

**APPLICATION OF INTELLECTUAL PROPERTY RIGHTS IN
ENHANCING FOREIGN DIRECT INVESTMENT IN KENYA**

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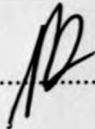
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**A management research project submitted in partial fulfilment of the
requirements of the degree of Master of Business Administration (MBA),
School of Business, University of Nairobi**

AUGUST, 2010

DECLARATION


This Management Research Project is my original work and has never been submitted for examination in any other university.

Signed.......... Date.....15/11/2010.....

PENNINAH MURINGO MUNYAKA

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This Management Research Project has been submitted for examination with my approval as the university supervisor.

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ACQUAINTANCE DEDICATION

This project is dedicated to my mother, Magdaline Wanjiru Munyaka for her invaluable unconditional love and support throughout the writing of this project.

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I am greatly thankful to my supervisor, Dr. John Yabs for tirelessly guiding me throughout the writing of this project. Indeed, his encouragement and wise counsel greatly inspired me throughout the period I was writing this project.

Thanks are due to my moderator, Dr. Mududa and the supervisory committee for their helpful comments on the draft.

I thank all the lecturers at the University of Nairobi who taught me during the entire MBA course for their deep commitment to their duties.

I would also like to thank my fiancé, Moses K. Atemba, on whose constant encouragement and love I have relied throughout this venture.

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ABSTRACT

Intellectual Property Rights (IPRs) refers to the rights that inhere in the creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. With time, the global system of intellectual property rights is undergoing profound change. Numerous developing countries recently have undertaken significant strengthening of their IPRs regimes. Regional trading arrangements, such as the North American Free Trade Agreement and a series of Partnership Agreements under negotiation between the European Union and various Eastern European and Middle Eastern nations, now pay significant attention to issues of regulatory convergence, with particular emphasis on intellectual property rights. Most important is the introduction of the multilateral agreement on trade-related intellectual property rights, or TRIPs, within the World Trade Organization (WTO). Under the terms of TRIPs, current and future WTO members must adopt and enforce strong and non-discriminatory minimum standards of protection for intellectual property. There is therefore among an evident commitment to achieving strong protection and enhancement of application of IPRs. It is against this back drop that this study was formulated to evaluate the application of IPRs in enhancing Foreign Direct Investment in Kenya (FDI).

A case study design was adopted in this study. This study focused on two departments namely the Registry of Companies a department under the State Law Office and the Kenya Industrial Property Institute a department under the Ministry of Trade. The study had three objectives namely investigating the level of protection of Intellectual Property Rights in Kenya, finding out the determinants of protection of Intellectual Property Rights in Kenya and establishing the relationship between protection of Intellectual Property Rights and Foreign Direct Investments in Kenya. In this study, emphasis was given both to secondary data and primary data. The secondary data comprised of the data collected by the Registries mentioned above. Data was also collected via structured questionnaires from the respondents in charge of those registries namely, the Registrars, Assistant Registrars, State Counsels and Assisting State Counsels.

The findings of the study established that with the passage of time and as the level of protection of Intellectual Property Rights continues to develop, there is a corresponding increase in the number of foreign companies registering trademarks and patents at Kenya Industrial Property

Institute and further there is a corresponding growth in the number of foreign companies registered at the Registry of Companies. The study further established that the rate of growth of the registration at the Companies Registry and the rate of growth of the registration of trademarks and patents at Kenya Industrial Property Institute was related.

The study therefore recommends that there is need to further develop the level of application of IPRs in Kenya for the purpose of enhancing the growth of FDI in Kenya.

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CHAPTER 1: INTRODUCTION

1.1 Background of the Study

The nature of business has continued to change over time and at present there is drastic change through advancement in technology and globalization. Business has therefore adopted an international approach resulting into International Business which is a recent development from International Trade (Yabs, 2007). International business is a term used to collectively describe all commercial transactions (private and governmental, sales, investments, logistics, and transportation) that take place between two or more nations.

International Business is beneficial to a Nation's economy. The benefits from International Business flow directly or indirectly into the economy of a Nation. International Business enhances the domestic competitiveness of organizations in the global market, it takes advantage of international trade technology, it increases sales and profits as market share grows globally, it extends sales potential of the existing products, it maintains cost competitiveness in the domestic market as compared across borders, it enhances potential for expansion of business, it reduces dependence on existing markets and stabilizes seasonal market fluctuations.

Due to the benefits discussed above, Nations have come up with various ways of promoting International Business. International Business may take various modes through Contract Manufacturing, Licensing, Franchising et cetra. This paper limits itself to the application of Intellectual Property Rights (IPRs) as a mode of promoting Foreign Direct Investment (FDI) in Kenya.

1.1.1 Concept of Intellectual Property Rights

Intellectual Property is a product of human creation and is therefore the product of the human intellect or mind WIPO (2004). The objects of the rights covered by the concept of intellectual property are manifestations of human creativity in the form of the work; the invention and the relationship between a symbol and a business.

The Intellectual Property branches in Kenya include Industrial Property, Copyright and Plant Breeders Rights. Industrial Property Includes: Patents, Utility Models, Industrial Designs, Trade Secrets, Trade and Service Marks, Geographical Indications and Layout Designs of Integrated Circuits. Copyright includes: Literary, Artistic works, Musical works. Plant Breeders Rights include: new varieties of plant species (except algae and bacteria)

The protection of Intellectual Property gives rise to IPRs that see to the protection of investments in time, money or other resources used to create new contribution to technology, commerce and entertainment. The Protection of IPRs encourages creators to disclose their creations to the public in order to promote the progress of science and useful arts which are the engines of development; investors demand this guarantee. Research and Development (R&D) is one of the highest costs incurred by organizations in the industrialised countries. It is therefore necessary that an organization gets back its return in as far as the investment in R&D is concerned. R&D results in novel creations that require protection. The industrialised countries therefore have put in place legal measures to protect these creations thus promoting R&D.

With globalization and promotion of international business, it has become increasingly necessary for organizations in the industrialised countries to penetrate markets in the less developed countries. The major challenge has been and continues to be the level of protection of the novel creations in the less developed countries. In most cases organizations seeking to penetrate into new markets in new areas are forced to make a decision on which markets to penetrate based on the difference between the return on investment and the likely loss of their IPRs in their products. The mode of entry into the new markets and the new countries has been influenced by the level of protection in the IPRs.

An organization seeking to invest in a foreign country may prefer to go by the way of franchising, licensing, foreign direct investment and contract manufacturing. The organization will be seeking to shield itself from risks in divulging secrets in production

of its products which may lead to infringement and passing off. Examples include Coca-Cola which is a franchise in Kenya.

While the Kenyan Government has continued to put measures in place to protect IPRs, there is a lot of improvement required to enable Kenya promote investment in R&D and also promote FDI from industrialised countries. The Laws in place at the moment include Industrial Property Act, Trademarks Act and the Copyright Act. Kenya is also a signatory to the Agreement on Trade Related Aspects of Intellectual Property, 1995 (TRIPs), the Berlin Convention and the Madrid Convention.

