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INTELLECTUAL PROPERTY RIGHTS

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Subject Code : GE8075

Semester - VI

(Computer Science & Engineering / Information Technology /Mechanical Engineering
/ Electrical & Electronics Engineering / Electronics & Communication Engineering / Civil Engineering)
Professional Elective - I / II

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PREFACE

The importance of **Intellectual Property Rights** is well known in various engineering fields. Overwhelming response to our books on various subjects inspired us to write this book. The book is structured to cover the key aspects of the subject **Intellectual Property Rights**.

The book uses plain, lucid language to explain fundamentals of this subject. The book provides logical method of explaining various complicated concepts and stepwise methods to explain the important topics. Each chapter is well supported with necessary illustrations, practical examples and solved problems. All the chapters in the book are arranged in a proper sequence that permits each topic to build upon earlier studies. All care has been taken to make students comfortable in understanding the basic concepts of the subject.

The book not only covers the entire scope of the subject but explains the philosophy of the subject. This makes the understanding of this subject more clear and makes it more interesting. The book will be very useful not only to the students but also to the subject teachers. The students have to omit nothing and possibly have to cover nothing more.

We wish to express our profound thanks to all those who helped in making this book a reality. Much needed moral support and encouragement is provided on numerous occasions by our whole family. We wish to thank the **Publisher** and the entire team of **Technical Publications** who have taken immense pain to get this book in time with quality printing.

Any suggestion for the improvement of the book will be acknowledged and well appreciated.

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SYLLABUS

Intellectual Property Rights [GE8075]

UNIT I : INTRODUCTION

Introduction to IPRs, Basic concepts and need for Intellectual Property - Patents, Copyrights, Geographical Indications, IPR in India and Abroad – Genesis and Development – the way from WTO to WIPO –TRIPS, Nature of Intellectual Property, Industrial Property, technological Research, Inventions and Innovations – Important examples of IPR. **(Chapter - 1)**

UNIT II : REGISTRATION OF IPRs

Meaning and practical aspects of registration of Copy Rights, Trademarks, Patents, Geographical Indications, Trade Secrets and Industrial Design registration in India and Abroad **(Chapter - 2)**

UNIT III : AGREEMENTS AND LEGISLATIONS

International Treaties and Conventions on IPRs, TRIPS Agreement, PCT Agreement, Patent Act of India, Patent Amendment Act, Design Act, Trademark Act, Geographical Indication Act. **(Chapter - 3)**

UNIT IV : DIGITAL PRODUCTS AND LAW

Digital Innovations and Developments as Knowledge Assets – IP Laws, Cyber Law and Digital Content Protection – Unfair Competition – Meaning and Relationship between Unfair Competition and IP Laws – Case Studies. **(Chapter - 4)**

UNIT V : ENFORCEMENT OF IPRs

Infringement of IPRs, Enforcement Measures, Emerging issues – Case Studies. **(Chapter - 5)**

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Solved Model Question Paper

(M - 1) to (M - 2)

1

Introduction to IPRs

Syllabus

Introduction to IPRs, Basic Concepts and Need for Intellectual Property, Patents, Copyrights, Geographical Indications, IPR in India and Abroad, Genesis and Development- the Way from WTO to WPO, TRIPS, Nature of Intellectual Property, Industrial Property, Technological Research, Inventions and Innovations, Important Examples of IPR

Contents

- 1.1 *Introduction to IPRs*
- 1.2 *Basic Concepts and Need for Intellectual Property*
- 1.3 *Patents*
- 1.4 *Copyrights*
- 1.5 *Geographical Indications*
- 1.6 *IPR in India and Abroad*
- 1.7 *Genesis and Development - The Way from WTO to WPO*
- 1.8 *TRIPS*
- 1.9 *Nature of Intellectual Property*
- 1.10 *Industrial Property*
- 1.11 *Technological Research*
- 1.12 *Inventions and Innovations*
- 1.13 *Important Examples of IPR*
- 1.14 *Two Marks Questions with Answers*

1.1 Introduction to IPRs

Technological advances since the advent of science continue to shape human life. Scientists constantly endeavour to develop technologies aimed at aiding development in different sectors of society. However, not all products of such efforts are free from controversy as some fail to convincingly address queries related to their freedom from risk to users, the environment and indeed their general acceptability to the larger sphere.

Property has always been considered as essential for the proper development of personality. But it is not a static concept. It has evolved over time in a dynamic and flexible concept and has been construed in diverse manners across societies, legal systems and periods in time. Even within the same society and legal system it has varied significantly.

Property is not a relationship between people and things rather than it is a relationship between people with regard to things. The concept of property is changing today in small, yet dramatic ways. Now ideas, including writings, compositions and art are considered as property.

The concept of property now-a-days has become a complex socio-economic-legal phenomenon. It has been a significant source of socio economic power and divided the human beings between haves and haves-not, rich and poor, not merely at local, regional or national levels but throughout the globe.

There are three distinct types of property that individuals and companies can own ;

(a) Real Property : Real property refers to land or real estate.

(b) Personal Property : Personal property refers to specific items and things that can be identified, such as jewelry , cars and stock.

(c) Intellectual Property : Intellectual property refers to the fruits or products of human creativity, including literature, advertising, slogans, songs or new inventions. Thus, property that is the result of thought, namely, intellectual activity is called intellectual property.

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

With the emerging and fast growing computer technology, Internet, information storage through computer data bases, cyberspace and communication technology, the law relating to Patents, Designs, Trademarks, Copyrights, Confidential Information, Industrial and Trade Secrets and Know-how, though originally categorized as Industrial property, have come within the broad spectrum of Intellectual Property law. These products of the human intellect need the utmost protection, more so with the globalization of trade and commerce.

Intellectual property is acquiring an important role on the international stage. Works of the mind, for instance inventions, trademarks, industrial designs, books, music, films are used and enjoyed in all countries around the globe. International protection of intellectual property “acts as a source to human creativity, pushing forward the boundaries of science and technology and enriching the world of literature and the arts. By providing a stable environment or the marketing of intellectual property products, it also oils the wheels of international trade”.

The recognition of the creator and inventor, the protection of their rights of those who invest in the making of their creations, and / or commercialization of their creative products, contribute to sustainable economic growth.

More and more countries developed a system for the protection of inventions during the second half of the last century, a general desire, as with other fields of law, for the harmonization of the laws of industrial property on worldwide basis. This was due to the development of a more internationally – oriented flow of technology and to the increase of international trade, which made such harmonization of industrial property laws urgent in both the patent and the trademark fields. The World Intellectual Property Organization (WIPO) is one of the specialized agencies of the United Nations (UN) system of organizations. The “Convention Establishing the World Intellectual Property Organization” was signed at Stockholm in 1967 and entered into force in 1970. However, the origin of WIPO go back to 1883 and 1886, with the adoption of the Paris Convention and the Berne Convention respectively. WIPO has two main objectives. The first is to promote the protection of intellectual property worldwide. The second is to ensure administrative cooperation among the intellectual property Unions established by the treaties that WIPO administers. Intellectual property laws and enforcement vary widely from jurisdiction to jurisdiction. There are inter-governmental efforts to harmonize them through international treaties such as the 1994 World Trade Organization (WTO), agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), while other treaties may facilitate registration in more than one jurisdiction at a time. Disagreement over medical and software patents and the severity of copyright enforcement have, so far, prevented consensus on a cohesive international system. The TRIPS Agreement consolidates new forms of protectionism, which are not exercised through tariffs but through the appropriation of the knowledge applied to produce goods.

1.2 Basic Concepts and Need for Intellectual Property

‘Intellectual Property’ is a comprehensive expression. It covers the whole field of creative activity. Intellectual property, in its literal sense, means the things which emanate from the exercise of the human brain. It is the product emerging out of the intellectual labour of a human being. It involves the visible expression of a mental conception, the work of both brain and hand. Intellectual property is a cluster of legally recognized rights associated with innovation and

creativity-the works of the mind, as against physical products, land and other tangible resources. Even though it is intangible, intellectual property(IP) is often recognized as personal property, to be sold and traded like other forms of property. But national laws normally don't define 'intellectual property' as a single property right. Instead, 'intellectual property' is used as a convenient general term describing a range of distinct legal rights.

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time. These legal rights confer an exclusive right to the inventor/creator or his assignee to fully utilize his invention/creation for a given period of time. It is very well settled that IP play a vital role in the modern economy. It has also been conclusively established that the intellectual labor associated with the innovation should be given due importance so that public good emanates from it. There has been a quantum jump in research and development (R&D) costs with an associated jump in investments required for putting a new technology in the market place. The stakes of the developers of technology have become very high, and hence, the need to protect the knowledge from unlawful use has become expedient, at least for a period, that would ensure recovery of the R&D and other associated costs and adequate profits for continuous investments in R&D. IPR is a strong tool, to protect investments, time, money, effort invested by the inventor/creator of an IP, since it grants the inventor/creator an exclusive right for a certain period of time for use of his invention/creation. Thus IPR, in this way aids the economic development of a country by promoting healthy competition and encouraging industrial development and economic growth.

Originally, only patent, trademarks, and industrial designs were protected as 'Industrial Property', but now the term 'Intellectual Property' has a much wider meaning. IPR enhances technology advancement in the following ways :

- (a) It provides a mechanism of handling infringement, piracy, and unauthorized use.
- (b) It provides a pool of information to the general public since all forms of IP are published except in case of trade secrets.

IP protection can be sought for a variety of intellectual efforts including ;

- Patents
- Industrial designs relates to features of any shape, configuration, surface pattern, composition of lines and colors applied to an article whether 2-D, e.g., textile, or 3-D, e.g., toothbrush.
- Trademarks relate to any mark, name, or logo under which trade is conducted for any product or service and by which the manufacturer or the service provider is identified. Trademarks can be bought, sold, and licensed. Trademark has no existence apart from the goodwill of the product or service it symbolizes.

- Copyright relates to expression of ideas in material form and includes literary, musical, dramatic, artistic, cinematography work, audio tapes, and computer software.
- Geographical indications are indications, which identify a good as originating in the territory of a country or a region or locality in that territory where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin.

1.2.1 Some Formal Definitions

The term intellectual property and industrial property can often be used in a very general sense, but they do have specific legal meanings. Industrial property is a term used specifically for patents, designs and trademarks, in contrast to copyright and the related rights of performers, broadcasters and producers.

The World Intellectual Property Organization (WIPO) is the United Nations specialized agency responsible for international cooperation on IP. Intellectual Property is defined in an all pervasive sense in Article 2 (viii) of the Convention Establishing the World Intellectual Property Organization (WIPO) signed at Stockholm on July 14, 1967. The Convention defines intellectual property as including the rights relating to ;

- Literary, artistic and scientific works
- Performances of performing artists, phonograms and broadcasts
- Inventions in all fields of human endeavour
- Scientific discoveries
- Industrial designs
- Trademarks, service marks and commercial names and designations
- Protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

For the purposes of the **World Trade Organization (WTO)** Agreement on Trade- Related Aspects of Intellectual Property Rights (TRIPS). ‘intellectual property’ is given a more limited application. It refers only to those categories of IP right that are explicitly covered in the Agreement’s provisions on copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits and protection of undisclosed information.

The Paris Convention for the Protection of Industrial Property defines its subject matter in general terms ;

The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition. Industrial property shall be understood in the broadest sense and

shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf , fruit, cattle , minerals, mineral waters, beer, flowers and flour.

Intellectual property rights (IPRs) are designed to protect the products of creative and inventive endeavours, and distinctive marks for traded goods and services. The grant of an IPR generally involves a trade-off , and some form of reciprocal obligation on the part of the right holder. For example, as a condition of receiving and maintaining a patent, inventors are required to make public details of their invention and may be required to ensure that the benefits of the invention are made available to the public on reasonable terms.

Intellectual property rights form part of a nation's policy to encourage innovation and dissemination of knowledge, and are therefore intended to balance the interests of the inventor or originator with the broader needs of society.

This policy consideration is recognized in, and underscores, **the TRIPS Agreement** ; The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovations and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

While different types IPRs, such as patents and copyrights, developed separately, they all set out to achieve this same objective of a balance of interests that promotes general welfare.

1.2.2 Objectives of Intellectual Property Rights

The following are the objectives of intellectual property rights :

- It helps in protecting the ownership and originality of the individuals creation.
- It provides recognition to the concerned person or authority.
- It allows owners of intellectual property to have financial benefits from the property they have created.
- They are provided financial incentive for the creation of and also to incur the cost of investment in intellectual property.
- Such rights motivate individuals' creativity and thus also contributes to economic growth.
- It can also offer some economic aid to the holder of the right, through the monopoly of their creations.
- It improves the financial status of the individual as well as of the economy of the country.

1.2.3 Types of Intellectual Property

The major intellectual property rights are copyright, patents, trademarks, industrial designs and trade secret. International conventions and the agreement on Trade Related Intellectual Property Rights(TRIPS) have resulted in the emergence of new, complex rights such as geographical indications, semiconductor , integrated circuit lay-out designs or chips , rights of plant breeders and farmers and the protection of undisclosed information.

- Copyright protects original works of authorship, including literary, music, dramatic, artistic and other works. Copyright exists from the moment of creation of a work. It gives a copyright holder the exclusive right to control reproduction or adaptation of such work for a certain period of time.
- A patent may be granted for a new, useful and non-obvious invention and gives the patent holder a right to prevent others from practicing the invention without a licence from the inventor for a certain period of time.
- A trademark is a word, name, symbol, or device used to indicate the origin, quality and ownership of a product or service. A trademark is a distinctive sign which is used to distinguish the products or services of different businesses.
- A trade secret consists of any valuable commercial information that, if known by a competitor, would provide some benefit or advantage to the competitor.
- An industrial design right protects the form of appearance, style or design of an industrial object (spare parts, furniture or textiles).

1.2.4 Significance of Intellectual Property Rights

An intellectual property right is an important right and values the creativity and originality which is a result of an individual's mind and intelligence. Therefore, it has several significance and importance. Some of them include the following :

- Intellectual property rights provides incentives as well as recognition to the concerned persons / authorities / nations / institutions / or organisations.
- Intellectual property rights encourages innovations and ensures a better quality of life. Industrial designs are what make a product attractive and appealing ; hence, they add to the commercial value of a product and increase its marketability.
- Just like the elements of a good product or service, the elements of a good advertisement are likely to be imitated or copied by others. So, it is hardly surprising that one or more types of IP rights come into play in creating content for an advertisement, or while deploying an advertising campaign.

1.3 Patents

The term ‘patent’ originated from Letters Patent, i.e. open letters (*literae patentes*) issued by the crown. The reason for calling these grants as letters patent were explained by Blackstone in the following words; “They are not sealed up, but exposed to view, with the Great seal pendant at the bottom , and are usually addressed by Sovereign to all the subjects of the Realm.”

In legal context Patent is a specific right of monopoly for a limited period, inclusive of both positive as well as negative element in relation to an invention. The two main aspects of patent are; One, positive which denotes an exclusive privilege granted to make, use, exercise and transfer an invention, and Second, negative which entitles him to exclude other from making, using, exercising and selling the invention.

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain; that is, anyone can commercially exploit the invention without infringing the patent.

A patent is awarded for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial or commercial application. Patents can be granted for products and processes. As per the Indian Patent Act 1970, the term of a patent was 14 years from the date of filing except for processes for preparing drugs and food items for which the term was 7 years from the date of the filing or 5 years from the date of the patent, whichever is earlier. No product patents were granted for drugs and food items.

Is a patent valid in every country : Patents are territorial rights. In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region.

1.3.1 The Kind of Protection a Patent Offer

In principle, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent. The protection is granted for a limited period, generally 20 years from the filing date of the application.

- **Rights provided by Patent :** A patent owner has the right to decide who may or may not use the patented invention for the period in which the invention is protected. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported, or sold by others without the patent owner's consent.
- **Kinds of inventions can be protected through Patent :** Patents may be granted for inventions in any field of technology, from an everyday kitchen utensil to a nanotechnology chip. An invention can be a product such as a chemical compound, or a process, for example or a process for producing a specific chemical compound. Many products in fact contain a number of inventions. For example, a laptop computer can involve hundreds of inventions, working together.

1.3.2 Manner in which Patent Rights Enforced

Patent rights are usually enforced in a court on the initiative of the right owner. In most systems a court of law has the authority to stop patent infringement. However the main responsibility for monitoring, identifying, and taking action against infringers of a patent lies with the patent owner.

Licensing a patent : Licensing a patent simply means that the patent owner grants permission to another individual/organization to make, use, sell etc. his/her patented invention. This takes place according to agreed terms and conditions (for example, defining the amount and type of payment to be made by the licensee to the licensor), for a defined purpose, in a defined territory, and for an agreed period of time. A patent owner may grant a license to a third party for many reasons. The patent owner may not have the necessary manufacturing facilities, for example, and therefore opts to allow others to make and sell his/her patented invention in return for “royalty” payments. Alternatively, a patent owner may have manufacturing facilities, but they may not be large enough to cover market demand. In this case, he/she may be interested in licensing the patent to another manufacturer in order to benefit from another income stream. Another possible situation is one in which the patent owner wishes to concentrate on one geographic market; therefore the patent owner may choose to grant a license to another individual/organization, with interests in other geographical markets. Entering into a licensing agreement can help to build a mutually-beneficial business relationship.

Unlike selling or transferring a patent to another party, the licensor continue to have property rights over the patented invention.

