5- تعهد به تضمین انتظارات تجاری متنقل الیه

4-1- Goods Based Legislations

To start discussion see Article 35 of the Vienna Convention 1980 (CISG). See also English Sale of Goods Act 1979 (SOGA), sections 13, 14 and 15, American UCC Article 2, sections 314, 315, 316, and Iranian Civil Code, Articles 410 and seq., Articles 422 and seq. and Articles 438 and seq.

Article 35 of the CISG 1980

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they: (a) are fit for the purposes for which goods of the same description would ordinarily be used; (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment; (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model; (d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

SOGA 1979

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13 **Sale by Description:**

(1) Where there is a contract for the sale of goods by description, there is an implied that the goods will correspond with the description. As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition. (2) If the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. (3) A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer. (4) Paragraph 4 of Schedule 1 below applies in relation to a contract made before 18 May 1973. This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in section 11 of that Act).

14 Implied Terms about Quality or Fitness:

(1) Except as provided by this section and section 15 below and subject to any other enactment, there is no implied about the quality or fitness for any particular purpose of goods supplied under a contract of sale. (2) Where the seller sells goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality. (2A) For the purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances. (2B) For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods— (a) fitness for all the purposes for which goods of the kind in question are commonly supplied, (b) appearance

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and finish, (c) freedom from minor defects, (d) safety, and (e) durability. (2C) The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory— (a) which is specifically drawn to the buyer's attention before the contract is made, (b) where the buyer examines the goods before the contract is made, which that examination ought to reveal, or (c) in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample. (3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known (a) to the seller, or (b) where the purchase price or part of it is payable by installments and the goods were previously sold by a credit-broker to the seller, to that credit-broker, any particular purpose for which the goods are being bought, there is an implied that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit-broker. (4) An implied [F15term] about quality or fitness for a particular purpose may be annexed to a contract of sale by usage. (5) The preceding provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made. (6) As regards England and Wales and Northern Ireland, the terms implied by subsections (2) and (3) above are conditions. (7) Paragraph 5 of Schedule 1 below applies in relation to a contract made on or after 18 May 1973 and before the appointed day, and paragraph 6 in relation to one made before 18 May 1973. (8) In subsection (7)

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above and paragraph 5 of Schedule 1 below references to the appointed day are to the day appointed for the purposes of those provisions by an order of the Secretary of State made by statutory instrument. (9) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in sections 9, 10 and 18 of that Act).

15 Sale by Sample:

(1) A contract of sale is a contract for sale by sample where there is an express or implied term to that effect in the contract. (2) In the case of a contract for sale by sample there is an implied (a) that the bulk will correspond with the sample in quality; F21(b) (c) that the goods will be free from any defect, making their quality unsatisfactory], which would not be apparent on reasonable examination of the sample. (3) As regards England and Wales and Northern Ireland, the term implied by subsection (2) above is a condition.] (4) Paragraph 7 of Schedule 1 below applies in relation to a contract made before 18 May 1973. This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in sections 13 and 18 of that Act).

15A Modification of Remedies for Breach of Condition in Non-Consumer Cases:

(1) Where in the case of a contract of sale (a) the buyer would, apart from this subsection, have the right to reject goods by reason of a breach on the part of the seller of a term implied by section 13, 14 or 15 above, but (b) the breach is so slight that it would be unreasonable for him to reject them, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty. (2) This section applies unless a contrary intention appears in, or is

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to be implied from, the contract. (3) It is for the seller to show that a breach fell within subsection (1) (b) above. (4) This section does not apply to Scotland.

15B Remedies for Breach of Contract as Respects Scotland:

(1) Where in a contract of sale the seller is in breach of any term of the contract (express or implied), the buyer shall be entitled— (a) to claim damages, and (b) if the breach is material, to reject any goods delivered under the contract and treat it as repudiated. (1A) Subsection (1) does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in sections 19 to 22 of that Act) (3) This section applies to Scotland only.

UCC Article 2 Version 2000

Section 2–314- Implied Warranty: Merchantability; Usage of Trade

(a) Unless excluded or modified (Section 2–316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. (b) Goods to be merchantable must be at least such as (1) pass without objection in the trade under the contract description; and (2) in the case of fungible goods, are of fair average quality within the description; and (3) are fit for the ordinary purposes for which goods of that description are used; and (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and (5) are adequately contained, packaged, and labeled as the agreement may require; and (6) conform to the promises or affirmations of fact made on the container

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or label if any. (c) Unless excluded or modified (Section 2–316) other implied warranties may arise from course of dealing or usage of trade.

