

IPR Lecture 1

UNIT I:

Introduction to Intellectual Property Law – Evolutionary past – Intellectual Property Law Basics Types of Intellectual Property – Innovations and Inventions of Trade related Intellectual Property Rights – Agencies Responsible for Intellectual Property Registration – Infringement – Regulatory Overuse or Misuse of Intellectual Property Rights – Compliance and Liability Issues

INTRODUCTION TO INTELLECTUAL PROPERTY RIGHTS

- Intellectual property rights are the legal rights that cover the privileges given to individuals who are the owners and inventors of a work, and have created something with their intellectual creativity.
- Individuals related to areas such as literature, music, invention, etc., can be granted such rights, which can then be used in the business practices by them.
- The creator/inventor gets exclusive rights against any misuse or use of work without his/her prior information. However, the rights are granted for a limited period of time to maintain equilibrium.



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Intellectual Property

- **Intellectual property** is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property.
- **Examples** of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on the process to manufacture chewing gum.

Type of Intellectual Property



Copyright



Patent



Trademark



Trade Secret



Design



Geographic
Indication



Plant
Variety
Protection

Intellectual Property Rights (IPR)

- **Intellectual property rights (IPR)** can be defined as the rights given to people over the creation of their minds.
- They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.
- **Intellectual property (IP) refers to creations of the mind:** inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

Categories of Intellectual Property

One can broadly classify the various forms of IPRs into **two categories**:

- IPRs that stimulate inventive and creative activities (patents, utility models, industrial designs, copyright, plant breeders' rights and layout designs for integrated circuits)
- IPRs that offer information to consumers (trademarks and geographical indications)

IPRs in both categories seek to address certain failures of private markets to provide for an efficient allocation of resources

