

## **INTELLECTUAL PROPERTY**

Intellectual property (IP) refers to any Intellectual creation of mind. Intellectual Property laws give people the right to own and profit from their artistic, scientific and technological creations for a designated period of time. Inventors are granted to a variety of intangible assets, such as ideas, business methods, inventions, musical piece, literary work, artistic works, discoveries, words, phrases, symbols, and designs.

The primary objective of an Intellectual Property Rights 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.

### **Property Rights:**

Property rights give the owner or right holder the ability to do with the property what they choose. That includes holding on to it, selling or renting it out for profit, or transferring it to another party.

- A property can be owned by a person, company, government, Charity, MGO etc.
- Right to use/Transfer/Earn an income/Destroy etc.

### **INTELLECTUAL PROPERTY RIGHTS:**

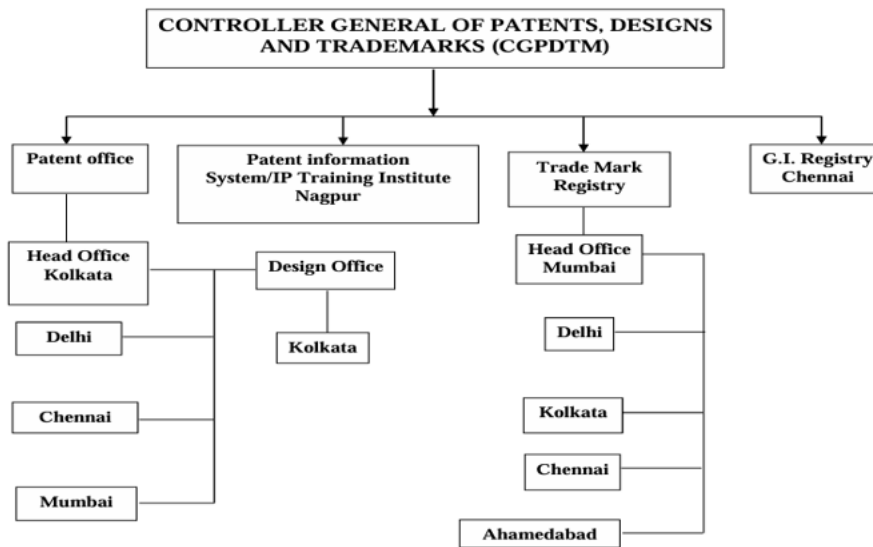
Intellectual property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property. The term intellectual property reflects the idea that this subject matter is the product of the mind or the intellect, and that Intellectual Property rights may be protected at law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. 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.

### **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.

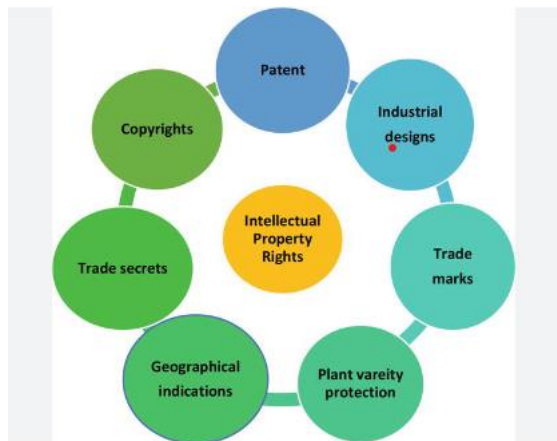
## IPR offices of INDIA:



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### Patents:

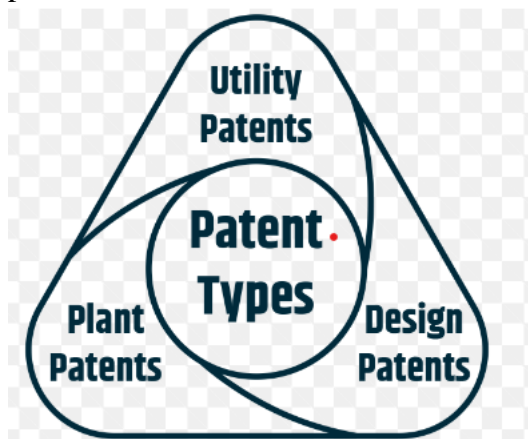
Patent is a monopoly right given by the government to an inventor for a period of twenty years. Once granted, a patent gives the inventor the right to exclude others from making, using, selling, importing or offering for a sale of the inventor's invention for the duration specified in the terms of patent. After twenty years the patent falls under public domain there after anyone can use the invention without permission from patentee. Invention can be any new

article, composition of matter, machine, process or any new value addition to the above said.