1.3.3 Importance of Patents to Society, Business, Individuals etc.

Patented inventions have, in fact, pervaded every aspect of human life, from electric lighting (patents held by Edison and Swan) and plastic (patents held by Baekeland), to ballpoint pens (patents held by Biro), and microprocessors (patents held by Intel, for example). Patents provide

incentives to and protection for individuals by offering them recognition for their creativity and the possibility of material reward for their inventions. At the same time, the obligatory publication of patents and patent applications facilitates the mutually-beneficial spread of new knowledge and accelerates innovation activities by, for example, avoiding the necessity to “re-invent the wheel”. Once knowledge is publicly available, by its nature, it can be used simultaneously by an unlimited number of persons. While this is, without doubt, perfectly acceptable for public information, it causes a dilemma for the commercialization of technical knowledge. In the absence of protection of such knowledge, “free-riders” could easily use technical knowledge embedded in inventions without any recognition of the creativity of the inventor or contribution to the investments made by the inventor. As a consequence, inventors would naturally be discouraged to bring new inventions to the market, and tend to keep their commercially valuable inventions secret. A patent system intends to correct such under-provision of innovative activities by providing innovators with limited exclusive rights, thereby giving the innovators the possibility to receive appropriate returns on their innovative activities. In a wider sense, the public disclosure of the technical knowledge in the patent, and the exclusive right granted by the patent, provide incentives for competitors to search for alternative solutions and to “invent around” the first invention. These incentives and the dissemination of knowledge about new inventions encourage further innovation, which assures that the quality of human life and the well-being of society is continuously enhanced.

1.3.4 Conditions Must be Met to Obtain Patent Protection

There are numerous conditions that must be met in order to obtain a patent and it is not possible to compile an exhaustive, universally applicable list. However, some of the key conditions include the following :

- The invention must show an element of novelty ; that is, some new characteristic which is not known in the body of existing knowledge in its technical field. This body of existing knowledge is called “prior art”.
- The invention must involve an “inventive step” or “non-obvious”, which means that it could not be obviously deduced by a person having ordinary skill in the relevant technical field.
- The invention must be capable of industrial application, meaning that it must be capable of being used for an industrial or business purpose beyond a mere theoretical phenomenon, or be useful.
- Its subject matter must be accepted as “patentable” under law. In many countries, scientific theories, aesthetic creations, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, methods for medical treatment (as opposed to medical products) or computer programs are generally not patentable.

- The invention must be disclosed in an application in a manner sufficiently clear and complete to enable it to be replicated by a person with an ordinary level of skill in the relevant technical field.

1.3.5 Reasons for Patenting Inventions

- **Exclusive rights :** Patents provide you with an exclusive right to prevent or stop others from commercially exploiting an invention for twenty years from the date of filing of the patent application.
- **Return on investments :** Having invested a considerable amount of money and time in developing innovative products, through exclusive patent rights, you may be able to establish yourself in the market as the pre-eminent player and to obtain higher returns on investments.
- **Opportunity to license or sell the invention :** If you choose not to exploit the patent yourself, you may sell it or license the commercialization of the patented invention to another enterprise, which could then be a source of income for your company.
- **Increase in negotiating power :** If your company is in the process of acquiring the rights to use the patents of another enterprise through a licensing contract, your patent portfolio will enhance your bargaining power. That is to say, your patents may prove to be of considerable interest to the enterprise with which you are negotiating, and you could enter into a cross-licensing arrangement where, simply put, your enterprise and the other agree to license respective patents to each other.
- **Positive image for your enterprise :** Business partners, investors and shareholders may perceive patent portfolios as a demonstration of the high level of expertise, specialization, and technological capacity within your company. This may prove useful for raising funds, finding business partners and raising your company's market value.

1.3.6 Consequences of Not Patenting Inventions

If you don't patent your invention, competitors may well take advantage of it. If the product is successful, many other competitor firms will be tempted to make the same product by using your invention without needing to ask for your permission. Larger enterprises may take advantage of economies of scale to produce the product more cheaply and compete at a more favorable market price. This may considerably reduce your company's market share for that product. Even small competing enterprises may be able to produce the same product, and often sell it at a lower price as they would not have to recoup the original research and development costs incurred by your company.

But that's not all. The possibilities to license, sell or transfer technology will be severely hindered if you don't patent your invention ; indeed, without intellectual property (patent) rights,

transfers of technology would be difficult if not impossible. The transfer of technology assumes that one or more parties have legal ownership of a technology and this can only be effectively obtained through appropriate intellectual property (IP) protection. Without IP protection for the technology in question, all sides tend to be suspicious of disclosing their inventions during technology transfer talks, fearing that the other side may “run away with the invention”.

Finally, you have to consider the possibility that someone else may patent your invention first. The first person or enterprise to file a patent for an invention will have the right to the patent. This may in fact mean that, if you do not patent your inventions or inventions made the employees of your company, somebody else – who may have developed the same or an equivalent invention later – may do so. Thus they could legitimately exclude your enterprise from the market, limit your activities to the continuation of prior use (where the patent legislation provides for such an exception), or ask your company to pay a licensing fee for using the invention.

However, to ensure that no one is able to patent your invention, instead of filing a patent application, you may disclose the invention to the public so that it becomes prior art for any patent application that will be filed after your publication, thereby placing it in the public domain (commonly known as defensive publication). Because of the existence of such prior art, later filed patent applications containing the same or similar invention will be refused by a patent office on the grounds of the lack of novelty or inventive step. At the same time, if you disclose your invention before filing a patent application, you will severely limit your possibility of obtaining patent protection on that invention.

1.3.7 The Following Would Not Qualify as Patents

- An invention, which is frivolous or which claims anything obvious or contrary to the well established natural law. An invention, the primary or intended use of which would be contrary to law or morality or injurious to public health.
- A discovery, scientific theory, or mathematical method.
- A mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine, or apparatus unless such known process results in a new product or employs at least one new reactant.
- A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance.
- A mere arrangement or re-arrangement or duplication of a known device each functioning independently of one another in its own way.
- A method of agriculture or horticulture.

- Any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.
- An invention relating to atomic energy.
- An invention, which is in effect, is traditional knowledge.

1.3.8 Types of Patents

As per patent laws applicable in various countries, patents generally can be divided into the following types ;

Utility Patent : A utility patent applies to the way something is made, the way a device operates, or a process for accomplishing some utilitarian purpose. The subject of a utility patent must result from human activity. It should not be a product of nature. It covers one of the following or an improvement on any of them;

- **A Manufactured Article :** Nail cutter or spanner
- **A Machine :** Washing machine, television, compressor, car or grass cutter
- **Composition of Matter :** Paint, hair, dye, medicine
- **A Process for Making or Doing Something :** A method for making steel or sugar refining, or a protocol for managing investment accounts. A new use of an old machine can be patented as a process.

Design Patent : A design patent covers a new and original ornamental shape or a surface treatment of a manufactured article. The shape or ornamentation can have no functional utility other than an aesthetic one. For example, the cut of a dress or the shape of a table lamp or an automatic body may be protected by a design patent (these are normally covered under Indian Design Act).

Plant Patent : A plant patent applies to characteristics of a new plant that has been asexually reproduced by grafting or selective cuttings-without seed manipulation. A new variety of plant, irrespective of the method of reproduction, can also be the subject of a utility patent. Indian law considers protection of plant varieties through seed manipulation only.

The new Indian Patent Law provides for granting of patents in ‘Utility Patents’ i.e. new, useful, or improved processes, machines, apparatuses, articles of manufacture, or compositions of matter.

Hence, some natural compositions, which are used in traditional medicine, can not be patented any longer since they have been known and used for a long time, However, the active substances of those compositions, provided they are isolated and characterized, can still be patented because the existence of such active substances was not known before.

1.4 Copyrights

It is a right that is provided to the owner of a literary or artistic work. It is an exclusive right to control the publication, distribution and adaptation of creative works. Copyright laws deal with the intellectual property of creative works like articles, books, music, software, painting, etc. The right lies with the owner cum copyright holder for a certain period of time. As time lapses, the work can be republished or reproduced by others. Usually, the time span of a copyright extends through the entire life of the owner and lasts up to a period of about 50 to 100 years after death. In case of anonymous works, the right lasts for 95 years after publication or 120 years after the creation.

Copyright (or author's right) 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.

1.4.1 What can be Protected using Copyright ?

Exhaustive lists of works covered by copyright are usually not to be found in legislation. Nonetheless, broadly speaking, works commonly protected by copyright throughout the world include :

- Literary works such as novels, poems, plays, reference works, newspaper articles ;
- Computer programs, databases ;
- Films, musical compositions, and choreography ;
- Artistic works such as paintings, drawings, photographs, and sculpture ;
- Architecture ;
- Advertisements, maps, and technical drawings.

Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such. Copyright may or may not be available for a number of objects such as titles, slogans, or logos, depending on whether they contain sufficient authorship.

1.4.2 Rights Provided under Copyright

There are two types of rights under copyright : economic rights, which allow the rights owner to derive financial reward from the use of his works by others ; and moral rights, which protect the non-economic interests of the author.

Most copyright laws state that the rights owner has the economic right to authorize or prevent certain uses in relation to a work or, in some cases, to receive remuneration for the use of his work (such as through collective management). The economic rights owner of a work can prohibit or authorize :

- Its reproduction in various forms, such as printed publication or sound recording ;
- Its public performance, such as in a play or musical work ;
- Its recording, for example, in the form of compact discs or DVDs ;
- Its broadcasting, by radio, cable or satellite ;
- Its translation into other languages ;
- Its adaptation, such as a novel into a film screenplay.

Examples of widely recognized moral rights include the right to claim authorship of a work and the right to oppose changes to a work that could harm the creator's reputation.

Steps to be taken if one's published work has been reproduced without their permission :

Before taking any steps, you should carefully assess whether the reproduction is in fact an infringement of your copyright (refer to the question on limitations and exceptions to copyright). If you consider that there is an infringement of your right, you should try to identify the person responsible. If it is impossible or inappropriate to solve the problem by informal means, you can seek a legal remedy from a court or other authority.

It is usually possible to bring a claim before a civil court for monetary compensation and also to prevent the continuation or repetition of the infringement. Before taking this step though it is often advisable – and even compulsory in some states – to first send a formal notification to the alleged infringer, requesting him to stop the infringement and/or to pay compensation.

Alternatively, if the unauthorized reproduction amounts to the criminal offence of copyright piracy, a complaint may be submitted to the police, public prosecutor or other competent authority in accordance with applicable local law.

In some cases, the use of alternative dispute resolution mechanisms (such as mediation, arbitration, expert determination, neutral evaluation, etc.) can provide a valuable alternative to court procedures, as they may lead to a settlement of the dispute in a simpler, faster and cheaper way.

If the unauthorized reproduction of the work is being made available through the internet, it may be possible to notify the relevant internet service provider, asking it to prevent access to the infringing copy. Such procedures are generally known as “notice-and-take-down (procedures)”.

If you are a member of a Collective Management Organization (CMO), it will often be enough to request it to take the appropriate steps. If you are not, it is up to you to act in order to protect your rights. It is often advisable, in such a case, to instruct a lawyer to do so on your behalf.

1.4.3 Process of Registering for Copyright

In the majority of countries, and according to the Berne Convention, copyright protection is obtained automatically without the need for registration or other formalities. Most countries

nonetheless have a system in place to allow for the voluntary registration of works. Such voluntary registration systems can help solve disputes over ownership or creation, as well as facilitate financial transactions, sales, and the assignment and/or transfer of rights. Please note that WIPO does not offer a copyright registration system or a searchable copyright database. Find out more about copyright registration and documentation systems.

- **Work :** The term “work” is used in the copyright context to refer to a wide range of intellectual creations, from novels to architecture, computer programs, and more. For a more detailed list of works that can be protected by copyright, refer to the question “What can be protected using copyright?”.
- **© symbol :** In the past, some countries had legislation in place that required the copyright holder to comply with certain formalities in order to receive copyright protection. One of those formalities was to include an indication that copyright had been claimed, such as by using the symbol ©. Currently, very few countries still impose formalities on copyright, therefore the use of such symbols is no longer a legal requirement. Nonetheless, many right owners still include the symbol © as a highly visible way to emphasize that that work is protected by copyright and that all rights are reserved, as opposed to a less restrictive license.
- **A Work in the public domain :** When a work is said to be in the public domain (also referred to as “commons”) what is meant is that the work no longer has a right owner (of the economic rights). This is usually because the term of copyright protection has expired. For example, the economic rights over the famous poem *Odyssey*, written by Homer, have lapsed and the work can be used or exploited without the need to obtain authorization or remunerate the right owner. In some countries, authors can also voluntarily include their works in the public domain through a procedure known as “voluntary relinquishment”.
- **Time limit of copyright protection :** Economic rights have a time limit, which can vary according to national law. In those countries which are members of the Berne Convention, the time limit should be equal to or longer than 50 years after the creator’s death. Longer periods of protection may however be provided at the national level.
- **Works published on the Internet :** A common misperception is that works published on the Internet, including on social media platforms, are in the public domain and may therefore be widely used by anybody without the authorization of the right owner. Any works protected by copyright or related rights – ranging from musical compositions, to multimedia products, newspaper articles, and audiovisual productions – for which the time of protection has not expired, are protected regardless of whether they are published on paper or digitally. In each case you should, generally, seek the authorization of the right owner prior to use.

- **Related or neighboring rights :** They are a separate set of copyright-type rights given to certain persons or bodies that help make works available to the public. The beneficiaries of related rights in national legislations are usually performers, producers of phonograms, and broadcasting organizations. The terms can also refer to rights given to persons or bodies, who produce subject matter which, while not qualifying as works under the copyright systems of some countries, contain sufficient creativity or technical and organizational skill to justify recognition via a right similar to copyright. Some laws make clear that the exercise of related rights should leave intact, and in no way affect, the protection of copyright.
- **Licensing your work :** Once you are the right owner of a work, you can provide authorization for others to use or exploit your work. Such authorizations are commonly referred to as “licenses” and may or may not entail paying the rights owner. Naturally, it is always recommended to seek expert legal advice before negotiating a licensing agreement.

If you wish to license your work to users such as broadcasters, publishers, or even entertainment establishments (i.e. bars, nightclubs), joining a Collective Management Organization (CMO) may be a good option. CMOs monitor uses of works on behalf of creators and publishers and are in charge of negotiating licenses and collecting remuneration. They are particularly common in the field of musical and literary works where there may be a large number of users of the same work and it would be difficult both for the owner of rights and the users to seek specific authorization for every single use and to monitor them.

- **Copyright of software or Mobile App :** Computer programs and other types of software are considered as literary works for copyright purposes. Therefore they receive automatic protection without the need for registration. In some countries, the process of voluntary registration for software may differ from that for other types of work.

Collective Management Organizations (CMOs) monitor uses of works on behalf of creators and are in charge of negotiating licenses and collecting remuneration. They are particularly common in the field of musical and literary works where there may be a large number of users of the same work and it would be difficult both for the owner of rights and the users to seek specific authorization for every single use and to monitor them.

1.4.4 Limitations and Exceptions to Copyright

In some cases it may be possible to use works that are not in the public domain without needing to request authorization from or remunerate the author or the right owner. This can occur if such uses are covered by limitations and exceptions in the national legislation. Examples of limitations and exceptions include :

- The quotation of works ;

- The use of news of the day;
- The creation of accessible formats for print disabled people.

In order to maintain an appropriate balance between the interests of rightholders and users of protected works, copyright laws allow certain limitations on economic rights, that is, cases in which protected works may be used without the authorization of the right holder and with or without payment of compensation.

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 exceptions and limitations and leaving to national legislators to decide if a particular exception or limitation is to be applied and, if it is the case, to determine its exact scope. Due to the development of new technologies and the ever-increasing worldwide use of the Internet, it has been considered that the above balance between various stakeholders' interests needs to be recalibrated.

Limitations and exceptions is an issue considered in the agenda of the WIPO Standing Committee for Copyright and Related Rights (SCCR) and, recently, its debate has been focused mainly on three groups of beneficiaries or activities in relation to exceptions and limitations – on educational activities, on libraries and archives and on disabled persons, particularly visually impaired persons.

1.5 Geographical Indications

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. Whether a sign functions as a geographical indication is a matter of national law and consumer perception. Geographical indications may be used for a wide variety of agricultural products, such as, for example, "Tuscany" for olive oil produced in a specific area of Italy (protected, for example, in Italy by Law No. 169 of February 5, 1992), or "Roquefort" for cheese produced in France (protected, for example, in the European Union under Regulation (EC) No. 2081/92 and in the United States under US Certification Registration Mark No. 571.798).

A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates therein. It is important that the product derives its qualities and reputation from that place. Since those qualities depend on the place of production, a specific "link" exists between the products and their original place of production.

An appellation of origin is a special kind of geographical indication, used on products that have a specific quality that is exclusively or essentially due to the geographical environment in which the products are produced. The concept of geographical indication encompasses appellations of origin.

1.5.1 Need of Geographical Indications

Geographical indications are understood by consumers to denote the origin and the quality of products. Many of them have acquired valuable reputations which, if not adequately protected, may be misrepresented by dishonest commercial operators. False use of geographical indications by unauthorized parties is detrimental to consumers and legitimate producers. The former are deceived and led into believing to buy a genuine product with specific qualities and characteristics, while they in fact get a worthless imitation. The latter suffer damage because valuable business is taken away from them and the established reputation for their products is damaged.

