

Report Q205

in the name of the Philippine Group

Exhaustion of IPRs in cases of recycling and repair of goods

Questions

I) Analysis of the current statutory and case laws

1) *Exhaustion*

In your country, is exhaustion of IPRs provided either in statutory law or under case law with respect to patents, designs and trademarks? What legal provisions are applicable to exhaustion? What are the conditions under which an exhaustion of IPRs occurs? What are the legal consequences with regard to infringement and the enforcement of IPRs?

In line with the general definition provided in the Working Guidelines, i.e. “the IPR owner may not prohibit a third party from selling or trading a specific product based on his IPR any further”, the following provisions in Republic Act 8293, Intellectual Property Code of the Philippines (IP Code for brevity) deal with exhaustion of IPRs in the context of Philippine statutes:

Patents

Section 71. Rights Conferred by Patent. – 71.1. A patent shall confer on its owner the following exclusive rights:

- a) Where the subject matter of a patent is a product, to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling or importing that product;
- b) Where the subject matter of a patent is a process, to restrain, prevent or prohibit any unauthorized person or entity from using the process, and from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process.

71.2. Patent owners shall also have the right to assign, or transfer by succession the patent, and to conclude licensing contracts for the same. (Sec. 37, R.A. No. 165a).

The said exclusive rights of a patent holder is however qualified by the following:

Section 72. Limitations of Patent Rights. – The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 hereof in the following circumstances:

72.1. Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market;

72.2. Where the act is done privately and on a non-commercial scale or for a non-commercial purpose: Provided, That it does not significantly prejudice the economic interests of the owner of the patent;

72.3. Where the act consists of making or using exclusively for the purpose of experiments that relate to the subject matter of the patented invention;

72.4. Where the act consists of the preparation for individual cases, in a pharmacy or by a medical professional, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;

72.5. Where the invention is used in any ship, vessel, aircraft, or land vehicle of any other country entering the territory of the Philippines temporarily or accidentally: Provided, That such invention is used exclusively for the needs of the ship, vessel, aircraft, or land vehicle and not used for the manufacturing of anything to be sold within the Philippines. (Secs. 38 and 39, R.A. No. 165a).

Moreover, the right of a good faith "prior user" to continue using the invention is recognized under the following provisions in the IP Code:

Section 73. Prior User. – 73.1. Notwithstanding Section 72 hereof, any prior user, who, in good faith was using the invention or has undertaken serious preparations to use the invention in his enterprise or business, before the filing date or priority date of the application on which a patent is granted, shall have the right to continue the use thereof as envisaged in such preparations within the territory where the patent produces its effect.

73.2. The right of the prior user may only be transferred or assigned together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made. (Sec. 40, R.A. No. 165a).

Further, the Philippine Government is explicitly allowed to exploit the invention under the following situations:

Section 74. Use of Invention by Government. – 74.1. A Government agency or third person authorized by the Government may exploit the invention even without agreement of the patent owner where:

- a) The public interest, in particular, national security, nutrition, health or the development of other sectors, as determined by the appropriate agency of the government, so requires; or
- b) A judicial or administrative body has determined that the manner of exploitation, by the owner of the patent or his licensee is anti-competitive.

74.2. The use by the Government, or third person authorized by the Government shall be subject, *mutatis mutandis*, to the conditions set forth in Sections 95 to 97 and 100 to 102. (Sec. 41, R.A. No. 165a).

The following conditions governing compulsory licensing applies to the use of the invention by the Philippine Government:

Section 95. Requirement to Obtain a License on Reasonable Commercial Terms. – 95.1. The license will only be granted after the petitioner has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions but such efforts have not been successful within a reasonable period of time.

95.2. The requirement under Subsection 95.1 shall not apply in the following cases:

- a) Where the petition for compulsory license seeks to remedy a practice determined after judicial or administrative process to be anti-competitive;
- b) In situations of national emergency or other circumstances of extreme urgency;
- c) In cases of public non-commercial use.

95.3. In situations of national emergency or other circumstances of extreme urgency, the right holder shall be notified as soon as reasonably practicable.

95.4. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly. (n)

Section 96. *Compulsory Licensing of Patents Involving Semi-Conductor Technology.* – In the case of compulsory licensing of patents involving semi-conductor technology, the license may only be granted in case of public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive. (n)

Section 97. *Compulsory License Based on Interdependence of Patents.* – If the invention protected by a patent, hereafter referred to as the “second patent,” within the country cannot be worked without infringing another patent, hereafter referred to as the “first patent,” granted on a prior application or benefiting from an earlier priority, a compulsory license may be granted to the owner of the second patent to the extent necessary for the working of his invention, subject to the following conditions:

97.1. The invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the first patent;

97.2. The owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent;

97.3. The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent; and

97.4. The terms and conditions of Sections 95, 96 and 98 to 100 of this Act. (Sec. 34-C, R.A. No. 165a).

Designs

Section 119. *Application of Other Sections and Chapters.* – 119.1. The following provisions relating to patents shall apply mutatis mutandis to an industrial design registration:

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Chapter VIII – Right of Patentees & Infringement of Patents (specifically Sections 71 to 75 enumerated in subheading “Patents” above).

