A TEXTBOOK
OF
INTELLECTUAL ROPERTY RIGHTS

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INTELLECTUAL PROPERTY RIGHTS

IPR is protecting knowledge in the form of legal rights. It is one kind of intangible property and has commercial value. It is a property raised from the creativity of the human mind, intellect, and creative ideas.

Property is divided into two types tangible and intangible. Tangible property is movable like a car and immovable like a building. Intangible means we cannot see but can feel like intellectual property, which divides into industrial related (patents, trademarks, designs etc.) and copyright-related

INTRODUCTION

Intellectual property (IP) pertains to any original creation of the human intellect, such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refer to the legal rights given to the inventor or creator to protect his invention or creation for a specific time. These legal rights confer an exclusive right to the inventor/creator or his assignee to utilize his invention/creation for a given time fully. It is very well settled that IP plays a vital role in the modern economy. It has also been conclusively established that the intellectual labour associated with the innovation should be given due importance so that public good emanates from it. There has been a quantum jump in research and development (R&D) costs with an associated jump in investments required for putting new technology in the marketplace. The stakes of the developers of technology have become very high. Hence, the need to protect the knowledge from unlawful use has become expedient, at least for a period, that would ensure recovery of the R&D and other associated costs and adequate profits for continuous investments in R&D. IPR is a robust tool to protect investments, time, money, effort invested by the inventor/creator of an IP since it grants the inventor/creator an exclusive right for a certain time for the use of his invention/creation. Thus IPR, in this way, aids the economic development of a country by promoting healthy competition and encouraging industrial development and economic growth.

Need for IPR

IP protects from infringement and Saves from unauthorized use

IP contributes enormously to our national and state economies.

Many industries across our economy rely on the adequate enforcement of their patent, trademarks and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products. Without the protection of ideas, businesses and individuals would not reap the full benefits of their inventions and focus less on research and development.

IP accounts for 74% of US exports, which amounts to nearly $ 1 trillion. Substantial IP rights help consumers make an educated choice about their purchases' safety, reliability, and effectiveness.

Nearly all the 300 WHO essential drug list that is saving, improving people's lives around the globe came from the R&D pharmaceutical industry that depends on patent protection.

Innovative agricultural companies are creating new products to help farmers to produce more and better products for the world hungry while reducing the environmental impact of agriculture. IP driven discoveries in alternate energy, green technologies will help improve energy security and address climate change.

Types of IPR

1.PATENTS

2.TRADE SECRETS

3.COPYRIGHTS

4.TRADEMARKS

5.GEOGRAPHICAL INDICATIONS

6.INDUSTRIAL DESIGNS

7.NEW PLANT VARIETIES (PLANT BREEDER RIGHTS)

8.LAYOUT DESIGNS OF INTEGRATED CIRCUITS (semiconductor chips)

9.TRADITIONAL KNOWLEDGE

10.BIOLOGICAL DIVERSITY

These are different categories of IPR

IPRs that do not fit into this classical division are termed sui generis, meaning one-of-its-kind. Such sui generis rights include those covering layout designs of semiconductor chips and plant breeders rights.

Sui generis systems

Sui generis is a Latin word. It means uniqueor special, leaving the sui generis system open to interpretation. Sui generis offers a unique type of intellectual property right (IPR), which is different from the classical IPR, as is the case with the patent. All sui generis models that could be tailored to the specific needs and circumstances of the Members are legally recognized systems. The plant varieties constitute the principal means of production and growth in agricultural productivity. It is also recognized that the specific needs and circumstances of agriculture in each country vary. In this respect, the differences between the developing and the developed countries are extensive in several aspects. Therefore, it was evident that a sui generis system of protection appropriate for a developing country may require specific modifications in another developing country, and these systems may not even be relevant to a developed country. These differences in ground realities and perceptions have contributed to the raging controversy on the sui generis system.

The significance of traditional knowledge

Traditional knowledge (TK) is integral to the identity of most local communities. It is a vital constituent of a community social and physical environment, and, as such, its preservation is of paramount importance. Attempts to exploit TK for industrial or commercial benefit can lead to misappropriation and prejudice the interests of its rightful custodians. In the face of such risks, there is a need to develop ways and means to protect and nurture TK for sustainable development in line with the interests of TK holders. The preservation, protection, and promotion of local communities' TK-based innovations and practices are crucial for developing countries. Their rich endowment of TK and biodiversity plays a critical role in their health care, food security, culture, religion, identity, environment, trade, and development. However, this valuable asset is under threat in many parts of the world. There are concerns that this knowledge is being used and patented by third parties without the prior informed consent of TK holders. Few, if any, of the derived benefits are shared with the communities in which this knowledge originated and existed. Such concerns have pushed TK to the forefront of the international agenda, triggering a lively debate about ways to preserve, protect, further develop and sustainably use TK. Documenting and digitizing TK-related information in the form of a TKDL proves to be an effective means of preserving TK and preventing its misappropriation by third parties. India is a pioneer in this field.

Sui Generis Systems in The World

No country has put a sui generis system in place. Most are content using patents and the International Union for Protection of New Plant Varieties (UPOV) to protect their genetic resources. Kenya and Malawi are making efforts to establish sui generis systems. Many other countries have been proactive in the debate attempting to link

the objectives of Access and Benefit-sharing (ABS) as contained in the Convention on Biological Diversity (CBD) to Trade-Related Aspects of Intellectual Property Rights (TRIPS). They are fighting for a modification of TRIPS to allow them to control access to genetic resources and get some benefits from them.

Situation In India

India has not brought any TK-specific regime, but laws adopted to give effect to its obligations under the TRIPS, CBD and ITPGRFA have reiterated India's stand-in different intergovernmental bodies working on the protection of TK. India has adopted three companion legislation on IPRs, plant varieties, and biodiversity: the Patent's (Amendment) Act, 2005 (effective from 1January 2005); the protection of plant varieties and farmers rights Act, 2001 (PPVFR Act), and the Biological Diversity Act, 2002. There are linkages between these three pieces of legislation and some over-lapping. Whereas the Patents Act grants patents on Biotechnology, the plant variety protection law provides a sui generis regime on plant breeder's rights (PBRs). The Biological Diversity Act provides a mechanism to protect and share PGRs.

The Patents (Amendment) Act

The Patents (Amendment) Act, 2005 has made Biotechnological processes patentable. Microorganisms are patentable, but plants and animals in whole or any part thereof, including seeds, varieties, and species, and essentially biological processes for propagating plants and animals are not patentable. It incorporates provisions for protecting biodiversity and traditional knowledge by refusing to grant a patent or revoking a patent if the application wrongfully mentions the place of origin of the biological material for the invention. Failure of disclosure is also a ground for opposition to a patent. Furthermore, an invention that, in effect, is traditional knowledge or aggregation or duplication of the known properties of the traditionally known components is non-patentable. However, it is often difficult to check the unscrupulous patent of TK because of a lack of documentation and validation.

Protection of Plant Varieties and Farmer's Rights Act (PPVFR Act), 2001

When India initiated this legislative process in 1993, the first draft appeared to have more similarities with UPOV 1978 Act. This draft encountered severe opposition and protest from farmers, nongovernmental organizations led by the Gene Campaign, civil society, and Parliamentarians. A dialogue on this legislation organized at the M.S.Swaminathan Research Foundation, Chennai, led to the development of another draft model incorporating equitable PBR, farmers' rights, recognition of farmer as the cultivator, conserver and breeder with entitlement to protect farmers' varieties, new concepts such as benefit-sharing, creation of national gene fund for promoting conservation of agro-biodiversity by farmers. Further several interactions with farmers, NGOs, and other interested parties, the draft bill was modified to suit the national agricultural scenario with checks and breaks to minimize the monopolistic role of multinational corporations while encouraging their partnership in plant breeding. The draft Bill was subsequently referred to a Joint Select Committee of Parliamentarians headed by Shri. Sahib Singh Varma. The enacted Protection of Plant

Varieties and Farmers' Rights Act, 2001, is notable and distinct from the UPOV Acts in several respects. It meets all crucial elements to make it an effective sui generis system of IPR. Some of the features are unique with no parallel in the protection of plant varieties. For this reason, there is also the possibility that a few of the ideological features may encounter specific practical difficulties during their implementation. These problems, however, are not insurmountable with motivated implementation agencies and willingness for timely review.

The Biological Diversity Act, 2002

This application is more explicit in its approach towards TK. It contains elaborate provisions on benefit-sharing but is a week about the participation of communities in decision making. However, no attempt has been made to define TK or Communities. The main focus of the Act is to regulate access to GR and associated knowledge by foreign individuals, institutions or companies to secure equitable sharing of benefits arising out of the use of these resources with the local people. To protect the knowledge of local communities biodiversity. To address the problem of Bio-Piracy, the Act has elaborate provisions to grant access to biological resources by non-resident Indians, foreign individuals, etc., who can obtain any biological resources occurring in India or knowledge associated with it.

IPR in India – Genesis and development

Intellectual Property Right (IPR) in India was imported from thewest. The history of IPR in India is distinctly divided into pre-independence and post-independence phases. The post-independence phase witnessed tremendous changes in the postTRIPs (WTO) era. The time to time transformation and amendment in IPR laws to ensure the inventor's interest is evident throughout the development of IPRs in India. The Indian Trade and Merchandise Marks Act 1884 was the 1st Indian Law regarding IPR. The 1st Indian Patent Law was enacted in 1856, followed by a series of Acts being passed. They are the Indian Patents and Designs Act in 1911 and the Indian Copyright Act in 1914. Indian Trade and Merchandise Marks Act and IndianCopyright Act were replaced by Trade and Merchandise Marks Act 1958 and Copyright Act 1957. In 1948. The Indian Government appointed the 1st committee to review the prevailing Patents and Designs legislation. In 1957, the Government appointed Justice RajagobalaAyyangar Committee (RAC) to revise the Patent Law. RajagobalaAyyangar Committeesubmitted its report in 1959. The report tried to balance the constitutional guarantee of economic and social justice enshrined in the constitution's preamble. This report provided the processfor Patenting of drugs. This report outlined the policy behind the Indian Patent system.

The theory upon which the patent system is based, i.e., an opportunity to acquire exclusive rights in an invention, stimulates the technical process in four ways.

1. Encourages research and invention.

2. Induces an inventor to disclose his discoveries.

3. Offers award for the expenses of developing inventions.

4. Provides an inducement to invest capital in new lines of production which might not appear probable.

Based on the RajagobalaAyyangar Committee report, a Bill was introduced in 1965, and the bill was passed in the Lok Sabha. However, it lapsed in the Rajya Sabha and once again lapsed in Lok Sabha in the year 1966 due to the dissolution of Lok Sabha. However, it was reintroduced in 1967 and passed in 1970; the draft rules wereincorporated in Patent Act and passed in 1971.The following steps are being suggested with particularreference to the situation in India regarding IPR in the national policymaking

Intellectual Property Rights and its Development in India

Intellectual Property Rights are patents, copyrights, trademarks, geographical indicators, protection ofundisclosed information, layout designs of integrated circuits, industrial designs and traditional knowledgerecognized by the Trade-Related Intellectual Property Rights agreement (TRIPS) and governed by the WTO (World Trading Organization).

In the present book, development of Intellectual Property Law in India, Evaluation of an International Intellectual Property Regime, New Dimensions and issues for resolution, the Importance of IPR in developing countries and its impact are discussed in brief.

Constitute a single integrated window National IPR commission to deal with IPR policy issues.

Integrate national technology planning with IPR and trends in the international technology trade.

Implement a formal national IPR literacy mission.

Set up IPR training institutes to prepare technically qualified attorneys.

Introduce an enabling national taxation policy to encourageinnovation, the building of IPR portfolio and its utilization intechnology transfer and trade.

Urgently modernize the IPR administrative structures in the country.

Improve infrastructure for access and effective use of IPR information. There is an urgent need to harmonize the patent.

classification system to ease and optimize processes in patent searching.

Re-structure the judiciary and enforcement machinery for professionals and speedy response to IPR issues.

Training of corporate and institutional managers on effectivemanagement of IPR.

Standardize models for valuation and audit of IPR.

Evolve national taxation policies of development.

7 objectives of the new IPR Policy, 2016:

1. To increase public awareness about IPR and their economic, social and cultural benefits.

2. To stimulate the creation of IPR in the country.

3. To create a strong legal and legislative framework around IPR.

4. To modernize administration and management of IPR.

5. To promote commercialization of IPR.

6. To strengthen enforcement and adjudication mechanism around IPR.

7. To expand Human Capital Development.

Key Features of the new IPR Policy, 2016:

1. Broadening the Ambit:The new Policy covers music, films and industrial drawings by copyright.

2. Process Time Reduction:Reduction in time taken to clear the backlog of IP application from current 5-7 years to 18 months by March 2018.
Reduction in approval of trademark applications from a current average of 13 months to one month by 2018.

3. Conflict Resolution:Designate DIPP (Department of Industrial Policy and Promotion) as a nodal agency for coordination, guidance and regulatory works.

4. Policy Review: To review the policy after every five years in consultation with stakeholders.

5. Domestic IPR facilitation:To promote Research and Development

Some Essential Examples of IPR

Abduction of turmeric:

Thus, the war began: In May 1995, the US Patent Office granted the University of Mississippi Medical Center a patent [#5,401,504] to use Turmeric in Wound Healing. The patent was promptly challenged by Dr R A Mashelkar, an Indian scientist who has done much to awaken India to Intellectual Property Rights issues. After four months of submissions, it was established that turmeric as a healing agent was well-known in India. For some centuries, one is tempted to add. The patent was annulled. However, there were more battles ahead. In 1996, Vandana Shiva --an icon for Third World Knowledge Rights began to challenge the patent granted to the firm of W.R.Grace& Co by the European Patent Office, Munich forfungicidal uses of neem oil'. Now, it so happens that neem is as much a sacred object in India as turmeric is.

The case of basmati rice patent

The facts of this case are that in September 1997, Ricetec was granted a patent for allegedly novel basmati lines and grains which were created from the crossing of the basmati germplasm (of Pakistani origin) taken from an ex-situ gene bank in the US with American long-grained variety of rice. Ricetec has claimed that the new varieties have the same or better aroma, grain length and other characteristics than the original basmati variety grown in India and Pakistan and can be grown successfully in specified geographical areas in North America. This came to the notice of the government of India in February 1998, and an Inter-Ministerial Committee was set up under the Secretary, Department of Industrial Development, to examine this issue. The Agricultural Export Development Agency (APEDA) of the Ministry of Commerce in the government of India has been entrusted with the task of representing the rice exporters in any re-examination of the patent in the US Patent and Trademarks Office (USPTO), if it is decided that there are sufficient grounds for the eventual revocation of the patent.

The Council for Scientific and Industrial Research (CSIR) successfully opposed and obtained the revocation of a patent on turmeric in 1997 in the USPTO is assisting in this exercise. In 1996-97, India exported about 490,000 MTs of basmati rice valued at about $ 358 million, constituting over 60 per cent of the value of India's total exports of rice. Irrespective of what is decided in the USPTO on revoking the basmati patent, can Ricetec or any other company use the name basmati to sell rice that does not originate from India or Pakistan. In other words, can basmati be protected as a geographical indication? There is no unequivocal answer as Ricetec has claimed that basmati is a generic name denoting a variety of rice. Moreover, if Ricetec or any other company sells rice similar to basmati and labels or advertises this as 'American made basmati type rice' or 'basmati style rice', with a clear indication that the product originates from the US, there is no deception of the public even while the reputation and goodwill attached to the name basmati is diluted. The TRIPS Agreement accords absolute protection against the use of geographical indications with the words 'type', 'style', 'kind' etc., only to wines and spirits and to no other commodity. In addition, if the Courts in the US finally rule that the name basmati is already generic, as it is understood to denote a variety of rice not necessarily associated with any geographical region, there would be no protection available for it. This is not yet tested in the Courts in the US.

However, APEDA opposes the trademark 'Texmati' by Ricetec in the 20 UK because it would deceive the consumers as rice originating from India and Pakistan. The UK's GAFTA strictly enforces its labelling requirements where `basmati' can only be used for rice originating from India, and Pakistan should help India's case. As of date, the case has not yet been finally decided in the UK Trademarks Registry. Some have opined that taking a patent derived from the basmati germplasm amounts to biopiracy by Ricetec.

However, it must be noted that the germplasm was taken from an ex-situ collection in the US and that the CBD had skirted the issue of ownership of genetic resources in international collections. Thus, there is no prohibition on the exchange or use of such germplasm in the current international law, even if this is for commercial purposes.

Darjeeling tea case

the unauthorized use and registration of Darjeeling and Darjeeling logo by Japanese companies already registered in Japan by the tea board of India and unauthorised use and attempted registration of the words Darjeeling and Darjeeling logo by some other developed countries like the united states, united kingdom, France Russia. So efforts made by the tea board to ensure the supply of genuine Darjeeling tea and legal protection at the domestic level like CTM registration (certification trademarks) for Darjeeling logo and word Darjeeling under the trademarks act 1999 and GI registration in India applied by tea board of India in order to provide legal protection in India. Many hurdles, challenges, settlements, disputes have crossed the tea board of India in order to protect the word Darjeeling and Darjeeling logo.

IPR CASE BETWEEN INDIA AND USA ON NEEM

Neem is a tropical evergreen tree native to India.It is known as "the village pharmacy" because of its versatile use for more than 4000 years.Biopiracy is the theft of genetic materials by the process of patenting.Once patented, the patent owner can easily prevent competitors from producing the product, occasionally even interfering with the lifestyles of the community, which is the source of the patented product.In such cases, farmer and community livelihoods are threatened. The neem campaign consisted of a group of NGO's and individuals. This was done to mobilize worldwide support to protect indigenous knowledge systems.The neem patent became the first case to challenge US and European patents on the ground of biopiracy.PROBLEM: In 1971, us timber importer Robert Larson observed the tree's usefulness in India and began importing neem seeds to Wisconsin. He then conducted safety and performance tests on it and sold the patent for the product to the MNC, W R Grace and Co. Since 1985, over a dozen US patents have been taken out by the US and Japanese firms on the formulae for stable neem-based solutions, emulsions, etc. It also began suing Indian companies for making the emulsion. DISPUTE:The controversy about who has the right over the neem tree raised may question Indian companies claim that what the US companies are calling inventions is stealing and pirating the indigenous practices and knowledge of its people. Even the green party of Europe supported this claim.US, on the other hand, stated that what they are doing will help the Indian economy.Another issue is whether the neem tree is patentable because it is a product of nature. The problem is that W R Grace does not have a patent on the tree but on the process of making the emulsion. CASE JUDGEMENT: On 30 September 1997EPO accepted the arguments offered by Indian scientists and rejected the order of the US patent.The Indian scientists argued that the Indians had known the medicinal properties of neem for thousands of years, and hence no other company can patent its properties.The EPO agreed to withdraw the patent in May 2000.The US also needs to change its laws that allow biopiracy.

Novartis case

challenging the Indian Patent Office for 'Denial of its patent application for Glivec'Constitutional validity of section 3(d) of Indian Patent Law,1970

Section 3(d) of the Indian Patent Act– Prevents the Grant of a Patent for New Forms of Known Substances, Unless It is demonstrated with an Increased Efficacy. 'Glivec Patented in 35 countries & Helpful in Chronic Myeloid Leukemia.

Imatinib Mesylatein Beta Crystalline Form. ' Restrain Indian Generic Pharmaceutical Manufacturers from Producing Drugs based on the Compound. ' Not Compatible with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Vague). 'Non-Uniform Discretionary Power on the patent controller.

Glivec does not Qualify the Test of Inventionas laid down in Section 2(1)(j) and Section 2(1)(j (a)) of the Indian Patent Act. ' Novartis decided to stop any further Investment in R&D in India.

IPR IN ABROAD

Globalization and the rapid proliferation of technology have elevated the importance of IPR protection for small and medium enterprises. The intangible nature of the intellectual property and worldwide lack of standard practices create challenges for countries businesses wishing to protect their inventions, brands and business methods in foreign markets

For example, a car might have one hundred patents associated with it in various parts and components. One patent may be all that needed to cover one product, a patented drug in the pharmaceutical industry.

Some companies obtain patents to license or sell them to others, making money for their inventions without manufacturing or service anything. Other companies actively seek patents that they can purchase because they want to speed up their R&D efforts

Example: Daimler company which registered 2000 patents in 2009, pays 2600 outside inventors to use their innovations in Daimler products, so patents are the future of innovation management.

Filing a patent is relatively inexpensive. Everybody can afford the filing fee, but defending a patent can be expensive. How overworked the patent examiners and often errors on granting a patent means there are often overlapping patents. We wind up in these fights. We cannot tell, courts cannot tell, a patentee cannot tell what they mean.

The US government office of the United States trade representative (USTR) monitors intellectual property rights worldwide and fights IP theft because IP theft impacts 18 million Americans livelihood depends on IP protection. USTR evaluates countries and rates them according to how those countries enforce IP rights

The WIPO provides a list of national IP offices and a range of services for businesses looking to protect their IP internationally. Protecting and managing your IP abroad can be very complex. If you plan to sell, distribute, manufacture, or source your products abroad, you should seek help from an IP attorney or professional IP advisor.

According to a world statistical review, China, America, Japan has strong GDP and R&D and they primary patent filers. In 2007, 59.2% of patents were filed in these three countries.

In 2007 3.3 million trademark applications are filed across the world, and significant filers are IP offices of china and the united states of America. In 2007 the worldwide industrial design application filed was 621000 applications among 43.1% applications filed by China's IP offices.

The patent applications filed through the Patent Cooperation Treaty (PCT) in 2008 were approximately 163,600.Globally some companies are topped like Huawei Technology (China), Panasonic Corporation (Japan) and Philips (Netherlands) were ranked first,second and third in patent and PCT filings.

In university sector. The University of California filed 345 PCT applications. Tokyo, Seoul National, Imperial College and Osaka are the four non-US universities in the top 20 list.

China, Germany, Japan, the Republic of Korea and the US accounted for around 70% of world R&D expenditure, and these countries are the top five ranked countries for resident patent filings.

If we talk about the comparison of India and China, Domestic applicants file actively in China: 62 percent in China whereas 20 percent in India. Bigger Economy in China in comparison to India.Better Infrastructure for Patent filing in China. Better IP awareness among individuals and Universities. Easy to get a grant in China. Better enforcement of IP Laws in China.

China to be the leading country with the highest number of Patents filed in 2019, followed by the USA. China also leads in the number of Trademarks filed. India is ranked 10th globally in the number of Patents filed and 8th in terms of trademarks.

Guang Dong Oppo Mobile (1,927), Boe Technology (1,864), Ericsson (1,698), Ping An Technology (1,691), Robert Bosch Corporation (1,687) and LG Electronics (1,646). The list is based on applications filed through the WIPO's Patent Cooperation Treaty (PCT) system. India fares in applying for trademarks as well, having made up for just 0.7% of global filings in 2019, the WIPO data showed. The country is nearly absent in industrial designs, having filed for only three designs, against 21,807 globally. India's R&D spending remained constant at around 0.6-0.7% of its GDP, way below the expenditure level of countries like Israel (4.3%), South Korea (4.2%), the US (2.8%) and China (2.1%). Developing countries have fewer patents, trademarks, and industrial designs due to inadequate R&D and a lack of awareness about the importance of filing such applications.

INTERNATIONAL ORGANIZATIONS, AGENCIES AND TREATIES

Some several international organizations and agencies promote the use and protection of intellectual property. Although these organizations are discussed in more detail in the chapters to follow, a brief introduction may be helpful:

International Trademark Association (INTA) is a not-for-profit international association composed chiefly of trademark owners and practitioners. It is a global association. Trademark owners and professionals dedicated in supporting trademarks and related IP in order to protect consumers and to promote fair and effective commerce. More than 4000 (Present 6500 member) companies and law firms in more than 150 (Present 190 countries) countries belong to INTA and others interested in promoting trademarks. INTA offers various educational seminars and publications, including many valuable materials available at no cost on the Internet (see INTA's home page at http://www.inta.org). INTA members have collectively contributed almost US $ 12 trillion to global GDP annually. INTA undertakes advocacy [active support] work throughout the world to advance trademarks and offers educational programs and informational and legal resources of global interest. Its headquarters in New York City, INTA also has offices in Brussels, Shanghai, Washington DC, and Geneva and Mumbai. This association was founded in 1878 by 17 merchants and manufacturers who saw a need for an organization. The INTA is formed to protect and promote trademark owners' rights, secure applicable legislation (the process of making laws), and give aid and encouragement to all efforts for the advancement and observance of trademark rights.

World Intellectual Property Organization (WIPO) was founded in 1883 and is a specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world and administer 23 treaties (Present 26 treaties) dealing with intellectual property. WIPO is one of the 17 specialized agencies of the United Nations. It was created in 1967 to encourage creative activity, to promote the protection of Intellectual Property throughout the world. More than 175 (Present 188)

nations are members of WIPO. Its headquarters in Geneva, Switzerland, current Director-General of WIPO, Francis Gurry, took charge on October 1, 2008. The predecessor to WIPO was the BIRPI [Bureaux for the Protection of Intellectual Property] it was established in 1893. WIPO was formally created by the convention (meeting) establishing the world intellectual property organization, which entered into force on April 26 1970. Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) An International copyright treaty called the convention for the protection of Literary and Artistic Works signed at Berne, Switzerland, in 1886 under the leadership of Victor Hugo to protect literary and artistic works. It has more than 145 member nations. The United States became a party to the Berne Convention in 1989. The Berne Convention is administered by WIPO and is based on the precept that each member nation must treat nation must treat other member countries as its nationals for copyright purposes (the principle of —nation treatmentl). In addition to establishing a system of equal treatment that internationalized copyright amongst signatories, the agreement also required member states to provide strong minimum standards for copyrights law. It was influenced by the French —right of the authorl.

Madrid Protocol It is a legal basis is the multilateral treaties Madrid (it is a city situated in Spain) Agreement concerning the International Registration of Marks of 1891 and the protocol relating to the Madrid Agreement 1989. The Madrid system provides a centrally administered system of obtaining a bundle of trademark registration in a separate jurisdiction. The protocol is a filing treaty and not a substantive harmonization treaty. It provides a cost-effective and efficient way for the trademark holder. It came into existence in 1996. It allows trademark protection for more than sixty countries, including all 25 countries of the European Union.

Paris Convention, The Paris Convention for the protection of Industrial Property, signed in Paris, France, on 20 March 1883, was one of the first Intellectual Property treaties, after a diplomatic conference in Paris, France, on 20 March 1883 by Eleven (11) countries. According to Articles 2 and 3 of this treaty, juristic (one who has thorough knowledge and experience of law) and natural persons who are either national or domiciled in a state party to the convention. The convention is currently still in force. The substantive provisions of the convention fall into three main categories: National Treatment, Priority rights and Common Rules. An applicant for a trademark has six months after applyingto any of the more than 160 member nations to file a corresponding application in any of the other member countries of the Paris Convention and obtain the benefits of the first filing date. Similar priority is afforded for utility patent applications, although the priority period is one year rather than six months. WIPO administers the Paris Convention.

North American Free Trade Agreement (NAFTA) came into effect on January 1, 1994, and is adhered to by the United States, Canada, and Mexico. The NAFTA resulted in some changes to U.S. trademark law, primarily about marks that include geographical terms. The NAFTA was built on the success of the Canada-U.S Free Trade Agreement and provided a complement to Canada‘s efforts through the WTO agreements by making deeper commitments in some key areas. This agreement has

brought economic growth and rising standards of living for people in all three countries.

General Agreement on Tariffs and Trade (GATT) was concluded in 1994 and is adhered to by most of the major industrialized nations in the world. The most significant changes to U.S intellectual property law from GATT are that non-use of a trademark for three years creates a presumption that the mark has been abandoned and that the duration of a utility patent is now twenty years from the filing date of the application (rather than seventeen years from the date the patent issued, as was previously the case)

Various International Treaties

There are different subject matters of intellectual property like Patents, Copyright, Trademarks, Industrial design, Plant Varieties etc. The need for protection in these different subjects arose in different periods. These are reflected in different treaties. Under the aegis of WTO, Agreement on TRIPS remains the most influential, comprehensive, and inclusive of all. Other treaties are covered here for background information.

1. Paris Convention for Industrial Property, 1883 –Since it deals only with Industrial property, it covered only Patents and Trademarks. It was among the first treaties to recognize various principles of international trade like National Treatment, Right of Priority, Common rules etc.

2. Bern convention for literary and artistic works, 1886 – It provided for the copyright system. It does not provide for any formality to claim protection. Protection is automatically accorded to any creation, provided work is original and other conditions under the treaty are fulfilled. It means that your work, if original, is already protected. You can claim that you have copyright.

3. Madrid Agreement, 1881 – Governs the international recognition of trademarks. This agreement made international fillings easy and cheap.

4. Patent co-operation treaty, 1970 – It was earlier not possible for an entity to claim protection in different countries by a single application. This was made possible as it aimed for co-operation and was open for all parties to the Paris convention.

5. Budapest Treaty of 1980 – It made possible patenting for micro-organisms. The claimant is required to deposit his invention on micro-organisms with an Authority – 'International depository of Micro-Organisms' under WIPO. He shall make all the adequate disclosures.

6. Trademark Law Treaty, 1994 Harmonized administrative procedures and introduced service marksin the ambit of trademarks. Earlier trademarks were accorded only to goods.

7. The Hague Agreement concerning the International Deposit of Industrial Design1925. It created the International Design Bureau of WIPO.

8. International Union for protection of new plant varieties, 1961 This provides breeders and farmers with the right to new plant varieties.

9. Agreement on Trade-Related Aspects of Intellectual Property Itis a landmark and most comprehensive treaty on Intellectual property. While earlier treaties subject matters were specific, TRIPS deals with eight kinds of property rights – Patents, Trademarks, trade dress, Copyrights, Industrial Designs, Plant Varieties, Integrated Circuits and layouts. Geographical Indication. Further, almost all countries are a TRIP party. In earlier treaties, only limited countries participated. It also provides an enforcement mechanism that was not available in WIPO treaties. It mandated all the member countries to make their domestic laws complaints to TRIPS. India passed specific laws and amended others. India's IPR regime now stands complaint fully to TRIPS.

E.g., India amended patent law in 2005 to provide product patent protection. Earlier protection was available only to processes. TRIPS was the result of discussions held in the Uruguay Round, which led to the formation of WTO. This treaty is an offshoot of the General Agreement on Trade in Goods (GATT). This treaty provided a robust Dispute Resolution Mechanism and stringent penal provisions under the auspices of WTO.

Further, every treaty under WTO has based some principle which is

1. National Treatment – No foreign products, once they enter domestic territories, shall be discriminated against in any manner. This also applies to intellectual property. Members must accord similar treatment to foreign creations, as they do to domestic ones.

2. Most Favoured Nation – If a member provides some privilege, favourable treatment or exemption to another country or group, other members must get similarly favourable treatment.

3. Right to priority treatment – If a similar patent application has been filed in two different countries, then the prior applicant has the right to the patent.

4. Concept of Minimum Standards – This treaty provides a minimum level of protection that every member should provide to intellectual property. Members have the discretion to provide more protection than minimum standards.

5. Universal Copyright Convention, 1952. UNESCO administers this convention. This exists simultaneously with Bern Convention. This treaty provides for procedural formalities for filing and recognition of copyright. As the Bern convention provides for an automatic route to copyright, this treaty has lost its relevance

International copyright treaties

Berne convention 1886, for protection of literary and artistic works

Rome convention 1961, for the protection of performers and producers of phonograms and broadcasting organizations.

Geneva convention 1971, for the protection of producers of phonograms against unauthorized duplication of their phonograms

Brussels convention 1974, related to the distribution of programme carrying signals transmitted by satellite

WIPO copyright treaty 1996

WIPO performances and phonograms treaty 1996

Current IP Laws in India

Copyright

Copyright Act of 1957, copyright rules 1958

Amendments to copyright 2012

Customs

Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

Designs

The Designs Act, 2000

The Design (Amendment) Rules, 2008

Geographical Indications

Geographical Indications of Goods (Registration and Protection) Act, 1999

Geographical Indications of Goods (Registration and Protection) Rules, 2002

Geographical Indications of Goods (Registration and Protection) Rules, 2020

Information Technology

The Information Technology Act, 2000

The Information Technology Rules, 2000

Cyber Regulations Appellate Tribunal (Procedure) Rules, 2000

Patents

The Patents Act, 1970

The Patents (Amendment) Act, 2005

The Patents Rules, 2003

The Patents (Amendment) Rules, 2006

The Patents (Amendment) Rules, 2020

Plant

Plant Varieties Protection and Farmers' Rights Act, 2001

Semiconductor and Integrated Circuits

Semiconductor Integrated Circuits Layout Design Act 2000

Rules for the Semiconductor Integrated Circuits Layout Design Act 2000

Trademarks

The Trade Marks Act, 1999

The Trade Marks Rules, 2002

The trademarks (amendment) act 2010

Biological diversity

Biological diversity act 2002

PATENTS

A patent for an invention is granting a property right to the inventor issued by the Indian patentoffice. Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in India or, in exceptional cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. Indian patent grants are effective only within India, Indian territories,

Under certain circumstances, patent term extensions or adjustments may be available. The right conferred by the patent grant is, in the language of the statute and of the grant itself, the right to exclude others from making, using, offering for sale, or sellingl the invention in India or importingl the invention into India. What is granted is not the right to make, use, offer for sale, sell or import, but to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without the aid of the IPO.