Patents are territorial rights, which means that an invention is only protected in the countries or regions where patent protection has been obtained. 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.

Patent right can be shared whenever there are more than one patents. Patent rights can be

- Licensed or sold for a commercial consideration.
- A right to initiate legal proceedings against infringement
- The patentee can commercially exploit its potential without fear of copying imitation without the patentee's permission during the term of patent.
- **Invention** refers to the technical solution to a technical problem. It may be an innovative idea or may be in the form of working model or prototype.
- **Innovation** refers to the translation of the invention into a marketable product or process.



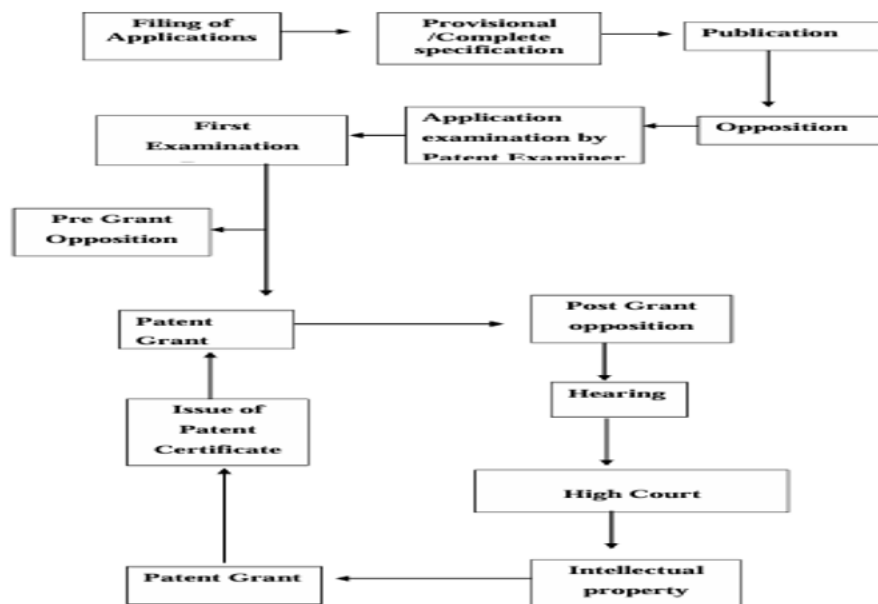
There are three types of patents:

**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.

## Flowchart of Patent Granting System:



## WHO CAN APPLY PATENT:



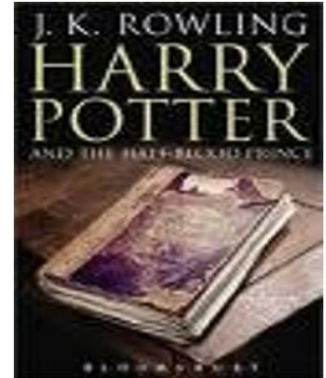
## COPYRIGHTS

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

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.



- a. **Rights of performers** - They include a live performance of a pre-existing artistic, dramatic or musical work, or a live recitation or reading of a pre-existing literary work. The work performed need not be previously fixed in any medium or form and may be in the public domain or protected by copyright. The performance may also be an improvised one, whether original or based on a pre-existing work. Ex: actors, musicians
- b. **Rights of producers of sound recordings** (or “phonograms”) in their recordings  
Example. Compact discs.
- c. **Rights of broadcasting organizations** in their radio and television programs transmitted over the air and in some countries, rights in the transmission of works via cable systems.

Copyright and related rights work of different categories of right holders. While copyright protects the works of the authors themselves, related rights are granted to certain categories of people or business that play an important role in performing, communicating or disseminating works to the public that may or may not be protected by copyright.

### **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.

### **TRADEMARK:**

Trademark is a unique sign or indicator used by an individual, business organization or other legal entity to identify that the products and /or services are offered to the consumers with which the trademark appears. It would have originated from a unique source of origin, in order to distinguish its products or valid for services from those of other entities.

**For example:** If a trademark such as NIKE could be counterfeited (imitating) and used by another on inferior merchandise (goods), there would be no incentive for the owners of the NIKE mark to produce high-quality shoes and to expend money establishing consumer recognition of the products offered under the NIKE marks.