Section 2–315- Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Section 2–316- Disclaimer or Modification of Warranties

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2–202) negation or limitation is inoperative to the extent that such construction is unreasonable. (b) Notwithstanding subsection (c), unless the circumstances indicate otherwise, all implied warranties are disclaimed by expressions such as “as is” or “with all faults” or similar language or conduct which in common understanding make it clear to the buyer that the seller assumes no responsibility for the quality or fitness of the goods. In a consumer contract evidenced by a record, the requirements of this subsection must be satisfied by conspicuous language in the record. (c) Subject to subsection (b), to disclaim or modify an implied warranty of merchantability or fitness, or any part of either implied warranty, the following rules apply: (1) In a contract other than a consumer contract, the language is sufficient if must: (A) in the case of an implied warranty of merchantability, it mentions merchantability; and (B) in the case of an implied warranty of fitness, the language states, for

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example, “There are no warranties that extend beyond the description on the face hereof.” (2) In a consumer contract, the language must be in a record and be conspicuous and: (A) in the case of an implied warranty of merchantability, state “The seller makes no representations about and is not responsible undertakes no responsibility for the quality of the goods except as otherwise provided in this contract”; and (B) in the case of an implied warranty of fitness, state “The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in the contract.” (3) Language that is sufficient to disclaim or modify an implied warranty under satisfies paragraph (2) is also sufficient to disclaim or modify an implied warranty under satisfies paragraph (1). (d) An implied warranty may also be disclaimed or modified by course of performance, course of dealing, or usage of trade. (e) If before entering into the contract the buyer has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to the buyer. (f) Remedies for breach of warranty may be limited in accordance with this article with respect to liquidation or limitation of damages and contractual modification of remedy (Sections 2-718 and 2-719).

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4-2- IP Based Legislations

No general rule to warrant fitness for the purpose is suggested by the Model IP Contract Law. But see the following sections of the UCITA which provides as follows:

Section 403 Implied Warranty: Merchantability of Computer Program

(a) Terms of Implied Warranty

Unless the warranty is disclaimed or modified, a licensor that is a merchant with respect to computer programs of the kind warrants: (1) to its end user licensee that the computer program is fit for the ordinary purposes for which such computer programs are used; (2) to its distributor that: (A) the program is adequately packaged and labeled as the agreement requires; and (B) in the case of multiple copies, the copies are within the variations permitted by the agreement, of even kind, quality, and quantity within each unit and among all units involved; and (3) to the parties described in paragraphs (1) and (2), that the program conforms to any promises or affirmations of fact made on the container or label.

(b) Implied Warranties Arising from Course of Dealing or Usage of Trade

Unless disclaimed or modified, other implied warranties with respect to computer programs may arise from course of dealing or usage of trade.

c) Rule for Informational Content

No warranty is created under this section with respect to informational content, but an implied warranty may arise under Section 404.

Section 404 Implied Warranty: Informational Content

(a) Terms of implied warranty

Unless the warranty is disclaimed or modified, a merchant that, in a special relationship of reliance with a licensee, collects, compiles, processes, provides, or transmits informational content warrants to that licensee that there is no inaccuracy in the informational content caused by the merchant's failure to perform with reasonable care. **(b) When no warranty exists**

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There is no warranty under subsection (a) with respect to: (1) subjective characteristics of the informational content, such as the aesthetics, appeal, and suitability to taste; (2) published informational content; or (3) a person that acts as a conduit or provides no more than editorial services in collecting, compiling, distributing, processing, providing, or transmitting informational content that under the circumstances can be identified as that of a third person.

(c) Disclaimer permitted

The warranty under this section is not subject to the preclusion in Section 115(b) (1) on disclaiming obligations of diligence, reasonableness, or care.

Section 405 Implied Warranty: Licensee's Purpose; System Integration

(a) When implied warranty as to licensee's purpose arises

Unless the warranty is disclaimed or modified, if a licensor at the time of contracting has reason to know any particular purpose for which the computer information is required and that the licensee is relying on the licensor's skill or judgment to select, develop, or furnish suitable information, the following rules apply:

(1) [Fitness.] Except as otherwise provided in paragraph (2), there is an implied warranty that the information is fit for that purpose.

(2) [Effort.] If from all the circumstances it appears that the licensor was to be paid for the amount of its time or effort regardless of the fitness of the resulting information, the warranty under paragraph (1) is that the information will not fail to achieve the licensee's particular purpose as a result of the licensor's lack of reasonable effort.

(b) When no warranty exists

There is no warranty under subsection (a) with regard to: (1) the aesthetics, appeal, suitability to taste, or subjective quality of informational content; or

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(2) published informational content, but there may be a warranty with regard to the licensor's selection among published informational content from different providers if the selection is made by an individual acting as or on behalf of the licensor.

(c) Implied warranty of system integration

If an agreement requires a licensor to provide or select a system consisting of computer programs and goods, and the licensor has reason to know that the licensee is relying on the skill or judgment of the licensor to select the components of the system, there is an implied warranty that the components provided or selected will function together as a system.

(d) Disclaimer permitted

The warranty under this section is not subject to the preclusion in Section 115(b) (1) on disclaiming diligence, reasonableness, or care.

Section 406- Disclaimer or Modification of Warranty

(a) Express warranties and disclaimers

Words or conduct relevant to the creation of an express warranty and words or conduct tending to disclaim or modify an express warranty must be construed wherever reasonable as consistent with each other. Subject to Section 301 with regard to parol or extrinsic evidence, the disclaimer or modification is inoperative to the extent that such construction is unreasonable.