Thus, as regards “designs”, the exhaustion of IPR is similar to that provided for “patents” as explicitly provided in the IP Code.

Trademarks

Section 138. *Certificates of Registration.* – A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. (Sec. 20, R.A. No. 165).

Section 147. *Rights Conferred.* – 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner’s consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

147.2. The exclusive right of the owner of a well-known mark defined in Subsection 123.1(e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: Provided, That use of that mark in relation

to those goods or services would indicate a connection between those goods or services and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use. (n)

Third Parties are however allowed limited use of the registered mark:

Section 148. *Use of Indications by Third Parties for Purposes Other than those for which the Mark is Used.* – Registration of the mark shall not confer on the registered owner the right to preclude third parties from using bona fide their names, addresses, pseudonyms, a geographical name, or exact indications concerning the kind, quality, quantity, destination, value, place of origin, or time of production or of supply, of their goods or services: Provided, That such use is confined to the purposes of mere identification or information and cannot mislead the public as to the source of the goods or services. (n)

A trademark owner relinquishes exclusivity and registration of a trademark if his mark becomes the generic name for the goods or services, or a portion thereof for which it is registered. Also, by reason of continuous non-use for a period of three (3) years or more. Therefore, in a sense the trademark owner will not be able to prevent use of the mark by third parties.

Section 151. *Cancellation.* – 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

- a) Within five (5) years from the date of the registration of the mark under this Act.
- b) At any time, if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of this Act, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used. (n)
- c) At any time, if the registered owner of the mark without legitimate reason fails to use the mark within the Philippines, or to cause it to be used in the Philippines by virtue of a license during an uninterrupted period of three (3) years or longer.

On the legal consequences with regard to infringement and enforcement of IPR:

Patents

Section 76. *Civil Action for Infringement.* – 76.1. The making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee constitutes patent infringement.

76.2. Any patentee, or anyone possessing any right, title or interest in and to the patented invention, whose rights have been infringed, may bring a civil action before a court of competent jurisdiction, to recover from the infringer such damages sustained thereby, plus attorney's fees and other expenses of litigation, and to secure an injunction for the protection of his rights.

Section 77. *Infringement Action by a Foreign National.* – Any foreign national or juridical entity who meets the requirements of Section 3 and not engaged in business in the Philippines, to which a patent has been granted or assigned under this Act, may bring an action for infringement of patent, whether or not it is licensed to do business in the Philippines under existing law. (Sec. 41-A, R.A. No. 165a).

Section 79. *Limitation of Action for Damages.* – No damages can be recovered for acts of infringement committed more than four (4) years before the institution of the action for infringement. (Sec. 43, R.A. No. 165).

Section 80. *Damages, Requirement of Notice.* – Damages cannot be recovered for acts of infringement committed before the infringer had known, or had reasonable grounds to know of the patent. It is presumed that the infringer had known of the patent if on the patented product, or on the container or package in which the article is supplied to the public, or on the advertising material relating to the patented product or process, are placed the words “Philippine Patent” with the number of the patent. (Sec. 44, R.A. No. 165a).

Section 84. *Criminal Action for Repetition of Infringement.* – If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than six (6) months but not more than three (3) years and/or a fine of not less than One hundred thousand pesos (P100,000) but not more than Three hundred thousand pesos (P300,000), at the discretion of the court. The criminal action herein provided shall prescribe in three (3) years from date of the commission of the crime.

Designs

The legal consequences as regards infringement of designs and enforcement of IPR is the same as the processes, grounds, penalties provided by the IP Code for patents.

Trademarks

Infringement:

Section 155. *Remedies; Infringement.* – Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive, shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: Provided, That the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material. (Sec. 22, R.A. No 166a).

Section 156. *Actions, and Damages and Injunction for Infringement.* – 156.1. The owner of a registered mark may recover damages from any person who infringes his rights, and the measure of the damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the

defendant actually made out of the infringement, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable percentage based upon the amount of gross sales of the defendant or the value of the services in connection with which the mark or trade name was used in the infringement of the rights of the complaining party. (Sec. 23, first par., R.A. No. 166a).

156.2. On application of the complainant, the court may impound during the pendency of the action, sales invoices and other documents evidencing sales. (n)

156.3. In cases where actual intent to mislead the public or to defraud the complainant is shown, in the discretion of the court, the damages may be doubled. (Sec. 23, first par., R.A. No. 166).