### **Types of marks:**

There are various types of marks namely

### **Trademark**

The term trademark thus refers to some physical and tangible good and service mark refers to an intangible service, in common usage the term trademark is often used to refer to marks for both goods and service. The key point in this legal description is that a trademark is a visual mark that may use any combination of letters and imagery to aid a company in differentiating itself from other entities. The purpose of a trademark is to visually represent a person, company, or product and trademark should be designed to provide easy and definite recognition. The term mark will be used as a synonym for both trademark and service marks. The federal statute ((law) an act passed by a legislative body) governing trademark law, the U.S. Trademark Act (Lanham Act, found at 15 U.S.C 1051etseq.) itself states that the term mark includes any trademark, service mark, collective mark, or certificate mark.



### **Service mark**

A service mark is the same as a trademark, but instead of a particular product, it identifies and differentiates the source of a service. A service mark is nothing but a mark that distinguishes the services of one proprietor/owner from that of another. Service marks do not represent goods, but the services offered by the company.

They are used in a service business where actual goods under the mark are not traded. Companies providing services like computer hardware and software assembly, restaurant and hotel services, courier and transport, beauty and health care, advertising, publishing, etc. are now in a position to protect their names and marks from being misused by others. The rules governing for the service marks are fundamentally the same as any other trademarks.





## Certification mark

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

For example: Hallmark, ISO mark and in U.S Under writers Laboratory seals of approval (Underwriters Laboratory is the large stand best known independent, not for profit testing laboratory in the world based in Northwood, Illinois, UL conducts safety and quality tests on abroad range of products, from fire door's to CCTV cameras seals of approval).



## Collective Mark

A collective mark is one used by collective membership organization such as a labor union, fraternity, or professional society, to identify that the person displaying the mark is a member of the organization. These are the trademarks used by a group of companies and can be protected by the group collectively. Collective marks are used to inform the public about a particular characteristic of the product for which the collective mark is used. The owner of such marks may be an association or public institution or it may be cooperative. Collective marks are also used to promote particular products which have certain characteristics specific to the producer in a given field. Thus, a collective trademark can be used by a more than one trader, provided that the trader belongs to the association.



- Well-known marks (marks that are considered to be well-known in the market and as result benefit from stronger protection).

#### **Duration of trademark:**

The term of trademark is ten years and it can be renewed lifelong for every ten years. Trademark can be a word, phrase, logo, symbol, design, image, or a combination of these elements.

Example: **Coco-Cola, IBM, AIRTEL** etc.



#### **INDUSTRIAL DESIGN:**

A design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colors applied to any article. A design should be new and original. The word “article” refers to any article manufactured and any substance, artificial, or partly artificial and partly natural, and includes any part of an article capable of being made and sold separately. Design office is located at Kolkata.





As general rule Industrial Design consists of

- Three-dimensional features, such as the shape of a product,
- Two dimensional features such as ornamentation, patterns, lines or colour of a product or
- A combination of one or more such feature.

### **Duration of Industrial Design:**

An Industrial design is registered for a period of 10 years and is extendable for another 5 years if an application in Form-3 with a fee of Rs. 2,000/- is filed before the expiry of 1st year.

### **GEOGRAPHICAL INDICATION:**

Geographical Indication is an indication which identifies goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin.

In case of manufactured goods one of the activities of either the **production** or **processing** or **preparation** of the goods concerned takes place in such territory, region or locality, as the case may be

- Explanation clarifies that GI need not be a geographical name. Alphonso, Basmati.
- Goods include goods of handicraft or of industry and also foodstuff.

Example: Basmati rice, Darjeeling Tea, Nagpur Oranges, Kolhapur Chappal Tirunelveli Halwa, Kanchipuram Sarees etc.



Duration of GI:

The Term of Geographical indication protection is ten years.

### **TRADE SECRETS:**

They are any information that is not generally known, that will give a business advantage, or is commercially useful. Sometimes they are considered and referred to as confidential information's. It may be a formula, process, design, device etc.

Example: **composition of coco cola is a trade secret**



### **Semiconductor Integrated circuit's layout – Design**

Integrated circuits are commonly known as silicon chips. They are usually made from layers of materials by a process which includes etching, using various marks (templates) which are made photographically. The simplest integrated circuit consists of three layer one of which is made from semiconductor material.

