

STUDY ON INTELLECTUAL PROPERTY RIGHTS AND CHALLENGES

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Abstract

The present article provides an overview of the various laws dealing with the intellectual property rights in India. In India, the many facets of intellectual property rights such as Trade Mark, Copy Right, Patents, designs etc. are dealt with in particular legislations enacted by the Parliament. While providing brief insights into different types of Intellectual property rights, the article also focuses on its need in the modern age and current challenges.

INTRODUCTION

Intellectual Property refers to intellectual creativity of a creator. In contrast to physical property, intellectual property is an intangible asset of a person. Intellectual Property Rights (IPR) are the exclusive rights given to the creators to their creations. Common types of Intellectual Property Rights are patents, copyrights, trademarks, industrial designs, geographical indications, trade secrets, layout designs for integrated circuits and even ideas. Intellectual property rights provide an incentive to the creator to develop his creation and to share it with other people for the development of the society. The basic aim of the IPRs is to help in meeting the challenges in the development like reducing poverty, stimulating economic growth, improving the health status by providing medicines to the poor, improving access to education and contributing the overall sustainable development. Though IPRs provide incentive to the author or the creator and lead to a competition in the field of invention but it is also an intellectual protectionism or a form of a temporary monopoly enforced by the state. The various areas covered under of intellectual property rights and the laws dealing with them are:

1. Trade Marks - Trade Marks Act, 1999
2. Patents - The Patents Act, 1970 (as amended in 2005)
3. Copyrights and Related Rights- The Copyright Act, 1957
4. Industrial Designs- The Designs Act, 2000
5. Geographical Indications- The Geographical Indications of Goods (Registration and Protection) Act, 1999
6. Layout Designs of Integrated Circuits- The Semiconductor Integrated Circuits Layout Design Act, 2000
7. Plant Varieties- The Protection of Plant Varieties and Farmers' Right Act, 2001
8. Information Technology and Cyber-crimes and Data Protection- The Information Technology Act, 2000

HYPOTHESIS

1. With the rapid globalization, Liberalization and privatization the “Intellectual Capital” has become one of the key wealth drivers in the present international trade. Therefore, it can be said that Intellectual property rights have become significantly conspicuous on the legal horizon of India both in terms of new statutes and judicial pronouncements.
2. IPR are considered to achieve economic, social and technological advancement that protects the ideas and stimulates innovation, design and helps to the creation of technology. Therefore, it can be said that the various types of IPR are designed to provide the formal basis of ownership of developed knowledge with benefit sharing between partners in innovation to create a niche of themselves. It also leads to wealth creation.

OBJECTIVES

1. To study the concept of IPR and different areas covered under it.
2. To study and analyse the different IPR and laws dealing with it
3. To conclude with suitable recommendations.

RESEARCH METHODOLOGY

The researcher has adopted doctrinal method for the purpose of collection of data. It includes online books, articles, various law journals, newspapers and internet. The material was collected and arranged in systematic order.

MEANING OF IPR:

Intellectual property, or IP as it is commonly referred to, consists of all the pieces of your business that you or your employees have thought of. It's the things that differentiate you from the competition that you came up with using your intellect – your brain.¹ It is a broad categorical description for the set of intangibles owned and legally protected by a person or a company or association etc.

NEED OF IPR:

The intellectual property rights were essentially recognized and accepted all over the world. The reasons are very much obvious:

1. To provide incentives to the individuals for new creations.
2. To provide due recognition to the creators and inventors.
3. To ensure material reward for intellectual property.
4. To ensure the availability of the genuine and original products.

BRIEF ANALYSIS OF THESE LAWS:

TRADE MARK

Trade marks have been defined as any sign, or any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings. Such distinguishing marks constitute protectable subject matter. The Trade Marks Act provides, inter alia, for registration of service marks, filing of multiclass applications, increasing the term of registration of a trademark to ten years as well as recognition of the concept of well-known marks, etc. The Indian judiciary has been proactive in the protection of trademarks, and it has extended the protection under the trademarks law to Domain Names as demonstrated in landmark cases of *Tata Sons Ltd. v Manu Kosuri & Ors*². India, being a common law country, follows not only the codified law, but also common law principles, and as such provides for infringement as well as passing off actions against violation of trademarks. Section 135 of the Trade Marks Act recognises both infringement as well as passing off actions.