With time, the global system of IPRs is undergoing profound change. Numerous developing countries including Kenya have undertaken significant strengthening of their IPRs regimes. Regional trading arrangements and a series of Partnership Agreements now pay significant attention to issues of regulatory convergence, with particular emphasis on intellectual property rights. Most important is the introduction of TRIPs, within the World Trade Organization (WTO). Under the terms of TRIPs, discussed further below, current and future WTO members must adopt and enforce strong and non-discriminatory minimum standards of protection for intellectual property.

While considerable controversy persists over international means of protecting key information technologies, including databases and electronic information transfer, there is an evident commitment to achieving strong protection in these areas. That the international system is moving toward markedly stronger IPRs is not a surprise when viewed in the context of economic globalization. Globalization is the process in which national and regional markets are more tightly integrated through the reduction of government and natural barriers to trade, investment, and technology flows. In this global economy, the creation of knowledge and its adaptation to product designs and production techniques are increasingly essential for commercial competitiveness and economic growth. Accordingly, globalization tends to invest its largest rewards in creative and technically skilled workers and to place its largest pressures on lower-skilled workers leading to the need to protect IPRs.

Kenya Industrial Property Institute (KIPI)

Kenya Industrial Property Institute (KIPI) is a Government parastatal under the Ministry of Trade and Industry. The Institute was established on 2nd May 2002 upon the coming into force of the Industrial Property Act 2001. The Institute is established under the supervision of a board of directors. The board has the mandate to monitor the performance of the Institute as prescribed by the Industrial Property Act 2001. In enacting the Industrial Property Act, the Government recognized that inventors in the country were disadvantaged in getting patent protection because of the long and costly procedures that required an inventor to get protection in the United Kingdom (UK) Patent Office, before the same could be registered in the Registrar Generals Office in Kenya. Such a procedure rendered patenting a hopeless pursuit for an inventor mainly because the invention was likely to be copied and later patented by persons with easier access to the necessary patenting structures (KIPI, 2010).

The functions of the Institute include the administration of industrial property rights; provision of technological information to the public; promotion of inventiveness and innovativeness in Kenya; and provision of training on Industrial property. This study focuses on KIPI's function on the administration of IPRs to act as a source of data necessary for analysis on the extent of application of IPRs in Kenya.

1.1.2 Concept of Foreign Direct Investment

FDI literally means one Nation investing in another. FDI's enable growth of the international business and multinational businesses. One of the advantages of FDI is that it helps in the economic development of the particular Nation where the investment is being made Joseph and Anthony (2003). This however, is based on whether the Government Policies are accommodative of such investments and whether the government of the day is able to manage properly the benefits arising from Foreign Direct Investment.

Multinational enterprises may have to make solid decisions regarding means by which they can serve foreign markets. Firms may choose simply to export at arm's-length to a

particular country or region. Alternatively, they may decide to undertake FDI, which requires selecting where to invest, in what kind of facilities, whether to purchase existing operations or construct new plants. Firms may prefer a joint venture with some defined share of input costs, technology provision, and profits or losses. Finally, MNCs may opt to license a technology, product, or service, leading to complicated issues of bargaining over license fees and royalty payments.

FDI can also be referred to as the act of establishing or acquiring a foreign subsidiary over which the investing firm has substantial management control Joseph and Anthony (2003). By definition, firms that engage in FDI operate in more than one country and are also referred to as MNCs. The location of an MNC's headquarters is called the home or source country, in that the decision to invest is made there, while the location of the subsidiary is called the host or recipient country. Clearly, there are difficulties in interpreting such concepts.

It has become increasingly difficult to identify major MNCs with a particular host country, since they may establish facilities in several countries that each undertake "headquarters operations" (such as research and development, marketing, and organizational design) for local markets and tax jurisdictions. Multinational enterprises may undertake horizontal FDI, in which the subsidiary produces products and services that are similar to those produced at home, or vertical FDI, in which the subsidiary produces inputs or undertakes assembly from components. In the latter case, international production is fragmented across borders, taking advantage of locational considerations and input costs (especially wage differences) at various stages of production. Incentives for horizontal FDI and vertical FDI are different, as further explained below. Horizontal FDI tends to characterize investment decisions of MNCs operating across borders within the industrialized nations, while vertical FDI is more prevalent among MNCs that invest in developing (low-wage) economies. Horizontal subsidiaries tend to produce for local or regional markets only, without exporting much output to the host country. In contrast, the output of vertical subsidiaries is more likely to be exported within the MNC, both to the host country and to other countries with similar demand characteristics.

FDI embodies two distinctive assets: first, capital and second, technology or some intangible advantage. While the capital for financing FDI may come from the host country or from global financial markets, it may also be raised on the local capital markets of the recipient nation. Indeed, this is far the most common approach for financing horizontal investments among industrialized nations. Thus, FDI may or may not be associated with a net external addition to the local capital stock, although in economic terms this is of little consequence since it is investment itself that matters, whether raised from domestic or foreign sources. External financing more commonly characterizes FDI in emerging countries.

Therefore, FDI should be viewed less as a source of finance (global FDI flows are small in relation to flows of portfolio capital in any case) and more as a source of investment in capital and technology or related assets. These variables are capable of improving productivity and wages in a recipient economy. For a firm to become a MNC, it must have a sufficient cost advantage or technical product superiority over firms in the host country to overcome the disadvantages it faces in international management, including language and cultural barriers, jurisdiction-specific tax treatments, distance from head quarters, and monitoring local operations. Thus, MNCs must enjoy some efficiency advantages, meaning that they bring potential gains to host countries, and economic theories of FDI begin with a description of such advantages. This paper talks about the benefits arising from Foreign Direct Investment and further the application of IPRs that enhance the level of FDI in a Nation and more specifically in Kenya.

The Registry of Companies

The State Law Office also known as the Office of the Attorney General has created a department namely the Registry of Companies headed by the Registrar General. The Registry of Companies keeps a record of all the companies registered in Kenya. Of relevance to this project is the record of foreign companies. Foreign companies which, establish a place of business within Kenya are required by law to, within thirty days of the establishment of the place of business, deliver to the registrar for registration certain specified documents to ensure compliance with the law Companies Act (Ch. 486).

The Registry of Companies thus keeps a record of all foreign companies that establish a place of business in Kenya. Foreign companies that establish a place of business in Kenya directly invest in Kenya thus forming a basis or a measure of the rate of Foreign Direct Investment in Kenya. This study will therefore focus on the duty of the Registry of Companies to keep records of foreign companies that have registered a place of businesses in Kenya to extract data on the trend of number of foreign companies coming into Kenya.

1.2 Statement of the Problem

The subject of IPRs is a relatively new discipline. In fact, few people understand it or appreciate its importance in the promotion of investment in a country. Various factors enhancing FDI have been written and discussed but little emphasis have been put on the application of IPRs in enhancing IPRs. In the advent of globalization and advancement in technology, IPRs are now seen as the basis of development in a country. As a matter of fact, the World Intellectual Property Organization (WIPO) has released statistics confirming that there is indeed a relationship between the Growth Domestic Product of a country and the protection of IPRs especially in the area of patents.

