

A Review Article on Intellectual Property Rights and Patent

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Abstract

Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields. These rights Safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and non-exhausted consumption.

Intellectual property rights (IPR) have become important in the face of changing trade environment which is characterized by global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development (R&D), production and marketing and need for highly skilled human resources. Regardless of what product an enterprise makes or what service it provides, it is likely that it is regularly using and creating a great deal of intellectual property. There is an emergent need for enterprises and professionals to systematically consider the steps required for protecting, managing and enforcing intellectual property rights, so as to get the best possible commercial results from its ownership.

The current study topic is undertaken for detail study of development of IP (Intellectual Property) Law in India as well as Introduction to IP Law in India. This study topic also includes the detail study of the Role of IP in Pharma industry growth

Key words: IPR, R&D

Introduction

What is an IPR?

Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields. These rights Safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and no exhausted consumption.

Types/tools of IPRs:

- Patents.
- Trademarks.
- Copyrights and related rights.
- Geographical Indications.
- Industrial Designs.
- Trade Secrets.
- Layout Design for Integrated Circuits.
- Protection of New Plant Variety

Table 1: Subject matter and main field of Application of Intellectual Property Right

Type of Intellectual Property Right	Subject Matter	Main Field
Trademark	Signs or symbols to identify goods and services	All industries
Copyright	Original work of authorship	Printing, entertainment, software
Geographical indication	Geographical origin of goods and services	Wine, spirit, chees, and other food product
Industrial design	Ornamental design	Clothing, automobile, electronics
Patent	Industrial applicable	Chemicals, drugs, plastics, electronics etc.

Trademarks:

A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colors used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods services, or to authorize another to use it in return for payment. It helps consumers

identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. Registration of trademark is prima facie proof of its ownership giving statutory right to the proprietor. Trademark rights may be held in perpetuity. The initial term of registration is for 10 years; thereafter it may be renewed from time to time. General Principles governing the Trademarks System in India and further details can be viewed at DIP&P website at http://ipindia.nic.in/tmr_new/default.htm
Examples of the trade mark

**Figure 1:****Copyrights and related rights:**

Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as 3paintings, drawings, photographs and sculpture; architecture; and advertisements,

maps and technical drawings. Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work & creator is the owner of the work. Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work,

and are then referred to as royalties. These economic rights have a time limit, (other than photographs) is for life of author plus sixty years after creator's death. General Principles governing the Copyrights and related rights System in India and further details can be viewed at website of Copyright Office website at <http://copyright.gov.in/>

Geographical Indications (GI):

GI are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. They may also highlight specific qualities of a product, which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions. A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is important that the product derives its qualities and reputation from that place. Place of origin may be a village or town, a region or a country. It is an exclusive right given to a particular community hence the benefits of its registration are shared by the all members of the community. Recently the GIs of goods like Chanderi Sarees, Kullu Shawls, Wet Grinders etc have been registered. Keeping in view the large diversity of traditional products spread all over the country, the registration under GI will be very important in future growth of the tribes / communities / skilled artisans associated in developing such products. General Principles governing the Geographical Indication System in India and further details can be viewed at website of Geographical Indication Registry, website at <http://ipindia.nic.in/girindia/>

Some of examples are listed below—

- ❖ Darjeeling Tea
- ❖ Paithani sarees
- ❖ Lonavala chikki
- ❖ Puneri pagadi
- ❖ Kolhapur slippers

❖ Baramati's pure GOLD

Industrial Designs:

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration. This replacement Act is also aimed to enact a more detailed classification of design to conform to the international system and to take care of the proliferation of design related activities in various fields. General Principles governing the Industrial Design System in India and further details can be viewed at DIP&P website [link at http://ipindia.nic.in/ipr/design/designs.htm](http://ipindia.nic.in/ipr/design/designs.htm)

Patent

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent. The protection is granted for a limited period, i.e 20 years. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may - or may not - use the patented invention for the period in

which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others. All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but valuable information and inspiration for future generations of researchers and inventors. General Principles governing the Patent System in India and further details can be viewed at DIP&P website at <http://ipindia.nic.in/ipr/patent/patents.htm>

Indian Patent Law is enforced as

- ❖ Indian Patent Act 1970
- ❖ Indian Patent Law Amendment 1970
- ❖ Indian Patent Law Amendment 1999
- ❖ Indian Patent Law Amendment 2002

Indian Patent Law Amendment 2005

NON –PATENTABLE INVENTIONS-

- ❖ Frivolous and contrary to natural law
- ❖ Contrary to law, morality or injurious to public health
- ❖ Mere discovery of scientific principle or formulation of abstract theory
- ❖ Discovery of living or non living substance occurring in nature
- ❖ Mere admixtures resulting in the aggregation of properties
- ❖ Mere arrangement and rearrangement of known device

- ❖ A mathematical or business method or a computer program or algorithms
- ❖ Scheme or rules or method of performing mental act or method of playing game
- ❖ Presentation of information
- ❖ Traditional knowledge or aggregation or duplication of known properties of traditionally known component
- ❖ Method of agriculture and horticulture

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