

3.1 IPR and MSME's

3.1.1 Introduction:

Micro, Small and Medium Enterprises are actually helping in the economic development of the country by providing employment, income generation, exports etc. These industries are important for the country but due to lack of financial resources, skilled manpower etc, and these industries become sick. Therefore, for the survival, such industries should become competitive and should strive for the competitive advantages through innovations. Innovations play an important role in improving the enterprises and for innovation IPR is must. There are several reasons that why India needs IPR:

1. Indian competitiveness is based more on the cheap labour and raw material but it can be a Knowledge based economy for that there is a need of IPR to convince and protect the originators about their work. This will boost the motivation to bring knowledge to the country.

2. Moreover, India is WTO nation and all 149 WTO nations have agreed for the IPR protection by including Trade Related Intellectual Property Rights (TRIPS). IPR has proved to be helpful and useful in various economies and therefore can also be helpful for the MSME's as follows:

- a. It can prevent the competitors from imitating other's product and services.
- b. can help in making a corporate image through trademarks.
- c. can help in preventing the resources invested uselessly in Research and Development.
- d. IPR helps in increasing the market value of the company.
- e. Uniqueness and innovations can help in reaping more profits.
- f. Patents, trademarks, copyrights can help in protecting the entrepreneurs and gaining competitive advantage.
- g. helps in generating money by issuing license, commercialization and sale of the Intellectual Property.

Over the past two decades, intellectual property rights have grown to a stature from where it plays a major role in the development of global economy. Intellectual property is everywhere,

- i.e., the music you listen to, the technology that makes your phone work, the design of your favourite bike, the logo on your chocolate, etc.

It exists in all the things you can see — all are the products of human creativity and skill, such as inventions, books, paintings, songs, symbols, names, images, or designs used in business, etc.

❖ Intellectual Property (IP)

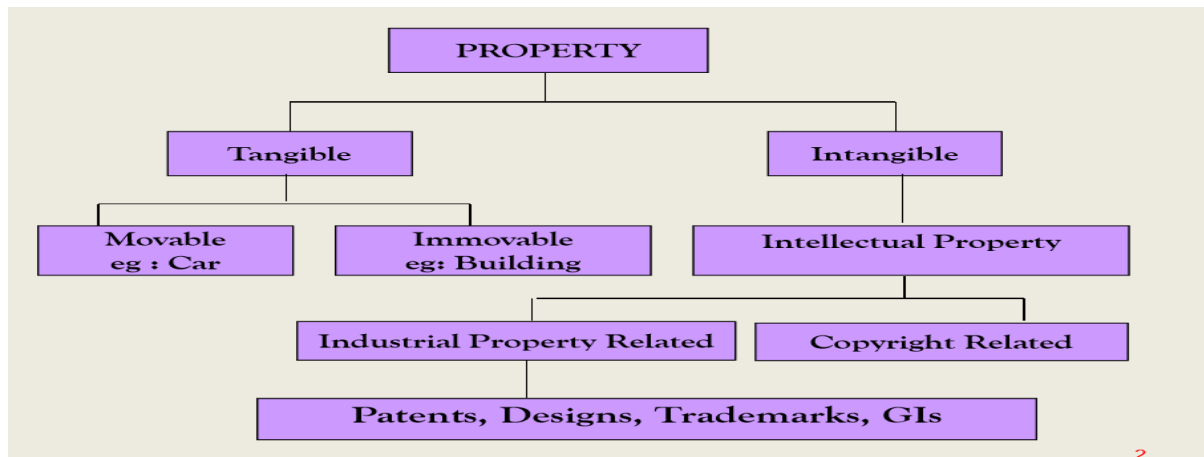
IP means the property, which is created with intellect such as inventions, books, paintings, songs, symbols, names, images, or designs used in business, etc.

❖ Intellectual Property Right (IPR)

Exclusive rights given to person over the creation of their minds for certain periods of time.

3.2 Major Laws for the Protection of Intellectual Property in India

1. The Patents Act 1970 as amended by the patents (Amendment) Act, 1999, 2002 & 2005.
2. The Trademarks Act. 1999.
3. The Copyright Act, 1957 as amend by the copyright (Amendment) Acts , 1994, 1999 & 2012
4. The Designs Act 2000.
5. The Geographical Indication of Goods (Registration and Protection) Act, 1999.
6. The protection of Plant Varieties and Farmers rights Act, 2000.
7. The Semiconductor Integrated Circuits Layout Designs Act, 2000.



