INTELECTUAL PROPERTY RIGHTS WITH SPECIAL REFERENCE TO PATENT AND COPY RIGHT

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ABSTRACT

Intellectual property is the creative work of the human intellect. the main motivation of its protection is to encourage and reward creativity nations give statutory expression to the economic rights of creators in their creations and to the right of public in accessing these creation.

There is no intellectual property in mere idea .only in particular expression of an idea is protected. Intellectual property provides rights of ownership in the product created by human intellect but not in the product itself.

Intellectual property rights grant the holder the ability to stop others doing something a negative right but not necessarily a right to do it them selves. A positive right but intellectual property also gives two different righs . one positive one negative the positive one is the right to certain thing in relation to subject matter.

Keywords: property, intellectual property ,patent. copy rights

1. INTRODUCTION

Intellectual property is the creative work of the human intellect. the main motivation of its protection is to encourage and reward creativity nations give statutory expression to the economic rights of creators in their creations and to the right of public in accessing these creation.

The convention establishing world intellectual property organization WIPO has given a wider definition of intellectual property rights. according to this definition the I P R

shall include the rights relating to,

1) Literary, artistic and scientific works.

2) Performances of performing artistic

3) Inventions in all field of human endeavor

4) Scientific discovers.

5) Industrial designs.

6) Trade mark, service mark and commercial name and designation[1]

2. CONCEPT OF PROPERTY

The term "Property" is subject to diverse interpretations property, in legal sense, is essentially a bundles of rights flowing form the concepts of ownership and possession, while most of them have material existence. The value of property depends on the knowledge of use associated with it.

3. CONCEPT OF INTELLECTUAL PROPERTY

Intellectual property is the property created by the intellect of human mind. Unlike other forms of property, intellectual property is a non physical property which term form, or is identified as, and whose value is based upon some idea(s).

Intellectual property encompasses the protection offered by the legal regimes of various types like patent, copyright, trade mark, designs and trade secrets. It would also include allied and similar legal regimes like protection of plant varieties and protection of databases.

Intellectual property insists on some amount of novelty/originality to gain protection. The degree of newness, be it novelty or originality differs from one system to another. The intellectual property system is duration specific. It does not provide any perpetual and absolute monopoly over the property. But there are exceptions for the

limited duration in certain branches of intellectual property rights. What is protected with respect to intellectual property is the use or value of ideas/expressed ideas.

However, it is to be noted that the bundle of rights constituting intellectual property is not over abstract ideas, but rather over physical, concrete or tangible manifestations of these ideas for example: rights under patent law include the right to manufacture, distribute, etc., while right, under copyright law extend to the right of publication, distribution, etc., all of which deal with concrete embodiments of ideas and not the abstract ideas in themselves

4. TYPES OF INTELLECTUAL PROPERTY

Intellectual property protects applications of ideas and information that are of commercial value. The subject is growing in importance, to the advanced industrial countries in particular, as the fund of exploitable ideas becomes more Sophisticated and as their hopes for a successful economic future come to depend increasingly upon their superior corpus of new knowledge and fashionable conceits. There has recently been a great deal of political and legal activity designed to assert and strengthen the various types of protection for ideas. One characteristic shared by all types of intellectual property to date is that the rights granted are essentially negative: they are rights to stop others doing certain things-rights in other words to stop pirates, counterfeiters, imitators and even in / some cases third parties who have independently

reached the same ideas, from exploiting them without the licence of the right owner. Some aspects of intellectual property confer positive entitlements, such as the right to be granted a patent or register a trade mark upon fulfilling the requisite conditions; but these are essentially ancillary.