(b) Implied warranties: disclaimer or modification

Except as otherwise provided in subsections (c), (d), and (e), to disclaim or modify an implied warranty or any part of it, but not the warranty in Section 401, the following rules apply:

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(1) [Disclaimer of Section 403 and 404 warranties.] Except as otherwise provided in this subsection: (A) To disclaim or modify the implied warranty arising under Section 403, language must mention "merchantability" or "quality" or use words of similar import and, if in a record, must be conspicuous. (B) To disclaim or modify the implied warranty arising under Section 404, language in a record must mention "accuracy" or use words of similar import.

(2) [Disclaimer of Section 405 warranty.] Language to disclaim or modify the implied warranty arising under Section 405 must be in a record and be conspicuous. It is sufficient to state "There is no warranty that this information, our efforts, or the system will fulfill any of your particular purposes or needs", or words of similar import.

(3) [Disclaimer of all implied warranties.] Language in a record is sufficient to disclaim all implied warranties if it individually disclaims each implied warranty or, except for the warranty in Section 401, if it is conspicuous and states "Except for express warranties stated in this contract, if any, this 'information' 'computer program' is provided with all faults, and the entire risk as to satisfactory quality, performance, accuracy, and effort is with the user", or words of similar import.

(4) [Disclaimer or modification pursuant to other law.] A disclaimer or modification sufficient under [Article 2 or 2A of the Uniform Commercial Code] to disclaim or modify an implied warranty of merchantability is sufficient to disclaim or modify the warranties under Sections 403 and 404. A disclaimer or modification sufficient under [Article 2 or 2A of the Uniform Commercial Code] to disclaim or modify an implied warranty of fitness for a particular purpose is sufficient to disclaim or modify the warranties under Section 405.

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(c) Effect of "as is" or "with all faults"

Unless the circumstances indicate otherwise, all implied warranties, but not the warranty under Section 401, are disclaimed by expressions like "as is" or "with all faults" or other language that in common understanding calls the licensee's attention to the disclaimer of warranties and makes plain that there are no implied warranties.

(d) Effect of pre-contract examination

If a licensee before entering into a contract has examined the information or the sample or model as fully as it desired or has refused to examine the information, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed to the licensee.

(e) Effect of commercial context

An implied warranty may also be disclaimed or modified by course of performance, course of dealing, or usage of trade.

(f) Terms apply to all performances

If a contract requires ongoing performance or a series of performances by the licensor, language of disclaimer or modification which complies with this section is effective with respect to all performances under the contract.

(g) Limitation of remedies

Remedies for breach of warranty may be limited in accordance with this [Act] with respect to liquidation or limitation of damages and contractual modification of remedy.

Section 407 Modification of Computer Program

A licensee that modifies a computer program, other than by using a capability of the program intended for that purpose in the ordinary course, does not invalidate any warranty regarding performance of an unmodified copy but

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does invalidate any warranties, express or implied, regarding performance of the modified copy. A modification occurs if a licensee alters code in, deletes code from, or adds code to the computer program.

Section 408 Cumulation and Conflict of Warranties

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention, the following rules apply:

(1) [Effect of specifications.] Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) [Effect of a sample.] A sample displaces inconsistent general language of description. (3) [Relation of express and implied warranties.] Express warranties displace inconsistent implied warranties other than an implied warranty under Section 405(a).

Section 409 Third-Party Beneficiaries of Warranty

(a) [Third-party beneficiaries.] Except for published informational content, a warranty to a licensee extends to persons for whose benefit the licensor intends to supply the information or informational rights and which rightfully use the information in a transaction or application of a kind in which the licensor intends the information to be used.

(b) [Consumer's family or household.] A warranty to a consumer extends to each individual consumer in the licensee's immediate family or household if the individual's use would have been reasonably expected by the licensor.

(c) [Contractual term limiting beneficiaries.] A contractual term that excludes or limits the persons to which a warranty extends is effective except as to individuals described in subsection (b).

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(d) [Effect of warranty or remedy disclaimer or modification.] A disclaimer or modification of a warranty or remedy which is effective against the licensee is also effective against third persons to which a warranty extends under this section.

Section 410 No Implied Warranties for Free Software

(a) [Free software defined.] In this section, "free software" means a computer program with respect to which the licensor does not intend to make a profit from the distribution of the copy of the program and does not act generally for commercial gain derived from controlling use of the program or making, modifying, or redistributing copies of the program.

(b) [Implied warranties inapplicable.] The warranties under Sections 401 and 403 do not apply to free software.

4-3- Comparative Study

4-3-1- Common Law Jurisdictions as described by Noel Byrne:

A licensor should know also whether the technology on offer to a prospective licensee is useful or commercially advantageous for a particular purpose. Accordingly, if the technology has been developed by the licensor for the purpose or purposes for with the licensee requires it, the licensor should be in a position to warrant that the technology is fit or suitable for that purpose or those purposes when used by the licensee according to the licensor's instructions. In the USA, a warranty of title and of fitness for the intended use may be implied in an assignment or a license of copyright. A warranty of marketable title may also be implied.