Protection of IPRs therefore attracts FDI into a country and also leads to a rise in the Growth Domestic Product of a country. Lesser (2002), Leeand Mansfield (1996), and Smarzynska (2004) in their research findings found a positive effect of IPR on FDI. Based on a survey of patent attorneys and licensing executives, Lesser (2002) used a cross sectional design to examine the relationship between IPR and FDI for a sample of 44 developing countries and found that strong property right protection was positively associated with FDI inflows. Similarly, Smarzynska (2004) used 1995 data to study the impact of IPR on FDI inflows in Eastern European countries and reported that weak IPR deterred FDI and rather encouraged investors to focus on distribution of imported products. Though these research findings have been criticised by other researches, it is clear that protection of IPRs results in a rise in FDI in a given country.

However, the protection of IPRs is just but one factor and on its own it cannot promote FDI inflows, it requires other factors including the interplay of market power, free riding,

contracting uncertainties, and other features of the international markets for information Maskus (2000). This study is therefore designed to establish the relationship between application of IPRs and FDI in Kenya.

1.3 Objectives of the Study

The objectives of the study are:

- i. To investigate the level of protection of IPRs in Kenya;
- ii. To find out the determinants of protection of IPRs in Kenya; and
- iii. To establish the relationship between protection of IPRs and FDI in Kenya.

1.4 Significance of the Study

This study will be important to the policy makers who will find the study useful as a basis of formulating policies, which can be effectively implemented for promoting FDI in Kenya. FDI being a key determinant in the promotion of International Business in Kenya, it deserves a special place in policy making to enhance the economy of the country.

This study will also be important to the government as it may use the study to come up with clear criteria of promoting R&D in Kenya. R&D cannot be promoted without the need to promote IPRs, therefore, this study will be useful to promote R&D which forms the backbone of the developed countries today and is thus necessary to all developing countries today.

This study will also be important to the researchers and academic community who may use this study as a stepping stone for further studies on FDI in Kenya and to determine all other determinants of FDI in Kenya which together will enhance International Business in Kenya.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

This chapter presents seeks to broadly discuss the concepts of IPRs and FDI. This chapter seeks to show the levels of application of IPRs in Kenya and the structures put in place to promote the application of IPRs in Kenya. This Chapter also discusses the benefits that expected to accrue from FDI in Kenya. This study further discusses the materials available on the topic under study, pointing out the any omissions by other researchers regarding the application of IPRs and its effect on FDI in a country.

While FDI has been researched on extensively, little research has been undertaken in Kenya on the nature and direction of the relationship between IPRs protection and FDI. Some of the studies conducted in the United States and other countries have not specifically assessed the issues arising in Kenya. Some of the studies considered include the studies by Rapp and Rozek (1990) who studied the relationship between the strength of IPR systems and 'modernization variables' including Gross Domestic Product, access to electricity, and health factors. The relationship was found to be a statistically strong and positive one, but there is no indication of causality. As if to emphasize the causality issue, Ginarte and Park's (1997) work focused on identifying determinates of a country's level of patent protection. Using their own IPR score, the authors find that a strong correlation between the 'strength' of IPR and GDP per capita lagged five years. However their study concluded that R&D is a better explanation of the strength of IPR for the richer nations. McCorriston and Sheldon (1998) reviewed the theory of determinates of FDI in an effort to explain the 'wavelike' level of inward US FDI. An empirical study then included a number of industry-specific factors in a cross section analysis, but that approach could not explain the observed wave pattern to FDI.

In this study, the focus is on Kenya and further the study seeks to show that the level of IPRs protection is a strong determinant of inward FDI and that the IPRs have a greater impact on inward FDI than many economic policy variables among certain country

groups. Counterfeiting and piracy are not just issues of concern to the developed countries and the industrial giants of the western countries. Counterfeiting and piracy have a negative impact even in the developing third world countries. In Kenya, the increase of counterfeiting and Piracy would cause a negative effect on FDI.

2.2 Intellectual Property Rights

Intellectual Property has attracted various definitions. WIPO (2004) provides that “Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields.” Those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation. Intellectual property is traditionally divided into two branches, “industrial property” and “copyright.”

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, 1995) states that, for the purposes of the Agreement, the term “intellectual property” refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of TRIPS, namely, copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits and undisclosed information TRIPS (Article 1.2).

With the passage of time, more and more descriptions of intellectual property are coming into existence “But of growing importance to the economy is a type of intangible personal property called ‘intellectual property’ Douglas and John (1991). Intellectual property includes patents, trademarks, copyrights and trade secrets. The said are doctrines of law designed to protect original ideas ranging from computer programs, to production processes, to corporate logos, to the persona of a celebrity. It is now important to protect the rights inherent in intellectual property to protect original ideas from remaining available for any other organizations to use. If such original ideas are not protected then there would be no incentive to develop any ideas since the products produced could be easily copied by competitors.

According to Joseph and Anthony (2003) “Intellectual property includes both artistic as well as industrial property rights. Copyrights, patents and trademarks are the principle areas involved. Related to these rights “know-how” or technology-particularly in developing countries in which technology is transferred between firms in different countries that have joint venture agreements.” Copyright is an author’s or creator’s literary, artistic, or musical work and in some countries a creator’s computer program (that can be fixed in a medium that would make it possible to communicate creative works). The copyright laws prohibit the reproduction or alteration of an author’s work without his or her permission with the result that copyrighted materials are given at least minimal protection in most countries.

Patents are a statutory privilege granted by a nation to inventors for a fixed period of years to exclude all others from manufacturing, using, or selling a patented product without permission from the inventor. Trademarks, trade names, service marks, and certification marks are valuable tools used by businesses to identify their products and services. In most cases, the treatment of these valuable properties in international business does not greatly differ from domestic treatment.

2.3 Local Protection of Intellectual Property Rights

Every Government makes laws to protect Intellectual Property especially because MNC’s will be inclined to invest in countries where their patents and other IPRs are protected. Businesses will invest in places where they can gain and where there is protection of property. One of the most important properties is the IPR.

The Kenyan Government has invested in the application of IPRs to promote investment by way of FDI. Parliament has adopted and also passed various Laws to protect IPRs. The various Laws and institutions created by the said laws as discussed below seek to protect various aspects of IPRs.

2.3.1 The Trade Marks Act, Ch. 506

According to the legislative definition in The Trade Marks Act, Ch. 506, the word trade means any type of profession or other business occupation in which a mark may be used

in the manner prescribed by the (Trade Marks) Act. On the other hand, mark includes a distinguishing guise, slogan, device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof whether rendered in two dimensional or three-dimensional forms. A trade mark is then defined as a mark used or proposed to be used in relation to goods for the purpose of indicating a connection between the goods and the person having the right to the same conceptual issues and are generally more appropriate for use in the concept of marketing or advertising.