PATENTS

Patent is an intellectual property right relating to inventions and it is the grant of exclusive rights, for a limited period, provided by the Government to the patentee, in exchange of full disclosure of his invention and excluding others, from making, using, selling, importing the patented product or processes producing that product for any purposes. The purpose of this system is to encourage inventions by highlighting their promotion and utilization so as to contribute to the development of industries, which in turn, contributes to the promotion of technological innovations and to the transfer and dissemination of technology. Under the system, Patents ensure property rights for the invention for which patent have been granted, which may be extremely valuable to an individual or a company. Patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

Term of Patent

The term of every patent in India is 20 years from the date of filing the patent application, irrespective of whether it is filed with provisional or complete specification. However, in case of applications filed under the Patent Cooperative Treaty (PCT), the term of 20 years begins from the international filing date.

Payment of Renewal Fee

It is important to note that a patentee has to renew the patent every year by paying the renewal fee, which can be paid every year or in lump sum.

¹ <https://www.shopify.in/encyclopedia/intellectual-property>

² [90 (2001) DLT 659] and *Yahoo Inc. v Akash Arora* [1999 PTC 201].

Restoration of Patent

A request for restoration of patent can be filed within eighteen months from the date of cessation of patent along with the prescribed fee. After the receipt of the request, the matter is notified in the official journal for further processing of the request.

COPYRIGHTS AND RELATED RIGHTS

The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for the **lifetime of the author or artist, and 60 years counted from the year following the death of the author. In the case of cinematograph films, sound recordings, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organisations are protected for a period of 60 years which is counted from the year following the date of publication.**

Enforcement of Copyright in India:

The law of copyright in India not only provides for civil remedies in the form of permanent injunction, damages or accounts of profits, delivery of the infringing material for destruction and cost of the legal proceedings. etc. but also makes instances of infringement of copyright, a cognizable offence punishable with imprisonment for a term which shall not be less than six months but which may extend to three years with a fine which shall not be less than Rs 50,000 (approx. US\$ 800) but may extend to Rs 2,00,000 (approx. US\$ 3,000). For the second and subsequent offences, there are provisions for enhanced fine and punishment under the Copyright Act. The (Indian) Copyright Act, 1957 gives power to the police authorities to register the Complaint and act on its own to arrest the accused, search the premises of the accused and seize the infringing material without any intervention of the court.

Protection to Foreign works

Copyright of “works” of foreign nationals, whose countries are member of Convention Countries to which India is a signatory, are protected against any infringement of their “works” in India through the International Copyright Order, 1999. The Indian courts have also been pro-active for the protection of copyright of foreign authors/owners, which includes software, motion pictures including screen play of motion pictures and database.

The Government of India is also taking initiative to combat piracy in the software industry, motion pictures and the music industry along with players in the industry through their associations and organizations like NASSCOM (National Association of Software and Service Companies), NIAPC (National Initiative Against Piracy and Counterfeiting) etc.

INDUSTRIAL DESIGNS

An industrial design is that which is ornamental or aesthetic. It may consist of three-dimensional features such as the shape or surface of the article, or two-dimensional features such as patterns, lines or color.

Industrial design is applied to a wide variety of products of industry or handicraft; from watches, jewellery, fashion and other luxury items to industrial and medical implements; from house ware, furniture and electrical appliances to vehicles and architectural structures, from practical goods and textile designs to leisure items, such as toys and pet accessories. A new designs law repealing and replacing the Designs Act, 1911 has been passed by Parliament in the Budget Session, 2000. This Act has been brought into force from May 11, 2001.

The total period of validity of registration of an Industrial Design under the (Indian) Designs Act, 2000 is 15 years. Initially, a design is registered for a period of 10 years, giving the owner of registered design exclusive rights to sell, make or import the articles and initiate a legal action against infringement. This initial period of 10 years can be further extended by a period of 5 years on the payment of renewal fees.

GEOGRAPHICAL INDICATIONS

Geographical indications of goods are defined as that aspect of industrial property, which adverts to the geographical indication referring to a country or to a place, situated there is as being the country or place or origin of that product. The given product should have a specific geographical origin and posse’s qualities or a reputation due to that place of origin. A place name is sometimes used to identify a product. This geographical indication not only refers to where the product was made, but more importantly, it identifies the product’s special characteristics which are the result of the products origin. Using the place name when the product was made elsewhere or when it doesn’t have the usual characteristics can mislead consumers, and it can lead to unfair competition. Some exceptions are allowed, for example if the name is already protected as a trademark or if it has become a generic term.

GIs have been used in India for a wide variety of products, such as Basmati Rice, Darjeeling Tea, Kangra Tea, Feni, Alphonso Mango, Alleppey Green Cardamom, Coorg Cardamom, Kanchipuram Silk Saree, Kohlapuri Chappal, Rasgulla etc.