156.4. The complainant, upon proper showing, may also be granted injunction. (Sec. 23, second par., R.A. No. 166a).

Section 157. Power of Court to Order Infringing Material Destroyed. – 157.1 In any action arising under this Act, in which a violation of any right of the owner of the registered mark is established, the court may order that goods found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or destroyed; and all labels, signs, prints, packages, wrappers, receptacles and advertisements in the possession of the defendant, bearing the registered mark or trade name or any reproduction, counterfeit, copy or colorable imitation thereof, all plates, molds, matrices and other means of making the same, shall be delivered up and destroyed.

157.2. In regard to counterfeit goods, the simple removal of the trademark affixed shall not be sufficient other than in exceptional cases which shall be determined by the Regulations, to permit the release of the goods into the channels of commerce. (Sec. 24, R.A. No. 166a).

Section 158. Damages; Requirement of Notice. – In any suit for infringement, the owner of the registered mark shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is likely to cause confusion, or to cause mistake, or to deceive. Such knowledge is presumed if the registrant gives notice that his mark is registered by displaying with the mark the words "Registered Mark" or the letter R within a circle or if the defendant had otherwise actual notice of the registration. (Sec. 21, R.A. No. 166a).

Section 159. Limitations to Actions for Infringement. – Notwithstanding any other provision of this Act, the remedies given to the owner of a right infringed under this Act shall be limited as follows:

159.1. Notwithstanding the provisions of Section 155 hereof, a registered mark shall have no effect against any person who, in good faith, before the filing date or the priority date, was using the mark for the purposes of his business or enterprise: Provided, That his right may only be transferred or assigned together with his enterprise or business or with that part of his enterprise or business in which the mark is used.

159.2. Where an infringer who is engaged solely in the business of printing the mark or other infringing materials for others is an innocent infringer, the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing.

159.3. Where the infringement complained of is contained in or is part of paid advertisement in a newspaper, magazine, or other similar periodical or in an electronic communication, the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of

such electronic communications. The limitations of this subparagraph shall apply only to innocent infringers: Provided, That such injunctive relief shall not be available to the owner of the right infringed with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter where restraining the dissemination of such infringing matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication is customarily conducted in accordance with the sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter. (n)

Section 160. *Right of Foreign Corporation to Sue in Trademark or Service Mark Enforcement Action.* – Any foreign national or juridical person who meets the requirements of Section 3 of this Act and does not engage in business in the Philippines may bring a civil or administrative action hereunder for opposition, cancellation, infringement, unfair competition, or false designation of origin and false description, whether or not it is licensed to do business in the Philippines under existing laws. (Sec. 21-A, R.A. No. 166a).

Fraudulent Declaration:

Section 162. *Action for False or Fraudulent Declaration.* – Any person who shall procure registration in the Office of a mark by a false or fraudulent declaration or representation, whether oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof (Sec. 26, R.A. No. 166).

Section 166. *Goods Bearing Infringing Marks or Trade Names.* – No article of imported merchandise which shall copy or simulate the name of any domestic product, or manufacturer, or dealer, or which shall copy or simulate a mark registered in accordance with the provisions of this Act, or shall bear a mark or trade name calculated to induce the public to believe that the article is manufactured in the Philippines, or that it is manufactured in any foreign country or locality other than the country or locality where it is in fact manufactured, shall be admitted to entry at any customhouse of the Philippines. In order to aid the officers of the customs service in enforcing this prohibition, any person who is entitled to the benefits of this Act, may require that his name and residence, and the name of the locality in which his goods are manufactured, a copy of the certificate of registration of his mark or trade name, to be recorded in books which shall be kept for this purpose in the Bureau of Customs, under such regulations as the Collector of Customs with the approval of the Secretary of Finance shall prescribe, and may furnish to the said Bureau facsimiles of his name, the name of the locality in which his goods are manufactured, or his registered mark or trade name, and thereupon the Collector of Customs shall cause one (1) or more copies of the same to be transmitted to each collector or to other proper officer of the Bureau of Customs. (Sec. 35, R.A. No. 166).

Unfair Competition:

Section 168. *Unfair Competition, Rights, Regulation and Remedies.* – 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

- a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;
- b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or
- c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply *mutatis mutandis*. (Sec. 29, R.A. No. 166a).

False Designation of Origin:

Section 169. *False Designations of Origin; False Description or Representation.* – 169.1.

Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

- a) Is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or
- b) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of this Act by any person who believes that he or she is or is likely to be damaged by such act.

169.2. Any goods marked or labeled in contravention of the provisions of this Section shall not be imported into the Philippines or admitted entry at any customhouse of the Philippines. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized. (Sec. 30, R.A. No. 166a).

Common Penalties:

Section 170. *Penalties.* – Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, Revised Penal Code).

2) *International or national exhaustion*

Does the law in your country apply international exhaustion for patents, designs or trademarks? If yes, are there any additional conditions for international exhaustion compared to regional or national exhaustion, such as a lack of marking on products that they are designated only for sale in a specific region or country or the non-existence of any contractual restrictions on dealers not to export products out of a certain region? What is the effect of breach of contractual restrictions by a purchaser?