1. Industrial Property

2. Copyright

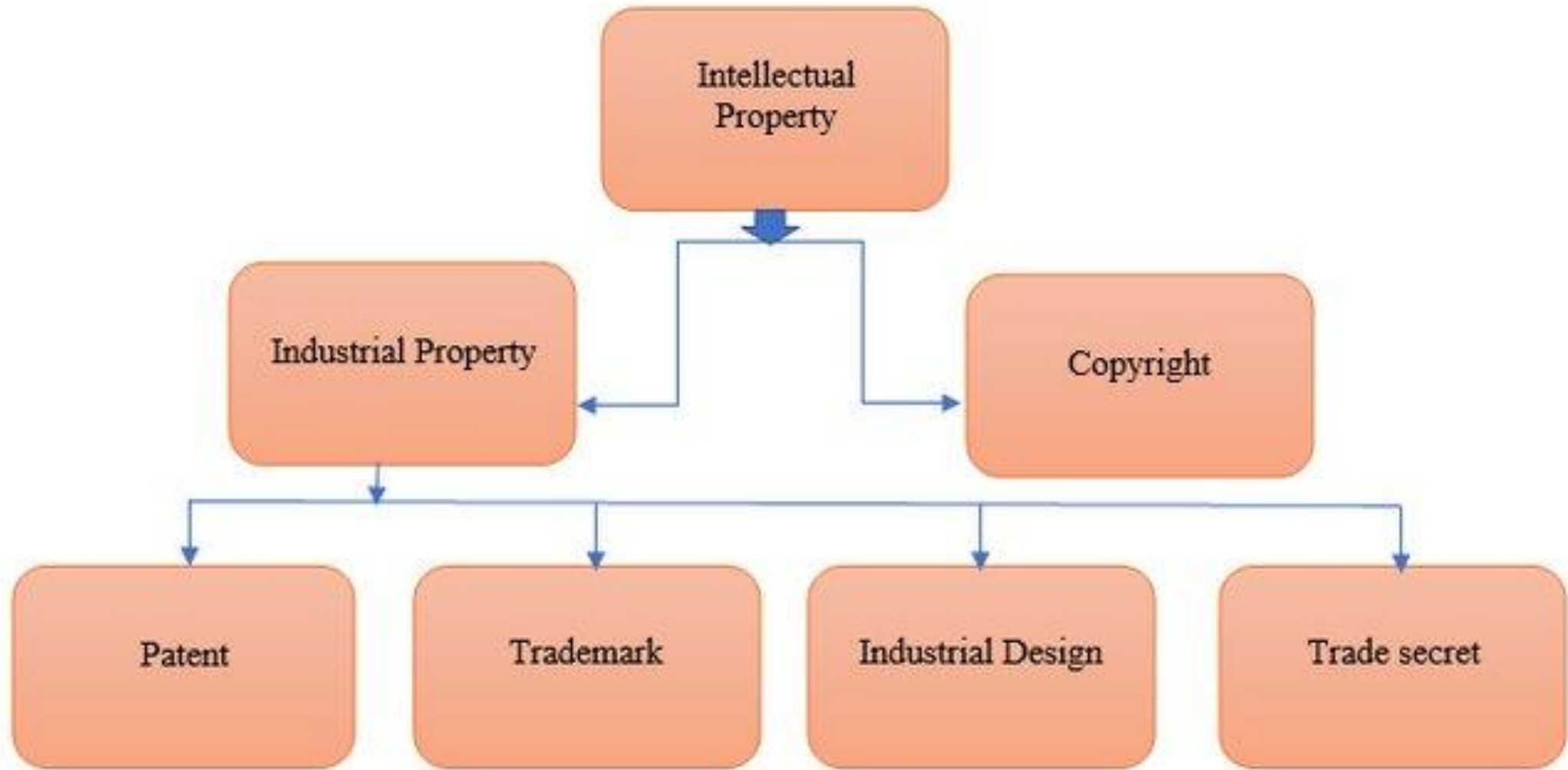
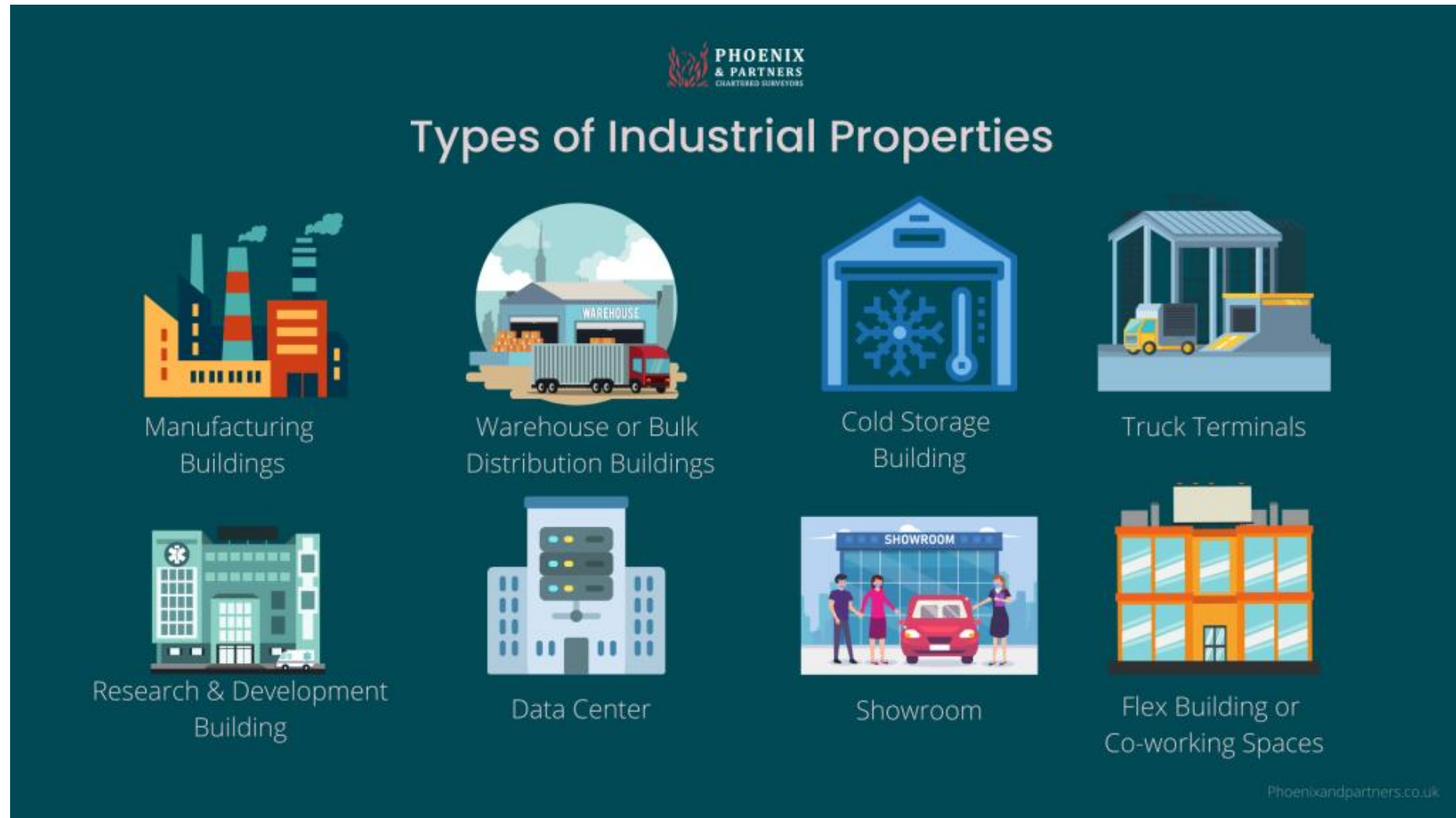
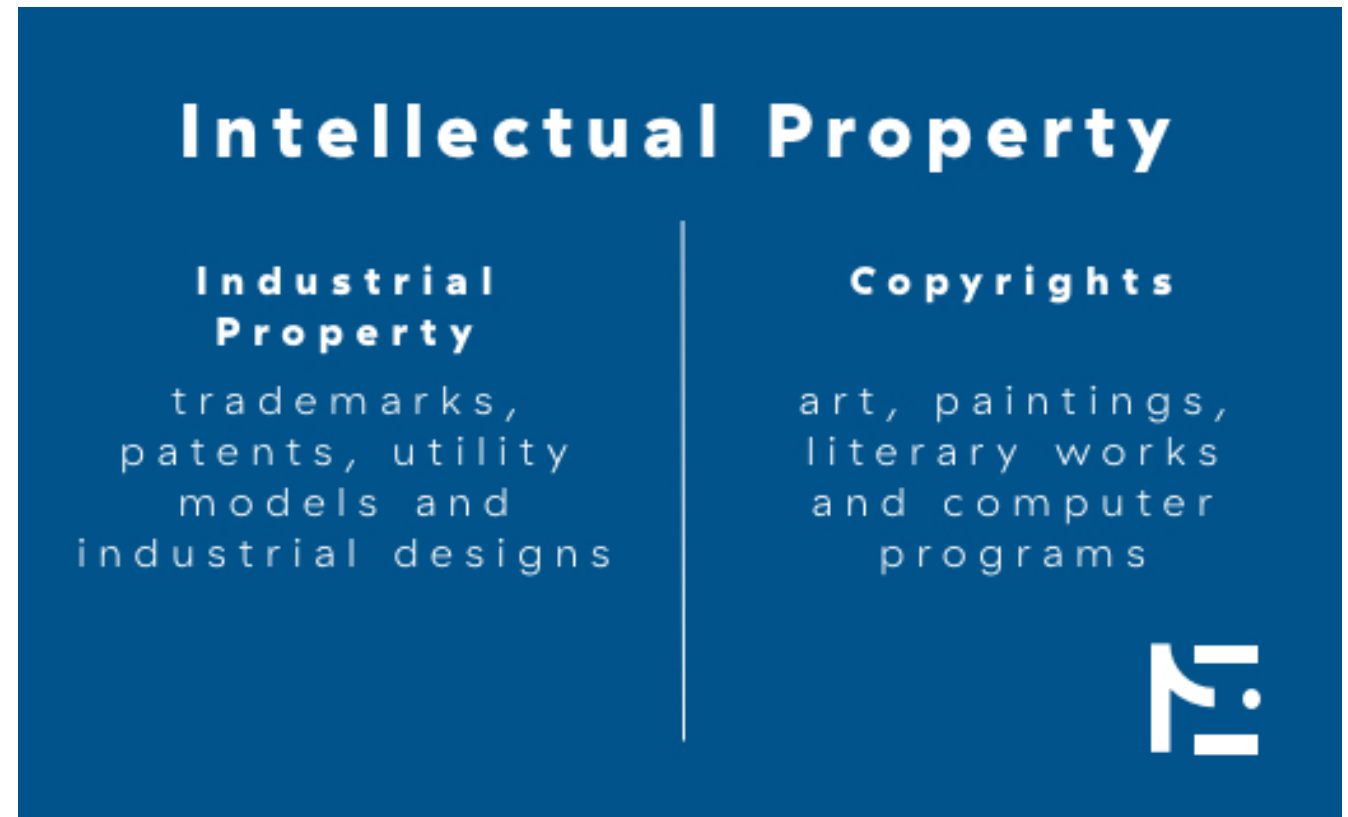