1.5.2 Area of Geographical Indications

The use of geographical indications is not limited to agricultural products. They may also highlight specific qualities of a product which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions. That place of origin may be a village or town, a region or a country. An example for the latter is "Switzerland" or "Swiss," which is perceived as a geographical indication in many countries for products that are made in Switzerland and, in particular, for watches.

1.5.3 Difference between a Geographical Indication and a Trademark

A trademark is a sign used by an enterprise to distinguish its goods and services from those of other enterprises. It gives its owner the right to exclude others from using the trademark. A geographical indication tells consumers that a product is produced in a certain place and has certain characteristics that are due to that place of production. It may be used by all producers who make their products in the place designated by a geographical indication and whose products share typical qualities.

1.5.4 Protection under Geographical Indication

Geographical indications are protected in accordance with national laws and under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks or special laws for the protection of geographical indications or appellations of origin. In essence, unauthorized parties may not use geographical indications if such use is likely to mislead the public as to the true origin of the product. Applicable sanctions

range from court injunctions preventing the unauthorized use to the payment of damages and fines or, in serious cases, imprisonment.

1.5.5 Manner of Protection at International Level through Geographical Indications

A number of treaties administered by the World Intellectual Property Organization (WIPO) provide for the protection of geographical indications, most notably the Paris Convention for the Protection of Industrial Property of 1883, and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration. In addition, Articles 22 to 24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) deal with the international protection of geographical indications within the framework of the World Trade Organization (WTO).

1.5.6 Generic Geographical Indication

If a geographical term is used as the designation of a kind of product, rather than an indication of the place of origin of that product, this term does no longer function as a geographical indication. Where that has occurred in a certain country over a substantial period of time, that country may recognize that consumers have come to understand a geographical term that once stood for the origin of the product - for example, "Dijon Mustard," a style of mustard originally from the French town of Dijon - to denote now a certain kind of mustard, regardless of its place of production.

1.5.7 WIPO's Role in Protecting Geographical Indications

WIPO is in charge of the administration of a number of international agreements which deal partly or entirely with the protection of geographical indications (see, in particular, the Paris Convention for the Protection of Industrial Property, and the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration). Furthermore, through the work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, made up of representatives of member States and interested organizations, WIPO explores new ways of enhancing the international protection of geographical indications.

1.6 IPR in India and Abroad

1.6.1 Origin of Intellectual Property Rights

The origin of intellectual property rights can be traced back to the ancient days when monopolies existed in the Byzantine Empire⁸³. Ancient Greece in the 7th century BC granted monopoly to cooks to exploit new recipes for one year. But a few centuries later, Emperor Zeno in

Rome rejected the concept of monopoly. Through a proclamation in 480 AD, Emperor Zeno ordered that no one should exercise monopoly upon any garment or fish or any kind of thing. By 1432, the Senate of Venice enacted a statute providing exclusive privileges to those inventing any machine or any process to speed up the making of silk. This protection was soon extended to other devices. Any new idea thus introduced started obtaining protection. The earliest of the legislations for the protection of intellectual property rights was in the area of patents⁸⁴. Thus, the origin of the intellectual property rights has a link with European enlightenment.⁸⁵ During that period people began to think that the knowledge came from the human mind working upon the senses, rather than through divine revelation, assisted by the study of ancient texts- that it became possible to imagine humans as creators and hence owners of new ideas rather than as mere transmitters of eternal verities.⁸⁶ Besides being distinctively modern, intellectual property is a dense concept; woven together from at least three complex strands of jurisprudence – copyright, patent and trademark- each with its own success in premodern custom and law, and each with its own trajectory into our own era⁸⁷

1.6.2 Development of Intellectual Property Rights (Other than India)

A. Early Antecedents of Intellectual Property

The first practice that separated out an information element was the marking of goods. The marks used to indicate reliability and reputation of the craftsman/maker. Marking of owners likely to have started with the practice of branding animals the earliest form of proprietary markings. There is wide spread evidence from the cave painting of ear-cut branding and other techniques. Indeed the cutting of animal's ears to produce an individualized sign of ownership, using a specific owner's mark is still widespread in agrarian cultures and in modern farming ear tags (and branding) continue to serve a similar function. For more than 6000 years (perhaps since animals were first domesticated), humans across the globe have marked objects they made, found or obtained it can also be said that some of the marks indicate the modern trademark today. There is considerable evidence from ownership stamps on pottery and other household items excavated from prehistoric sites in Europe and Asia indicating that such practices were widespread and common. By the time of Egyptian and Mesopotamian empires, brick makers marked their products, alongside the name of the ruling king and the owner of the building where the bricks were used. In the Greek city –states, this recognition that a particular goods might be valued more highly by virtue of the identity of the maker started to spread from the material goods to the cultural goods to the culture (and intellectual) realm as well.⁸⁸

1.6.2.1 Greek Ideas about Owning Ideas

In the Greek city states, direct support by patronage began to be supplemented by prizes for recitation in public as well as for the performances which were paid. The Sophists are the reputed to be the first group to earn significant rewards through their freelance teaching activities.

The Sophists were regarded as the teachers of the thinking and doing, they were not recognised as the intellectual providers. It was uncommon to find in Greek culture from the sixth century B.C. onwards poets who claimed to be the authors of specific works and artists who signed their paintings or illustrations. Mladen Vukmir took the appearance of makers' marks (and signature) on works of art "reliable evidence of recognition of the proprietary nature of artistic activity" being both a "recognition of personal achievement and a warning of ownership" of the creative content. In Greek society during the sixth and fifth century B.C. we can see the emergence of the idea of creativity that subsequently would underpin the wider ownership of knowledge. The romantic view of the author as individual genius that emerged in the seventeenth and eighteenth centuries therefore finds its distance origins in Greece. Poetry was considered to be the first creative activity which was commodified.

1.6.2.2 Roman Developments

In the industrial arts, Roman use of craftsman's marks continued earlier Greek practice. The mark at that time represented the honesty and integrity of the manufacturers as it has no legal status the marks' originator had no recourse against an infringement of a mark. The roman publishing industry, or more accurately the organised production of multiple copied scribal texts, emerged and expanded in the first century B.C. originally in Alexandria, then moving to Rome in the fifty years before A.D. 100. As had happened previously in Greece, authors were frequently supported by patrons and did not directly receive money from the publication of their works. A new model of authorship slowly developed, with a direct link between author and sale of specific works, and a concept of literary property developed. After the decline of the Roman Empire these early (and essentially unformalized) ideas of ownership rights in knowledge or intellectual creations did not entirely disappear. One dispute in the sixth –century Ireland has sometimes been identified as the first relatively formal copyright dispute, as no such thing as copyright existed at this time such claims are exaggerated, it concerns.

Saint Columba, who in the year 567 surreptitiously copied a psalm book, is belonging to his, teacher, Finnian of Moville. When Finnian objected, the dispute went before king Diarmed the King concluded that both the original and copy belonged to Finnian saying, "to every cow her calf, and accordingly every book its copy". Diarmed saw the book as Finnian's property the ownership of which entitled Finnian to its product, the copy. There is a considerable doubt as to whether the

reported story took place, but its mythical quality does not detract from its importance as a signal of continuing appeal of authorship and knowledge.

During the Middle Ages however the form of trademark developed from Greek and Roman Empire.

1.6.2.3 Venetian Moment and Intellectual Property

Despite the widespread development of ideas about owning knowledge, the first formalised patent system was only developed in the fifteenth century in Venice. For the first time the legal and institutional form of intellectual property rights established the ownership of knowledge and was explicitly utilised to promote innovation. At that time there was no formal constitution and no clear separation of authority among legislative, administrative and judicial bodies. Instead, custom and precedent guided government behaviour with overlapping authorities. Venice enacted its first patent statute in 1474.⁹⁴ The law passed by Venetian Senate stated: “We have among us men of great genius, apt to invent and discover indigenous devices...now, if provisions were made for work and devices discovered by such persons, so that others who may see them could not build them and take the inventors honour away, more men would then apply their genius, would discover and would build devices of great utility for our common wealth”.

The new statute –derived patents were not universally adopted by Venetian innovators, during the fourteenth and fifteenth centuries the granting of patents for monopolies as opposed to innovations was broadly similar across the continent of Europe and Britain. The first known attempt to protect craft knowledge in Venice had been a decree issued by the council of Venice on 21 May 1297 that stated: “if a physician makes a medicine based on his own secret, he too must make it only of the best materials; all must be kept within the Guild and all Guild members must swear not to pry into it” (quoted in Bugbee 1967, 20) by issuing a decree to this effect the council gave limitation on the diffusion of knowledge and the weight of law rather than merely of Guild regulation. In 1549 all Venice’s printers and booksellers were organised into guild, which allowed a full record of works to be maintained, authors were dependant on the publishers to secure publication of works through the legal formalization of protectable text.

The Venetian moment produced the skeleton of a system that has been remarkably robust in its central elements. In Venice the invention of something akin to modern intellectual property was in part a response to a new revolutionary information Technology. Printing changed the environment in which knowledge and information could be deployed. It changed the rules of the game for those who sought to profit from their control of ownership of secret process and techniques of privileged information or merely access to important scholarship. During the fifteenth century the institutionalization of the intellectual property not only was directly related to the previous customary practice but remained only one method of providing protection. Certainly there is a

coincidence between Venetian success, its domination of printing and the emergence of intellectual property that might imply some causal link. In the conventional justification for patent this link is axiomatic. Although presented in terms universal principles what the Venetian moment reveals, however that is from its legislative origin, intellectual property was not unduly concerned with the idealised individual and his right but rather it was a government-derived strategy for the development of competitive advantage and effective economic organisation. The 1474 statute was intended to shore up and improve Venice' position in a number of industrial sectors in response to the problems that were starting to beset their commercial empire at the end of the fifteenth century. But this response was driven by logic developed not by the legislators but by those who would gain from a formal ownership regime in knowledge. As intellectual property emerged as an institution, whatever subsequent justification may claim, the rights and interest of the owners of knowledge not its producers were regarded as central to legislative innovation⁹⁷

The first record of copyright case was Finnian v. Columbia⁹⁸ in 550 AD. The statute of University of Paris in 1223 legislated upon duplication of texts for the University's use. Before the late fifteenth century, works of literature were mainly religious and written by scholarly monks who worked painstaking for considerable periods of time preparing their illuminated books. Obviously, because of the massive human labour and skill required to produce such works, plagiarism of books was usually a viable consideration. Eventually it became apparent that a stronger copyright law was desirable and this was responded to by the parliament through the passing of the copyright Act 1709, popularly known as Statute of Ann (the world's first copyright statute) the statute of Annvested in authors of books a monopoly over their works, much to the surprise of the publishers. Unlike the rights granted to publishers by Royal Decree, the statutory right limited to only 14 years, renewable for an additional 14 years by the author. The statute contained a complex system of registration, notice and deposit requirement and strict compliance with those requirements was required by the English courts for many years. The preamble of the Statute of Ann was applied by English Courts for many years as the preamble recognized the importance of copyright as a means of disseminating ideas and information. It reads thus;

“An Act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times there in mentionedwhere as printers, booksellers and other persons have of late frequently taken the liberty of printing, reprinting and publishing or causing to be printed, re printed and published, books and other writings without the consent of the authors or proprietors of such books and writings to their very great detriments, and too often , to the ruin of them and their families.”

The process of enlargement of the concept of copyright had begun in eighteenth century. The Engraves Copyright Act 1734, 1766 and 1777 were enacted. In the copyright Acts 1798 and 1814, sculpture were protected, in 1833 right was given in dramatic works, extended to musical works in

1842. In America, Connecticut and Massachusetts had passed Copyrights Acts in 1783.¹⁰⁰ The congress in the same year had recommended to the various states to grant copyright protection to authors and publishers who were citizens of the United States. ¹⁰¹ In 1789 the constitution of the United States of America provided that the congress was authorised to promote the progress of science and useful arts by securing for the limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.¹⁰² The Federal copyright Act 1790 was passed in accordance with the constitutional provision¹⁰³.

1.6.3 Development of Intellectual Property Rights in India

1.6.3.1 Copyright

The western development of intellectual property law profoundly influenced the development of intellectual property rights in India. ¹⁰⁴ East India Company extended to India the English Copyright Act of 1872. In 1911 the law of copyright was codified in England through legislations like the Copyright Act 1911, the Imperial Copyright Act 1911. These legislations was the ‘Law in force’ in the Indian Territory.¹⁰⁵ The Indian Copyright Act of 1914 was a modified version of the British Copyright Act of 1911. Some of the important provisions of the act were (i) the registration of the authors work was not necessary (ii) the authors’ right came into existence as soon as the work was created (iii) protection was given not to ideas but to the material forms in which the work was expressed (iv) only original works attracted the protection of copyright law although the general principle applied was that all laws which put a restraint upon human activity and enterprise construed in a reasonable and generous spirit. (v) The term of copyright protection was fixed as the lifetime of the author and 25 years of his death. The Act of 1914 prescribed penalties for infringement of copyright which was not considered a criminal offence. With a view to consolidating and amending the old laws, the copyright Act was reenacted in 1957. ¹⁰⁶ The salient provision of the act of 1957 were :

- establishment of the copyright board ;
- expansion of definition of copyright ;
- right of the author to reacquire his right after 7 years but before expiry of 10 years of assignment ;
- issue of license to a library to make copy of any books ;
- regulation of the activities of the performing arts societies including the fees or royalties charged.

The 1983 amendment to the Copyright Act 1957 inserted section 32A and 32B providing for compulsory licenses with respect to publication of foreign works in any Indian language for the purpose of systematic infrastructural activities at low price with the permission of Copyright

Board. Section 19A empowered the copyright board upon a complaint to order revocation of the assigned copyright where either the terms are ‘harsh’ or where the publication of the work is unduly delayed. The board has also been given power to publish previously unpublished Indian works and for the protection of oral works.

The 1984 amendment the piracy became a global problem due to the rapid advances in technology and has assumed alarming proportions all over the world, all the countries started to make efforts to meet the challenges by taking stringent legislative and enforcement measures. Enough Anti-piracy measures should be taken into consideration. In a contemporary world there are three types of piracy they are, piracy of the printed word; piracy of sound recordings and piracy of cinematograph films.¹⁰⁸ To combat with this crime the bill of 1984 proposed certain amendments these are ;

- To increase the punishment provided for the infringement of the copyright, namely, imprisonment of 3 years with a minimum punishment of imprisonment of 6 month and a fine of up to Rs. 2 Lakhs with a minimum of RS. 50000.
- To provide for enhanced punishment in case of second and subsequent convictions.
- To provide for the declaration of the offence of infringement of copyright as an economic offence so that period of limitation provided in the code of criminal procedure, 1973 for offences will not be applicable to this offence.
- To specifically make the provision of the Act applicable to video films and computer programmes.
- To require the producers of records and video films to display certain information in the record, video films and containers thereof.

The 1999 amendment to the Copyright Act, 1957 inserted sections 40A and 42A to empower the central government to make provision for the broadcasting organization and performers. They also empower the central government to restrict right of foreign broadcasting organization and performers. It is in the national interest of the country to provide protection to varied types of intellectual products for the better development of the society and its culture. Foreign works and the newly developed technologies should also be protected so that scope of learning of the people can be enhanced.

The Copyright Act 1957 is the oldest intellectual property legislation in India. The Copyright Act got amended nearly five times the recent one is the 2012 amendment. The amendments of the 2012 are significant in terms of range as they address the challenges posed by the internet and go beyond these challenges in their scope.¹¹¹ The 1980’s and the 1990’s saw the digital revolution sweeping the world and the advent of internet over the World Wide Web. The global community responded to the challenges posed to the copyright system by the internet through two treaties

framed in 1996, called WIPO Copyright Treaty (WCT) and WIPO performances and Phonograms Treaty (WPPT), together known as the ‘Internet Treaties’ the treaties address the challenges relevant to the dissemination of protected material over digital networks such as the internet. The WCT deals with the protection for the authors of literary and artistic works. The WPPT extends copyright like protection to performers and producers of phonograms.

The Copyright (Amendments) Act 2012 introduced amendments to harmonise the copyright act 1957 with WCT and WPPT. The amendments Act goes much beyond the internet treaties and has introduced many changes in the copyright Act 1957. The amendments can be categorised into:

- Amendment to rights in artistic works, cinematograph films and sound recordings.
- WCT and WPPT related amendments to rights.
- Authors friendly amendments on mode of assignments and licenses to streamline business practices.
- Amendments to facilitate access to works further sub-classified into ;
 - (a) Grant of compulsory licenses
 - (b) Grant of statutory licenses
 - (c) Administration of copyright societies.
 - (d) Access to copyrighted works by the disabled
 - (e) Relinquishment of copyright
- Strengthening enforcement and protecting against internet piracy including WCT and WPPT related provision.
- Reforms of Copyright Board and other minor amendments.

Welcome reforms to administration of copyright societies and the copyright board. Overall the amendments have the signature of a reformist approach. The substantive aspects of Copyright law have brought natural conformity with the TRIPS Agreement. However, enforcement of the Copyright is not yet up to the mark of the TRIPS Agreement. Even 2012 amendment in Copyright Act has not made any development over enforcement of copyright infringement.

