

Intellectual Property Rights: Current Trends and Developments

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ABSTRACT

Intellectual Property Right is exclusive right is granted by Government of India for protection originality of work of inventor. Simple intellectual property right is intangible creation of human mind. The present study describes the basic concept in IPR, Objectives in IPR, Type of IPR (Patents, Trademarks, Copyrights And Related Rights, Geographical Indications, Industrial Designs, Trade Secrets, Layout Design For Integrated Circuits, Protection of New Plant Variety), Duration of Intellectual Property Rights, Concept Related Patents (Types of Patent, Tangible And Intangible Property, Novelty, Non-Obviousness, Utility, Anticipation, Prior Art, Global Perspective Of Patent System, Role Of International Organization, Indian Patent Act 1970, Patentability, Patent Infringement, Commercialization, Patent Licensing), Applications of IPR.

Keywords: *Intellectual property, Trademark, IPR, Trade Secrets.*

Introduction

Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to

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economic and social development.

Society values the creative fruits of the human mind, believing that they enrich the fabric of life for all of its members. Thus, a system of laws has been developed that confers rights on the creators of these fruits. These rights are collectively known as intellectual property rights, which is commonly abbreviated to 'IPRs' (Edenborough, 1997). A category of intangible rights protecting commercially valuable products of the human intellect (Garner, 2009). Intellectual property is all about the results of human creativity. Its subject matter is formed by new ideas generated by man. Their application to human needs and desires can be of considerable benefit to mankind. New ideas can be embodied in familiar things such as books, music and art, in technical machinery and processes, in designs for household objects and for commercial ventures, and in all other sources of information (Colston, 1999). TRIPS define intellectual property rights as, the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time (WTO, 2017) The subject matter of intellectual property is very wide and includes literary and artistic works, films, computer programs, inventions, designs and marks used by traders for their goods or services (Bainbridge, 2015) Intellectual property are explained by many theories over a time. The first is a natural theory of property which defends the claims that natural facts determine what is property and who owns what. The second approach is in fact a broad class of theories that understand property as a social construction validated in terms of its instrumental capacity to produce or secure other ethical goals. The third approach is a labour theory that grounds property claims in productive activity (Das, 2008).

Types of IPR

According to WIPO, Intellectual property is divided into two categories that is, Industrial Property and Copyright. Industrial property includes patents for inventions, trademarks, industrial designs and geographical indications. Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their performances, producers of phonogram their recordings, and broadcasters in their radio and television programs (WIPO, 2017).

A. Patents

Patents are granted in respect of inventions, i.e. technological improvements, great and small, which contain at least some scintilla of inventiveness over what is previously known (Cornish, et.al.,2010). As

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per WIPO, A Patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. According to Halsbury's Laws of England, the word patent is used denoting a monopoly right in respect of an invention. Patent is a monopoly right conferred by Patent Office on an inventor to exploit his invention subject to the provisions of Patents Act for a limited period of time (Ahuja, 2015).

B. Trademarks

According to WIPO, a trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. A product can be copied by a competitor and can become outdated by the introduction of new products, but a trade mark is unique. A successful trade mark is timeless and the most important source of market power and enables its owner to diversify in products and geographical markets (Bansal, 2014). Internationally trademark is observed under Madrid protocol. Duration of International registration of trademark is valid for ten years and it can be renewed for ten years from the expiry of preceding period. Protection of trademarks in India is governed by The Trademarks Acts, 1999, which is amended in the year 2010 i.e., Trademarks (Amendment) Act, 2010.