The fact that intellectual property gives a right to control the activities of others has a number of implications, often inadequately understood. The right owner does not need the right in order to exploit a market for its goods or services: a patent is not a pre-condition to exploiting one's own invention. By way of corollary, the right gives no liberty to ignore the rights of other individuals (including their intellectual property) or to override public liabilities: a trade mark registration does not justify its use to advertise illegal goods. Nor does intellectual property confer on the right owner's products any privileged position in

international trade, rendering them exempt from prohibitions or quotas which a country would otherwise apply to them: the fact that films embody copyright does not mean that they cannot be subject of programming limitations designed to favour national culture. Of course, it would be possible to adopt a new approach to these matters, and arguments for doing so are made from time to time. However, if they were ever to succeed, fundamental assumptions about the role and purpose of intellectual property would also shift, with consequences which might be very hard to predict.

Apart from this shared characteristic, the three central types of intellectual property right-patents for inventions, copyright for literary and artistic works and associated products and trade marks and names for the goodwill attaching to marketing

symbols=cover distinct subject-matter and have different objectives. The law on each accordingly varies in strategic ways and these need to be compared at the outset.

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. To take the standards now operating in much of Europe, they are typified by the following:

- they issue from a state or regional patent office after a substantial examination of their validity;
- they last for a maximum of 20 years from application; and
- they require that the invention be publicly described in the patent specification.

The right which they accord is to prevent all others-not just imitators, but even independent devisers of the same idea-from using the invention for the duration of the patent. That core conception reveals a great deal about why invention patents are the most basic, the most valuable, and, to others, potentially the most dangerous, of all intellectual property the category which demands to be studied above all others.

The practical applications of scientific knowledge which make up "technology" are rooted in objective information. Inventions are discoveries about the nherent

capacities of matter, and in a sense are waiting to be made. Inventors may proceed by all sorts of routes, but those addressing the same problem are after essentially the same knowledge. A first discovery in a particular field may well be followed by further research results which all competitors in an industry will need to embody in their products if they are to keep in the market.

A stage will be reached where further inventions produce both advantages and disadvantages over other ways of making and doing things, at which point product developers will have alternatives to hand. But whether a patent is for a primary breakthrough or for some subsequent development, it will only have industrial value to the extent that it covers all embodiments of its inventive concept. Otherwise there will be ways of taking the idea over without infringing the right and any patent will be good only against simple imitators. A patent system must above all strive to ensure that it gives rights over all applications of the invention revealed but over no more than this-a balance which can be remarkably difficult to achieve."

The special potential of a patent is accordingly that it may be used to prevent all others from including any form of the invention in their products and services; and where real breakthroughs are patented this potential is occasionally so considerable as to render the competition obsolete. More regularly, a patent poses serious difficulties for competitors. This is why patents are not freely available for all industrial improvements, but only for what is judged to qualify as a "patentable invention".[2]

b) Copyright

Copyright, by contrast, is a right given against the copying of defined types of cultural, informational and entertainment productions. Classically, these have been (in international jargon) "literary and artistic works"-the creations of authors, playwrights, composers, artists and film directors." At least the out- standing works in each of these categories are marked by their individuality- that distinctness which results from the creator's myriad choices made in the course of constructing the work in the chosen medium.

Because aesthetic productions are endlessly different, and therefore the protection, quite properly, operates only against copying, the right has come to have a very substantial duration: typically, the author's life and 50 years thereafter-or 70 years as it is

In this century, the range of copyright has been complicated by the addition of certain analogous rights given to performers and to the producers of sound recordings, films, broadcasters and other entrepreneurs, for somewhat shorter periods (sometimes labelled "related" or "neighbouring" rights as distinct from "authors' rights"). At this introductory stage it can be taken that these rights share many of the characteristics of the authors' copyright. They are, however, somewhat closer to industrial property in the relative shortness of their duration.

