



INTELLECTUAL PROPERTY RIGHTS IN INDIA & THEIR IMPORTANCE

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Abstract – Intellectual Property rights are 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.

Intellectual proper rights are intangible in nature and gives exclusive rights to inventor or creator for their valuable invention or creation. These right boosts the innovative environment by giving recognition and economic benefits to inventor. The primary functions of IPR is to protect & stimulate the development and distribution of new product and the provision of new services based on the creation and exploitation of inventions, trademarks, designs or other intangible assets.

This present paper highlights various terms of IPR such as patents, copyrights, trademarks, Industrial designs, trade secrets, geographic indications, etc. with their rules, regulations their need & role etc.

Keywords - IPR, WIPO, Patents, trademarks, copyrights, industrial designs, trade secrets.

WIPO - World Intellectual Property Organization (WIPO) is a UN specialized agency created in 1967 to promote intellectual property (IP) protection and encourage creative activity all over the world. WIPO is basically a global forum of IP policy, services information and co- operation.

Functions of WIPO –

1. To render legal and technical assistance in the field of IP.
2. To conduct Research and publish its results as well as collect and circulate information.
3. Signing International agreements related to IPR Protection.
4. To ensure the work of services that facilitates the IPR Protection.

➤ **Patent-** A patent is an exclusive right granted for an invention. A patent is an exclusive right to product or process that generally provides a new way of doing something or offers a new technical solution to a problem. Patent is an intellectual property right granted to inventor by concerned government office for his novel technical invention.

There are three types of Patents.

1. Utility Patent
2. Design Patent
3. Plant Patent



The patentability of any invention need to fulfill following criteria:

1. Usefulness: Invention must have industrial applicability or applied for practical purpose.
2. Novelty: Invention must be new technology which has not been published or available in prior art of the country or elsewhere in the world before the date of patent filing.
3. Non obviousness: Invention which can be done by any ordinary skilled person is obvious and cannot be patentable. Hence invention must not be obvious for patentability.

As per Section 3 of the Patent Act, 1970 the following are not patentable:

1. Frivolous invention
2. Invention against the natural laws
3. Inventions which are not fair to health of human, animal, plant life, environment as well as contrary to public order or mortality.
4. Discovery of any living thing; discovery of any non living substances occurring in nature;

The Patent Filing Steps are as Follows:

1. Filing of Patent Application or Priority Application.
 2. Publication of Application
 3. Opposition of Patent
 4. Request for Examination
 5. Examination and Clarification of Raised Objections, if any
 6. Grant of Patent
- **Trademark** – Trademark can be any word, phrase, symbol, design or a combination of these things that identifies your goods or services. It's how customers recognize you in marketplace and distinguish you from your competitors. A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by IPR.

Need for Trademarks Registration-

Trademark registration protects your rights to use the mark in association with your goods or services it offers a robust shield against infringement, empowering you to take legal action against unauthorized trademark use. Upon successful registration, your trademark remains valid for ten years from the filing date, with the option to renew it indefinitely.

Other Benefits –

1. It gives credits to the source of the product or service.
2. It guarantees its quality.
3. It helps in the advertisement of goods and services.

Registration Process –

1. Step (I) Trademark Search –

The search should be done in both for various combinations of similar marks on the I.P. website in case similar marks are found check the descriptions to see if the mark represents the same set of goods or services proposed by you.



2. Step (II) Application Preparations –

A application is prepared by trademarks attorney. Form 48 and TM-1 will be prepare for approval and signature of the trademark applicant.

3. Step (III) Application Filing –

The trademark is completed with the trademark Registry. The Govt. Fees for registering trademark for an individual, startup, small enterprise is Rs. 4500.

4. Step (IV) Government Processing –

In case of objections an objection reply must be submitted by the applicant within 30 day. After Govt. is processing the application the status of trademark application must be checked periodicity.

➤ Copyrights

Copyright refers to the legal right of the owner of intellectual property. In simpler terms, copyright is the right to copy. This means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work.