1.6.3.2 Patents

The history of patent regime in India is a history of legislative enactments. Even during the British rule in 1859, the grant for exclusive privilege to inventors was passed. The main aim of this Act was to enable the English patent holders to acquire the Indian market. In 1872 the Patent and Design Protection Act was passed followed by the Invention and Design Act 1888. These enactments were to honour the inventors’ creativity. The Patent and the Design Act 1911 was a comprehensive piece of legislation. it occupied the field of India till the passing of the 1970 Patent Act.¹¹⁵ It provided for an elaborate administrative regime under the management of the controller

of patent and various time bound procedural requirements for processing of application and filling of objection etc. it was after the several amendments and few committee reports that the Act of 1970 was passed. Considered the failure of the Indian Patent system to stimulate invention and encourage the exploitation of new invention for industrial purposes and suggested the following measure :

1. Compulsory licenses should be issued ;
2. Efficient machinery should be evolved to tackle the issue of abuses.

These recommendations were made part of the Indian Patents and Design Amendment Act 1950 which identified the essential pre-requisites for a nation to assimilate the benefits of a patent system. These features include the technological advancement of the country, need for encouragement of inventors and need to encourage them in the field of education the committee after careful deliberation suggested few measures for the improvement where the interest of the inventors should be protected after proper identification of the inventions, either to allow the foreigners to take part in the Indian market or put restrictions on them and the determination to withstand any pressure to sign any international conventions. This was suggested so that India could successfully develop its own economy. After the prolonged discussion the Patent Act 1970 was passed. 116 The 1970 Patent Act recognized the following salient features they are :

- patents are granted to encourage inventions and to secure that the inventive works are to be produced on a commercial scale,
- patents are not granted to enjoy a monopoly in important matters,
- two kinds of patents are recognized; product patent and process patent,
- No product patent can be granted to medicines, food items and chemicals except to their manufacturing process.

In case of grant of patent in certain substances which are not food items or drugs as such and are capable of being used as food and drugs the same are deemed to be endorsed with the words “licenses of rights” the significance is that a patent endorsed with these words, does not restrain exclusive right of the patentee. Any other person can apply for a right to use the invention after the expiry of three years from the date of sealing of the patent. In such cases the right of the patentee for exclusive use is limited for three years.

Subsequently, however it was realized that in terms of Articles 70.8 and 70.9 of the TRIPS Agreement, member countries that do not provide for product patent in the same area of pharmaceuticals and agricultural chemicals are required to provide the means to receive product application for such product with effect from the coming in to force of the Agreement (from January 1, 1995) and on completion of certain condition grant exclusive marketing rights for a period of five years or until the patent Act did not provide for grant of patents in respect of

agricultural products, chemicals pharmaceuticals and for grant of exclusive marketing rights (EMRS). 119 The patent amendment Act 1999 added a new chapter i.e. chapter IV-A consisting of sections 24-A to 24-F, with retrospective effect from 1-1- 1995, which deals with the exclusive marketing rights (EMRs) to sell or distribute an article or substance in India.

A claim for the patent of an invention for a substance itself intended for use or capable of being used as medicine or drug except:

- All medicine for internal or external use of human beings or animals,
- all substances intended to be used for or in the diagnosis, treatment , mitigation or prevention of diseases in human beings or animals,
- all substance intended to be used for or in the maintenance of public health, or the prevention or control of epidemic diseases among human beings or animals and
- Insecticides, germicides, fungicides and all other substances intended to be used for the protection of plant can be made before the controller, the application in the prescribed form will be referred to the examiner, and these provisions have been made with a view to give effect to the Treaty obligation of WTO and TRIPS Agreements.

The Patent Act too got amended several times like the Copyright Act in the year 1999, 2002 and in the year 2005. In the year 2002 the important changes have been made with respect to the Patent Act 1970 they are; a new definition ‘capable of industrial application’ is added this is defined as an invention capable of being made or used in an industry. The definition of food is strengthened by adding the words’ ‘for human consumption’. The definition of ‘invention’ has been simplified. Whereas the previous definition contained reference to art, process, method or manner of manufacture, machine, apparatus etc. including any new and useful improvements of any of them, the definition substituted by the 2002 Amendment Act simply states that invention means new product or process involving an inventive step and capable of industrial application 123 this is an improvement over the previous definition. A new definition of the Patent Co-Operation Treaty (PCT) has been added as the new amendment provides for an international application for patent, even outside India. Beside these there are other important amendments were also done with respect to the application for patents, the new amendment provides that an International application under the PCT and also an application before the controller in India can be filed simultaneously 124 the term of every patent granted after the commencement of the 2002 amendment act has been increased 20 years from the date of filling of the application for the patents. Most significant among the amendments were increase in the penalty for the unauthorised claim of patent rights has been increased from Rs. 500 to Rs. 10000125 . Similarly penalty for the refusal or failure to supply information has been raised to Rs. 20000 from Rs. 1000126. If any person being a non-registered

patent agent practices, he will be liable to pay a maximum fine of Rs. 40000 instead of Rs. 2000 under the unamended act.

The salient feature of the Patent (Amendment) Act 2005 was the introduction of product patent of medicine and Drugs from 1-1-2005127. To implement the TRIPS Agreement obligation the parliament has amended the patent act; apart from reintroducing the product patent of medicine and drugs which was permitted before 1970 the 2005 amendment has affected number of changes in the patent act 1970. The changes are (1) change in the definition of ‘inventive steps’, new invention and pharmaceuticals 128(2) introduction of requirement to communicate the adverse report of the examiner and the gist of objections etc. to the applicant by the controller 129(3) substitution of new section 25 and 26 relating to opposition to the patent. (4) Substitution of ‘granted’ in place of ‘granted and sealed’ in case of patents 130 and (5) introduction of provision to grant compulsory license for export of patented pharmaceutical products in certain exceptional circumstances¹³¹, introduced substantial changes which have far –reaching consequences in the Patent Act. The amendment introduced provisions pertaining to the claim for patent of an invention for a substance intended for use itself, or capable of being used as a medicine or drug by inserting sub-section (2) in section 5 of the Patents Act. The amendment also brought into picture a new doctrine of exclusive marketing rights (EMRS). This TRIPS Agreement stipulates that patents would be available for any invention (whether product or process) in all fields of technology, if they are new involve inventive steps and capable of industrial application. It further provides that patent shall be available and patent rights shall be enjoyed without any discrimination as to the place of invention , the field of technology and whether products are imported or locally produced. It also provides protection of plant varieties either by patents or by an effective sui generis system or by combination thereof. As stated above the Patent Act 1970 was also amended in 2005.

1.6.3.3 Trademark

The law relating to trademark has a long and chequered history of more than two hundred years ago in England the right of property in trademark was established by a series of decision of English courts by 1838 and an action for infringement of a trademark was maintainable prior to 1875, before 1875 there was only three kinds of remedies under common law for the protection of trademarks. These remedies were actions for deception, passing off and injunction. The right in the trademark could be acquired only by public user and it was protected under the law of equity. This act was found unsatisfactory and was repealed by the Patents, Design and Trademark Act 1883. The 1883 act was amended in 1888 for introducing some alteration and minor changes. In the year 1905 the Trademark Act 1905 was passed which repealed the 1883 Act. The 1905 Act was amended in the year 1919 and 1938. The law of trademarks was consolidated by the 1938 Act. In India there was no specific legislation on trademark law prior to the year 1940. However the

affected people used to have recourse to the other legislation like Specific Relief Act, 1877 for settling down the dispute with respect to trademark. Section 54 of the Specific Relief act could be invoked for the reliefs in actions relating to trademark. The Indian Penal code, 1860 also provides for the legal protection of the trademark under section 479-489. It has made using a false property mark, counterfeiting property mark used by the other, counterfeiting a mark used by the public servant, making or possession of any instrument for counterfeiting a property mark making a false mark upon any receptacle containing goods and tampering with the property mark intent to cause injury punishable. All these offences have been declared to be non-cognizable and bail able. The provision pertaining to trade marks law in the aforesaid statutes was considered to be inadequate in view of the growing industrialization and economic developments. There was a need for a special statute for the protection of trademark. The first statute Indian Merchandise Marks Act 1889 was brought to the statute book which was followed by the trademark act 1940 as a pure law on the subject. The rapid industrial growth proved that the 1940 was insufficient to meet the demands, beside this the Indian merchants faced difficulties in getting their trade mark registered in foreign countries where the production of certificate for home registration was a condition precedent for obtaining the registration. It was felt necessary for the practical purposes to remove the uncertainties with regard to the jurisdiction of the High Courts to hear appeals against the decision of Registrar. Therefore, the parliament of India passed the Trade and Merchandise marks act 1958, the 1958 occupied the field about 42 years and served its purpose. In view of developments in trading and commercial practice, increasing globalization of trade and industry to encourage investment flows and transfer of technology, need for simplification and harmonization of trademark management system and to fulfill the obligation under the TRIPS Agreement a comprehensive review of the 1958 act was felt necessary.¹³⁷ The parliament of India therefore passed the Trademark Act 1999; the act introduced several changes in the Indian Trademark law which provided for the:

- Registration of trademark for services, in addition to goods. This is novel feature introduced by the 1999 Act.
- Registration of trademarks, which are imitation of well known trademark not to be permitted, besides enlarging the ground for refusal of registration, consequently the provision for defensive registration of trademark have been proposed to be omitted.
- Simplifying the procedure for registration of registered user and enlarging the scope of permitted use.
- Providing for the registration of collective marks owned by the association etc.

1.6.3.4 Design

Great Britain was the first country to offer protection for the Designs. The Textile Design was the first to receive legal protection. In 1787, the first enactments for the protection of design was made in U.K. for the encouragement of arts of design and printing linens, cotton , calicoes and muslins , by vesting their properties in the designers , printers and proprietors for a limited period. However shortly thereafter the life of the design was extended and soon it was made perpetual. In 1839, the protection was enlarged to cover design for printing woven fabrics. An updating measure was taken in 1842 to amend the existing laws of the Design Act. The statute relating to Patents, Design and trademarks remained separate till in 1883. After 1905, the Patents and Design law remained together.

So far India is concerned the first legislation on the subject was the Patents and Design Act, 1872. The Act was passed to extend similar privileges to the inventors of new patterns and design in British India, though for a much shorter period. It included the new term ‘new manufacture’ any new and original pattern or design or the application of such pattern or design to any substance or article manufacture. The Invention and the Design Act, 1888 which consolidated and amended the law relating to the protection of invention and design contained in a separate part. Ultimately the British Patent and the Design Act, 1907 had become the basis of the Indian Patent and Design Act 1911. In 1970 the Patents Act repealed the provision with respect to the Patents law from the Patents and Design Act 1911, there after the Design Act 1911 continued to be the only enactment dealing with the industrial design in India till the Design Act 2000 has been passed the provision of the act has got similarities with the 1911 Design Act. In the Design Act of 2000 certain changes had been made so that the legal system of the protection of industrial design requires to be made more efficient in order to ensure effective protection to the registered design. It is also intended that the law does not unnecessarily create any system which are not required by the act. To achieve this purpose the new Act incorporates certain amendments some of them are namely;

- It enlarges the scope of the definition of article and design and introduces definition of ‘original’;
- It contains provision for identification of non-registerable designs.
- It revokes the period of secrecy of two years of a registered design.
- It enhances the quantum of penalty imposed for infringement of registered design.
- It contains provision for restoration of lapsed design; etc.

The Act of 2000 increased the amount of penalty in case of piracy of a registered design from rupees five hundred to rupees twenty five thousand. In case the proprietors of a registered design chooses to claim damages then the amount which may be paid to him has been fixed for rupees fifty thousand instead of rupees one thousand. This provision will prove to be helpful in decreasing

the ratio of infringement of registered design. The Act of 2000 introduced other important provision for avoidance of certain restrictive conditions in contract, leases and certain licenses in view of the TRIPS Agreement which provides for the control of anti - competitive in contracted license. This provision will prove helpful in removing the difficulties in granting licenses of registered design by proprietor. The Trademark Act 1940 lays down specific law on this subject which was repealed by the Trade and Merchandise Marks Act 1958 that served its purpose for four decades. In view of developments in trading and commercial practices, increasing globalization of trade and industry, need to encourage investment flows and transfer of technology, need for simplification and harmonization of trade and to fulfill obligation of TRIPS Agreement, the Indian Parliament enacted the Trademark Act 1999 (the 1999 Act) repealing the 1958 Act is to amend and consolidation the law relating to trademark for goods and services and prevention of the use of fraudulent marks. The most significant change which the new Act sought to bring about the registration of trade marks for services in addition to goods.

1.6.3.5 New Dimensions

In addition to copyright, patents, designs, trademarks there are various sui-generis regimes that grant rights akin to intellectual property rights. Geographical indication, plant varieties and farmers right are examples of sui-generis rights. In India the Geographical indication of Goods (Registration and Protection) Act 1999 introduced a new concept of geographical names free from the concept of the distinctiveness. . In this Act, geographical indication is defined as an indication used to identify the goods whether natural or manufactured goods emanating from a particular area or territory known for the particular quality or characteristics of the goods. Such geographical names if used by any person in relation to goods originating entirely from different places are likely to cause confusion or deception. The Geographical indication of Goods Act is designed to protect the use of such geographical indication from infringement by others and protect the consumers from confusion and deception through the process of registration of such indication by law. The object of the geographical indication of goods act is precisely this. The protection of the Plant Varieties and Farmers Rights Act 2001 has also introduced another new concept in the field of IPRs. In view of the ever increasing population all over the world, the necessity for increasing agricultural production has become very important. This can be made possible only by creating new varieties of plant which will produce qualitatively and quantitatively higher yields of food grains, pulses, seeds and fruits of all varieties. Creation of such varieties has become possible by scientific research which involves expenditure of money, labour and intellectual effort. To encourage scientific research and creates incentive for producing new plant varieties the persons or organisation which produce such varieties should be rewarded either by granting them patent rights

or by an effective sui generis system. The government of India had decided to adopt a sui generis legislation to give protection to breeders of new varieties of plants.

The intellectual property regime has been subject to criticism throughout its long history. These critiques have seemingly become more withering in recent years. An innovative industry continue to play a more significant role in the national economy, awareness of intellectual property has grown, along with the diversity of perspective troubled by the intellectual property law's implication. In an era where information can be immediately disseminated in infinite quantities around the globe, the notion that an innovation can be an object of possession has been changed. To such critics the concept the concept of property in information is little more than a bad metaphor. Others commentators are troubled that intellectual property extends the value of the market places to ideas and, in their belief, ultimately to knowledge and thought, some view intellectual property as a one –way ratchet ever favouring the expansion of rights . In recent years, for example the term of copyright protection has significantly increased the scope of patent protection has expanded to include business methods and other post – industrial innovations and trademark law has embraced the expansive dilution doctrine. Against these developments there seems to be little on the balance sheet favouring consumers. As innovators continue to develop new technologies, new forms of personal expression and new business strategies, the intellectual property law will continue to recreate it.

'Geographical indication' indicates that particular goods originate from a country, region or locality and have some special characteristics, qualities or reputation, which are attributable to its place of origin, prior to 1999 there was no specific legislation in India on geographical indication which could adequately protect the interest of the producers. Despite her being party to the TRIPS Agreement, India did not enact a law on geographical indication.

The enactment of the Protection of Plant Varieties and Farmers Right Act 2001 was an outcome of the India's obligation which arose from art 27(3)(b) of the TRIPS Agreement which obliges members to protect plant varieties either by patent or by effective sui generis system or by any combination thereof. India decided to protect plant varieties by a sui generis law i.e Plant Varieties Act. Integrated circuit plays a significant role for the advancement of technology, especially for electronic purpose and information technology. Integrated circuits are used in a large range of products including mobile phones, television, watches, radio, and washing machine data processing, equipment etc. There is a growing need to create those layout designs which reduce the dimension of the integrated circuit and simultaneously increase their function. The smaller the integrated circuit the less the material needed for its manufacture, and the smaller the space needed to accommodate it. The creation of a new layout- design of an integrated circuit involves enormous investment, both in terms of money and the time of highly qualified experts. In order to reward and encourage an adequate level of investment of human, financial and technological resources, and

also to fulfil her obligation under the TRIPS Agreement, India has enacted the Semiconductor Integrated Circuit Layout Design Act 2000 (Layout-Design Act)

1.6.4 Enforcement of Intellectual Property Rights

The law relating to enforcement of intellectual property rights begins since the time of origin of the rights. As the intellectual property rights are statutory rights the enforcement of these rights is provided by the statute. The first statute the world over on intellectual property rights is the English Statute of Anne (the English Copyright Act 1709). The statute of Anne came into force with effect from January 1, 1710. Under this statute the right of the author was recognized for a limited period of time and in case of infringement of the right the enforcement procedure was recognized by the said statute. Thus, injunction, damages, account of profits, etc are traditional methods of enforcement of intellectual property rights. After the entry into force of the TRIPS Agreement,

India has given effect to its different provisions through amending the existing intellectual property law or legislating new ones. In this process, it has amended its Copyright Act 1957 (in 1994 and subsequently, in 1999 and 2012) and the Patent Act, 1970 (by the Patent Amendment Act 2002) replaced the Trade and Merchandised Mark Act 1958 with the new Trade Mark Act 1999, and enacted Geographical indication of Goods (Registration and Protection) Act 1999, the Integrated Circuit Layout Design Act 2000, and the Plant Varieties and Farmers Protection Act, 2001. Beside, these specific IPR laws, the other general laws also provide enough scope for the enforcement of the IPRs. The Indian Penal Code makes counterfeiting an offence (section 483), which is punishable with imprisonment and fine. The Specific Relief Act, 1963 provides the relief by way of injunction, interim as well as permanent for the activity infringing the right of the owner.