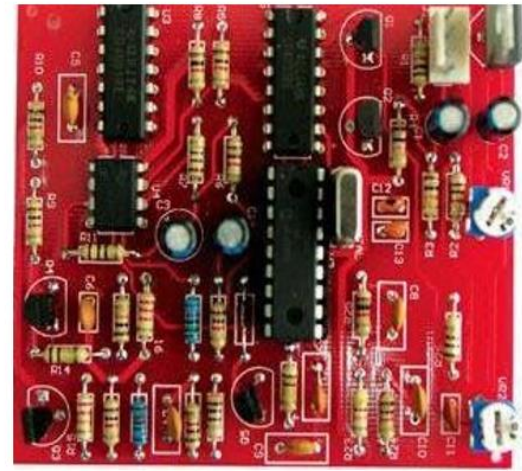
A semiconductor material in terms of its ability to conduct electricity is one which lies between a conductor, such as copper and an insulator, such as rubber.

Examples: silicon, germanium, selenium and gallium arsenide.

Semiconductor integrated circuit means a product having transistors and other circuitry elements which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

Layout design means a layout of transistors and other circuitry elements and includes

lead wires connecting such elements and expressed in any manner in semiconductor integrated circuit.



### **Plant Patents:**

In some jurisdictions, including the United States, plant varieties can be protected through plant patents. A plant patent gives the patent holder the exclusive right to produce, use, and sell the patented plant variety for a limited period, typically 20 years from the date of filing the patent application. To be eligible for a plant patent, the plant variety must be new, distinct, and non-obvious.

### **Plant Breeders' Rights (PBR):**

Many countries have adopted a system of Plant Breeders' Rights, which provides protection to plant varieties through specialized legislation or international agreements such as the International Union for the Protection of New Varieties of Plants (UPOV). Under PBR, breeders can obtain exclusive rights to market a new plant variety for a certain period, typically around 20 to 25 years. To qualify for PBR protection, a plant variety must be new, distinct, uniform, and stable.

### **Requirements of PBR:**

However, there are some common requirements found in many PBR systems worldwide. Here are the typical requirements:

1. **Novelty:** The plant variety must be new, meaning it has not been commercialized or sold before a certain date. This requirement ensures that only genuinely new varieties are granted protection.
2. **Distinctiveness:** The plant variety must be distinct from any other varieties that are known to exist at the time of application. Distinctiveness can be determined by characteristics such as morphological traits, genetic markers, or biochemical properties.
3. **Uniformity:** The plant variety must be uniform, meaning that it exhibits consistent characteristics among individual plants within the variety. This ensures that the variety is stable and predictable in its traits.

4. **Stability:** The plant variety must be stable, meaning that its characteristics remain unchanged after repeated propagation or successive generations. Stability ensures that the variety retains its desired traits over time.

#### **Genetic Resources:**

Genetic resources refer to the genetic material of plants, animals, and microorganisms that contain valuable traits and characteristics. These resources are the foundation of biodiversity and play a crucial role in the adaptation, evolution, and sustainability of ecosystems. Genetic resources are utilized in various fields, including agriculture, medicine, and biotechnology, to develop improved crops, livestock breeds, pharmaceuticals, and other products.

Challenges related to genetic resources include conservation, access, and benefit-sharing. Conservation efforts aim to preserve genetic diversity in natural habitats, gene banks, and other protected areas to ensure the long-term sustainability of biodiversity. Access to genetic resources involves issues of ownership, sovereignty, and equitable sharing of benefits derived from their use. International agreements such as the Convention on Biological Diversity (CBD) and the Nagoya Protocol provide frameworks for addressing these issues and promoting fair and equitable access and benefit-sharing arrangements.

#### **Traditional Knowledge:**

Traditional knowledge (TK) refers to the knowledge, innovations, and practices developed by indigenous and local communities over generations, often based on their interactions with the environment. This knowledge encompasses a wide range of subjects, including agriculture, medicine, biodiversity conservation, and natural resource management. Traditional knowledge systems are deeply rooted in local cultures, beliefs, and social structures and have sustained communities' livelihoods and well-being for centuries.

Traditional knowledge faces challenges such as erosion, misappropriation, and inadequate recognition and protection. Globalization, modernization, and intellectual property regimes have led to the loss or degradation of traditional knowledge systems, threatening both cultural heritage and biodiversity conservation. Efforts to protect traditional knowledge involve initiatives to document, preserve, and promote indigenous knowledge systems, as well as policies and legal frameworks to safeguard traditional knowledge from exploitation and misappropriation.