Fig. : Types of intellectual property

Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source.



- **Copyright**, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.
- Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs



<https://mieresparza.com/en/la-propiedad-intelectual-propiedad-industrial-y-derechos-de-autor/>

Intellectual property shall include the right relating to:

- Literary, artistic and scientific works;
- Performance of performing artists;
- Inventions in all fields of human Endeavour;
- Scientific discoveries;
- Industrial designs;
- Trademarks, service marks and etc;
- Protection against unfair competition.

What is a property?

- Property designates those things that are commonly recognized as being the possessions of an individual or a group.
- A right of ownership is associated with property that establishes the good as being "**one's own thing**" in relation to other individuals or groups, assuring the owner the right to dispense with the property in a manner he or she deems fit, whether to use or not use, exclude others from using, or to transfer ownership.

Properties are of two types - tangible property and intangible property i.e. one that is physically present and the other which is not in any physical form.

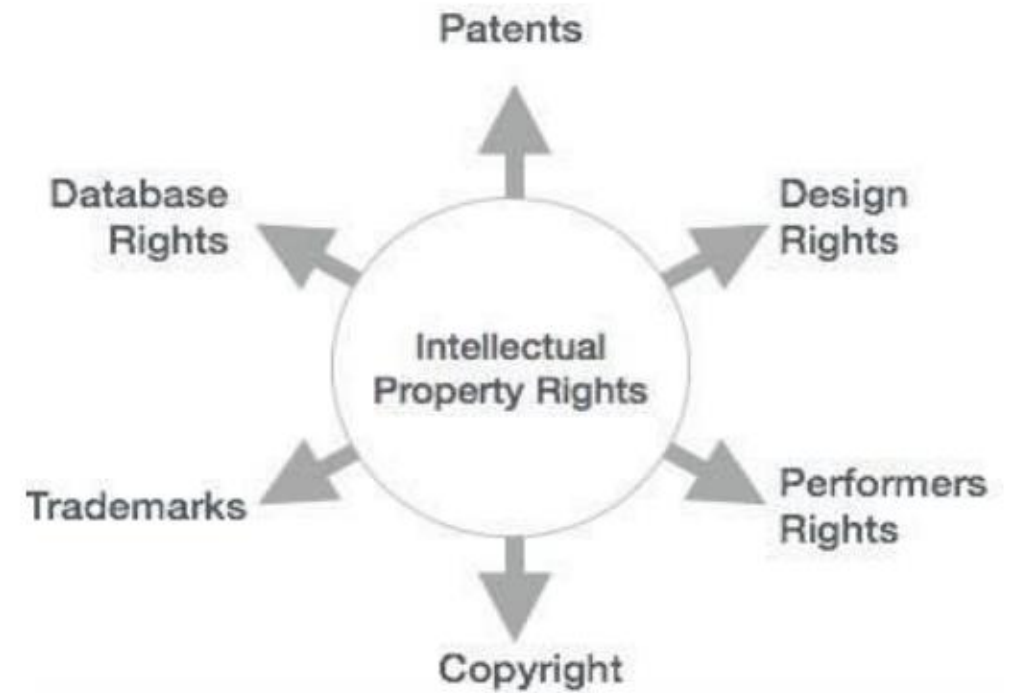
- Building, land, house, cash, jewellery are few examples of tangible properties which can be seen and felt physically.
- On the other hand there is a kind of valuable property that cannot be felt physically as it does not have a physical form.
- **Intellectual property is one of the forms of intangible property** which commands a material value which can also be higher than the value of a tangible asset or property