4-3-2- Civil Law Jurisdictions as Described by Noel Byrne:

In Civil law jurisdiction, a warranty as to technical usefulness may be implied, unless disclaimed by the licensor. Representations by the licensor that, under

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normal operation conditions, the technology can be applied within the specified budget to achieve a specified output of acceptable quality by a certain time or within a defined period, without violating environmental protection laws, could be important to the prospective licensee, yet the licensor should be reluctant to give broad warranties in those respects unless he can control the licensee's application of the technology (e.g., by supplying and commissioning essential plant or equipment). If the subject-matter of the proposed license is a completely untried invention, then it would be highly imprudent of the licensor to warrant its fitness- on the contrary, he ought to disclaim that expressly- and the licensee must assume the risk that the invention may be a technical or commercial failure (In some civil law jurisdictions the licensor may be statutorily obliged to provide such warranties. The Contract Law of the People's Republic of China, 1999, e.g., requires the licensor to warrant any transferred technology is 'complete, free from error, effective and capable of achieving the prescribed goals'.). Even when an invention has been implemented successfully for a particular purpose, the licensor should hesitate before representing that it can be developed or applied for a broadly similar, but in certain respects different, purpose. A warranty that the technology supplied will conform to a description agreed by the parties will be much less onerous for the licensor than a fitness for purpose warranty, since if what is actually supplied- operating manuals, drawings, machinery, etc- tallies with what the description calls for, the warranty has been met.

French Law

French law implies warranties against material defects of the patent itself and a warranty of technical realization of the invention, subject to the possibility of disclaimer. Defects in the conception of the licensed invention (e.g. the

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invention when realized or embodied causes a fire) are covered by the implied warranty against technical defects. If the licensed invention is not industrially applicable, there is a legal deficiency rather than a technical deficiency. But there is no implied warranty of commercial value or productivity of the licensed invention, although if the invention can be performed only at a prohibitive cost or only in the laboratory this is apt to be seen as a technical deficiency. French Law (Art 1627 of the Civil Code) allows the warranties ordinarily implied in patent license contracts to be excluded by agreement between the contracting parties.

Italian law also implies a warranty that the licensed invention can be realized technically, i.e., worked successfully from a technical point of view, and that there is no hidden defect preventing its industrial application; but there is no implied warranty that the licensed invention can be exploited profitably. Frignanti in his pater 'Profiles of Licensing Contracts in Italy' (1981) Industrial property at 262, says that this warranty can be based on Art 1490 of the Italian Civil Code, which imposes upon the vendor to a contract of sale a warranty for the defects which render the thing sold unfit for the use for which it was intended or which appreciably diminish its value, or on Art 1578 of the Civil Code, according to which, if at the time of delivery the thing leased under a contract of lease has defects which impair to an appreciable extent its fitness for the use agreed upon, the lease can request the termination of the contract, or a reduction of payment, except in the case of defects known or easily detectable by him. In either case, the patent licensee can raise the breach of implied warranty of merchantability as a ground for terminating the license and for restitution of royalties or reduction of the same, in addition to his right to bring an action for damages.

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Under German Law, the licensor impliedly warrants (subject to possible disclaimer) the technical usefulness or operability of the invention, though not its fitness for specific applications (which must be expressly warranted) or its economic practicability. If, however, the subject-matter of a patent license proves not to be economically feasible, the licensee's obligation to work the license ceases. He does not have 'to produce more or less unsalable scrap' and 'unwittingly head towards ruin'. (**cited in: Noel Byrne, Licensing Technology, ibid, pp. 206-207**). **See also: Raymond Nimmer, Modern Licensing Law, vol. 1, 8.26, 8.27, 8.28, 8.29, Melvin Jager, Licensing Law Handbook, 10.9.**

4-3-3- Iranian Law and Jurisprudence

5 Assignment and Succession in License Contract

In US law, non-exclusive patent licenses are not assignable as a matter of right. Exclusive licenses are generally considered to be assignable. Federal decisions have held that a patent license is personal and is not assignable unless the agreement expressly permits an assignment. The same is not true for pure trade secrets licenses that are controlled by state law. The common law and statutes of many states provide that contracts are assignable and can be transferred by corporate merger to the successor company.

The best way to avoid legal entanglements is to specifically provide for the rights of succession and assignment in the license. Common approaches are to provide that the license is binding on the "heirs, successors and assignors". Alternatively, the license can add that it is assignable by the licensee only with the written permission of the licensor, or only to the successor to the entire related business of the licensee. …

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See Melvin Jager, pp. 566-670

6- Competent Jurisdiction to Trial IP Contractual Disputes

Is IP Contractual Disputes are covered by IP Legislation or Civil Law: Courts of Tehran or Not?

Is Computer Software Invention Contractual disputes are covered by Trade Secret Legislation or Industrial One 1386?

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4-1- Goods Based Legislations

To start discussion, see Article 35 of the Vienna Convention 1980 (CISG). See also English Sale of Goods Act 1979 (SOGA), sections 13, 14 and 15, American UCC Article 2, sections 314, 315, 316, and Iranian Civil Code, Articles 410 and seq., Articles 422 and seq. and Articles 438 and seq.