A brand is the symbolic embodiment of all the information connected with a company, a product or a service. A brand typically includes a name, logo, and other visual elements such as images, fonts, colour schemes, or symbols. Brand management can be termed as the marketing phase of Trade Marks as is it refers to the application of such marketing techniques to a specific product, product line or brand. It is the art of creating and maintaining a brand. The main aim of brand management is to increase the product's perceived value to the customer and thereby increase brand equity and franchise.

Marketers see a brand as an implied promise that the level of quality people have come to expect from a brand will continue with present and future purchases of the same product. This may increase sales by making a comparison with competing products more favourable. It may also enable the manufacturer to charge more for the product.

The value of the brand is determined by the amount of profit it generates for the manufacturer. This results from a combination of increased sales and increased price. A good brand name should: be easy to pronounce; be easy to remember; be easy to recognize; attract attention; suggest product benefits or suggest usage; suggest the company or product image; distinguish the product's positioning relative to the competition and most importantly it should be legally protectable. Some Trade Marks are temporary or lose their value and effect after the event such as those of sports events Murunga B.M. (2009).

A franchise is an arrangement where the owner or developer of a brand or a concept (the franchisor) agrees to let others (franchisees) own and operates businesses based on that

concept. Licensing, on the other hand, usually involves an arrangement between two parties where the licensor grants temporary use of a trademark, product or intellectual property for a specified period of time. More often than not, it involves manufacturing and marketing rights for technologies, inventions or processes. With such relations between parties in any part of the world, there is need to protect the origin of the trade mark and more importantly the owner of the trade mark to avoid the loss of the same through licensing or franchising.

When an organization introduces a new product or service into the market, it usually invests heavily on the advertising of the said product or service. Companies invest heavily in the promotion of their services and products and that outlay deserves protection. An example of this happens when there is a merger between companies as was evidenced when Apollo Insurance Company Limited merged with Pan African Insurance Company to form APA Insurance Company. A new company was formed; a new logo was created. Once this presence is attained, the trademark owner has something of value and if another poaches upon the commercial magnetism of the symbol that has been created, the owner can obtain legal redress.

This has led to some people rightly believing that a trade mark is a merchandising psychological short cut which induces a purchaser to select what he wants, or what he has been led to believe that he wants. The Trade Mark Act, Ch 506 gives protection to a person who owns a trade mark, further it makes legal remedies available to a person whose IP in the Trade Mark is being infringed.

The remedies available under the Trade Marks Act, Ch 506 include the issuance of Cease and Desist letter, this letter is written to the infringer to put a stop to the ongoing infringement. The owner of a trade mark can also institute opposition proceedings against the infringer at the Registry of Trade Marks if he feels aggrieved by the action of another to register a Trade Mark that closely resembles their own. The owner of a trade mark may also institute expungement proceedings at the Trade Marks Registry against the infringer. The difference with opposition proceedings is that whilst the opposition proceedings deal

with a new registration that is still in the application stage, the expungement deals with an already registered mark.

The owner of a trade mark may also institute action for passing off or for infringement. Passing off is the common law mechanism for protecting goodwill between a business and its customer. The main difference between passing off and infringement of registered trademarks is that in passing off, a cause of action arises occurs when there is deceptiveness as to the origin of the goods but in registered trademarks, infringement only occurs when certain requirements have been met. The requirements are that the Mark has to be (correctly) registered, and that the defendants use of the trademark falls under the definition of infringement. A plaintiff residing outside Kenya and carrying on no direct business in Kenya can still succeed in an action for passing off.

2.3.2 The Copyrights Act, 2001

Copyright is 'The right to copy a work, [specifically], a property right in an original work of authorship (including a literary, musical, dramatic or other work) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display the work.'(Blacks Law Dictionary). The protection of copyright is often justified on the basis that it stimulates creativity and further that the law recognizes an authors natural or human rights over the product of their labour. Copyright in a work arises automatically, once the work is created. There are no formal requirements that must be satisfied for copyright to exist. The existence of copyright is therefore not dependent on registration (Copyright Act, 2001).

The Copyright Act 2001 governs the legal regulation of Copyright in Kenya and its stated purpose of the Act is 'to make provision for Copyright in literary, musical, and artistic works, audio-visual works, sound recordings, broadcasts and for connected purposes.' Copyright Act provides that copyright shall be infringed by a person who, without the licence of the copyright owner does, or causes to be done, an act the doing of which is controlled by the copyright; or imports, or causes to be imported, otherwise than for his private and domestic use, an article which he knows to be an infringing copy.

2.3.3 The Industrial Property Act, 2001

Enforcement of Patents and other related Industrial rights are protected under the (Industrial Property Act, 2001). Infringement of Patents occur when a person other than the owner of the patent or of the registered utility model or industrial design without the owner's authorization, in relation to a product or a process falling within the scope of a validly granted patent or certificate of registration makes use or derives benefits from the use of the Patent.

A Patent is a certificate (a paper document like a title deed), issued by a government or its authority (patent office) to a natural or legal person conferring to the person a monopoly (exclusive rights to make, use and/or market an invention/innovation) within a territory (of the government or its authority) for a specified number of years (usually 20 years). Patents are granted throughout the world under various patent laws of various countries to encourage an inventor to disclose his invention to the public and thereby promote the progress of science and the useful arts.

This arrangement is a bargain or contract between a government and a creator where the creator discloses the creation and the government in return provides the monopoly for a controlled period of time. The public benefits after expiry of the patent term since the disclosure involves a description of the invention that must be clear and sufficient enough such that a man skilled in the "art" can carry it out.

A patent law, as a specialized field of endeavour and as a special form of the law that protects property without which the doctrine of "survival for the fittest" would reign, is the legal system designed to provide government sanctioned remedies and means to protect the inventor's rights in his or her new contribution to society and is peculiarly effective in any society where private property is recognized.

Patent system permits organizations to plan rationally and effectively in order to carry out business activities relative to new technology in an orderly way. It is incontestable that patentable inventions have revolutionized the society economically and socially. The organizations treat the expenses of the invention, innovation and patenting as a cost

of doing business, which is transferred directly to the product and service costs paid by the consumers who are thus immediate and direct beneficiaries of the invention or innovation.

The applicant or the owner of the invention has to disclose the invention in a clear and complete manner, and in particular to indicate at least one mode for carrying out the invention, in accordance with the requirements, and subject to the sanctions, applicable under the Law to give information concerning corresponding foreign applications.

The Patent System therefore encourages and promotes investment since investors are assured of getting reasonable returns from their investment. The Government of Kenya recognizes patent rights as one of the important tools of trade, cornerstones of modern economic policy of any nation and catalysts for development. As a commitment to regional / international co-operation, Kenya is actively involved in formulation and implementation of regional/international policy on Patents and is party to the main regional/international treaties/agreements on patents.