Tangible Assets	Intangible Assets
Cash	Patents
Furniture	Logo
Plant and Machinery	Copyright
Vehicles	Brand Value
Building	Self-developed softwares
Stock	Customer data
Equipment	Trademark
Computers	Goodwill

TYPES OF INTELLECTUAL PROPERTY

The different types of Intellectual Property Rights are:

- Patents
- Copyrights
- Trademarks
- Industrial designs
- Geographical indications of goods
- Trade Secrets

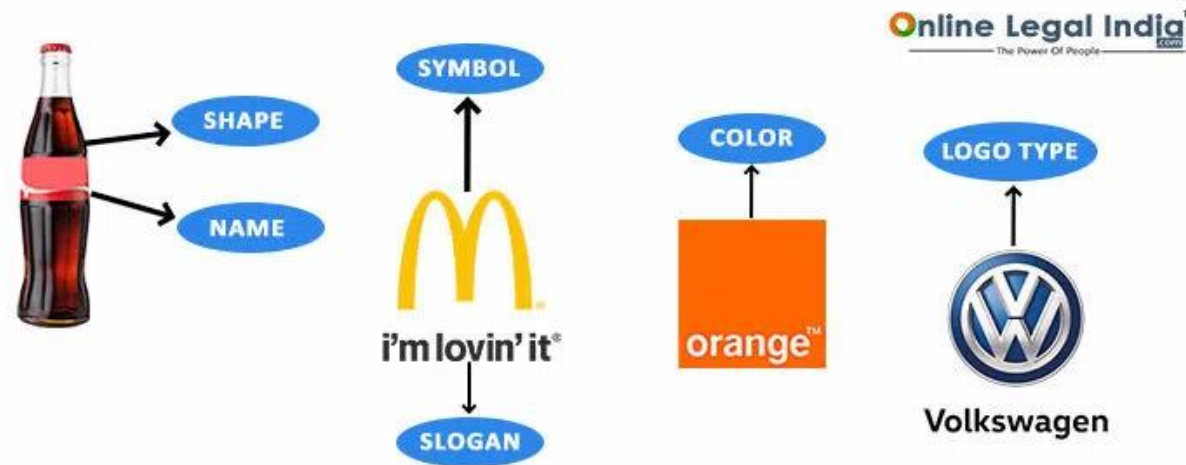


Important Species of IPR

Out of the different types of Intellectual Property Rights the following are the most important species of IPR-

TRADEMARKS

According to section 2, sub-section (1) of the Trade Marks Act 1999, ***“Trade Mark”*** means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors.



TYPES OF TRADEMARK

- Trade mark registration is an effective and economic way of ensuring your brand is protected.
- Registration provides a safeguard against third party infringement and often acts as an effective deterrent against third parties considering or contemplating infringement.
- Failure to protect brand may reduce its value, and could damage your business' reputation.
- It is also important to be attentive to the activities of your competitors. If you suspect or witness your brand being infringed it is best to take action as soon as possible.
- The longer the infringing activity exists, the more difficult to maintain the registered trademark and chances of trademark becoming generic.

Genericide is the term used to describe the death of a trademark that results from the brand name becoming the name of the object itself.

Here's a table featuring some famous trademarks in 4 more categories:

Sport shoes	Jeans	Watches	Online shopping
			
			
			

Some Famous Trademarks.
Can you see your favourite brands here?

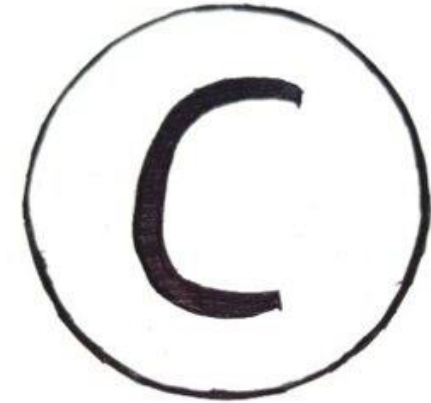


COPYRIGHTS

- **1847 is the First Copyright law Enactment in India** during British Regime.
- The term of copyright was for the lifetime of the author and 60 years counted from the year following the death of the author.