By registering a geographical indication in India, the rights holder can prevent unauthorized use of the

registered geographical indication by others by initiating infringement action by way of a civil suit or criminal complaint. Registration of the GIs in India is not mandatory as an unregistered GI can also be enforced by initiating an action of passing off against the infringer. It is, however, advisable to register the GI as the certificate of registration is prima facie evidence of its validity and no further proof of the same is required.

A Geographical Indication is registered for a period of 10 years and the registration may be renewed from time to time for a period of 10 years at a time. The falsification of a Geographical Indication will carry a penalty with imprisonment for a term which may not be less than six months but may extend to three years and with a fine which may not be less than Rs 50,000 (approx. US\$ 800) but may extend to Rs 2,00,000 (approx. US\$ 3,000).

PLANT VARIETIES

The protection of new plant varieties is another aspect of intellectual property rights, and as such seeks to acknowledge the achievements of breeders of new plant varieties by giving them, for a limited period, an exclusive right. To obtain such protection, the new varieties must satisfy specific criteria. Variety is defined as a plant grouping within a single botanical taxon of the lowest known rank. Provided that the herb should be new or novel, distinct, uniform, stable and have a satisfactory denomination.

The organization overseeing the protection of new plant varieties is referred to as UPOV (The International Union for the Protection of New Varieties of Plants).

The duration of protection of registered varieties is different for different crops, as given below:

- For trees and vines - 18 years;
- For other crops - 15 years;
- For extant varieties - 15 years from the date of notification of that variety.

Infringement of any right under the Plant Varieties and Farmers' Rights attracts both civil and criminal action. A criminal action under the Act entails punishment up to two years or a fine up to Rs 5,00,000 (approx. US\$ 8000), or with both.

DATA PROTECTION

Data Protection refers to the set of privacy laws, policies and procedures that aim to minimise intrusion into one's privacy caused by the collection, storage and dissemination of personal data. The Information Technology Act, 2000 deals with the issues relating to payment of compensation and also punishment in case of wrongful disclosure and misuse of personal data and violation of contractual terms in respect of personal data.

Under section 43A of the (Indian) Information Technology Act, 2000, a body corporate who is possessing, dealing or handling any sensitive personal data or information, and is negligent in implementing and maintaining reasonable security practices resulting in wrongful loss or wrongful gain to any person, then such body corporate may be held liable to pay damages to the person so affected. It is important to note that there is no upper limit specified for the compensation that can be claimed by the affected party in such circumstances.

CURRENT CHALLENGES:

- Drugs and pharmaceutical patents - Issues of Ever-greening and Incremental inventions are major unresolved questions.
- Patents for IT and electronics related inventions- In view of yet to be resolved issues on FRAND (fair, reasonable and nondiscriminatory) and SEP (Standard Essential Patents) questions regarding infringements arise when standards are to be met in technical fields.
- Software and related inventions- Issues related to patentable subject-matter remains unresolved. There is lack of clarity at international level as to whether these are to be regarded as Copyright or Patent.
- Private Rights vs. Public Rights
 - Compulsory licensing (CL) is an important provision sought after by various jurisdictions for providing remedy against abuse of patent protection. CL provision is available in many jurisdictions including USA, Europe etc. It appears that, at the developmental stage of economy, when implementing patent law became imperative, majority of developed countries have included Compulsory Licensing provision in their Patent Act.
 - Current trend among the developed countries, including Europe and USA, is to put strong opposition to any attempt made by developing countries and Least Developed Countries for granting compulsory license, particularly in the pharmaceutical field, though the same may be within the ambit of TRIPS and Doha declaration. Hue and cry is raised against the CL along with an attempt to malign that country at global platform and invoking economic sanctions like use of Super 301 are threatened.
 - Country like USA which had been the biggest advocate of Compulsory License system during the initial years of implementation of Patent laws in USA, has been putting resistance to

developing countries on compulsory licensing which is intended in public interest.³

CONCLUSION AND RECOMMENDATIONS:

It can be concluded that aim of IPR protection laws is to confer the exclusive right on the inventor and encourage him to register for his benefit and also society at large. With the passage of time, it is expected that all the issues arising out of IPR will be resolved by making suitable amendments in the laws and enforcement machineries.

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³ Om Prakash Gupta, IPR in India, Emerging Trends, also available at: http://www.nja.nic.in/Concluded_Programmes/2017-18/P-1048_PPTs/1.IPR%20in%20India.pdf