2.3.4 The Kenya Copyright Board

The Kenya Copyright Board is a statutory body concerned with all the administrative matters concerning copyright and the purpose of its establishment is to ensure that a centralized public body will co-ordinate the overall administration and enforcement of copyright and related rights in Kenya (Copyright Act, 2001. S.3). The members of the Kenya Copyright Board are drawn from both the public and private sectors. The diversification in the Boards composition seeks to ensure that there is adequate representation of the relevant stakeholder's interests in the copyright industry, including, but not limited to members representing the software industry; musicians associations; filming associations; performing artistes associations and producers of sound recordings. In addition, the Board contains a maximum number of 4 members who are appointed because of their knowledge and expertise in matters relating to copyright and related rights.

Section 7 of the Copyright Act vests the Kenya Copyright Board with various powers in order for it to carry out its mandate effectively. These powers include controlling, supervising and administering the assets of the Board; receiving any grants, gifts, donations or endowments and making legitimate disbursements; and entering into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Board is established.

2.3.5 The Music Copyright Society of Kenya

The Music Copyright Society of Kenya has the mandate of overseeing the collection and distribution of royalties from public music users to the composers, musicians and producers of music.

Part VII of the Copyright Act deals with collective management societies and brings them under the supervision and control of the Kenya Copyright Board.

Section 46(1) of the Copyright Act provides that no person or association of persons is allowed to commence or carry on the business of a copyright collecting society unless it obtains a certificate of registration from the Kenya Copyright Board. This certificate of registration is valid for a period of one year from the date of its issue, unless it is cancelled. The Music Copyright Society of Kenya was recently appointed by the Kenya Copyright Board by notice in the Kenya Gazette to collect royalties on behalf of producers of sound recordings.

2.4 Global Protection of Intellectual Property Rights

In a bid to enhance protection of IPRs, the Kenyan Government has ensured that Kenya has ratified International Treaties that seek to enhance the protection of IPRs. The ratification of these international treaties sends a message to the developed countries regarding the level of protection of IPRs in Kenya. Below is brief description of the various international treaties that Kenya has ratified.

2.4.1 The Agreement on Trade–Related Aspects of Intellectual Property Rights (TRIPs, 1995)

TRIPs provides for a worldwide uniform system for the protection of IPRs (WTO, 2001). TRIPs came into force with the concession of transitional periods of five and ten years for developing and least–developed countries, respectively. TRIPs covers a number of different IPR instruments, which include: copyright and related rights; trademarks; geographical indications; industrial designs; and patents Watal J. (2002).

2.4.2 The African Regional Industrial Property Organization (ARIPO)

In order to enhance and promote the creation and utilization of patent information in Africa, ARIPO was established in Harare, Zimbabwe on 9 December 1976. The organization is responsible for the modernization, harmonization and development of industrial property laws of its member states; fostering the establishment of close relationships between the member states in matters relating to industrial property rights; establishment of common services or organs for the coordination, harmonization and development of industrial activities affecting its members; the promotion and evolution of a common view and approach to industrial matters; and assisting its members in the acquisition and development of technology relating to industrial property (ARIPO, 1994). The organization administers two treaties, namely, the Lusaka Agreement on the Creation of African Regional Industrial Property Organization since 9 December 1976 and the Harare Protocol on the Grant and Registration of Patent and Industrial Design within the framework of ARIPO since 24 October 1994 (ARIPO, 1994).

2.4.3 The Patent cooperation Treaty (PCT, 1970)

The PCT is an international treaty, concluded in 1970 in Washington and administered by WIPO. It has 141 contracting states. The PCT system makes it possible to seek patent protection for an invention simultaneously in all 141 member states by filing a single application (international) through the Receiving Office (RO) or International Bureau of WIPO. The PCT system does not grant patents, the granting of patents remains under the

control of the national or regional patent offices, in which case the national laws or regional Treaty is applicable (WIPO, 2004).

2.4.4 The Berne Convention for the Protection of Literary and Artistic Works (1886)

The Convention ensures that works originating in one of the contracting States is given the same protection in each of the other contracting States as the latter grants to the works of its own nationals and that Such protection must not be conditional upon compliance with any formality and that such protection is independent of the existence of protection in the country of origin of the work. If, however, a contracting State provides for a longer term than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases. The Berne convention has since been revised resting with the amendment of 1979 at Paris (WIPO, 2004).

2.4.5 The Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974)

The Convention provides for the obligation of each contracting State to take adequate measures to prevent the unauthorized distribution on or from its territory of any programme carrying signal transmitted by satellite. The distribution is unauthorized if it has not been authorized by the organization which has decided what the programme consists of. The obligation exists in respect of organizations that are nationals of a contracting States.

2.4.6 The Paris Convention for the Protection of Industrial Property (1883)

The Convention applies to industrial property in the widest sense, including patents, marks, industrial designs, utility models, trade names, geographical indications and the repression of unfair competition.

The Convention provides that, as regards the protection of industrial property, each contracting State must grant the same protection to nationals of the other contracting States as it grants to its own nationals. Nationals of non-contracting States are also entitled to national treatment under the Convention if they are domiciled or have a real and effective industrial or commercial establishment in a contracting State.

2.4.7 The Madrid Agreement Concerning the International Registration of Marks (1891) and the Protocol Relating to that Agreement (1989)

The Madrid Agreement and Protocol are open to any State which is party to the Paris Convention for the Protection of Industrial Property. The two treaties are parallel and independent and States may adhere to either of them or to both. In addition, an intergovernmental organization which maintains its own Office for the registration of marks may become party to the Protocol. The system makes it possible to protect a trade mark in a large number of countries by obtaining an international registration which has effect in each of the Contracting Parties that has been designated.

This Protocols ensures that instead of filing many national applications in all countries of interest, in several different languages, in accordance with different national procedural rules and regulations and paying several different fees, an international registration may be obtained by simply filing one application with the International Bureau (through the Office of the home country), in one language (either English or French) and paying only one set of fees (WIPO, 2004).

2.5 Foreign Direct Investment (FDI)

“FDI occurs when a firm invests directly in facilities to produce and/ or market a product in a foreign country” Hill (2005). FDI may take the form of green-field investment which involves the establishment of a wholly new operation in a foreign country or it may take the form of an acquisition or a merger with an existing firm in a foreign country. One way of gauging the rate of FDI in Kenya is by taking into consideration the rate of

registration of foreign companies in Kenya. In Kenya, a foreign company is required by law to register with the Registry of Companies within 30 days of establishing a place of business in Kenya (Companies Act, Ch. 486).

FDI has been promoted and continues to be promoted by effective protection of IPRs. MNCs are becoming aware of the losses they stand to lose if their IPRs are not protected. The creation of an effective IPR regime has an effect not only on the incentive for new knowledge creation and its dissemination, but even more importantly the business location decision of firms, prices, and the market structure. Kalande (2002), for example, noted that most MNCs are willing to invest in non-manufacturing sectors or extractive industries rather than invest in technology intensive activities in countries with inadequate IPR protection. Similarly, Nicholson (2002) claimed that an enhanced IPR protection encourages firms to undertake overseas production due to the expanded protection of their ownership advantages.

2.5.1 Advantages of FDI

FDI helps in the economic development of the particular country where the investment is being made. FDI also permits the transfer of technologies. This is done basically in the way of provision of capital inputs. The importance of this factor lies in the fact that this transfer of technologies cannot be accomplished by way of trading of goods and services as well as investment of financial resources. It also assists in the promotion of the competition within the local input market of a country.

