

# **PROFESSIONAL PRACTICE, LAW AND ETHICS**

## **UNIT 5**

**DR.GUJJATI SUDHAKAR**

### **INTELLECTUAL PROPERTY RIGHTS**

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. The twenty-first century witnessed the emergence of “Intellectual Capital” as a key wealth driver of international trade between countries, thanks to rapid globalization and liberalization of economies the world over. Intellectual property rights have become an irreplaceable element of India’s business fraternity, whether in terms of new statutes or judicial pronouncements. India’s consent of the WTO (World Trade Organization) agreement has paved the way for its compliance with TRIPS (Trade Related Aspects of Intellectual Property Rights). This article explores the intellectual property laws in India, with specific emphasis on the amendments brought forth by TRIPS.

Intellectual property rights are customarily divided into two main areas:

#### **1. Copyright and rights related to copyright:**

The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author. Also protected through copyright and related (sometimes referred to as “neighbouring”) rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations. The main social purpose of protection of copyright and related rights is to encourage and reward creative work.

#### **2. Industrial property:**

Industrial property can usefully be divided into two main areas:

- One area can be characterized as the protection of distinctive signs, in particular trademarks (which distinguish the goods or services of one undertaking from those of other undertakings) and geographical indications (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin). The protection of such distinctive signs aims to stimulate and

ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services. The protection may last indefinitely, provided the sign in question continues to be distinctive.

- Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), industrial designs and trade secrets. The social purpose is to provide protection for the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities. A functioning intellectual property regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing.

The protection is usually given for a finite term (typically 20 years in the case of patents). While the basic social objectives of intellectual property protection are as outlined above, it should also be noted that the exclusive rights given are generally subject to a number of limitations and exceptions, aimed at fine-tuning the balance that has to be found between the legitimate interests of right holders and of users.

## **TYPES OF INTELLECTUAL PROPERTY**

**1. Copyright:** Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings. Copyright law protects the rights of creators in their works in fine arts, publishing, entertainment, and computer software. The laws protect the owner of the work if others copy, present, or display the owners work without permission.

**2. Patents:** A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document. Patent law grants protection for new inventions which can be products, processes or designs and provides a mechanism for protection of the invention. The patent law promotes the sharing of new developments with others to foster innovation. The patent owner has the right to protect others from producing, using, distributing or importing the protected item. Essentially the patent is a property right that can be licensed, sold, mortgaged or assigned.

**3. Trademarks:** A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or "mark" on their products. Trademark law protects a word, phrase, symbol or design that is used by an entity to identify its product or service. Examples are Dunkin Donuts orange and pink sausage style lettering, Apple's apple logo, and Adidas' three stripes. Trademark owners can prevent others from using their marks, or marks which are confusingly similar so that consumers would not be able to identify the source.

**4. Industrial designs:** An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or colour. The TRIPS agreement has accorded India with the ingredients that help in the protection of industrial designs. The Designs Act, 2000, caters to these requirements by providing protection to original and aesthetically appealing designs which have the potential for commercial applications and is in consonance with the evolvments in technology and economical advancements.

**5. Geographical indications:** Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods. A Geographical Indication (GI) is utilized on goods with a specific geographical origin and it consists of qualities or reputation that are due to the place of origin. Rights in terms of GI are valuable and needs to be protected against misuse by dishonest commercial operators.

**6. Trade secrets:** Trade secrets are IP rights on confidential information which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection. Trade secrets are business practices, formulas, designs or processes used in a business, designed specifically to provide a competitive advantage to a business. These trade secrets would not be otherwise known to an "outsider" of the business. An example of this is the formula for Coca Cola. Trade secrets are protected without registration and appropriate steps should be taken by the owner to maintain confidentiality.