Article 35 of the CISG 1980

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they: (a) are fit for the purposes for which goods of the same description would ordinarily be used; (b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment; (c) possess the qualities of goods which the seller has held out to the buyer as a sample or model; (d) are contained or packaged in the

manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

SOGA 1979

13 **Sale by Description:**

(1) Where there is a contract for the sale of goods by description, there is an implied that the goods will correspond with the description. As regards England and Wales and Northern Ireland, the term implied by subsection (1) above is a condition. (2) If the sale is by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. (3) A sale of goods is not prevented from being a sale by description by reason only that, being exposed for sale or hire, they are selected by the buyer. (4) Paragraph 4 of Schedule 1 below applies in relation to a contract made before 18 May 1973. This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in section 11 of that Act).

14 Implied Terms about Quality or Fitness:

(1) Except as provided by this section and section 15 below and subject to any other enactment, there is no implied about the quality or fitness for any particular purpose of goods supplied under a contract of sale. (2) Where the seller sells goods in the course of a business, there is an implied term that the goods supplied under the contract are of satisfactory quality. (2A) For the

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purposes of this Act, goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances. (2B) For the purposes of this Act, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods— (a) fitness for all the purposes for which goods of the kind in question are commonly supplied, (b) appearance and finish, (c) freedom from minor defects, (d) safety, and (e) durability. (2C) The term implied by subsection (2) above does not extend to any matter making the quality of goods unsatisfactory— (a) which is specifically drawn to the buyer's attention before the contract is made, (b) where the buyer examines the goods before the contract is made, which that examination ought to reveal, or (c) in the case of a contract for sale by sample, which would have been apparent on a reasonable examination of the sample. (3) Where the seller sells goods in the course of a business and the buyer, expressly or by implication, makes known (a) to the seller, or (b) where the purchase price or part of it is payable by installments and the goods were previously sold by a credit-broker to the seller, to that credit-broker, any particular purpose for which the goods are being bought, there is an implied that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the seller or credit-broker. (4) An implied [F15term] about quality or fitness for a particular purpose may be annexed to a contract of sale by usage. (5) The preceding provisions of this section apply to a sale by a person who in the course of a business is acting as agent for another as they apply to a sale by a principal in the course of a

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business, except where that other is not selling in the course of a business and either the buyer knows that fact or reasonable steps are taken to bring it to the notice of the buyer before the contract is made. (6) As regards England and Wales and Northern Ireland, the terms implied by subsections (2) and (3) above are conditions. (7) Paragraph 5 of Schedule 1 below applies in relation to a contract made on or after 18 May 1973 and before the appointed day, and paragraph 6 in relation to one made before 18 May 1973. (8) In subsection (7) above and paragraph 5 of Schedule 1 below references to the appointed day are to the day appointed for the purposes of those provisions by an order of the Secretary of State made by statutory instrument. (9) This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in sections 9, 10 and 18 of that Act).

15 Sale by Sample:

(1) A contract of sale is a contract for sale by sample where there is an express or implied term to that effect in the contract. (2) In the case of a contract for sale by sample there is an implied (a) that the bulk will correspond with the sample in quality; F21(b) (c) that the goods will be free from any defect, making their quality unsatisfactory], which would not be apparent on reasonable examination of the sample. (3) As regards England and Wales and Northern Ireland, the term implied by subsection (2) above is a condition.] (4) Paragraph 7 of Schedule 1 below applies in relation to a contract made before 18 May 1973. This section does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in sections 13 and 18 of that Act).

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15A Modification of Remedies for Breach of Condition in Non-Consumer Cases:

(1) Where in the case of a contract of sale (a) the buyer would, apart from this subsection, have the right to reject goods by reason of a breach on the part of the seller of a term implied by section 13, 14 or 15 above, but (b) the breach is so slight that it would be unreasonable for him to reject them, the breach is not to be treated as a breach of condition but may be treated as a breach of warranty. (2) This section applies unless a contrary intention appears in, or is to be implied from, the contract. (3) It is for the seller to show that a breach fell within subsection (1) (b) above. (4) This section does not apply to Scotland.

15B Remedies for Breach of Contract as Respects Scotland:

(1) Where in a contract of sale the seller is in breach of any term of the contract (express or implied), the buyer shall be entitled— (a) to claim damages, and (b) if the breach is material, to reject any goods delivered under the contract and treat it as repudiated. (1A) Subsection (1) does not apply to a contract to which Chapter 2 of Part 1 of the Consumer Rights Act 2015 applies (but see the provision made about such contracts in sections 19 to 22 of that Act) (3) This section applies to Scotland only.

UCC Article 2 Version 2000

Section 2–314- Implied Warranty: Merchantability; Usage of Trade

(a) Unless excluded or modified (Section 2–316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. (b) Goods to be merchantable must be at least such as (1) pass without

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objection in the trade under the contract description; and (2) in the case of fungible goods, are of fair average quality within the description; and (3) are fit for the ordinary purposes for which goods of that description are used; and (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and (5) are adequately contained, packaged, and labeled as the agreement may require; and (6) conform to the promises or affirmations of fact made on the container or label if any. (c) Unless excluded or modified (Section 2–316) other implied warranties may arise from course of dealing or usage of trade.