The basis of copyright lies in the personal character of the subject-matter in issue. It is the particular expression making up a work which is protected, rather than the idea behind it. It is St. Joan or Jeanne d'Arc au bucher that is copyright, rather than any play or oratorio on the historical story of Joan of Arc. Copyright law must strive, therefore, to give meaning and a sense of proportion to the often amorphous distinction between "expression" and "idea". It is a difficulty which becomes acute when copyright is extended to an utilitarian subject-matter and nowhere more so than in treating computer programs as "literary works" within copyright." Yet without some such distinction, the right would be of uncon- strained breadth. It would then be very difficult to justify the long term attached to it.

c) Trade marks and names

Trademarks and related aspects of trading goodwill (get-up, trade names of businesses, etc.) are protected as symbols needed by consumers to distinguish between competing products and services in a market economy. As long as they continue to be used in trade these signs are a prominent part of goodwill and rights in them cannot be subject to any maximum duration. In the British and many other systems, rights are conferred either by virtue of formal registration or else because of a reputation generated by actual trading (mainly through the action against passing-off).

By association with a successful product or service, or by persistent advertising or even the vagaries of fashion, a mark may be built into an asset of prime value to a business; witness the household names of five continents-Levis for jeans, Mercedes for cars, Panasonic for televisions, Outspan for oranges, Fosters for lager. Nonetheless, marks do not

by themselves have the capacity to prevent a competitor from entering any market with his own products or services; they merely prevent him from annexing the protected mark in order to facilitate his market entry. Accordingly there is no policy reason for imposing any limit on the duration of rights of this type. At least, this will remain so provided that marks are not allowed to become barriers in the way of marketing products or services themselves.

d) Other aspirants

These three types of intellectual property may be regarded as setting the models to which aspirants will turn for the protection of other ideas, information and "trade values". Throughout the period of industrialization there have been claimants who seek either to fit a new subject-matter within one of the model systems or else to have a new regime created to protect it.[3]

e).Industrial designs

The longest standing of these has concerned the design of industrial products. Legal responses remain as much a problematic hybrid today as they have long been. Many countries have a design registration system, but they differ in the extent to which the right granted is akin to patent protection (in the form of a full monopoly) or to copyright (requiring copying). Some .use artistic copyright itself to give protection of the designs of industrial products, often with some modification of its scope. This may 'raise awkward questions about whether the two types of protection can be cumulative. Others again may add a right that is subgenera, as the United Kingdom did in 1988 with its unregistered design right for the shape of products, both technical and non-technical." .

f) Trade secrets and other confidential information

Over much the same period, there have been claims to rights over secret business information-technological know-how (whether inventive or not), ideas for new products and markets, commercial information about customers, finance, employment and many other things. To this countries have responded in various ways, some confining protection to general civil remedies affecting contract, tort, property and perhaps unjust enrichment; some building specific provisions into their law of unfair competition; some (notably common law jurisdictions) generating a form of subgenres protection that is akin to but is not quite a form of property right. Countries in this last tradition (such as the United Kingdom) have tended to place the protection of trade secrets in a broader conceptual frame which also encompasses governmental secrets and personal confidences. This approach avoids the need to define limited categories, but it means that cases which may demand very different responses will fall to be considered under a single rubric. However the protection of secrets is formulated, the rights given are likely to be unlimited in time and also to be effective against unjustified uses and disclosures of all kinds. Hence the reluctance to give them the absolute.[4]

5. CONCEPT OF COPY RIGHT

The concept of copy right and neighboring rights have assumed significance in the context of contemporary scientific, economic, social, political and legal environment not only in India, but also in the entire world. The scope of copyright which was restricted only to the protection of literary and artistic works in the earlier days, has now been broadened to include not only literary and artistic works, but also dramatic and musical works, cinematograph film and sound recording.

In addition, neighbouring rights which consist of the rights of performers, the rights of producers of phonograms and the rights of broadcasting organizations are also covered by the copy right law.

The reason why scope of the copyright has become so vast is the technological innovations which took place in the last two centuries.

Technological innovations example Computers, audio recording, video recording, reprography, cable television and most recently internet have posed challenges to copyright have from time to time, and forced the nations to amend their laws.

The copyright law, today, not only protects the rights of the copyright owner and neighboring rights but also deals with the subject of public interests and tries to strike a balance between the two in this digital environment.