If your law does not apply international exhaustion, is there regional exhaustion or is exhaustion limited to the territory of your country?

In case your country applies regional or national exhaustion, who has the burden of proof regarding the origin of the products and other prerequisites for exhaustion and to what extent?

As regards patents (and designs for that matter under Section 119 of the IP Code), it may be appreciated in Section 71, that to the owner alone is reserved the right amongst others to "import" the patented product or the product obtained directly or indirectly from the patented process.

In essence therefore the Philippines adheres to the national exhaustion of patent rights.

Section 71. Rights Conferred by Patent. – 71.1. A patent shall confer on its owner the following exclusive rights:

- a) Where the subject matter of a patent is a product, to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling or importing that product;
- b) Where the subject matter of a patent is a process, to restrain, prevent or prohibit any unauthorized person or entity from using the process, and from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process.

Regional exhaustion:

The Philippines is not a party to any regional exhaustion regime.

Burden of proof regarding origin of products:

The defendant has the burden of proof under Section 78.

Section 78. Process Patents; Burden of Proof. – If the subject matter of a patent is a process for obtaining a product, any identical product shall be presumed to have been obtained through the use of the patented process if the product is new or there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable despite reasonable efforts, to determine the process actually used. In ordering the defendant to prove that the process to obtain the identical product is different from the patented process, the court shall adopt measures to protect, as far as practicable, his manufacturing and business secrets. (n)

New legislation being deliberated that will modify the IP Code to place medicines under the international exhaustion regime:

Presently, a new legislation is being deliberated to amend Section 72.1 of the IP Code to allow the parallel importation of medicines.

72.1. Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market; *(Provided that with regard to drug or medicines,*

the limitation on patent rights shall apply after a drug or medicine has been introduced anywhere in the world by the patent owner, or by any party authorized to use the invention.)
PROPOSED AMENDMENT.

3) *Implied license*

Does the theory of implied license have any place in the laws of your country? If so, what differences should be noted between the two concepts of exhaustion and implied license?

The IP Code establishes the grounds by which “compulsory licensing” may be required even without the agreement of the patent owner.

Section 93. Grounds for Compulsory Licensing. – The Director of Legal Affairs may grant a license to exploit a patented invention, even without the agreement of the patent owner, in favor of any person who has shown his capability to exploit the invention, under any of the following circumstances:

93.1. National emergency or other circumstances of extreme urgency;

93.2. Where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy as determined by the appropriate agency of the Government, so requires; or

93.3. Where a judicial or administrative body has determined that the manner of exploitation by the owner of the patent or his licensee is anti-competitive; or

93.4. In case of public non-commercial use of the patent by the patentee, without satisfactory reason;

93.5. If the patented invention is not being worked in the Philippines on a commercial scale, although capable of being worked, without satisfactory reason: Provided, That the importation of the patented article shall constitute working or using the patent. (Secs. 34, 34-A, 34-B, R.A. No. 165a).

Section 95. Requirement to Obtain a License on Reasonable Commercial Terms. – 95.1. The license will only be granted after the petitioner has made efforts to obtain authorization from the patent owner on reasonable commercial terms and conditions but such efforts have not been successful within a reasonable period of time.

95.2. The requirement under Subsection 95.1 shall not apply in the following cases:

- a) Where the petition for compulsory license seeks to remedy a practice determined after judicial or administrative process to be anti-competitive;
- b) In situations of national emergency or other circumstances of extreme urgency;
- c) In cases of public non-commercial use.

95.3. In situations of national emergency or other circumstances of extreme urgency, the right holder shall be notified as soon as reasonably practicable.

95.4. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly. (n)

Section 96. Compulsory Licensing of Patents Involving Semi-Conductor Technology. – In the case of compulsory licensing of patents involving semi-conductor technology, the license may only be granted in case of public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive. (n)

Section 97. Compulsory License Based on Interdependence of Patents. – If the invention protected by a patent, hereafter referred to as the “second patent,” within the country cannot

be worked without infringing another patent, hereafter referred to as the "first patent," granted on a prior application or benefiting from an earlier priority, a compulsory license may be granted to the owner of the second patent to the extent necessary for the working of his invention, subject to the following conditions:

97.1. The invention claimed in the second patent involves an important technical advance of considerable economic significance in relation to the first patent;

97.2. The owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent;

97.3. The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent; and

97.4. The terms and conditions of Sections 95, 96 and 98 to 100 of this Act. (Sec. 34-C, R.A. No. 165a).

Section 100. *Terms and Conditions of Compulsory License.* – The basic terms and conditions including the rate of royalties of a compulsory license shall be fixed by the Director of Legal Affairs subject to the following conditions:

100.1. The scope and duration of such license shall be limited to the purpose for which it was authorized;

100.2. The license shall be non-exclusive;

100.3. The license shall be non-assignable, except with that part of the enterprise or business with which the invention is being exploited;

100.4. Use of the subject matter of the license shall be devoted predominantly for the supply of the Philippine market: Provided, That this limitation shall not apply where the grant of the license is based on the ground that the patentee's manner of exploiting the patent is determined by judicial or administrative process, to be anti-competitive.