Section 2–315- Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Section 2–316- Disclaimer or Modification of Warranties

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (Section 2–202) negation or limitation is inoperative to the extent that such construction is unreasonable. (b) Notwithstanding subsection (c), unless the circumstances indicate otherwise, all implied warranties are disclaimed by expressions such as “as is” or “with all faults” or similar language or conduct which in common understanding make it clear to the buyer that the seller assumes no responsibility for the quality or fitness of the goods. In a consumer contract

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evidenced by a record, the requirements of this subsection must be satisfied by conspicuous language in the record. (c) Subject to subsection (b), to disclaim or modify an implied warranty of merchantability or fitness, or any part of either implied warranty, the following rules apply: (1) In a contract other than a consumer contract, the language is sufficient if must: (A) in the case of an implied warranty of merchantability, it mentions merchantability; and (B) in the case of an implied warranty of fitness, the language states, for example, “There are no warranties that extend beyond the description on the face hereof.” (2) In a consumer contract, the language must be in a record and be conspicuous and: (A) in the case of an implied warranty of merchantability, state “The seller makes no representations about and is not responsible undertakes no responsibility for the quality of the goods except as otherwise provided in this contract”; and (B) in the case of an implied warranty of fitness, state “The seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in the contract.” (3) Language that is sufficient to disclaim or modify an implied warranty under satisfies paragraph (2) is also sufficient to disclaim or modify an implied warranty under satisfies paragraph (1). (d) An implied warranty may also be disclaimed or modified by course of performance, course of dealing, or usage of trade. (e) If before entering into the contract the buyer has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to the buyer. (f) Remedies for breach of warranty may be limited in accordance with this article with respect to liquidation or limitation of damages and contractual modification of remedy (Sections 2-718 and 2-719).

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4-2- IP Based Legislations

No general rule to warrant fitness for the purpose is suggested by the Model IP Contract Law. But see the following sections of the UCITA which provides as follows:

Section 403 Implied Warranty: Merchantability of Computer Program

(a) Terms of Implied Warranty

Unless the warranty is disclaimed or modified, a licensor that is a merchant with respect to computer programs of the kind warrants: (1) to its end user licensee that the computer program is fit for the ordinary purposes for which such computer programs are used; (2) to its distributor that: (A) the program is adequately packaged and labeled as the agreement requires; and (B) in the case of multiple copies, the copies are within the variations permitted by the agreement, of even kind, quality, and quantity within each unit and among all units involved; and (3) to the parties described in paragraphs (1) and (2), that the program conforms to any promises or affirmations of fact made on the container or label.

(b) Implied Warranties Arising from Course of Dealing or Usage of Trade

Unless disclaimed or modified, other implied warranties with respect to computer programs may arise from course of dealing or usage of trade.

c) Rule for Informational Content

No warranty is created under this section with respect to informational content, but an implied warranty may arise under Section 404.

Section 404 Implied Warranty: Informational Content

(a) Terms of implied warranty

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Unless the warranty is disclaimed or modified, a merchant that, in a special relationship of reliance with a licensee, collects, compiles, processes, provides, or transmits informational content warrants to that licensee that there is no inaccuracy in the informational content caused by the merchant's failure to perform with reasonable care. **(b) When no warranty exists**

There is no warranty under subsection (a) with respect to: (1) subjective characteristics of the informational content, such as the aesthetics, appeal, and suitability to taste; (2) published informational content; or (3) a person that acts as a conduit or provides no more than editorial services in collecting, compiling, distributing, processing, providing, or transmitting informational content that under the circumstances can be identified as that of a third person.

(c) Disclaimer permitted

The warranty under this section is not subject to the preclusion in Section 115(b) (1) on disclaiming obligations of diligence, reasonableness, or care.

Section 405 Implied Warranty: Licensee's Purpose; System Integration

(a) When implied warranty as to licensee's purpose arises

Unless the warranty is disclaimed or modified, if a licensor at the time of contracting has reason to know any particular purpose for which the computer information is required and that the licensee is relying on the licensor's skill or judgment to select, develop, or furnish suitable information, the following rules apply:

(1) [Fitness.] Except as otherwise provided in paragraph (2), there is an implied warranty that the information is fit for that purpose.

(2) [Effort.] If from all the circumstances it appears that the licensor was to be paid for the amount of its time or effort regardless of the fitness of the resulting information, the warranty under paragraph (1) is that the information will not

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fail to achieve the licensee's particular purpose as a result of the licensor's lack of reasonable effort.

(b) When no warranty exists

There is no warranty under subsection (a) with regard to: (1) the aesthetics, appeal, suitability to taste, or subjective quality of informational content; or (2) published informational content, but there may be a warranty with regard to the licensor's selection among published informational content from different providers if the selection is made by an individual acting as or on behalf of the licensor.

(c) Implied warranty of system integration

If an agreement requires a licensor to provide or select a system consisting of computer programs and goods, and the licensor has reason to know that the licensee is relying on the skill or judgment of the licensor to select the components of the system, there is an implied warranty that the components provided or selected will function together as a system.

(d) Disclaimer permitted

The warranty under this section is not subject to the preclusion in Section 115(b) (1) on disclaiming diligence, reasonableness, or care.