FDI helps in the creation of new jobs in a particular country. It also helps in increasing the salaries of the workers. This enables them to get access to a better lifestyle and more facilities in life. It has normally been observed that FDI allows for the development of the manufacturing sector of the recipient country. FDI can also bring in advanced technology and skill set in a country. There is also some scope for new research activities being undertaken.

Foreign direct investment assists in increasing the income that is generated through revenues realized through taxation. It also plays a crucial role in the context of rise in the

productivity of the host countries. FDI opens up the export window that allows these countries the opportunity to cash in on their superior technological resources. It has also been observed that as a result of receiving FDI from other countries, it has been possible for the recipient countries to keep their rates of interest at a lower level.

It becomes easier for the business entities to borrow finance at lesser rates of interest. The biggest beneficiaries of these facilities are the small and medium-sized business enterprises. Historically, most FDI has been directed at the developed nations of the world as firms based in advanced countries invested in the other's markets. However, currently the flow of FDI is moving to the less developed nations and more importantly there has been a huge flow of FDI to China. The main reason for the new flow of FDI is that most MNCs have discovered the need to tap huge markets and cheap labour in the highly populated and less developed countries. However, these MNCs have been caught unawares on the cost involved and the loss suffered as a result of loss of IPRs on their products. The highest numbers of counterfeits are being produced in China at less cost and are very affordable. This is therefore leading to a loss in the market share, one of the main reasons for the FDI. It is therefore becoming increasingly important that any nation that wishes to encourage inward FDI do consider the protection of the IPRs owned by the MNCs intending to invest.

It is also common for Governments to offer incentives to foreign firms to invest in their countries. Such incentives take many forms but the most common are tax concessions, low interest loans and grants or subsidies. Incentives are motivated by the desire to gain from the resource-transfer and employment effects of FDI. They are also motivated by the desire to capture FDI away from other potential host countries. These nations are in competition and there is need for Kenya to rise above the basic incentives it has been offering to MNC for ages.

Kenya is on the right track in rising above various nations as it enhances protection of IPRs in Kenya and thus sending a message to all those MNCs that wish to invest in Kenya to note that their IPRs will be protected and that their market share will therefore continue to expand.

CHAPTER 3: RESEARCH METHODOLOGY

3.1 Research Design

A research design is the plan used to conduct a research and generally to answer research questions. A case study research design was found appropriate to generate rich, detailed and valid data that contribute to in-depth understanding of the application of intellectual property rights in enhancing FDI in Kenya.

The case study sought to evaluate the enhancement of FDI in Kenya by the application of IPRs in Kenya. The qualitative research design sought to assess the patterns in the data collected and further to come up with conclusions from the patterns in the data. The data will be limited to the change in patterns expended in the years between 2002 and 2009.

3.2 Data Collection

In this study, emphasis was given both to secondary data and primary data. The secondary data comprised of the data collected from the Registry of Companies and the KIPR Registry mentioned above. Data was also collected via interviews and the structured questionnaire was used as an interview guide on the respondents in charge of those registries namely, the Registrars, Assistant Registrars, State Counsels and Assisting State Counsels. In total the respondents targeted were six, being three respondents from the two Registries to avoid over replication of data.

3.3 Data Analysis

Data collected was both qualitative and quantitative. Therefore content analysis was the best method of analysis on the data collected via interviews as the interviews did not limit the respondents on answers and it had the potential of generating more detailed information. Quantitative analysis was important to show the relationship between the growth of application of IPRs and the growth of FDI in Kenya.

All the data collected was summarized into a report and tabulated based on the objectives of the study. Thus the report was structured in terms of the level of protection of Intellectual Property Rights in Kenya, the determinants of protection of Intellectual

CHAPTER 4: DATA ANALYSIS AND RESEARCH FINDINGS

4.1 Introduction

This chapter presents the findings of the study. Secondary Data collected from the two departments namely the Companies Registry and the KIPi Registry was analysed in relation to the analysis of the Primary Data collected from the Registrars, State Counsels and their assistants from the same departments as presented below. The secondary data received from the field was edited for completeness to confirm that it was a true replica of the data stored by the Registry of Companies and KIPi. The questionnaires received from the field were also edited for completeness, clarity and consistency of responses and then subjected to the final analysis. Content analysis and descriptive statistics were used to analyze the data with the results of the analysis being summarized in a report, a table and a chart.

The organization of this Chapter is as described in the following sentences. The Chapter begins with the presentation of the level of protection of IPRs in Kenya. Secondly, the Chapter deals with the determinants of protection of IPRs in Kenya. Finally, the Chapter sets out a presentation of the relationship between protection of IPRs and FDI in Kenya.

4.2 The level of protection of IPRs in Kenya

The respondents were asked to rate the level of protection of IPRs in Kenya. From the responses given by all the respondents, the study found that the level of protection of IPRs is very good but that there is a lot of room for improvement as it is yet to be rated as excellent. It was felt by the respondents that there were great legal structures set up to protect IPRs in Kenya and that the government had pumped resources to promote the same. However, the bodies set up to implement the protection of the IPRs were seen to have failed for lack of resources and for lack of cooperation by the general public. The respondents were of the view that a large percentage of the public remained ignorant of the advantages of protection of IPRs and infact they found the protection of the same as unnecessary nuisance.

The respondents further felt that it was not only a duty of the public to deal with protection of IPRs in Kenya but it was also a duty bestowed personally on the general public. It was established that a large percentage of the general public was of the view that it had every right to infringe IPRs for companies based in foreign countries and thus considering itself not a market to the same foreign companies. This is evidenced by the large number of counterfeits impounded every other time. The respondents felt that there was need to increase the level of awareness of the operation of IPRs in Kenya and the benefits of the same especially in as far as FDI was concerned. The respondents also felt that there was need to have the awareness of IPRs disseminated in the education system and taught not only to the lawyers but to all people in Kenya to promote awareness and make it easy for the process of implementation.

4.3 The determinants of protection of IPRs in Kenya

The respondents were guided to state the determinants or factors promoting protection of IPRs in Kenya. The respondents sought to explain the areas of strengths that Kenya has or the areas that Kenya has invested in to promote the level of protection of IPRs in Kenya. The responses given varied only in terms of the wording and the explanation but largely the content and the issues discussed were similar. Below is a discussion of the determinants of protection of IPRs in Kenya as presented by the respondents.

One of the determinants of protection of IPRs is the existing legal and institutional framework for recognition, protection and enforcement of IPRs. It was largely felt that Kenya has enacted very good legislation for the protection of patents, trademarks, industrial designs, utility models, copyright and plant breeder's rights. Kenya's domestication of the WTO TRIPs Agreement, the WIPO Paris Convention for Protection of Industrial Property and the Copyright Treaties has provided a stable foundation for the protection of IPRs in Kenya.