3.3 Types of IP

Intellectual Property Rights as a collective term includes the following independent IP rights which can be collectively used for protecting different aspects of an inventive work for multiple protection

Types Intellectual Property	
INDUSTRIAL PROPERTIES" <ul style="list-style-type: none"> • PATENTS • INDUSTRIAL DESIGNS • TRADEMARKS • TRADE SECRETS • PLANT VARIETIES • INTEGRATED CIRCUITS • GEOGRAPHICAL • INDICATORS 	COPYRIGHT <ul style="list-style-type: none"> • LITERARY <ul style="list-style-type: none"> ○ NOVEL ○ POEM ○ PLAYS <ul style="list-style-type: none"> ▪ FILMS ▪ MUSICAL ▪ ARTISTIC • DRAWINGS • PHOTOGRAHS • PERFORMING ARTS • SCULPTURES <ul style="list-style-type: none"> ▪ SOFTWARE

1. PATENT

A Patent is an exclusive right granted by law to applicants for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.

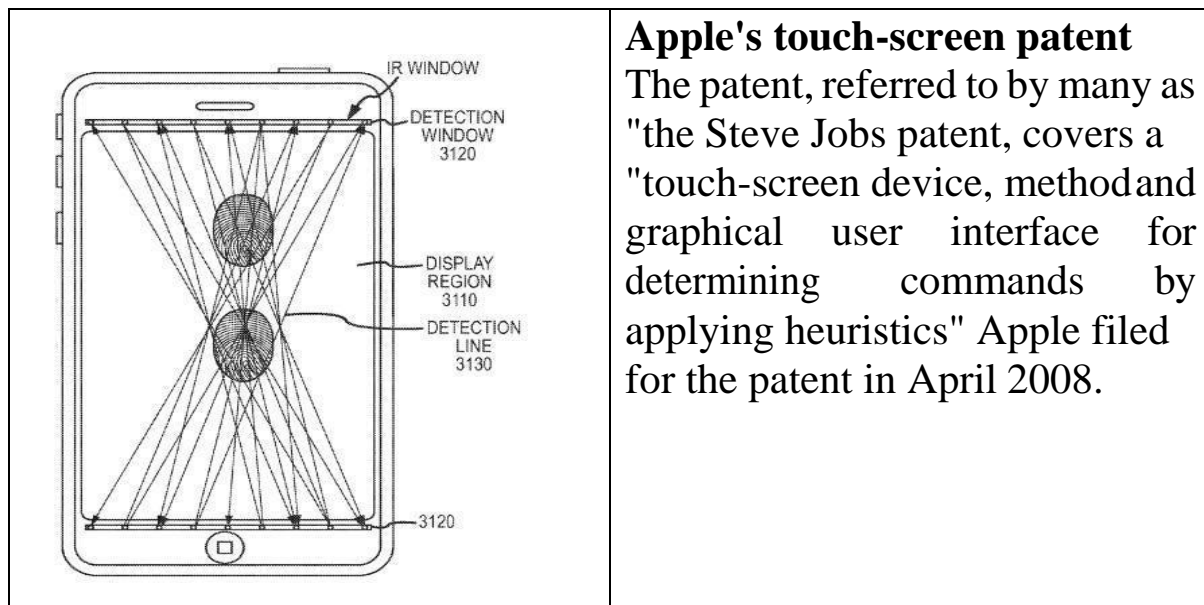
A Patent gives monopolistic rights to its owner to exclude others, from making, using, selling, offering for sale or importing the product or the process for producing the product without his consent.

Any product or process which is new, non- obvious and capable of industrial application can be patented.

The term of every patent in India is twenty years from the date of filing the Patent application.

The Patents Act, 1970 and the Patents Rules 1972 subsequently amended in 1999, 2002, 2005 and 2016 govern the provisions relating to Patents in India.

For Example



2. DESIGN

Industrial Designs are the features of shape, configuration, pattern, ornament or composition of lines or colours applied to the product which makes it look different from other articles in the market.


The purpose of industrial designs is to add on to the aesthetic value of the product to increase the marketability while making our life easier.