Section 406- Disclaimer or Modification of Warranty

(a) Express warranties and disclaimers

Words or conduct relevant to the creation of an express warranty and words or conduct tending to disclaim or modify an express warranty must be construed wherever reasonable as consistent with each other. Subject to Section 301 with regard to parol or extrinsic evidence, the disclaimer or modification is inoperative to the extent that such construction is unreasonable.

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(b) Implied warranties: disclaimer or modification

Except as otherwise provided in subsections (c), (d), and (e), to disclaim or modify an implied warranty or any part of it, but not the warranty in Section 401, the following rules apply:

(1) [Disclaimer of Section 403 and 404 warranties.] Except as otherwise provided in this subsection: (A) To disclaim or modify the implied warranty arising under Section 403, language must mention "merchantability" or "quality" or use words of similar import and, if in a record, must be conspicuous. (B) To disclaim or modify the implied warranty arising under Section 404, language in a record must mention "accuracy" or use words of similar import.

(2) [Disclaimer of Section 405 warranty.] Language to disclaim or modify the implied warranty arising under Section 405 must be in a record and be conspicuous. It is sufficient to state "There is no warranty that this information, our efforts, or the system will fulfill any of your particular purposes or needs", or words of similar import.

(3) [Disclaimer of all implied warranties.] Language in a record is sufficient to disclaim all implied warranties if it individually disclaims each implied warranty or, except for the warranty in Section 401, if it is conspicuous and states "Except for express warranties stated in this contract, if any, this 'information' 'computer program' is provided with all faults, and the entire risk as to satisfactory quality, performance, accuracy, and effort is with the user", or words of similar import.

(4) [Disclaimer or modification pursuant to other law.] A disclaimer or modification sufficient under [Article 2 or 2A of the Uniform Commercial Code] to disclaim or modify an implied warranty of merchantability is sufficient to disclaim or modify the warranties under Sections 403 and 404.

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A disclaimer or modification sufficient under [Article 2 or 2A of the Uniform Commercial Code] to disclaim or modify an implied warranty of fitness for a particular purpose is sufficient to disclaim or modify the warranties under Section 405.

(c) Effect of "as is" or "with all faults"

Unless the circumstances indicate otherwise, all implied warranties, but not the warranty under Section 401, are disclaimed by expressions like "as is" or "with all faults" or other language that in common understanding calls the licensee's attention to the disclaimer of warranties and makes plain that there are no implied warranties.

(d) Effect of pre-contract examination

If a licensee before entering into a contract has examined the information or the sample or model as fully as it desired or has refused to examine the information, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed to the licensee.

(e) Effect of commercial context

An implied warranty may also be disclaimed or modified by course of performance, course of dealing, or usage of trade.

(f) Terms apply to all performances

If a contract requires ongoing performance or a series of performances by the licensor, language of disclaimer or modification which complies with this section is effective with respect to all performances under the contract.

(g) Limitation of remedies

Remedies for breach of warranty may be limited in accordance with this [Act] with respect to liquidation or limitation of damages and contractual modification of remedy.

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Section 407 Modification of Computer Program

A licensee that modifies a computer program, other than by using a capability of the program intended for that purpose in the ordinary course, does not invalidate any warranty regarding performance of an unmodified copy but does invalidate any warranties, express or implied, regarding performance of the modified copy. A modification occurs if a licensee alters code in, deletes code from, or adds code to the computer program.

Section 408 Cumulation and Conflict of Warranties

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention, the following rules apply:

(1) [Effect of specifications.] Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) [Effect of a sample.] A sample displaces inconsistent general language of description. (3) [Relation of express and implied warranties.] Express warranties displace inconsistent implied warranties other than an implied warranty under Section 405(a).

Section 409 Third-Party Beneficiaries of Warranty

(a) [Third-party beneficiaries.] Except for published informational content, a warranty to a licensee extends to persons for whose benefit the licensor intends to supply the information or informational rights and which rightfully use the information in a transaction or application of a kind in which the licensor intends the information to be used.

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(b) [Consumer's family or household.] A warranty to a consumer extends to each individual consumer in the licensee's immediate family or household if the individual's use would have been reasonably expected by the licensor.

(c) [Contractual term limiting beneficiaries.] A contractual term that excludes or limits the persons to which a warranty extends is effective except as to individuals described in subsection (b).

(d) [Effect of warranty or remedy disclaimer or modification.] A disclaimer or modification of a warranty or remedy which is effective against the licensee is also effective against third persons to which a warranty extends under this section.

Section 410 No Implied Warranties for Free Software

(a) [Free software defined.] In this section, "free software" means a computer program with respect to which the licensor does not intend to make a profit from the distribution of the copy of the program and does not act generally for commercial gain derived from controlling use of the program or making, modifying, or redistributing copies of the program.

(b) [Implied warranties inapplicable.] The warranties under Sections 401 and 403 do not apply to free software.