## **Governing Regulations**

Intellectual properties rights in India is governed under the following Acts:

- Trade Marks Act, 1999
- The Patents Act, 1970 (amended in 2005)

- The Copyright Act, 1957
- The Designs Act, 2000
- The Geographical Indication of Goods (Registration and Protection) Act, 1999
- The Protection of Plant Varieties and Farmers Rights Act, 2001
- The Information Technology Act, 2000

## **COPYRIGHT**

Copyright is a form of intellectual property protection granted under Indian law to the creators of original works of authorship such as literary works (including computer programs, tables and compilations including computer databases which may be expressed in words, codes, schemes or in any other form, including a machine readable medium), dramatic, musical and artistic works, cinematographic films and sound recordings. Copyright law protects expressions of ideas rather than the ideas themselves. Under section 13 of the Copyright Act 1957, copyright protection is conferred on literary works, dramatic works, musical works, artistic works, cinematograph films and sound recording. For example, books, computer programs are protected under the Act as literary works.

Copyright refers to a bundle of exclusive rights vested in the owner of copyright by virtue of Section 14 of the Act. These rights can be exercised only by the owner of copyright or by any other person who is duly licensed in this regard by the owner of copyright. These rights include the right of adaptation, right of reproduction, right of publication, right to make translations, communication to public etc. Copyright protection is conferred on all Original literary, artistic, musical or dramatic, cinematograph and sound recording works. Original means, that the work has not been copied from any other source. Copyright protection commences the moment a work is created, and its registration is optional. However it is always advisable to obtain a registration for a better protection. Copyright registration does not confer any rights and is merely a prima facie proof of an entry in respect of the work in the Copyright Register maintained by the Registrar of Copyrights.

As per Section 17 of the Act, the author or creator of the work is the first owner of copyright. An exception to this rule is that, the employer becomes the owner of copyright in circumstances where the employee creates a work in the course of and scope of employment. Copyright registration is invaluable to a copyright holder who wishes to take a civil or criminal action

against the infringer. Registration formalities are simple and the paperwork is least. In case, the work has been created by a person other than employee, it would be necessary to file with the application, a copy of the assignment deed.

One of the supreme advantages of copyright protection is that protection is available in several countries across the world, although the work is first published in India by reason of India being a member of Berne Convention. Protection is given to works first published in India, in respect of all countries that are member states to treaties and conventions to which India is a member. Thus, without formally applying for protection, copyright protection is available to works first published in India, across several countries. Also, the government of India has by virtue of the International Copyright Order, 1999, extended copyright protection to works first published outside India.

#### **INDIAN PERSPECTIVE ON COPYRIGHT PROTECTION:**

The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two forms:

- Economic rights of the author, and
- Moral Rights of the author.

##### **(A) Economic Rights:**

The copyright subsists in original literary, dramatic, musical and artistic works; cinematographs films and sound recordings. The authors of copyright in the aforesaid works enjoy economic rights u/s 14 of the Act. The rights are mainly, in respect of literary, dramatic and musical, other than computer program, to reproduce the work in any material form including the storing of it in any medium by electronic means, to issue copies of the work to the public, to perform the work in public or communicating it to the public, to make any cinematograph film or sound recording in respect of the work, and to make any translation or adaptation of the work. In the case of computer program, the author enjoys in addition to the aforesaid rights, the right to sell or give on hire, or offer for sale or hire any copy of the computer program regardless whether such copy has been sold or given on hire on earlier occasions. In the case of an artistic work, the rights available to an author include the right to reproduce the work in any material form, including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work, to communicate or issues copies of the work to the public, to include the work in any cinematograph work, and to make

any adaptation of the work. In the case of cinematograph film, the author enjoys the right to make a copy of the film including a photograph of any image forming part thereof, to sell or give on hire or offer for sale or hire, any copy of the film, and to communicate the film to the public. These rights are similarly available to the author of sound recording. In addition to the aforesaid rights, the author of a painting, sculpture, drawing or of a manuscript of a literary, dramatic or musical work, if he was the first owner of the copyright, shall be entitled to have a right to share in the resale price of such original copy provided that the resale price exceeds rupees ten thousand.

### **(B) Moral Rights:**

Section 57 of the Act defines the two basic 'moral rights of an author. These are:

- Right of paternity, and
- Right of integrity.