The copyright law, thus, covered a long journey from its earlier days when it used to protect only literary and artistic works and has entered a new world full of technological innovations.

6. OBJECTIVES OF COPY RIGHT LAW

The objectives of copyright law are mainly twofold. First the copyright law is developed by the nations to encourage and reward authors, composers, artists, designers and other creative people as well as the publishers and film producers, who risks their capital in putting their works before the public. This is done by giving to the author, or in some cases his employer. Certain exclusive rights to enjoy the benefits of the created subject-matter for a limited period of time. These exclusive rights include example The right to reproduce the work in any material from whatsoever, to issue copies of the work to the public; to perform the work in public; to make any cinematograph film or sound recording of the work; to make any adaptation of the work etc.

The grant of exclusive rights to copyright owner is by way of a monopoly for a limited period of time. The monopoly rights are granted to copyright owner in his workthat he could exploit his work to the exclusion of others for a limited period of time, i.e. in India, sixty years after the death of the author, during this period, person other than the copyright owner are not allowed to make themselves enrich at the cost of the labor of copyright owner which he has put in producing the work. A part from the aforesaid rights, which are known as economic rights, the copyright law also provides moral rights to the author. These are rights to claim authorship of the work and the right of integrity.

Since the author is the creator or makes of work which is the expression of his personality, he has a right to prevent any injury or mutilation of his intellectual offspring.

Secondly, the copyright law allows people to make some free uses of the copyright material. The list of these free uses have been laid down in the copyright Act 1957, the reason for having provisions relating to free uses in the Act is to strike a balance between the interests of the copyright owner and the interests of the society at large. Thus, the private rights of the copyright owner have been curtailed to a limited extent in the interest of society.

7. NATURE OF COPY RIGHT

Copyright is an incorporated property in nature. The property in the work is justified by the fact that the right owner has created or made it. As he is the owner of the property, he can dispose of it by outright state (assignment of his right) or by licensing. Since the subject of the property is incorporeal, it gives a dominium over the work, a right in the work dragomans. The property is an intellectual property in the sense that is originates in the mind of persons before it is reduced to material form. However, it is noteworthy that ideas and thoughts are not protected which merely exist in a man's brain, as ideas and thoughts are not works under the copyright law.

But once reduced to writing or other materials form, the result becomes a work worthy of protection. Further, copyright is a bundle of exclusive rights which means that the right owner can prevent all others from copying his work, or doing any other acts which according to copyright law can only be done by him.

This is also referred to as a monopoly as it is recognized that the produce of a person's skill and labor is his property.

However, the term 'monopoly' is misleading the reason is that if it can be shown that two precisely similar works were in fact produced wholly independently of one another, these can be no infringement of copyright by one of the other.

The exclusive rights in copyrighted work are limited in time. Unlike physical property, which lasts as long as the object in which it is vested. Copyright subsists for a limited period of time. After expiration of this period, the work passes into the public domain. In other words, it becomes public property and can be freely used by anyone without any hindrance. Thus, exclusive rights in copyrighted work for a limited period serve public interest.

8. SUBJECT-MATTER OF COPY RIGHT

Copyright Act protects original Literary, Dramatic, Musical, and Artistic works, Sound Recordings and Cinematograph films. ,

9. TERM OF PROTECTION:

Term of protection in case of literary, dramatic and artistic works except in photography is lifetime of the author plus sixty years from the date of creation of the work. Term of protection in case of anonymous and pseudonymous works in case of a literary, dramatic and musical work except in case of a photograph is the lifetime of the author until sixty years from the date of publication of the work. Where the author is disclosed the copyright protection subsists for sixty years from the date: of death of the author. Where there are two or more authors then the protection is for sixty years from the date of death of the last author. Term of protection in posthumous work in the case of literary, dramatic or musical work or an engraving is the lifetime of the author and in case of joint authorship the lifetime of the author who last dies plus sixty years from the date of first publication and in case of sound recording when the work has been sold to the public or offered for sale to the public.