### **SECURING INTELLECTUAL PROPERTY RIGHTS IN ABROAD:**

Globalization and the quick multiplication of innovation have raised the significance of licensed innovation security for small and medium sized Enterprises (SMEs). The elusive idea of licensed innovation and the overall absence of standard practices make difficulties for U.S. organizations wishing to secure their innovations, brands, and business techniques in outside business sectors. The three most regular vehicles for ensuring licensed innovation are licenses, trademarks, and copyrights. This article is proposed to give exporters a concise review of licensed innovation rights and the techniques being utilized to secure those rights universally.

#### **IPR IN ABROAD:**

In the event that one feels the organization's licensed innovation rights have been, or might be unfavorably influenced by remote licensed innovation insurance and requirement rehearses, one may document a grumbling electronically with the Office of IPR inside the

## International Trade Administration.

### Major International Instruments Relating to the Protection of Intellectual Property

“In today’s economic environment, intangible assets are becoming increasingly important. These assets, which are the result of human intellectual creative activity such as invention, design, know-how, and artistic creation, are known as “intellectual property.” Some forms of Intellectual property rights are specifically entitled to legal protection such as trademarks, designs, literary works, layout designs and trade secrets. In the recent years we have seen an increase in the volume of trade of good and services relating to intellectual property.

Therefore, the protection of intellectual property necessary otherwise it will lead to distort free trade. The protection regarding intellectual property has been always a narrow in most of the developing countries. Some developed countries also have problematic intellectual property regimes that, for example, openly discriminate against foreign nations, provide excessive protection, or otherwise have regimes so different from those employed by the rest of the world that its administration is discriminatory. This trade distorts were needed to be addressed and for the purpose of same the WTO decided to establish framework for the protection of intellectual property. There were number of treaties formed as a common legal framework for the protection of intellectual property right. In this article the following three of the major frameworks are discussed-

1. Berne Convention for the protection for Artistic and Literary works.
2. The Paris Convention for the Protection of Industrial Property
3. TRIPS (Agreement on the trade related aspects of intellectual property rights)



## EVOLUTION OF IP ACTS AND TREATIES

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

### 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.

## **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. Works protected include:

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

## **Universal Copyright Convention**

Universal Copyright Convention (UCC) is an international instrument which was drawn up in 1952 under the auspices of UNESCO. The UCC was adopted in Geneva, Switzerland, in 1952, and enforced in 1955, is one of the two principal international conventions protecting copyright the other is the Berne convention.

Its main features are the following:

- (1) no signatory nation should accord its domestic authors more favorable copyright treatment than the authors of other signatory nations, though no minimum protection for either domestic or foreign authors is stipulated;
- (2) a formal copyright notice must appear in all copies of a work and consist of the symbol ©, the name of the copyright owner, and the year of first publication; a signatory nation, however, might require further formalities, provided such formalities do not favour domestic over foreign works;
- (3) the minimum term of copyright in member nations must be the life of the author plus 25 years (except for photographic works and works of applied art, which have a 10-year term);
- (4) all adhering nations are required to grant an exclusive right of translation for a seven-year period, subject to a compulsory license under certain circumstances for the balance of the term of copyright.

Both the Universal Copyright Convention and the Berne Convention were revised at a Paris conference in 1971 to take into consideration the special needs of developing countries, especially with regard to translations, reproductions, public performances, and broadcasting. The liberalized regulations were to apply only to teaching, scholarship, and research.

## **WIPO Convention:**

World Intellectual Property Organization (WIPO)

- WIPO is one of the oldest specialised agencies of United Nations.
- WIPO was created in 1967 "to encourage creative activity, to promote the protection of intellectual property throughout the world".



- WIPO currently administers 26 international treaties.
- It is headquartered in Geneva, Switzerland.
- Every year World Intellectual Property Day is being celebrated on 26<sup>th</sup> April.

### **Status of WIPO Membership**

- WIPO currently has 193 member states.
- All member states of the UN are entitled, though not obliged, to become members of the specialized agencies like WIPO.
- 190 of UN member states as well as Cook Islands, Holy See and Niue are members of WIPO.
- Palestine has permanent observer status.
- Besides 281 non-governmental organizations (NGOs) and 47 intergovernmental organizations (IGOs) 17 UN system of organizations and 10 IP organizations have official observer status at WIPO meetings.
- India joined WIPO in 1975.

### **WIPO's Limitations and Exceptions**

Limitations and exceptions to copyright and related rights vary from country to country due to particular social, economic and historical conditions. International treaties acknowledge this diversity by providing general conditions for the application of limitations and exceptions, leaving national legislators to decide if a particular limitation or exception is to be applied and, if it is the case, to determine its exact scope. With the development of new technologies and the ever increasing worldwide use of the Internet, there has been extensive discussion about how limitations and exceptions apply in the digital environment, including when content crosses borders.