100.5. The license may be terminated upon proper showing that circumstances which led to its grant have ceased to exist and are unlikely to recur: Provided, That adequate protection shall be afforded to the legitimate interest of the licensee; and

100.6. The patentee shall be paid adequate remuneration taking into account the economic value of the grant or authorization, except that in cases where the license was granted to remedy a practice which was determined after judicial or administrative process, to be anti-competitive, the need to correct the anti-competitive practice may be taken into account in fixing the amount of remuneration. (Sec. 35-B, R.A. No. 165a).

Section 101. *Amendment, Cancellation, Surrender of Compulsory License.* – 101.1. Upon the request of the patentee or the licensee, the Director of Legal Affairs may amend the decision granting the compulsory license, upon proper showing of new facts or circumstances justifying such amendment.

101.2. Upon the request of the patentee, the said Director may cancel the compulsory license:

- a) If the ground for the grant of the compulsory license no longer exists and is unlikely to recur;
- b) If the licensee has neither begun to supply the domestic market nor made serious preparation therefor;
- c) If the licensee has not complied with the prescribed terms of the license;

It should be noted that the principle of national exhaustion of IPR rights followed in the Philippines is qualified or tempered by the exigencies as defined in the Compulsory Licensing provisions of the IP Code broadly falling under “public interest” and/or “national security”.

4) *Repair of products protected by patents or designs*

Under what conditions is a repair of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term “repair” in this context?

5) *Recycling of products protected by patents or designs*

Under what conditions is a recycling of patented or design-protected products permitted under your national law? What factors should be considered and weighed? Does your law provide for a specific definition of the term “recycling” in this context?

No specific provision in the IP Code explicitly treats of “repair of products” or “recycling of products” protected by patents or designs.

Except that as earlier stated, under Section 72, the patent owner cannot limit the use of the patent by third parties in the following situations:

Section 72. Limitations of Patent Rights. – The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 hereof in the following circumstances:

72.1. Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed **after** that product has been so put on the said market;

72.2. Where the act is done privately and on a non-commercial scale or for a non-commercial purpose: Provided, That it does not significantly prejudice the economic interests of the owner of the patent;

72.3. Where the act consists of making or using exclusively for the purpose of experiments that relate to the subject matter of the patented invention;

72.4. Where the act consists of the preparation for individual cases, in a pharmacy or by a medical professional, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;

72.5. Where the invention is used in any ship, vessel, aircraft, or land vehicle of any other country entering the territory of the Philippines temporarily or accidentally: Provided, That such invention is used exclusively for the needs of the ship, vessel, aircraft, or land vehicle and not used for the manufacturing of anything to be sold within the Philippines. (Secs. 38 and 39, R.A. No. 165a).

The foregoing provisions of the IP Code suggest that “repairs” or “recycling” of patented products or products derived from patented processes may be done after the “first sale” of the product in the situations contemplated in the above provisions.

Moreover, the Consumer Act of the Philippines, Republic Act 7394 provides for the regulation of “Repair and Service Firms”. Though not in any way providing any clear position in reference to the rights of an IPR owner, the provisions reflect adherence to the principle of exhaustion on the “first sale”. The reference to a “parent company” in Art 129 herein below provided refers to a repair service franchisor.

CHAPTER VII

REGULATION OF REPAIR AND SERVICE FIRMS

Art. 125. Declaration of Policy. – The State shall cause the accreditation of repair and service firms or establishments and their technical personnel in order to protect the interest of the consumers availing of their services.

Art. 126. Implementing Agency. – The Department of Trade and Industry, hereby referred to as the Department, shall enforce the provisions of this Chapter.

Art. 128. Accreditation of Repair and Service Firm. – No person shall operate a repair and service firm or act as technical personnel therein without first being accredited by the Department.

Art. 129. Certification of Accreditation. – Upon compliance with the requirements for accreditation, the Department shall issue the corresponding certificate of accreditation. A separate certificate shall be required for each branch of an enterprise located in areas outside of the main office. However, with respect to repair and service centers of factory authorized representatives of franchised dealers, such centers may display a certified true copy of the certificate of accreditation of the parent company.

6) *Products bearing trademarks*

Concerning the repair or recycling of products such as reuse of articles with a protected trademark (see the examples hereabove), has your national law or practice established specific principles? Are there any special issues or case law that govern the exhaustion of trademark rights in your country in case of repair or recycling?

As previously mentioned, a certificate of registration gives the registrant exclusive right to use the mark in connection with the goods or services.

Section 138. Certificates of Registration. – A certificate of registration of a mark shall be prima facie evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. (Sec. 20, R.A. No. 165).