Copyright law is designed to protect interests and balance the rights of the following stake Holders-

- **Authors/ Creators**
- **Publishers/ Entrepreneurs**
- **Users /Audiences**



<http://dx.doi.org/10.18231/j.ijpca.2023.028>



<https://www.pngwing.com/en/free-png-byhfd>

Indian Copyright Act is the one of the best Copyright enactments in the world.

- **The Copyright Act 1911**, while repealing earlier statutes on the subject, was also made applicable to all the British colonies including India.
- **In 1914**, the Indian Copyright Act was enacted which modified some of the provisions of Copyright Act 1911 and added some new provisions to it to make it applicable in India.
- Copyright Act, 1911 was in existence in India till the new Copyright Act, 1957 was introduced in India Post Independence.
- In India, **the Copyright Act, 1957** (as amended in 1999), the Rules made there under and the International Copyright Order, 1999 govern Copyright and neighboring rights.
- This Act has been amended five times i.e 1983, 1984, 1992, 1999 and most recently in 2012.



**THE
COPYRIGHT ACT, 1957
(14 OF 1957)**

What can be protected under Copyright?

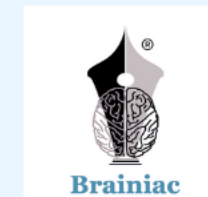
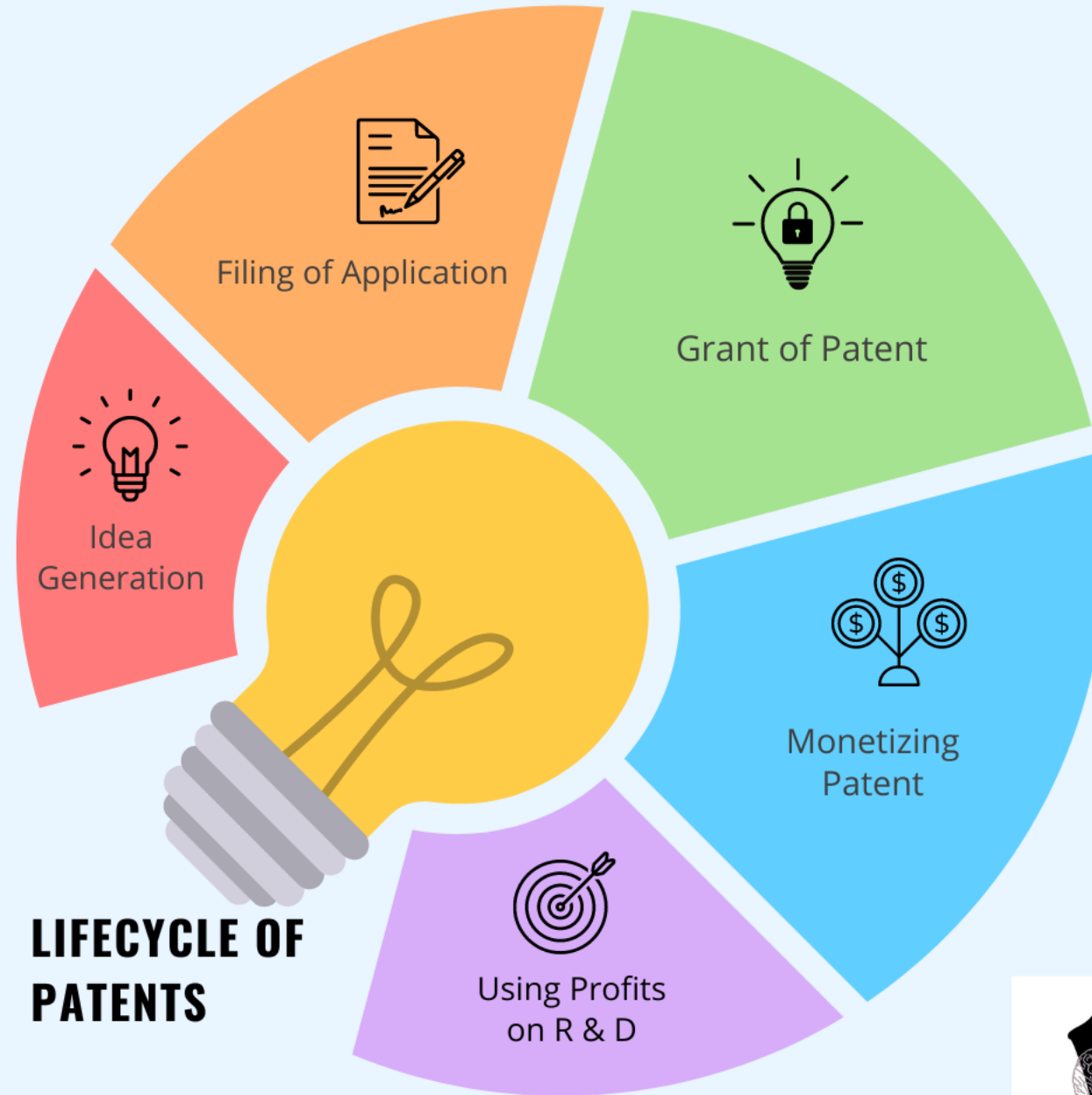
- Literary, Dramatic, Artistic, Musical, Cinematographic, Photographic and Sound Recording works.
- Literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings.