1.7 Genesis and Development - The Way from WTO to WPO

- **WTO :** There are a number of ways of looking at the World Trade Organization. It is an organization for trade opening. It is a forum for governments to negotiate trade agreements. It is a place for them to settle trade disputes. It operates a system of trade rules. Essentially, the WTO is a place where member governments try to sort out the trade problems they face with each other.

The WTO was born out of negotiations, and everything the WTO does is the result of negotiations. The bulk of the WTO's current work comes from the 1986–94 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO is currently the host to new negotiations, under the 'Doha Development Agenda' launched in 2001.

Where countries have faced trade barriers and wanted them lowered, the negotiations have helped to open markets for trade. But the WTO is not just about opening markets, and in some circumstances its rules support maintaining trade barriers - for example, to protect consumers or prevent the spread of disease.

At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations. These documents provide the legal ground rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.

The system's overriding purpose is to help trade flow as freely as possible - so long as there are no undesirable side effects - because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be 'transparent' and predictable.

Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

- **WIPO :** It was the first major international treaty formed to help the inventors of one country to obtain protection in other countries for their creation or invention. The roots of this organization can be traced back to 1833 with the birth of Paris Convention for the protection of industrial property. It is responsible for the administration of various multilateral treaties dealing with the legal and administrative aspects of intellectual property. WIPO is a specialized agency of the United Nations which is dedicated to ensuring that the rights of creators and owners of intellectual property are protected worldwide. However, the main objective of the convention is to give Protection against false indication and unfair competition. WIPO undertakes development cooperation for developing countries through advice, training and furnishing of documents. WIPO was established by the convention in 14 July 1967, which entered into force in 1970. Resolve the private disputes on intellectual property and harmonizes the Intellectual Property (IP) laws and procedures. Provide legal and technical assistance to developing and other countries. Exchange intellectual property information among member countries. Provide services for international application for industrial property rights. WIPO has promoted the interaction among different stakeholders at the national level to include, for example agriculture, health, science and technology, etc.

- The agreement between WIPO and WTO was concluded in December 1995. Implementation of procedures for the protection of national emblems. Translation of natural laws, Notification of and access to national laws and regulation, Technical knowledge, The agreement provides cooperation in the following areas : A similar agreement on cooperation between WIPO and WTO came into force on 1 January 1996.

1.8 TRIPS

1.8.1 Introduction

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). It sets down minimum standards for the regulation by national governments of many forms of Intellectual Property (IP) as applied to nationals of other WTO member nations. TRIPS was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) between 1989 and 1990 and is administered by the WTO.

The TRIPS agreement introduced intellectual property law into the multilateral trading system for the first time and remains the most comprehensive multilateral agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the Doha Declaration. The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all."

Specifically, TRIPS requires WTO members to provide copyright rights, covering authors and other copyright holders, as well as holders of related rights, namely performers, sound recording producers and broadcasting organisations ; geographical indications ; industrial designs ; integrated circuit layout-designs ; patents; new plant varieties ; trademarks ; trade names and undisclosed or confidential information. TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

1.8.2 History

TRIPS was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1984-1994. Its inclusion was the culmination of a program of intense lobbying

by the United States, supported by the European Union, Japan and other developed nations. Campaigns of unilateral economic encouragement under the Generalized System of Preferences and coercion under Section 301 of the Trade Act played an important role in defeating competing policy positions that were favored by developing countries like Brazil, but also including Thailand, India and Caribbean Basin states. In turn, the United States strategy of linking trade policy to intellectual property standards can be traced back to the entrepreneurship of senior management at Pfizer in the early 1980s, who mobilized corporations in the United States and made maximizing intellectual property privileges the number one priority of trade policy in the United States .

After the Uruguay round, the GATT became the basis for the establishment of the World Trade Organization. Because ratification of TRIPS is a compulsory requirement of World Trade Organization membership, any country seeking to obtain hard access to the numerous international markets opened by the World Trade Organization must enact the strict intellectual property laws mandated by TRIPS. For this reason, TRIPS is the most important multilateral instrument for the globalization of intellectual property laws. States like Russia and China, that were very unlikely to join the Berne Convention have found the prospect of WTO membership a powerful enticement.

Furthermore, unlike other agreements on intellectual property, TRIPS has a powerful enforcement mechanism. States can be disciplined through the WTO's dispute settlement mechanism.

1.8.3 The Requirements of TRIPS

TRIPS requires member states to provide strong protection for intellectual property rights. For example, under TRIPS :

- Copyright terms must extend at least 50 years, unless based on the life of the author. (Art. 12 and 14)
- Copyright must be granted automatically, and not based upon any "formality," such as registrations, as specified in the Berne Convention. (Art. 9)
- Computer programs must be regarded as "literary works" under copyright law and receive the same terms of protection.
- National exceptions to copyright (such as "fair use" in the United States) are constrained by the Berne three-step test.
- Patents must be granted for "inventions" in all "fields of technology" provided they meet all other patentability requirements (although exceptions for certain public interests are allowed (Art. 27.2 and 27.3) and must be enforceable for at least 20 years (Art 33).
- Exceptions to exclusive rights must be limited, provided that a normal exploitation of the work (Art. 13) and normal exploitation of the patent (Art 30) is not in conflict.

- No unreasonable prejudice to the legitimate interests of the right holders of computer programs and patents is allowed.
- Legitimate interests of third parties have to be taken into account by patent rights (Art 30).
- In each state, intellectual property laws may not offer any benefits to local citizens which are not available to citizens of other TRIPS signatories under the principle of national treatment (with certain limited exceptions, Art. 3 and 5). TRIPS also has a most favored nation clause.

The TRIPS Agreement incorporates by reference the provisions on copyright from the Berne Convention for the Protection of Literary and Artistic Works (Art 9), with the exception of moral rights. It also incorporated by reference the substantive provisions of the Paris Convention for the Protection of Industrial Property (Art 2.1). The TRIPS Agreement specifically mentions that software and databases are protected by copyright, subject to originality requirement (Art 10).

Article 10 of the Agreement stipulates : "1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971). 2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself."

1.8.4 Controversial Cases which led to a Revision of TRIPS

- **Access to essential medicines :** The most visible conflict has been over AIDS drugs in Africa. Despite the role that patents have played in maintaining higher drug costs for public health programs across Africa, this controversy has not led to a revision of TRIPS. Instead, an interpretive statement, the Doha Declaration, was issued in November 2001, which indicated that TRIPS should not prevent states from dealing with public health crises. After Doha, PhRMA, the United States and to a lesser extent other developed nations began working to minimize the effect of the declaration. A 2003 agreement loosened the domestic market requirement, and allows developing countries to export to other countries where there is a national health problem as long as drugs exported are not part of a commercial or industrial policy. Drugs exported under such a regime may be packaged or colored differently in order to prevent them from prejudicing markets in the developed world.

In 2003, the Bush administration also changed its position, concluding that generic treatments might in fact be a component of an effective strategy to combat HIV. Bush created the PEPFAR program, which received \$15 billion from 2003–2007, and was reauthorized in 2008 for \$48 billion over the next five years. Despite wavering on the issue of [compulsory licensing], PEPFAR began to distribute generic drugs in 2004-5.

- **Software patents under TRIPs Agreement :** Another controversy has been over the TRIPS Article 27 requirements for patentability "in all fields of technology", and whether or not this necessitates the granting of software and business method patents. According to article 10 of the TRIPS Agreement the appropriate instrument to protect software protection is copyright. The importance of this instrument has recently been confirmed by the US Supreme Court (Oracle America, Inc. v. Google, Inc.).
- **Implementation in developing countries :** The obligations under TRIPS apply equally to all member states, however developing countries were allowed extra time to implement the applicable changes to their national laws, in two tiers of transition according to their level of development. The transition period for developing countries expired in 2005. The transition period for least developed countries to implement TRIPS was extended to 2013, and until 1 January 2016 for pharmaceutical patents, with the possibility of further extension. It has therefore been argued that the TRIPS standard of requiring all countries to create strict intellectual property systems will be detrimental to poorer countries' development. It has been argued that it is, *prima facie*, in the strategic interest of most if not all underdeveloped nations to use the flexibility available in TRIPS to legislate the weakest IP laws possible.

This has not happened in most cases. A 2005 report by the WHO found that many developing countries have not incorporated TRIPS flexibilities (compulsory licensing, parallel importation, limits on data protection, use of broad research and other exceptions to patentability, etc.) into their legislation to the extent authorized under Doha.

This is likely caused by the lack of legal and technical expertise needed to draft legislation that implements flexibilities, which has often led to developing countries directly copying developed country IP legislation, or relying on technical assistance from the World Intellectual Property Organization (WIPO), which, according to critics such as Cory Doctorow, encourages them to implement stronger intellectual property monopolies.

Banerjee and Nayak shows that TRIPS has a positive effect on R&D expenditure of Indian pharmaceutical firms.

1.8.5 Post-TRIPS Expansion

In addition to the baseline intellectual property standards created by the TRIPS agreement, many nations have engaged in bilateral agreements to adopt a higher standard of protection. These collection of standards, known as TRIPS+ or TRIPS-Plus, can take many forms. General objectives of these agreements include :

- The creation of anti-circumvention laws to protect Digital Rights Management systems. This was achieved through the 1996 World Intellectual Property Organization Copyright Treaty (WIPO Treaty) and the WIPO Performances and Phonograms Treaty.
- More stringent restrictions on compulsory licenses for patents.
- More aggressive patent enforcement. This effort has been observed more broadly in proposals for WIPO and European Union rules on intellectual property enforcement. The 2001 EU Copyright Directive was to implement the 1996 WIPO Copyright Treaty.
- The campaign for the creation of a WIPO Broadcasting Treaty that would give broadcasters (and possibly webcasters) exclusive rights over the copies of works they have distributed.

1.9 Nature of Intellectual Property

IPR are largely territorial or geographical based rights (that is it may differ from nation to nation) except copyright, which is global in nature in the sense that it is immediately available in all the members of the Berne Convention. These rights are awarded by the State and are monopoly rights meaning thereby that no one can use these rights without the consent of the right holder. Except the copy rights and trade secrets, all the other intellectual property rights need to be regularly renewed. IPR can be assigned, gifted, sold and licensed like any other property. It would however, be possible to utilize geographical indications for protecting some agriculture and traditional products.

1.10 Industrial Property

Industrial property is one of two subsets of intellectual property (the other being copyright), it takes a range of forms, including patents for inventions, industrial designs (aesthetic creations related to the appearance of industrial products), trademarks, service marks, layout-designs of integrated circuits, commercial names and designations, geographical indications and protection against unfair competition. The object of industrial property consists of signs conveying information, in particular to consumers, regarding products and services offered on the market. Protection is directed against unauthorized use of such signs that could mislead consumers, and against misleading practices in general. Industrial property is Intangible property such as inventions, industrial designs, trademarks and geographical indications, which is afforded protection under national and international intellectual property laws.

The broad application of the term “industrial property” is set out in the Paris Convention, Industrial property legislation is part of the wider body of law known as Intellectual Property (IP) which refers broadly to the creations of the human mind. IP rights protect the interests of innovators and creators by giving them rights over their creations. The Convention Establishing the World Intellectual Property Organization (1967) does not seek to define intellectual property, but

lists the following as protected by IP rights : literary, artistic and scientific works ; performances of performing artists, phonograms and broadcasts ; inventions in all fields of human endeavor; scientific discoveries ; industrial designs; trademarks, service marks, and commercial names and designations ; protection against unfair competition ; “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”.

Countries generally have laws to protect IP for two main reasons :

- To give statutory expression to the rights of creators and innovators in their creations and innovations, balanced against the public interest in accessing creations and innovations ;
- To promote creativity and innovation, so contributing to economic and social development.

Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications ;

1.10.1 Patent

A **patent** is an exclusive right granted for an invention, a product or process that provides a new way of doing something, or that offers a new technical solution to a problem.

1.10.2 Trademark

A Trademark is a sign (logo) that serves to distinguish the goods or services of one organisation or individual from those of another.

- A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. The sign may consist of : Words (including personal names) ; Figurative elements ; Letters ; Numerals, shapes, signs, slogans or logos of the good or its packaging.
- For a trademark to be accepted, it has to be ; Original, Distinctive and Non-descriptive.
- Exclusive right over a trademark is valid for 10 years, however it is possible to renew the trademark indefinitely.

The origin of trademarks dates back to ancient times when craftsmen reproduced their signatures, or “marks”, on their artistic works or products of a functional or practical nature. Over the years, these marks have evolved into today’s system of trademark registration and protection. The system helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality – as indicated by its unique trademark – meet their needs.

1.10.3 Industrial Design

An industrial design refers to the ornamental or aesthetic aspects of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional

features, such as patterns, lines or colour. Industrial designs are applied to a wide variety of industrial products and handicrafts : from technical and medical instruments to watches, jewellery and other luxury items ; from house wares and electrical appliances to vehicles and architectural structures ; from textile designs to leisure goods.

To be protected under most national laws, an industrial design must be new or original and non-functional. This means that an industrial design is primarily of an aesthetic nature, and any technical features of the article to which it is applied are not protected by the design registration. However, those features could be protected by a patent.

1.10.4 Geographical Indications

Protection of Geographical Indication (GI) has, over the years, emerged as one of the most contentious IPR (Intellectual Property Rights) issues in the realm of the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). TRIPS defines GI as any indication that identifies a product as originating from a particular place, where a given quality, reputation or other characteristics of the product are essentially attributable to its geographical origin. Also a geographical indication (GI) gives exclusive right to a region (town, province or country) to use a name for a product with certain characteristics that corresponds to their specific location.

The Geographical Indications of Goods (Registration and Protection) Act, 1999 protect the GI's in India. Registration of GI is not compulsory in India. If registered, it will afford better legal protection to facilitate an action for infringement.

1.11 Technological Research

Technological research proposes stimulating challenges starting from the new scenarios arising since 20th century, the environmental imperative imposes new responsibilities, the industrial production, requires the rethinking of the concept of "material culture" as well as new information technologies lead to new models of theoretical and conceptual elaboration. We live a new condition, defined by Augé surmodernite, where history fades into actuality, space turns into images and individuals from being actors become spectators.

The industrial design moves from tackling "traditional culture" of the project to the "culture of innovation" for which the "know-how", which allows the transition from theory to practice, is replaced by the "can-do" that is the design of a technological solution allowing to model artifacts in a new way and, as a consequence, introducing a different interaction between users and the context.

1.12 Inventions and Innovations

In its purest sense, “invention” can be defined as the creation of a product or introduction of a process for the first time. “Innovation,” on the other hand, occurs if someone improves on or makes a significant contribution to an existing product, process or service.

Consider the microprocessor. Someone invented the microprocessor. But by itself, the microprocessor was nothing more than another piece on the circuit board. It’s what was done with that piece ; the hundreds of thousands of products, processes and services that evolved from the invention of the microprocessor ; that required innovation.

Not all inventions are patentable. Patent laws generally require that an invention fulfill the following conditions, known as the requirements or conditions of patentability :

- **Patentable subject matter :** The invention must fall within the scope of patentable subject matter as defined by national law. This varies from one country to another. Many countries exclude from patentability such subject matter as scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, methods for medical treatment (as opposed to medical products), and any invention where prevention of commercial exploitation is necessary to protect public order, morality or public health.
- **Industrial applicability (utility) :** The invention must be of practical use, or capable of some kind of industrial application.
- **Novelty :** The invention must show some new characteristic that is not known in the body of existing knowledge (referred to as prior art) in its technical field.
- **Inventive step (non-obviousness) :** The invention must show an inventive step that could not be deduced by a person with average knowledge of the technical field.
- **Disclosure of the invention :** The invention must be disclosed in a clear and complete manner in the patent application to be carried out by a person skilled in the art (a person conversant in the field of technology concerned).

The conditions of novelty and inventive step must be fulfilled by a certain date, generally the date on which the application is filed. An exception to this rule, covered by an applicant's right of priority, is regulated by the Paris Convention. The right of priority means that, having filed an application in one member country of the Paris Convention, the same applicant (or their success or in title) may, within a specified time period, apply for protection for the same invention in any of the other member countries. These subsequent applications will not be invalidated by reason of any acts occurred between the filing date of the earliest application and the subsequent applications.

For example, if an inventor first files an application for patent protection in Japan, and later a second application, with respect to the same invention, in France, it is sufficient that the conditions of novelty and non-obviousness existed at the date on which the Japanese application was filed. In

other words, the later, French application retains priority over any applications relating to the same invention filed by other applicants between the date of the inventor's first and second application. This is subject to the period between the two dates not exceeding 12 months.

1.13 Important Examples of IPR

1.13.1 Examples of IPR Disputes of other Countries

Here are four of the most famous intellectual property disputes between world-renowned company brands, and, yes - a macaque monkey.

1.13.1.1 Napster's Software

If you've never heard of Napster Inc., that's because the free peer-to-peer music file-sharing company no longer exists. In 2000, A and M Record Inc. and superstars including Dr. Dre and Metallica, won significant lawsuits against Napster citing copyright infringement on an unrivalled scale.

They claimed that Napster's software - which allowed twenty million users to freely share MP3 files of their favourite music online was unlawful. The case set a precedent in 21st century copyright law regarding the impact of peer-to-peer file sharing on the earnings of the creators and owners of original artistic content.

In 2007, the high-end signature hand-bag and luggage maker, Louis Vuitton Malletier, lost an outrageous copyright infringement case against comedy fashion company Haute Diggity Dog.