4-3- Comparative Study

4-3-1- Common Law Jurisdictions as described by Noel Byrne:

A licensor should know also whether the technology on offer to a prospective licensee is useful or commercially advantageous for a particular purpose. Accordingly, if the technology has been developed by the licensor for the purpose or purposes for with the licensee requires it, the licensor should be in a position to warrant that the technology is fit or suitable for that purpose or those purposes when used by the licensee according to the licensor's

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instructions. In the USA, a warranty of title and of fitness for the intended use may be implied in an assignment or a license of copyright. A warranty of marketable title may also be implied.

4-3-2- Civil Law Jurisdictions as Described by Noel Byrne:

In Civil law jurisdiction, a warranty as to technical usefulness may be implied, unless disclaimed by the licensor. Representations by the licensor that, under normal operation conditions, the technology can be applied within the specified budget to achieve a specified output of acceptable quality by a certain time or within a defined period, without violating environmental protection laws, could be important to the prospective licensee, yet the licensor should be reluctant to give broad warranties in those respects unless he can control the licensee's application of the technology (e.g., by supplying and commissioning essential plant or equipment). If the subject-matter of the proposed license is a completely untried invention, then it would be highly imprudent of the licensor to warrant its fitness- on the contrary, he ought to disclaim that expressly- and the licensee must assume the risk that the invention may be a technical or commercial failure (In some civil law jurisdictions the licensor may be statutorily obliged to provide such warranties. The Contract Law of the People's Republic of China, 1999, e.g., requires the licensor to warrant any transferred technology is 'complete, free from error, effective and capable of achieving the prescribed goals'.). Even when an invention has been implemented successfully for a particular purpose, the licensor should hesitate before representing that it can be developed or applied for a broadly similar, but in certain respects different, purpose. A warranty that the technology supplied will conform to a description agreed by the parties will be much less onerous for the licensor

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than a fitness for purpose warranty, since if what is actually supplied- operating manuals, drawings, machinery, etc- tallies with what the description calls for, the warranty has been met.

French Law

French law implies warranties against material defects of the patent itself and a warranty of technical realization of the invention, subject to the possibility of disclaimer. Defects in the conception of the licensed invention (e.g. the invention when realized or embodied causes a fire) are covered by the implied warranty against technical defects. If the licensed invention is not industrially applicable, there is a legal deficiency rather than a technical deficiency. But there is no implied warranty of commercial value or productivity of the licensed invention, although if the invention can be performed only at a prohibitive cost or only in the laboratory this is apt to be seen as a technical deficiency. French Law (Art 1627 of the Civil Code) allows the warranties ordinarily implied in patent license contracts to be excluded by agreement between the contracting parties.

Italian law also implies a warranty that the licensed invention can be realized technically, i.e., worked successfully from a technical point of view, and that there is no hidden defect preventing its industrial application; but there is no implied warranty that the licensed invention can be exploited profitably. Frignanti in his pater 'Profiles of Licensing Contracts in Italy' (1981) Industrial property at 262, says that this warranty can be based on Art 1490 of the Italian Civil Code, which imposes upon the vendor to a contract of sale a warranty for the defects which render the thing sold unfit for the use for which it was intended or which appreciably diminish its value, or on Art 1578 of the Civil Code, according to which, if at the time of delivery the thing leased under a contract of lease has defects which impair to an appreciable extent its

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fitness for the use agreed upon, the lease can request the termination of the contract, or a reduction of payment, except in the case of defects known or easily detectable by him. In either case, the patent licensee can raise the breach of implied warranty of merchantability as a ground for terminating the license and for restitution of royalties or reduction of the same, in addition to his right to bring an action for damages.

Under German Law, the licensor impliedly warrants (subject to possible disclaimer) the technical usefulness or operability of the invention, though not its fitness for specific applications (which must be expressly warranted) or its economic practicability. If, however, the subject-matter of a patent license proves not to be economically feasible, the licensee's obligation to work the license ceases. He does not have 'to produce more or less unsalable scrap' and 'unwittingly head towards ruin'. (**cited in: Noel Byrne, Licensing Technology, ibid, pp. 206-207**). **See also: Raymond Nimmer, Modern Licensing Law, vol. 1, 8.26, 8.27, 8.28, 8.29, Melvin Jager, Licensing Law Handbook, 10.9.**

4-3-3- Iranian Law and Jurisprudence

5 Assignment and Succession in License Contract

In US law, non-exclusive patent licenses are not assignable as a matter of right. Exclusive licenses are generally considered to be assignable. Federal decisions have held that a patent license is personal and is not assignable unless the agreement expressly permits an assignment. The same is not true for pure trade secrets licenses that are controlled by state law. The common law and statutes of many states provide that contracts are assignable and can be transferred by corporate merger to the successor company.

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The best way to avoid legal entanglements is to specifically provide for the rights of succession and assignment in the license. Common approaches are to provide that the license is binding on the "heirs, successors and assignors". Alternatively, the license can add that it is assignable by the licensee only with the written permission of the licensor, or only to the successor to the entire related business of the licensee. …

See Melvin Jager, pp. 566-670

6- Competent Jurisdiction to Trial IP Contractual Disputes

Is IP Contractual Disputes are covered by IP Legislation or Civil Law: Courts of Tehran or Not?

Is Computer Software Invention Contractual disputes are covered by Trade Secret Legislation or Industrial One 1386?

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