The establishment of both administrative and institutional regulatory framework for recognition and enforcement of IPRs was considered a major determinant of protection of IPRs in Kenya. These bodies being the implementers of IPRs in Kenya were seen as key

determinants. KIPi, the Copyright Board of Kenya and the Kenya Plant Health Inspectorate Services are institutions charged with granting and protecting IPRs.

The existing infrastructural and institutional capability in Kenya was also seen to play a major role in enhancing the level of protecting of IPRs in Kenya. It was felt that Kenya has numerous public research institutes charged with the responsibility of conducting research in specific fields. The institutes had the institutional and administrative capability to conduct research.

Further, it was argued that Kenya has a National Science Policy that sees to the formulation of a Science, Technology and Innovation (STI) policy. It was stated that there were steps towards formulation of a national intellectual property policy that would promote the protection of IPRs in Kenya. These policies are meant to provide incentives for innovation and amongst the incentives is the protection of the innovation.

Another determinant was said to be the existing collaboration initiatives with foreign and-governmental research institutes. It was said that public universities and research institutes in Kenya have established linkages and networks with foreign and other external research agencies. This therefore means that Kenya is borrowing a lot of modes of application and protection of IPRs through the existing collaboration initiatives and thus developing its level of protecting IPRs.

Public expenditure in research and in funding organizations that seeks to protect IPRs in Kenya. A lot of public expenditure has been going into the protection of IPRs in Kenya and so far there has been wisdom to manage it properly towards the protection of IPRs in Kenya. There is therefore a lot of improvement in the management of departments such as the Copyright Board and KIPi which bodies are key in promoting the level of application and protection of IPRs in Kenya.

Finally, it was also felt that the co-ordination of institutional and administrative structures that promote and protect IPRs in Kenya is a major factor in determining the level of protection of IPRs in Kenya. So far KIPi and the Courts of Law in Kenya work together in assisting a party who's IPRs have been infringed to seek recourse from the guilty

party. It was however felt that further coordination was relevant between KIPI and the Registry of Companies to ensure that IPRs are fully protected.

4.4 The relationship between protection of IPRs and FDI in Kenya

The respondents were asked to state if there was growth in the extent of protection of IPRs in Kenya and to state if there was growth in the number of foreign countries registered in Kenya between the years 2002 and 2009 and all the respondents provided that there was growth in both situations. The respondents were then asked to comment if there was a possible relationship between the two scenarios and what the possible relationship was likely to be. The respondents related the two scenarios making the growth of the extent of protection of IPRs in Kenya a condition precedent to the growth in the number of the foreign companies registered in Kenya. The respondents were also asked to comment on the reason for such a relationship and the response was largely that application of protection of IPRs would obviously attract foreign companies to invest in Kenya as they would be assured of legal recourse in the event that their IPRs were infringed.

Further the secondary data collected seemed to support the arguments made by the respondents during the interviews. The Number of Registration of IPRs grew and was accompanied by the growth of the number of Foreign Companies registered in Kenya. The names of the foreign companies seeking to register the IPRs in Kenya were also the same companies seeking registration of places of business at the Registry of Companies.

The relationship discussed above could not be ignored as it sought to support the argument that the growth of application of IPR in a country is a major factor among other factors that seek to attract FDI in a country. The data was therefore reduced into a table showing the number of registrations of both the IPRs in Kenya and the foreign companies in Kenya over a period of 8 years from the year 2002 to the year 2009.

	Year	Number of Foreign Trade Marks registered by various Foreign Companies	Number of Foreign Companies registered in Kenya
1.	2002	1387	98
2.	2003	1820	123
3.	2004	1815	160
4.	2005	2141	187
5.	2006	2330	253
6.	2007	2099	25
7.	2008	2469	127
8.	2009	2215	299

Table: 1 Source of data: KIPI & Registry of Companies

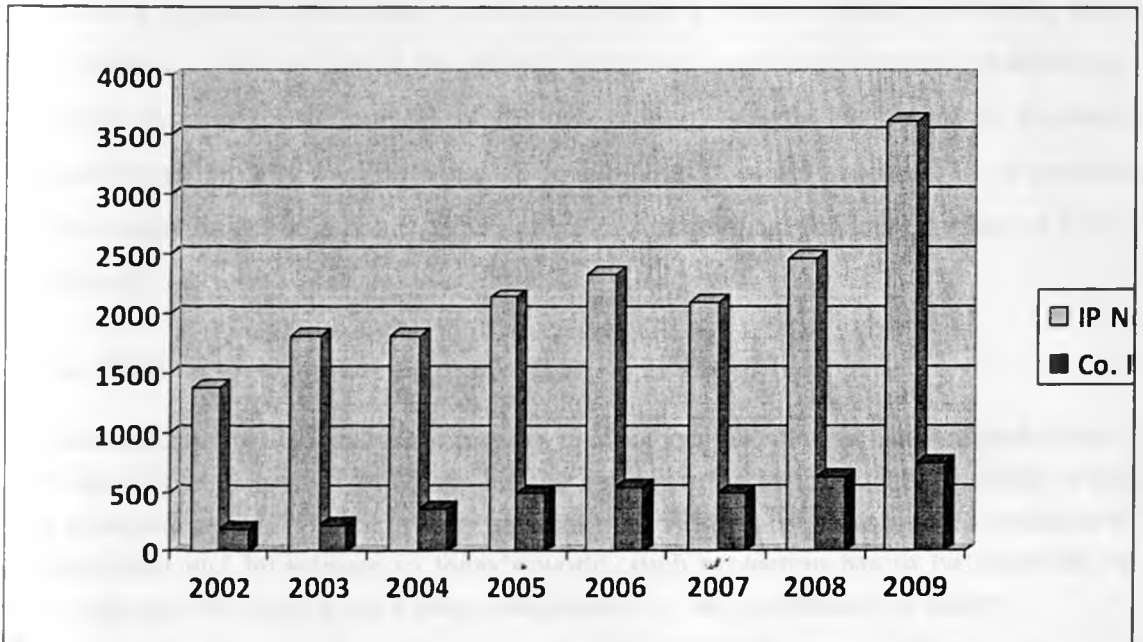


Figure 1: Source of data: Registry of Companies

CHAPTER5: CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

The conclusions under this Chapter are drawn from the analysis of data contained in Chapter 4 above. The conclusions below answer to the issues raised in the statement of the problem.

5.1.1 The level of protection of IPRs in Kenya

The study found that the level of protection is above average but it is yet to reach the point of excellence and thus there is a lot of room for improvement. While most countries are pushing hard for the strengthening of IPRs around the globe, there is now a strong movement for Kenya to join in the push for stronger protection of IPRs. There is urgent need to improve the existing legal structures that have been set to protect IPRs in Kenya. There is also need to create public awareness as regards the importance of the IPR systems among the local communities so that they can get benefits associated with the protection of the IPRs especially the benefits arising from FDI.

The ability to protect IPRs is key to success in today's world in which intellectual, rather than physical, assets are one of the primary sources of wealth and competitive advantage. Recognition and protection of intellectual property assets are therefore necessary preconditions for development today. A country that does not uphold IPRs is therefore disadvantaged in as far as the desire to promote International Business by way of FDI is concerned.