Section 147. Rights Conferred. – 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

In a case however, (*Twin Ace Holdings Corp. vs. Rufina and Company*, GR No. 160191, June 5, 2006) the Supreme Court ruled that the use of empty marked bottles as containers of food seasonings such as "bagoong" and "patis" (local fish sauces) is legal because the law exempts their use by either large, medium, or small-scale producers of native products.

Twin Ace Holdings Corporation was ordered to return to Rufina and Company 26,241 empty bottles marked "Tanduay Distillery, Inc." In dismissing the petition of Twin Ace Holdings Corporation, the Supreme Court held that the exemption contained in Section 6, of Republic Act No. 623, "AN ACT TO REGULATE THE USE OF DULY STAMPED OR MARKED BOTTLES, BOXES, CASKS, KEGS, BARRELS AND OTHER SIMILAR CONTAINERS" (a precursor of the present IP Code) applies to all manufacturers of "sisi", "bagoong", and "patis" and similar native products without distinction or qualification as to whether they are small, medium or large scale.

The Supreme Court cited Section 6 of RA 623 which states: "The provisions of this Act shall not be interpreted as prohibiting the use of bottles as containers for 'sisi,' 'bagoong,'

'patis,' and similar native products." "It is a basic rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation," the Supreme Court said.

7) *IPR owners' intention and contractual restrictions*

As mentioned in the answer to Item Nos. 4 and 5, Section 72 of the IP Code suggest that "repairs" or "recycling" of patented products or products derived from patented processes may be done by a third person even without the consent of the patent owner after the "first sale" of the product in the situations contemplated in the said provision of law, i.e. Sections 72.1 to 72.5.

- a) *In determining whether recycling or repair of a patented product is permissible or not, does the express intention of the IPR owner play any role? For example, is it considered meaningful for the purpose of preventing the exhaustion of patent rights to have a marking stating that the product is to be used only once and disposed or returned after one-time use?*

Thus, whether repair or recycling is permissible or not would not be determined by the preference of the patent owner under the situations mentioned in Section 72.

- b) *What would be conditions for such kind of intentions to be considered?*

The said intentions could be considered under other local legislations, i.e. consumer protection or environmental laws for hazardous substances.

- c) *How decisive are other contractual restrictions in determining whether repair or recycling is permissible? For example, if a license agreement restricts the territory where a licensee can sell or ship products, a patentee may stop sale or shipment of those products by third parties outside the designated territory based on his patents. What would be the conditions for such restrictions to be valid?*

As regards trademarks, the IP Code allows for the customs recordation of registered trademarks to guard against the importation of goods marked or labeled in contravention with the law. Specifically, Section 169.2 provides:

169.2. Any goods marked or labelled in contravention of the provisions of this Section shall not be imported into the Philippines or admitted entry at any customhouse of the Philippines. The owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse under the customs revenue laws or may have the remedy given by this Act in cases involving goods refused entry or seized. (Sec. 30, R.A. No. 166a).

- d) *Are there any other objective criteria that play a role besides or instead of factors such as the patentee's intention or contractual restrictions?*

Same reply as item b).

- e) *How does the situation and legal assessment differ in the case of designs or trademarks?*

Designs are treated in the same way as patents as regards exhaustion. Concerning trademarks, the reply is given in item c) above.

8) *Antitrust considerations*

According to your national law, do antitrust considerations play any role in allowing third parties to recycle or repair products which are patented or protected by designs or which bear trademarks?

The Philippine Constitution of 1987 specifically mandates under Section 19 of Article XII of the Constitution that: "The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed."

Article 186 of the Revised Penal Code and Article 28 of the New Civil Code echo the sentiments of this constitutional policy. Article 186 of the Revised Penal Code penalizes monopolization and creation of combinations in restraint of trade whilst Article 28 of the New Civil Code makes any person who shall engage in unfair competition liable for damages.

As may be appreciated, the state under the said constitutional mandate may either "regulate" or "prohibit" monopolies. It has been said that Section 19, Article XII of the Philippine constitution is anti-trust in spirit and it levels the playing field, espousing competition.

At this time, no anti-trust legislation has been passed dealing squarely with the issues relative "repair" and/or "recycling" concerns in the exercise of IPRs.

9) *Other factors to be considered*

In the opinion of your Group, what factors, besides those mentioned in the Discussion section above, should be considered in order to reach a good policy balance between appropriate IP protection and public interest?

To strike a good policy balance between appropriate IP protection and public interest as regards "repair" and "recycling" there should be a clear analysis of the benefits for both the patent owner as well as third parties and the public in general in terms of costs and income, health and safety considerations, ecological considerations pertinent to a particular patented product, design or stamped/labeled product or container. A good policy balance would take into consideration the welfare of the consumer vis-a-vis the patent owner and the third party who utilizes the patented product for resale, etc.

10) *Interface with copyrights or unfair competition*

While the present Question is limited to patents, designs, and trademarks as noted in the Introduction above, does your Group have any comments with respect to the relationship between patent or design protection and copyrights or between trademarks and unfair competition relative to exhaustion and the repair and recycling of goods?