- **The following literary and artistic works are covered under copyrights:**

1. **Literary and scientific works:** novels, poems, reference works, newspapers, plays, books, pamphlet, magazine, journals, etc.
2. **Musical work:** songs, instrument musical, choruses, solos, bands, orchestras, etc
3. **Artistic works:** such as painting, drawings, sculpture, architecture, advertisements, etc.
4. **Photographic work:** portraits, landscape, fashion or event photography, etc
5. **Motion pictures:** it includes the cinematography works such as film, drama, documentary, newsreels, theatrical exhibition, television broadcasting, cartoons, video tape, DVDs, etc.
6. **Computer programs:** computer programs, software's and their related databases, Maps and technical drawings

- **Copyright Duration**

In India copyrights exist for 60 years for literary, dramatic, musical and artistic works after the death of creator. In case of photograph, film, sound recording copyright term is 60 years from the beginning of calendar year next following year in which it is published or released. Besides these, author also gets moral rights for its creations.

- **Copyright Infringement**

The copyright infringement means making, selling or taking financial benefits of copyrighted work without permission of copyright owner. It is a criminal offence and as per the act, minimum punishment for infringement is imprisonment for six month with a minimum fine of Rs 50,000/-.

- **Plagiarism**

When work of someone else writing is taken without permission and claimed as one's own work



then it is known as plagiarism. Although, facts which are known as common knowledge are not covered under the copyright law and hence can be used by anybody. As per copyright, fair justifiable use of some other work is allowed by paraphrasing the text or by using quotation mark with giving appropriate reference or citation in credit of the original author.

➤ **Industrial designs**

Industrial designs refer to creative activity which results 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. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 which aims at enacting 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.

● **Essential features of the Designs Act, 2000**

1. Adoption of Locarno Classification
2. Introduction of 'absolute novelty'
3. Restoration of designs
4. Transfer of cases to high courts

➤ **Trade Secrets**

Broadly speaking, any confidential business information which provides an enterprise a competitive edge may be considered a trade secret. Trade secrets encompass manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret. Contrary to patents, trade secrets are protected without registration.

Information Protected by a Trade Secret

Generally, any confidential piece of business info that provides a competitive edge to a company or firm and isn't known to others may be safeguarded as a trade secret. Trade secrets comprise both technical info, including designs and drawings of computer programs, pharmaceutical test data, information concerning manufacturing processes, etc., and commercial info, including the list of clients and suppliers, distribution methods, marketing strategies, etc.

Additionally, a trade secret may consist of a combination of elements, every element of which by itself lies in the public domain, but where the entire combination kept as secret provides a competitive edge in the industry. Other pieces of info that may obtain trade secret protection include formulas, recipes, financial info, and source codes.

➤ **Geographical Indications**

Geographical Indications (GIs) are a form of Intellectual Property Rights (IPR) that protect products originating from a specific geographical location. These indications serve to identify and promote the uniqueness and quality of products closely linked to their geographical origin. Geographical Indications in IPR play a crucial role in promoting regional development, preserving traditional knowledge, and safeguarding the reputation of local products. They also help consumers make informed choices about the products they purchase. It can be related to



agricultural products, natural products, handicrafts, and industrial products. GIs are protected under national laws and international agreements like Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**) under the World Trade Organization (**WTO**). Countries establish legal frameworks to prevent unauthorized use, imitation, or misuse of GIs by unauthorized parties. In many cases, products seeking GI protection must undergo certification processes to demonstrate their adherence to specific production methods and quality standards associated with their geographical origin. Some well-known examples of products protected by GIs include *Darjeeling tea* from India, and *Scotch whisky* from Scotland.

Rights granted under Geographical Indications In IPR:

1. Exclusive Use
2. Protection against Misuse
3. Prevention of Imitations
4. Quality Assurance
5. Right to License
6. Control over Imports
7. Legal Remedies
8. Recognition in International Trade

Conclusion:

Intellectual property rights are very much essential for progressive societal development in the field of knowledge based economy. Today India is on its way to adopting a balanced approach towards creating a stimulus for the betterment of the IPR industry as a whole. IPR is basic necessity to be a part of local as well as global competitive trade as without dissemination of IPR knowledge implementation creating the innovative environment is really impossible. It is essential for policy makers to include IPR in basic educational system and promote IPR registration by encouraging the innovations and creators. Strong and enforced IPR protects consumers and families. Finally it is clear that, IPR not only protect the ideas or concepts of business assets that are vital to the products and services.

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