PATENTS

- Patent is a **grant** for an invention by the Government to the inventor in exchange for full disclosure of the invention.
- A patent is **an exclusive right** granted by law to applicants / assignees to make use of and exploit their inventions for a limited period of time (generally 20 years from filing).
- The patent holder has the legal right to exclude others from commercially exploiting his invention for the duration of this period.
- In return for exclusive rights, the applicant is obliged to disclose the invention to the public in a manner that enables others, skilled in the art, to replicate the invention.
- The patent system is designed to balance the interests of applicants / assignees (exclusive rights) and the interests of society (disclosure of invention).

A Step-by-Step Guide to Filing a Patent in India



Meaning of 'Invention' under Patent

Law Sec.2(1)(J) – *“Invention” means a new product or process involving an inventive step and capable of industrial application.*

There are three types of patents:

Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;

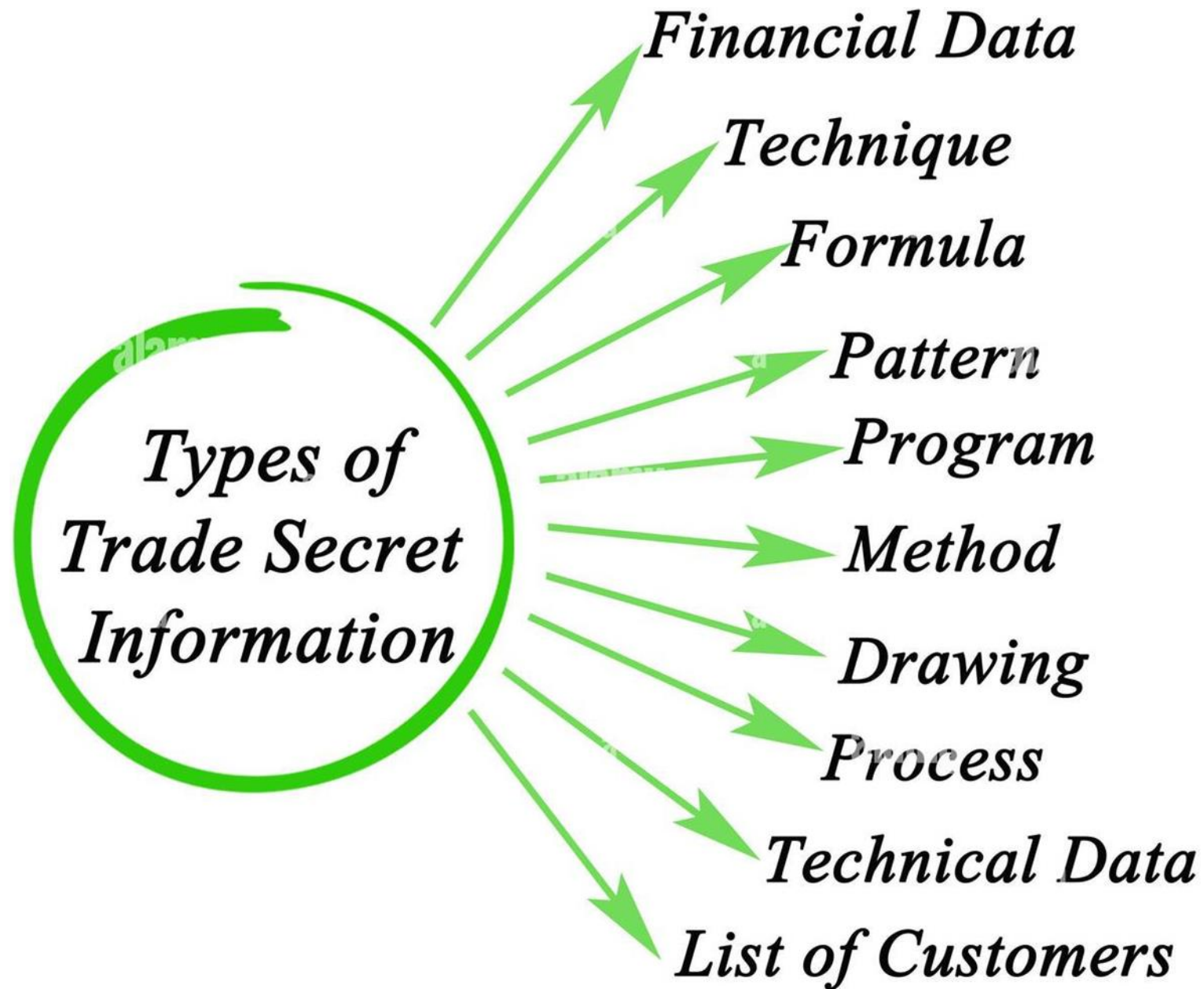
Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture;

Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

TRADE SECRETS

- A trade secret consists of any valuable business information.
- The business secrets are not to be known by the competitor.
- There is no limit to the type of information that can be protected as trade secrets.
- **For Example:** Recipes, Marketing plans, financial projections, and methods of conducting business can all constitute trade secrets.

