; the utility models; the industrial designs; the trademarks, service marks and trade names; the indications of source of appellations of origin; and repression of unfair competition.
2. National treatment requires that each contracting state must grant the same protection to the nationals of other contracting states as it grants to its own nationals in matters of protection of industrial property.

Patents, Paris Convention

3. The patents applied for in the various countries of the Union shall be independent of each other with regard to nullity and forfeiture and their normal duration. This means that granting a patent in one country of the Union does not force other countries to grant the patent for the same invention. Also, the refusal of the patent in one country does not mean that it will be terminated in all the countries.
4. Each member country shall have the right to provide for the grant of compulsory licenses to prevent the abuses resulting from the exclusive rights conferred by the patent. Compulsory licences for failure to work or insufficient working of the invention may not be requested before the period of time of non-working or insufficient working has elapsed. This time limit is four years from the date of filing of the patent application or three years from the date of the grant. Such licences will be a non-exclusive and non-transferable.