The WIPO Standing Committee for Copyright and Related Rights (SCCR) has been addressing the issue of limitations and exceptions to copyright since 2004 and has been addressing limitations and exceptions to copyright for libraries and archives, educational and research institutions, and persons with other disabilities at every session since 2012. The SCCR developed and implemented extensive Action Plans on limitations and exceptions in 2018-19, culminating in an International Conference on Copyright Limitations and Exceptions for Libraries, Archives, Museums and Educational and Research Institutions.



## Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty (PCT) provides us with an overview of an international treaty which is duly administered by the World Intellectual Property Organization (WIPO). PCT is an international treaty with more than 148 Contracting States. The PCT is an international treaty which provides a system for filing a patent application and allows us to obtain patents in multiple countries around the world on the basis of a single patent application. The PCT simplifies the patent filing process for applicants, and the ultimate decision to grant a patent vest exclusively with each national or regional Patent Office.

This treaty was established to help people seek patent protection for inventions in developed countries at the same time by filling out one international patent application. A resident or a national of a PCT member country can apply at the patent office of the State or at the applicant's option at the International Bureau of WIPO in Geneva. A single PCT application has the same legal effect as a national Patent application in each of the PCT Contracting States. Without the PCT, we would have to file a separate patent application in each country separately and independently. PCT saves applicant time, effort, and expense of preparing separate applications in various languages and filing them in different signatory states.

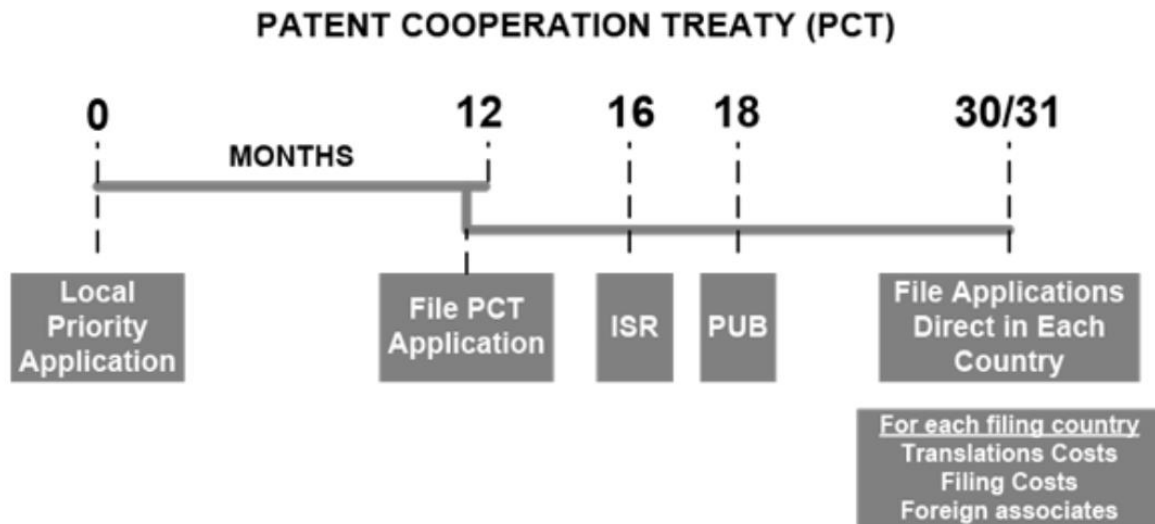
There are several reasons that the PCT was needed by the WIPO as follows:

- To bring the world within reach.
- Removes major costs and provides users with additional time to consider their various Patent granting options.
- Provides a strong basis to the user for Patenting decisions.
- Is effectively used by the world's major corporations, universities, and research institutions when they seek international patent protection.
- Providing an unified procedure to all the member countries to file patents, rather than filing them in every country manually by their individual patent offices.

Let's understand the basic features of the PCT before diving deep into it:

- It is a formal examination carried out by one office itself.

- The retrieval process is also carried out by one office that overlooks everything associated with the filing process.
- The international publication is done by one office that is responsible for the advertisement of the PCT as well.
- The examination and authorization is finished by the national office itself before moving on to the international phase.
- It is a single application with legal effect in all PCT countries.
- There are a total of 148 countries and 4 regional patent systems in the PCT.



## TRIPS Agreement

India along with other emerging nations graced a signatory to the Treaty of TRIPS of the World Trade Organisation (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.