1.13.1.2 Chewy Vuitton

The comedy designers had released a line of parody products named Chewy Vuitton, to go along with other memorable knock-offs such as Chewnel No.5 and Sniffany & Co.

Remarkably, the U.S Court of Appeals ruled against the claim of copyright breach, stating that because of the element of parody, the products were adequately differentiated and unique, thereby negating any copyright or trademark infringement.

1.13.1.3 Barbie Doll vs Toy Doll

Mattel Inc., creators of the Barbie doll, won a huge case against rival toy doll maker, MGA Entertainment Inc. back in 2008.

MGA claimed that Mattel had copied their latest range of Bratz dolls in order to steal back MGA's dominant market share. The designs were simply too similar, featuring disproportionately large heads and slim bodies.

However, lawyers working on Mattel's behalf managed to turn the case around, proving that an ex-Mattel designer who had subsequently worked on the design team for MGA had used designs that he had created while employed at Mattel.

In fact, those doll designs were still the legal property of Mattel. MGA was ordered to pay damages to the tune of \$100,000,000 and temporarily remove their dolls from shelves. It just goes to show, instigating an intellectual property claim can end up being an expensive miscalculation.

1.13.1.4 | Naruto vs David Slater

In 2011, Naruto, a curious macaque monkey in Indonesia picked up nature photographer David Slater's camera and took one of the most famous selfies in recent years.

David Slater's copyright infringement claim against those who had copied or downloaded the photo from his online posts was rejected, the court ruling that Mr. Slater did indeed own the camera, but not the photo.

A counter claim filed in 2015 on behalf of Naruto the macaque sought to claim damages against Mr. Slater and others, and secure the intellectual property rights under Naruto's name as the author of a work of art.

The poignant argument in the case is whether it can be said that Naruto knew what he was doing. We know what we think – what about you ?

If being at the forefront of developments in technology and the intellectual asset protection of art and music sounds like the career you want, check out the online Master of Laws (LLM) in Legal Practice from The University of Law.

1.13.2 | India's Top 10 IP Cases

1.13.2.1 | Bayer Corporation v. Union of India

In a very significant development, the Delhi High Court held that 'export' of a patented invention for experimental purposes is also covered under Section 107A of the Patents Act, 1970 (India's Bolar exemption) and thus does not amount to patent infringement. It accordingly allowed Natco to export Bayer's patented drug 'Sorafenib Tosylate' (for which it was granted a compulsory license in 2012) to China for the purpose of conducting development/ clinical studies and trials. However, two months later, the order was stayed by a Division Bench which asked Natco to file a separate application seeking permission for exporting the drug for experimental purposes and observed that it would be permitted to export only a limited quantity of the drug.

1.13.2.2 Patel Field Marshal Agencies Ltd. v. PM Diesels Ltd. & Ors.

In a landmark decision, the Supreme Court conclusively settled an extremely important issue that whether, upon the institution of a suit for infringement under the Trademarks Act, the remedies for rectification of a trademark under Sections 47 and 57 (before the IPAB) are still available to the litigant, in case the plea of validity has been abandoned by the relevant litigant. The Supreme Court took note of the conflicting decisions of the various High Courts, and found that where the question of validity has not been taken up by the court, the statutory authority has the power to decide a rectification claim by the litigant. However, in a case where the court comes to a *prima facie* conclusion on validity, the only remedy available is an appeal.

1.13.2.3 Toyota Jidosha Kabushiki Kaisha v. M/S Prius Auto Industries Ltd.

In a notable development for Indian trademark law, the Supreme Court reiterated that IP rights are “territorial” and not “global”. The court refused to grant an injunction restraining the defendant from using its registered trademark ‘Prius’ even though Toyota was a prior user of the mark. It reasoned that even though Toyota’s mark was well-known outside India, Toyota failed to prove that it enjoyed a reputation in the ‘Indian’ market at the relevant point of time i.e. the year 2001 when the defendant began using the mark in India.

1.13.2.4 Kent RO Systems Ltd. & Anr. v. Amit Kotak & Ors

In a welcome development, the Delhi Court ruled that there is no obligation on the intermediaries to screen content alleged to be violative of intellectual property laws before publishing the same (i.e. on an ex-ante basis). It, therefore, refused to direct E-bay to remove listings of water purifiers that allegedly infringed Kent RO’s registered design from its website or to issue a prohibitory injunction preventing E-bay from publishing the same in the future.

1.13.2.5 Thiagarajan Kumararaja v. M/s Capital Film Works and Anr.

The judgment filled up some of the void in the jurisprudence relating to the inter-play between the rights of the producer of a cinematographic film and that of the authors of underlying works. The Madras High Court, deciding on the question whether dubbing of a film into another language would fall foul of the rights of the scriptwriter, held that the producers have the right to replace the sound recording of the original film with a different language. The Court based its finding on an expansive reading of the phrase ‘communication to the public’ under Section 2(ff) and observed that ‘dubbing’ would fall under the said definition. The Court also observed that dubbing is distinct from translation, and the producer’s rights to communicate the film to the public, through dubbing, does not affect the rights of the author of the underlying script. Nevertheless, on the question of whether the right to communicate a film to the public includes the right to remake the film entirely,

the Court answered the same in the negative as it felt that this would entail making changes to the underlying script, without the author's consent.

1.13.2.6 | Paramount Surgimed Ltd. v. Paramount Bed India Pvt. Ltd.

In a notable decision on the effect of misrepresentation in a suit, which seeks equitable reliefs, the Delhi High Court held that suppression or misrepresentation of facts in the plaint was fatal to a claim for equitable relief. The bigger take away from the decision is that even when the Plaintiff has registered a mark, dishonesty on its part would result in its right to claim equitable relief, including relief in the form of interim injunction, being rendered nugatory.

1.13.2.7 | Neetu Singh v. Rajiv Saumitra

The judgment shed light into the relatively uncharted territory of Section 17 (c) of the Copyright Act and clarified that when the ownership of copyright is disputed between an employer and an employee, it is the terms of employment that have to be looked into. The Court went on to even clarify what is to be looked into to determine the terms of employment. For instance, in the case of a Director, it is any subsisting agreement, or the Articles of Association or the Memorandum of Association of the company. Relying on this principle, the Court held that in the instant case although the Plaintiff was working as a Director of the Defendant No. 2 company from 2012 to 2014, it noted that the Defendants had failed to prove that the literary work was authored as part of her duties and obligations as a Director and granted an injunction in favour of the Plaintiff.

1.13.2.8 | Dashrath B. Rathod & Ors. v. Fox Star Studios India Pvt. Ltd. & Ors.

In yet another Justice Patel master class, the learned judge came down heavily on the tendency of parties to approach the court at the eleventh hour seeking injunction against impending movie releases. The judgment laid down in no uncertain words that the attempts to snatch last minute injunctions at the cost of putting both the opposite party and the court machinery under undue pressure should in no way be tolerated, especially when not even a *prima facie* case of copyright infringement was made out by the Plaintiff in the instant case. In a double whammy to the Plaintiff, who sought injunction against the release of the Defendant's movie *Phillauri*, Justice Patel, relying on the provisions of the Commercial Courts Act, 2015, imposed a cost of Rs. 5,00,000 lakhs on the Plaintiff.

1.13.2.9 | Anil Kapoor Film Co. Pvt. Ltd. v. Make My Day Entertainment & Anr.

In a very well-reasoned interim order, the Bombay High Court refused to grant an ad-interim injunction in a claim of passing off by the makers of the film 'Veere Ki Wedding' (under production) against the makers of the film 'Veere Di Wedding' (then soon to be released). The

court noted that not only was the title (“Veere Di Wedding” translating into “My best friend’s wedding”) extremely common, the plaintiff needed to prove reputation through consumer recognition – i.e. the title should be associated with the public mind as referring only to the plaintiff’s work, which according to it was next to impossible in this case because the movie was not even in existence. It also rejected the argument on misrepresentation, clarifying that just by virtue of having made a film with a similar title, the defendant cannot be said to have attempted to deceive the public.

1.13.2.10 Krishna Plastic Industries v. Controller of Patents and Designs & Anuradha Doval v. The Controller of Patents And Designs & Ors.

In appeals against two orders of the Controller of Designs, the Calcutta High Court clarified some important aspects of the Designs Act, 2000, namely, the scope of ‘new and original design’ and the responsibility of the Controller in issuing orders. In the first judgment, inter alia, the court considered the distinction between a shape and configuration and a pattern or ornament, and opined that ornaments or patterns, particularly if pronounced (as in the case of grooves in a hot water bottle or markings on a chair) may also constitute a ‘shape or ornament’, applied upon an article, and asked the Deputy Controller to make a reasoned decision on the issue as to whether the surface pattern constitutes a shape, configuration, pattern or ornament. In the second judgment the court held that ‘in order to claim novelty, there has to be a significant change or difference in the design, although, it may have a common source.’ It further held that the Controller has the expertise to decide the matter of similarity between the two designs, and that the Appellate Court would not interfere with the Controller’s order unless it found that the Controller ‘proceeded on some wrong principle’.

1.14 Two Marks Questions with Answers

Q.1 What are Intellectual Property Rights (IPR) ?

Ans. : IPR is a general term covering patents, copyright, trademark, industrial designs, geographical indications, layout design of integrated circuits, undisclosed information (trade secrets) and new plant varieties.

Q.2 What are the legislations covering IPRs in India ?

Ans. : Patents : The Patents Act, 1970 as amended in 1999, 2002 and 2005. **Design :** The Designs Act, 2000. **Trade mark :** The Trade Marks Act, 1999. **Copyright :** The Copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999. **Layout design of integrated circuits :** The Semiconductor Integrated Circuits Layout Design Act, 2000. **Protection of undisclosed information :** No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872. **Geographical indications :** The Geographical Indications of Goods

(Registration and Protection) Act, 1999. **Plant varieties** : The Protection of Plant Variety and Farmers' Rights Act, 2001.

Q.3 What do the TM, ®, © and "Pat. Pend." symbols mean ? When can I use them ? Should I use them ?

Ans. : TM : Common law trademark (see also SM for common law service mark). Can be used ANY TIME, regardless of whether you have filed a federal trademark application. Lets the world know that you claim that material as a valid trademark.

® : Federally registered trademark or service mark. You can only use this AFTER you have received a U.S. federal registration. The trademark laws of foreign countries differ, however, so it is important to consult an attorney before using this designation on goods that will be sent outside of the U.S.A.

© : Copyright designation, which can be used any time, regardless of whether a federal registration has been secured. In fact, it is ALWAYS a good idea to include this symbol, along with the year the copyright was created and the name of the individual or entity responsible for its creation at a conspicuous location on the copyrighted material.

Pat. Pend. : Indicates that you have filed a federal application for a patent with the U.S. Patent and Trademark Office. Again, the laws of foreign countries differ, so consult an attorney before using this designation on goods that will be sent out of the U.S.A. If all goes well and your patent "issues," you should put a notice of the U.S. patent number on the patented item, such as "U.S. Patent No. XXX,XXX,XXX."

Q.4 Who are responsible for administration of IPRs in the country ?

Ans. : Patents, designs, trademarks and geographical indications are administered by the Controller General of Patents, Designs and Trademarks which is under the control of the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. Copyright is under the charge of the Ministry of Human Resource Development. The Act on layout-design of integrated circuits is administered by the Ministry of Telecommunication and Information Technology. Protection of Plant Varieties and Farmers' Rights Authority, Ministry of Agriculture administers the Act on plant variety.

Q.5 What is industrial property ?

Ans. : Industrial property includes : (a) Patents (b) Utility models (c) Industrial designs (d) Trademarks, service marks and trade names (e) Indication of source or appellations of origin (this is same as the geographical indications adopted in TRIPS).

Q.6 What is copyright ?

Ans. : Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work.

Q.7 Does copyright apply to titles and names ?

Ans. : Copyright does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information. Copyright does not protect ideas or concepts. To get the protection of copyright a work must be original.

Q.8 What is a patent ?

Ans. : A patent is a right granted to an individual or enterprise by the government that excludes others from making, using, selling or importing the patented product or process without prior approval.

Q.9 What are the advantages of owning a patent ?

Ans. : A patented product is likely to improve brand perception and potentially enable your business to charge a premium. Additionally,

- i) Patents can increase your business revenues while slowing down rivals for years to come.
- ii) With exclusive rights, the owner of the patent controls the use of the invention for a full twenty years.
- iii) Patents can be sold and licensed like other forms of property.

Q.10 Why should you opt for a patent attorney/agent ?

Ans. : Although the patent law does not mandate the assistance of a patent attorney or a patent lawyer, it is highly advisable to hire an agent because :

- Patent documents are complex in nature and requires technical expertise and legal knowledge to draft and file the application.
- Legislation of many countries requires an applicant, who resides in a foreign country or if the principal place of business is in some other country, be represented by a patent agent or attorney.
- According to the Indian Patents Act, 1970, a patent agent is entitled to :
- Practice before the Controller.
- Prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.

Q.11 Can I obtain a patent and keep my invention secret ?

Ans. : No. Patents are granted by patent offices in exchange for a full disclosure of the invention. In general, the details of the invention are then published and made available to the public at large. It should be noted that publication can take place at various stages of the procedure. In some countries, the patent document is only published after the granting of a patent. In other countries, patent applications are generally published 18 months from the filing date or, where priority has been claimed, the priority date (for more details, see the website of your national IP office).

Q.12 What does the term 'Geographical Indications (GI)' stand for ?

Ans. : Geographical indications are names associated with goods which identify such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or a locality in that territory, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin. Some examples of GI are Darjeeling Tea, Pochampalli Saree, Chanderi Saree, Kanjeevaram Silk, Champagne Wine, Scotch Whisky.



UNIT - II

2

Registration of IPRs

Syllabus

Meaning and practical aspects of registration of Copy Rights, Trademarks, Patents, Geographical Indications, Trade Secrets and Industrial Design registration in India and Abroad.

Contents

- 2.1 *Introduction*
- 2.2 *Meaning and Practical Aspects of Registrations of Copyrights*
- 2.3 *Meaning and Practical Aspects of Registrations of Trademarks*
- 2.4 *Meaning and Practical Aspects of Registrations of Patents*
- 2.5 *Geographical Indications*
- 2.6 *Trade Secrets*
- 2.7 *Registration of Industrial Designs in India and Abroad*
- 2.8 *Two Marks Questions with Answers*

2.1 Introduction

According to World Intellectual Property Organization (WIPO), intellectual property refers to creations of mind : inventions; literary and artistic works; and symbols, names and images used in commerce. It can be divided into two categories :

1. Industrial property which includes patents for inventions, industrial designs, trademarks and geographical indications.
2. Copyright which covers literary works (e.g. novels, poems etc.), movies, music and/or any other artistic works.

As an inventor, owner or author of such intellectual property you have rights, similar to in case of any other physical property. It prevents any other person or entity to use it without your permission along with giving due credit and even monetary compensation. To legally enforce such right, you need to register your creation with the Office of Controller General of Patents, Designs and Trade Marks under Ministry of Commerce and Industry, Government of India.

File in your application as soon as possible, as First-to-file rule is of great significance for registration of intellectual property. If two or more applications are identical or similar only the first application will be given importance for registration.

Patents : Patent implies a new product or process capable of industrial application. The product or process should be a new invention that has not been used before in the public domain. Term for registered patents in India is 20 years. Application for registration has to be filed in the patents office of relevant territorial jurisdiction by the inventor either alone or jointly or through assigned legal representative. An important thing to understand is that these rights are territorial in nature and do not extend beyond the jurisdiction for which it is granted. If you want to reserve the intellectual property right in different countries, you can either directly file separate applications in the respective countries or file Patent Cooperation Treaty (PCT) application simultaneously with application in Form-1. Along with the application (Form 1), you need to give in a provisional or complete specification of your invention (Form 2), details of any foreign filings for the same (Form 3), declaration that the product or process is your invention (Form 5), and Power of Attorney appointing a patent agent in Form 26, if any. The process of registration, payment of fees, renewal is online and will require Digital Signature of the applicant.

Industrial design : According to WIPO, an industrial design refers to the ornamental or aesthetic aspects of an article. A design may consist of 3-D features, such as the shape or surface of

an article, or 2-D features such as patterns, lines or color. Industrial designs are applied to a wide variety of industrial products and handicrafts. The designs wing of the patents office under Government of India administers the registration process. The process for registration is online - you need to create an account, fill in the application, digitally sign the form (Form 5 and 44) and make the payment.

Trademarks : Trademarks/Wordmarks are distinctive or unique sign or mark that identifies that a certain product or service belongs to or are provided by an individual or entity.

A trademark provides recognition and familiarity among its consumers. Regulation of trademarks in India is governed under Trademarks Act, 1999. This Act is in conformity with World Trade Organization recommendations and Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The Trademarks Department under the Office of Controller General of Patents, Designs & Trade Marks administers trademarks in India. The process of registration is online and is valid for 10 years, with an option to renew the same for another 10 years.

To register, you need to create an account, fill in the application, digitally sign the form (TM-1) and make the payment. The application for registration of trademarks is sent to the Trade Marks Registry Office within whose territorial limits the principal address of business is situated .The application is then examined to check if the relevant mark is enough to distinguish and differentiate an applicant's good or service and whether it is prohibited for registration under any other law or is identical or similar to any existing marks.

The examination of all applications is done centrally in Mumbai. On consideration of the application, if accepted, the registrar publishes the same in Trade Marks Journal, an official gazette of the Trade Marks Registry, which is published weekly on the official website. In case somebody wants to contest the grant of trademark, same should be intimated to the office within 4 months from the date of publication in the official gazette.