- There is no requirement that a trade secret be unique or complex; thus, even something as simple and nontechnical as a list of customers can qualify as a trade secret as long as it affords its owner a competitive advantage and is not common knowledge.
- If trade secrets were not protectable, companies would have no incentive to invest time, money and effort in research and development that ultimately benefits the public.
- **Trade secret law thus promotes the development of new methods and processes for doing business in the marketplace.**



Famous Trade Secrets and Their Impact on Industries



Protection of Trade Secrets:

- Although trademarks, copyrights and patents are all subject to extensive statutory scheme for their protection, application and registration, there is no federal law relating to trade secrets and no formalities are required to obtain rights to trade secrets.
- Trade secrets are protectable under various state statutes and cases and by contractual agreements between parties.



The Advantages of Trade Secrets over Patents and Copyrights



GEOGRAPHICAL INDICATIONS

- GI is an indication, originating from a definite geographical territory.
- It is used to identify agricultural, natural or manufactured goods produced, processed or prepared in that particular territory due to which the product has special quality, reputation and/or other characteristics.



Kaji Nemu
Assam, India

<https://agriicarjrf.com/2020/03/10/kaji-nemu-lemon-got-gi-tag-in-assam/>



Assamese Japi
Assam, India

<https://www.haatsite.com/client/product/assamese-japi-18inc>



Bodo Eri Silk
Assam, India

<https://ritikamittal.wordpress.com/2010/09/07/eri-silk-north-east%C2%A0india/>



Darjeeling Tea
West Bengal, India

<https://www.flickr.com/photos/darjeelingteas/9998599283>

PLANT VARIETY PROTECTION

- Plant variety protection provides legal protection of a plant variety to a breeder in the form of **Plant Breeder's Rights (PBRs)**.
- PBRs are intellectual property rights that provide exclusive rights to a breeder of the registered variety.
- In India, the **Plant Variety Protection And Farmers Rights (PPVFR) Act, 2001** is a *sui generis* system that aims to provide for the establishment of an effective system for protection of plant varieties and the rights of plant breeders and farmers.
- A certificate of registration for a variety issued under this Act confers an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety. Application for registration of plant varieties can be made in the office of Registrar, PPV & FRA, New Delhi (Protection of Plant Varieties and Farmers' Rights Authority).

<https://www.obhanandassociates.com/practice-areas/intellectual-property/plant-variety/#:~:text=Plant%20variety%20protection%20provides%20legal,breeder%20of%20the%20registered%20variety.>

A *sui generis* system is a special form of protection regime that is outside of the known framework for intellectual property rights (IPRs).

The term comes from the Latin phrase *sui generis*, which means "of its own kind" or "a special kind"

IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

- IPR is a significant tool in today's era. The risk of an innovation getting infringed without the knowledge of the inventor stands very high.
- With the increase in the importance of IP, instances of IP crimes have become the part and parcel of the digitized era sometimes even leading to failure of businesses.
- Companies rely on adequate protection of their patents, trademarks, and copyrights, while customers make use of IP to ensure that they purchase secure, assured goods.
- An IP asset is like any other physical property offering commercial benefits to businesses. In a web-based world, IP protection is much more relevant as it is comparatively simpler than ever to reproduce any specific template, logo, or functionality. Hence, strong IP laws give protection to IP and contribute to the economy of the respective state.
- IPR is one of the sources of security for intangible properties which are still open to the public and which can be quickly replicated by anyone.

- **Intellectual property rights are more important because** today we are highly-connected to digital landscape. With all the good the rise of the internet has done for the sharing of information and ideas, it has unfortunately become easier for ideas and works to be stolen, which can be damaging to both national economies and innovation.
- **Intellectual property protection varies from country to country**, but countries that have strong IP laws recognize the important impact original works, designs, inventions, etc. have on the overall economy. Almost every country that has a dependence on international trade takes strong measures to protect their intellectual property rights.

- With the rise of intangible assets that are shared across the internet, it is easy for people to unlawfully copy and share books, music, movies, and more. **Copyrights, patents, trademarks, and trade secrets** and the laws around these protections are all intended to encourage innovation and creativity and are essential to the practice of IP law to help curb illegal activities.
- **Organizations like the World Intellectual Property Organization (WIPO)** underscore the importance of fostering IP-driven innovation to incentivize and protect creativity. WIPO is a global forum for intellectual property services and is a self-funding agency of the United Nations, with 193 member states.