The owner of a registered industrial design has the right to prevent third parties from making, selling or importing articles bearing or embodying a design which is a copy of the protected design.

The design must be new and distinct. The design protection is provided for 10 years. The period of protection is extendable to 5 years after the expiry of 10 years' duration.

The Designs Act 2000 governs the provisions relating to designs in India and specifically mentions that the design to be registered must be visible on the finished article.

For example:

	<p>Piaggio Vespa Scooter</p> <p>The classic Vespa scooter design is associated heavily with the Italian design aesthetic, but it was actually heavily influenced by pre-World-War-11 Cushman scooters. Such scooter design can definitely be considered as an Industrial Design</p>
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3. TRADEMARKS

A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors.

A trademark is a mark which is unique, distinctive, made up of names, symbols, signs, sounds, images, shape, packaging, colour combination, and capable of distinguishing one product from another.

Term of registration of a trademark is ten years, which may be renewed for a further period of ten years on payment of prescribed renewal fees.

The Trade Marks Registry was established in India in 1940 and presently it administers the Trade Marks Act, 1999 and the rules thereunder.

	<p>Starbucks Coffee Company</p> <p>In January 2011, Starbucks announced that they would make changes to the company's logo, by enlarging the siren image, and making it green. So, this logo comes into existence, which is a Trademark of Starbucks.</p>
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Kinds of trademarks that can be registered

1. Trademarks may be one or a combination of words, letters and numerals.
2. They may consist of drawings, symbols or three dimensional signs, such as the shape and packaging of goods.
3. Non-traditional marks may be registered for distinguishing features such as holograms, motion and color.







4. Non-visible signs may also be registered such as sound, smell or taste

4. 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.”


Copyright is an exclusive legal right granted to the creators of intellectual work. Copyright protects “original works of authorship” that are fixed in “a tangible form of expression.” Copyright owner has rights to reproduce, translate, adapt, perform, distribute and publicly display the work, etc.

The Copyright Act, 1957 governs the provisions relating to copyrights in India.

 Literary including Software – Books, Essay, Compilations, Computer Programs	 Artistic – Drawing, Painting, Logo, Map, Chart, Photographs, Work of Architecture
 Dramatic – Screenplay, Drama	 Musical – Musical Notations
 Sound Recording – Compact Disc	 Cinematograph Films – Visual Recording which includes sound recording

Literary, Dramatic, Musical or Artistic Works – Lifetime of the author until 60 years from the death of the author.

For others – 60 years from the year in which the recording was published.

	Cartoon Image of Satish Acharya Here, the cartoon image shown is the creation of Cartoonist Satish Acharya, which is protected by him through copyright. So, no one can use this cartoon image without his permission, because it is copyrighted by its creator.
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5. GEOGRAPHICAL INDICATIONS


"A **Geographical Indication** (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin."

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.

Type of products, for which geographical indications be used

1. **Agricultural products** such as Nagpur Orange, Gir Kesar Mango
2. **Handicrafts** such as Kutch Embroidery, Surat Zari Craft
3. **Industrial products** Such as Morbi Watches

Geographical Indications in India is protected under the Geographical Indications of Goods (Registration & Protection) Act, 1999 and the Geographical Indications of Goods (Registration & Protection) Rules, 2002.

	Darjeeling Tea Darjeeling tea is a tea grown in the Darjeeling district in West Bengal, India, and widely exported and known. It is processed as black, green, white and oolong tea. When properly brewed, it yields a thin-bodied, light-coloured infusion with a floral aroma.
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6. PLANT VARIETY PROTECTION

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

7. LAYOUT-DESIGN PROTECTION

The Semiconductor Integrated Circuits Layout Design Act, 2000, describes a Semiconductor Integrated Circuit as a product with transistors and other circuitry elements which are inseparably formed on a semiconductor material, insulating material or inside the semiconductor material and designed to perform an electronic circuitry function Layout Design (topography) means the three dimensional layout of transistors and disposition of other circuitry elements. It includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit.