The right of paternity refers to a right of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work. Right of integrity empowers the author to prevent distortion, mutilation or other alterations of his work, or any other action in relation to said work, which would be prejudicial to his honour or reputation. The provision to section 57(1) provides that the author shall not have any right to restrain or claim damages in respect of any adaptation of a computer program to which section 52 (1)(aa) applies (i.e. reverse engineering of the same). It must be noted that failure to display a work or to display it to the satisfaction of the author shall not be deemed to be an infringement of the rights conferred by this section. The legal representatives of the author may exercise the rights conferred upon an author of a work by section 57(1), other than the right to claim authorship of the work.

### **COPYRIGHT INFRINGEMENT**

Copyright infringement refers to the unauthorized use of someone's copyrighted work. Thus, it is the use of someone's copyrighted work without permission thereby infringing certain rights of the copyright holder, such as the right to reproduce, distribute, display or perform the protected work. Section 51 of the Copyright Act specifies when a copyright is infringed. According to Section 51 of the Act, Copyright is deemed to be infringed if:

- A person without obtaining the permission of the copyright holder does any act which only the copyright holder is authorised to do.

- A person permits the place to be used for communication, selling, distribution or exhibition of an infringing work unless he was not aware or has no reason to believe that such permission will result in the violation of copyright.
- A person imports infringing copies of a work
- A person without obtaining the authority from the copyright holder reproduces his work in any form.

### **Copyright Infringement examples**

- If a person uses someone's song as background music in his/her music video then he could be made liable for copyright infringement.
- If a person downloads movies or songs from an unauthorized source then it will amount to copyright infringement.
- A person is free to record a TV program to view it later, but if he transfers or distributes it to others then it becomes a copyright infringement.

### **Copyright infringement elements**

The work was the original creation of the author. The defendant actually copied the work of the author. It is important to note that not all factually copying is legally actionable. The substantial similarity between the works of the author and the defendant has to be established to prove that the defendant has infringed the author's copyright.

### **Copyright Issues**

There are a number of issues that can arise in Copyright. These are discussed below:

- **Plagiarism:** Someone may copy the copyrighted material and pretend it to be his original work. People are allowed to quote the work or refer the work but the person who is using the copyrighted work has to give the credit to the copyright holder.
- **Ownership:** The issue of ownership may arise when an employer works for an organisation. In such case who has the copyright over the work? If a person is an employer then it is the organisation which has the copyright over the material but if a person is a freelance writer then it is the person himself who is the sole owner of the copyrighted material.
- **Derivative Works:** Derivative works use the already existing work of someone. It is a new version of already existing material. For example, translating a book into another

language. A person requires a license for it but if he has not obtained the license for it then he can be made liable for copyright infringement.

### **Types of Copyright Infringement**

Copyright infringement can be broadly classified into two categories:

- Primary Infringement
- Secondary Infringement

#### **Primary Infringement**

Primary infringement refers to the real act of copying the work of the copyright holder. For example, photocopying a book and then distributing it for commercial purposes. However, sometimes a person may only copy a part of the work, for example, a paragraph of an article. In such a case, the copyright holder is required to establish two things:

- **Substantial Taking:** A copyright is infringed only when an unauthorized person copies a substantial part of the work. For example, copying a catchy phrase of a lyricist. While deciding the case, the court also tries to conceive, how an ordinary person will perceive the work. If an ordinary person will perceive that the work is copied from a different source then it will be considered infringement. If the writing style, language and errors are similar to the copyrighted work then it will serve as evidence of copying in a court of law. The minor alterations made by the person in the work of a copyright holder will not affect the claim of infringement.
- **Casual Connection:** The copyright holder must prove that there is a similarity in the works of the copyright holder and the infringer. However, this may be because of several other reasons like both of them have used the same source for the research. In such a case, the copyright holder cannot claim for infringement.

#### **Secondary Infringement**

Secondary Infringement refers to the infringement of copyright work without actually copying it. This can happen in the following ways:

##### **Providing a place for Copyright Infringement**

If a person provides the place or permits the place (for profit) to be used for communicating of the work the public and such work amounts to copyright infringement then such person can be made liable for the offence of copyright imprisonment. However, if the person is unaware or has no reason to believe that the place is used for copyright infringement then cannot be made liable for the same.