EVOLUTION OF IP ACTS AND TREATIES

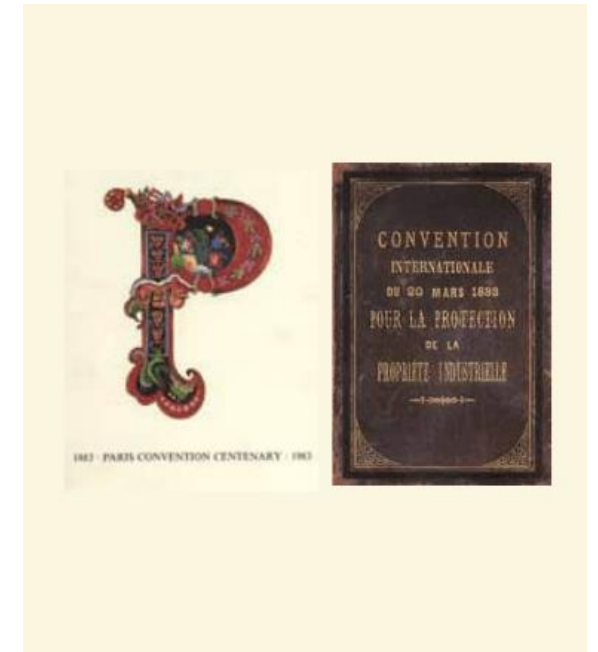
The evolution of international IP acts through different treaties and the formation of World Intellectual Property Organization (WIPO) .

1883 – Paris Convention (France)

The Paris Convention for the Protection of Industrial Property is born. **This international agreement is the first major step taken to help creators ensure that their intellectual works are protected in other countries.** The need for international protection of intellectual property (IP) became evident when foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna, Austria in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries.

The Paris Convention covers:

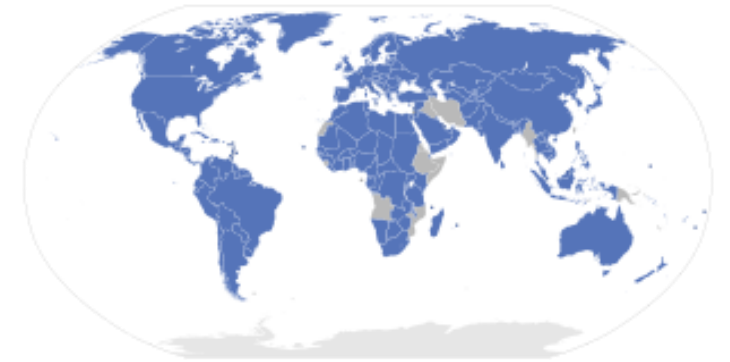
- Inventions (patents)
- Trademarks
- Industrial designs



<https://abounaja.com/blogs/paris-convention-of-1883>

1886 – Berne Convention (Switzerland)

- Following a campaign by **French writer Victor Hugo** the Berne Convention for the Protection of Literary and Artistic Works is agreed.
- The aim is to give creators the right to control and receive payment for their creative works on an international level.



Map of parties to the Convention

https://en.wikipedia.org/wiki/Berne_Convention

Works protected include:

- **Novels, short stories, poems, plays;**
- **Songs, operas, musicals, sonatas; and**
- **Drawings, paintings, sculptures, architectural works**

1891 – Madrid Agreement (Spain)

- With the adoption of the Madrid Agreement, the first international IP filing service is launched: **the Madrid System** for the international registration of marks.
- In the decades that follow, a full spectrum of international IP services will emerge under the auspices of what will later become WIPO.



1893 – BIRPI established

The two secretariats set up to administer the Paris and Berne Conventions combine to form WIPO's immediate predecessor, **the United International Bureaux for the Protection of Intellectual Property** – best known by its French acronym, BIRPI. The organization, with a staff of seven, is based in Berne, Switzerland.

1970 – BIRPI becomes WIPO

The Convention establishing the World Intellectual Property Organization (WIPO) comes into force and BIRPI is thus transformed to become WIPO. The newly established WIPO is a member state-led, intergovernmental organization, with its headquarters in Geneva, Switzerland.



1974 – WIPO joins the UN (193 Member Countries in UN)

- WIPO joins the United Nations (UN) family of organizations, becoming a specialized agency of the UN. All member states of the UN are entitled, though not obliged, to become members of the specialized agencies.



United Nations

<https://pngimg.com/image/76470>

1978 – PCT System launched

- The PCT international patent system begins operation.
- The PCT expands rapidly to become WIPO's largest international IP filing system today.
- **The Patent Cooperation Treaty (PCT)** makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application.



PCT Building of WIPO in Geneva

[https://en.wikipedia.org/wiki/
Patent_Cooperation_Treaty](https://en.wikipedia.org/wiki/Patent_Cooperation_Treaty)

TRIPS Agreement

- India along with other emerging nations graced a signatory to the Treaty of TRIPS of the World Trade Organization (WTO) in 1995 with a matter that agreement will allow free flow of trade, investment and eliminate the restrictions enduring in the norm of Intellectual Property.
- The Agreement on **Trade Related Aspects of Intellectual Property Rights (TRIPS)** is an international agreement administered by the World Trade Organization (WTO) that sets down **minimum standards for many forms of intellectual property (IP) regulation** as applied to nationals of other WTO Members.

- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international legal agreement between all the member nations of the World Trade Organization (WTO).
- The TRIPS Agreement aims for the transfer of technology and requires developed country members to provide incentives for their companies to promote the transfer of technology to least-developed countries in order to enable them to create a sound and viable technological base.

TRIPS

Trade **Related** **Intellectual** Property **Rights**