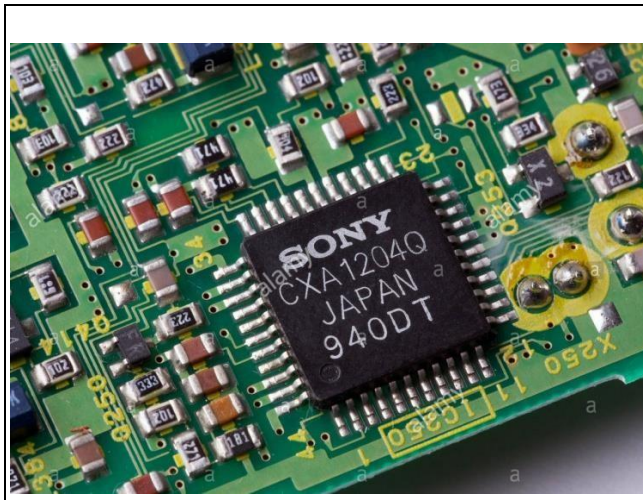
Period of ten years from the date of filing of an application.

Semiconductor Integrated Circuits Layout Design Act 2000, Semiconductor Integrated Circuits Layout Design Rules 2001

Types of layout designs are eligible for protection:

A layout design of an integrated circuit can be protected if it is original in the sense that it is the result of the creators' own intellectual effort and not commonplace among creators of layout designs and manufacturers of integrated circuits at the time of the creation

In general, protection of the topography requires that an integrated circuit be registered or commercially exploited.



Lay-out designs of integrated circuits of Sony

Sony Company Ltd is involved in manufacturing of Integrated Circuits. So it can be considered as its intellectual Property

8. TRADE SECRET

"Any confidential business information which provides an enterprise a competitive edge and is kept secret may be protected as a **Trade Secret.**"


In general, to qualify as a trade secret, the information must be **commercially valuable** because it is secret, be known only to a limited group of persons, and be subject to reasonable steps taken by the rightful holder of the information to keep it secret.

Software Algorithms, Inventions, Designs, Formulas, Financial Records, Ingredients, Lists of Customers, Devices, Methods, Consumer Profiles and Advertising Strategies or Policies of a Company, etc.

Types of information protected by trade secrets:

1. **Technical Information**, such as information manufacturing processes, pharmaceutical test data, and drawings of computer programs,
2. **Commercial Information**, such as distribution methods, list of suppliers and clients, and advertising strategies.

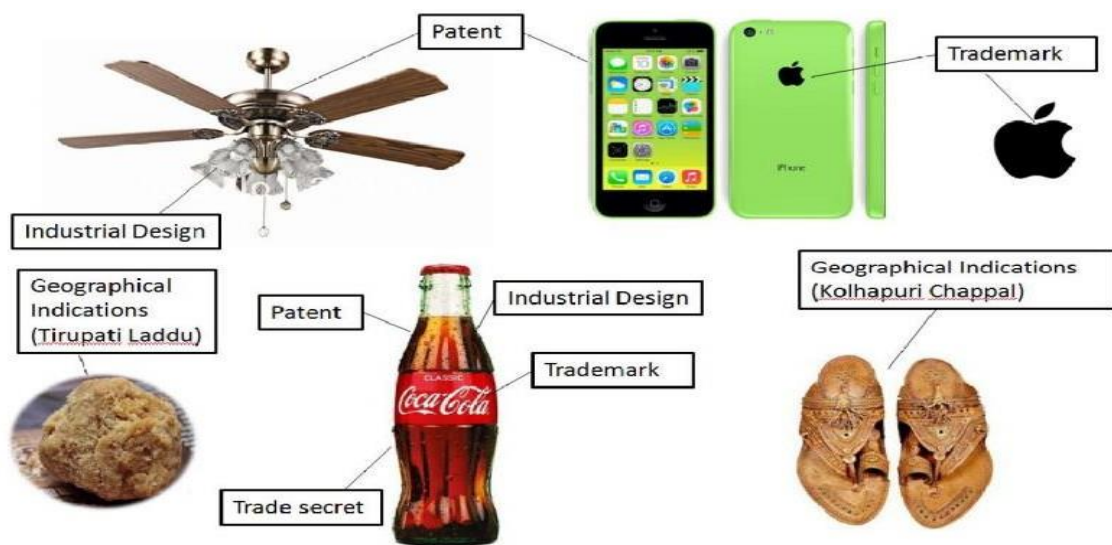
3. **Combination of Elements**, each of which by itself is in the public domain, but where the combination, which is kept secret provides a competitive advantage.
4. **Other examples** of information that may be protected by trade secrets include financial information, formulas and recipes and source codes.