Below is the detailed flow chart of how the whole registration process works

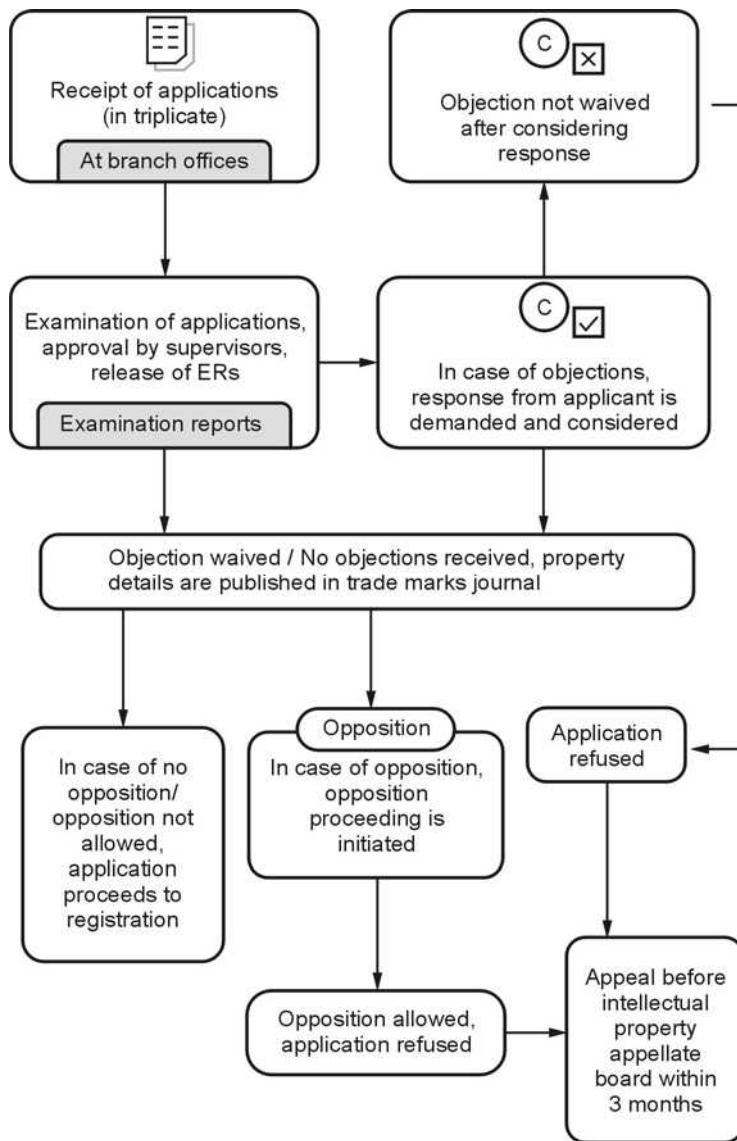


Fig. 2.1.1 Process for intellectual property registration

2.2 Meaning and Practical Aspects of Registrations of Copyrights

2.2.1 Introduction

Copyright, is a bundle of rights, which grants protection to the unique expression of ideas. Ideas per se cannot be protected; it is the expression of ideas in a material medium that is the subject matter of copyright protection. Copyright is a negative right and the owner of a copyright gets the right to prevent others from copying his work without his consent towards a commercial end. However, at the same time it gives to the author an exclusive right for the commercial exploitation

of his work. Copyright in India is recognized virtually worldwide under the Berne Convention and the applicable law of its member nations. Registering your work with the Registrar of Copyright Office is basically a copyright protection insurance policy. Copyright protection arises automatically the moment the author fixes the work in a tangible form (i.e. when a writer writes her story), without the author having to do anything. Legal service India was designed by copyright attorneys to offer creative people complete yet affordable copyright protection services, right from the comfort of your home saving your time, energy and thousands of rupees in legal fees.

The domain of copyright includes original literary (which includes computer programmes). Copyright assumes supreme importance for computer programmers and designers. An author, or a designer looks forward to the commercial benefits accruing from his work, apart from the intellectual satisfaction derived from creating the work. Many a times, unscrupulous traders copy software programmes and sell it at a price that is just a fraction of the original work. This in turn, eats into the commercial benefits that the author of an original work rightly expects and deserves. Copyright law comes in here and secures the interests of the author, punishes the infringer and thus provides incentive to the creation of original works. A copyright can be transferred or can be assigned or licensed for a consideration. Copyright, unlike the other intellectual property rights does not require any formal procedures as such and affords protection during the lifetime of the author and sixty-years thereafter. List of creative works protected by the copyright law in India are :

- Literary work which includes computer program and computer databases apart from book.
- Sound recording or audio recorded files which could include songs, dialogues recorded Etc.
- Cinematograph film includes films, videos, cartoon films. It is advisable to include creative rights in the various agreements between parties in the initial stage itself.
- Artistic work including a painting, a sculpture, a drawing such as a map, chart or diagram, an engraving, a photograph, architecture/ artistic craftsmanship and dramatic work.
- Musical work meaning staff notations and written music.

Copyright subsists only in certain works. The term work means any of the following namely :

- A literary, dramatic, musical or artistic work,
- A cinematograph film
- A sound recording,

Government work means a work which is made or published by or under the direction or control of :

- i) The Government or any department of Government,
- ii) Any Legislature in India,
- iii) Any Court, Tribunal or other judicial authority in India.

2.2.2 Things that cannot be Copyrighted in India

Ideas, methods, or systems : Ideas, methods, and systems are not covered by copyright protection, this includes making, or building things; scientific or technical methods or discoveries; business operations or procedures; mathematical principles; formulas, algorithms; or any other concept, process, or method of operation.

Commonly known information : This category includes items that are considered common property and with no known authorship. Examples include standard calendars, height and weight charts, telephone directories, tape measures and rulers, and lists or tables taken from public documents. A phrase such as "The sky is blue" also falls under this category since there is no known authorship associated with it.

Choreographic works : A choreographic work, whether original or not, is not subject to copyright protection unless it has been videotaped or notated. The same applies to speeches that have not been transcribed before or after they are given, as well as any other types of performances.

Names, Titles, Short phrases, or Expressions : Also exempt: names, titles, short phrases, or expressions-such as that catchy slogan you came up with for your business-product descriptions, pseudonyms, titles of works, and business names. The good news is that while they are not protected by copyright, if they pertain to your business (for example, goods and services) they can be protected with a trademark. Recipes also fall under this category. Specifically the listing of ingredients (even if it's your own recipe ingredients) is not protected by copyright. This applies to formulas, compounds, and prescriptions as well. There are exceptions however, such as when recipes are compiled in a cookbook for instance or if the recipe is accompanied by "substantial literary expression," a term that refers to text such as directions, or when there is a combination of recipes, there may be a basis for copyright protection.

Fashion : Fashion that is, a shirt, dress, or other article of clothing is not protected by copyright law. Despite the fact that copyright law protects such things as architectural design works or works of the visual arts, fashion is all about clothing and accessories, which under copyright law are considered "useful articles." It is possible however, to copyright a specific fabric pattern, but not the actual dress. And, it should be noted that while designs can be copyrighted in a particular format in India.

2.2.3 Necessity of Copyright Registration

The object of copyright law is to encourage authors composers and artists to create original works by rewarding them with the exclusive right for a limited period to reproduce the works for the benefit of the public. On the expiry of the term copyright the works belong to the public

domain and anyone may reproduce them without permission. The exclusive right given to the author is a negative right that is to say, a right to prevent others from copying or reproducing the work. Copyright like patent right, is a monopoly restraining the public from doing that which, apart from the monopoly, it would be perfectly lawful for them to do. The monopoly is itself right and just, and is granted for the purpose of preventing persons from unfairly availing themselves of the work of others, whether that work be scientific, literary or artistic. Other objects are;

- Copyright registration is necessary to protect the creators, creative work such as music, books, manuscripts, software's, films, fashion designs, website etc from being copied and used for commercial purposes without the creators permission thus causing tremendous loss to the creator. Copyrights operates against unauthorized copying, the taking of another's creation, without paying for it.
- Copyright is essentially a creation of statute, the copyright act makes it clear that no person shall be entitled to copyright or any similar rights, in any work whether published or unpublished, otherwise than in accordance with the provisions of the Act.
- Copyright registration of creative work protects your creativity from being stolen or duplicated, and gives you a confirmed legal right over your creation.
- Copyright registration gives your creative work a legal status, thereby making it an intellectual property, giving you exclusive legal right over your creation.
- Copyright registration guarantees speedy justice.
- Copyright registration is necessary to obtain legal right over your creative work. Legal right is a full-proof stamp of ownership of your creative work, which none can take away from you, that is primarily the biggest reason why one should register their copyright immediately on completion of one's creative work.
- Copyright registration establishes a public record of your copyright and puts everyone in the world on notice that you have sought and claim copyright protection under the copyright laws.
- You cannot sue anyone for copyright infringement until you have filed for copyright protection with the Registrar of Copyright Office.
- No award for statutory damages or attorneys fees will be made for any infringement of a copyright in an unpublished work which occurs prior to the submission of the copyright registration documents. The same holds true for published works, unless the copyright registration is made within three months after the first publication.
- If the registration of your work is done within five years from its creation, it is considered Prima Facie Evidence in court. Prima facie evidence means that if you ever went to court, proof of the copyright registration with the Registrar of Copyright Office would be sufficient evidence of your ownership of the copyrighted material.

The only way for another party to win would be for them to present evidence showing :

- That they had a pre-existing copyright claim to the work.
- That you permitted them to use your work.
- That you didn't actually create the work.
- That you stole it from them.

2.2.4 Form of Register of Copyrights

- 1) The register of copyrights as per the Act to be kept both in physical and electronic form in six parts, namely -
 - Part I Literary works other than computer programmes, tables and compilations including computer databases and dramatic work
 - Part II Musical works
 - Part III Artistic works
 - Part IV Cinematograph films
 - Part V Sound recordings
 - Part VI Computer programmes, tables and compilations including computer databases
- 2) As specified in Form XIII of the register of copyrights shall contain these particulars.

A) Application for registration of copyright :

- All Application for registration of copyright shall be made in Form XIV and in Form XV every application for registration of changes in the particulars of copyright entered in the register of copyright shall be made.
- Each application has to be separately submitted and must be accompanied by the fee specified in the second schedule in this regard.
- The application must be signed by the applicant only. i.e. An author or owner of right. If the application is submitted by the owner of copyright, than no objection certificate issued by the author is mandatory.
- An application for registration of an unpublished work must be submitted along with two copies of the work.
- Every application for registration of a computer programme shall accompanied by the source and object code.
- Every application for registration in respect of an artistic work which is or is capable of being used (in relation to any goods or services), such application shall include a statement to that effect and shall be accompanied by a certificate from the Registrar of Trade Marks referred to in

Section 3 of the Trade Mark Act, 1999, to the effect that no trade mark identical with or deceptively similar to such artistic work has been registered under that Act in the name of, or that applicant.

- In respect of an artistic work which is capable of being registered as a design under the Designs Act, 2000, such application, shall be accompanied by a statement in the form of an affidavit containing the following, namely-
 - a) The artistic work has not been registered under the Designs Act, 2000; and
 - b) The artistic work has not been applied to an article through industrial process and reproduced more than fifty times.
- Registration application can be filed in the Copyright Office in person or by post or by online filing facility as provided on the website of the Copyright Office.
- It is mandatory that the person applying for registration has to give notice of his application to every such person who claims or has any interest in the subject-matter of the copyright or disputes the rights of the applicant to it.
- If within thirty days of filling the application, no objection to such registration is received by the registrar of copyrights, the registrar of copyrights shall if satisfied that the particulars given in the application are correct and, enter such particulars in the register of copyrights.
- If the registrar of copyrights receives any objections for such registration within the time specified in [sub-rule (10)], or, if he or she is not satisfied about the correctness of the particulars given in the application, he or she may, after holding such inquiry as he or she deems fit, enter such particulars of the work in the register of copyrights as he or she considers necessary.
- The registrar of copyrights shall give an opportunity of hearing before rejecting any application filed for registration of any work.
- The process of registration is completed only after a copy of the entries made in the register of copyrights is signed and issued by registrar of copyrights or by Deputy registrar of copyrights, to whom such authority is delegated.
- The registrar of copyrights shall, send, wherever practicable, a copy of the entries made in the register of copyrights to the parties concerned.

B) Rectification and correction of entries in the register of copyrights

- For the entries specified in section 49 the registrar of copyrights may, either suo motu or on application of any interested person amend, or alter the register of copyrights, after giving, wherever practicable, to the person affected by such amendment or alteration, and communicate to such person the amendment or alteration so made.

- The Registrar of Copyrights shall rectify the entries made in the Register of Copyrights after an order is being passed by the Board on an application made by Registrar of the Copyrights in this behalf under section 50.

C) Copyright Indexes

- Copyright Office keeps the following Indexes both in physical and electronic form for each and every part of the Register of Copyrights, namely;
 - A general Author Index;
 - A general Title Index
 - An Author Index of works in each language; and
 - A Title Index of works in each language
- Every Index shall be arranged alphabetically in the form of cards.

D) Inspection of the Register of Copyrights and Indexes :

The Register of Copyrights and indexes thereof shall at all reasonable time be open to inspection any person in such manner and subject to such conditions as the Registrar of Copyrights may specify. The online search or inspection of the Register of Copyrights and indexes can be utilised by making online payment of fee as specified in the Schedule.

E) Copies and extracts of the Register of Copyrights and Indexes :

- Any one shall be entitled to take copies of, or make extracts from, the Register of Copyrights or Indexes on payment of the fee as specified in the Second Schedule subject to supervision as the Registrar of Copyrights may arrange.
- To furnish a certified copy of entries made in the Register of Copyrights and Indexes thereof, An application to The Registrar of Copyrights has to be made along with payment of the fee specified in the Second Schedule.

Copyright Filing Requirements in India

Applicant's particulars : Name, Address, Citizenship For corporate entities: Country of incorporation, Nature of entity (e.g. private limited company, public listed company) Clear specimen of the Work (5 Copies of the Work) Electronic Form or Physical Form

Copyright Particulars

Form; Statement of Particulars, in triplicate; Statement of further particulars, in triplicate; A No Objection Certificate; Copyright Notice;

Under Certificate of Posting ; Copy of the work in triplicate; Power of Attorney;

Power of Attorney : Notarized Power of Attorney (must be filed at the time of filing the application)

2.2.5 Steps Involved in Making a Registration of Copyright

- Application in triplicate with prescribed fee.
- Application to serve notice of his application to every person who has any interest in the subject-matter.
- If the Registrar receives no objection for registration within 30 days of receipt of application by him, he shall, is satisfied about the correctness of particulars, enter such particulars in objection, he may, after holding such inquiry as he deems fit, enter such particulars of the work in the Register of Copy rights which he considered proper.
- Registrar then sends copies of the entries made in the Register to the parties concerned.
- Appeal : Any person aggrieved by the decision or order of Registrar of Copyright, may, within three months from the date of the order or decision, appeal to the Copyright Board.

2.2.6 Time for Processing Application

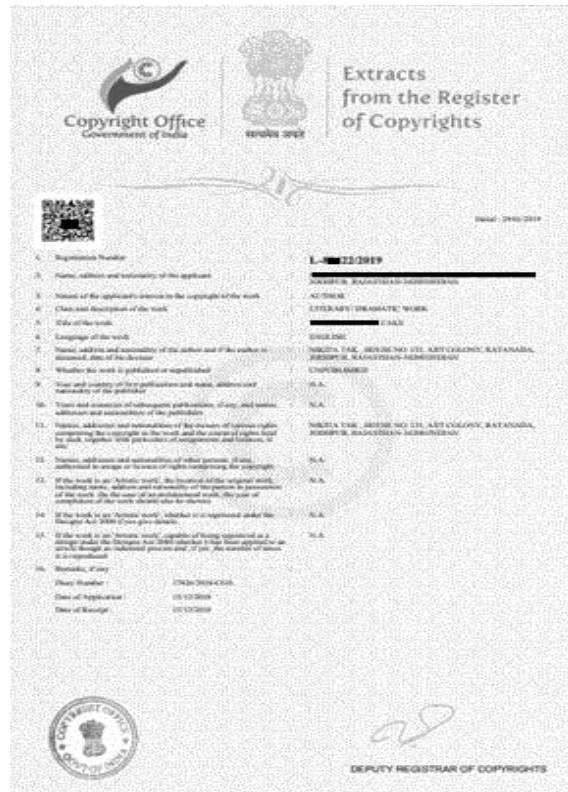
From the date of submission to certification it has its own time duration.

- First 30 days is the cooling period, during this period if anyone wants to make an objection can do so.
- If none makes an Objection than it goes in the process of scrutiny.
- If there is any error or suspicion in the application, it will get into Objection.
- If no Objection is found then it goes into Copyright Registration Clearance.
- A permanent Copyright Registration number will be assigned.
- Finally after nearly six months you will receive the Certificate via Indian Postal

2.2.7 Copyright Certificate Issued by Government of India

The certificate of registration under the copyright Act will only *prima facie* show that the particulars mentioned therein are entered in the copyright register. The mere fact that something is entered in the copyright register, does not, as a matter of law, establish that what is registered is in fact and in law copyrightable subject-matter.

This is so because the *sine qua non* to the existence of copyright, is the expenditure of skill and labour on any work which originated from its author and unless the original work on which skill and labour has been expended by its author is produced in court to *prima facie* show that the work has originated from the author, it cannot be said that there is copyright in the work.