Huawei, Mitsubishi Electric, Samsung and Qualcomm filed more international patent applications each than the whole of India in 2019, showed the latest data compiled by the Geneva-based World Intellectual Property Organization (WIPO). India is markedly less spending on research and development (R&D).India filed only 2,053 patents applications in 2019, accounting for fewer than 1% of the global filings (see

chart). In contrast, Huawei alone filed 4,411 applications, followed by Mitsubishi Electric (2,661), Samsung (2,334) and Qualcomm (2,127).
The essential purpose of these amendments is to bring in efficiency in the procedures followed for application, review, and disposal of the patents filed. Modernization of the IP offices where-in technology is augmented for IT-enabled IP offices (e-filing, paperless electronic process, etc.). Removal of backlog and speedy examination & disposal of applications is cited for the augmentation of Manpower

Patentable:

A new product or process involving an inventive step, capable of making use in industry. It means the invention to be patentable should be technical and should meet the following criteria

i) Novelty: The matter disclosed in the specification is not published in India or elsewhere before filing the patent application in India.

ii) Inventive Step: The invention is not obvious to a person skilled in the art in the light of the prior publication/knowledge/ document.

iii) Industrially applicable: Invention should possess utility to be made or used in industry.

Non-patentable:

The following are non-Patentable inventions within the meaning of the act:

(a) an invention that is frivolous or which claims anything obviously contrary to well established natural laws

(b) an invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or the environment

(c) the mere discovery of a scientific principle or the formulation of an abstract theory (or discovery of any living thing or non-living substances occurring in nature)

(d) the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant; Explanation- For this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties about efficacy.

(e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance

(f) the mere arrangement or re-arrangement or duplication of known devices, each is functioning independently of one another in a known way; (g) a method of agriculture or horticulture.

(h) any process for the medicinal, surgical, curative, prophylactic,diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.

(i) plants and animals in whole or any part thereof other than micro-organisms but including seeds, varieties and species and essentially biological processes for producing or propagating plants and animals.

(j) a mathematical or business method or a computer programme per se or algorithms.

(k) a literary, dramatic, musical or artistic work or any other aesthetic creation, including cinematographic works and television productions.

(I) a mere scheme or rule or method of performing a mental act or method of playing a game.

(m) a presentation of information.

(n) topography of integrated circuits.

(o) an invention that, in effect, is traditional knowledge or aggregation or duplication of known properties of a traditionally known component or component.

(p) Inventions relating to atomic energy and the inventions prejudicial to the interest of the security of India.

Product and process patents

The issue relating to protecting a product and protecting a process is very relevant only in the case of inventions in the chemical field. The basic philosophy behind the grant of a patent for the preparation of a product is that the said product can be manufactured by a new, different and innovative method. When one refers to a patent as a product patent, he has developed a new product. Similarly, when one refers to a patent as a process patent, he has developed a new and improved process for producing a known product. In the case of a product patent, one will have claims (defining the area of the legal protection) for the new product and, if he desires, can also have claims for the process for preparing the said product. Of course, if he does not claim the process is mandatory that the process for the preparation of the new product should be disclosed in the text of the document (specification). Whereas in the case of a process patent, one can have only claims for the process and not for the product, as the product prepared by the said process is already known, and therefore, there is no novelty in such a product. With the coming into force of the product patent regime in India, only those new products on the date of filing of the application for a

patent for that product will be patentable and not others. The exception is the WTO applications (meaning those applications claiming new pharmaceutical, agricultural, chemical products) filed since Jan 1st1995. In other words, the products which are already known before Dec 31st 2004 (except the above said WTO applications) cannot be patented as their novelty has been lost.

On the other hand, the rights in the process patent are confined to the use of that particular process of preparing the product and nothing else. Therefore, anybody else can develop an alternate process, and if it satisfies the criteria of patentability, he can secure a patent for that alternate process. In this context, it should be noted that the product obtained by the processes is already known in this case. Therefore, nobody gets protection for the said product. Hence, the commercial production of the said compound by the alternate process is possible without the fear of any infringement, even though a patent for another different process of preparing the same substance is in force in the same country. The possession of a patent confers the patentee not merely certain valuable monopoly rights and privileges but also certain obligations and duties. It is also to be noted that if the alternate process for a product developed is very efficient. The said product is beneficial having good commercial potential, the two different patent holders for the respective inventions (one for the product and another for the improved process) can come together and have a joint agreement (cross-licensing) and bring the new product to the market and share the profits amongst themselves. Such an exercise will benefit society at large in getting the fruits of the research work. Instead of hampering research and development (R&D) in developing alternative processes for a product under the product patent regime, it will enhance developmental activities.

As mentioned above, in many countries, including India, the patent law excludes certain specific kinds of inventions from being patentable even though the inventions satisfy all the three essential criteria for patentability, namely, novelty, inventive step (non-obvious) & Utility. Examples of such non-patentable inventions are nuclear transformation, human beings, plants & animals etc. The types of inventions which are not patentable are stipulated in the patent legislation of the country concerned.

In India, the inventions for which patents can be secured is defined in Section 2(1) (j) of the Act. The term processl may be defined as one or more steps or acts performed on materials/substances to produce a result (product/composition /material /substance). The process should be regarded as an artificial process or operation of an industrial nature wherein certain starting materials/substances are subjected to the process or operation to convert the starting materials/substances in such a manner to produce a new or known and useful article or substance or substance or product which is tangible. Suppose the starting materials/substances used in the process remains unaltered, and the resulting product also remains the same as the starting materials/substances. In that case, the process may not be an invention for which patent protection can be secured.

What is patent of addition

When an invention is patented, and if any improvements or modifications are coming up for that invention as a natural process, as a result of the feedback of the market or

industry, then the original patented product or process may be protected by the patent of addition in India. A patent of addition is granted after the grant of a patent for the main inventions. The Indian Patent Law offers protection for such improvements or modifications through Patents of Addition. Sections 54, 55 and 56 of the Indian Patents Act, 1970 deal with the law about patents of addition and the same are reproduced.

Patent registration flow chart

Publication of patent application in India

Usually, every patent application is published after 18 months of applying and objections are invited.

The patent application shall not be open to the public for eighteen months after filing or date of priority, whichever is earlier.

The Controller may issue direction to prohibit or restrict such publication.

In the secrecy direction, the application will be published when the secrecy directions cease to operate.

The publication will include the particulars of the date of application, number of applications, name and address of the applicant and an abstract.

Examination of patent application in India

An examination is taken up only if the applicant or any other interested person makes a request in the prescribed manner for such examination within 48 months from the date of filing of the patent application.

If such a request is not made within the prescribed time, the patent application is treated as withdrawn.

When the patent application is in respect of an invention for a chemical substance used as an intermediate in the preparation of a medicine or drug including insecticides etc. used for protection or preservation of plants, the request for examination has to be made within 12 months. or within 48 months from the date of the application, whichever is later

Acceptance and Advertisement of Complete Specifications-

Once the complete specification is accepted, the Controller notifies it the applicant and advertises it in the Official Gazette.

From the date of advertisement of the acceptance of the complete specification and until the date of sealing of the patent, the applicant will have the like privileges and rights as if a patent for the invention had been sealed on the date of advertisement

Granting of patent application in India

Opposition to the Grant of Patent: Any person interested in opposing the grant of patent may give notice to the Controller of such opposition within 4 months from the date of advertisement of the acceptance on the grounds like:-

1. the invention was wrongfully obtained by the inventor/applicant.

2. the invention, as claimed in any claim of the complete specification has been anticipated in a specification filed for another patent earlier.

3- The invention claimed in any claim was publicly known/used in India before the priority date of the claim.

4- The subject of the patent is not an invention within the meaning of the Act.

5- The information furnished is false.

6- Geographical origin of biological material is not disclosed or falsely disclosed.

Grant and Sealing of Patent

Where the application for a patent along with complete specification has been accepted either without opposition.

After the opposition, a patent shall be granted if the applicant makes a request in the prescribed manner for a grant of patent.

The request has to be made within six months from the date of advertisement of the acceptance of the complete specification.

The patent so granted shall be sealed with the seal of the patent office and the date of sealing of patent shall be entered in the register.

Rights Under Indian Patent Law

Under section 47, a patent granted under this Act shall confer upon the patentee

(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India

(b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India:

Right to exploit the patent.: The patentee has a right to prevent third parties from exploiting the patented invention.

Right to grant license: The patentee has the power to assign rights or grant licenses.

Right to surrender: The patentee is given the right to surrender the patent by giving notice in the prescribed manner to the controller.

Right to sue for infringement.: A patentee is given the right to institute proceeding for infringement of the patent in a district court.

TRANSFER OF PATENT

A patent is the exclusive property of the inventor. It hence can be transferred from the original patentee to any other person by assignment, grant of license, or operation of law.

The IPA requires that an assignment, license or creation of any other interest in a patent must be in writing, clearly specifying all the terms and conditions governing the rights and obligations of the parties.

This document must be registered in the prescribed manner within the prescribed time.

The person getting such entitlement in a patent has to apply in writing to the Controller to register the title.

Patent application process

Overview of the Application Process

The process of preparing, filing, and shepherding a patent application through the PTO (Patent & Trademark Office) towards issuance is called prosecution. An application may be filed by himself or herself or, as is more usual, by a 600 patent attorney or patent agents in India. Inventors file only 20% of all applications without the assistance of attorneys. The application is filled with PTO. It will be assigned to one of more than 100 patent examiners with experience in technology related to the invention who will review the application and conduct a search of patent records to ensure the application complies with the statutory requirements for patents. The

process may continue for several rounds. A Notice of Allowance will be sent to the applicant, which specifies an issue fee paid to the PTO for the patent to be granted.

	Individual inventors	Small entity	Other than small entity
Application for grant of patent	1600	4000	8000

Application for grant of patent form 01

Provisional or complete specification form 02

Early publication requests can be made with form 9

	Individual inventors	Small entity	Other than small entity
Request for early publication	**2500**	**6250**	**12500**

Request for examination of patent form 18

	Individual inventors	Small entity	Other than small entity
Request for examination	**4000**	**10000**	**20000**

Refer forms and fees on government website www.ipindia.nic.in

Response to the examination report (objections): the patent agent or attorney may charge a professional fee in response to objections based on the complexity of objections and the number of objections received. The fee for a response to objections varies 5000-20000 rupees depending on the complexity, subject matter and number of objections.

Searching a patent

A patent search or a patentability search is a search conducted in patent databases and the literature available to check whether any invention similar to your invention already exists. In other words, it evaluates your chances of getting a patent grant. Therefore, instead of going forth with the filing, if one conducts the patent search, one can get a clear idea about the invention's patentability, whether the application should be filed and the strengths and weaknesses of the invention.

Patent databases: Patent databases are an excellent source for extracting patent information that cannot be carried out at a reasonable price with conventional methods.

Patent databases which contain bibliographic data,abstracts, and claims, full text, indexing data, legal status data, graphical data

Search for prior art before filing patent applications •Avoid infringement, Monitor patents in a given area of technology, Monitor patents by a company, university or an individual, Locate information on a specific patent •Market analysis/statistics, Identifying technological trends, Searches for potential cooperation partners and licensors.

Advantages of using onlinedatabases in acquiring patent information time efficiency cost-effectiveness comprehensiveness up-to-date information easily assessable information from your desk complete coverage on an international level

Maintain a current, knowledgeable position - current intellectual property portfolio possible patent infringement competitor research make informed business decision decide future research directions

Current awareness information is critical for protecting an organization's research and marketing endeavours

International Patent Classification (IPC) works as a universal classification for patents started in 1975 and periodically updated. We currently use IPC 7th Edition. Section, Class & Group. The International Patent Classification looks like this:

A 02 J 1/00

A=Section 02=Group J=SubGroup 1=Class 00=SubClass

A 47 J 27/09 includes the safety device on your rice cooker

B 63 G 11/00 covers your various aircraft carriers

US Patent Classification US Patents are classified with 400+ main classes and thousands of subclasses.

424 / 497

424= Class 497=SubClass

Patent search tools

FREE	PAID
Uspto Espacenet Depatis PAJ CIPO Many more patent office sites	CASWEBDelphion Intellectual Property Network DialogGetThePatent.com IPOrganizer.com IP Search Engine Lexis-Nexis MicroPatent PATSCANQuestel Orbit Patent Database SCIFINDER Shadow Patent Office

	STN SurfIP.co

The Need for a Search:

Patentability requires novelty and non-obviousness.

The patentability search, sometimes called a novelty search

A search is recommended to determine the feasibility of obtaining a patent.

A novelty search is somewhat limited in scope and is designed to disclosewhether an application will be rejected based on lack of novelty orobviousness.

A novelty search can usually be completed for less than 5000 rupees.

If an invention is intended for immediate commercial use or sale, an additional search, call an infringement search or investigation, is often conducted concurrently with the novelty search.

This novelty search is thus more expensive. Conducting a patent search is indispensable before filing a patent application. The Indian Patent Advanced Search System, InPASS, was introduced on Feb 27th, .2015. Before InPASS, IPAIRS [Indian Patent Information Retrieval System] was used to conduct a patent search in India. InPASS is an updated version of IPAIRS as it allows for a full-text search of all Indian patents and Patent Applications. Apart from this, InPASS also allows a person to conduct a patent search using Wild Cards and Boolean Operators. Now, InPASS is the Indian patent office database used to conduct an advanced patent search in India.

Types of Application (global)

1.Provisional Application

2. Utility Application

3. Design Application

4.Plant Application

5.Continuation Application

6.PCT (Patent Cooperation Treaty) Application

7.Divisional Application

For India required applications

Ordinary Applications

Convention Application

Patent of Addition Application

Divisional Applications

PCT Application

Drafting of a patent.

Patent drafting, besides the most crucial document in the entire patent registration process, is also considered to be one of the most complex techno-legal documents. The patent drafting/writing specification contains the aspects of the invention such as field of invention, background, summary, detailed description, patent drawings, abstract and patent claims for which protection is sought. Two types of patent specifications can be drafted based on the invention stage and the need for clients. The provisional patent specification is mainly drafted to describe the invention for the invention's initial stage andsecure the invention's priority date. No patent is granted based on the provisional patent specification. On the other hand, a non-provisional specification is drafted with patent claims for the invention ready to launch on the market. The non-provisional specification has to be drafted within 12 months from the date of provisional patent filing

Filing of a patent

Application for a patent can be filed only on the payment of a full fee

The filing fee is charged based on the number of pages and the number of claims made in the patent document.

No extra fee is charged up to 30 pages and ten claims.

Power of attorney if applicable.

Application, Specification and other documents should be either in Hindi or English language

If application discloses sequence listing of nucleotides and amino acids, it should be filed in electronic form

There is only one application filed for one invention.

This must be done in a prescribed form along with the prescribed fees in the appropriate patent office.

It should be accompanied by a provisional or a complete specification

A specification is an accurate description of the patent stating how the invention can be carried out by the method best known to the applicant. The specification ends with a claim or claims defining the scope of the invention for which protection is claimed.

Every application must be accompanied by a provisional or a complete specification.

• It is possible to apply with provisional specifications. However, it is necessary to file the complete specifications within one year of filing the original patent application.

• The twelve-month limit can be extended to 15 months if an application is made to the Controller with such request and the prescribed fee is paid.

How to file a patent application in India

One can file the Patent application in the Indian Patent Office in two ways:
a. Online Patent filing :

also known as online Patent registration, the Indian Patent Office's Electronic Patent filing application isan e-service portal.

b. Offline Patent filing :

Apart from performing Patent filing online, one can also file a Patent through the offline method, where one needs to submit hard copies to the respective Patent Office. However, filing an offline Patent Application is 10 % more compared to the official fee of the online patent registration mode.

Indian Patent office has a Patent filing application a web portal, that provides Patent filing online facility for interaction, communication, and transaction between the Patent office and the stake holder, service facilitates user-friendly and transparent system which covers comprehensive Patent filing online system, wherein, in addition to the online patent registration of new applications, subsequent online filing formalities can also be completed.

What are the documents required to file a patent application in India?

A piece of work that contains:

Description of the invention

Drawings necessary to understand the invention

One or more claims

An abstract

The name(s) of the inventor(s)

Corresponding foreign applications, if applicable.

Parts of the patent document

1.Request for grant of application (application form):

title of the invention

name, address of the patent agent

name, address of the inventor

filing date

priority date

publication number and date

application number

international patent classification

2.Specifications: Disclosure of the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

Description of a related art

Field of invention

Background of invention

3.Claims: define the matter for which protection is sought. To understand claims, contact the patent agent.

4.Abstract: a concise summary of the disclosure of the information

5.Drawings: illustration to show every feature of the invention and may consist of several views

Patent specification

The specification, which is also called the disclosure, is a written description of an invention. The patent specification is drafted both to satisfy the written requirements for patentability and define the scope of the claims. While the layout of a specification varies from place to place, it is relatively consistent between the U.S. and Europe, except that B and C are unique to the U.S. For this tutorial, the claims are described separately from the specification. The sections of a patent specification are:

A. Title of the invention.

The title of the invention is designed to describe the essence of the invention in a few words.

B. Cross-reference to related applications. In the U.S., it is required that a patent application include a section titled cross-reference to related applications. In this section, the applicant lists any provisional patent applications claiming priority, or if the application is a continuation, the patent application number(s).

C. Statement regarding federally sponsored research (if applicable). In the U.S., it is also required that the applicant include a statement regarding federally sponsored research if the invention was made under a government contract or if federal grant money was used to fund the research.

D. Background of the invention. The background of the invention is typically drafted for a jury audience. Selected art in the field is discussed to emphasize differences with the current invention and point needed improvements provided by the current invention.

E. Summary of the invention. The summary of the invention, which is distinct from the abstract, is meant to discuss the invention (i.e., the claims) rather than the disclosure as a whole. Often, the summary will discuss the advantages of the invention or how it solves the problems existing in the art, such as those presented in the background of the invention.

F. Description of the drawings. If drawings are included in the application, a brief description of each drawing is required.

G. Detailed description of the invention. The detailed description of the invention is the meatiest section of a patent. Its purpose is to adequately and accurately describe the invention.

There are generally two sections:

• A general explanation of the invention and how to practice it. The invention is described in its broadest sense to show that the inventors have a broad view of the scope of the elements. Often, preferred embodiments of the invention are described. Such embodiments are generally more limited versions of the broadest concept and are provided to support a fallback position of narrower claims if the broader concept is not patentable. Definitions of key terms are often provided and are extremely important in interpreting the scope of the claims.

• Specific examples of how to practice the invention. A patent application does not require examples. However, in practice, examples can often assist in showing patentability (e.g., enablement). The examples may or may not have been performed by the inventors. Working examples present completed undertakings. Prophetic examples are hypothetical undertakings and are always written in the present or future tense. Typically, the examples demonstrate a practice of one or more specific embodiments of the invention. H. Sequence listing. A sequence listing is required if the application includes nucleic acid or amino acid sequences. If sequences are disclosed, every nucleic acid molecule that is at least ten nucleotides, and every protein that is at least four amino acids, must be included. In many jurisdictions, sequence listings are required to be in a specific text format. The USPTO provides a free software download called Patent. which is often used to compile sequence listings.

Patent claims.

The claims are the essential part of a patent. The goal of the claims is to point out particularly and distinctly claim the subject matter which the applicant regards as his or her invention. There must be at least one claim in a patent, and the reasoning is that possible infringers must understand what is and is not protected based on the claims. Parts of a Claim A claim is generally presented in three parts, the preamble, a transitional phrase (or word), and the body. Preamble The preamble is an introductory statement that names the invention that is to be claimed. For example, A method for making a genetically modified plant. Transitional Phrase The transitional phrase (or word) specifies whether the claim is limited to only the elements listed or whether the claim may cover items or processes with additional elements. Commonly used transitional phrases include comprisingand consisting of. See also Transitional Language in Patent Claims for a more in-depth description of transitional phrases. Body, The body of a claim lists the elements (also referred to as limitations) or steps of the named invention. Claims may be independent or dependent. Independent Claims An independent claim defines an operative, complete invention by itself, without referring to or including limitations of other claims. Independent claims intend to broadly cover all embodiments of the invention without reading on prior art.Dependent Claims Dependent claims refer back to and further defines an invention recited in another claim. In doing so, a dependent claim includes all of the limitations of the claim to which it refers. Dependent claims are often used to define the scope of the elements in an independent claim and are written to protect specific embodiments of an invention. Should a court find that the main independent claim was wrongly granted, a dependent claim may still be valid and is used as a "fallback position"., Dependent claims also make it easier for a jury to determine whether infringement as occurred if the infringing activity is spelt out in a claim rather than just inferred.

Management of IP assets (IPAs) is collections of intellectual properties – patents, trademarks, copyrighted works, industrial designs, geographical indications, and trade secrets strategically chosen for their business value. IP assets have economic value because of their ability to enhance the value and financial return from technologies, products and services. The development and management of intellectual property have become a primary concern of private enterprises, especially in the fast-growing technology and cultural industries. The field of Intellectual Asset Management – sometimes called IAM, has become a professional discipline taught by business schools and offered as a service by accounting, consulting and law firms.

IP assets, when properly managed, can:

motivate and help generate revenues from product sales and licensing royalties; increase high-value exports.

Attract high-value foreign direct investment (FDI) and joint ventures.

Help retain and motivate technical personnel.

Stimulate research and development (R&D) based industries and create employment; support educational and research institutions.

Enhance corporate valuation.

Promote funding for R&D, which provides and enhances needed technologies and products.

Provide bargaining power in technology transfer negotiations.

Help to gain access to goods and technologies through licensing agreements.

IP portfolio management

Portfolio management is an essential facet of IP management. During an IP audit, the review of an IP portfolio provides an opportunity to identify IP assets whose value has become insignificant or markedly decreased. IP valuation helps in budgeting and resource allocation decisions. A bloated portfolio ties up capital and management time in underperforming assets. In many instances, value is added by selling, licensing or termination of these assets. It is necessary to consider whether poor performance is the result of bad management or weak IP. Misjudgement can result in a handover of value to a shrewd purchaser. Several private equity firms in Europe specialize in reviving underperforming brands.

THE MACROECONOMIC IMPACT OF THE PATENT SYSTEM

A. **Introduction**

A patent is a set of exclusive rights granted by a sovereign state to an inventor or assignee for a limited time in exchange for detailed public disclosure of an invention. The patent system's role in economic growth received greater attention in the recent past, especially after the Apple, Samsung case. The patent system is designed in such a way as to encourage innovation. By conferring rights on the owner to exclude competitors from the market, patents offer the incentive for people to study new technology. In some fields, particularly pharmaceuticals, it is also argued that the monopoly of the patent in the market allows the owner to recover the huge expenses invested in the research and development phase3. Technology and knowledge are essential factors for economic growth and development. Patents are legal instruments intended to encourage innovation by providing a limited monopoly to the inventor (or their assignee) in return for the disclosure of the invention. By offering exclusive rights for a limited period, an inventor may recover R&D costs and investments. It also promotes investment to commercialize and market new inventions so that the general public can enjoy the fruit of the innovation. Further, the system is designed to disseminate knowledge and information to the public by publishing patent applications and granted patents. Therefore, allowing the ideas to become public and forming breeding grounds for creating many more new and valuable inventions through the dissemination of the knowledge included in the published invention.

B. Relationship between the patent system and economic growth.

The patent system has an impact on the economy as a whole. The surrounding economics group of patents or a single patent revolves around the balance between the expense of maintaining the patents, and the income derived from owning those patents

C. Patents & free and fair market competition

A patent is an exclusive right enjoyed by the inventor to exclude others from commercially exploiting the invention for a limited period. However, in order to get Patent rights, the

inventor shall disclose the invention. Thus disclosure of the invention is an essential consideration in any patent granting procedure. The balance between the interest of patent holders and that of the public has recently been discussed a lot in the light of competition policy because the right to exclude others particularly referred to as monopoly. The aims and objectives of patent and competition policy may seem prima facie as odds. However, both competition policy and patent law are complementary, as both aim to encourage innovation and competition. Patent rights are not legal monopolies froma competition law perspective. They do not necessarily confer monopoly power on patent rights holders. Most countries adopted a market system, where free and fair competition between the enterprises are allowed within limits defined by law. Such competitions are considered the best means of satisfying the demand-supply chain and thereby protecting the consumer interest and the economy. However, when there is competition, the possibility of unfair practices are high. Patent holders may deploy their rights improperly to the detriment of competition and technological progress by forming a cartel and suppressing competition in associated markets or alternative technologies to raise the entry barriers. Such practices will be having a direct detrimental impact on the economy as well as the consumer interest. Rules on the prevention of restrictive trade practices as well as on prevention of unfair competition interrelated as both aims at ensuring an efficient operation of the market. However, fair play in the market cannot be ensured only by the protection of industrialproperties. Therefore, it is necessary to supplement the laws on industrial property. This can be done by preparing competition law flexible, and the protection thereunder must be independent of any formality such as registration. In order to maintain fair competition within the market, competition policy prohibits such restrictive trade practices as well as agreements that restrict fair competition in the market. Hence, the interplay between competition policy and the patent law ensures innovation by keeping away abuse of dominant powers, maintaining fair competition and improving consumer welfare.

D. Patent policies and economic growth

The policymakers have recognized the importance of Patents and the needs for specific policies for patents during the early 1990. As a result, policymakers recognized the role of the patent system as an important element of the institutional infrastructure, thereby encouraging private investment in the Research & Development (R &R&D) sector. Patents as a private and intangible good prevent competition based on free-riding and support innovation-based competitions through limited monopoly and the public good through innovation disclosure. Therefore, we can say that the patent system offers a proper balance between two extreme policies viz. private good and the public good. Besides accelerating the growth in innovation, patents also assist in determining the directions of technical change, thereby leading to adopting necessary patent policies in countries with no such practices.

E. Economic impact of patents

The scope of patent protection is regularly assumed to be much broader than determined by law. It is then no wonder that the assumption that intellectual property rights in general and patents, in particular, confer an economic monopoly on their owner is considered by Kitch to be one of the elementary but persistently repeated errors in economic analysis. The economic importance of patents is rapidly increasing. However, visible and demonstrable evidence of economic payoff attributable to intellectual property (IP) protection (including patent

protection) is currently not sufficiently widespread. It is always difficult to analyze the role of the patent system in the economic development process due to the complexities in separating or desegregating the effects of IP protection from other factors that impact the developing economies. The role of patents in economic development is likely to be case-specific, in the context of both variations from industry to industry and variations among countries. Effects of patents on a given market may vary widely according to the type of market and whether there are other barriers to entry. Even in socialist monopole economies, the adherence to international patent laws was or becomes strict, as the effect is reciprocal for the public economy, as soon as the level of technology development in these economies creates a comparative advantage. However, since patents essentially encourage innovation by giving owners the right to monopolize the market for a limited time, the public will suffer from patents that are not innovative by paying a higher cost.

Patent offices in India

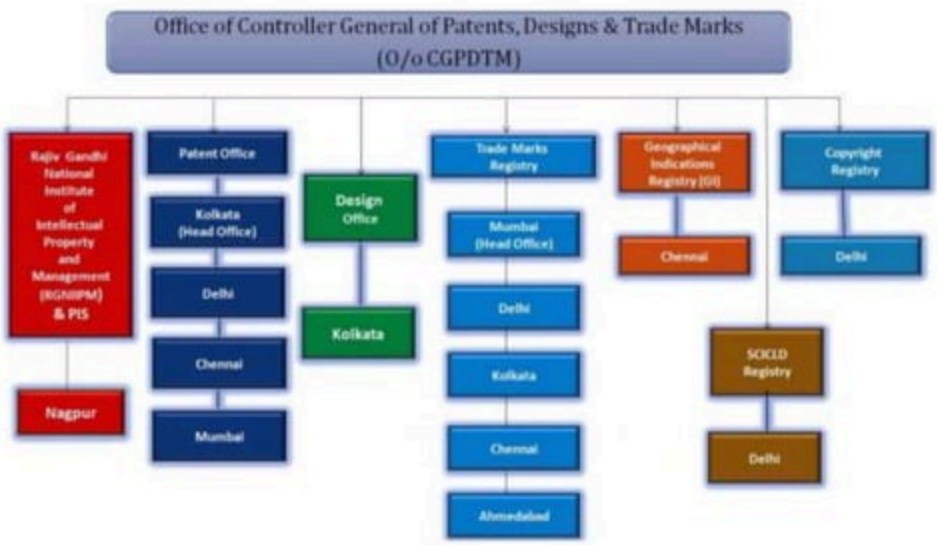
The head office for Patent Administration in India is in Kolkata. Patent offices have 4 four branches based on territorial jurisdictions:

MUMBAI- The States of Maharashtra, Gujarat, Madhya Pradesh, Goa and Chhattisgarh and the Union Territories of Daman and Diu & Dadra and Nagar Haveli.

CHENNAI- The States of Andhra Pradesh, Karnataka, Kerala, Tamil Nadu and the Union Territories of Pondicherry and Lakshadweep.

NEW DELHI- The States of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Uttar Pradesh, Uttaranchal, Delhi and the Union Territory of Chandigarh.

KOLKATA- The rest of India.



COMPULSORY LICENCING

Patentable drugs are not available to the public at a reasonably affordable price is one of the grounds of granting compulsory licencing. It is permission granted by the government in the aspect of public interest to a non-patentee to manufacture a patented product. It is given in a national emergency, extremely important, during covid like pandemics.

Compulsory licenses are sovereign state authorizations that enable a third party to make, use, or sell a patented product without the patent holder's consent. Provisions about compulsory licensing are provided for under both the Indian Patent Act, 1970, and the international legal agreement between all the member nations of WTO – the TRIPS. In India. Under Section 84(1) of the Indian Patent Act, 1970, after three years from the grant of a patent, any interested person may make an application for a compulsory license because the patented invention:

(a) Does not satisfy the reasonable requirements of the public;

(b) Is not available to the public at a reasonably affordable price; and

(c) Is not worked in the territory of India.

In addition to the grounds mentioned above, according to Section 92 of the Act, compulsory licenses can also be issued suomotu by the Controller of Patents according to a notification issued by the Central Government if there is either a "national emergency" or "extreme urgency" or in cases of "public non-commercial use". The said section enables the Government of India to notify to the public of such extreme circumstances, whereupon, any person interested can apply for a compulsory license, and the Controller in such case may grant to the applicant a license over the patent on such terms and conditions as he thinks fit.

The patentee, however, has the right to be heard in the compulsory licensing application process.

India's first-ever compulsory license was granted by the Patent Office on March 9, 2012, to Hyderabad-based Natco Pharma for the production of a generic version of Bayer's Nexavar, an anti-cancer agent used in the treatment of liver and kidney cancer. In the Bayer vs Natco case, it was established that only 2% of the cancer patient population had easy access to the drug and that Bayer was selling the drug at an exorbitant price of 2.8 lakh INR for a month treatment. Further, on the ground that Nexavar was being imported within the territory of India, the IPO issued a compulsory license to Natco Pharma, which assured that the tablets would be sold for Rs. 8,880/- per month. It was settled that 6% of the net sales of the drug would be paid to Bayer by Natco Pharma as royalty.

In the second case of Compulsory licensing in India, the Controller rejected the BDR Pharmaceuticals application for compulsory license (made on March 4, 2013) for the BMS cancer drug, SPRYCEL. The Controller rejected the compulsory license application made by BDR for stating that BDR has failed to make a prima facie case to make an order under section 87 of the Act. The controller in the said case observed

that BDR Pharmaceuticals had not made any credible attempt to procure a voluntary license from the Patent holder, and the applicant has also not acquired the ability to work the invention to the public advantage.

In India's most recent case of compulsory licensing, Lee Pharma, a Hyderabad based Indian pharma company, filed an application for compulsory license (dated 29.06.2015) for the patent covering AstraZeneca's diabetes management drug Saxagliptin. In order to make a prima facie case, Lee Pharma strived to show that their negotiations for a voluntary license with the patent owner were not rewarding as they did not receive any response from the Patent owner within a reasonable period. The grounds alleged by Lee Pharma were that:

- the patentee has failed to meet the reasonable requirements of the public,
- the patented invention is not available to the public at a reasonably affordable price, and
- the patented invention is not worked in India.

However, all three grounds of Lee Pharma were rejected by the Controller General, and the Compulsory license application was refused. The application was rejected because Lee Pharma failed to demonstrate the reasonable requirement of the public with respect to Saxagliptin and further failed to demonstrate the comparative requirement of the drug Saxagliptin vis-a-vis other drugs are also DPP-4 inhibitors. Further, Controller General held that all the DPP-4 inhibitors were in the same price bracket and the allegation that Saxagliptin alone was being sold at an unaffordable price was unjustified. The Controller General also stated that Lee Pharma failed to show the exact number of patients being prescribed the patented drug. How many of them were unable to obtain it due to its non-availability. Consequently, it was challenging to hold whether manufacturing in India was necessary or not.

PATENT COOPERATION TREATY (PCT)

The advantage of PCT is the Simplification of paperwork. It has reduced cost and reduction in time for obtaining protection for an invention throughout out the world

PCT offers advantages to applicants by giving sufficient time to access the market potential of their patents in different countries. India is a signatory to PCT and is a member country. Nearly 150 countries are in PCT, and your rights exist in the entire world for 2.5 years

The Patent Cooperation Treaty (PCT) assists applicants in seeking patent protection internationally for their inventions, helps patent Offices with their patent granting decisions and facilitates public access to a wealth of technical information relating to those inventions. By filing one international patent application under the PCT, applicants can simultaneously seek protection for an invention in 150 countries

throughout the world. The PCT makes it possible to seek patent protection for an invention simultaneously in many countries by filing a single internationalpatent application instead of filing several separate national or regional patent applications. The granting of patents remains under the control of the national or regional patent Offices in what is called the national phase.