	<p>Recipe of Coca-Cola</p> <p>The secret formula for Coca-Cola, which is locked in a vault, is an example of a trade secret that is a formula or recipe. Coca Cola made a choice to brand the recipe a trade secret, which would have lead to the disclosure of only the ingredients. Coca Cola decided to keep the recipe as confidential information to that extent, that even its employees are also not aware of it.</p>
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Terms of different Intellectual Property Right

		Protects	Infringement	Registration Process	Term	Comparative Costs
Patent	Utility Patent	Functional Aspects	Make, Use, Offer, Sale, Import	Yes	20 years upon filing	Expensive
	Design Patent	Ornamental Features	Make, Use, Offer, Sale, Import	Yes	15 years upon filing	Moderate
Trademarks		Brands	Used in commerce	Optional	Potentially indefinite, limited by use	Inexpensive
Copyrights		Works of Authorship	Copying, etc.	Optional	Life Plus 70 Years	Inexpensive
Trade Secrets		Information	Misappropriation	No	Potentially indefinite, limited by secrecy	Depends

Examples of IP



3.4 PATENT

3.4.1 Introduction of Patent:

These are the oldest form of the intellectual Property Rights and are enforced to promote technological and economic development by recognizing the individual's creativity and intellect. According to the act, patent is the allowance from the government to the inventors and giving them the exclusive right to make and use their invention and it is for a limited period of the time. According to the Trade Related Intellectual Property Rights, this exclusive right is for a period of 20 years and after that Government has the right to publish it. Government publishes it so that new and better ideas can be generated and the better products can be made so that old one can be replaced. Intellectuals have the right to commercialise, transfer or to sell the license of their invention during this time period.

The Indian Patent act, 1970 has classified the patentable inventions as follows:

Process: According to the law, process means new methods of production, research, testing analysis or the technological process that can be validated as new or unique. These are not the physical objects are in documented form.

Machines: In the patent law, machines are physical objects. It can be any product, instrument, or any other physical item that is new or useful.

Manufacture: According to the patent law, manufacture means any physical item has been made up by a new and unique way or materials.

Composition of matter: Composition of matter in a patent law refers to the mixture of the chemical compounds, medicines and botanical compositions which are new , unique and are useful and do not exist in the nature in that particular state

- The Patents Act 1970, along with the Patents Rules 1972, came into force on 20th April 1972, replacing the Indian Patents and Designs Act 1911.
- India also became signatory of the Paris Convention and the Patent Cooperation Treaty on 7th December 1998 and thereafter signed the Budapest Treaty on 17th December 2001.

3.4.2 Definition:

A Patent is an exclusive right granted by law to applicants for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem.

“A Patent is an intellectual property right relating to inventions and is the grant of exclusive right, for limited period, provided by the Government to the patentee, in exchange of full disclosure of their invention, for excluding others, from making, using, selling, importing the patented product or process producing that product for those purposes.”

The word “Patent” refers to a monopoly right over an invention. Not all inventions are patentable nor it is essential to protect inventions solely through patent. The final product that results from an invention may be protected through other forms of intellectual property rights.

The purpose of this system is to encourage inventions by promoting their protection and utilization so as to contribute to the development of industries, which in turn, contributes to the promotion of technological innovation and to the transfer and dissemination of technology.

Patent right is territorial in nature and a patent obtained in one country is not enforceable in other country. The inventors/their assignees are required to file separate patent applications in different countries for obtaining the patent in those countries. In other words, if you have not been granted a patent with effect in a given country, your invention will not be protected in that country enabling anybody else to make , use, import or sell your invention in that country.

3.4.3 Patentability Criteria

A new product or process which involves an inventive step and capable of being made or used in an industry and should meet following criteria.

a) Novelty: Novelty means the matter disclosed in the specification is neither published in India nor anywhere else where before the date of filing of patent application in India. the invention must be novel, meaning thereby that the Invention must not be in existence

b) Non-obvious: 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. Example: Camera + Phone

c) Utility: Industrially applicable means the invention should possess utility, so that it can be made or used in an industry.

