



INTELLECTUAL PROPERTY RIGHTS IN INDIA

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ABSTRACT

Most of the people do not know that they are able to protect their invention using multiple types of Intellectual Property Rights. Intellectual Property Rights are like any other property right. They allow creators of patents, trademarks and copyrighted works to benefit from their own work. These rights are outlined in article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary and artistic productions.

INTRODUCTION

Intellectual Property's Importance was first recognized in the Paris Convention in 1883 for the protection of industrial property. In 1886 the Berne Convention for the protection of Literary and Artistic works. Both treaties are administered by the World Intellectual Property Organization (WIPO). Intellectual property is a product of human intellect and the rights granted on it allow its owner to benefit from the fruits of this intellectual endeavour by creating a monopoly over it. Such benefit is not always a natural right but requires recognition by a statute.

Objectives of the Study:

- 1) To find out the importance of Intellectual Property Rights.

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- 2) To know the types of Intellectual Property Rights.
- 3) To find out the reasons to promote and protect Intellectual Property.
- 4) To find out the Strengths of the Indian IPR Regime:

Importance of Intellectual Property Right:

The significance of intellectual property can be traced to the ancient use of stamps on bricks by Roman brick-makers for the purpose of identification, and even before that when the leaders of the ancient Greek city of Sybaris granted monopoly for one year on cooking a delicious dish to its creator. Obviously, much has changed since then with the advancement of science and technology and global business.

Intellectual property rights (IPRs) play a key role in every sector and have become the basis for crucial investment decisions. IPRs are exclusive rights and therefore there is always a challenge to strike a balance between the interests of innovators and the interests of the society at large. Another important factor is having an adequate legal framework to protect the interests of innovators and inspire confidence that their intellectual property will be protected, in turn triggering further innovation.

Definition of Intellectual Property Right:

“Intellectual Property Rights are the rights given to person over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creations for a creation period of time.”

Intellectual Property refers to creations of mind. Inventions, literary and artistic works and symbols, names and images used in commerce. Intellectual Property is divided into two categories for ease of understanding.

1) Industrial property:

Includes patents for inventions, trademarks, industrial designs and geographical indications.

2) Copyright:

Covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings and broadcasters in their radio and television programs.

Most products can be protected by four types of IPR.

	Trade Secrets	Trademarks	Copy Rights	Patents
Protects	Information	Brands	Works of Authorship	1)Utility Patent 2)Functional Aspects 3)Design Patent 4)Ornamental features
Infringement	Misappropriation	Used in Commerce	Copying etc.	make,use,offer,sale,import
Registration Process	No	Optional	Optional	Yes
Term	Potentially indefinite limited by secrecy	Potentially indefinite limited by secrecy	Life Plus 70 years	Utility Patent,Functional Aspects- 20 years Design Patent, Ornamental features-15 years
Comparative Costs	Depends	Inexpensive	Inexpensive	Expensive

Trade secrets are protects Information e.g. new invention, coke formula.

Trademarks are protects brands e.g. Apple for cell phones.

Copy Rights are protects works of authorship e.g. books, movies, drawings.

Patents are Protects Utility Patent, Functional Aspects, Design Patent, Ornamental features

There are several reasons to promote and protect Intellectual Property.

- 1) The progress and well-being humanity rest on its capacity to create and invent new works in the areas of technology.
- 2) The legal protection of new creations encourages the commitment of additional resources for further innovation.
- 3) The promotion and protection of Intellectual Property creates new industries and jobs enhances the quality of life.
- 4) An efficient Intellectual Property system can help to realize Intellectual Property's potential as a catalyst for economic, social and cultural development.
- 5) An equitable Intellectual Property system can help strike a balance between the interests of innovators and the public, providing an environment for creativity and invention.

Intellectual property rights (IPRs) play a key role in every sector and have become the basis for crucial investment decisions. Another important factor is having an adequate legal

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framework to protect the interests of innovators and inspire confidence that their intellectual property will be protected, in turn triggering further innovation.