Advantages The PCT System has many advantages for an applicant, for the patent Offices and the general public:

(a) An applicant has up to 18 months more than if he had not used the PCT to reflect on the desirability of seeking protection in foreign countries, to appoint local patent agents in each foreign country, to prepare the necessary translations and to pay the national fees;

(b) If an international application is in the form prescribed by the PCT, it cannot be rejected on formal grounds by any PCT Contracting State patent Office during the national phase of the processing of the application;

(c) The international search report and written opinion contain essential information about the potential patentability of your invention, providing a solid basis for you to make business decisions about how to proceed;3

(d) There is also a possibility that during the optional international preliminary examination, the international application be amended, and then entered into dialogue with the examiner to argue the case thoroughly and put the application in order before processing by the various national patent offices;

(e) The search and examination work of patent offices in the national phase can be considerably reduced thanks to the international search report, the written opinion and, where applicable, the international preliminary report on patentability that accompany the international application;

(f) Applicants are also able to fast-track examination procedures in the national phase in Contracting States that have PCT-Patent Prosecution Highway (PCT-PPH)agreements or similar arrangements;

(g) Since each international application is published together with an international search report, third parties are in a better position to evaluate the potential patentability of the claimed invention;

(h) For an applicant, international publication online puts the world on notice of their invention. Such an applicant may also highlight their interest in concluding licensing agreements on PATENTSCOPE, which can be an effective means of advertising and looking for potential licensees;

(i) Applicants also achieve other savings in document preparation, communication and translations because the work done during the international processing is generally not repeated before each Office (for example, he may submit only one copy of the priority document instead of having to submit several copies); and

(j) If an invention appears to be not patentable at the end of the international phase, the applicant may abandon the PCT application and will have saved the costs he would otherwise have incurred by directly seeking protection in foreign countries, appointing local patent agents in each foreign country, preparing the necessary translations and paying the national fees.

Ultimately, the PCT:

– brings the world within reach; – streamlines the process of fulfilling diverse formality requirements; – postpones the significant costs associated with seeking international patent protection; – provides a solid basis to patenting decisions; and – is used by the world's major corporations, research institutions and universities when they seek international patent protection.

Conditions for grant of a (valid) patent:

A patent application must be filed

The invention must be new (novel) and involve an inventive step (non-obvious)

The invention must be industrially applicable

The application must fully describe the invention sufficiently to enable the performance of the invention.

The application must define the patent rights sought in patent claims that are somewhat based on what is described

PCT System deals with patents under two main phases:

INTERNATIONAL PHASE

It starts with the filing of the PCT application.

Involves many processes such as international search, international examination, international publication with regards to the laws of signatory countries before the national phase.

The search, examination and publication done at this stage need not be repeated for every other country during the national phase.

The countries that the application is to be filed rely on such an international report, thus reducing the time required for the patent to be registered.

NATIONAL PHASE

It falls at 30 months from the filing date of the international application or the earliest priority date of the application if a priority is claimed.

In the national phase, the patent application is subject to each country's patent laws, regulations, and practices.

Rejections on form and content may not be raised provided that they conform to the requirements of the PCT.

For example, A person resides in India. He has invented a unique device that he wants many countries to benefit from. He can file for a patent at the PCT Regional Office in his country. Once the international phase of his application is over, he can start the process to register his patent under the national phase. During the national phase, he has to individually file for registrations in countries that he wants to register.

What happens to my application in the national phase?

Once you have entered the national phase, the national or regional patent Offices concerned begin determining whether they will grant you a patent. Any examination which these Offices may undertake should be made more accessible by the PCT international search report and the written opinion and even more by an international preliminary examination report.

How do I enter the national phase?

Whether you use an earlier-filed patent application to support priority for the filing of the PCT Application (as discussed above), or you file an international application without a previous direct filing, you will ultimately need to enter into what is called the national phase in every country where you wish to ultimately obtain a patent. It is only after you have decided whether, and in respect of which States, you wish to proceed further with your international application that you must fulfil the requirements for entry into the national phase. These requirements include paying national fees and, in some cases, filing translations of the application. These steps must be taken, in relation to the majority of PCT Contracting States' patent Offices, before the end of the 30th month from the priority date. There may also be other requirements in connection with the entry into the national phase – for example, the appointment of local agents.

What are the costs associated with the filing and processing of an international application under the PCT? What are the costs for entering the national phase?

PCT applicants generally pay three types of fees when they file their international applications:

a. an international filing fee of 1,330 Swiss francs,

b. a search fee which can vary from approximately 150 to 2,000 Swiss francs depending on the ISA chosen, and

c. a small transmittal fee which varies depending on the receiving Office.

For example, to file a patent in India, the cost to be incurred is as follows:

a. International filing fee of 1,363 USD

b. The search fee of 2,500 INR

c. A transmittal fee of 17,600 INR

PCT flow chart

In what languages can an international patent application be filed?

An international patent application can be file in any language which the receiving Office accepts. Suppose you file your application in a language that the ISA does not accept to carry out the international search. In that case, you will be required to furnish a translation of the application for an international search. Receiving Offices are, however, obliged to accept filings in at least one language, which is both a language accepted by the competent ISA that is to carry out the international search and a publication language, that is, one of the languages in which international patent applications are published (Arabic, Chinese,English,French,German, Japanese, Korean, Portuguese, Russian and Spanish).Therefore always have the option of filing your international patent application in at least one language from which no translation is required for either PCT international search or publication purposes.

What is a PCT international search?

A PCT international search is a high-quality search of the relevant patent documents and other technical literature in those languages in which most patent applications are filed (Chinese, English, German and Japanese, and in some instances, French, Korean, Russian and Spanish). The high quality of the search is assured by the standards prescribed in the PCT for the documentation to be consulted and by the qualified staff and uniform search methods of the ISAs, all experienced patent Offices. The results are published in an international search report and a written opinion of the ISA on the potential patentability of your invention.

The PCT Contracting States has appointed the following as International Searching Authorities (ISAs): The national Offices of ● Australia, ● Austria, ● Brazil, ● Canada, ● China, ● Chile, ● Egypt, ● Finland, ● India, ● Israel, ● Japan, ● the Republic of Korea, ● the Russian Federation, ● Spain, ● Sweden, ● Ukraine, ● the

United States of America ● and the following regional offices: the European Patent Office and the Nordic Patent Institute. The availability of a particular ISA to the nationals or residents of a country is determined by the receiving Office where the international application was filed. Some receiving Offices provide a choice of more than one competent ISA. If receiving Office is one of those, you can choose any one of them, taking into account differing requirements relating to language, fees, etc

What does international publication under the PCT consist of?

WIPO publishes the international application shortly after the expiration of 18 months from the priority date9 (if it has not been withdrawn earlier), together with the international search report. PCT international applications are published online on PATENTSCOPE, a robust, fully searchable database with flexible, multilingual interfaces and translation tools to assist users and the public in understanding the content of published applications.

What is the international preliminary examination?

The international preliminary examination is a second evaluation of the invention's potential patentability, using the same standards on which the written opinion of the ISA was based. Suppose you wish to make amendments to your international application in order to overcome documents identified in the international search report and conclusions made in the written opinion of the ISA. In that case, international preliminary examination provides the only possibility of actively participating in the examination process and potentially influencing the examiner's findings before entering the national phase can submit amendments and arguments and are entitled to an interview with the examiner. At the end of the procedure, an international preliminary report on patentability (IPRP Chapter II) will be issued.

Role of WIPO in the PCT

For each PCT application filed, WIPO is responsible for:

receiving and storing all application documents.

We are performing a formalities examination.

Publishing the application.

Publishing the PCT Gazette (data about the application).

Translating various portions of the PCT application and certain associated documents into English and French, where necessary.

Communicating documents to Offices and third parties.

Providing legal advice on requests to Offices and users.

Provides a framework for the overall coordination of the PCT system.

Assists existing, new and the potential Contracting States and their Offices.

Provides advice on implementing the PCT in the national legislation and on setting up internal procedures in the Contracting States' patent Offices.

Publishes the PCT Applicant's Guide and the PCT Newsletter.

Creates and disseminates PCT information via the PCT website, paper publications, and telephone and email assistance; organizes and gives PCT seminars and training courses.

UTILITY MODELS

A utility model is an exclusive right granted to an invention that allows the right holder to prevent others from commercially using the protected invention without his authorization for a limited time. This may vary from one country to another.

This utility model is similar to the patent but has minor differences. India does not have adopted any laws on utility models. These are also called petty patents or innovation patents., these are small patents. Few countries have the option of protection of the utility model.

A utility model is similar to a patent in that it provides a monopoly right for an invention. However, utility models tend to be much cheaper to obtain, the requirements for the grant of a utility model are usually less stringent, and the term is shorter. Not all countries grant utility models. However, countries granting utility models (or similar/equivalent rights with a different name) include Germany, France, Spain, Italy, Japan, China and Australia.

What does a utility model give you?

Like a patent, a utility model provides its owner with the right to prevent others from exploiting the claimed invention without the owner's consent in the geographical area for which the utility model was granted. Usually, the same relief available for infringement of a patent is available to infringe a utility model.

What is the Difference between utility models and patents

For a patent to be granted, the invention must be both novel and inventive over the prior art. However, for utility models, the prior art available for the assessment of novelty is often more limited (so-calledabsolute novelty is not always required, for example), and an inventive step either is not required or has a considerably lower threshold. A patent protects for up to 20 years. A utility model protects a shorter term, usually between seven and 10 years.

Usually, utility model applications are not examined before the grant, so there is not the same level of presumed validity as with a patent. However, utility models are granted much more quickly, the average time being around six months. This also means that utility models are published much more quickly than patent applications, which are not published until 18 months after their priority date. Utility models tend to be much cheaper to obtain and maintain than patents. In some countries, there is a grace period for utility models for an inventor's own disclosures, which is not usually available for patents. Utility models can protect not all inventions that can be

patented, and the requirements vary from country to country. Most countries will only grant utility models for products but not for methods or processes.

Why are utility models useful?

There are a wide variety of situations in which a utility model may be useful. Because the novelty and inventive step requirements are less stringent than those required for patents, utility models can be useful for incremental inventions where only a small change has been made and might not meet the inventive step requirements for a patent. Due to the shorter term of protection, utility models can be useful for relatively short commercial life products. The lower costs associated with utility models mean that they can be beneficial for SMEs. Suppose an inventor has already published the invention, meaning that a patent for it cannot be obtained, in some countries, such as Germany. In that case, there is a grace period for an inventor's own disclosures so it may still be possible to obtain a utility model. Since utility models are usually granted much more quickly than patents, they can be useful if the owner is aware of an infringement and needs a granted IP right quickly to enforce against an infringer.

Where can you get a utility model?

Utility models (or similar/equal rights with a different name) are available in Albania, Angola, Argentina, ARIPO (African Regional Intellectual Property Organization), Armenia, Aruba, Australia, Austria, Azerbaijan, Belarus, Belize, Brazil, Bolivia, Bulgaria, Chile, China (including Hong Kong and Macau), Colombia, Costa Rica, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Malaysia, Mexico, OAPI (Organisation Africaine de la PropriétéIntellectuelle), Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Slovakia, Spain, Taiwan, Tajikistan, Trinidad & Tobago, Turkey, Ukraine, Uruguay and Uzbekistan. However, utility models are not available in the United Kingdom or the United States.

How do you apply for a utility model?

Utility model applications can be filed at the countries' patent offices or regions listed above. Like a patent application, an application for a utility model contains a description, claims and drawings. A utility model may claim priority from an earlier patent or utility model application. It is also possible to use a PCT application as the basis for a utility model application in the national phase

Can you convert a patent application to a utility model?

Many countries allow the conversion of a patent application into a utility model application. However, in some countries, there is a time limit for doing so. If a patent application is refused, some countries allow the patent application to be converted into a utility model within a certain period after the refusal. In some countries, conversion can even occur shortly after a patent has been granted.

Can you have a patent and a utility model for the same invention?

This depends on the country. In Germany, for example, it is possible to obtain and keep both a patent and a utility model for the same invention. If a utility model is branched off from a patent application, the patent application can continue to be prosecuted to grant as well. However, in other countries, such as Japan and China, only a single right for the same invention is allowed to remain in force.

What happens after the grant?

Usually, renewal fees are due annually or every few years to keep the utility model in force. However, no renewal fees are required in some countries, and utility models are granted for a fixed term.

Patent	Utility Model
The invention, which has a novel, inventive step and industrial application, can be protected.	The invention which has mainly a novelty, but less or absent in inventive step can be protected.
All new inventions or substantial improvement inventions can be protected.	All marginal improvement inventions can be protected.
The term of protection is 20 years from the date of patent filing.	The term of protection is between 7 and 10 years from the date of filing.
The patent cost to obtain and maintain the patent is expensive.	The cost to obtain and maintain the utility model is cheaper.
It requires substantive examination of the patent application to validate patentability.	It does not require substantive examination procedure, as it does not require the inventive step.
A longer time [2 to 5 years] is required to obtain a patent.	To obtain Utility model protection, it requires only less time in the range of 6 months to 1 year.
Patent protection is available in almost all major countries.	Utility model protection is available only in some countries based on technology.

Patent protection is actively used	Utility model protection is less actively used.
Conversion of the patent into the utility model is always possible.	Conversion of utility model into a patent is possible under certain circumstances.

COPYRIGHTS

Introduction

Every year millions of Indians create original works like books, music, research and other forms of creative expression. All these creations are Intellectual Property, and all of them are protected by copyright. Writers, editors and publishers, understanding copyrights issues are essential.

Especially now that the production of counterfeit [imitating] and pirated goods, including written works, has become so prevalent. Nowadays, the internet has made copying and distributing protected material more accessible than ever before for avoiding copying the material. So, to protect yourself from IP theft, it is essential to know the basics ofcopyrights.

Definition

"The legal protection given to published works forbidding anyone but the author from publishing or selling them. An author can transfer the copyright to another person or corporation, such as a publishing company.

What is a Copyright?

Copyright is a form of protection provided by Indian Law to the authors of Original Works of Authorshipfixed in any tangible medium of expression. The manner and medium of fixation are virtually unlimited. Creative expression may be captured in words, numbers, notes, sounds, pictures or any other graphic or symbolic media. The subject matter of copyright is extensive, including literary, dramatic, musical, artistic, audio-visual and architectural works.Copyright protection is available for both published and unpublished works

Common-Law Right

Law – Copyrights Act 1957, amended in 2012 and Ministry – Copyright Office, Ministry of Human Recourse Development Copyright is a bundle of rights given by the law to the creators of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings. The rights provided under Copyright law include the rights of reproduction of the work, communication of the work to the public, adaptation of the work, and translation. Copyrights of works of the countries mentioned in the International Copyright Order are protected in India as if such works are Indian works. The term of copyright in work shall not exceed that which is enjoyed by its country of origin.

Acquisition of copyright is automatic, and it does not require any formality. Copyright comes into existence as soon as a work is created, and no formality is required to be completed for acquiring copyright. However, the certificate of copyright registration and the entries made therein serve as prima facie evidence in a court of law concerningthe dispute relating to copyright ownership. Copyright applications can be filed in the Copyright office. Computer Software or a programme can also be registered as a literary work. As per Copyright Act, 1957, literary work includes computer programmes, tables and compilations, including computer databases. Source Code also has to be supplied along with the application for registration of copyright for software products. The 2012 amendments make Indian Copyright Law compliant with the Internet Treaties – the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).

Literary, dramatic, musical and artistic works	Lifetime of the author + sixty years from the beginning of the calendar year next following the year in which the author dies
Anonymous and pseudonymous works Posthumous work Cinematograph films	Until sixty years from the beginning of the calendar years next following the year in

Sound records Government work Public undertakings International Agencies photographs	which the work is first to publish

The originality of material:

The limits of copyrightability are dictated [command] by federal statute

According to copyright protection exists in original works [tangiblemedium]. Thus, there are three basic requirements for copyrightability:

1.Work must be original

2.Work must be fixed in a tangible form of expression; and

3.A work must be a work of authorship Originality of Material

To be eligible for copyright protection

The material must be original, Meaning, independently created, possess a modicum of creativity. It should not confuse novelty, worthiness or aesthetic [dealing with beauty] appeal, Originality thus does not mean first. It merely means independently created, A slight amount of creative spark.

Fixation of Material

The copyright act protects works of authorship that are fixed in any tangible medium of expressionl.

A work is fixed:

When it is embodied [existing in broad form]

Phono record and is sufficiently permanent

Stable to permit it to be perceived, reproduced or communicated for a period ofmore than transitory [temporary] duration

Thus there are two tangible categories

Copies: A copy is a material object from which a work can be perceived, reproduced or communicated, either directly by human perception or with the help of a machine. Phonorecord: A Phonorecord is a material object in which sounds are fixed and from which the sounds can be perceived, reproduced or communicated either directly by human perception or with the help of a machine.

Works of Authorship:

The copyright act provides that copyright protection subsists [support oneself] in original works of authorship fixed in any tangible medium of expression, now known or hereafter developed, from which they can be perceived, reproduced or otherwise communicated. The list is preceded by the phrase that works of authorship include

those categories, demonstrating that the listed categories are not only types of works that can be protected, but are illustrate only Literary works Musical works Dramatic works Pantomimes and choreographic works Pictorial, graphic and sculptural works Motion pictures and other audio-visual works Sound recording and Architectural works

The Rights afforded by copyright law:

Introduction

1.The copyright act provides that, subject to certain exceptions, the owner of copyright has the exclusive rights to do and to authorize any of the following:

2.To reproduce the copyrighted work in copies or phonorecords

3.To prepare derivative works based on the copyrighted work

4.To distribute copies or phonorecords of the copyrighted work to the public

5.To perform the copyrighted work publicly

6.To display the copyrighted work publicly

7.To perform the copyrighted work publicly using a digital audio transmission

8.Unless exemption exists, the unauthorized exercise of any of these rights by another is an infringement.

9.These exclusive rights usually referred to as a "bundle."

Rights of Reproduction:

The most fundamental of the rights granted to copyright owners is the right to reproduce the work

A violation of the copyright act occurs whether or not the violator profits from the reproduction

Only the owner has the right to reproduce the work

Secretly taping a concert, taking pictures at a performance, or recording all violate the owner's right to reproduce

The suggestion of congress, in 1978, a group of authors, publishers and users established a not-for-profit entity called Copyright Clearance Center [CCC]

CCC grants licenses to academic, government and corporate users to copy and distribute theworks

It collects royalty fees, which are distributed to the authors

Companies that photocopy articles from journals and magazines often enter into licensing arrangements with the CCC to make copies.

Rights to prepare Derivative works:

Copyright Act provides that the copyright owner has the exclusive right to prepare derivative works based upon the copyrighted work. This right often referred to as the right to adapt the original work

Definition:

A derivative work is broadly defined as a work based upon one or more pre-existing works, such as a translation, dramatization, fictionalized motion pictures version, abridgement condensation or any other form in which a work may be recast transformed, or adapted.

a work consisting of editorial revisions, annotations, elaborations, or other modifications is also a derivative work

Rights of distribution and the first sale doctrine:

Copyright act provides that the owner of a copyright has the exclusive right to distribute copies or phonorecords of the work to the public by sale or other transfer of ownership

A violation of the distribution right can arise solely from the act of distribution itself. The distributor did not make an unlawful copy or the copy being distributed was unauthorized

Thus, blockbuster video store can be liable for violating an owner‘s right to distribute

Once the author has parted with ownership of copyrighted material, the new owner of a lawfully made copy can treat the object as his or her own

The new owner the right to lend the book or movie to a friend, resell the work at a garage sale or even destroy it.

The first sale doctrine does not apply to or limit the author‘s exclusive rights to prepare derivative works or rights of public performance, and Without the permission of authorship, the goods are not permitted to import into India

Rights to perform the work publicly

Copyright Act provided that in all copyrighted works other than sound recording & works of architecture, the copyright owner has the exclusive right to display the work publicly. A display is public under the same circumstances in which performance is public if it occurs at a place open to the public (or) at many persons outside the usual circle.

Copyright Ownership Issues

Copyright in work protected under the copyright act vests [provide power and authority] in the author or authors of the work. Issues about ownership arise when more than one person creates a work. Unless copyright has been explicitly conveyed

with those physical articles, the original authors generally retain all other rights associated with the works.

Joint Works [intent to create a unitary whole]

A joint work is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. - One copyright exists in the created works. Joint authors are those whomastermind orsupermind the creative effort.

Ownership Rights in Joint Works

Suppose an individual is the author of joint work. In that case, each owns an equal, undivided interest in the copyright as a tenant in common [each has the right to use the work, prepare derivative works, display it without seeking the other co-author's permission]. If profits arising out of such use, an accounting must be made so that each author shares the benefits or proceeds. The death of a co-author, his or her rights pass to heirs who then own the rights in common with the other co-author.

Ownership in Derivative or Collective Works

The author of the original book has rights only to his or her work and cannot reproduce orperform the derivative work without permission. If work such as a book is created by one person who intends it to be complete at thetime and illustrations are later added to it by another, the work cannot be a joint workbecause there was no intention of the parties to create a unitary whole at the time of theircreation.The author of the derivative work cannot create further works based on the original bookwithout permission and cannot reproduce the original work without permission.Multiple ownership rights may also arise if separately copyrightable works are compiledinto a collection.

For Example:

Suppose essays written by Jerry Seinfeld, Ellen DeGeneres, and Paul Reiser are collected into a humour anthology by Bill Jones (with permission of the original authors). In that case, the original authors retain their exclusive rights (such as rights to reproduce, distribute,and perform) in their respective essays. No join work is created because there was no intent when the separate essays were created to merge them into a unitary whole. No derivative work is created because the original works have not been transformed somehow, and nothing new has been added to them. The anthology by the compiler, Bill Jones, is a collective work. According to the copyright act, Jones acquires only the right to reproduce and distribute the contributions as part of the particular collective work or any revision of the collective work.

Works Made for Hire

The general rule is that the person who creates a work is the author of that work and the copyright owner therein; there is an exception to that principle: the copyright law defines a category of works called works made for hire.

If work is done for hire, the author is considered the employer or commissioning party and not the employee or the actual person who created the work.

The employer or commissioning party may be a company or an individual.

There are two types of works that are classified as works made for hire; works prepared by an employer within the scope of employment and specific categories of specially ordered or commissioned works.

Copyright Registration

A work is created when it is fixed in a copy or phonorecord for the first time. Although not required to provide copyright protection for a work, registration of copyright with the Copyright Office is expensive, easy, and provides several advantages, chiefly, that registration is a condition precedent for bringing an infringement suit for works of Indian origin.

To register a work, the applicant must send the following three elements to the Copyright Office: a properly completed application form, a filing fee, and a deposit of the work being registered.

Registration may be made at any time within the life of the copyright.

THE APPLICATION FOR COPYRIGHT REGISTRATION

The following persons are entitled to apply for registration of copyright:

the author (either the person who created the work or, if the work is one made for hire, the employer or commissioning party)

the copyright claimant (either the author or a person or organization that has obtained ownership of all of the rights under the copyright originally belonging to the author, such as a transferee)

the owner of exclusive rights, such as the transferee of any of the exclusive rights of copyright ownership (for example, one who prepares a movie based on an earlier book may apply to the newly created derivative work, the movie); and the duly authorized agent of the author, claimant, or owner of exclusive rights (such as an attorney, trustee, or anyone authorized to act on behalf of such parties)

Application Forms

The Copyright Office provides forms for application for copyright registration.

An applicant may use photocopies of forms. The Copyright Office receives more than 6,00,000 applications each year. Each application must use a similar format to ease the burden of examination.

The type of form used is dictated by the type of work that is the subject of copyright. For example,one form is used for literary works, while another is used for sound recording. There are different forms used for copyright applications.

International Copyright Law

Developments in technology create new industries and opportunities for the reproduction and dissemination of works of authorship. λSeveral new issues have arisen relating to the growth of electronic publishing, distribution, and viewing of copyrighted works. Along with new and expanded markets for works comes the ever-increasing challenge of protecting works from piracy or infringement. Copyright protection for computer programs. Copyright protection for Automated Databases. Copyright in the Electronic Age, the Digital Millennium Copyright Act

Related rights

Related rights, also referred to as neighbouring rights, protect the legal interests of certain persons and legal entities that contribute to making works available to the public or that produce subject matter which, while not qualifying as works under the copyright systems of all countries, contains sufficient creativity or technical and organizational skill to justify recognition of a copyright-like property right. The law of related rights deems that the productions that result from the activities of such persons and entities merit legal protection as they are related to the protection of works of authorship under copyright. However, some laws clarify that the exercise of related rights should leave intact and in no way affect the protection of copyright.

Traditionally, related rights have been granted to three categories of beneficiaries:

• performers

• producers of sound recordings (also referred to as phonograms)

• broadcasting organizations.

The rights granted in national laws to the three types of beneficiaries of related rights based on Rome treaties and internet treaties are generally as follows (although not all rights may be granted under the same law).

• Performers have the right to prevent fixation (recording), broadcasting and communication to the public of their live performances without their consent, and the right to prevent reproduction of fixations of their performances under certain circumstances. The rights in respect of broadcasting and communication to the public may be in the form of equitable remuneration rather than a right to prevent. Due to the personal nature of their creations, some national laws also grant performers moral rights, which may be exercised to prevent unauthorized use of their name and image or modifications of their performances that present them in an unfavourable light. When the Beijing Treaty enters into force, these rights will extend to performers about their audio-visual performances.

• Producers of sound recordings have the right to authorize or prohibit reproduction, importation and distribution of their soundrecordings and copies thereof, and the right to equitable remuneration for broadcasting and communication to the public of their sound recordings.

• Broadcasting organizations have the right to authorize or prohibit rebroadcasting, fixation and reproduction of their broadcasts. The Music Industry can be very complex. It is not just about talent & booking gigs, making records & writing songs. Many areas escape an artist 's grasp and require specific knowledge. One of these areas is Copyright. When music is streamed or played, that generates a profit and royalties for the composer or copyright owner & the publisher. However, it also generates neighbouring rights for the artist performing, the master & the record company owner.

Copyright vs Neighbouring Rights

Copyright pertains to the intellectual right of the owner of something, which in music is the songwriter or composer and the publisher. While the featured artists are getting exposure to the public through live performances, radio, etc the songwriters remain in the background, but they also get paid through the copyright royalty. They get paid with that royalty for every stream or play of that song, so they end up cashing in overtime.

Neighbouring rights are somewhat more recent and protect the rights of the artists who performed the song. Whether the rendition gets played locally or abroad, it generates profit, and thus a portion of such income should be paid to the right people, including the artist. Sadly, this is usually difficult to track or is just neglected on the part of the artist. Luckily, Inner Music Group is here to help. CD Depot Stores offers a wide range of services for Artists & the Music Business in general. Services like CD & DVD Duplication, Graphic Design and CD & DVD Replication, to name a few, are essential for new and established artists alike. However, we also offer services such as Copyright Registration, Digital Distribution and Music Publishing. Please contact CD Depot Stores or our friends at Music Group if you have any questions. We can help sort through copyright registration, filings with the PROs, negotiation of licensing, royalty's collection, and the whole gamut of publishing administration.

Celebrity rights

The word celebrity comes from the Latin word Celebritatem which means the condition of being famous.It was enunciated that the term celebrity should be interpreted in a broader sense to encompass more than the traditional categories of movie actors, rock stars and ballplayers. Today, actors, authors, artists, politicians, models, athletes, musicians, singers, television personalities, well-known business executives, and anyone who seeks to capture the public attention, including reality TV stars are all celebrities.

CELEBRITY RIGHTS IN INDIA

In recent times, media has grown in importance, which has resulted in the need to regulate the media's dealings through effective regulations.

The various rights of a celebrity are stated as under

Personality Rights: An individual's contribution to society is his right, and such personality rights are protected.

Privacy Rights: Celebrities try to keep their personal information as private as possible to avoid embarrassment. The Constitution under Article 21 recognizes this Right to Privacy as a Fundamental Right. Celebrities may also find recourse in an action of invasion of privacy.

Publicity Rights: The right to use the value of the fame of a celebrity is known as publicity rights. In this regard, it would be pertinent to mention that fame is an act projected to augment sales.

Plagiarism:

Plagiarism is the wrongful appropriation and stealing, and publicationof another author's language, thoughts, ideas, or expressionsand the representation of them as one's original work. The modern concept of plagiarism as immoral and originality as an ideal emerged in India in the 20th century. Plagiarism is not in itself a crime but can constitute copyright infringement. In academia and industry, it is a serious ethical offence. Plagiarism and copyright infringement overlap considerably, but they are not equivalent concepts. Many types of plagiarism do not constitute copyright infringement, which is defined by copyright law and may be adjudicated by courts. Plagiarism is not defined or punished by law but rather by institutions (including professional associations, educational institutions, and commercial entities, such as publishing companies). No universally adopted definition of academic plagiarism exists; however, this section provides several definitions to exemplify the most common characteristics of academic plagiarism. According to Bela Gipps, academic plagiarism encompasses: The use of ideas, concepts, words, or structures without appropriately acknowledging the source to benefit in a setting where originality is expected.

The definition by B. Gipps is an abridged version of Teddi Fishman's definition of plagiarism, which proposed five elements characteristic of plagiarism. According to T. Fishman, plagiarism occurs when someone:

1. Uses words, ideas, or work products

2. Attributable to another identifiable person or source

3. Without attributing the work to the source from which it was obtained

4. In a situation in which there is a legitimate expectation of original authorship

5. In order to obtain some benefit, credit, or gain, which need not be monetary

Typical forms of student plagiarism

According to The Reality and Solution of College Plagiarism created by the Health Informatics department of the University of Illinois at Chicago, there are ten main forms of plagiarism that students commit:

1. submitting someone's work as their own.

2. Taking passages from their previous work without adding citations.

3. Re-writing someone's work without properly citing sources.

4. Using quotations but not citing the source.

5. Interweaving various sources together in work without citing.

6. Citing some but not all passages that should be cited.

7. Melding together cited and uncited sections of the piece.

8. Providing proper citations but fails to change the structure and wording of the borrowed ideas enough.

9. Inaccurately citing the source.

10.Relying too heavily on other people's work. Fails to bring original thought into the text.

Cyberlaw issues:

We can say that cybercrime is unlawful acts wherein the computer is either a tool or a target or both

Cybercrimes can involve traditional criminal activities, such as theft, fraud, forgery, defamation, and mischief, all subject to the Indian Penal Code. The abuse of computers has also given birth to a gamut of new age crimes that the Information Technology Act, 2000 addresses.

We can categorize Cybercrimes in two ways

The Computer as a Target: using a computer to attack other computers. e.g., Hacking, Virus/Worm attacks, DOS attacks etc.

The computer as a weapon:using a computer to commit real-world crimes.e.g., Cyber Terrorism, IPR violations, Credit card frauds, EFT frauds, Pornography etc. Cyber Crime regulated by Cyber Laws or Internet Laws.

Criminal law

Indian criminal law is the law relating to criminal conduct in India. India has a well-established statutory, administrative and judicial framework for criminal trials. The Act primarily governs Indian Penal laws:

1. The Code of Criminal Procedure, 1973 (CrPC)

2. The Indian Penal Code, 1960 (IPC)

3. The Indian Evidence Act, 1872 (IEA).

The Code of Criminal Procedure (CrPC) is the main legislation for administering substantive criminal law in India. It was enacted in 1973 and came into force on 1 April 1974. It provides the machinery for investigating crime, apprehension of suspected criminals, collection of evidence, determination of the accused person's guilt or innocence, and the determination of punishment of the guilty. Additionally, it also deals with public nuisance, prevention of offences and maintenance of wife, child and parents.

The Indian Penal Code (IPC) is the main criminal code of India. It is a comprehensive code intended to cover all substantive aspects of criminal law. The objective of this Act is to provide a general penal code for India. Though not an initial objective, the Act does not repeal the penal laws that were in force when coming into force in India. This was so because the Code does not contain all the offences, and some offences might have still been left out of the Code, which was not intended to be exempted from penal consequences. Though this Code consolidates the whole of the law on the subject and is exhaustive on the matters in respect of which it declares the law, many more penal statutes governing various offences have been created and the code.

The enactment and adoption of the Indian Evidence Act was a path-breaking judicial measure introduced in India, which changed the entire system of concepts aboutthe admissibility of evidence in the Indian courts of law. Until then, the rules of evidence were based on the traditional legal systems of different social groups and communities of India and were different for different people depending on caste, religious faith and social position. The Indian Evidence Act introduced a standard set of law applicable to all Indians. The law is mainly based upon the firm work by Sir James Fitz James Stephen, who could be called the founding father of this comprehensive piece of legislation.