Some famous example of patent:

A) The entire Mach 3 system of Gillette protected by 35 patents, costs \$35 billion just to bring to market.

B) Tata Motors had file up 34 patents for Tata Nano to make it cheapest car of the world.

3.4.4 What Inventions are not patentable?

Non-patentable inventions are enumerated under Section 3 and 4 of the Patent Act. Such inventions are delineated below:

- **Harmful to human, animal or plant life or to environment.**
Eg. The genetically modified onco mouse to develop cancer for the purpose of medical research is not patentable because cancer can be transmitted to public.
- **Discovery of living things or non living substances in nature.**
Eg. Newton's law. discovery of microorganism.
- **New use or new property of known substance .**
Eg. New use of neem, turmeric. new use of aspirin for heart ailments.
- **Mere admixture resulting only in the aggregation of the properties of the components.**
Eg. Solution of sugar and color additives of water to form a soft drink.
- **Mere arrangement or arrangement of or duplication of known devices**
Eg: an umbrella with fan bucket fitted with torch
- **Methods of agriculture or horticulture.**
Eg. Cultivation of algae, producing new form of known plant.
- **Method of medical treatment.**
Eg. application of medical composition for removal of warts or moles.
- **Plants & animals in whole; Parts of plants & animals; Seeds; Varieties & species;**
- **Essentially biological processes for propagation or production of the animals & plants.**
- **Mathematical method, computer program, algorithms, business method.**
Eg. Online chatting method.
- **Method of performing mental act or method of playing game.**
Eg: scheme for learning a language, method of solving a cross word puzzle.
- **Presentation of information.**
- **Traditional knowledge.**
Eg. Wound healing property of turmeric.
- **Inventions falling under atomic energy.**

3.5 TRADEMARK

3.5.1 Introduction:

A trade mark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking. The trademark owner will have monopoly over the usage of that symbol. It includes Brands, Logos, Service marks, Trade name etc.

3.5.2 Definition:

"A trademark is any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors."

The Trademarks Act, 1999 defines Trademark as following: "Section 2 (zb) "Trademark" means a mark capable of being represented graphically and which is capable of distinguishing the goods and services of one from those of others and may include shape of goods, their packaging and combination of colours

"A trademark is a symbol or word that characterizes your product or service and distinguishes it from other products or services on the market. It makes your customers recognize your product or service."

3.5.3 Types of Trademark can be registered

There are many forms of trademark, which can be registered:

- Any name (including personal or surname of the applicant or predecessor in business or the signature of the person), which is not unusual for trade to adopt as a mark.
- An invented word or any arbitrary dictionary word or words, not being directly descriptive of the character or quality of the goods/service.
- Letters or numerals or any combination thereof.
- The right to proprietorship of a trade mark may be acquired by either registration under the Act or by use in relation to particular goods or service.
- Devices, including fancy devices or symbols
- Monograms
- Combination of colors or even a single color in combination with a word or device
- Shape of goods or their packaging
- Marks constituting a 3- dimensional sign.
- Sound marks when represented in conventional notation or described in words by being graphically represented.

A trademark can be a word, expression, logo, letter, number, slogan, combination of colors, sound, smell or a hologram.

Sound



Letters



Words



Names



Number



Expression



Logo



What can be *Trademarked*?



Product



Service



Shape



Pattern



Collective



Certification



Sound



Colour



Word



Letters / Numbers



Device



Packaging

3.5.4 Procedure/Steps for Trademark Registration



1. Trademark Search:

A Trademark search is the first step in determining the uniqueness of your mark, and its similarity to other, pre-existing marks. Without a search there may be a greater risk of being sued for Trademark infringement, the rejection of your Trademark application, and a third-party challenging your Trademark application.

2. Application for Registration of Trademark:

Applications for registration of a trademark are to be filed by a person claiming to be the proprietor of a trademark, in the office of the Trade mark Registry, within the territorial limits of the place of business in India.

Example : Trademark Registry, Ahmedabad,

Trademark Jurisdiction: The state of Gujarat and Rajasthan and Union Territory of Damman, Diu, Dadra and Nagar Haveli.

3. Examination of application by the registry: Examination of the application by the Registrar to ascertain whether it is distinctive and does not conflict with existing registered or pending trademarks and examination report is issued.

4. Acceptance of application or refusal to accept:

an application for registration of a trademark is accepted only if the formal requirements are fulfilled.