It is important to note that the person should let the place for “profit” to be made liable for copyright infringement. If an NGO lets the place then the NGO cannot be made liable for the same.

### **Selling Infringing Copies**

If a person sells the copies that infringe the right of the copyright holder then it will amount to copyright infringement.

### **Distributing Infringing Copies**

When a person distributes infringing copies of the copyright holder works then it will amount to copyright infringement. For example, if a person uploads a movie on the internet for free then it is an infringement of copyright.

### **Importing Infringing Copies**

Importing the infringed work of the copyright holder in India also amounts to infringement of Copyright. However, if the person has imported the infringed work for the domestic or personal use then it will not amount to Copyright Infringement.

### **Copyright Infringement:**

Direct Infringement: Direct infringement is a strict liability offence and guilty intention is not essential to fix criminal liability. The requirements to establish a case of copyright infringement under this theory are

- Ownership of a valid copyright; and
- Copying or infringement of the copyrighted work by the defendant.

Thus, a person who innocently or even accidentally infringes a copyright may be held liable under the Copyright Act of the U.S. and under the laws of various other countries. The guilty intention of the offender can be taken into account for determining the quantum of damages to be awarded for the alleged infringement.

### **Contributory infringement:**

The contributory infringement pre-supposes the existence of knowledge and participation by the alleged contributory infringer. To claim damages for infringement of the copyright, the plaintiff has to prove

- That the defendant knew or should have known of the infringing activity; and
- That the defendant induced, caused, or materially contributed to another person's infringing activity.

**Vicarious Infringement:**

Vicarious copyright infringement liability evolved from the principle of respondent superior. To succeed on a claim of vicarious liability for a direct infringer's action, a plaintiff must show that the defendant

- Had the right and ability to control the direct infringer's actions; and
- Derived a direct financial benefit from the infringing activity.

Thus, vicarious liability focuses not on the knowledge and participation but on the relationship between the direct infringer and the defendant.

Legal precedent for vicarious copyright infringement liability has developed along two general relational lines. The first relational line involves the employer/employee relationship, whereas the second involves the lessor / lessee relationship.

**PIRACY**

In medieval pre-sets, the term piracy was often used for the act of raiding or looting, which involved the ship-borne looters, who then attacked dwellers of another ship or a coastal area, with the primary purpose being to loot them of their belongings, such as cargo or other valuables. However, in today's world piracy is a more relevant and commonly used term, which constitutes theft on copyrighted and trademarked grounds i.e. unlawfully stealing and infringing someone else's work and produce it as one's own. Piracy in the digital realm can be compared to physical theft and piracy, because when a person illegally distributes a digital file on the internet or locally for free, he prevents the profit from the purchase of that item from going to the creator, creating an economic impact comparable to when actual pirates looted cargo.

**Types of piracy**

Piracy, when elaborated in terms of software, can be classified into 5 types, those being –

- **Counterfeiting:** It is the illegal acquisition, duplication, and distribution of any copyrighted material, which directly imitates the copyrighted product. The nature of the distribution of the said product may be a sale, or not. The most common way of distributing such pirated works is through compact discs.
- **Internet Piracy:** Internet piracy is the act of downloading a file from the internet, or by procuring an online software through a compact disc. Methods of conducting

internet piracy are websites offering free downloads of software, auctions selling illegally obtained software or P2P servers which transfer programs.

- **End-User Piracy:** This form of piracy involves the user illegally reproducing software which he isn't authorized to do. An example would be a user using one license to the software and installing it on multiple systems, or upgrading an already pirated software.
- **Client-Server Overuse:** In a computer network, when the number of clients exceeded the number prescribed in the server license, then it is termed as overuse piracy.
- **Hard-Disk Loading:** This occurs when a business sells new computers with illegal copies of software loaded onto the hard disks to make the purchase of the machines more attractive.