The IP Code gives the copyright owner exclusive rights.

Section 177. Copyright or Economic Rights. – Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)

177.5. Public display of the original or a copy of the work;

177.6. Public performance of the work; and

177.7. Other communication to the public of the work. (Sec. 5, P. D. No. 49a).

These rights are however limited and accordingly, a third party may use a copyrighted work.

Section 184. *Limitations on Copyright.* – 184.1. Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

- a) The recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society; (Sec. 10(1), P.D. No. 49)
- b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: Provided, That the source and the name of the author, if appearing on the work, are mentioned; (Sec. 11, third par., P.D. No. 49)
- c) The reproduction or communication to the public by mass media of articles on current political, social, economic, scientific or religious topic, lectures, addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved: Provided, That the source is clearly indicated; (Sec. 11, P.D. No. 49)
- d) The reproduction and communication to the public of literary, scientific or artistic works as part of reports of current events by means of photography, cinematography or broadcasting to the extent necessary for the purpose; (Sec. 12, P.D. No. 49)
- e) The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording or film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and of the name of the author, if appearing in the work, are mentioned;
- f) The recording made in schools, universities, or educational institutions of a work included in a broadcast for the use of such schools, universities or educational institutions: Provided, That such recording must be deleted within a reasonable period after they were first broadcast: Provided, further, That such recording may not be made from audiovisual works which are part of the general cinema repertoire of feature films except for brief excerpts of the work;
- g) The making of ephemeral recordings by a broadcasting organization by means of its own facilities and for use in its own broadcast;
- h) The use made of a work by or under the direction or control of the Government, by the National Library or by educational, scientific or professional institutions where such use is in the public interest and is compatible with fair use;
- i) The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit making, subject to such other limitations as may be provided in the Regulations; (n)
- j) Public display of the original or a copy of the work not made by means of a film, slide, television image or otherwise on screen or by means of any other device or process: Provided, That either the work has been published, or, that the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title; and
- k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner.

184.2. The provisions of this section shall be interpreted in such a way as to allow the work to be used in a manner which does not conflict with the normal exploitation of the work and does not unreasonably prejudice the right holder's legitimate interests.

Moreover, this jurisdiction recognizes "fair use" of copyrighted work.

Section 185. Fair Use of a Copyrighted Work. – 185.1. The fair use of a copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research, and similar purposes is not an infringement of copyright. Decompilation, which is understood here to be the reproduction of the code and translation of the forms of the computer program to achieve the inter-operability of an independently created computer program with other programs may also constitute fair use. In determining whether the use made of a work in any particular case is fair use, the factors to be considered shall include:

- a) The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- b) The nature of the copyrighted work;
- c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- d) The effect of the use upon the potential market for or value of the copyrighted work.

185.2. The fact that a work is unpublished shall not by itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

Other instances where a third party may use the copyrighted work beyond the control of the copyright holder are the following:

Section 186. Work of Architecture. – Copyright in a work of architecture shall include the right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original: Provided, That the copyright in any such work shall not include the right to control the reconstruction or rehabilitation in the same style as the original of a building to which that copyright relates. (n)

Section 187. Reproduction of Published Work. – 187.1. Notwithstanding the provision of Section 177, and subject to the provisions of Subsection 187.2, the private reproduction of a published work in a single copy, where the reproduction is made by a natural person exclusively for research and private study, shall be permitted, without the authorization of the owner of copyright in the work.

187.2. The permission granted under Subsection 187.1 shall not extend to the reproduction of:

- a) A work of architecture in the form of building or other construction;
- b) An entire book, or a substantial part thereof, or of a musical work in graphic form by reprographic means;
- c) A compilation of data and other materials;
- d) A computer program except as provided in Section 189; and
- e) Any work in cases where reproduction would unreasonably conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author. (n)

Section 188. Reprographic Reproduction by Libraries. – 188.1. Notwithstanding the provisions of Subsection 177.6, any library or archive whose activities are not for profit may,

without the authorization of the author of copyright owner, make a single copy of the work by reprographic reproduction:

- a) Where the work by reason of its fragile character or rarity cannot be lent to user in its original form;
- b) Where the works are isolated articles contained in composite works or brief portions of other published works and the reproduction is necessary to supply them, when this is considered expedient, to persons requesting their loan for purposes of research or study instead of lending the volumes or booklets which contain them; and
- c) Where the making of such a copy is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable and copies are not available with the publisher.

188.2. Notwithstanding the above provisions, it shall not be permissible to produce a volume of a work published in several volumes or to produce missing tomes or pages of magazines or similar works, unless the volume, tome or part is out of stock: Provided, That every library which, by law, is entitled to receive copies of a printed work, shall be entitled, when special reasons so require, to reproduce a copy of a published work which is considered necessary for the collection of the library but which is out of stock. (Sec. 13, P.D. 49a).