5.1.2 The determinants of protection of IPRs in Kenya

As discussed in the data analysis, there are in place positive determinants of protection of IPRs already implemented in Kenya but the same need to be improved especially in this fast changing times. It is clear that protection of IPRs is a necessary pre-condition of development and Investment in today's world, such protection has to be supported by other appropriate policies and a deep commitment by the government of Kenya.

There is therefore need to ensure that there is an effective infrastructure necessary to process and make use of IPRs. Without positive action by the government, the intellectual property system will not fulfil its potential as a tool for development, growth

and progress especially in as far as FDI is concerned in the promotion of International Business.

The review of the determinants of FDI leaves much room for IPRs to affect investment flows and the operations of foreign companies in Kenya. The various means by which IPRs influence FDI are subtle and complex. Moreover, it is worthy of note that strong IPRs alone are insufficient for generating strong incentives for firms to invest in a country.

To better reap the benefits of a strong IPRs protections system, the government should ensure that it provides clear and enforceable IPRs ownership, without discrimination as to nationality, these suggested measures include: improving the accessibility of the national and international intellectual property protection systems in terms of costs and ease of use; ensuring that intellectual property institutions are efficient and sufficiently funded; supporting intellectual property policies with sound economic management, good infrastructure and other appropriate policies in areas such as education, science and technology, culture, taxes, investment regulations, production and technical incentives, trade, and competition; establishing an active and coherent intellectual property policy coordinated throughout government bodies; educating local communities, businesses and the public on the potential benefits of the intellectual property system; providing assistance to innovators/producers/creators on how to use intellectual property protection to their commercial advantage and supporting efforts of stakeholder organisations in this area; bridging the gap between academic and research institutions, and businesses and financing sources; and making it a priority to strengthen a legal framework to ensure implementation and effective enforcement measures against intellectual property theft. There is also a need for clearly designated and sufficiently resourced enforcement institutions, supported by training, international cooperation and public education.

5.1.3 The relationship between protection of IPRs and FDI in Kenya

From this review it appears that the last decade has been a period of substantially rising FDI which is correlated to the improved IPR system in Kenya. The growth of registration of IPRs by foreign companies has also been accompanied by registration of places of

businesses in Kenya by foreign companies. This promotes international business which improves the economy of the country. This trend should be encouraged and maybe fast tracked to ensure that the country reaps the expected benefits from this contributor to promotion of international business.

IPRs are an important component of the general regulatory system, including taxes, investment regulations, production incentives, trade policies, and competition rules. As such, it is joint implementation of a pro-competitive business environment that matters overall for FDI. Therefore, what matters ultimately to the foreign companies is the likelihood that an investment will raise its expected profits while protecting its properties especially its IPRs. While there are numerous factors that influence profitability, the issue regarding IPRs is the extent to which the regime affects the foreign company's perception that it will be able to earn a higher return on its IPRs through FDI, relative to other means of earning such returns.

5.2 Recommendations

The study was confined to application of IPRs in enhancing FDI in Kenya. The researcher recommends that this study be extended to application of IPRs in enhancing International Business as a whole in the economy. Application of IPRs does not only influence or enhance FDI it also affects various other aspects of International Business and generally the growth domestic product of a country.

The researcher also recommends that organizations set up to regulate the application of IPRs in Kenya set a monitoring mechanism to compliment the regulatory and legal framework recommended above to ensure that both foreign and local companies protect their inventions and thus invest freely for the benefit of the economy in the country.

Finally, the researcher recommends that Intellectual Property scholars in Kenya do conduct a comprehensive study to grade the adequacy of the IPRs system in Kenya internationally.

5.3 Limitations of the study

Although extra care was exercised in the design and execution of this research project, it is important to highlight some of the possible limitations of the study. First some of the respondents were too busy and unwilling to be part of the research. However, persuasive skills and strict follow up resulted into availability of time for the interviews.

Further, the secondary data was issued to me in a summarized manner yet it would have been more helpful if all the raw data was availed to me. Therefore, the interpretation of the findings in this study should be done in light of the above highlighted limitations.

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APPENDICES

APPENDIX 1: LETTER OF INTRODUCTION



Penninah Munyaka
c/o University of Nairobi
P. O. Box 30197-00100
NAIROBI
September, 2010

Dear Sir/Madam,

**RE: APPLICATION OF INTELLECTUAL PROPERTY RIGHTS IN
ENHANCING FOREIGN DIRECT INVESTMENT IN KENYA**

I am a postgraduate student at the University of Nairobi, Faculty of Commerce. I am undertaking the above research project in partial fulfillment of the requirements of the award of the Master of Business Administration degree (MBA).

In order to achieve this, I humbly request your assistance in availing yourself for an interview and in giving me access to secondary data of all the registrations made by foreign companies to generate data for the study. Any information you provide will be treated with utmost confidentiality and shall not be used for any other purpose apart from its intended academic use. Kindly note that your responses and your identity will be kept confidential at all times. A copy of the research report will be availed to you upon request.

Your participation in this case study is highly appreciated.

Thank you in advance,
Yours sincerely,

.....
Dr. John Yabs
SUPERVISOR

.....
Penninah Munyaka
STUDENT

APPENDIX II: QUESTIONNAIRE

Instructions

The questionnaire has 10 questions. Kindly answer all the questions in each section. If a question is not applicable, kindly mark "N/A". If you simply do not have the knowledge, kindly mark "NK"

PART A: Institutional information.

- 1) Name (optional)
- 2) Name of the organization
- 3) Years you have served in the organization (Tick)
 - a) Below 10 years _____
 - b) 11-20 _____
 - c) 21-30 _____
 - d) 31-40 _____
 - e) Above 40years _____
- 4) Your position in the organization (Tick)
 - a) Registrar _____
 - b) Assistant Registrar _____
 - c) State Counsel _____
 - d) Assisting State Counsel _____
- 5) How would you rate the level of protection of Intellectual Property Rights in Kenya?
 - a) Excellent _____
 - b) Very good _____
 - c) Good _____
 - d) Poor _____
 - e) Very Poor _____

Reason for the answer above (Please specify)

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6) What in your view are the determinants of protection of Intellectual Property Rights in Kenya

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7) What in your view is the rate of registration of foreign companies in Kenya?

- a) Very High _____
- b) High _____
- c) Average _____
- d) Low _____
- e) Very Low _____

8) Has there been positive growth in the extent of protection of Intellectual Property Rights in Kenya within the past 5 years?

- a) Yes _____
- b) No _____
- c) Maybe _____
- d) I do not know _____

9) Has there been an increase in growth in the number of foreign companies in Kenya for the past 5 years?

- a) Yes _____
- b) No _____
- c) Maybe _____
- d) I do not know _____

10) If Yes (in 7 above), what in your view is the effect of the protection of Intellectual Property in Kenya in as far as registration of foreign companies is concerned?

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11) If Yes (in 8 above), what in your view is the cause of registration of foreign companies in as far as the protection of Intellectual Property Rights are concerned.

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