### **Piracy in movies**

The act of illegally acquiring, copying, reproducing and then distributing film media, without having any legal right or license to do so, is considered movie piracy. The most common occurrence of this is the distribution of these movies on websites. Traffic for these sites tends to spike whenever a new blockbuster movie releases as a pirated version will very likely be hosting these movies in a downloadable format on their servers.

### **Piracy in software**

Software piracy describes the act of illegally acquiring, copying, reproducing, and distributing software without a license to do so. Software piracy has become much more rampant in this generation of technology, as most software has converted into a one-user license i.e. it can only be redeemed once by one user for his use alone. Distributing this software, such as sharing with a friend, or via the internet, is illegal.

### **Online Piracy**

Online piracy is still a new arena in the world of piracy as compared to its offline older brother, and it has only grown more intricate with advancements in technology. Any piece of digital content, be it movies, music or games, are now accessible online through the BitTorrent client service, which strings together several pieces of the data from a swarm of users, then downloads and compiles them onto the user's computer. It's simple, efficient, widely used, and difficult to crack down on.

### **Pirating movies**

Movie piracy has become a more controlled art in recent times, from shaky recordings on camcorders to dedicated sites, apps, and add-ons to physical hardware, piracy has grown more

subtle yet more dangerous as a practice. In the UK, over a third of people who are above the age of 16 pirate movies. The method of pirating movies and uploading them online has also grown more intricate and difficult to track. Pirates often make use of BitTorrent to upload their files and store them online. The data travels to the user who requests the file is supplied with the file through the contribution of a huge group of seeders i.e. pirates who upload the files in bits and pieces. However, with the recent crackdown on online piracy, and links for pirated files being shut down, pirates save files offline, and these same games and movies are then sold via optical discs at grey markets.

## **LAW FOR PIRACY**

Surprising as it may be, there is no definitive international law that governs piracy as a whole, at least for the digital equivalent of piracy. Under international law, the statute of piracy only covers ‘physical’ piracy, i.e. the actual looting and plundering of goods and valuables via ship-borne thieves.

**Copyright:** Copyright is one tool to prevent the intellectual property of a person from being pirated. It is the legal right granted to a creator of any intellectual property to be able to reproduce and redistribute his work, at his discretion. Although back then, and even today, copyright doesn’t exactly prevent piracy, it does protect the legal interests of the party negatively affected and prescribe legal consequences for the perpetrator, in the event that copyright infringement (piracy) does occur. Copyright holders routinely invoke legal and technological measures to prevent and penalize copyright infringement.

**Filming a movie:** An act of piracy that involves recording a movie or a video, especially without prior authority from the creator or purchased license to do so. The most notable method of movie piracy is known as camcorder piracy, in which a camcorder or a small recording device is often snuck into a theatre, and the entire movie, recorded onto the camcorder, is distributed online via the internet, either on pirated sites for free or sold on gray markets.

**Websites to pirate movies:** Websites that host pirated content are one of the most popular sources to acquire pirated content, as most of these sites offer the content for free, which sees them experience a lot of network traffic due to their popularity, and the sheer number of users accessing their domains to get their hands on the latest pirated songs, games or movies.

## **Remedies for digital piracy in its tracks**

### **1. Remove the Incentive**

One of the most-effective ways of dealing with piracy is by removing the incentive for the consumers to look for pirated content. Effectively this can be characterised by offering a good product and a good user experience at a fair price. Price though is not the only differentiator. The importance of the user experience cannot be understated; viewers want sympathetic interfaces that contain the usual sophisticated bells and whistles such as personal recommendations, and they want excellent picture quality with no buffering and/or latency. The more the industry can provide that at realistic cost, the less people will be driven towards pirate arms.

## **2. PR & Education**

There are several strands to this, but effectively the goal is to highlight to the consumer that piracy is a crime and it is illegal. To those within the industry this is obvious; to those outside it, it is anything but. This has become a normative crime i.e. one that ‘everyone’ does and so the activity no longer appears as illegal because the behaviour is normal. The usual example given is speeding, but video piracy is prevalent enough that maybe it should replace speeding in the textbooks. Efforts made to remind viewers that piracy is both morally wrong and a crime can prove successful in driving down numbers, as have been campaigns that have highlighted the role of organised crime in pirate activities, exposure to malware and inappropriate material, and the danger to advertisers of negative brand association with pirate sites.