Before issuing a total or partial refusal of the application, the office should give the applicant an opportunity to make corrections.

5. Advertisement of application

When an application is absolutely accepted or subject to some conditions, the registrar should advertise the application.

□ Purpose: for oppositions of interested persons with in time.

6. Opposition to registration

With in three months from date of advertisement with prescribed fee in prescribed manner..

7. **Certificate of Registration** : Final step in the Trademark registration procedure is the issuance of Trademark registration certificate. After the application for Registration of Trademark is accepted by the Registrar, the Registrar shall issue to the applicant a Certificate of Registration under the seal of the Trademark Registry.

Time Duration: If there is no objection and /or opposition raised, the process of Registration of Trademark usually takes 15 to 18 months.

A trademark is designated by the following symbols:

™ (for an unregistered trade mark)

SM (for an unregistered service mark)

® (for a registered trademark)

Generally, one who has filed an application (pending registration) can use the TM (trademark) SM (Service Mark) designation with the mark to alert the public of his exclusive claim. The claim may or may not be valid. The registration symbol, ®, may only be used when the mark is registered.

8. **Trademark Renewal** : The validity period of registration certificate is for ten years and after that the same can be renewed subject to the payment of renewal fees.

3.5.5 Term/Duration of a Trademark in India

The duration of a registered trademark is ten years subject to renewals after payment of prescribed fee. Failure to renew can lead to removal of trademark from the register.

An application for renewal of a trademark can be filed within six months from Constantia (Body) the expiry of the last registration of trademark.

3.5.6 Government fees for major Trade Mark Activities

1. Where the applicant is an Individual / Startup/Small Enterprise --rs.5,000 (physical) Rs.4,500 (online)

In all other cases (**Note: Fee is for each class and for each mark**)---rs.10,000 (physical)rs.9,000(online)

2. To file a Notice of Opposition to oppose an application published in the Trade Marks Journal **Fees:Rs.2,500/-**

3. For renewal of registration of a trademark under section 25 for each class rs.10,000 (physicalrs.9,000(online) and the form is TM-R.

3.5.7 Trademark Infringement

A registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade

- which is identical with, or deceptively similar to, the trade mark in relation to goods or services in respect of which the trade mark is registered
- cause confusion on the part of the public
- use as their trade name or part of their trade name, or name is their business concern or part of the name, of their business concern dealing in goods or services
- used for labeling or packaging goods, as a business paper, or for advertising goods or services

Examples



There are two types of remedies available for the infringement of Trademark.

These remedies are:-

1. **Infringement Action:** An action for infringement, which is a statutory right, is dependent on the validity of the registration of the mark.

Injunction;

- Restraining (Warning) the future use of the mark;
 - Order for delivery of the infringing labels and marks for destruction;
 - Seizure infringing goods by the police department;
 - Arrest of the infringers;
 - Fines and penalties.: Offences shall be punishable with imprisonment for a term of minimum of six (6) months but which may extend to three (3) years and with a minimum fine of fifty thousand (50,000) rupees but which may extend to two lakh (2,00,000) rupees or more.
2. **Passing Off:** An action of passing off is a direct subject matter of or common law of right. Passing off is not defined in The Trade and Merchandise Marks Act, but it provides the rules of procedure and the remedies available.

In the case of unregistered yet well known marks, the owner of the mark can initiate a passing off action in the appropriate Court of law.

Trademark Infringement Example Case

Amul won trademark case in Gujarat HC in 2007.

It was concluded that Utterly Butterly Delicious Amul's name cannot be used by any other proprietor even if the company is selling goods other than that sold by the proprietor, who has registered the trademark. In a significant judgment, the Gujarat High Court has ruled that a registered trademark user has the right to restrict others using their trademark for different class or goods.

HC's judgment was in connection with a case where the Kaira District Co-operative Milk Producers' Union popularly Amul Dairy and the Gujarat Co-operative Milk Marketing Federation (GCMMF) had filed trademark infringement cases against two local shop owners, Amul Chasmaghar and Amul Cut Piece Stores in the district court. While Kaira Union owns brand Amul, GCMMF manages the brand.