10. ORIGIN OF THE TERM PATENT

The term 'Patent' has its origin in the term "Letters Patent".

The expression "Letters Patent" meant open letters as distinguished from dosed letters. These were instruments under the Great Seal of the King of England addressed the Crown all the subjects at, large, in which the Crown conferred certain rights and privileges on one or more individuals m the kingdom.

In the later part of the nineteenth century new inventions in the field of art, process, method or manner of manufacture, machinery, apparatuses and other substances, produced by manufacturers were on the increase and the inventors became very much interested that the inventions done by them should not be infringed by anyone else by copying them or by adopting the methods used by them. To save the interests of inventors, the then British rulers enacted the Indian .Patents and Designs Act, 1911 (2 of 1911).

11. MEANING OFTHETERM 'PATENT'

It refers to a grant of some privilege, property or authority made by the Government or the Sovereign of the country to one or more individuals. The instrument by which such grant is made is known as 'Patent'.

The Act conveys to the inventor substantive rights and secures to him the valuable monetary right which he can enforce for his own advantage either by using it himself or by conveying the privileges to others. He receives something tangible; something which has present existing value which protects him from some competition and is the source of gain and profit.

After the expiry of the period for which exclusive right is granted to the inventor, the invention can be put to use by any person other than the one to whom a patent had been granted. The person to whom a patent is granted is called patentee.

12. PATENT-A FORM OF PROPERTY

An invention is the creation of intellect applied to capital and labour, to produce something new and useful. Such creation becomes the exclusive Property of the inventor on grant of patent. The patentee's exclusive proprietary right over the invention is an intellectual property right. The owner of the “patent", i.e., patentee is entitled to deal with his such property in the same manner as owner of any other movable property deals with his property. This means that the patentee can sell the whole or part of his property (patent). He can also grant license to other(s) to use the patented property. He can also assign such property to any other(s). Such sale, license or assignment of patented property naturally has to be for valuable consideration, acceptable mutually.

13. THE OBJECTIVE BEHIND A PATENT LAW

The Patent Law recognizes the exclusive right of a patentee to gain commercial advantage out of his invention. This is to encourage the inventors to invest their creative faculties, knowing that their inventions would be protected by law and no one else would

be able to copy their inventions for certain period during which the respective inventor would have exclusive rights.

14. CONCLUSION

Intellectual property in some ways fundamentally different from other forms of property. The property in legal sense ,is essentially a bundles of rights flowing from the concept ownership and position, the value of property depends on the knowledge of use associated with it.

Intellectual property is property created by the human mind, it is non_ physical property .there are different types of intellectual property: patents, copy right, trade marks and name and other aspirants :industrial designs and trade secret and other confidential information.

The concept of copy right and neighboring rights have assumed significance in the context of contemporary ,scientific ,social, political and legal environment not only in India also in the whole world.

The scope of copyright which was restricted only to protection literary and artistic works in earlier days ,has now been extended to dramatic ,musical works, cinema graphic films and sound recording .The reason why scope of the copy right has become vast is the technical innovations which took place in last two centuries. There are two kinds remedies for infringe of copy right :civil remedies include injunction , damage ,or account of profit ,and criminal remedies include :imprisonment and fine.

Patent it refers grant of privilege, property, authority made by the government or the sovereign of the country to one or more individuals .Patent is the creation of intellect applied to capital and labor ,to produce some new and useful, origin and novel. The patentee's exclusive proprietary right over the invention is an intellectual property.

Intellectual property has assumed central importance throughout the world in the recent past. Intellectual property ,which was mainly the subject matter of world intellectual property, organization, has also becomes a part of word trade organization, regime in 1995.

The TRIPs agreement of WTO treaty involved minimum standards for the protection of intellectual property for member states to incorporate in their municipal law .there are various types of intellectual property rights recognized by the law where the creator of knowledge would enjoy certain privileges and rights.

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