Data exclusivity

Data Exclusivity (DE) or exclusivity of registration data is the non-reliance and non-disclosure period provided to new chemical entities, pharmaceutical compositions, and agrochemical registration data or test data. It is for a limited time when the drug regulatory authorities do not allow the test data of the originator to be used to register the generic version. Data exclusivity is an independent intellectual property right and should not be confused with the protection provided by other rights, especially patents. Clinical trial data and other test data result from scientific discovery and development conducted by the originator with an investment of time and cost to demonstrate the efficacy and safety of new chemical entities, formulations, and their new uses. While the discovery and development of a new molecule take about 8 to 10 years and costs millions of dollars, generating the test data takes about 50% of the time and expense. This data becomes very important at the time of obtaining marketing approval from regulatory authorities. Data exclusivity provides the originator with rights to preclude third parties from relying on the data to obtain marketing approval for a specific time. However, it does not prevent third parties

from generating their data. Second, entrants may apply for their formulations or products but must obtain authorization from the originator's data and prove bioequivalence according to international standards. Otherwise, by merely referring to the originator's submitted data, they obtain an undue advantage, as they have not performed any of the expensive and time-consuming tests or submitted any data to demonstrate the safety and efficacy of their product.Thus, data exclusivity ensures that

a. the originator obtains market exclusivity for a specified period, enabling him to recover the costs incurred in obtaining the marketing approval.

b. for a specified period, the regulatory agency must not access the originator's data without his consent when reviewing an application from a second entrant seeking approval of a copied product.

THE COPYRIGHT ACT 1957

Assignment

A right to assign work under the Copyright Act 1957 (from now on referred to as 'Copyright Act') arises naturally when the work comes into existence. However, certain rights are specific to certain types of subject matter/work. Further, an author/owner is entitled to multiple rights broadly categorised as Economic and Moral rights. The owner of a copyright may grant any interest in the copyright by a License. The Act prescribes that a prospective owner of a copyright in future work may assign the copyright to any person, either wholly or partially. However, the assignment shall take effect only when the work comes into existence. The requirements for an assignment to be enforced are:

(a) It must be in writing.

(b) It should be signed by the Assignor.

(c) The copyrighted work must be identified and must specify the rights assigned.

(d) It should have the terms regarding revision, royalty and termination.

(e) It should specify the amount of royalty payable, if any, to the author or his legal heirs.

(f) If the Assignee does not exercise the rights assigned to him within one year, the assignment in respect of such rights is deemed to have lapsed unless otherwise specified in the Agreement.

(g) If the period of assignment is not stated, it is deemed to be five years from the date of assignment, and if no geographical limits are specified, it shall be presumed to extend within India.

License

The owner of a copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right, by License in writing, signed by him or by his duly authorized agent. The requirements specified above for

an assignment will apply for a License. The Copyright Board is empowered to grant compulsory licenses under certain circumstances on suitable terms and conditions in respect of 'Indian work'. The circumstances necessary for grant of such a License are as follows:

(a) the work must have been published or performed in public.

(b) the author must have refused to republish or allow the republication of the work or must have refused to allow the performance in public, that because of such refusal, the work is withheld from the public;

(c) the author must have refused to allow communication to the public by a broadcast of such work or, in the case of a sound recording, the work recorded in such sound recording, on terms which the complainant considers reasonable.

The Copyright Act states that in the case of unpublished Indian work, where the author was a citizen of India or is dead, unknown or cannot be traced, under such circumstances, any person may apply to the Copyright Board for a License to publish the work or translation thereof in any language according to the procedure laid down in the Act.

Infringement

Copyright infringement is the use of works protected by copyright law without permission, infringing certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to do derivative works. The copyright holder is typically the work's creator, publisher, or other business to whom copyright has been assigned. Copyright holders routinely invoke legal and technological measures to prevent and penalize copyright infringement. Copyright infringement disputes are usually resolved through direct negotiation, a notice and takedown process, or litigation in civil court. Egregious or large-scale commercial infringement, especially when it involves counterfeiting, is sometimes prosecuted via the criminal justice system. Shifting public expectations, advances in digital technology and the increasing reach of the Internet have led to such widespread, anonymous infringement that copyright-dependent industries now focus less on pursuing individuals who seek and share copyright-protected content online and more on expanding copyright law to recognize and penalize as "indirect" infringers. The service providers and software distributors which are said to facilitate and encourage individual acts of infringement by others. Estimates of the actual economic impact of copyright infringement vary widely and depend on many factors. Nevertheless, copyright holders, industry representatives, and legislators have long characterized copyright infringement as piracy or theft – language which some U.S. courts now regard as pejorative or otherwise contentious.

Trademark

Introduction

Although there was some use of trademarks or symbols in the Middle East and Far East several centuries ago, contemporary (modern) trademark law can be traced back to use of trademarks during the medieval period in Europe by merchants who sought to distinguish the goods they sold from those sold by others by applying a mark or symbol to their goods. By viewing the mark, purchasers would immediately be able to identify the craftsperson that made the goods and make an informed decision about the quality of the material. The use of symbols by medieval craftspeople to distinguish and identify their goods is the direct antecedent for the everyday use of trademarks. Definition of Trademark: The modern definition of trademark is that it is a word, name, symbol, or device or a combination thereof, used by a person [including a business entity], or which a person has an intention to use, to identify and distinguish his or her goods from those manufactured by others and to indicate the source of those goods.

Rights of trademarks holder

To use the trademarks about goods and services, in respect of which the trademark is registered.

To transfer his rights through license or assignment of his trademark.

To obtain legal relief against alleged infringement of a registered trademark

To apply for correction of register with regards to name address or description of the registered proprietor or to cancel the trademark entry on the register.

ACQUISITION OF TRADEMARK RIGHTS

In most foreign countries, trademark rights arise from registering the mark with a governmental entity. The law in India is quite different: trademark rights arise from adopting and using a mark. A person using a mark may have valid and enforceable rights in a mark even though the mark is not registered with the PTO. Such an owner will prioritise even over a subsequent user who has secured registration for a mark with the PTO. The use required to establish trademark rights is more than token use. It must be a public use. While actual sales of products or services are not required, a certain level of presale activity is required.

For example, Sales within a company or to personal friends are insufficient to show use while soliciting [plead for something], and accepting an order is usually sufficient to show commercial use. Thus, a person using a mark may have valid and enforceable rights in a mark even though the mark is not registered with the PTO. Such an owner will prioritise even over a subsequent user who has secured a federal registration for a mark with the PTO. Establishing a date of first use is critical for a trademark owner because the priority of trademark rights is measured from this date. Suppose one party first used the mark on September 15, 2015 and another first used a similar mark on October 15, 2015, the prior or senior. In that case, the user will preclude the junior user from using a confusingly similar mark. For a mark to be registrable, it must be based on commerce, meaning the type of commerce that can regulate.

Generally, the use is based on interstate commerce or commerce between states (although it could be based on commerce between the United States and a foreign country). A purely intrastate use does not provide a basis for federal registration of a mark. A purely intrastate use does not provide a basis for federal registration of a mark. The requirement of interstate (within one state) commerce is satisfied if the goods or services are advertised in more than one state, offered to citizens of more than one state, or offered on the Internet, which is considered use in commerce because it is available to a national audience through the use of telephone lines. The general rule is that acquisition of trademark rights stem from use. There is one exception to this rule: the intent-to-use application. Until 1989, the United States was one of only two countries in the world that required that a mark is in actual use before an owner could apply to register it. After an applicant had begun using the mark and then filed an application, the PTO might refuse registration of the mark on the basis that it was confusingly similar to a prior mark or was subject to some other defect. The applicant would then have invested substantial money and time in developing the mark, using it in commerce, marketing and advertising, and applying for registration, only to be told the mark was unregistrable.

To remedy this situation, the Trademark Law Revision Act of 1988allowed persons to file applications for marks based on a bona fide intent to use the mark in commerce in the future. Suppose the PTO determines the mark is unregistrable. In that case, the applicant will not have expended any sums other than the PTO filing fee and can readily file another application for a new mark. Once the mark proceeds to registration, priority is measured from the date the intent-to-useapplication was filed, even though that filing date may precede actual use in commerce by more than three years. Minimal or token use cannot serve as the basis for securing or maintaining a registration, ensuring that an owner does not reserve or warehousel a mark by making only sporadic use of it with the intent to block others from using it rather than having a true commercial intent to exploit the mark for sales. The PTO desires to clear its records of new marks, or deadwood, so that such unused marks may be available by others. The use required is bonafide use of a mark in the ordinary course of trade and not made merely to reserve a right in a mark.

PURPOSE AND FUNCTION OF TRADEMARK

Trademarks perform two critical functions in the marketplace:

1.they assure that goods are of a certain quality and consistency.

2. they assist consumers in making decisions about the purchase of goods. The primary purpose of a trademark is to show the difference in the quality of goods and service

For example: If a trademark such as NIKE could be counterfeited (imitating) and used by another on inferior merchandise (goods), there would be no incentive for the owners of the NIKE mark to produce high-quality shoes and to expend money establishing consumer recognition of the products offered under the NIKE marks. Thus, protection of trademarks results in increased completion in the marketplace, with both the producer of goods and services and the consumer as the ultimate beneficiaries. Businesses benefit because they can reap the rewards of their investment in developing and marketing a product with one fearing another business will deceive consumers by using the same or a confusingly similar mark for like goods, and consumers benefit because they can identify and purchase desired and quality goods. The value inherent in achieving consumer loyalty to a particular product or service through maintainingthe consistent quality of the products or service offered under a mark is called goodwill.

they identify one maker ‘s goods or services and distinguish them from those offered by others

They indicate that all goods or services offered under the mark come from a single producer, manufacturer, or source

They indicate that all goods or services offered under the mark are of consistent quality and

They serve as an advertising device so that consumers link a product or service being offered with amark.

TYPES OF MARKS

There are four different types of marks. They are:

1.Trademark

2.Servicemark

3.Certification mark

4.Collective mark

Trademark &Servicemark

the term trademark refers to some physical and tangible good, and service mark refers to an intangible service. In common usage, the term trademark is often used to refer to marks for both goods and services. The critical point in this legal description is that a trademark is a visual mark that may use any combination of letters and imagery to aid a company in differentiating itself from other entities. A trademark aims to represent a person, company, or product visually, and the trademark should be designed to provide easy and definite recognition. The term mark will be used as a synonym for both trademark and service marks. The Indian Trademark Act states that the term mark includes any trademark, service mark, collective mark, or certification mark.

Certification marks

A certification mark is a word, name, symbol, device, or combination thereof, used by one person to certify that the goods or services of others have certain features regarding quality, material, mode of manufacture, or some other characteristic (or that the work done on the goods or services was performed by members of a union or other organization) for example, Hallmark, ISO mark etc.

Collective Mark

A collective mark is used by a collective membership organization, such as a labour union, fraternity, or professional society, to identify that the person displaying the mark is a member of the organization. Thus, the FUTURE FARMERS OF AMERICA and AMERICAN BAR ASSOCIATION marks indicate membership in specific organizations. A company may use several marks. For example, COCA-COLA, the stylized WAVE DESIGN, and the slogan THINGS GO BETTER WITH COKE. All of these marks are used on one product, and the Coca-Cola Company protects all. On some occasions, companies use house marks to establish recognition in a wide range of products or services.

CATEGORIES OF MARKS

Although marks can consist of words, symbols, designs, slogans, or a combination thereof, not every term is protectable. Even among protectable marks, some marks are stronger than others. In determining the strength of marks, courts recognize several

categories of marks. In ascending order of strength and protectability, the five categories are:

Generic Mark

Generic marks are devices that name a product and are incapable of functioning as a trademark. Unlike descriptive marks, generic devices will not become a trademark even if they are advertised so heavily that secondary meaning can be proven in consumers minds. The rationale for creating the category of generic marks is that no manufacturer or service provider should be given exclusive right to use words that generically identify a product. A valid trademark can become generic if the consuming public misuses the mark sufficiently to become the generic name for the product. The prime examples of former trademarks that became the generic name for a product are ASPIRIN, XEROX and CELLOPHANE.

Descriptive mark

are devices that merely describe the services or goods on which the mark is used. If a device is merely descriptive, it is not a mark since it does not identify the source of the goods or services. No trademark rights are granted to merely descriptive marks. Misdescriptive marks are equally weak. As explained in connection with suggestive marks above, descriptive marks are often difficult to distinguish from suggestive marks. Suggestive marks require some imagination, thought, or perception to conclude the nature of the goods. Descriptive marks allow one to reach that conclusion without such imagination, thought or perception. Putting this distinction into practice can be very difficult. Merely descriptive marks can be registered federally on the Supplemental Register. The descriptive mark will not register in PTO until the consumer links the mark with a single source. That learned association is called Secondary meaning or acquired distinctiveness. The PTO assumes that secondary meaning has been acquired after five years of consecutive and exclusive use of a mark. Secondary meaning can be demonstrating a significant level of advertising, sales and consumer survey evidence to prove that when consumer encounter a mark.

For Example: The following imaginary marks could be considered merely descriptive for computer peripherals: FAST BAUD for modems (describing the quickness of the modem); 104 KEY for computer keyboards (describing the number of keys on a keyboard); LIGHT for portable computers (describing the computer's weight), TUBELESS for computer monitors (even if misdescriptive for a monitor that contains tubes).

Suggestive mark is a mark that suggests a quality or characteristic of the goods and services. Even though suggestive marks are not as strong as fanciful or arbitrary marks, suggestive marks are far more common due to the inherent marketing advantage of tying a mark to the product in a customer's mind. Suggestive marks are often difficult to distinguish from descriptive marks (described below), since both are intended to refer to the goods and services in question. Suggestive marks require some imagination, thought, or perception to conclude the nature of the goods. Descriptive marks allow one to reach that conclusion without such imagination, thought or

perception. Putting this distinction into practice is one of the most challenging and disputed areas of trademark law.

The following marks can be considered suggestive: MICROSOFT (suggestive of software for microcomputers), NETSCAPE (suggestive of software which allows traversing the "landscape" of the Internet)SILICON GRAPHICS (suggestive of graphically oriented computers)

Arbitrary Marks An arbitrary mark utilizes a device having an ordinary meaning that has no relation to the goods or services being sold.

Examples of arbitrary marks include: APPLE (for computers), LOTUS (for software), SUN (for computers), CROWN (For Television)

Fanciful Marks are devices that have been invented for the sole purpose of functioning as a trademark and have no other meaning than acting as a mark. Fanciful marks are considered to be the most vital type of mark.

Examples of fanciful marks are: EXXON, KODAK and XEROX

PROTECTABLE MATTER

Slogans, Letters and Numbers

A word or other groupings of letters is the most common type of mark. For Examples: APPLE, SILICON, GRAPHICS, NETSCAPE, IBM, NBC. Slogans from advertising campaigns are also used as trademarks. Example slogans that have substantial trademark rights attached. For Example, Nike Alphanumeric symbols (letters and numbers) may be protectable as long as they are not merely descriptive. If the numbers or letters describe something about the product or service offered under the mark, however, they will not be registrable unless proof of secondary meaning is shown.

Logos and Symbols

Logos are probably the following most common form of mark. A logo can be described as a design that becomes a mark when used closely with the goods or services being marketed. The logo mark does not need to be elaborate; it only distinguishes goods and services sold under the mark from other goods and services. Examples of logo marks are McDonald's double arches:

Names of performing Artists

A mark that merely serves to identify an artist or entertainer is not registrable. However, if the mark owner has controlled the quality of the goods or services, and the name of the artist or group has been used numerous times on different records the name may be registered as a trademark. Thus, GOO GOO DOLLS and BOB BYLAN have been registered for musical sound recordings.

Domain Names

Domain names, for example, www.ibm.com, are registrable as trademark or service marks only if they function as an identification of the source of goods and service. Thus, www.oakwood.com has been registered for real estate leasing service, and www.eilberg.com was refused registration because the mark merely indicated the location on the Internet where the applicants website appeared. It did not separately identify the applicants legal services. Another complication with domain name registration is that the PTO has held that businesses that create a website for the sole purpose of advertising their products or services cannot register a domain name used to identify that activity. Thus, www.amazon.com is registered for providing online chat rooms and bulletin boards. It is not registered in connection with offering books or other goods for sale.

Shapes and Containers

A product or container shape can also serve a source-identifying function and therefore can be an enforceable trademark. A product or container shape may also be subject to a design patent. Historically, trademark protection was not granted to product shapes until the consuming public recognized the shape as indicating the source of the product. In other words, the product shape was required to obtain secondary meaning. However, recent court decisions may mean that an inherently distinctive product shape can be a protectable trademark even before secondary meaning is obtained. Examples of product shapes and configurations that likely enjoy trademark status include: Coca-Cola Bottle

Trade Dress Trade dress is the overall commercial image (look and feel) of a product or service that indicates or identifies the source of the product or service and distinguishes it from those of others. It may include the design or configuration of a product, the labelling and packaging of goods, and the décor or environment in which services are provided. Trade dress can consist of such elements as size, shape, colour and texture to the extent that such elements are not functional. In many countries, trade dress is referred to as product design. Only non-functional trade dress can be protected because trade dress is often protected through the law of unfair competition.

Colour

The colour of an item can also function as a trademark. The Supreme Court held in the 1995 case of Qualitex Co. v. Jacobson Products Co., 115 S.Ct. 1300 (1995) that the green-gold colour of a dry-cleaning press pad can function as a trademark. Before this decision, the argument was often made that colour alone could not be considered a trademark since granting trademark status to colours would soon lead to the depletion of the number of colours available for an object. The Court in Qualitex rejected arguments based on this depletion theory, reasoning that alternative colour would usually be available for competitors. In those cases where alternative colours were not available, courts could deny trademark protection in those circumstances where colour depletion may occur

Fragrances, Sounds, and Moving Images

A sound can also be a trademark or a service mark. The three-tone chime of NBC has been registered as a service mark. Sound trademarks recently were in the news when Harley-Davidson announced that it was attempting to register the exhaust sound of a Harley- Davidson motorcycle with the U.S. Patent and Trademark Office (USPTO). Harley-Davidson was reacting to moves by competitors to duplicate the Harley sound in competing motorcycles. Hearings in front of the USPTO have been scheduled to determine whether Harley-Davidson can register the sound. A fragrance can function as a trademark if it is distinctive and not functional. For example, in re Clarke, a floral fragrance was allowed as a trademark for sewing thread and embroidery yarn and was not functional when used in connection with those goods. The roar of the MGM lion and Woody Woodpecker distinctive laugh are also registered. Finally, the Internet has given rise to applications for marks that consist of moving images, such as Microsoft company spinning EXPLORER GLOBE.

Design and Ornamentation

A design can function as a trademark as long as it is distinctive rather than merely functional or ornamental. Some designs are protected on their own, such as Nike famous swoosh design, the alligator that appears on shirts, and Betty Crocker‘s spoon. However, if the design is merely background material and does not create a separate commercial impression, or if it consists solely of some simple geometric shape, such as an oval or square, it cannot be protected without proof of secondary meaning. For example, the PTO refused the registration of two parallel-coloured bands placed at the top of socks as pure ornamentation. Merely decorative subject matter and pure ornamentation cannot be registered because they do not identify and distinguish goods or services and cannot function as a trademark.

Serialized Literary and Movie Titles

The title of a single book or movie title is generally not protectable. However, the title of a serialized work, such as THE BRADY BUCH or NEWSWEEK, can be protected as a trademark or service mark.

Insignia

Flags, coats of arms, and other insignia of India or any state or any foreign nation cannot be registered.

Picture and Drawings

Pictures or drawings of a character or scene are often used as trademarks or service marks.

SELECTING AND EVALUATING A TRADEMARK

Selecting a Mark, The selection of a mark occurs in a variety of ways.

companies hold contests and encourage employees to create a mark for a new product line orservice

Companies engage sophisticated research

Branding firms that will conduct surveys and create a mark and a logo or design for the company.

There are name creation software programs that help individuals and companies create marks

Once the mark is selected, it must be screened and evaluated for use and registrability, if failed then it leads to wastage in the expenditure of time and money in advertising, using, and applying for a mark that is rejected for registration by the PTO or, in the worst-case scenario, might subject the owner to damages for trademark infringement and unfair competition.

Reviewing a Proposed Mark

Once a mark is selected, it should be carefully scrutinized to ensure that it will not be excluded from protection under the Lanham Act.

Firstly, they have to check whether the mark contains scandalous (giving offence to moral sensibilities and injurious to reputation)

Whether consent from a living person will be required,

Whether the mark is generic,

Whether it is statutorily protected

Whether the mark is descriptive of some feature of the goods and services offered under the mark,

It also sees that the mark includes foreign terms

Many law firms specializing in trademark work use a questionnaire form or datasheet to gatherquestionnaire form or datasheet to gather basic information from clients about their marks

THE TRADEMARK SEARCH

Scope of search

There are a variety of sources that can be reviewed to locate potentially conflicting marks

There are millions of marks registered or applied for at the PTO, and thousands of journals,trade magazines, directories, telephone books, Internet sources, state records, and state trademarkregistrations that might contain other marks or business names, a computer-assisted or online searchis the most effective method of searching.

Both LEXIS and WESTLAW, the computer-assisted legal research system, offer access to vastdatabases that may point out conflicts.

One of the best-known databases is TRADEMARKSCAN product of Thomson & Thomson

Conducting the trademark search

The trademark searching is a two-step process:

a preliminary search is conducted of the records of the PTO to make a quick determination as to whether the mark may be available or whether there is a conflict that would preclude the use of the mark. It is also called a knockout search. Suppose the results of the preliminary or knockout search indicate a mark may be available. In that case, a comprehensive search of other sources (including state trademark records, telephone directories, Internet records, and trade journals) is then conducted.

Step One: The Preliminary Search

A variety of sources can be used to conduct an initial trademark search, including online subscription services, CD-ROM, the Patent and Trademark Depository Libraries, and the PTO website search services.

Following are some resources commonly used for conducting a preliminary search:

Electronic Database and CD-ROM

TRADEMARKSCAN is a database owned by Thomson & Thomson, a renowned trademark search firm, which provides information on all active registered trademarks and service marks. The TRADEAMRKSCAN database is primarily used as a quick screening tool to determine the availability of a new mark. DIALOG is another database offered by Thomson & Thomson. Its database includes trademarks from the United States plus numerous foreign countries as well as patent and copyright information. It provides online training and practice and free practice searching at the following website: http://training.dialog.com/onlinecourses/trademarks/. SAEGIS is an entire suite of services provided by Thomson & Thomson that allows online worldwide trademark searching and searching of domain name registries and websites to locate common law uses of proposed marks. TRADEMARK.COM is an online search service offered by Micro Patent LLC, offering various searchable databases, including federal marks and common law uses of potentially conflicting marks. LEXIS and WESTLAW, the computer-assisted research system, offer access to vast trademark databases that may disclose potentially conflicting marks.

PTO Web Site: Perhaps the easiest and least expensive way to conduct a very preliminary search is to review the records of the PTO (http://www.uspto.gov) and free public searching called Trademark Electronic Search System (TESS).

Step Two: The Comprehensive Search

A separate professional trademark search firm are existing for the companies when their need of searching for the trademark. These companies review the records of the PTO (go through an existing and pending application), review state trademark office

records for state trademark registration, and perform a common law search of various journals, directories, press releases, domain names and the Internet references to locate unregistered names and mark. These professional search firms can save considerable time and money and, more importantly, provide a more thorough search than what an individual can conduct on his or her own. They also check for identical and phonetically equivalent marks for similar goods and services and check for foreign equivalents. They will charge for the searching of the marks. The report is typically divided into three sections: results gained from reviewing PTO registrations and applications; results gained from reviewing state trademark records; and the typical law results.

TRADEMARK REGISTRATION PROCESSES

Preparing the application

Once a mark has been selected and evaluated for use and registration, an application for federal registration of the mark should be prepared and filed.

PTO provides an application

The name of the applicant

The citizenship of the applicant

The address of the applicant

The address of the applicant

An identification of the goods and or services offered under the mark

A drawing of the mark

A verification or declaration signed by the applicant or agent, or attorney

The application is based on the actual use of the mark or the owner's intent to use the mark.

The process of moving an application through the PTO is called prosecution [(law) the institution and conduct of legal proceedings against a defendant for criminal behaviour]

The application must be in English.

Electronically filed applications are provided by the PTO

Self-application is also be prepared as the letter size (namely 8 ½ inches by 11 inches) paper, typewriter, double-spaced, with margins of at least 1 ½ inches at the left and top of the pages.

The application should be written on only one side of the paper.

The filing and prosecution of a trademark application are governed by the TMEP [Trademark Manual of Examination Procedure].

The PTO introduced an electronic filing system in 1998.

The Trademark Electronic Application System [TEAS]. Permits applicants to file numerous documents electronically.

PTO considers the electronically filed document after transmission.

The applicant

The mark can be made only by the owner of the mark or, in the case of an intent-to-use application, by a person who has a bonafide to use the mark in commerce.

Application may be natural persons or business entities such as a corporation, partnership, association, unions, or other organisations.

Government entities such as nations, states, municipalities and other governmental bodies.

The applicant name must be an incorrect legal form

A mark should be identified in the application by the name outlined in its articles of incorporation.

Clients often make mistakes in their corporate names or the punctuation

The certificate of registration will issue in the name of the application as outlined in the application

If the application is a person or business that conducts business under a fictitious [fake] business name, the application will be rejected.

The applicant is a partnership. For example, Balboa Gardens Partnership, the application should be made by the partnership itself and the state in which the partnership was organized.

A trademark or service mark application is usually filed in the name of one party.

The PTO has been reluctant [unwilling] to accept applications by joint applicants.

A joint venture or a partnership cannot be joint applicants

Identification of Goods or Services

The application must identify the goods and services offered or to be offered under the mark that is the subject of the application. Careful consideration must be given to drafting this part of the application. The PTO categorizes goods and services into forty-five separate classes, called International Classes, because many other nations use this same classification system established by WIPO. Until 1973, the PTO used a different classification scheme, called the Indian Classification Scheme. Each class requires a filing fee. A detailed listing of the International Classes with numerous examples is found and available on the PTO‘s website. If a mark is used for more than one class of goods or services, the applicant may file a combined application listing all of the goods and services. Some attorneys prefer to file separate applications believing that a defect regarding one class of goods or services in a combined application will hold up registration for the mark in all classes. The PTO requires that the identification of goods or services be as clear, accurate and concise as possible.

Once the application is filed, no other item can be added to the registration process, and a separate application should be applied.

REGISTRATION

A registration will issue about twelve weeks after publication in the official gazette

If no notice of opposition is filed to the application.

For an ITU [Intent-to-Use] application, registration will occur after publication in the Official Gazette.

The PTO will issue a certificate of registration for the mark

The term of the registration is presently ten years from the date the mark is registered

TM for Trademark & SM for service mark.

THE TRADEMARKS ACT 1999

Assignment

An assignment of a trademark must be in writing and with the Registrar's consent under the Trademarks Act, 1999 (from now on referred to as "Trademark Act"). A registered/unregistered proprietor can assign a trademark with or without goodwill. An assignment is usually required to be made for consideration. The application, which is in a prescribed format, can be submitted by either the Assignee or together with the Assignor, before the Registrar of Trademarks for registering the title of a person who becomes entitled by assignment to a registered trademark. The Assignee, after the assignment is complete, must apply to the Registrar of Trademarks to register his/her title and the Registrar enters the name and details of the Assignee in the Register on proof of title, to his satisfaction. However, under certain circumstances, an assignment cannot be enforced, namely

(a) if an assignment will create multiple exclusive rights in more than one person;

(b) if an assignment will create multiple exclusive rights in different parts of India.

License

A License needs to be in writing, and the Trademark Act allows the licensee to either be a registered or unregistered user. The licensee of a trademark will enjoy the same rights as that enjoyed by a registered trademark proprietor. Thus, the benefit of use of the mark by an unregistered user also accrues to the registered proprietor. The Trademark Act also recognizes non-registered licensed use provided that the proprietor has licensed the right in a written agreement and the user meets all conditions of that agreement. The registered user can institute infringement proceedings in certain circumstances, while the unregistered permitted user does not have this power under the Trademark Act. The parties to a License agreement are also free to choose the territorial scope of the agreement and the term of the contract.

Infringement

Trademark infringement is a violation of the exclusive rights attached to a trademark without the trademark owner's authorisation or any licensees (provided that such authorization was within the scope of the licence).

Infringement may occur when one party, the infringer, uses a trademark that is identical or confusingly similar to a trademark owned by another party about products or services identical to the products or services the registration covers.

An owner of a trademark may commence civil legal proceedings against a party that infringes its registered trademark. In India, the Trademark Counterfeiting Act of criminalized the intentional trade in counterfeit goods and services. The ACTA trade agreement, signed in May 2011 by the United States, Japan, Switzerland, and the EU, requires that its parties add criminal penalties, including incarceration and fines, for copyright and trademark infringement and obligated the parties to actively police for infringement. A trademark that is not registered in many countries cannot be infringedas such, and the trademark owner cannot bring infringement proceedings. Instead, the owner may be able to commence proceedings under the common law for passing off or misrepresentation or under legislation that prohibits unfair business practices.

In some jurisdictions, infringement of trade dress may also be actionable. Where the respective marks or products or services are not identical, similarity will generally be assessed by reference whether there is a likelihood of confusion that consumers will believe the products or services originated from the trademark owner. The likelihood of confusion is not necessarily measured by actual consumer confusion, though usually one of the elements, but by a series of criteria Courts have established.The Court there announced eight specific elements to measure the likelihood of confusion:

1. Strength of the mark

2. Proximity of the goods

3. Similarity of the marks

4. Evidence of actual confusion

5. Marketing channels used

6. Type of goods and the degree of care likely to be exercised by the purchaser

7. Defendant's intent in selecting the mark

8. Likelihood of expansion of the product lines

If the respective marks and products or services are entirely dissimilar, trademark infringement may still be established if the registered mark is well known under the Paris Convention. In the United States, a cause of action for using a mark for such dissimilar services is called trademark dilution. In some jurisdictions, a party other than the owner (e.g., a licensee) may be able to pursue trademark infringement proceedings against an infringer if the owner fails to do so. The party accused of infringement may be able to defeat infringement proceedings if it can establish a valid exception (e.g., comparative advertising) or defence (e.g., laches) to infringement or

attack and cancel the underlying registration (e.g., for non-use) upon which the proceedings are based.

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GEOGRAPHICAL INDICATIONS

A geographical indication (GI) is a sign used on products with a specific geographical origin and possess qualities or a reputation due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

Geographical indication originates from a definite geographical territory. It identifies goods with unique characteristics originating from a definite geographical territory and identifies agricultural, natural or manufactured goods. The manufactured goods should be produced or processed or prepared in that territory. GI should have a unique quality or reputation or other characteristics.

Examples:

Tirupathi laddu-A.P

Mysore sarees-Karnataka,

Banganapalle mangoes-A.P,

KandhamalHaldi-Odisha,

Darjeeling tea-west Bengal.

Sankheda furniture-Gujarat

Potential benefits: GI's can help establish a niche for the product in the national and international market. Also helpful in getting a premium price for the producers.

GI'S are instrumental in informing the consumers about the product's true origin and preventing the consumers from being cheated.

GI's protect indigenous knowledge and methods of production.

GI'S can develop socio-economic development for the specific geographical area from where the goods originate.

GI's are registered with the GI registry in Chennai for an initial period of 10 years and can be renewed afterwards. Registration of GI is done in part-A of register, and registration of authorized users is entered in part-B andprovides business opportunities in domestic and international markets.

GI's are being viewed as tools for protecting the traditional knowledge as well as economic development of origin of the products

Why should GI be protected in India?

India is a rich storehouse of goods with reputation or quality that can be adduced to their (geographical origin or place of manufacture) to protect Indian Treasures. The economic potential of these goods is enormous. To prevent GI goods from becoming generic.

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) is a sui generis Act of the Parliament of India to protect geographical indications in India. As a member of the World Trade Organization (WTO), India enacted the Act to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights. The GI tag ensures that none other than those registered as authorised users

(or those residing inside the geographic territory) can use the popular product name. GI tags are requirements of TRIPS agreement came into force effective from 15 September 2003

Darjeeling tea became the first GI tagged product in India in 2004–05. Since then,365 products or goods had been added to the list as of 2021.

Karnataka has the highest number of GI tagged products in the country, and the government was making all efforts to popularize and market them

- An indication used to identify agricultural, natural or manufactured goods originating from a definite territory in India.
- It should have a unique quality or characteristics or reputation based upon the climatic or production characteristics unique to the geographical location.
- Examples of Geographical Indications in India are Darjeeling Tea, Kanchipuram Silk Saree, Alphonso Mango, Nagpur Orange, Kolhapuri Chappal, Bikaneri Bhujia, etc.
- Any association of persons, producers, organization established by or under the law can apply to represent& protecting the interests of the producers.
- The registration of a Geographical Indication is for ten years.
- Renewal is possible for further periods of 10 years each.
- Article 22.2 of TRIPS elaborates GI protection by member countries
- Earlier protection limited to wines and spirits
- Registration of GI as trademark prohibited
- Prevents use of terms such as type, like, kind etc
- Domestic law needed to claim protection in other countries
- Indian GI Act-2001 details – authority, registration, opposition, renewal
- Impact on trade and farmers.

Law – Geographical Indications of Goods Act, 1999

Ministry – DIPP, Ministry of Commerce and industry

Summary:A geographical indication (GI) is a sign used on products with a specific geographical origin and possesses qualities or a reputation due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production. A geographical indication right enables those who can use the indication to prevent its use by a third party whose product does not conform to the applicable standards. For example, in the jurisdictions in which the

Darjeeling geographical indication is protected, producers of Darjeeling tea can exclude the use of the term Darjeeling for tea not grown in their tea gardens or not produced according to the standards set out in the code of practice for the geographical indication. However, a protected geographical indication does not enable the holder to prevent someone from making a product using the same techniques as those set out in the standards for that indication. Protection for a geographical indication is usually obtained by acquiring a right over the sign indicating the indication. Geographical indications are typically used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products.