It was on April 25, in 2007 year that the district court had passed an order that it was a clear case of infringement and restrained the two from using Amul trademark. Amul Chasmaghar however had challenged the district court's interim injunction in the HC, where justice D N Patel upheld ruling of the district court.

3.6 COPYRIGHTS

3.6.1 Introduction:

The advent of the internet has posed a threat to people in different ways. One of them is Copyright infringement. People can have access to millions of websites with just a click, post something on social media networks by altering somebody's original work, a popular example of such alteration is the submission of research papers where researchers often use different sources to produce their work. People often copy someone else's original work without having any authority to do so.

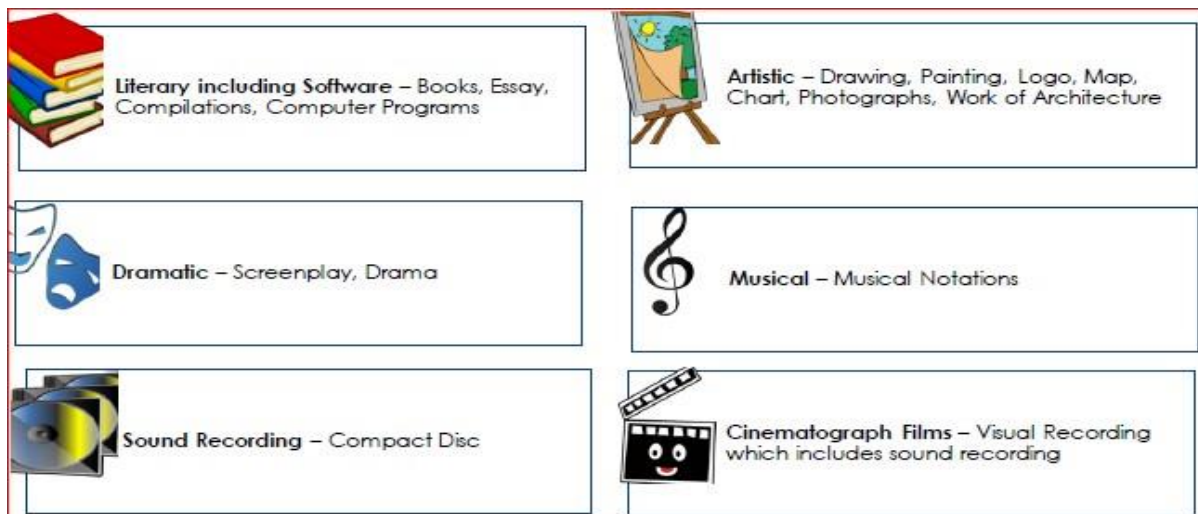
3.6.2 Definition

The word copyright is a mixture of two words – 'copy' and 'right'. To be more precise copyright means 'right to copy', wherein only the creator or his authorised person has a right to reproduce a work. In simple words, a legal right which is possessed by the owner of Intellectual property is a 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.”

3.6.3 Types of Work Protected by Copyright:

- Copyright is provided for a wide range of expressions like literary works, Artistic work, music and Cinematography.
- Literary works include novels, books, newspaper articles, journals, research papers, magazines, instruction manuals.
- Artistic work includes painting, sculpture, diagrammatic representation, drawing.
- Music includes original music work and a specific combination of melody and harmony.
- Cinematography includes movies, tv shows, documentaries, television recording of events.
- It is provided for work and not for ideas.



Examples of Copyright

- Someone publishes the novel, then he gets the copyright for the novel.
- The makers of the film have a copyright over the film.

❖ **Why is copyright important**

Copyright is important for various reasons, namely,

- Copyright legally protects the creator's work
- Copyright helps the author to exercise control over his work
- It provides ownership to the creator of the work.

❖ **Registration of Copyright**

It is not mandatory to register the work to claim copyright and it commences the moment the work is created. However, it is advised to register the work for better protection, it will serve as proof in a matter of dispute.

[Section 13](#) of the Copyright Act, 1957 states that the copyright can be given only for the original work. Copyright is usually provided for 60 years

3.6.4 Term of Copyright

The general rule is that copyright lasts for 60 years. In the case of original literary, dramatic, musical and artistic works the 60-year period is counted from the year following the death of the author. In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations, the 60-year period is counted from the date of publication.

3.6.5 Copyright Infringement

❖ What is 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.

3.6.6 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.