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INTELLECTUAL PROPERTY RIGHTS IN OUTER SPACE - INDUCING INVESTMENTS AND
THEORETICAL CONFLICTS

Abstract

With the commercialization of outer space and evolution of space industry, it is necessary to develop and extend certain legal mechanisms to regulate and support space activities. To attract technological endeavors to develop space commerce and industry, a lucrative investment option and incentives must be designed to attract more and more players into space research and development, earth observation systems, satellite industry and space tourism. Issuing patents rights in outer space and extension of terrestrial, territorial patent law to extraterrestrial, non territorial outer space is a much debated issue. Harmonization of intellectual property law and outer space law is becoming necessary to administer property rights in outer space. Some developments in last decade implicate this necessity which is evident in the case of TRW vs. ICO Global Communications, the issue related to infringement of patent right in space activity. Earlier, Nortel was issued a patent for 'Pseudo-Geostationary Orbits', raising questions about patentability of orbits. The recent patent related queries about ISS are the most recent development that needs serious attention and must be addressed. All these developments in recent years emphasized on the need to revisit intellectual property rights issues in the outer space and evolution of a homogeneous law governing outer space and objects in space. In this paper, the researchers undertake an in depth analysis and study of some of the recent intellectual property issues including the ISS. The researchers analyse the need to develop an innovative intellectual property regime to govern outer space activities and the requirement to develop institutions to regulate intellectual property in space. Inducement of investment in space activities can be promoted through incentives in the form of space patent. But there are theoretical conflicts in extending patent law to outer space, considered a common property of mankind. Reconciliation of these conflicts is necessary for fostering space industry. In this paper, emphasis is laid by the researchers to analyze and address these conflicting aspects of the legal mechanisms. The conventional notion of intellectual property rights in space, jurisdictional issues in space and applicability of domestic patent legislations to objects in space are studied and analyzed by the researchers, to understand the theoretical conflict between 'freedom of use' and property rights. Acknowledging the importance attached to the commercialization of space by the international community, it is apposite to consider now whether the new epoch in space development is being built on an appropriate legal foundation.