State-wise list of GI tagged products in India for 2021

GI tagged products in Andhra Pradesh

S.No	Geographical indication	Goods type
1	Srikalahasti kalamkari	Handicraft
2.	Kondapallibommallu	Handicraft
3	Machilipatnam kalamkari	Handicraft
4	Budithi Bell &Brass metal	Handicraft
5	Andhrapradesh leather puppetry	Handicraft
6	Uppada jamdani sarees	Handicraft
7	Tirupathi laddu	Food stuff
8	Guntur sannam chilli	Agriculture
9	Venkatagiri sarees	Handicraft
10	Bobbili veena	Handicraft
11	Mangalagiri Sarees and fabrics	Handicraft
12	Dharmavaram Handloom Pattu Sarees and Pavadas	Handicraft
13.	Bandar Laddu	Food stuff
14	Udayagiri Wooden Cutlery	Handicraft
15	Durgi stone carvings	Handicraft
16	Etikoppaka Toys	Handicraft
17	Allagadda stone carvings	Handicraft
18	Araku valley arabica coffee	Agriculture

GI tagged products in Arunachal Pradesh

S.No	Geographical indication	Goods type
1	Idu Mishmi textiles	Handicraft
2.	Arunachal Orange	Agriculture

GI tagged products in Assam

S.No	Geographical indication	Goods type
1	Muga silk of Assam	Handicraft
2.	Assam (Orthodox)	Agriculture
3	Muga silk of Assam (logo)	Handicraft
4	Assam KarbiAnglong Ginger	Agriculture
5	Joha Rice of Assam	Agriculture
6	Tezpur Litchi	Agriculture

7	Boka Chaul	Agriculture
8	KajiNemu	Agriculture

GI tagged products in Bihar

S.No	Geographical indication	Goods type
1	Madhubani paintings	Handicraft
2.	Applique (Khatwa) work of bihar	Handicraft
3	SujiniEmbroidary work of Bihar	Handicraft
4	Sikki grass products of Bihar	Handicraft
5	Bhagalpur silk	Handicraft
6	Applique (Khatwa) work of bihar (logo)	Handicraft
7	Sikki grass products of Bihar (logo)	Handicraft
8	SujiniEmbroidary work of Bihar (logo)	Handicraft
9	BhagalpuriZardalu	Agriculture
10	Katarni Rice	Agriculture
11	Magahi Paan	Agriculture
12	Shahi Litchi of Bihar	Agriculture
13	Silaokhaja	Food stuff

GI tagged products in Chhattisgarh

S.No	Geographical indication	Goods type
1	BastarDhokra	Handicraft
2.	Bastar wooden craft	Handicraft
3	Bastar iron craft	Handicraft

GI tagged products in Goa

S.No	Geographical indication	Goods type
1	Feni	Manufactured
2.	Khola chilli	Agriculture

GI tagged products in Gujarat

S.No	Geographical indication	Goods type
1	Sankheda furniture	Handicraft
2.	Agates of Cambay	Handicraft
3.	Kutch embroidery	Handicraft
4.	Tangaliya shawl	Handicraft
5	Surat zari craft	Handicraft
6	Gir kesar mango	Agriculture
7	Bhalia wheat	Agriculture

8	Kachohh shawls	Handicraft
9	Patan patola	Handicraft
10	Sankheda furniture (logo)	Handicraft
11	Agates of cambay (logo)	Handicraft
12	Kutch embroidery (logo)	Handicraft
13	JamnagariBandhani	Handicraft
14	Rajkot patola	Handicraft
15	Pethapur printing blocks	Handicraft

GI tagged products in Himachal Pradesh

S.No	Geographical indication	Goods type
1	Kullu shawl	Handicraft
2.	Kangra tea	Handicraft
3.	Chambarumal	Handicraft
4.	Kinnauri shawl	Handicraft
5	Kullu shawl (logo)	Handicraft
6	Kangra paintings	Handicraft
7	Himachal kala zeera	Agriculture
8	Himachal chulli oil	Manufactured

GI tagged products in Jammu &Kashmir

S.No	Geographical indication	Goods type
1	Kani shawl	Handicraft
2.	Kashmir pashmina	Handicraft
3.	Kashmir paper machie	Handicraft
4.	Kashmir walnut wood carving	Handicraft
5	Khatamband	Handicraft
6	Kashmir hand knotted carpet	Handicraft
7	Saffron	Agriculture

GI tagged products in Jharkhand

S.No	Geographical indication	Goods type
1	Sohrai-khovar paintings	Handicraft

GI tagged products in Karnataka

S.No	Geographical indication	Goods type
1	Mysore Silk	Handicraft
2	Mysore Agarbathi	Manufactured
3	Bidriware	Handicraft
4	Channapatna Toys & Dolls	Handicraft
5	Mysore Rosewood Inlay	Handicraft
6	Mysore Sandalwood Oil	Manufactured
7	Mysore Sandal soap	Manufactured
8	Kasuti Embroidery	Handicraft

9	Mysore Traditional Paintings	Handicraft
10	Coorg Orange	Agricultural
11	Mysore Betel leaf	Agricultural
12	Nanjanagud Banana	Agricultural
13	Udupi Malligae	Agricultural
14	Mysore Malligae	Agricultural
15	HadagaliMalligae	Agricultural
16	Ilkal Sarees	Handicraft
17	Ganjifa Cards of Mysore	Handicraft
18	Navalgund Durries	Handicraft
19	Karnataka Bronzeware	Handicraft
20	Coorg Green Cardamom	Agricultural
21	Dharwad Pedha	Food Stuff
22	Devanahalli Pomello	Agricultural
23	Appemidi Mango	Agricultural
24	Kamalapur Red Banana	Agricultural
25	SandurLambani Embroidery	Handicraft
26	Byadagi Chilli	Agricultural
27	Udupi MattuGulla Brinjal	Agricultural
28	Kinhal Toys	Handicraft
29	Bangalore Blue Grapes	Agricultural
30	Bangalore Rose Onion	Agricultural
31	Karnataka Bronzeware (Logo)	Handicraft
32	Ganjifa Cards of Mysore (Logo)	Handicraft
33	Navalgund Durries (Logo)	Handicraft
34	GuledguddKhana	Handicraft
35	Udupi Sarees	Handicraft
36	Mysore Silk (Logo)	Handicraft
37	Coorg Arabica Coffee	Agricultural
38	Chikmagalur Arabica Coffee	Agricultural
39	Bababudangiris Arabica Coffee	Agricultural
40	Sirsi Supari	Agricultural
41	Gulbarga Tur Dal	Agricultural

GI tagged products in Kerala

S.No	Geographical indication	Goods type
1	Tirur Betel Leaf (TirurVettila)	Agricultural
2	Alleppey Coir	Handicraft
3	Navara Rice	Agricultural
4	Palakkadan Matta Rice	Agricultural
5	Alleppey Green Cardamom	Agricultural
6	Maddalam of Palakkad	Handicraft
7	Screw Pine Craft of Kerala	Handicraft
8	Brass Broidered Coconut Shell Crafts of Kerala	Handicraft
9	Pokkali Rice	Agricultural
10	Vazhakulam Pineapple	Agricultural
11	Cannanore Home Furnishings	Handicraft
12	Balaramapuram Sarees and Fine	Handicraft

	Cotton Fabrics	
13	Kasaragod Sarees	Handicraft
14	Kuthampully Sarees	Handicraft
15	Central Travancore Jaggery	Agricultural
16	Wayanad Jeerakasala Rice A	Agricultural
17	Wayanad Gandhakasala Rice	Agricultural
18	Payyannur Pavithra Ring	Handicraft
19	ChendamangalamDhoties& Set Mundu	Handicraft
20	Kaipad Rice	
21	ChengalikodanNendran Banana	Agricultural
22	KuthampallyDhoties& Set Mundu	Handicraft
23	Maddalam of Palakkad (Logo)	Handicraft
24	Brass Broidered Coconut Shell Craft of Kerala (Logo)	Handicraft
25	Screw Pine Craft of Kerala (Logo	Handicraft
26	Nilambur Teak	Agricultural
27	Wayanaad Robusta Coffee	Agricultural
28	Marayoor Jaggery (MarayoorSharkara)	Agricultural
29	Tirur Betel Leaf (TirurVettila)	Agricultural

GI tagged products in Madhya Pradesh

S.No	Geographical indication	Goods type
1	Chanderi Sarees	Handicraft
2	Leather Toys of Indore	Handicraft
3	Bagh Prints of Madhya Pradesh	Handicraft
4	Bell Metal Ware of Datia and Tikamgarh	Handicraft
5	Maheshwar Sarees & Fabrics	Handicraft
6	Bell Metal Ware of Datia and Tikamgarh (Logo)	Handicraft
7	Leather Toys of Indore (Logo)	Handicraft
8	RatlamiSev	Food Stuff
9	Bagh Prints of Madhya Pradesh (Logo)	Handicraft
10	JhabuaKadaknath Black Chicken Meat	Foodstuff

GI tagged products in Maharashtra

S.No	Geographical indication	Goods type
1	Solapur Chaddar	Handicraft
2	Solapur Terry Towel	Handicraft
3	PuneriPagadi	Handicraft
4	Nashik Valley Wine	Manufactured Goods
5	Paithani Sarees and Fabrics	Handicraft
6	Mahabaleshwar Strawberry	Agricultural
7	Nashik Grapes	Agricultural
8	Kolhapur Jaggery	Agricultural

9	AjaraGhansal Rice	Agricultural
10	Mangalwedha Jowar	Agricultural
11	Sindhudurg & Ratnagiri Kokum	Agricultural
12	WaghyaGhevada	Agricultural
13	Navapur Tur Dal	Agricultural
14	Vengurla Cashew	Agricultural
15	Lasalgaon Onion	Agricultural
16	Sangli Raisins	Agricultural
17	Beed Custard Apple	Agricultural
18	Jalna Sweet Orange	Agricultural
18	Waigaon Turmeric	Agricultural
20	Purandar Fig	Agricultural
21	Jalgaon Bharit Brinjal	Agricultural
22	Solapur Pomegranate	Agricultural
23	BhiwapurChil	Agricultural
24	Ambemohar Rice	Agricultural
25	Dahanu GholvadChikoo	Agricultural
26	Jalgaon Banana	Agricultural
27	Marathwada Kesar Mango	Agricultural
28	Karvath Kati Sarees & Fabrics	Handicraft
29	Alphonso	Agricultural

GI tagged products in Manipur

S.No	Geographical indication	Goods type
1	ShapheeLanphee	Handicraft
2	WangkheiPhee	Handicraft
3	MoirangPhee	Handicraft
4	Kachai Lemon	Agricultural
5	Chak-Hao	Agricultural

GI tagged products in Meghalaya

S.No	Geographical indication	Goods type
1	Khasi Mandarin	Agricultural
2	Memong Narang	Agricultural

GI tagged products in Mizoram

S.No	Geographical indication	Goods type
1	Mizo Chilli	Agricultural
2	Pawndum	Handicraft
3	Ngotekherh	Handicraft
4	Hmaram	Handicraft
5	Tawlhlohpuan	Handicraft
6	Mizo Puanchei	Handicraft

GI tagged products in Nagaland

S.No	Geographical indication	Goods type

1	Naga Mircha	Agricultural
2	Naga Tree Tomato	Agricultural
3	Chakshesang Shawl	Handicraft

GI tagged products in Odisha

S.No	Geographical indication	Goods type
1	Kotpad Handloom fabric	Handicraft
2	Orissa Ikat	Handicraft
3	Konark Stone carving	Handicraft
4	Orissa Pattachitra	Handicraft
5	Pipli Applique Work	Handicraft
6	Khandua Saree and Fabrics	Handicraft
7	Gopalpur Tussar Fabrics	Handicraft
8	Ganjam Kewda Rooh	Manufactured
9	Ganjam Kewda Flower	Agricultural
10	DhalapatharParda& Fabrics	Handicraft
11	Sambalpuri Bandha Saree & Fabrics	Handicraft
12	Bomkai Saree & Fabrics	Handicraft
13	Habaspuri Saree & Fabrics	Handicraft
14	Berhampur Patta (Phoda Kumbha) Saree &Joda	Handicraft
15	Orissa Pattachitra (Logo)	Handicraft
16	KandhamalHaladi	Handicraft
17	Odisha Rasagola	Food Stuff

GI tagged products in Rajasthan

S.No	Geographical indication	Goods type
1	Kota Doria	Handicraft
2	Blue Pottery of Jaipur	Handicraft
3	Molela Clay Work	Handicraft
4	Kathputlis of Rajasthan	Handicraft
5	Bikaneri Bhujia	Manufactured
6	Kota Doria (Logo)	Handicraft
7	Bagru Hand Block Print	Handicraft
8	Thewa Art Work	Handicraft
9	Makrana Marble	Natural Goods
10	Molela Clay Work of Rajasthan (Logo)	Handicraft
11	Blue Pottery of Jaipur (Logo)	Handicraft
12	Kathputlis of Rajasthan (Logo)	Handicraft
13	Pokaran Pottery	Handicraft

GI tagged products in Tamilnadu

S.No	Geographical indication	Goods type
1	Salem Fabric	Handicraft
2	Kancheepuram Silk	Handicraft
3	Kancheepuram Silk	Handicraft

4	Madurai Sungudi	Handicraft
5	Coimbatore Wet Grinder	Manufactured
6	Thanjavur Paintings	Handicraft
7	Temple Jewellery of Nagercoil	Handicraft
8	Thanjavur Art Plate	Handicraft
9	East India Leather	Handicraft
10	Salem Silk known as Salem Venpattu	Handicraft
11	Kovai Kora Cotton Sarees	Handicraft
12	Arani Silk	Handicraft
13	Swamimalai Bronze Icons	Handicraft
14	Eathomozhy Tall Coconut	Agricultural
15	Thanjavur Doll	Handicraft
16	Nilgiri (Orthodox)	Agricultural
17	Virupakshi Hill Banana	Agricultural
18	Sirumalai Hill Banana	Agricultural
19	Madurai Malli	Agricultural
20	Pattamadai Pai ("Pattamadai Mat")	Handicraft
21	NachiarkoilKuthuvilakku ("Nachiarkoil Lamp")	Handicraft
22	ChettinadKottan	Handicraft
23	Toda Embroidery	Handicraft
24	Thanjavur Veenai	Handicraft
25	Thanjavur Art Plate (Logo)	Handicraft
26	Swamimalai Bronze Icons (Logo)	Handicraft
27	Temple Jewellery of Nagercoil (Logo)	Handicraft
28	Mahabalipuram Stone Sculpture	Handicraft
29	Erode Manjal (Erode Turmeric)	Agricultural
30	Thirubuvanam Silk Sarees	Handicraft
31	KodaikanalMalaiPoondu	Agricultural
32	Palani Panchamirtham	Food Stuff
33	Dindigul Locks	Manufactured
34	Kandangi Saree	Handicraft
35	SrivilliputturPalkova	Food Stuff
36	KovilpattiKadalaiMittai	Food Stuff
37	Thanjavur Pith Works	Handicraft
38	Arumbavur Wood Carvings	Handicraft

GI tagged products in Tripura

S.No	Geographical indication	Goods type
1	Tripura Queen Pineapple	Agricultural

GI tagged products in Telangana

S.No	Geographical indication	Goods type
1	Pochampalli Ikat	Handicrafts
2	Silver Filigree of Karimnagar	Handicrafts
3	Nirmal Toys and Craft	Handicrafts
4	Nirmal Furniture	Handicrafts

5	Nirmal Paintings	Handicrafts
6	Gadwal Sarees	Handicrafts
7	Hyderabad Haleem	Food Stuff
8	Cheriyal Paintings	Handicrafts
9	SiddipetGollabama	Handicrafts
10	Narayanpet Handloom Sarees	Handicrafts
11	Pochampally Ikat (Logo)	Handicrafts
12	Adilabad Dokra	Handicrafts
13	Warangal Durries	Handicrafts
14	Telia Rumal	Handicrafts

GI tagged products in Uttar Pradesh

S.No	Geographical indication	Goods type
1	Allahabad Surkha Guava	Agricultural
2	Lucknow Chikan Craft	Handicraft
3	Mango MalihabadiDusseheri	Agricultural
4	Banaras Brocades and Sarees	Handicraft
5	Hand Made Carpet of Bhadohi	Handicraft
6	Agra Durrie	Handicraft
7	Farrukhabad Prints	Handicraft
8	Lucknow Zardozi	Handicraft
9	Banaras Brocades and Sarees (Logo)	Handicraft
10	Kalanamak Rice	Agricultural
11	Firozabad Glass	Handicraft
12	Kannauj Perfume	Manufactured
13	Kanpur Saddlery	Handicraft
14	Moradabad Metal Craft	Handicraft
15	Saharanpur Wood Craft	Handicraft
16	Meerut Scissors	Manufactured
17	Khurja Pottery	Handicraft
18	Banaras GulabiMeenakari Craft	Handicraft
19	Varanasi Wooden Lacquerware & Toys	Handicraft
20	Mirzapur Handmade Dari	Handicraft
21	Nizamabad Black Pottery	Handicraft
22	Banaras Metal Repouse Craft	Handicraft
23	Varanasi Glass beads	Handicraft
24	Ghazipur Wallhanging	Handicraft
25	Varanasi Soft Stone Jali Work	Handicraft
26	ChunarBaluaPatthar	Natural
27	Gorakhpur Terracotta	Handicraft

GI tagged products in West Bengal

S.No	Geographical indication	Goods type
1	Darjeeling Tea (word & logo)	Agricultural
2	Nakshi Kantha	Handicraft
3	Santiniketan Leather Goods	Handicraft
4	Malda Laxman Bhog Mango	Agricultural

5	MaldaKhirsapati (Himsagar) Mango	Agricultural
6	MaldaFazli Mango	Agricultural
7	Santipore Saree	Handicraft
8	Baluchari Saree	Handicraft
9.	Dhaniakhali Saree	Handicraft
10.	Joynagar Moa	Food Stuff
11	BardhamanSitabhog	Food Stuff
12	BardhamanMihidana	Food Stuff
13.	Gobindobhog Rice	Agricultural
14.	Tulapanji Rice	Agricultural
15.	BanglarRasogolla	Food Stuff
16.	Bankura Panchmura Terracotta Craft	Handicraft
17.	Bengal Patachitra	Handicraft
18.	Purulia Chau Mask	Handicraft
19.	Wooden Mask of Kushmandi	Handicraft
20.	Madur Kathi	Handicraft

INDUSTRIAL DESIGNS

Introduction

Design plays a critical role in adding to the commercial value and marketability by making it more attractive and appealing. Industrial design helps companies differentiate their products from competitors and enhance the brand image of their products.

What is an Industrial Design?

An industrial design is that aspect of a helpful article that 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 colour. Industrial designs are 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 houseware, furniture and electrical appliances to vehicles and architectural structures; from practical goods and textile designs to leisure items, such as toys and pet accessories.

Examples: shapes or forms of chairs, telephones, cars, computers, aeroplanes, TV, watches, cameras, etc

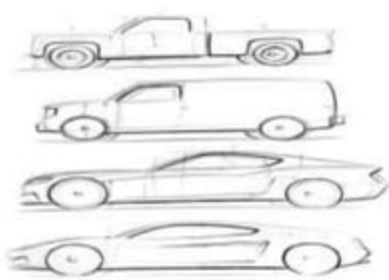
An Industrial Design is distinguished from a trademark primarily because it is constituted by the appearance of a product, which must not necessarily be distinctive (a prime requirement for a trademark). A trademark, although it may consist of all kinds of visible signs, which may or may not be ornamental, must always be distinctive since a trademark must always be capable of distinguishing the goods and services of one enterprise from another. Therefore the functions of, and justifications for, protecting industrial designs and trademarks are quite different.

The object of protection of an industrial design is different from that of a patent, primarily because an industrial design must relate to the object's appearance and which is not determined by technical or functional necessity. The object of patent protection, in contrast, is determined by the functionality of an object or process since it must be an invention.

The shape of the cars, Shape of Square idli – Not usually available, They will get design protection but should have industrial/commercial applications.

It can be expressed in 2 D features like patterns, lines, composition, colour, Example of 2D designs – textile, Example of 2D designs- wallpaper, carpet designs

Examples of 3d design – mobile phone, Examples of 3d design – car, Examples of 3d design - the shape of a toy and combination of both 2D & 3D



Why protect Industrial Designs?

By protecting an industrial design, the design owner is given a right against its unauthorized copying or imitation by third parties. In other words, the owner of a protected industrial design shall have the right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design that is a copy of the protected design. Since industrial designs are that aspect of an article that makes it aesthetically appealing and attractive, they serve to add to the product's commercial value and facilitate its marketing and commercialization. To be protected under most national laws, an industrial design must appeal to the eye. The industrial design does not protect any technical features of the article to which it is applied.

The owner of an Industrial Design benefits through the industrial development of her/his products, and the protection helps to ensure a fair return on investment. However, the consumer and the public benefit greatly as industrial design protection is conducive to fair competition. Ethical trade practices encourage creativity and thus lead to more aesthetically attractive and diversified products. Also, industrial design protection injects creativity into the industrial and manufacturing sector, contributes to the expansion of commercial activities, and enhances the export potential of national products

So industrial design protection benefits the owner, the consumer and the economy in general. Another exciting feature of industrial designs is that they can be relatively inexpensive and

straightforward to develop and protect. Therefore they are reasonably accessible to small and medium-sized enterprises, even to individual artists and artisans, in industrialized and developing countries.

How can industrial designs be protected?

In most countries, an Industrial Design must be registered to be protected under industrial design law. As a general rule, to be registered, the design must be new or original. What constitutes novelty or originality may differ from country to country, and indeed the registration process varies from country to country. In particular, this can involve whether there is an examination or not as to the form and substance of the application for the registration of the design, especially to determine novelty or originality. An industrial design must be capable of being reproduced by industrial means (industrial application). Also, it must be possible to apply an industrial design to an article which may be either two-dimensional or three-dimensional

In principle, the industrial design must be published either before, at the time of, or in a stated period after, registration. This depends on the national law and sometimes on the decision of the applicant. Furthermore, it should be borne in mind that registration of an industrial design is not necessarily the only means of protection. It is possible if certain conditions are met to protect industrial designs under copyright law or the law against unfair competition

How long does any protection last?

Again this varies from country to country but the term of protection is typically for 5 years with the possibility of renewal, which may total, in most countries, up to a maximum of 15 to 25 years. The minimum duration under the TRIPS agreement is 10 years.

In some countries, industrial design and copyright protection can be cumulative. This means that these two kinds of protection can exist concurrently. However, if copyright is allowed in other countries, it is mutually exclusive to industrial design protection. This means that once the owner chooses one kind, he loses the protection of the other.

Is there any other protection available for an Industrial design?

Under some circumstances and in some countries, an industrial design may also be protectable under unfair competition law. However, it is worth stressing that the protection and remedies are different under the different forms of protection.

Can you get worldwide protection for an Industrial Design?

As a general rule, and following the Paris Convention, industrial design protection is limited to the country where protection is sought and granted. If protection is desired in several countries, separate national applications (or deposits) must be made, and the procedures will generally be different in each country. However, the Hague Agreement concerning the International Deposit of Industrial Designs helps to facilitate this process.

Summary of Industrial Design protection

An industrial design is that aspect of a helpful article, 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 colour. As with other forms of intellectual property, it may be protected. By protecting an industrial design, the owner is ensured an exclusive right against its unauthorized copying or imitation by third parties for a time, typically for 5 years with the possibility of renewal, up to a maximum of 15-25 years

depending on the particular national law. The TRIPS provides for the protection of a minimum of 10 years.

In most countries, an Industrial Design must be registered to be protected under industrial design law and, as a general rule to be registered. The design must be newor original. What constitutes its novelty or originality may differ from country to country, and indeed the registration process itself varies from country to country. In particular, this can involve whether there is an examination or not as to the form and substance of the application for the registration of the design, especially to determine novelty or originality.

NEW PLANT VARIETIES

The **International Union for the Protection of New Varieties of Plants** or **UPOV**is an intergovernmental organization with headquarters in Geneva, Switzerland. The current Secretary-General of UPOV is Francis Gurry. UPOV was established by the International Convention for the Protection of New Varieties of Plants. The Convention was adopted in Paris in 1961 and revised in 1972, 1978 and 1991. The objective of the Convention is the protection of new varieties of plants by an intellectual property right. By codifying intellectual property for plant breeders, UPOV aims to encourage new varieties of plants to benefit society.For plant breeders' rights to be granted, the new variety must meet four criteria under the rules by UPOV:

1. The new plant must be novel, meaning it must not have been previously marketed in the country where rights are applied.
2. The new plant must be distinct from other available varieties.

3. The plants must display homogeneity.
4. The traitor traits unique to the new variety must be stable to remain true to type after repeated propagation cycles.

Protection can be obtained for a new plant variety (legally defined) however, it has been obtained through conventional breeding techniques or genetic engineering.

Whether or not UPOV negatively affects agriculture in developing countries is much debated. It is argued that UPOV's focus on patents for plant varieties hurts farmers in that it does not allow them to use saved seed or that of protected varieties. Countries with solid farmers' rights, such as India, cannot comply with all aspects of UPOV. François Meienberg is of this opinion and writes that the UPOV system has disadvantages, especially for developing countries, and that at some point, protection starts to oppose development.

On the other hand, by joining UPOV, developing countries will have more access to new and improved varieties (better yielding, stronger resistance) instead of depending on old varieties or landraces, thus helping fight poverty and feed the growing world population.

Empirical evidence to support either point of view is lacking. However, two things are clear.

First, UPOV supports an agricultural system that is export-oriented. In other words, developing countries moving towards UPOV-consistent systems tend to favour breeders who are producing for export. In this regard, the example of Kenya is telling, as UPOV's study points out, the majority of varieties are owned by foreign producers and are horticultural crops, clearly destined for export. An over-heavy dependence on agriculture for export is increasingly recognized as being unwise.

Plant Variety and Farmers Right Act

The **Protection of Plant Variety and Farmers Right Act, 2001 (PPVFR Act)** is an Act of the Parliament of India that was enacted to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders, and to encourage the development and cultivation of new varieties of plants. This act received the assent of the President of India on October 30, 2001.

The PPV&FR Act, 2001 was enacted to grant intellectual property rights to plant breeders, researchers and farmers who have developed any new or extant plant varieties. The Intellectual Property Right granted under PPV&FR Act, 2001 is dual one is for the variety, and the other is for the denomination assigned to it by the breeder. The rights granted under this Act are heritable and assignable, and only registration of a plant variety confers the right. Essentially Derived Varieties (EDV) can also be registered under this Act, and it may be new or extant. Farmers are entitled to save, use, sow, re-sow, exchange, or sell their farm produce, including seeds of a registered variety, in an unbranded manner. Farmers varieties are eligible for registration, and farmers are totally exempted from paying any fee in any proceedings under this Act. The period of protection for field crops is 15 years and for trees and vines is 18 years,and for notified varieties, it is 15 years from the date of notification under section 5 of Seeds Act, 1966. An annual fee must be paid every year to maintain the registration and renewal fee paid for the extended registration period. Farmers can claim compensation if the registered variety fails to provide expected performance under given conditions. The rights granted under this Act are exclusive rights to produce, sell, market, distribute, import and export the variety. Civil and criminal remedies are provided for enforcement of breeders' rights, and provisions relating to benefit sharing and compulsory licence in a case registered variety is not made available to the public at a reasonable price are provided. Compensation is also provided for villages or rural communities if any registered variety has been developed using any variety whose evolution such village or local community has contributed significantly. The procedural details and modes of implementing this Act are provided in PPV&FR Rules, 2003. In the present article, we discuss some of the essential legal provisions of this Act and some of the case studies.

Plant breeders rights (PBR), also known as **plant variety rights** (PVR), are rights granted to the breeder of a new variety of plant that gives the breeder exclusive control over the propagating material (including seed, cuttings, divisions, tissue culture) and harvested material (cut flowers, fruit, foliage) of a new variety for several years.With these rights, the breeder can choose to become the exclusive marketer of the variety or to license the variety to others. In order to qualify for these exclusive rights, a variety must be new, distinct, uniform and stable. A variety is:

- new if it has not been commercialized for more than one year in the country of protection;
- distinct if it differs from all other known varieties by one or more critical botanical characteristics, such as height, maturity, colour, etc.
- uniform if the plant characteristics are consistent from plant to plant within the variety;
- stable if the plant characteristics are genetically fixed and therefore remain the same from generation to generation or after a reproduction cycle in hybrid varieties.

The breeder must also give the variety an acceptable "denomination", which becomes its generic name and must be used by anyone who markets the variety.

Typically, plant variety rights are granted by national offices after the examination. Seed is submitted to the plant variety office, which grows it for one or more seasons, to check that it is distinct, stable, and uniform. If these tests are passed, exclusive rights are granted for a specified period (typically 20/25 years (or 25/30 years, for trees and vines). Annual renewal fees are required to maintain the rights.

Breeders can bring suit to enforce their rights and can recover damages for infringement. Plant breeders' rights contain exemptions from infringement that are not recognized under patent law. Commonly, there is an exemption for farm-saved seeds. Farmers may store the products in their bins for their use as seed, but this does not necessarily extend to brown-bag sales of seed. Further sales for propagation purposes are not allowed without the written approval of the breeder. There is also a breeders' exemption (research exemption in the 1991 Act) that allows breeders to use protected varieties as sources of initial variation to create new varieties of plants (1978 Act) or for other experimental purposes (1991 Act). There is also a provision for compulsory licensing to assure public access to protected varieties if the national interest requires it and the breeder cannot meet the demand.

There is tension over the relationship between patent rights and plant breeder's rights. There has been litigation in Australia, the United States, and Canada over the overlap between such rights. Each of these cases was decided on the principle that patents and plant breeders' rights were overlapping and not mutually exclusive. Thus, the exemptions from infringement of plant breeders' rights, such as the saved seed exemption, do not create corresponding exemptions from infringement of the patents covering the same plants. Likewise, acts that infringe the plant breeders' rights, such as the exportation of the variety, would not necessarily infringe a patent on the variety, which only allows the patent owner to prohibit making, using or selling the patented invention.

Is there any Act for protecting a new plant variety in India?

The Protection of Plant Varieties and Farmers' Rights Act 2001 was enacted in India to protect the new plant varieties. Rules for the same were notified in 2003. The Act has now come into force. The Protection of Plant Varieties and Farmers' Rights Authority has been set up and is responsible for administering the Act. The Registrar's office has started receiving applications for registration of twelve notified crops viz. rice, lentil, maize, green gram, kidney bean, black gram, chickpea, pearl millet, pigeon pea, sorghum, field pea, bread wheat. Under the TRIPS agreement, it is obligatory to protect new plant varieties either through patent or an effective sui generis system or a combination of these two systems. India was therefore under an obligation to introduce a system for protecting new plant variety. India opted for a sui generis system and enacted The Protection of Plant Varieties and Farmers' Rights Act 2001. However, in many countries, such plants can be protected through Breeders' Rights, patents and UPOV Convention.

What are the objectives of the Protection of Plant Varieties and Farmers' Rights Act in India?

The objectives of the Protection of Plant Varieties and Farmers' Rights Act are:

(i) to stimulate investments for research and development both in public and the private sectors to develop new plant varieties by ensuring appropriate returns on such investments.

(ii) to facilitate the growth of the seed industry in the country through domestic and foreign investment, which will ensure the availability of high-quality seeds and planting material to Indian farmers.

(iii) to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro-biodiversity by rewarding them for their contribution through benefit sharing and protecting the traditional right of the farmers.

More importantly, this act safeguards farmers by giving farmers' rights while providing adequate protection of plant breeders' rights. The Act seeks to safeguard researchers' rights as well. It also contains provisions for safeguarding the more significant public interest. The farmer's rights include his traditional rights to save, use, share or sell his farm produce of a variety protected under this Act, provided the sale is not for reproduction under a commercial marketing arrangement.

What kind of varieties are registerable under the plant variety Act?

1. A new variety if it conforms to the criteria of novelty, distinctiveness, uniformity and stability

2. An extant variety if it conforms to criteria of distinctiveness, uniformity and stability.

How is an Extant Variety defined in PPVFR Act, 2001?

An "Extant Variety" means a variety, which is– (i) notified under section 5 of the Seeds Act, 1966 (54 of 1966); or (ii) a farmers' variety; or (iii) a variety about which there is common knowledge; or (iv) any other variety which is in the public domain.

What is the meaning of Farmers' Variety as per PPVFR Act, 2001?

Farmers' Varietymeans a variety which

(i) has been traditionally cultivated and evolved by the farmers in their fields; or

(ii) is a wild relative or landrace of a variety about which the farmers possess the common knowledge;

where farmer means any person who (i) cultivates crops by cultivating the land himself; or (ii) cultivates crop by directly supervising the cultivation of land through any other person; or (iii) conserves and preserves, severely or jointly, with any person any wild species or traditional varieties or adds value to such wild species or traditional varieties through selection and identification of their valuable properties.

What is the meaning of Essentially Derived Variety as per the PPVFR Act, 2001?