## **3. Barriers to Entry**

The era of unprotected content is long gone. Content owners look to protect their investment and Intellectual Property, and will only strike licensing deals with operators that can demonstrate that they take such threats to the revenue stream seriously in turn. What that means in practice, is changing all the time. Where once card-based Conditional Access Systems were as sophisticated as operators could get, the move towards IP and OTT delivery has necessitated a transition to software-based Digital Rights Management in turn.

## **4. Technology & Operations**

To identify content, a live pirate stream as having come from your own video ecosystem. That requires technical intervention at the pre-transmission stage. Monitoring is the key to success here, whether automated and there are some interesting developments in AI monitoring of video streams, both deployed and under development or human-led. In an ideal world, at least for now, a hybrid solution is typically deployed. Once a breach has been detected, swift action is necessary to deal with it. This has become ever-more important in recent years as piracy has pivoted towards real-time streaming and the lucrative illegal revenue streams associated with live sport in particular.

## **5. Legal & Enforcement**

There are a variety of counter measures that TV Service Providers can use to interrupt and remove pirated content, from the traditional take-down notices to increasingly sophisticated real-time messages. With the correct anti-piracy services, operators can identify consumers who are watching illegal streams and incentivize them switch to legitimate services. These actions scale from soft to hard, with the harder countermeasures involving the introduction of law enforcement authorities.

## **6. Cooperation**

While companies at all levels of the broadcast chain are used to competition, the losses to content piracy are too great for there not to be concerted efforts at cooperation. These need to take place at all levels of the industry and at all steps of the process, from production and on-set content security through to transmission. The concept of herd immunity that is such a crucial aspect of global vaccination programs is important here. The more companies and organisations that are involved, the more effective the overall solution. Unfortunately the converse can also be true, and if there is any weak spot in the chain at any point, even in a place far removed from what was considered to be the primary route to the consumer's television or device, that weakness is there to be exploited.

## **PATENT**

A patent is an exclusive right granted by the Government to the inventor to exclude others to use, make and sell an invention is a specific period of time. A patent is also available for improvement in their previous Invention. The main motto to enact patent law is to encourage inventors to contribute more in their field by awarding them exclusive rights for their inventions. In modern terms, the patent is usually referred to as the right granted to an inventor for his Invention of any new, useful, non-obvious process, machine, article of manufacture, or composition of matter. The word "patent" is referred from a Latin term "patere" which means "to lay open," i.e. to make available for public inspection. There are three basic tests for any invention to be patentable:

- Firstly, the invention must be novel, meaning thereby that the Invention must not be in existence.
- Secondly, the Invention must be non- obvious, i.e. the Invention must be a significant improvement to the previous one; mere change in technology will not give the right of the patent to the inventor.

- Thirdly, the invention must be useful in a bonafide manner, meaning thereby that the Invention must not be solely used in any illegal work and is useful to the world in a bonafide manner.

The Indian Patent and Design Act, 1911 repealed all previous acts. The Patents Act 1970, along with the Patent Rules 1972, came into force on 20 April 1972, replacing the Indian Patent and Design Act 1911. The Patent Act is basically based on the recommendations of the report Justice Ann. The Ayyangar Committee headed by Rajagopala Iyengar. One of the recommendations was the allowance of process patents in relation to inventions related to drugs, drugs, food and chemicals. Again The Patents Act, 1970 was amended by the Patents (Amendment) Act, 2005 regarding extending product patents in all areas of technology including food, medicine, chemicals and microorganisms.

## **WHAT CAN BE PATENTED**

Sections 3 and 4 of the Indian Patents Act, 1970 clearly mentioned the exclusions regarding what can be patented in India. There are certain criteria which have to be fulfilled to obtain a patent in India. They are:

**Patent subject:** The most important consideration is to determine whether the Invention relates to a patent subject matter. Sections 3 and 4 of the Patents Act list non-patentable subject matter. Unless the Invention comes under any provision of Section 3 or 4, it means that it consists of a subject for a patent.