Section 189. *Reproduction of Computer Program.* – 189.1. Notwithstanding the provisions of Section 177, the reproduction in one (1) back-up copy or adaptation of a computer program shall be permitted, without the authorization of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program: Provided, That the copy or adaptation is necessary for:

- a) The use of the computer program in conjunction with a computer for the purpose, and to the extent, for which the computer program has been obtained; and
- b) Archival purposes, and, for the replacement of the lawfully owned copy of the computer program in the event that the lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

189.2. No copy or adaptation mentioned in this Section shall be used for any purpose other than the ones determined in this Section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

189.3. This provision shall be without prejudice to the application of Section 185 whenever appropriate. (n)

Section 190. *Importation for Personal Purposes.* – 190.1. Notwithstanding the provision of Subsection 177.6, but subject to the limitation under the Subsection 185.2, the importation of a copy of a work by an individual for his personal purposes shall be permitted without the authorization of the author of, or other owner of copyright in, the work under the following circumstances:

- a) When copies of the work are not available in the Philippines and:
 - i) Not more than one (1) copy at one time is imported for strictly individual use only; or
 - ii) The importation is by authority of and for the use of the Philippine Government; or
 - iii) The importation, consisting of not more than three (3) such copies or likenesses in any one invoice, is not for sale but for the use only of any religious, charitable, or educational society or institution duly incorporated or registered, or is for the

encouragement of the fine arts, or for any state school, college, university, or free public library in the Philippines.

- b) When such copies form parts of libraries and personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale: Provided, That such copies do not exceed three (3).

190.2. Copies imported as allowed by this Section may not lawfully be used in any way to violate the rights of owner the copyright or annul or limit the protection secured by this Act, and such unlawful use shall be deemed an infringement and shall be punishable as such without prejudice to the proprietor's right of action.

190.3. Subject to the approval of the Secretary of Finance, the Commissioner of Customs is hereby empowered to make rules and regulations for preventing the importation of articles the importation of which is prohibited under this Section and under treaties and conventions to which the Philippines may be a party and for seizing and condemning and disposing of the same in case they are discovered after they have been imported. (Sec. 30, P.D. No. 49).

11) *Additional issues*

In the opinion of your Group, what would be further existing problems associated with recycling and repair of IPR-protected products which have not been touched by these Working Guidelines?

II) Proposals for uniform rules

- 1) *What should be the conditions under which patent rights, design rights and trademark rights are exhausted in cases of repair and recycling of goods?*

In cases of recycling of goods it is proposed that where the recycled product is used by the third party(ies) for the same purpose as the original invention/process, it should be made compulsory for the third party(ies) to pay a royalty to the patent owner for the said recycled (same) use of his invention.

If the recycling of the patented product is not intended for the same use, then no royalty payment would be due to the patent holder.

In cases of repairs, the effect of the use by a third party or consumer of parts or services not specified for the product would ipso facto void any warranty on the product.

It would likewise remove any other contractual/private or public liability on the part of the patent holder for use of the parts and services not under the control of the said patent holder.

- 2) *Should the repair and the recycling of goods be allowed under the concept of an implied license?*

It is proposed that repair and the recycling of goods be allowed under the concept of "compulsory license" as defined and under the conditions specified in the Philippines' R.A. 8293 (IP Code), specifically in line with considerations of public interest, health, safety; or for considerations of the "development" of specific economic sectors or interest groups.

- 3) *Where and how should a line be drawn between permissible recycling, repair and reuse of IP-protected products against prohibited reconstruction or infringement of patents, designs and trademarks?*

As mentioned, it is proposed that royalty be paid in the situations where the recycling of the patented product would be for the same use of the product as originally put to the market by the patent holder.

For repairs, the use of non-specified parts or service would void the warranty on the product and would remove any contractual/private and public liability on the part of the patent holder.

Of course, any case of infringement of the patent, design or trademark should be dealt with in accordance with each of the country's national laws as defined in their respective penal statutes.

- 4) *What effect should the intent of IPR holders and contractual restrictions have on the exhaustion of IPRs with respect to recycling and repair of protected goods?*

The non-compliance with the contractual restrictions would have the effect of voiding any warranty on the protected product and would remove any contractual/private and public liability (i.e. on the safety of the product) on the part of the patent holder.

- 5) *Should antitrust issues be considered specifically in cases of repair or recycling of goods? If so, to what extent and under which conditions?*

Yes, anti-trust issues (i.e. monopolies and combinations in restraint of trade) should be taken into consideration. However, for "same use" recycling or repair of goods it is proposed that the patent holder be allowed royalty payments.

- 6) *The Groups are invited to suggest any further issues that should be subject of future harmonization concerning recycling, repair and reuse of IP-protected products.*

- 7) *Based on answers to items 1 to 6 above, the Groups are also invited to provide their opinions about how future harmonization should be achieved.*

Harmonization may be achieved either through national legislation taking into account the discussions and resolutions of the Groups or by through treaty.