"Essentially Derived Variety" is a variety that is predominantly derived from another variety (protected or otherwise) and conforms to the initial variety in all aspects except for the differences which result from the act of derivation, and yet is distinguishable from such initial variety

How novelty, distinctiveness, uniformity & stability have been defined in the Protection of Plant Varieties and Farmers' Rights Act?

A) Novelty: Plant variety is novel if at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of breeder or his successor for exploitation of such variety-

(i) in India earlier than one year or(ii) outside India, in the case of trees or vines earlier than six years or any other case, earlier than four years, before the date of filing such application:

Provided that a trial of a new variety which has not been sold otherwise disposed of shall not affect the right to protection. Provided further that the fact that on the date of filing the application for registration, propagating or harvested material of such variety has become a matter of common knowledge other than the manner above shall not affect the criteria of novelty for such variety.

B) Distinctiveness: New plant variety will be considered distinct if it is distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country when applying.

C) Uniformity: New plant variety will pass uniformity test if subject to the variation that may be expected from the particular features of its propagation. It is sufficiently uniform in its essential characteristics.

D) Stability: New plant variety will be considered stable if its essential characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

Compulsory Plant Variety denomination: After satisfying the above four essential criteria, every applicant shall assign a single and distinct denomination to a variety-seeking registration.

What are farmers' rights?

The farmers' rights as defined in the Act are:

(i) a farmer who has bred or developed a new variety shall be entitled to registration and other protection in like manner as a breeder of a variety under this Act,

(ii) the farmers' variety shall be entitled to registration if the application contains declaration as specified in clause (h) or sub-section (1) of section 18,

(iii) a farmer engaged in the conservation of genetic resources of landraces and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the Gene Fund. Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act,

(iv) a farmer shall be deemed entitled to save, use, sow, resow, exchange, share or sell his farm produce, including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act.

Note: Branded seed means any seed put in a package or any other container and labelled in a manner thatindicates that such seed is of a variety protected under this Act. In addition to the above, where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organization of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organization of farmers, as the case may be, the expected performance under given conditions. If such propagating material fails to provide such performance under such given conditions, the farmer or the group of farmers or the organization of farmers, as the case may be, may claim compensation in the prescribed manner before the Authority and the Authority shall, after giving notice to the breeder of the variety and after providing him an opportunity to file an opposition in the prescribed manner and after hearing the parties, direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organization of farmers.

Which plant can varieties not be protected under this Act?

A plant variety which is:-

(i) not capable of identifying such variety; or

(ii) consists solely of figures; or

(iii) is liable to mislead or to cause confusion concerning the characteristics, value, identity of such variety, or the identity of a breeder of such variety.

(iv) is likely to deceive the public or cause confusion in public regarding the identity of such variety.

(v) is comprised of any matter likely to hurt the religious sentiments of any class or section of the citizens of India.

(vi) is prohibited for use as a name or emblem for any purposes; (vii) comprises solely or partly of a geographical name.

What is the term of plant variety protection?

(i) in the case of trees and vines, eighteen years from the date of registration of the variety.

(ii) in the case of extant varieties, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act,1966

(iii) in the other cases, fifteen years from the date of registration of the variety. Initially, the certificate of registration shall be valid for nine years in trees and vines and six years in other crops and maybe revived and renewed for the remaining period on payment of fees as may be fixed by the rules.

What is the cost of registering a plant variety?

Some necessary fees are given below:

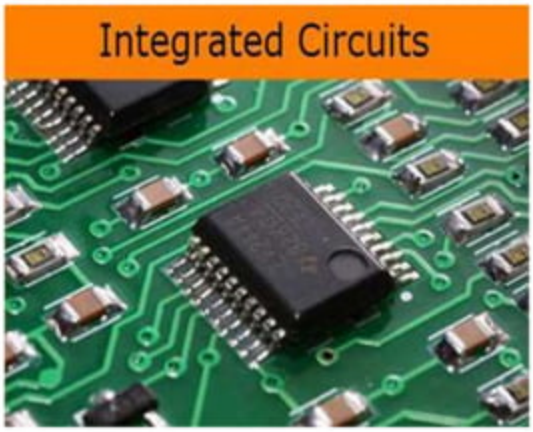
No.	Action	Official fee
1	Conducting tests	Dependent on the nature and type of test subject to a maximum of Rs. 50,000 per entry
2	Fees for registration of essentially derived varieties	Individual – Rs. 5,000/- Educational – Rs. 7,000/- Commercial –Rs. 10,000/-
3	Renewal fee per year	Individual – Rs. 5,000/- Educational – Rs. 7,000/- Commercial – Rs. 10,000/-
4	Application for benefit-sharing	Rs. 5,000/-

LAYOUT DESIGNS OF INTEGRATED CIRCUITS (semiconductor chips)

Introduction

The Indian government has passed the act that to protect layout designs of semiconductor integrated circuits. The objective of the law is to promote the progress of innovation in integrated circuits. The layout designs of integrated circuits may not be protected under the patent regime. it is one kind of IPR

Definition: it, also referred to as a monolithic integrated circuit, is an assembly of different electronic components connected toa tiny semiconductor wafer (usually silicon). -also called a chip or a microchip. "A circuit in which all or some of the circuit elements are inseparably associated and electrically interconnected so that it is considered to be indivisible for construction and commerce."



Requirements: A layout design has to satisfy the following requirement

Original

Non-commercialized

Distinctive

Types of integrated circuits

Digital Integrated Circuits

Digital IC's are the onesthat work only on two defined levels, 1 and 0. They work on binary mathematics. They can contain millions of logic gates, flip-flops etc, integrated on a single chip. Microprocessors and microcontrollers are examples of digital IC's

Analog Integrated Circuits

They work by processing continuous signals. They perform functions such as filtering, amplification, modulation, demodulation etc. Sensors, OP-AMP's are analog IC's

Microprocessor Integrated Circuits

composed of millions of transistors that have been configured as thousands of individual digital circuits, each of which performs some specific logic function.

Memory Integrated Circuits

memory is composed of dense arrays of parallel circuits that use their voltage states to store information. Memory also stores the temporary sequence of instructions, or programs, for the microprocessor

Mixed-Signal Integrated Circuits

combination of Digital Integrated Circuit and Analog Integrated Circuit.

Application-specific Integrated Circuits

An application-specific IC (ASIC) can be either a digital or an analog circuit. As their name implies, ASICs are not reconfigurable; they perform only one specific function. For example, a speed controller IC for a remote control car is hard-wired to do one job and could never become a microprocessor. An ASIC does not contain any ability to follow alternate instructions.

Radio-frequency Integrated Circuits

Radio-frequency ICs (RFICs) are rapidly gaining importance in cellular telephones and pagers. RFICs are analog circuits usually run in the frequency range of 900 MHz to 2.4 GHz (900 million hertz to 2.4 billion hertz). They are usually thought of as ASICs even though some may be configurable for several similar applications

Microwave Monolithic Integrated Circuits

A particular type of RFIC is known as a microwave monolithic IC (MMIC). These circuits run in the 2.4- to the 20-GHz range, or microwave frequencies, and are used in radar systems, satellite communications, and power amplifiers for cellular telephones.

Registration process

An application has to be filed before the registrar in a prescribed manneralong with the prescribed fee. The registrar will then examine the application and either reject or accept it with or without amendments or modifications. After acceptance, the application will be advertised and kept open to opposition.

In opposition, the registrar will allow the applicant to respond and grant a hearing if required. On successful passing the opposition, the application will be registered, and a certificate of registration will be issued.

Term: the term of registered layout design is 10 years from the date of first commercialization or the date of registration.

Rights: The registration of layout design gives the owner the following rights

Right to use

Right to reproduce

Right to distribute

Right to sell

Right to import the layout design

The rights subsist irrespective of whether the layout design is incorporated into an article or not. Protection of layout design approves only by registration and in no other manner.

A person is liable for the infringement of a layout design if he exercises any of the owner of layout design rights without authorization or permission.

Advantages of Integrated Circuits

1. Since the soldering joints are not used in integrated circuits, they are more reliable than discrete circuits. This is due to the reduction in the number of interconnections between components.

2. Due to the fabrication of the various components on the integrated circuits, the components became much smaller. This makes integrated circuits much lighter than discrete circuits. The integrated circuits thus consume much less space than discrete circuits.

3. Integrated circuits are encapsulated with a silicon oxide layer during manufacture. This layer is tough and resistant and thus gives the integrated an ability to operate at extreme temperatures and other extreme environmental conditions.

4. Integrated circuits are constrained to minimize the number of external connections. This has greatly simplified the layout of these circuits and makes them easier to use.

5. Integrated circuits have been noticed to use less power for operations.

TRADE SECRETS:

A trade secret is a formula, pattern, physical device, idea, process, or compilation of information that is not generally known or reasonably ascertainable. A business can obtain an economic advantage over competitors or customers.

Examples: A formula for a sports drink

Survey methods used by professional pollsters, and Recipes (food) ♦ A new invention for which a patent application has not yet been filed

Marketing strategies

Manufacturing techniques

Computer algorithms

Ways to protect trade secrets

Restrict access to the information (lock it away in a secure place, such as a bank vault)

Limit the number of people who know the information

Have the people who know the trade secret agree in writing not to disclose the information (sign non-disclosure agreements)

Have anyone that comes in contact with the trade secret, directly or indirectly, sign non-disclosure agreements

Mark any written material about the trade secret as proprietary

Advantages of trade secrets

Unlimited duration -trade secrets could potentially last longer than patents (20 years) and copyrights

Your protection is theoretically worldwide

No application required

No registration costs

No public disclosure or registration with a government agency

Effective immediately

Famous trade secrets are

Formula for coca-cola

KFC chicken recipe

The big mac special sauce.

Kentucky fried chicken

The secret recipe of 11 herbs and spiceslies in a bank vault. Few people know it, and they are contractually obligated to secrecy. The ingredients are mixed by two different companies in two locations and then combined elsewhere in a third, separate location.

To mix the final formula, a computer processing system is used to blend the mixtures and ensure that no one outside KFC has the complete recipe

Trade secret litigation comprises two aspects.

1. violation of trade secret law takes place when confidential information is obtained through misappropriation.

2. violation of nondisclosure agreement took place when a party in the contract breached the agreement.

The problem: 80% of trade secrets loss is due to employees, contractors, trusted insiders.

departing or disgruntled employees

intentional (malicious)

inevitable (knowledge acquired)

by ignorance

The way we do business today (increased use of contractors, temporary workers, out-sourcing)

Declining employee loyalty: more job changes

Organized crime: discovered the money to be made in stealing high tech IP

Storage facilities (DVD, external memories, keys)

Expanding the use of wireless technology

Trade secrets can be known by proper means

Trade secrets may be legally discovered by the following proper means:

Independent invention

Reverse engineering: that is, starting with the known product and working backwards to find the method by which it was developed (assuming the reverse engineering is not prohibited by contract)

Observing the item in public use or on public display

Obtaining the trade secret from published literature.

CDA AND NDA AGREEMENTS

CDA= Confidentiality Agreement

NDA= Non-Disclosure Agreement

the important elements included in the written agreement of CDA & NDA are:

1. Ownership of Inventions

2. Non-Disclosure Provisions

3. Non-Solicitation Provisions

4. Non-Competition Provisions

Technical know-How agreements

Know-Howshall mean formulae, processes, recipes, product specifications, technical and manufacturing data, information, equipment specification, raw materials, and other technical information and data necessary to manufacture Products. Know-how means any form of technical information or assistance relating to the manufacture or placing into operation of the said products. It also means any practical knowledge, techniques, and skill required to achieve some practical end. It is considered an intangible property in which rights may be bought and sold

Industrial know How

Industrial property viewed as intellectual property. Know-how is a component in the transfer of technology in national and international environments, co-existing with or separate from other IP rights such as patents, trademarks and copyright and is an economic asset. When it is transferred by itself, know-how should be converted into a trade secret before transfer in a legal agreement.

Know-how can be defined as confidentially held, or better, closely-held information in the form of unpatented inventions, formulae, designs, drawings, procedures and methods, together with accumulated skills and experience in the hands of a licensor firm's professional personnel which could assist a transferee/licensee of the object product in its manufacture and use and bring to it a competitive advantage. It can be further supported with privately maintained expert knowledge on the operation, maintenance, use/application of the object product and its sale.

TRADITIONAL KNOWLEDGE

INTRODUCTION

traditional knowledge derives from or is rooted in the traditional way of life of aboriginal people and the accumulated knowledge and understanding of the human place about the universe.

Traditional Ecological Knowledge environmental knowledge has been gathered by aboriginal peoples who have lived in and observed a particular area for generations. υsystems of experiential knowledge gained by continual observation and transmitted among members of a community

Traditional Environmental Knowledge: it is a body of knowledge and beliefs transmitted through oral traditions and first-hand observation. The quantity and quality of TEK vary among community members, depending upon gender, age, social status, intellectual capability and profession.

Indigenous knowledge: It includes facts, concepts, theories about the characteristics which describe the objects, events, behaviours and interconnections that comprise both the animate and inanimate environments of Indigenous peoples.

TRADITIONAL KNOWLEDGE DIGITAL LIBRARY

A collaboration between the Council of Scientific and Industrial Research (CSIR) and the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy, Ministry of Health & Family Welfare, Government of India. There is considerable unexplored potential for developing, promoting and utilizing traditional knowledge, a unique endowment of India. Create a sui generis system to protect traditional knowledge that will safeguard the misappropriation of traditional knowledge and promote further research and development in products and services based on traditional knowledge. The creation of the Traditional Knowledge Digital Library (TKDL) has been a significant achievement for India, a vast pool of traditional knowledge. India has been able to thwart attempts to misappropriate its traditional knowledge. The next challenge is to use India's strength in traditional knowledge for its effective promotion, development and utilization.

It manages a database of knowledge in various local languages such as Sanskrit, Urdu, Arabic, Persian and Tamil. TKDL has also converted the database into five international languages in patent application formats.

So far, over 2 lakh medicinal formulations have been transcribed, and the database is present. In the past year, patents have been wrongly granted to traditional knowledge related inventions that do not fulfil the requirement of novelty and inventive step, mainly due to relevant prior art. For instance, this has happened in the case of Turmeric, Neem, Basmati etc.

The practical obstacle underlying the issue was that patent examiners could not searchrelevant traditional knowledge as prior art because they did not have access to traditional knowledge information in their classified non-patent literature. This non-accessibility was that the Indian traditional knowledge exists in local languages such as Sanskrit, Urdu, Arabic, Persian, Tamil, etc. Neither was available or not understood by patent examiners. TKDL breaks the language and format barrier and makes available this information in English, French, Spanish, German and Japanese in patent

application format, which is easily understandable by patent examiners. TKDL is thus a tool providing defensive protection to the rich traditional knowledge of India.

A research council of the AYUSH ministry has been implementing a Tribal Health Care Research Programme (THCRP), which aims at collecting information on folk medicines / traditional practices prevalent in different parts of the country besides extending health care services to the tribal population.

Practices in India

Religious traditions

Traditional tribal traditions

Royal traditions

Livelihood traditions

The tribal communities of Meghalaya are Khasis, Garos, and Jaintias.

The Bhotiya community in western Himalaya.

Juang and Munda tribes of the Keonjhar district of Eastern India.

Kani tribes in Southern India.

International Mechanism in Protection of TK and BD:

1) TRIPS: Art.27.3(b)

2) CBD: Art.16.5 & Art. 22

3) Nagoya Protocol.

Traditional Knowledge: Article 8(j), TK must be: Respected, preserved and maintained, Promoted, with the approval and involvement of the holders. Benefits arising from TK must be shared equitably

CASE STUDIES

1. India Foils Colgate-Palmolive Bid to Patent Nutmeg Mouthwash

In 2010, a patent application was filed by Colgate-Palmolive Company titled Oral compositions containing extracts of Myristica fragrans and related methods. The company claimed an oral composition comprising a combination of extracts, including an extract from Myristica fragrans and a natural extract other than the extract from Myristica fragrans. The prime issue with this application by Colgate-Palmolive is that Myristica fragrans (nutmeg) has been traditionally used in the Indian system of medicines and is used almost every single day by an average Indian, especially those residing in the countryside. The Patent application by Colgate-Palmolive describes that Myristica fragrans (nutmeg) is known as a headache cure and a gastrointestinal drug in the Indian ancient Ayurveda and has been used in the treatment of dyspepsia, bellyache, diarrhoea and vomiting in traditional Chinese medicine. Myristica fragrans has reportedly been used as a fruit paste and applied to teeth. An essential claim of this application is A composition according to any preceding claim, wherein the composition is a dentifrice in a form selected from the group consisting of: powder; toothpaste or dental gel; a periodontal gel; a liquid suitable for painting a dental surface; a chewing gum; a dissolvable, partially dissolvable or non-dissolvable film or strip; a bead, a wafer; a wipe or towelette; an implant; a mouth rinse, a foam, and dental floss. CSIR-TKDL submitted proof in the form of references from an ancient book, which said that the herb and its extracts were used for oral diseases in Indian systems of medicine. In addition, other third party observations also made submissions against the claims, and the Patent application was shot down. The status of the application EP2689806 now stands cancelled.

2. India wins the Patent war on hair loss formula

Pangaea Laboratories Limited, a UK based company, had filed a patent application in February 2011 titled Hair building solid agent(EP2361602). On a close reading of the application, they come across two important pieces of information viz, the description section of the application which reads: "The hair building solid spray agent may include one or more pharmacologically active ingredient for treating one or more of hair loss, thinning hair and skin conditions. The pharmacologically active ingredient may be one or more of finasteride, dutasteride, spironolactone, minoxidil, nitric oxide donators, Beta-glucan, saw palmetto, resveratrol, curcumin, marine extracts, procyanidins, superoxide dismutase, superoxide dismutase mimetics, taurine, plant sterols, pine bark extract, melatonin, green tea, caffeine, copper peptides, copper PCA, EUK-134, copper(II) 3,5-dispropylsalicylate, dimethoxy chromanol, catalase, catalase mimetics and hydrolysed lupine protein."As can be observed from a reading of the paragraph. There is a mention of curcumin, pine bark, and green tea as a pharmacologically active ingredients in preparing the hair loss formula. Thus CSIR filed an objection to the application by providing the EPO with evidence from the TKDL citing the traditional use of curcumin, pine bark and green tea to treat hair loss. The third-party observations submitted by CSIR can be accessed here. Based on India's evidence, the Patent application was finally deemed to be withdrawn by the applicant on 29 June 2015.

3. Over 1500 yoga asanas shortlisted to thwart patenting by foreign parties.

Another news piece making rounds these days is that TKDL is in the process of documenting over 1500 yoga postures in order to stop patenting these postures by foreign parties. TKDL believes that as many as 2,000 applications were being made internationally every year for patents on Indian systems of medicine, including yoga postures, which was nothing but misappropriation of traditional Indian knowledge. However, with India providing evidence to the contrary, Patent applications have had to be withdrawn in countries as varied as the USA, Japan, UK, Italy, Germany, Australia, China, Cyprus, Kenya, Spain, South Korea, Bulgaria, the Netherlands and New Zealand. It is estimated that up to 300 million people practice yoga globally, with the US being the world's largest yoga industry, worth over $27 billion. However, more than half of global yoga enthusiasts are Indians in a country that lacked any organizational approach to the $80bn global industry. Lacking brand names, yoga training in India is mainly run through small independent businesses. News sources indicate that a mind-boggling 249 patents were taken on yoga in 2004 and 2,300 in 2005 at various international Patent offices, implying the urgent need to incorporate these yoga asanas into TKDL. The above three instances are only some of the success stories of TKDL. As published by the Press Information Bureau of India, the CSIR-TKDL unit to date has achieved success in about 200 cases and more, like the ones listed here, without any cost. Besides major companies like Colgate-Palmolive and Pangaea, the other big players whom the TKDL has hit include Nestle, L'Oréal, Avasthagen, Ranbaxy, BASF and Unilever.

4. KANI TRIBE-JEEVANI CASE

The subject of this case study is the role of intellectual property rights in the benefit-sharing arrangements concerning the "Jeevani" drug, which was developed by scientists at the Tropical Botanic Garden and Research Institute (TBGRI), based on the tribal medicinal knowledge of the Kani tribe in Kerala, South India. Jeevani is a restorative, immuno-enhancing, anti-stress and anti-fatigue agent based on the herbal medicinal plant arogyapaacha, used by the Kani tribals in their traditional medicine. Within the Kani tribe, the customary rights to transfer and practice specific traditional medicinal knowledge are held by tribal healers, Plathis. The knowledge was divulged by three Kani tribal members to the Indian scientists who isolated 12 active compounds from arogyapaacha, developed the drug Jeevani, and filed two patent applications on the drug (and another patent based on the same plant but for different use). The technology was then licensed to the Arya Vaidya Pharmacy, Ltd., an Indian pharmaceutical manufacturer pursuing the commercialization of Ayurvedic herbal formulations. A Trust Fund was established to share the benefits of commercialization of the TK-based drug Jeevani. With the involvement of all relevant stakeholders and the sustainable harvesting of the arogyapaacha plant, the operations of the Fund have posed certain problems that offer lessons on the role of intellectual property rights in benefit-sharing over medicinal plant genetic resources traditional medicinal knowledge.

BIOLOGICAL DIVERSITY

Law –Biological Diversity Act, 2002, The Protection of Plant Varieties and Farmers Rights Act, 2001.

The Convention on Biological Diversity (CBD) is a legally binding multilateral environmental agreement with 194 contracting Parties (Countries) as its members with three objectives

1. Conservation of biological diversity,

2. Sustainable use of the diversity and

3. It is ensuring fair and equitable sharing of benefits of such use.

It has entered into force on 29December 1993. The point is particularly relevant here. To check misappropriation of Indian biological resources or bio-piracy, the act provides that access to Indian biological resources and associated knowledge are subject to terms and conditions, which secure equitable sharing of benefits.

Further, it would be required to obtain the approval of the National Biodiversity Authority before seeking any IPR based on biological material and associated

knowledge obtained from India. It is a bit similar to PPVFR Act we just read. The PPVFR Act protects plant varieties. Biological Diversity Act, 2002 aims to accord similar protection to general biodiversity. There is no overlap between the Biological Diversity Act and Protection of Plant Varieties and the Farmer's Rights Act (PPV&FRA). The scope and objectives of these two legislations are different. In order to harmonise both the legislations, an exemption has been provided under Section 6 (3) of the Biodiversity Act for applicants seeking protection under the PPV&FRA. The purport of Section 6(3) is to ensure that before granting of IPRs, it becomes possible to realize equitable sharing of benefits arising out of the use of biological resources and knowledge. As the PPV&FRA also provides benefit-sharing, an exemption has been provided in the Biological Diversity Act for applicants seeking protection under the PPV&FRA. The patent applicant should disclose the source and geographical origin of the biological material used in an invention.

Further, non-disclosure or wrongful disclosure of the source of biological material and any associated knowledge will result in opposition to the grant of patent or revocation of the patent. Section 6(1) provides that prior approval of NBA is necessary before applying for any IPRs in India and outside based on any research or information on a biological resource obtained from India. However, in the case of patents, the permission of the NBA may be obtained after the application is made but before sealing of the patent.

Patenting trends in marine biodiversity: Pharmaceutical Companies Research. – molluscs, sharks, male toadfish, sea horse, tuna fish, jellyfish, snails, seaweeds, cyanobacteria, turtles, coral reefs and sponges.

In recent years, various forms of biodiversity like insects, algae and microorganisms of different ecosystems (e.g., grassland and marine) have also been explored with considerable success. While scientists are trying to derive valuable extracts from the biodiversity of different ecosystems, economists, ecologists, and decision-makers debate the benefits and value of bioprospecting processes. The economic value of plants or living organisms for pharmaceutical purposes is crucial not only to pharmaceutical firms but also to the host country or local people, who command exclusive ownership of the biological resources and expect adequate compensation for resource uses, especially after the Convention on Biological Diversity (CBD) in 1992 (Convention on Biological Diversity, 1996). The Convention establishes the control and sovereignty of local agencies over biological resources and their diversity.

UNFAIR COMPETITION

Introduction

unfair competition explains the remedies that can be used together with the obligation countries must fulfil to ensure fairness in competition. The idea of unfair competition has been around for some time and was mentioned as part of intellectual property protection as early as 1900 in the Brussels revision of the Paris Convention.

What is Unfair Competition?

Article 10bis (2) of the Paris Convention defines an act of unfair competition as "any act of competition contrary to honest practices in industrial or commercial matters".

Article 10bis (3) continues specifying which acts, in particular, shall be prohibited:

1. all acts of such a nature as to create confusion, by any means, with the establishment, the goods, or the industrial or commercial activities, of a competitor;

2. false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

3. indications or allegations the use of which in the course of trade is liable to mislead the public about nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

Therefore unfair competition is at its most straightforward dishonest practice. Of course, the concept of dishonest practice is a little difficult to precisely define and has to be defined in a country's national law. These national laws set the commercial and legal environment, ensure fairness in competition, and, as a result, complement the protection of intellectual property rights.

The need for protection

Experience has shown little hope of fairness in a competition being achieved solely by the free play of market forces. In theory, in their role as referees of economic play, consumers could deter dishonest entrepreneurs by disregarding their goods or services and favouring honest competitors. The reality, however, is different. As an economic situation becomes more complex, consumers become less able to act as referees. Often, they cannot detect by themselves acts of unfair competition, let alone react accordingly. Indeed, the consumer who, along with the honest competitor, has to be protected against unfair competition.

Fair play in the marketplace cannot be ensured only by the protection of industrial property rights. A wide range of unfair acts, such as misleading advertising and the violation of trade secrets, are usually not dealt with by the specific laws on industrial property. Therefore, unfair competition law is necessary to either supplement the laws on industrial property or grant a type of protection that no such law can provide.

The rules on preventing unfair competition and those on the prevention of restrictive business practices (anti-trust law) are interrelated: both aim to ensure the efficient operation of a market economy. They do so, however, in different ways. Anti-trust law is concerned with preserving the freedom of competition by combating restraints on trade and abuses of economic power. On the other hand, unfair competition law is concerned with ensuring fairness in competition by forcing all participants to play according to the same rules. Yet both laws are equally important, although in different respects, and supplement each other

Acts of Unfair Competition

Indeed, describing unfair competition as acts contrary to honest trade practices,good faith, and so on does not make for clear-cut, universally accepted standards of behaviour. The standard of fairness or honesty in competition is no more than a reflection of a society's sociological, economic, moral and ethical concepts. It may therefore differ from country to country (and sometimes even within a country). That standard is also liable to change with time. Furthermore, there are always new acts of unfair competition since there is ostensibly no limit to inventiveness in the field of competition. Any attempt to encompass all existing and future acts of competition in one sweeping definition, which at the same time defines all prohibited behaviour and is flexible enough to adapt to new market practices, has so far failed.

However, this does not mean that any general definition cannot encompass acts of unfair competition. The most notable of these acts are the causing of confusion, discrediting, and misleading indications. The common aspect of these most important, but by no means exhaustive, examples of unfair market behaviour is the attempt (by an entrepreneur) to succeed in competition without relying on his achievements in terms of quality and price of his products and services, but rather by taking undue advantage of the work of another or by influencing consumer demand with false or misleading statements. Practices that involve such methods are therefore doubtful at the outset as to their fairness in competition.

However, the most critical factor for determining unfairness in the marketplace is derived from the purpose of unfair competition law. In this respect, unfair competition law was initially designed to protect honest business people. In the meantime, consumer protection has been recognized as equally important. Moreover, some countries emphasise the protection of the public at large, especially its interest in the freedom of competition. Therefore, modern unfair competition law serves a threefold purpose: the protection of competitors, the protection of consumers, and the safeguarding of competition in the public's interest at large.

Categories of Acts of Unfair Competition

The following are amongst the most common generally recognized acts of unfair competition:

Causing confusion Misleading Discrediting Competitors Disclosure of secret information Taking advantage of another's achievements (free-riding) Comparative advertising

Causing confusion

The Paris Convention (Art. 10bis (3)) obliges the Member States to prohibit all acts that are "of such a nature as to create confusion by any means whatever with the establishment, the goods or the industrial or commercial activities of a competitor". The scope of this article is vast, as it covers any act in the course of trade involving a mark, sign, label, slogan, packaging, shape or colour of goods, or any other distinctive indication used by a businessman. Thus, indications used to distinguish goods, services or businesses and the appearance of goods and the presentation of services are considered relevant for the prohibition of confusion. However, there are two main areas in which confusion frequently occurs.

These are indications of commercial origin on the one hand and the appearance of goods. However, this does not preclude or limit the protection of other attributes or achievements against confusion.

An example of the first type of confusion could be a situation in which an organization that is entirely separate from the large American toy store known under the trademark " Toys 'R' Us" would begin to sell games in a store called Games 'R' Us

Misleading

Misleading can roughly be defined as creating a false impression of a competitor's products or services. It may well be the single most prevalent form of unfair competition, and it is by

no means harmless. On the contrary, misleading can have serious consequences: the consumer, relying on incorrect information, may suffer financial (or more harmful) prejudice. The honest competitor loses clients. The transparency of the market diminishes, with adverse consequences for the economy as a whole and economic welfare.

There is a consensus according to which the concept of misleading is restricted neither to inherently false statements nor to statements that have led to a false impression on the part of the consumer. Instead, it is considered sufficient that the indications in question are likely to have a misleading effect. Correct statements can be deceptive.

If, for example, chemical ingredients are generally forbidden in bread, the courts of most countries would consider an advertising claim that a certain bread "was without chemical ingredients" to be deceptive because, though true, it gives the misleading impression that the advertised fact is something out of the ordinary.

It is likewise unnecessary for the product in question to be inferior, in an objective sense, so long as the indication or allegation has some enticing effect on the consumer. For example, if the public prefers domestic goods to foreign goods, a false declaration to the effect that imported goods are domestic is misleading even if the imported goods are of superior quality.

Generally, the misleading concept does vary from country to country, which can best be seen in the various national treatments of exaggerations. Although in all countries, obvious exaggerations (even if inaccurate) are not considered deceptive because they can easily be recognized as "sales talk," the question of what is mere "hot air" or "puffing" and what is to be taken seriously is answered differently in different countries. In some countries (such as Germany), it is assumed that the public basically believes all advertising statements, and especially those that claim uniqueness (the best, the first,etc.); consequently, a stringent standard is applied. Other countries (such as Italy and the United States of America) take the exact opposite position. They tolerate generally formulated indications, in particular those in the form of claims of uniqueness. Thus, in the United States of America, the courts have generally only intervened if the product advertised as the best is in reality inferior

Discrediting Competitors

Discrediting (or disparagement) is usually defined as any false allegation concerning a competitor likely to harm his commercial goodwill, like misleading, discrediting tries to entice customers with incorrect information. Unlike misleading, however, this is not done by false or deceptive statements about one's product, but rather by casting untruthful aspersions on a competitor, his products or his services. Discrediting, therefore, always involves a direct attack on a particular businessman or a particular category of business people. However, its consequences go beyond that aim: since the information on the competitor or his products is incorrect, the consumer is liable to suffer also.

An explanation of this difference in attitudes can be found in the diverging assessment of commercial honour. Where unfair competition law has its roots in the protection of the commercial reputation of the individual businessmanas it does in the continental European countries a special tort of business disparagement has emerged, to which, in principle, much stricter rules apply than to defamatory statements outside the bounds of competition, where constitutional considerations such as freedom of speech have to be taken into account. In other countries, especially those that have not developed a comprehensive system of

protection against unfair competition, the attitude is precisely the opposite: it is assumed that, in the interest of competition, attacks on individual competitors are unavoidable, that they must be widely tolerated and that a line should only be drawn where the attack is based on false facts. In those countries, the plaintiff usually also bears the burden of proof as to the falseness of the statement—which can sometimes make action impossible.

Disclosure of secret information

Considerable commercial competitiveness of an enterprise can be due to information developed and accumulated by that enterprise or individuals. For example, the customer and potential customer lists could give that company an edge over itscompetitors who do not have such good quality lists. Another example could be that an enterprise has developed a secret, industrial process, enabling it to sell a better quality or cheaper product. I hope you agree with me that if either of these pieces of information were given to a competitor without the permission of the owner of the information, this would result in unfair competition. Indeed, the disclosure of secret information is defined as unfair competition by the TRIPS Agreement of 1994, which obliges World Trade Organization members to protect undisclosed information.

The TRIPS Agreement describes the protection of undisclosed information explicitly as necessary to protect against unfair competition (Article 39 (2)

Furthermore, while a patent application is pending, as long as the information has not been disclosed to the public, the owner of the information to be patented ought to be protected against any wrongful disclosure of the information by others, regardless of whether or not the application eventually leads to the grant of a patent

Taking undue advantage of another's achievements

The notion of free-ridinghas severalstandard features with the notions of causing confusion and misleading. It could be defined as the broadest form of competition by imitation. Under the principles of a free market, however, the exploitation or appropriationof another person's achievements is unfair only under specific circumstances. On the other hand, acts that cause confusion or usually mislead imply free-riding on another person's achievements but are generally recognised as forms of free-riding that are always unfair.

There are various types of free riding, including the dilution of the distinctive value and quality of a competitor's mark. This could happen if a similar mark is used for dissimilar goods or services

Comparative advertising

Comparative advertising may take two forms: a favourable reference to another's product (claiming that one's product is as good as the other) or a negative reference (claiming that one's product is better than the other). In the first instance, where the competitor's product is usually well known, the crucial question relates to the possibility of misappropriating another's goodwill. In the second case, where the competitor's product is criticized, it is the question of disparagement that arises. However, both forms of comparison involve an (unauthorized) reference to a competitor, either mentioned by name or implicitly identifiable by the public.