Intellectual Property Rights in India

The Vision statement envisages an India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

India has laws covering various areas of intellectual property as enumerated herein below:

- Trade Marks
- Patents
- Copyrights and Related Rights
- Industrial Designs
- Geographical Indications
- Layout Designs of Integrated Circuits
- Plant Varieties
- Information Technology and Cyber crimes
- Data Protection

In India, intellectual property rights recognised under statute are:

- The Copyright Act, 1957;
- The Patents Act, 1970;
- The Trade Marks Act, 1999;
- The Geographical Indications of Goods (Registration & Protection) Act, 1999;
- The Designs Act, 2000;
- The Semiconductor Integrated Circuits Layout Design Act, 2000;
- The Protection of Plant Varieties and Farmers' Rights Act, 2001.
- The Biological Diversity Act, 2002;

Broadly, the above acts deal with the protection of intellectual property:

Types of IPR in India:

❖ Copyright



Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work.

Concerned IP Act: The Copyright Act, 1957 (as amended). It has been revised latest in 2012 to conform to WIPO internet treaties

❖ Patent

A patent is granted for an invention which is a new product or process involving an inventive step and capable of industrial application.

“New invention” means the subject matter has not fallen in public domain or that it does not form part of the state of the art;

Inventive step is the feature(s) of the invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.

Capable of Industrial application means that the invention is capable of being made or used in an industry.

The Patents Act, 1970 (as amended in 2005)

❖ Trade Mark

A trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one undertaking from those of other undertakings.

A trademark can be a sign, words, letters, numbers, drawings, pictures, emblem, colours or combination of colours, shape of goods, graphic representation or packaging or sound or any combination of the above as applied to goods or services.

Concerned IP Act: Trade Marks Act 1999 (as amended in 2010)

❖ Geographical Indications

A geographical indication identifies agricultural or natural or manufactured goods as originating or manufactured in the territory of a country or region or locality in that territory, where a given quality, reputation or other characteristics of such goods is essentially



attributable to its geographical origin and, in case where such goods are manufactured goods, one of the activities of either the production or processing or preparation of the goods concerned takes place in such territory, region, or locality, as the case may be.

Concerned IP Act: The Geographical Indications of Goods (Registration & Protection) Act, 1999

❖ Design

A design refers only to the features of shape, configuration, pattern, ornamentation, composition of colour or line or a combination thereof, applied to any article, whether two or three dimensional or in both forms by any industrial process or means which, in the finished article, appeal to and are judged solely by the eye.

Concerned IP Act: Designs Act 2000

❖ Semiconductor Integrated Circuits Layout-Design

The aim is to provide protection of Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout-Designs and for matters connected therewith or incidental thereto.

Concerned IP Act: Semiconductor Integrated Circuits Layout-Design Act, 2000

❖ Plant Variety Protection And Farmer's Rights

Protection granted for plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

Concerned IP Act: The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001

Strengths of the Indian IPR Regime:

- The IPR framework in India is stable and well established from a legal, judicial and administrative point of view and is fully compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- India is committed to a number of international treaties and conventions relating to IPRs
- A number of awareness programs enumerating the types of intellectual property rights and its protection are being conducted by the Government, targeting audience from industry, universities, and schools.

- During the last few years, Indian IP offices have undergone major improvements in terms of upgradation of IP legislation, infrastructure facilities, human resources, processing of IP applications, computerization of the IP offices, IP databases, quality services to stakeholders, transparency in functioning and free access to IP-data through a dynamic website.
- State of the art, integrated and IT- enabled office buildings have been setup in the last few years in Delhi, Kolkata, Chennai, Mumbai and Ahmedabad, housing offices of Patents, Designs, Trademarks and Geographical Indications. The Patent Office is headquartered in Kolkata with branches in Delhi, Chennai, and Mumbai. The Trade Marks Registry, headquartered at Mumbai has branches in Ahmedabad, Chennai, Delhi, and Kolkata. The Design Office is located in Kolkata and the GI Registry is in Chennai. Separate facilities house the International Searching Authority (ISA) / International Preliminary Examining Authority (IPEA) in Delhi; an Intellectual Property Office Archives centre has been setup at Ahmedabad.
- The procedure for filing and processing of IP applications has been simplified, E-filing facilities and incentives for Small and Medium Enterprises (SMEs) and Startups are some of the other initiatives in the area of promoting IPRs in India.

CONCLUSION:

Intellectual Property Rights are like any other property right. They allow creators of patents, trademarks and copyrighted works to benefit from their own work. Intellectual property rights (IPRs) play a key role in every sector and have become the basis for crucial investment decisions.

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