C. Industrial Design

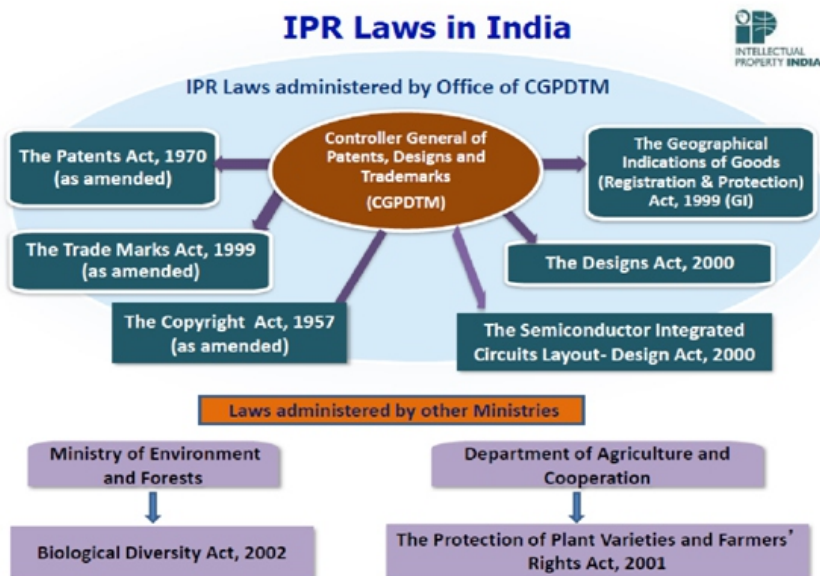
In India industrial designs are governed under Designs Act, 2000. "Design" means only the features of shape, configuration, pattern, ornament or composition of lines or colour applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device (The Designs Act of 2000).

C. "Geographical indication", in relation to goods , means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality (The Geographical Indications of Goods (Registration and Protection) Act).

D. Copyright

Copyright was recognized only after invention of printing in the 15th century, which enabled the reproduction of books in large numbers. Before that, creative writers, musicians, artists wrote, composed or made their works for fame and recognition rather than to earn a living and question of copyright never arose because copying was a laborious and expensive process (Narayana, 2013).

IPR Evolution and Developments



Patent- Post Independence Developments

Feeling that the Indian Patents & Designs Act, 1911 was **not fulfilling its objective**, the Government of India constituted a **Patents Enquiry Committee (PEC) in 1949 under the Chairmanship of Justice (Dr.) Bakshi Tek Chand, a retired Judge of Lahore High Court**, to review the patent law in India. Based on the **recommendations** of the Committee's report dated 4th August, 1949, a bill was introduced in the Parliament in 1953. The bill lapsed on dissolution of the Lok Sabha.

However, **the 1911 Act was amended** in relation to **working of inventions and compulsory licence/revocation in 1950** and, subsequently, for compulsory licence in relation to patents in food, medicines, insecticides, germicides and fungicides, **in 1952**. Compulsory licence was also made available on **notification by the Central**

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Government.

- Term of patent reduced from 16 years to 14 years
- Term of patent for the processes for drugs/foods maximum 7 years
- Provision for non-working as ground for compulsory licences, licences of right, and revocation of patents
- Government empowered to use inventions for its own use
- Prevention of abuse of patent rights by making restrictive conditions in licence agreements/contract as void
- Provision for appeal to High Court on decisions of Controller
- Provision for opening of branches of the Patent Office.
- Endorsement of 'LICENSE OF RIGHT' to the patents related to drugs, foods and products of chemical reaction

The Paris Convention is an international convention devised to facilitate protection of industrial property simultaneously in the member countries without any loss in the priority date. National Treatment under the Paris convention:

- Provide equal treatment to applicants from member countries, and not to differentiate between the nationals of member countries, for the purpose of grant and protection of industrial property
- Similarly, the applicants from member countries shall have the same protection after grant and identical legal remedies against any infringement.
- No requirement as to domicile or establishment in the country where protection is claimed, may be imposed.

Conclusion

Intellectual Property Rights empowers creator or researcher through giving their rights through laws of Intellectual Property Law. Copyright is the law which is basically related to libraries among intellectual property rights laws, which protects author rights. Library is the store house of knowledge viz., books, journals, manuscripts etc. which are protected by copyright and providing access through various means, to provide such knowledge is the primary service of libraries. Fair use is the exception to the copyright law. It is analyzed that exception to the libraries under the law is not clear and there is a need for proper interpretation of the law, in relation to libraries. It is observed, The Copyright law of India related to libraries is very vague and there is a need for clear provisions regarding libraries.

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