However, it must be remembered that there are differences in evaluating the notion of misleading and discrediting. As mentioned above, some countries consider statements claiming superiority or uniqueness (like the best,etc.) misleading unless they can be proved correct, while others consider them harmless exaggerations. Different assessments of the notions of discreditingand misappropriationare of even greater importance. Comparative advertising is generally tolerated in countries with a relatively permissive attitude towards factual but disparaging statements. As long as what is said is true, the courts will not interfere, even if the competitor's reference or product is disparaging or exploits his goodwill. In countries that traditionally emphasiseprotecting the honest businessman and his reputation, comparative advertising is either forbidden or at least severely restricted. Sometimes the mere fact that a competitor is named against his will is considered discrediting and unfair competition. According to the rule that the honest businessman has a right not to be spoken of, even if the truth is spoken,the legislation of some countries has even expressly forbidden all comparisons that needlessly identify a competitor. The same argument has led other countries' courts to find comparative advertising more or less automatically against fair trade practice (and therefore against the general provision on unfair competition law).

Although many countries take a strict view that comparative advertising is an unfair practice, there has been a trend in recent years in which this negative attitude towards comparative advertising has changed. It has been increasingly recognized that accurate comparisons of relevant facts can reduce the consumer's information search costs andpositively affect the economy by improving market transparency. The courts of those countries that traditionally view comparative advertising as disparaging have gradually relaxed the strict prohibition on all statements identifying a competitor. For example, price comparisons, if based on accurate, relevant and ample material, may be allowed. On the whole, there seems to be a clear trend towards the admission of truthful comparative advertising.

Other acts of unfair competition

As you should appreciate now, unfair competition is significant, and the treatment by different countries quite varied. So, to complete the list of unfair acts as much as possible, it is worth giving a few more examples briefly. These are:

Nuisance advertising. For example, advertising unduly exploits fear to make a sale. The use of sales promotion techniques such as lotteries, gifts and bonuses. These are usually regulated to avoid undue inducement to buy. Impeding of market activities such as the destruction of a competitor's returnable soft drink bottles

Summary of unfair competition

The idea of unfair competition has been around for some time and was mentioned as one way of protecting intellectual property as early as 1900 in the Brussels revision of the Paris Convention. It can best be seen as practices that distort the free operation of intellectual property and the reward system that it provides.

An act of unfair competition is competition contrary to honest practices in industrial or commercial matters.

For example, the following, in particular, shall be prohibited:

all acts of such a nature as to create confusion, by any means, with the establishment, the goods, or the industrial or commercial activities, of a competitor;

false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

indications or allegations the use of which in the course of trade is liable to mislead the public as to nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

There are many different types of acts of unfair competition, including:

Causing confusion Misleading Discrediting Competitors Violation of trade secrets Taking advantage of another's achievements (free-riding) Comparative advertising

Emerging issues in science and technology

Coronavirus

Corona viruses (CoV) are a large family of viruses that cause illnesses ranging from the common cold to more severe diseases such as middle east respiratory syndrome (MERS-CoV) and severe acute respiratory syndrome (SARS-CoV), a novel corona virus is a new strain that has not been previously identified in humans.

The virus spread mainly between people who are in close contact with each other. A person can be infected when aerosols or droplets containing viruses inhaled or come in direct contact with the eyes, nose, mouth.

WHO is bringing the world scientist and global health professionals together to accelerate the research and development and develop new norms and processes, standards to contain the spread of corona virus pandemic and help for those affected? Currently, no cure for an infection caused by the new corona virus, the scientist is trying to make new medicines and testing some existing drugs to see whether they can treat COVID-19.

Research in Alzheimer's disease

Alzheimer's causes chronic low-level brain cell inflammation. Researchers are studying ways to treat inflammatory processes at work in Alzheimer's diseases. The drug leucine is currently in research. It is thought that the drug may stimulate the immune system to protect the brain from harmful proteins.

There is no cure for Alzheimer's disease, but one treatment may potentially decline the disease, there are drug and non-drug options that may help treat symptoms. The cholinesterase inhibitors like donepezil approved to treat all stages and Rivastigmine for mild to moderate Alzheimer's.

Crisprtechnology

CRISPR (clustered regularly interspaced short palindromic repeats) is a family of DNA sequence found in prokaryotic organisms like bacteria. These sequences derived from DNA fragments of bacteriophages, that had previously infected the prokaryote. They are used to detect and destroy DNA from similar bacteriophages during subsequent infections. These sequences play a crucial role in the antiviral Défense system of prokaryotes and provide acquired immunity. CRISPR is found in approximately 50% of sequenced bacterial genomes. Cas9 (CRISPR associated protein 9) is an enzyme that uses CRISPR sequences as a guide to recognise and cleave specific strands of DNA that are complimentary to the CRISPR sequence. Cas9 enzymes and CRISPR sequences form the basis of technology known as CRISPR-Cas9 that can be used to edit genes within the organisms. This editing process has wide applications in biological research, development of biotechnological products and treatment of diseases, and Nobel prize in chemistry in 2020 awarded to Emmanuelle Charpentier and Jennifer Doudna.

Personalized genetic tests/personalized medicine

Within the last ten years, the creation of fast, low-cost genetic sequencing has given the public direct access to genome sequencing and analysis, with little or no guidance from physicians or genetic counsellors on how to process the information. What are the potential privacy issues, and how do we protect this very personal and private information? Are we headed toward a new era of therapeutic intervention to increase the quality of life or a new era of eugenics?

Hacking into medical devices

Implanted medical devices, such as pacemakers, are susceptible to hackers. Barnaby Jack, of security vendor IO Active, recently demonstrated the vulnerability of a pacemaker by breaching the security of the wireless device from his laptop and reprogramming it to deliver an 830-volt shock. How do we make sure these devices are secure?

Driverless Zipcars

In three states -- Nevada, Florida, and California -- it is now legal for Google to operate its driverless cars. Google's goal is to create a fully automated vehicle that is safer and more effective than a human-operated vehicle. The company plans to marry this idea with the concept of the Zipcar. The ethics of automation and equality of access for people of different income levels are just a taste of the complex ethical, legal and policy questions that will need to be addressed.

3-D printing

Scientists are attempting to use 3-D printing to create everything from architectural models to human organs. However, we could be looking at a future in which we can print personalized pharmaceuticals or home-printed guns and explosives. For now, 3-D printing is primarily the realm of artists and designers. However, we can easily envision a future in which 3-D printers are affordable,patterns abound for benign and malicious products and completely cut out the manufacturing sector.

Adaptation to climate change

The differential susceptibility of people around the world to climate change warrants an ethical discussion. We need to identify effective and safe ways to help people deal with the effects of climate change and learn to manage and manipulate wild species and nature to preserve biodiversity. Some of these adaptation strategies might be highly technical (e.g.

building sea walls to stem off sea-level rise), but others are social and cultural (e.g., changing agricultural practices).

Low-quality and counterfeit pharmaceuticals

Until recently, detecting low-quality and counterfeit pharmaceuticals required access to complex testing equipment, often unavailable in developing countries where these problems abound. The enormous amount of trade in pharmaceutical intermediaries and active ingredients raise several issues, from the technical to the ethical and legal. For example, India ruled in favour of manufacturing life-saving drugs.

Autonomous systems

Machines (both for peaceful purposes and for warfighting) are increasingly evolving from human-controlled to automated, autonomous, and can act independently without human input. As these systems operate without human control and are designed to function and make decisions independently, the ethical, legal, social, and policy implications have grown exponentially. Who is responsible for the actions undertaken by autonomous systems? If robotic technology can potentially reduce the number of human fatalities, is it the responsibility of scientists to design these systems?

Human-animal hybrids (chimaeras)

So far, scientists have kept human-animal hybrids on the cellular level. According to some, even more modest experiments involving animal embryos and human stem cells violate human dignity and blur the line between species. Is interspecies research the next frontier in understanding humanity and curing disease, or a slippery slope, rife with ethical dilemmas, toward creating new species?

Ensuring access to wireless and spectrum

Mobile wireless connectivity is having a profound effect on society in both developed and developing countries. These technologies completely transform how we communicate, conduct business, learn, form relationships, navigate and entertain ourselves. At the same time, government agencies increasingly rely on the radio spectrum for their critical missions. This confluence of wireless technology developments and societal needs presents numerous challenges and opportunities for making the most effective use of the radio spectrum. We now need to have a policy conversation about making the most effective use of the precious radio spectrum and closing the digital access divide for underserved (rural, low-income, developing areas) populations.

Data collection and privacy

How often do we consider the massive amounts of data we give to commercial entities when we use social media, store discount cards or order goods via the Internet? Now that microprocessors and permanent memory are inexpensive, we need to think about the kinds of information collected and retained. Should we create a diabetic insulin implant that could notify your doctor or insurance company when you make poor diet choices, and should that decision make you ineligible for certain types of medical treatment? Should cars be equipped to monitor speed and other measures of good driving, and should authorities subpoena this data following a crash? These issues require appropriate policy discussions in order to bridge the gap between data collection and meaningful outcomes.

Human enhancements

Pharmaceutical, surgical, mechanical and neurological enhancements are already available for therapeutic purposes. However, these same enhancements can be used to magnify human biological functions beyond the societal norm. Where do we draw the line between therapy and enhancement? How do we justify enhancing human bodies when so many individuals still lack access to primary therapeutic medicine?

Biotechnology Patents:

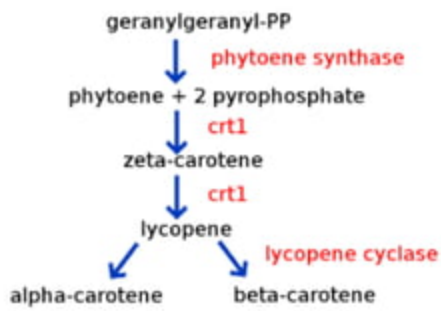
Diamond v. Chakrabarty: Super bug

In 1972, Ananda Chakrabarty filed a patent for a genetically modified bacterium capable of breaking down multiple components of crude oil. He developed this bacterium by engineering a way for multiple plasmids, each of which can break down the crude oil's hydrocarbon components into a single bacterium. The multiple plasmids would allow bacteria to break down oil from oil spills at a much quicker rate, and they would not be as affected by environmental conditions. The patent for this genetically modified bacterium that Chakrabarty filed contained three claims: How he produced the bacterium, an inoculum composed of a carrier material and the bacterium, and the bacterial species itself. The first two claims were accepted, but the claim on the bacteria was rejected because the bacteria are naturally occurring, and as living organisms, cannot be patented.

A live, man-made microorganism is a non-naturally occurring composition and therefore may be patented. Resolution of this issue is, regardless of its philosophical implications, strictly a matter of statutory construction. The relevant statute here, 35 U.S.C. § 101, defines patentable any new and usefulmanufactureorcomposition of matter,among other things. It is a basic rule of construction that words are given their natural, ordinary meanings. There can be little doubt that microorganisms produced by recombinant DNA technology may be said to be manufactured and to be compositions of matter. For purposes of patent law, the fact they are alive is not relevant. Although naturallyoccurring products may not be patented, a geneticallyengineered microorganism is not naturally occurring. While this Court recognizes that recombinant DNA technology is a controversial field, it is ill-equipped to balance the competing values and interests manifested therein; this is a task for Congress. Since the patent laws include materials, such as are at issue here within their scope, and no specific law exists to exclude it, the only appropriate holding is that recombinant DNA-produced microorganisms are patentable.

After Chakrabarty had appealed his patent's initial rejection, the Court of Customs and Patent Appeals had reversed in his favour, stating that "the fact that microorganisms are alive is without legal significance to the patent law". In response, Sydney Diamond, Commissioner of Patents and Trademarks, decided to take this case to the Supreme Court. Diamond had two arguments that were not well received by the court. The first called the existence of the 1930 Plant Patent Act and the 1970 Plant Variety Act to suggest that there is a congressional understanding about the terms'manufacture' and 'composition of matter' not referring to living things. The second was that microorganisms could not qualify as patentable subject matter until Congress authorizes such protection since genetic technology was unforeseen when Title 35 U.S.C. 101 was first enacted.

Golden Rice:



Greenpeace opposes the use of any patented genetically modified organisms in agriculture and opposes the cultivation of golden rice, claiming it will open the door to more widespread use of GMOs. The International Rice Research Institute (IRRI) has emphasised the non-commercial nature of their project, stating that "None of the companies listed ... are involved in carrying out the research and development activities of IRRI or its partners in Golden Rice, and none of them will receive any royalty or payment from the marketing or selling of golden rice varieties developed by IRRI.

Vandana Shiva, an Indian anti-GMO activist, argued the problem was not the plant per se, but potential problems with poverty and loss of biodiversity. Shiva claimed the corporate control

of agriculture could amplify these problems. By focusing on a narrow problem (vitamin A deficiency), Shiva argued, golden rice proponents were obscuring the limited availability of diverse and nutritionally adequate food. Other groups argued that a varied diet containing foods rich in beta carotenes such as sweet potato, leaf vegetables and fruit would provide children with sufficient vitamin A.

Keith West of Johns Hopkins Bloomberg School of Public Health has stated that foodstuffs containing vitamin A are often unavailable, only available at certain seasons, or too expensive for low-income families in underdeveloped countries.

In 2008, WHO malnutrition expert Francesco Branco cited the lack of real-world studies and uncertainty about how many people will use golden rice, concluding giving out supplements, fortifying existing foods with vitamin A, and teaching people to grow carrots or certain leafy vegetables are, for now, more promising ways to fight the problem. In 2013, author Michael Pollan, who had critiqued the product in 2001, unimpressed by the benefits, expressed support for the continuation of the research.

The FLAVR SAVR tomato:

The first genetically engineered crop product to be commercialized. The research and marketing efforts that produced the FLAVR SAVR tomato resulted in scientific success, a temporary sales success, and then commercial demise. The FLAVR SAVR story reveals how difficult it can be to bring genetically engineered products to market, how objections with little or no scientific merit can influence the outcome, and how important public opinion is in determining commercial success.

Circumstantial evidence available in the 1980s suggested that the tomato fruit enzyme polygalacturonase (PG), because of its ability to dissolve cell-wall pectin, was crucial for fruit softening. In Davis, researchers at Cal gene, Inc. proposed to suppress PG accumulation in ripening tomatoes by introducing a reverse-orientation copy of the gene, an antisense copy designed to prevent or drastically reduce the formation of PG.

They expectedripe fruit to remain firm longer, perhaps even allowing it to be transported to market after vine-ripening. Transporting vine-ripened fruit would avoid the practice of picking green fruits and artificially ripening them by ethylene treatment, which gives a ripe tomato colour but not the full array of vine-ripened tomato flavours.

By 1987, Calgene researchers identified and cloned a tomato fruit PG gene, developed methods for tomato transformation and regeneration, and produced tomato plants with inserted PG antisense DNA constructions. Some of the resulting tomato lines generated as little as 1% of the PG found in conventional tomatoes. Based on the results from eight contained field trials, in October 1992, the U.S. Department of Agriculture determined that the PG-antisense tomato lines were not a "plant-pest" risk and no longer required field testing or transport permits.

In May 1994, the U.S. Food and Drug Administration, responding to a Calgene petition, approved the introduction of kanamycin-resistance gene constructions needed to create the PG-antisense tomato lines.

Kanamycin-resistant organisms in human and animal guts and soil were determined to be so common and abundant that they would overcome any potential influence of the corresponding genes in engineered crop plants. Allergic reactions to the kanamycin-resistance protein were also determined to be highly unlikely.

Data submitted by Calgene, including animal feeding studies, showed the PG-antisense tomato to be indistinguishable in almost every way from traditional tomatoes. The exceptions were that fruit cell-wall pectin degraded more slowly, and tomato paste had a higher viscosity (Redenbaugh et al. 1992; Martineau 1997).

Paralleling Calgene's efforts to develop the PG-antisense tomato lines, the company began to gain experience in the conventional fresh-market tomato business and meet with community leaders, media representatives, and consumers in Davis and Chicago sites selected for the initial introduction of the FLAVR SAVR tomato. On May 21, 1994, the genetically engineered FLAVR SAVR tomato was introduced. Demand for this product was high and remained high, but the product was never profitable because of high production and distribution costs.

In 1996, Zeneca, under license, introduced in the United Kingdom paste from PG-antisense tomatoes grown and processed in California, in collaboration with the grocery chains Sainsbury's and Safeway. More than 1.8 million cans, clearly labelled as derived from genetically engineered tomatoes, were sold from 1996 through early 1999. Reduced processing costs allowed a 20% lower price. The paste from genetically engineered tomatoes initially out-sold conventional tomato paste at many locations, but sales of this product declined dramatically in fall 1998. Subsequently, Safeway and Sainsbury's declared that their

house brands would not have genetically engineered ingredients to satisfy the stated concerns of some customers rather than for any reason of food safety.

A select committee of the U.K. House of Commons (1999) suggests that the decline in sales of the Zeneca tomato paste can be traced to an August 1998 British broadcast featuring Dr Arpad Pusztai and subsequent media attention broadcast. He announced his conclusion that feeding rats genetically modified potatoes resulted in biological effects that "could" be attributed to the process of genetic engineering rather than to the product of the introduced gene (Ewen and Pusztai 1999). Subsequently, independent analysis of the data, commissioned by Dr.Pusztai, and his testimony to the select committee (U.K. House of Commons 1999) both indicate that the conclusions stated in the broadcast are incorrect. However, the Zeneca product has not returned to grocery store shelves, corresponding to California agriculture.

INTELLECTUAL PROPERTY RIGHTS CASE STUDIES

COCA COLA VS BISLERI-- IN THE DELHI HIGH COURT

Plaintiff by Coca Cola was the most prominent brand of soft drinks operating in 200 countries.Defendant No.1, earlier known as Aqua Minerals Pvt. Ltd., was a part of the Parle group of Industries. The owners of the defendant, Mr Ramesh Chauhan and Mr Prakash Chauhan, on September 18, 1993, sold the trademarks, formulation rights, know-how, intellectual property rights, goodwill etc., of their products THUMBS UP, LIMCA, GOLD SPOT, MAAZA to the plaintiff.

The company Bisleri Sales Ltd had the secret beverage base for manufacturing maaza and was an affiliated Defendant no. 1., On September 12, 1993, several agreements were signed between both the parties, such as a deed of assignment, goodwill assignment, know-how, confidentiality and non-use agreement, non-compete agreement, general assignment, etc., to give effect to the sale for a considerable money value. Then, the plaintiff was envisaged with the right to sell the product Maaza within the territory of India.

Defendant no. 1 retained the trademark rights of MAAZA in respect of other countries where it had been registered. In March 2008, defendant no. 1 got aware that the plaintiff had filed for registration of MAAZA in turkey. As a result, it sent the plaintiff a legal notice repudiating the Licensing Agreement and made it devoid of all other selling rights. The plaintiff filed the suit for permanent injunction and damages for trademark infringement and passing off, as the defendant had ignored entirely many irrevocable and absolute rights embarked upon the plaintiff.

JURISDICTION: The court had territorial jurisdiction over the matter because the defendant had issued a news article in the Delhi edition of the Times of India. The reports themselves created the court's jurisdiction as they showed his intention to use the mark through groundless threat. Also, the defendant had a factory at Shivaji Marg in New Delhi, and the threat was also given as notice from New Delhi itself.

PERMANENT INJUNCTION: The suit is not barred under Section 41 (h) and (1) of the Specific Relief Act 1963, as the agreement between both the parties was a determinable contract, and the plaintiff is entitled to an injunction for enforcement of its exclusive rights. because of the negative covenant under Section 42 of the Specific Relief Act, defendant no. 1 is not entitled to use the mark MAAZA in India. Hence, the interim order of injunction was granted to prevent the plaintiff from irreparable loss and injury. APPEAL: On an appeal filed by the defendant against the order, the Delhi Highcourt expressly barred Bisleri from selling Maaza products. However, it is specified that the company may continue to manufacture Maaza on Indian soil, provided the stock is exported.

Yahoo vs Controller of Patents.

Patent an Invention Titled "A Method of Operating a Computer Network Search Apparatus"

The court Invalidated Yahoo's Claim. Claimed Inventionis Doing the Advertisement Business Electronically. Technical Advance Claimed Over Existing Art is an Improvement in the Method of Doing Business.

By Section.3(k)Business Method cannot be Patented. 'Technical Advance has not improved the case. 'The Decision Made it Clear that Business Methods cannot be Granted Patent Protection in India

AMUL VS LOCAL SHOPKEEPERS

Amul Dairy and the Gujarat Cooperative Milk Marketing Federation (GCMMF) Filed Trademark Infringement Cases Against Two Local Shop Owners, Amul Chashmaghar and Amul Cut Piece Stores, the District court. Kaira Union owns the brand Amul, GCMMF manages the brand.

April 25, 2007, Order Passed by Court is a case of Infringement and Restrained the two from using Amul trademark. ' Amul Chashmaghar Challenged the Court's Interim Injunction in the High Court where Justice D N Patel Upheld Ruling of the District Court

Amul Chasmaghar's appeal was Rejected. Order Passed by the Court was True, as well as following the Trademarks Act 1999. Amul's name can not be used by another proprietor even if the company sells goods other than that sold by the proprietor, who has registered the trademark.

MARS TAKES HERSHEYS TRADEMARK DISPUTE TO COURT ON MALTESERS

Mars has filed a lawsuit against US confectionery firm Hershey over its Malteser product, which it claims is passing off as Mars famous Maltesers brand.

Hershey sells its Malteser chocolate-covered malt ball product in red packaging, having owned the trademark for Malteser without the "s" since 1998, while Mars has sold its 75-year-old Maltesers brand in red packaging since 1978. Mars, which never registered a trademark, claims the move is simply designed to prevent it from selling Maltesers in the US

in competition with Hershey's Whoppers brand, which is also milk chocolate-covered malt balls. As a result, Mars has filed a complaint at the US District Court for the Eastern District of Virginia, Alexandria Division, seeking a permanent injunctionagainst Hershey's use of the Malteser mark, along with damages for lost profits

Mars said in the lawsuit: Hershey did not develop a unique product under the Malteser mark. Hershey sporadically passes off Whoppers candy as Malteser candy selling Whoppers under the Malteser mark, without disclosing the switch to consumers merely to reserve rights to the Malteser name.

A Hershey spokesman dismissed Marsclaims as without merit. He added: The Hershey Co. has owned the Malteser trademark in the United States for more than 15 years. We intend to defend against this groundless litigation vigorously.

INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

IP infringement is any breach of intellectual property rights.IP rights are infringed when a work protected by IP laws is used, copied or otherwise exploited without proper permission from a person who owns those rights.Examples of IP infringement are counterfeiting and piracy.

Counterfeiting is the practice of imitating genuine goods, often to inferior quality, to take advantage of the superior value of the imitated product.

Piracy is the unauthorized copying, use, reproduction and distribution of materials protected by intellectual property rights.

Infringement

Infringement is an encroachment upon an owner or an authorized user's property by an outsider without the owner's prior approval. Illegitimate use of somebody else property consequently leads to infringement. Infringement is a breach or the contravention of the prescribed procedure of the law. When a person acts ultra-vires, it becomes a breach of law that ultimately violates law infringement. Infringement is described as "a crime less serious than a felony."

Infringement of Intellectual Property

The use of the intellectual property by a stranger without the owner's prior consent is an infringement of intellectual property. The infringement of intellectual property takes place due to the encroachment in the intellectual property of an owner. Hence it is essential to protect the ideas from getting into the wrong hands. The infringement of Intellectual Properties includes Patent Infringement, Trademark Infringement, Copyright Infringement, etc.

Patent Infringement

A person can use a patented product by seeking permission from the owner. This permission may typically be granted in the form of a license. Patent infringement is the act of utilizing a patented invention without permission from the patent holder. In many

countries, a usermust be commercial (or to have a commercial purpose) to constitute a patent infringement. Patents are territorial, and infringement is only possible in a country where a patent is in force. In the case of India, the patent infringement proceedings can be initiated only after the grant of the patent. Persons involved in making, using, selling, distributing, importing or offering any of the above may be held liable for infringement.
The burden of proof of establishing the infringement is on the plaintiff. However, in case of a patent involving the process for obtaining a product where the plaintiff first establishes that the products obtained are identical, the Court may shift the onus on the defendant.

Trademark infringement

It is a violation of exclusive rights attaching to a trademark without the trademark owner or licensees (provided that such sanction was within the scope of the license). Infringement may occur when one party, the infringer, uses a trademark that is identical or confusingly similar to a trademark owned by other parties about products or services identical to the products or services the registration covers.

The test for determining whether there is infringement/ passing off trademark has been laid down in Amritdhara Pharmacy VS Satyadeo Gupta, which states that Any unwary purchaser of average intelligence and imperfect recollection would not, as the High Court supposed, split the name into its parts and consider the etymological meaning thereof or even consider the meaning of the component words as current of nectar (Amritdhara) or current of Lakshman (Lakshmandhara). He would go more by the overall structure and phonetic similarity and the nature of medicine he has previously purchased or has been told about, or about which has otherwise learnt and which he wants to purchase. Applying this principle of average intelligence and imperfect recollection, it is possible to find whether there is a similarity between the two trademarks and whether there is a likelihood of causing any confusion between them.

Copyright Infringement

Copyright infringement or copyright violation is the unauthorized use of material that is covered by copyright law in a manner that violates one of the copyright owner's exclusive rights, such as the right to reproduce or perform the copyrighted work or to do derivative works. For electronic and audio-visual media, unauthorized reproduction and distribution are occasionally referred to as piracy.
The infringement of copyright takes place by reproducing the work in any material form, issuing copies of the work to the public not being the copies already in circulation, including the work in any cinematographic film, adapting the work, communicating the work to the public, is aware that such action shall amount to infringement of copyright, making, selling, letting on hire, distributing, importing or holding trade exhibits in public of the infringed work. The actual test to determine infringement is when a trader, spectator or viewer, after having read or seen both the works, should get an unmistakable impression that the subsequent work appears to be a copy of the first.

Remedies available for infringement

When there is a violation or an infringement of intellectual property, it becomes the sole right of the Intellectual property holder to obtain a remedy for the infringement of something that he has acquired with a lot of hard work and tremendous effort. Hence it is necessary to grant remedies to the intellectual property holders. The remedies granted to the Intellectual Property holders are of three types: Criminal, Civil and Administrative Remedies.

Patent Infringement Remedies

A Suit for Infringement of Patent has to be filed before the District Court or the High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen; however, if the counterclaim for revocation has been filed against the same, only the High Court has the jurisdiction to entertain the matter. The right to move the court of law to enforce a patent is vested with any person who holds a valid claim on the subject matter of the patent.

The reliefs that a court may grant in a patent infringement suit would include an injunction (subject to such terms, if any, as the court thinks fit) and, at the plaintiff's option, either damages or an account of profits. The court may also order that the goods which are found to be infringing and materials and implement, the predominant use of which is in the creation of infringing goods, shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.

Trademark Infringement Remedies

An owner of a trademark may commence legal proceedings against a party that infringes its registration. In the case of Trademark, statutory protection is available to both registered as well as unregistered trademarks. They are given both civil as well as criminal remedies for infringement or passing off. A Suit for Infringement must be filed before the District Court or the High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen.

The proprietors of the trademark and licensed users have the option to initiate criminal prosecution against the infringers. The acts recognized as offences against which criminal complaints can be filed are falsifying and falsely applying a trademark, making or processing instruments for falsifying a trademark, applying false description, applying false indication of the country of origin, tampering with an indication of origin already applied to goods, selling goods or possessing or exposing for sale of goods falsely marked, falsely representing a Trademark as registered, improperly describing a place of business as connected with the trademark office and falsification of entries in the register.

The Criminal Remedies available are that a suit for the above offences can be filed before the magistrate within whose territorial jurisdiction is committed. Police can register an FIR and prosecute directly; (statutory requirement to obtain the Registrar's approval). Besides confiscating goods and machinery, the Code of Criminal Procedure, 1973, also provides for imprisonment starting from six months which can be extended to three years or a fine of Rs. Fifty thousand, which can be extended to two lakhs or both.

Copyright Infringement Remedies

A Suit for Infringement of copyright has to be filed in a District Court or a High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen.

Copyright infringement is a cognizable (non-bailable) offence punishable with an imprisonment of six months which can be extended to three years, or a fine, not less than fifty thousand, which can be extended to two lakhs. For the second and subsequent conviction, the minimum term of imprisonment has increased to one year, which may extend to three years, and the minimum fine has increased to one lakh, which may be extended to two lakh rupees. These are the Criminal Remedies available to the Copyright holders for infringement of their copyright.

The copyright act authorizes a police officer not below the rank of a sub-inspector to seize without a warrant all copies of work and all plates used to make infringing copies of work and produce them before the magistrate.
These should be considered an alternative to civil remedies/actions since local authorities conduct them, thereby causing significant cost savings to the Intellectual Property owner.

The Civil Remedies available to the aggrieved parties are almost the same for all the Intellectual Properties. They are injunctions against future violations of civil raids & seizures, damages or accounts of profits, delivery up/ discovery of infringing material/documents, preservation of assets and interim/interlocutory injunction.

Administrative Remedies are available to the copyright, trademark and patent, including a ban of import or export of goods, including protection of patents, trademarks, and copyrights confiscation of infringing material by Excise Authorities and delivery to the owner and Restrictions against parallel importation of goods.

Patent Infringement in India

A patent is a techno-legal document. It is a grant of exclusive rights to the owner to exclude others from making, offering for sale, selling or importing the patented invention.

Infringement is the unauthorized use of an invention claimed in a valid patent. Patent infringement is an unauthorized act of selling, manufacturing, offering to sell, importing or using the in-force patented invention without the permission of a patented owner.

Patent infringement proceedings can only be initiated after the grant of a patent in India. However, they may include a claim retrospectively from the date of publication of the application for grant of the patent. Infringement of a patent consists of the unauthorized making, importing, using, offering for sale or selling any patented invention within India. Under the (Indian) Patents Act, 1970, only a civil action can be initiated in a Court of Law.

Sections 104 to 114 of the Indian Patents Act 1970 provide guidelines relating to patent infringement.According to Section 53, the validity of a patent is 20 Years from the date of filing a patent application.

Limitation

Indian Limitations act governs the period of limitation for bringing a suit for infringement of a patent, which is for three years from the date of infringement.

Suppose the patent has ceased to affect due to non-payment of the renewal fee. In that case, the patentee will not be entitled to institute the proceedings for infringement committed between the date on which the patent ceased to have an effect and the date of publication of the application for restoration of patent.

Jurisdiction

A Patent holder can file a suit in a district court or high court. However, where the defendant makes counter-claims for revocation of the patent, the suit and counter-claims are transferred to the high court to decide on the validity of a patent.

According to Section 19 of the Civil Procedure Code, the patentee can bring the suit for infringement in the court, which has jurisdiction in an area where he/she resides or carries on a business or personally works for the gain. The Patentee can also bring the suit for infringement in a court with jurisdiction in the infringing activity area.

A suit for infringement can be instituted only after the patent has been sealed. But damages sustained regarding infringement committed during the period between the date of advertisement of acceptance of the complete specification and the date of sealing may be claimed in the suit.

The right to sue for infringement belongs to the patentee. An assignee is entitled to file a suit if the application for registration of the assignment has been filed before the date of filing of the suit. A co-owner may also bring a suit for infringement.

In India, only High Courts have the power to deal with the matter of both infringement and invalidity simultaneously. A specialized forum is now being established as the Intellectual Property Appellate Board (IPAB).The Patents (Amendment) Act 2002 was enacted to bring our patent regime in line with the TRIPS agreement. The IPAB was conferred by this Act with the jurisdiction to hear all cases against any order or decision of the controller and all cases aboutthe revocation of patent other than on a counterclaim in a suit for infringement and rectification of registers and all such cases which were pending before the High Court is stood transferred to the IPAB by S.117-G of this Act

The IPAB has its headquarters in Chennai. The Registry is situated in Chennai, where sittings are also held. Circuit sittings are held at present at Delhi, Mumbai, Kolkata and Ahmedabad.

Rights of Patentees

Section 48 confers exclusive rights upon the patentee to exclude third parties from making, importing, using, offering for sale or selling the patented process. The right a patentee acquires is a monopoly to him personally to manufacture the patented chattel. Without the Patent Act. As per provisions of Section 48: the following actions would amount to infringement

In the case of a product patent, the following actions would amount to infringement:Making,Using, Offering for sale,Selling, or We are importing, for these purposes, the product in India without the permission of the patentee.

In the case of a process patent, the following actions would amount to infringement:Using,Offering for sale,Selling, orImporting for these purposes, the process in India without the permission of the patentee.

Any person who, without the consent of the patentee, performs the above activities infringes the patent.In patent infringement suits, the damages are not granted for using the patented invention during the period before the date of acceptance of the patent application.

In a patent infringement action, the defendant can file a counterclaim for a revocation of the patent. Consequently, the main suit and the counterclaim are heard together.

Relief in case of groundless threats

Section 106 of the Indian Patents Act 1970 grants power to the court to grant relief in case of groundless threats of infringement proceedings.

In such an action, the plaintiff can pray for a declaration to the effect that the threats are unjustified; he can ask for an injunction against the continuance of the threats and also damages if any he may have sustained thereby.