**Novelty:** Innovation is an important criterion in determining the patent potential of an invention. Under Section 2(l) of the Patent Act, a novelty or new Invention is defined as “no invention or technology published in any document before the date of filing of a patent application, anywhere in the country or the world”. The complete specification, that is, the subject matter has not fallen into the public domain or is not part of state of the art”. Simply, the novelty requirement basically states that an invention that should never have been published in the public domain. It must be the newest which have no same or similar prior arts.

**Inventive steps or non-clarity:** Under Section 2(JA) of the Patents Act, an inventive step is defined as “the characteristic of an invention that involves technological advancement or is of economic importance or both, as compared to existing knowledge, and invention not obvious to a person skilled in the art.” This means that the invention should not be obvious to a person skilled in the same field where the invention is concerned. It should not be inventive and obvious for a person skilled in the same field.

**Capable of industrial application:** Industrial applicability is defined in Section 2 (AC) of the Patents Act as “the invention is capable of being made or used in an industry”. This basically means that the Invention cannot exist in the abstract. It must be capable of being applied in any industry, which means that it must have practical utility in respect of patent.

## **PATENT INFRINGEMENT**

Patent infringement is a violation which involves the unauthorized use, production, sale, or offer of sale of the subject matter or Invention of another’s patent. There are many different types of patents, such as utility patents, design patents, and plant patents. The basic idea behind patent infringement is that unauthorized parties are not allowed to use patents without the owner’s permission. When there is infringement of patent, the court generally compares the subject matter covered under the patent with the used subject matter by the “infringer”, infringement occurs when the infringer uses patent material from in the exact form.

Patent infringement is an act of any unauthorized manufacture, sale, or use of a patented invention. Patent infringement occurs directly or indirectly.

**Direct patent infringement:** The most common form of infringement is direct infringement, where the Invention that infringes patent claims is actually described, or the Invention performs substantially the same function.

**Indirect patent infringement:** Another form of patent infringement is indirect infringement, which is divided into two types:

- Infringement by inducement is any activity by any third party that causes another person to infringe the patent directly. This may include selling parts that can only be used realistically for a patented invention, selling an invention with instructions to use in a certain method that infringes on a method patent or licenses an invention that is covered by the patent of another. The inducer must assist intentional infringement, but does not require intent to infringe on the patent.
- Contributory infringement is the sale of components of material that are made for use in a patented invention and have no other commercial use. There is a significant overlap with indications, but contributor violations require a high level of delay. Violations of the seller must have direct infringement intent. To be an obligation for indirect violations, a direct violation must also be an indirect act.

## **Remedies for Patent Infringement**



Patent infringement lawsuits can result in significantly higher losses than other types of lawsuits. Some laws, such as the Patent Act, allow plaintiffs to recover damages. Patent infringement is the illegal manufacture or usage of an invention or improvement of someone else's invention or subject matter who owns a patent issued by the Government, without taking the owner's consent either by consent, license or waiver. Several remedies are available to patent owners in the event of an infringement. Measures available in patent infringement litigation may include monetary relief, equal relief and costs, and attorneys' fees.

**Monetary Relief:** Monetary relief in the form of compensatory damages is available to prevent patent infringement:

- Indemnity compensation – A patent owner may have lost profits for infringement when they established the value of the patent.
- Increased damage – Up to three times, compensation charges can be charged in cases of will or violation of will.
- The time period for damages – The right to damages can be claimed only after the date when the patent was issued and only 6 years before the infringement claim is filed.

**Equitable relief:** Orders are issued by the court to prevent a person from doing anything or Act. Injunctions are available in two forms:

- Preliminary injunction – Orders made in the initial stage of lawsuits or lawsuits that prevent parties from doing an act that is in dispute (such as making a patent product)
- Permanent injunction – A final order of a court which permanently ceases certain activities or takes various other actions.