In such a suit, unless the defendant proves that there is, in fact a threat of infringement of his patent or any other right arising from the publication of the complete specification in respect of the patent, the court may not grant relief to the plaintiff.

Under the common law, the primary remedy available against such unfair acts is by action for the tort of trade libel.

Trade libel is defined as the publication of a false statement of fact that is an intentional disparagement of the quality of the services or products of the plaintiff's business and that result in pecuniary damages to the plaintiff.

Royal Baking Powder Co. v Wright, Crossley & Co.

- That the statements complained of were untrue;
- That they were made maliciously, i.e. without just cause and excuse; and
- That the plaintiffs have suffered special damage thereby.

Relief available to Patentee for infringement

Section 108 (1) of the Patents Act, 1970 provides for the Reliefs in a suit for infringement. It states that The reliefs which a court may grant in any suit for infringement include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

The reliefs that are available to a patentee in a suit for patent infringement against an infringer are:-

- Permanent injunction;
- Temporary / Interlocutory injunction;
- Ex-parte injunction;
- Damages or an account of profits;
- Seizure, forfeiture or destruction of infringing products/goods and materials and implements predominantly used in the creation of the infringing products/goods

Temporary Injunction/Interlocutory Injunction

For grant of temporary injunction in a suit for infringement, the court should consider that-

1. There is a prima facie case that the patent is valid and infringed;
2. The balance of convenience is in favour of injunction being granted;
3. The plaintiff will suffer irreparable loss.

It is a rule of practice that an interim injunction will readily be granted if a patent is a new one. If the patent is sufficiently old and has been working, the court may reasonably presume the patent to be valid and grant an injunction.

Case Law

Symed Labs vs Glenmark Pharmaceuticals

In this case,Symed Labs Ltd. had sued Glenmark Pharmaceuticals Laboratories before the Delhi High Court for allegedly infringing two of its patents: IN213062 & 213063. The first patent was granted for Novel intermediates for Linezolid and related compounds, while the 063 patent was granted for A novel process for the preparation of Linezolid and related compounds.

While declaring the judgment on 9th Jan 2015, the judge was convinced that Plaintiff has got a good prima facie case favouringSymed. He further decided that protection to the patent processes should be granted to Plaintiff as damages will not be an efficacious remedy.

Thus, there will be irreparable loss and injury because of the prolonged uninterrupted use of patents. The balance of convenience also lies in favour of Plaintiff. Thus the judge granted an ad interim injunction restraining Glenmark from manufacturing, selling, offering for sale, advertising, or directly or indirectly dealing in the production of Linezolid manufactured in a manner to result in infringement of the Plaintiff's registered Patents.

Roche vs Cipla

Roche was granted Indian Patent No. IN '774 in February 2007, under which as per Claim 1, they had patent rights over the Erlotinib Hydrochloride (EH) molecule (which has demonstrated breakthrough capabilities as an Epidermal Growth Factor Receptor (EGFR) inhibitor, which spiked survival benefit in non-small cell lung cancer (NSLC) patients). Based on media reports declaring Cipla's intention to launch a generic version of Roche's drug in January 2008, Roche moved the Delhi High Court seeking an injunction to stop Cipla from marketing Erlocip. Cipla forwarded a counterclaim, claiming that Roche's patent was invalid.

The judgment deals with two key issues:

1.Whether the manufacture of Erlocip infringes Roche's IN '774 patent and

2. Whether Roche's IN '774 patent ought to be revoked as being invalid.

The court concluded that

1. The manufacture, marketing and sale of Cipla's generic version of Roche's patented product do not infringe on Roche's Indian Patent 196774.
2. Roche's Indian Patent 196774 is valid against the grounds raised by Cipla in its written statement and counter-claim.
3. A permanent injunction is denied to Roche.
4. The counter-claim proves that Roche's subsequent US Patent 6900221 is directed at the compound of claim No.1 of the suit patent is a mixture of the two, Polymorph A and B Compound and need to be separated to perform and get the claimed compound for acceptable efficacy.

Permanent Injunctions

Permanent Injunctions are granted post-trial of the patent infringement suit. Once the interim injunction is issued, the lawsuit continues as usual. If the plaintiff wins at the trial, the preliminary injunction usually becomes permanent. If the defendant wins, the preliminary injunction is dissolved, and the defendant can seek recovery against the bond as discussed.

The US Supreme Court in **eBay, Inc. v. MercExchange L.L.C.** has set a four-factor test that a plaintiff must demonstrate to seek permanent injunctive relief from the court.

'A plaintiff must demonstrate –

- That it has suffered an irreparable injury,
- That remedies available at law, such as monetary damages, are inadequate to compensate for that injury,
- That, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted,
- That a permanent injunction would not disserve the public interest,

Canadian and English courts have the power and discretion to grant an injunction and require infringers to deliver up and destroy any goods about the infringing innovation.

Even under the US Patent Code, the patentee shall have a remedy by civil action for infringement of his action. According to Section 283, The several courts having jurisdiction of cases under this title may grant injunctions by the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

Damages

Once the suit is decided in favour of the plaintiff, the Court can either award damages or direct the defendant to render an account of profits. The two remedies are alternative and not concurrent.

In a suit for infringement of patent, damages shall not be granted against the defendant who proves that at the date of infringement, he was unaware and had no reasonable grounds for believing that the patent existed or where an amendment of a specification had been allowed after the publication of the specification. The infringement action is in respect of the specification before the date of publication unless the Court is satisfied original specification was made in good faith and with reasonable skill and knowledge.

There are two recognized forms of compensable damages for patent infringement-

1) Lost Profits

Lost profits damages may be measured based upon the causation factors outlined in Panduit Corp. v. Stahlin Bros. Fibre Works, Inc.

Under the Panduit test, the patentee must prove four factors to establish lost profits. The four factors are:

(1) A demand for the products covered by the patent;

(2) An absence of acceptable non-infringing substitutes to the patented product or process;

(3) The manufacturing and marketing capabilities to exploit the demand; and

(4) The amount of profit the patentee would have made had the infringement not occurred.

2) Reasonable Royalty

When actual damages cannot be proved, or are not sought for reasons of proof, trial strategy or otherwise, the patent owner is entitled to not less than a reasonable royalty as damages. The purpose of the royalty alternative is not to direct compensation but to set a floor below which damage awards may not fall.

Reasonable royalty was defined in Panduit Corp. v. Stahlin Bros. Fibre Works as "an amount which a person desiring to manufacture and sell a patented article, as a business proposition, would be willing to pay as a royalty and yet be able to make and sell the patented article in the market at a reasonable profit.

This can be illustrated from the Ericsson v. Micromax judgment, where the Delhi High Court directed the respondents to pay interim royalty to the plaintiff.

Ericsson vs Micromax

In March 2013, Ericsson filed a patent infringement suit against Micromax, claiming Rs. One hundred crores (1billion) in damages. Ericsson alleged that Micromax had infringed on 8 of its standard-essential patents (SEP's) registered in India.

In November 2013, Micromax filed a complaint with the Competition Commission of India (CCI), claiming that Ericsson had abused its dominant position in the market by imposing exorbitant royalty rates. The CCI determined prima facie that Micromax's claim was valid and ordered an investigation which Ericsson challenged in the Delhi High Court.

The court declared that CCI could not interfere in an ongoing patent infringement lawsuit. The Delhi High Court granted an ex-parte injunction restraining Micromax from selling, importing, or manufacturing mobile devices that implemented 3G, AMR and EDGE standards. Micromax and Ericsson later entered into an agreement in which the former would

pay interim royalty. In November 2014, while deciding the interim injunction application in Ericsson v. Micromax, the Delhi High Court had directed Micromax to continue paying quarterly royalty to Ericsson at the rates specified by the Court ranging from 0.8% to 1.3% on sales per unit.

Defences available in a Patent Infringement Suit

The defendant in a suit for infringement of a patent may lead one or more of the following defences:

1. plaintiff not entitled to sue for infringement,
2. denial of infringement or any threat or intention to infringe,,
3. leave or license express or implied to use the invention,
4. estoppels or res judicata,
5. the acts complied are under the conditions specified in s.47(Government use, experiment, research and education),
6. claims alleged to be infringed invalid on specificgrounds(Revocation of Patents)
7. For Patent in respect of Medicine or drug, for its use of Govt. of India, for distribution in Govt. Dispensary and hospitals or by gazette notifications to other dispensaries, hospitals and medical institutions.
8. Alleged infringement not novel or is obvious (Lord Moulton's defence or Gillette defence).

What does not constitute Infringement?

Section 107A in the act incorporates bolar provision and provision for parallel imports. Section 107A states that the following acts do not constitute infringement:

- Any act of making, constructing, using, selling or importing a patented invention solely for uses reasonably related to the development and submission of information required under any Indian law, or the law of a country other than India, that regulates the manufacture, construction, use, sale or import of any product;
- The importation of patented products by any person from a person who is duly authorized by the patentee under the law to produce and sell or distribute the products.

Bolar provision allows manufacturers to begin the research and development process in time to ensure that affordable equivalent generic medicines can be brought to market immediately upon the expiry of the product patent.

Parallel import provisions are provided in section 107 A (b) of the Patents Act, which says that importing patented products by any person authorized by the Patentee will not be considered an infringement. Therefore, importing the patented products from the patentee's licensee in any country without the Patentee's permission is possible. Parallel import aims to check the abuse of patent rights and control the price of a patented product.

ENFORCEMENT MEASURES

India has a well-established statutory, administrative and judicial framework to safeguard Intellectual Property Rights (IPRs). However, it is still facing problems with the enforcement of IPR. It has always been a concern about a slow judicial system involving lengthy and time-

consuming trial procedures in India. However, in recent years, Indian Courts have shown dynamism and zeal for adequate protection of Intellectual Property Rights. It has been observed that by adopting the right policies and strategies, IPR can be effectively protected with the help of law enforcement authorities.

For any IPR related litigation, it is necessary to understand the Indian Judicial system and its psychology. It has been observed that the Indian Courts are very active in granting equitable reliefs like injunctions, etc., but are still reluctant in awarding punitive pecuniary damages.

Authorities involved in the Execution of Orders of Courts

The Government Authorities, including Police, are bound to execute and enforce the Court's orders. The courts are empowered to direct any government authority to do or not to do or prevent/compel any person to comply with the Court's orders. There are effective methods for the enforcement of the Court's orders, including Contempt of Court proceedings, which provides for a fine and imprisonment, in case of non-compliance with the order of the Court. Execution/ compliance of the court's ordersis also done by way of the appointment of the Local Commissioner/Receivers by the Court. In India, certain State Governments have formed Special Intellectual Property Cells, which deal with offences relating to infringement of IPR.

In any civil action for enforcement of Intellectual Property Rights, the following reliefs may be claimed in such suit:

- Permanent Injunction;
- Interim Injunction;
- Damages;
- Accounts and handing over of profits;
- Anton Pillar Order (Appointment of Local Commissioner by the Court for custody/ sealing of infringing material/accounts);
- Delivery up of goods/packing material/dies/plates for destruction.

In case of infringement of Trademark, infringement of Copyright, Geographical Indication, Plant Variety and Semiconductor Integrated Circuits Layout Design
following **Criminal** action can also be initiated.

- Registration of First Information Report (FIR) or
- Filing of a Criminal Complaint before a Competent Magisterial Court with an application for search and seizure warrants directing the police to raid the premises of the accused ofthe seizure of the infringing material and arrest of the infringers.

It is interesting to note that in India, wherever provisions have been made for criminal prosecution for violation of any Intellectual Property Rights, a criminal case can be filed against known as well as unknown persons. It is also important to note that both civil and criminal remedies, wherever applicable, can be availed simultaneously, and both the remedies are coexistent.

Competent Court

A suit may be instituted in India in any Court of original jurisdiction, subject to their pecuniary and territorial jurisdiction. About IPR litigation, the designation of the lowest court is District and Sessions Judge. These cases can also be filed in the High Court directly if such High Court has original jurisdiction. The jurisdiction of the High Court can be invoked, subject to the payment of court fees. The structure of court fees payable varies from State to State.

Note: since tribunals reforms ordinances, 2021 led to the abolition of various boards, appelate tribunals existed under different laws under IPR. The Delhi high court has created an intellectual property division (IPD) to deal solely with cases related to intellectual property issues.

Border Control Measures for Enforcement of IPR

Under Section 11 of the (Indian) Customs Act, 1962, the Government of India is empowered to prohibit importation and exportation of goods of a specified description if it deems necessary to do so. The provision, *among other things*, empowers the government to prohibit importing or exporting goods to protect patents, trademarks, and copyrights. The goods imported in contravention of the provisions of the Customs Act or any other laws for the time being in force are liable to be confiscated. In this regard, a customs officer is empowered to inspect any premises, conveyance, x-ray any person and effect search and seize in a case where they have reasons to believe that the goods are of contraband nature. They can also investigate or interrogate any person and arrest him.

Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007

India has notified the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The rules comply with border measures as required by the TRIPS Agreement empowering the Customs Officers to enforce IPR over the imported products. Actions under Customs Act are independent of the remedies provided under various statutes on Intellectual Property. As per Rule 2(b) of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, Intellectual Property includes patents, designs, and geographical indications together with trademarks and copyrights.

Upon receipt of the Application, the Customs Authorities may register the Complaint and enforce Border Control measures to protect the Intellectual Property Rights in the prescribed format. It is important to note that this right is not unfettered. Specific provisions have also been made, and an elaborate procedure has been laid down to release the seized goods upon applying the importer of the goods.

ENFORCEMENT LAWS IN INDIA :

The general laws with Intellectual Property Enforcement in India are mainly the following:

- Code of Civil Procedure
- Indian Penal Code
- The Civil and Criminal Rules of Practice.

While the Civil Procedure Code provides civil remedies and enforcement through civil courts, the Indian Penal Code provides penal remedies. The rules of practice of the trial

courts, High Courts and the Supreme Court of India set the finalities of the enforcement procedure. India follows common law tradition, and judicial precedents do have binding force.

ENFORCEMENT MECHANISM AVAILABLE UNDER THE INDIAN LAW:

Civil remedies: Under civil remedy Protection for Design, is there against infringement of copyright in a design area

an injunction,

damages or

Compensation and delivery up of infringing articles. No Provision for criminal proceedings against piracy of designs. Unregistered design can be protected under the Copyrights Act.

Civil remedies for enforcement of the Copyright, including injunction, damages, an account of profits, delivery of infringing marks and damages for conversion, can be invoked by the copyright owner or, in some instances, publisher of the trademark label.

Suit for damages: Damages can be claimed

(1) as an amount of loss sustained by the copyright holder because of the infringement.

(2) as an amount representing the profits made by the infringer and

(3) as an amount representing the value of infringing copies.

Whenever a registered Trademark is violated or infringed, to the detriment of its proprietor or user, the aggrieved person can make use of the remedies available in a civil court. The most common remedy for infringement of a registered trademark is to file a suit in a civil court to restrain the defendant from using the registered trademark of the plaintiffs.

The issues arising in a passing-off action are:-

• Whether the plaintiff has established goodwill or reputation in connection with a business, profession, service or any other activity among the general public or a particular class of people before the first use of the defendant.

• Whether the defendant's activities or proposed activities amount to a misrepresentation that is likely to injure the business or goodwill of the plaintiff and cause damage or likely to cause damage to his business or goodwill.

• Whether the defendant succeeds in one or more of the defences set up by him.

For Patent civil remedy is not there.

Criminal remedies

Protection for Patents: Criminal liability: penalties available under Section 118. Contravention of secrecy provisions relating to particular inventions in cases relating to infringement of Patents. Failure to comply with Section 35 is punishable with imprisonment for a term that may extend to two years or with a fine or both.

A suit for the infringement of a patent can be instituted only after the sealing of the patent. Damages caused of infringement during the period between the dates of advertisement of acceptance and the date of the sealing may be cleared in the suit. In action for infringement of a patent, a defendant may plead any of the following defences:-

• Denial of infringement.

• Plaintiff is not entitled to sue for infringement.

• License to use the invention expresses or implied.

• Estoppel

• Existence of an unlawful contract.

• Claims invalid on account of lack of novelty and non-obviousness.

• Innocent infringement in cases against a claim for damages or account of profit.

The procedure concerning infringement action must confine to the Civil Procedure Code. If the suit is filed before a District Court and if the matter is before the High Court, the rule of practice of the court also shall apply. The main reason for a possible delay in getting orders in a patent infringement suit is the provision for preferring appeals from interim orders of trial courts.

Protection for Trade Marks Act, 1999 provides a comprehensive scheme whereby those persons who unauthorised deal with the trademarks can be punished for various offences. The offences include:- Falsifying and falsely applying for trademarks, Selling goods or providing services to which false trademark or false trade description is applied.

They remove piece goods, contrary to Sec. 81, which deals with stamping of piece goods, cotton yarn and threads—falsely representing a trademark as registered. Falsification of entries in the register; and Abetment in India, of acts done outside India etc.

The punishment of these offences includes minimum imprisonment of 6 months and a minimum of Rs.50 000, extending to a maximum of 3 years and Rs.20 000. Section 105 of the Act provides for enhancing penalty on second or subsequent conviction.

Protection for Copyright: The copyright owner and any person can initiate criminal proceedings by filing a complaint before the competent First Class Magistrate within whose jurisdiction the plaintiff resides, or the infringement occurs or deemed to have occurred. The procedure prescribed under the Criminal Procedure Code applies to the proceedings before the criminal court.

On conviction, the Criminal Court can sentence the accused to imprisonment upto 3 years and a fine extending upto Rs.2 lakhs. However, the recent amendment has made the imposition of punishment to a minimum term of 6 months and a fine of Rs.50,000 mandatory unless for special reasons to be recorded if the magistrate awards lesser punishment than the minimum.

For the Protection of Design act, no criminal remedies are there.

Administrative remedies

For Protection of Trademark: The Act vests certain powers in the various administrative authorities to relief and remedies to the aggrieved persons. It is the Registrar who mainly exercises these powers under the guidance of the Central Government.

For Copyright Protection: The owner can apply the copyright in any work or by his duly authorized agent to the Registrar of Copyright to ban the import of infringing copies of trademark labels earlier confiscated from infringer to the owner of the copyright.

Moreover, for the Patent and Design Act, no administrative remedies are there.

Model question paper

B-pharm VI year II semester Regular examination

INTELLECTUAL PROPERTY RIGHTS

1 **PART-A (compulsory questions) 2X10=20 marks**

A. examples of intellectual property rights

B. Write about know-how agreement.

C. Explain about drafting of a patent.

D. Explain plant breeder rights.

E. Define trademarks

F. What is well-known marks.

G. Define geographical indication.

H. Define industrial designs.

I. explain licensing of IPRs

J. Explain infringement of IPRs

PART-B (answer all five units) 5X10=50 marks

UNIT-I

2.Discuss the concept and need for intellectual property rights in India. OR

3.Explain the genesis and development of intellectual property rights in India.

UNIT-II

4.Why is a patent required? What can be patented and how? Explain OR

5.Discuss the difference between a utility model and a patent.

UNIT-III

6.Distinguish between copyrights and related rights. OR

7.Discuss the process involved in the registration of trademarks.

UNIT-IV

8.what are industrial designs? Explain the different kinds of protection for industrial designs. OR

9.Discuss the protection and extension of new plant varieties.

UNIT-V

10.state the relationship between unfair competition and intellectual property laws. OR

11.Explain the enforcement measures and emerging issues in science and technology.

IMPORTANT QUESTIONS FOR MID EXAMINATIONS

1.EXPLAIN THE GENESIS AND DEVELOPMENT OF IPR IN INDIA AND IPR IN ABROAD.

2.WHY IS PATENT REQUIRED, WHAT CAN BE PATENTED, DISCUSS THE DIFFERENCE BETWEEN UTILITY MODEL AND PATENT.

3.WHAT IS TRADEMARK, TYPES, DESCRIBE THE PROCESS INVOLVED IN REGISTRATION OF TRADEMARK.

4.EXPLAIN ABOUT GEOGRAPHICAL INDICATIONS.

5.WRITE A NOTE ON A)PCTB)TRADE SECRETS(KNOW-HOW AGREEMENTS)

6.WRITE A NOTE ON RIGHTS PROVIDED BY COPYRIGHTS AND PROTECTION OF COPYRIGHTS & ADD A NOTE ON THE DISTINCTION BETWEEN RELATED RIGHTS AND COPYRIGHTS?

7.EXPLAIN ABOUT RIGHTS, KINDS OF SIGNS, TYPES AND FUNCTIONS OF TRADEMARKS.
8.WHAT IS UNFAIR COMPETITION? EXPLAIN THE RELATIONSHIP BETWEEN UNFAIR COMPETITION AND IPR LAWS.
9.ELABORATE ON INFRINGEMENT OF IPR'S AND DESCRIBE ANY TWO CASE STUDIES RELATED TO PHARMACEUTICAL RESEARCH.
10.WHAT ARE INDUSTRIAL DESIGNS? DESCRIBE THE KINDS OF PROTECTION AND THE NEED FOR ITS PROTECTION.
11. DISCUSS THE PROTECTION AND EXTENSION OF NEW PLANT VARIETIES
12. EXPLAIN THE ENFORCEMENT MEASURES AND EMERGING ISSUES IN SCIENCE AND TECHNOLOGY.

MULTIPLE CHOICE QUESTIONS

1.INTELLECTUAL PROPERTY RIGHTS ARE

A)PATENT B)DESIGNS C)TRADE NAMES **D)ALL**

2.COPY RIGHTS ARE RIGHTS IN

A)LITERARY B)ARTISTIC C)SOFTWARE **D)ALL**

3. IPR S IMPORTANT FOR_____ DE VELOPMENT OF COUNTRY

A) TECHNILOGICAL B) INDUSTRIAL C) ECONOMIC **D) ALL**

4. WTO MEANS _____

A) WORLD TRADE ORGANIZATION B) WORLD TRAVEL ORGANIZATION C) WORLD TOURISM ORGANIZATION D) NONE

5. INTELLECTUAL PROPERTY RIGHTS ARE

a) GEOGRAPHICAL INDICATION B) INTEGRATED CIRCUITS C) TRADE SECRETS **D) ALL**

6. PATENTS ARE LIGAL RIGHTS GRANTED FOR

a) NEW INVENTIONS B) SCIENTIFIC KNOWLEDGE C) TECHNICAL KNOWLEDGE **D) ALL**

7. A DESIGN IS AN IDEA OF _____ APPLIED TO ORNAMENT

A) FUTURE OF SHAPE B) CONFIGERATION C) PATTERN OR ORNAMENT **D) ALL**

8. TRADEMARK IS A VISUAL SYMBOL IN THE FORM OF _____

A) WORD B) DEVICE C) LABLE **D) ALL**

9. COPY RIGHT IS RIGHT TO COPY AND MAKE USE OF

A) LITERALLY, DRAMETIC B) MUSICAL , ARTISTIC C) FILIMS , BROAD CAST **D) ALL**

10 . INDIA OPTED _____ SYSTEM INDIAN PARLIAMENT HAS PASS PROTECTION OF PLANT VARITIES AND FA RMER RIGHTS ACT 2001

A)PATENT LAW SYSTEM B)SUI GENERIS SYSTEM C) A AND B D) NONE

11. UTILITY MODEL LAW IS

A) VERY SIMPLE B) TIME TAKEN IN SHORT C) LOW-COST D)ALL

12. AS PER____CONVENTION COPYRIGHT PROTECTED UNDER THE COPYRIGHT LAW IN A MEMBER CATEGORY IS ENFORCED IN OTHER MEMBER COUNTRIES

A) BERNE B) BRITAIN C)BRAIN D)NONE

13.PROMOTIONS OF NON TRADE GENERIC DRUGS AND LOW-COST DRUGS BY CREATING A WELL SPARED LOW-COST PHARMACY CHAIN SYSTEM

A] JAN AUSHUDHI STORE B] JAN –DAN YOJANA C) JAN DAN SURAKSHA D] NONE

14.DOMESTIC PHARMACEUTICAL COMPANIES MUST ARCHIVE INTERNATIONAL STANDARDS SUCH AS

A]GMP B]GCP C]GLP D]ALL

15._____OF TECHNOLOGIES CAN BE UNEARTHEN. IT IS DIFFICULT TO KEEP INVENTION SECRET WITHOUT PATENT PROTECTION RUNS INTO GREATOR RISK, LOSING ECONOMIC LOSS

A) KNOW HOWB)WHAT C)WHEN D)NONE

16.IN INDIA, GRANT OF PATENTS IS GOVERNED BY____ AND REGISTRATION OF DESIGNS IS GOVERNED BY ____

A)PATENTS ACT B) DESIGNS ACT **C) BOTH A AND B**D)NONE

17. WHAT IS THE REGULATORY BODY FOR INDIA

A)USFDA **B)CDSCO** C)VGA D)NONE

18. SINGLE APPLICATION MADE IN RESPECT OF DESIGNATED MEMBER COUNTRY OF PCT

A) INTERNATIONAL APPLICATION B) WHO APPLICATION C) NATIONAL APPLICATION D) NONE

19.PATENT ARE VERY USEFUL AS

A)THEY CAN BE UTILISED AS DEVICES TO ADVANCE KNOWLEDGE AND BRING NEW KNOWLEDGE

B) INSTRUMENT OF COMPETITIVENESS BY THE ENTERPRISES AGAINST ACTUAL COMPETITORS

C) ENCOURAGE INVENTIVE ACTIVITIES IN A COUNTRY

D) ALL

20. TRIPS PROVISIONS HAS GIVEN SOME GRACE TIME FOR COUNTRIES LIKE INDIA TO COME UP THE STANDARD OF DEVELOPED COUNTRIES

A) UP TO 1-1-2005 B) 11-1-2006 C) 1-1-2007 D) 1-11-2008

21.MANY COUNTRIES IN THE WORLD PUBLISH THE CONTENTS OF PATENT DOCUMENTS ON EXPIRY OF _____ MONTHS FROM THE DATE OF FILING

A) 18 MONTHS B) 15 MONTHS C) 12 MONTHS D) NONE

22. UNDER TRIPS AGREEMENT OF WTO, THE TIME OF PATENT AMONGST THE MEMBER COUNTRIES _____ YEARS FROM DATE OF FILING

A) 20 B) 15 C) 10 D) NONE

23.THE MAIN REASON PATENT OFFICE WILL NOT GRANT PATENTS ARE

A) INVENTIONS NOT PATENTABLE UNDER PROVISIONS OF PATENT ACT

B) DUE TO FINDING PRIOR ART AFFECTING NOVELTY OF INVENTION

C) DUE TO INVENTION IS DEEMED ANTICIPATED MAKING THE INVENTION " OBVIOUS "

D) ALL

24.INDIA, THE FEES FOR PATENT, IS LOW AS COMPARED TO FEE PROMISED IN FOREIGN COUNTRIES THE PROFESSIONAL CHANGES OF PATENT PROFESSIONAL BASED ON THE

A) EXPERTISE B) EXPERIENCE C) STANDING IN THE PROFESSION **D) ALL**

25. IT IS ILLEGAL TO MENTION BEFORE FILING AN APPLICATION IN THE PATENT OFFICE

A) PATENT PENDING B) PATENT APPLIED FOR **C) A AND B** D) NONE

26. MAIN CRITERIA FOR SECURING A PATENT IS

A) INVENTION MUST BE NEW B) MUST INVOLVE INVENTIVE STEP C) MUST BE INDUSTRIALLY APPLICABLE **D) ALL**

27. THE COMMON MISTAKES THE INVENTORS [APPLICANTS] DO

A) PUBLISH THE INVENTION IN MAGAZINES B) JOURNALS C) NEW S PAPERS **D) ALL**

28.The patents exclusive rights are confined only to the method of manufacturing product and not to the product that is

A]product patent **B]process patent** C] A&B D] None

29. the grant of a patent for the process of preparation of product that said the product could be MFG by totally new and different methods is

A]product patent B]process patent C] A&B D] None

30.the patent under for respective inventions can come together and have a joint agreement and bring the product to the market and share the profits

A]Cross license B]process patent C]]product patent D] None

31.Product patent regime brought in to force

A]1-1-2005 B]1-1-2004 C] 1-3-2008 D] 1-4-2003

32.controller of general patents drug design trademarks head office located at

A] Calcutta B]Bengal C] Kerala d]none

33.the nodal ministry of the patent office is

A] Ministry of commerce in the industry (dept. Of industries policy and promotions)

B]ministry of home C]ministry of finance D] None

34.The patent office branches in

A]Chennai B]Mumbai C]Delhi **D] All**

35.inventions are developed by personal of atomic energy will not standard in way screening patent protection [ ]

A]Nuclear reactor B]uranium C] plutonium **D] All**

36.Patents search conducted through national patents system of every country like

A]Indian patent classification system B] the USA patent classification system

C]International patent classification system **D]All**

37.India is a signatory to

A]Paris convention for protects of industrial property B]Trips **C]A&B** D]None

38.The patent act enacted in India

A]1970 B]1999 C]1956 D]1976

39 the government fee in India for patent filing

A]1600 B]2000 C]5000 D]10000

40. pre-grant opposition made under

A]section 24(1) B]section 24(2) C]section 25(1) D]section 25(2)

41. WIPO located at

A]newyorkBnew Delhi **C]geneva** D]london

42. the government fee for filing design application of geographical indications

A]5000 B]10000 C]15000 D]20000

43. copyright law grants legal protection to

A]authors B]manufactures C]distributors D]all

44. how many parties signed in TRIPS AGREEMENT

A]123 B]153 C]143 **D]164**

45. which of the following patent specifications

A]provisional B]complete **C]A&B** D]technical

46. first examination report obtained within _____months

A]6 B]8 C]10 D]12

47.The powers of registrar for industrial designs given under

A]section 2 B section 3 C]section 5 Dsection 6

48. the application for grant of patent provided in

A]form1 B]form2 C]form3 D]form4

49. the publication for a patent could be made under

A]rule 21 B]rule 22 C]rule 23 D]rule 24

Fill in the blanks

1. UPOV means _____
2. What is the term of new variety in case of trees & vines _____years
3. A new variety if it conforms the criteria of _____
4. PPVFR act 2001 means protection of plant varieties & farmers rights act 2001
5. Trademarksrefer to specific shape, configuration, surface, colour, pattern, which produces an aesthetic impression of an article.
6. Best form of copy right are _____
7. Term of copy right is _____
8. _____is a symbol or word used by manufacturer to identify his goods from others
9. Term of trademark is initially for _____years
10. Geographical Indicationis aspect of IPR, which relate to goods or products originating from particular geographical region situated in particular country.
11. Darjeeling is famous for tea plants.
12. Tanjavur is famous for _____musical instrument.
13. _____refers to proprietary information having commercial value & applications
14. CDA means (as per trade secrets)confidential data agreement
15. IPRare legal rights associated with property, which is of intellectual nature i.e. Thoughts and ideas.
16. Good manufacturing practicesensure safety and quality of pharmaceutical products by providing guidelines to manufacturer.
17. TOT means technology of transfer
18. COT means _____
19. Compulsory licencingis a permission granted by government in public interest to a non patentee to make patented product.
20. Hutch Waksmanact also known as drug price competition and patent term restoration act.
21. PCT MEANSpatent cooperation treaty
22. N P PPmeans (as per pharmacy) national pharmaceutical pricing policy
23. NLEM 2015 meansnational list of essential medicines
24. IPR means intellectual property rights

25. USFDA means united states food and drug administration
26. CDSCO means central drug standard control organisation
27. GATT means General agreement on tariff and trade
28. TRIPS means Trade related aspects of intellectual property rights
29. cGMP means current good manufacturing practices
30. ANDA means Abbreviated new drug application
31. ICH means international council of harmonisation
32. WIPO means world intellectual property organisation
33. NCE means New chemical entity
34. IRB means Institutional review board
35. USP means united states pharmacopoeia
36. WTO means world trade organisation
37. WHO means world health organisation

Some important terminology used in IPR

Novelty: Invention would not be considered novel if it is used or published in India or elsewhere before the date of filing/priority.

Publication: Except where an early request for publication has been made, every patent will be published just after 18 months from the date of filing/priority and will be open for the public on payment of a fee prescribed.

Opposition: Provision of Pre-grant and Post-grant opposition has been introduced, where any person can file a pre-grant opposition before the grant of a patent, a post-grant opposition can be filed by any interested person after the grant of patent but before the expiry of 1 year.

Revocation: A patent can be challenged and revoked anytime after the grant of patent on a petition of any interested person or Central Government by the Appellate Board or on a counter-claim in a suit for infringement of the patent by the High Court.

Compulsory license can be granted to any interested person after the expiration of 3 years from the date of grant for non-working, unreasonable price and failure to fulfil the demand of patented invention.

Intellectual Property Appellate Board (IPAB) has now been constituted to hear appeals against the Controller's decisions under the Patents Act, 1970.

International Searching Authority (ISA) and **International Preliminary Examining Authority (IPEA)**. India is now recognised.

E-filing:A facility for e-filing of patent and trademark has been launched.

Plaintiff: a person who brings a case against another in a court of law

Defendant: an individual sued or accused in court of law.

Respondent: replying to something or a party against whom a petition is filed.

lawsuit: a dispute/disagreement brought to the court of law for decision

Permanent injunction: a permanent order given by the court of law to do or not to do.

Passing off: when someone deliberately or unintentionally passes off their goods and services as those belong to another party.

Jurisdiction: the official power to make legal judgements.

Interim order: a temporary order issued by the court during the pendency of litigation to ensure status quo.