2.2.8 Scope and Extent of Copyright Registration

These Days the Copyright Law has become Global India being a member of Berne Convention has Made the validity of your certificate to over 177 countries.

2.2.9 Process to get Copyright of a Song

A Song contains a bundle of additional copyrights involved i.e Song has Musicians, Lyricist, Singer, Sound Recorder, Composer and Producer, in most cases each aspect is done by various individuals, it is their sum total contribution, that leads to the creation of an audio recorded Song, hence to register such a creative work, NOC from each has to be obtained, only then can a Song be copyrighted, If even a single one of those involved rejects to give NOC copyright registration for a song will fail.

2.2.10 Protection of Copyright in Film, Script, Translation and Dubbing

A script is a written text of a movie. Therefore, it is different from story and the screenplay though there is an element of overlapping. Similarly, the dubbing is different from translation. A film with a sound track with dubbing is meant to provide a film with a sound track with a different language from the original. In dubbing, what is important is the lip movement. Thus no verbatim

translation is possible in an activity of dubbing. Under the Copyright Act of 1957, both a literary work and a cinematograph film would come under its purview thus, entitled for protection. They both operate on different fields. They are not meant to be seen in conflict with each other. A copyright of cinematograph film shall not affect the separate copyright of a work, which forms part of it.

2.3 Meaning and Practical Aspects of Registrations of Trademarks

2.3.1 Introduction

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by intellectual property rights. Popularly known word "Brand Name" is referred as "Trademark" in legal terms. A Trademark means any symbol, word, name, device, numerals or combination of both, which can be represented graphically can be registered as trademark. A trademark is unique symbol which distinguishes your goods or services from others. The trademark which is registered for services are known as the service marks.

At the national/regional level, trademark protection can be obtained through registration, by filing an application for registration with the national/regional trademark office and paying the required fees. At the international level, you have two options: Either you can file a trademark application with the trademark office of each country in which you are seeking protection, or you can use WIPO's Madrid System.

In principle, a trademark registration will confer an exclusive right to the use of the registered trademark. This implies that the trademark can be exclusively used by its owner, or licensed to another party for use in return for payment. Registration provides legal certainty and reinforces the position of the right holder, for example, in case of litigation.

The term of trademark registration can vary, but is usually ten years. It can be renewed indefinitely on payment of additional fees. Trademark rights are private rights and protection is enforced through court orders.

Kinds of trademark can be registered : A word or a combination of words, letters, and numerals can perfectly constitute a trademark. But trademarks may also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances, or color shades used as distinguishing features - the possibilities are almost limitless.

2.3.2 Advantages of Trademark Registration

Few benefits of trademark registration are;

Exclusive rights : The owner of Registered Trademark enjoys exclusive right over the trademark. The owner can use the same for all the products falling under the class(es) applied. Further, the owner can enjoy the sole ownership of the Trademark and can stop other from the unauthorised use of the Trademark under the same class where it is registered. It gives the right to sue the unauthorized user of the Trademark Registered.

Builds trust and goodwill : The established quality of your product and services are known by everyone through the trademark and which establishes trust and goodwill among the customers in market. It helps in creating permanent customers who are loyal and always opt for the same brand.

Differentiates product : It makes easy for customers to find your products. It makes your product and identity of products different from that of the existing and foreseen competitors and acts as efficient commercial tool. The logo can communicate your vision, quality or unique characteristic of your company and any organisation.

Recognition to product's quality : It gives recognition to the quality of the product. Customers attach the product's quality with the brand name and this image is created in the market about the quality of a particular brand which helps in attracting new customers as they can differentiate the quality of a product by the logo/brand name.

Creation of asset : Registration of Trademark creates an intangible asset i.e. Intellectual Property for an organisation. Registered trademark is a right created which can be sold, assigned, franchised or commercially contracted. Also, the Trademark is an intangible asset which gives the advantage to the organisation.

Use of ® symbol : Once the trademark is registered you can use the ® symbol on your logo stating that it is a registered trademark and no one can use the same trademark. It is exclusive of all types of usages as well as rights. If someone else use the trademark then you can also sue the party if the trademark is registered.

Protection against infringement : No competitor or other person can use the wordmark or logo registered by you under trademark. However, if in any case one uses it without the approval of the owner of trademark or make any deceptive use of same, the owner can get the legal protection under the Act and stop the person doing so.

Protection for 10 Years at low cost : Online Trademark registration is done on a very low maintainability cost. Once you register the trademark you have to just pay the maintenance cost and renewal cost which is after 10 years of registering the trademark. It is cost efficient and helps your company create an unique image.

Global trademark registration : If one wants to register the trademark in countries other than India, the trademark registered in India can be used as basis of registration there. For any person

willing to expand outside India, the trademark registered in India can provide a good base along with the established goodwill in the country.

Attract human resources : Young minds aspire to join big Brands as it acts as a magnate. It inspires the positive image of the organisation and thus candidates are attracted towards them easily. This reduces the cost towards hiring and related activities.

Although registration with the PTO is not required for a trademark to be protected, registration does confer a number of benefits to the registering party. Registration gives a party the right to use the mark nationwide. Registration constitutes nationwide constructive notice to others that the trademark is owned by the party. Registration enables a party to bring an infringement suit in federal court. Registration allows a party to potentially recover treble damages, attorneys fees, and other remedies. Finally, registered trademarks can, after five years, become "incontestable," at which point the exclusive right to use the mark is conclusively established.

Applications for registration are subject to approval by the PTO. The PTO may reject a registration on any number of grounds.. For example, the PTO will refuse to register generic marks or descriptive marks that have not attained secondary meaning. The PTO can also reject "immoral or scandalous" marks, certain geographic marks, marks that are primarily surnames, and marks that are likely to cause confusion with existing marks. As noted above, rejection of the mark does not necessarily mean that it is not entitled to trademark protection; it means only that the mark is not entitled to the additional benefits . Some states also have their own registration systems under state trademark law.

2.3.3 Conditions when Trademark Rights can be Lost

The rights to a trademark can be lost through abandonment, improper licensing or assignment, or genericity. A trademark is abandoned when its use is discontinued with an intent not to resume its use. Such intent can be inferred from the circumstances. Moreover, non-use for three consecutive years is *prima facie* evidence of abandonment. The basic idea is that trademark law only protects marks that are being used, and parties are not entitled to warehouse potentially useful marks.

- **Trademark rights can also be lost through improper licensing or assignment :** Where the use of a trademark is licensed (for example, to a franchisee) without adequate quality control or supervision by the trademark owner, that trademark will be canceled. Similarly, where the rights to a trademark are assigned to another party in gross, without the corresponding sale of any assets, the trademark will be canceled. The rationale for these rules is that, under these situations, the trademark no longer serves its purpose of identifying the goods of a particular provider.

- **Trademark rights can also be lost through genericity.** Sometimes, trademarks that are originally distinctive can become generic over time, thereby losing its trademark protection. *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111 (1938). A word will be considered generic when, in the minds of a substantial majority of the public, the word denotes a broad genus or type of product and not a specific source or manufacturer. So, for example, the term "thermos" has become a generic term and is no longer entitled to trademark protection. Although it once denoted a specific manufacturer, the term now stands for the general type of product. Similarly, both "aspirin" and "cellophane" have been held to be generic. *Bayer Co. v. United Drug Co.*, 272 F.505 (S.D.N.Y. 1921). In deciding whether a term is generic, courts will often look to dictionary definitions, the use of the term in newspapers and magazines, and any evidence of attempts by the trademark owner to police its mark.

2.3.3.1 Trademark Infringement

If a party owns the rights to a particular trademark, that party can sue subsequent parties for trademark infringement. The standard is "likelihood of confusion." To be more specific, the use of a trademark in connection with the sale of a good constitutes infringement if it is likely to cause consumer confusion as to the source of those goods or as to the sponsorship or approval of such goods. In deciding whether consumers are likely to be confused, the courts will typically look to a number of factors, including :

- the strength of the mark;
- the proximity of the goods;
- the similarity of the marks;
- evidence of actual confusion;
- the similarity of marketing channels used;
- the degree of caution exercised by the typical purchaser;
- the defendant's intent.

So, for example, the use of an identical mark on the same product would clearly constitute infringement. If I manufacture and sell computers using the mark "Apple," my use of that mark will likely cause confusion among consumers, since they may be misled into thinking that the computers are made by Apple Computer, Inc. Using a very similar mark on the same product may also give rise to a claim of infringement, if the marks are close enough in sound, appearance, or meaning so as to cause confusion. So, for example, "Applet" computers may be off-limits; perhaps also "Apricot." On the other end of the spectrum, using the same term on a completely unrelated product will not likely give rise to an infringement claim. Thus, Apple Computer and Apple

Records can peacefully co-exist, since consumers are not likely to think that the computers are being made by the record company, or vice versa.

Between the two ends of the spectrum lie many close cases, in which the courts will apply the factors listed above. So, for example, where the marks are similar and the products are also similar, it will be difficult to determine whether consumer confusion is likely. In one case, the owners of the mark "Slickcraft" used the mark in connection with the sale of boats used for general family recreation. They brought an infringement action against a company that used the mark "Sleekcraft" in connection with the sale of high-speed performance boats. Because the two types of boats served substantially different markets, the court concluded that the products were related but not identical. However, after examining many of the factors listed above, the court concluded that the use of sleekcraft was likely to cause confusion among consumers.

2.3.3.2 Trademark Dilution

In addition to bringing an action for infringement, owners of trademarks can also bring an action for trademark dilution under either federal or state law. Under federal law, a dilution claim can be brought only if the mark is "famous." In deciding whether a mark is famous, the courts will look to the following factors :

- The degree of inherent or acquired distinctiveness;
- The duration and extent of use;
- The amount of advertising and publicity;
- The geographic extent of the market;
- The channels of trade;
- The degree of recognition in trading areas;
- Any use of similar marks by third parties;
- Whether the mark is registered.

Under state law, a mark need not be famous in order to give rise to a dilution claim. Instead, dilution is available if :

- The mark has "selling power" or, in other words, a distinctive quality; and
- The two marks are substantially similar. *Mead Data Central, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 875 F.2d 1026 (2d Cir. 1989).

2.3.3.3 Defenses to Trademark Infringement or Dilution

Defendants in a trademark infringement or dilution claim can assert basically two types of affirmative defense: fair use or parody.

- Fair use occurs when a descriptive mark is used in good faith for its primary, rather than secondary, meaning, and no consumer confusion is likely to result. So, for example, a cereal manufacturer may be able to describe its cereal as consisting of "all bran," without infringing upon Kellogg's rights in the mark "All Bran." Such a use is purely descriptive, and does not invoke the secondary meaning of the mark. Similarly, in one case, a court held that the defendant's use of "fish fry" to describe a batter coating for fish was fair use and did not infringe upon the plaintiff's mark "Fish-Fri." Such uses are privileged because they use the terms only in their purely descriptive sense.
- Finally, certain parodies of trademarks may be permissible if they are not too directly tied to commercial use. The basic idea here is that artistic and editorial parodies of trademarks serve a valuable critical function, and that this critical function is entitled to some degree of First Amendment protection. The courts have adopted different ways of incorporating such First Amendment interests into the analysis. For example, some courts have applied the general "likelihood of confusion" analysis, using the First Amendment as a factor in the analysis. Other courts have expressly balanced First Amendment considerations against the degree of likely confusion. Still other courts have held that the First Amendment effectively trumps trademark law, under certain circumstances. In general, however, the courts appear to be more sympathetic to the extent that parodies are less commercial, and less sympathetic to the extent that parodies involve commercial use of the mark.

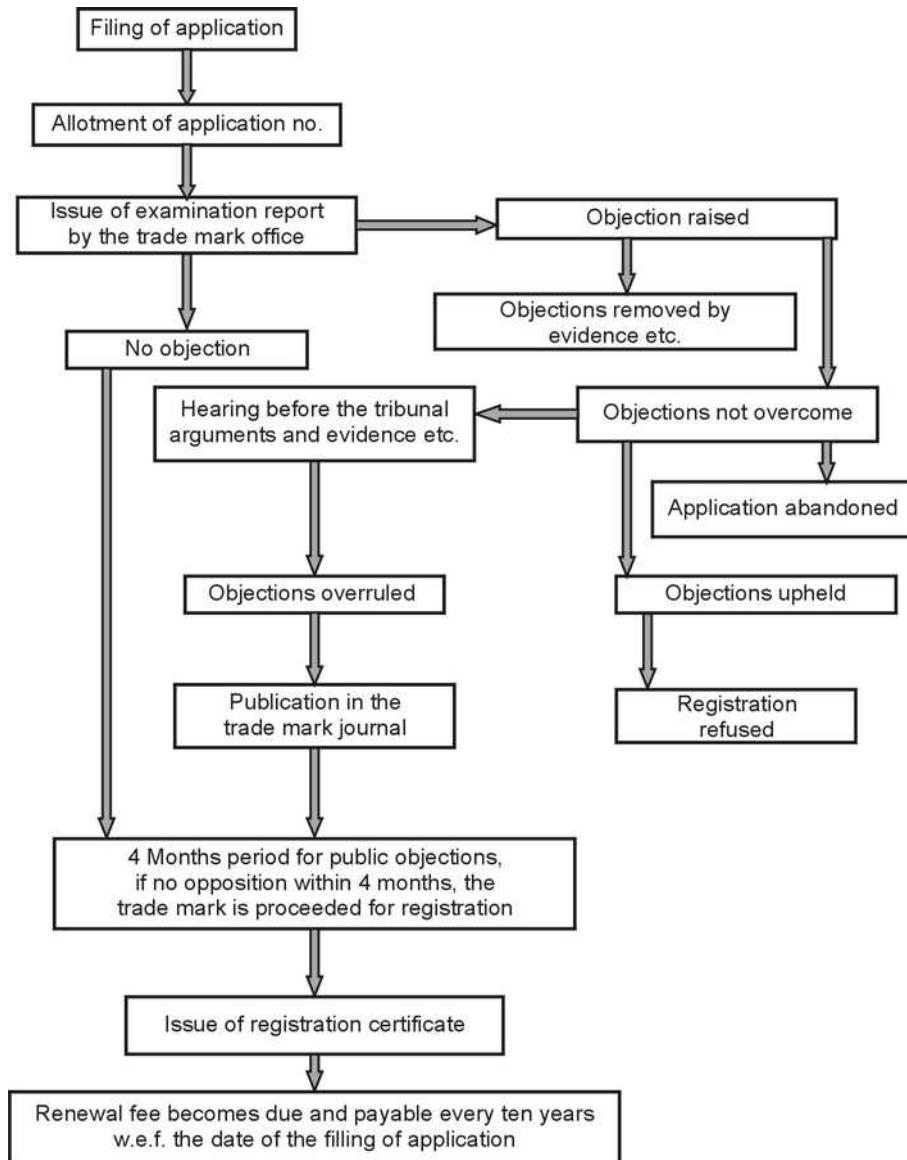
2.3.3.4 Remedies are there for Trademark Infringement and/or Dilution

Successful plaintiffs are entitled to a wide range of remedies under federal law. Such plaintiffs are routinely awarded injunctions against further infringing or diluting use of the trademark. In trademark infringement suits, monetary relief may also be available, including; defendant's profits, damages sustained by the plaintiff, and the costs of the action. Damages may be trebled upon showing of bad faith. In trademark dilution suits, however, damages are available only if the defendant willfully traded on the plaintiff's goodwill in using the mark. Otherwise, plaintiffs in a dilution action are limited to injunctive relief.

Offences and Penalties : In case of a criminal action for infringement or passing off, the offence is punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and fine which shall not be less than INR 50,000 but may extend to INR 200,000.

2.3.4 Procedure of Registration of Trademark in India

The procedure for registration of a trademark in India is given below :



Convention applications : In order to fulfill the obligations of any treaty, convention or arrangement with a country or countries that are members of inter-governmental organizations, which accord to Indian citizens similar privileges as granted to their own citizens, the Central Government notifies such countries to be Convention Countries. In case of an application for registration of a trademark made in any of the Convention countries, a priority date can be claimed with regard to the application in India, provided that the application is made within six months of

the application having been filed in the Convention country. The Government has notified and extended this privilege of priority to the members who have ratified the Paris Convention on Protection of Industrial Property.

Documents needed for trademark registration : An authorization letter that is duly signed by you allows us to file for trademark registration on behalf of you. After receiving the authorization letter, we start with the preparation of your documents, file the application online and also pay for it. Soon, you receive the confirmation of the application, and you will get the right to use the ™ symbol. While filing for the trademark registration, the documents you need to provide are as follows :

- Applicant's name
- Business type
- Business objectives
- Brand/logo/slogan name
- Registration address
- **Identity and business proofs :** The trademark owner or the person who is authorized by the trademark owner needs to submit their identity proof. It can be your Aadhar card, driving license, passport, ration card or voter's id.
- **Using logo with tagline :** If a trademark application is made for a tagline with only words there is no need of a logo. In cases where a logo is used, then it should be submitted in black and white format. The number of words in the logo should exactly be the same as mentioned in the application for a trademark.
- **Form 48 :** On behalf of you, an attorney is authorized to file for the trademark application with the trademark registrar. The trademark user affidavit should be submitted in case a claim for the previous trademark was made in the application.

Madrid protocol : India Parliament has passed the Trade Marks (Amendment) Bill, 2009 for enacting special provisions relating to protection of trademarks through international registration under the madrid protocol. As per the Amendment Bill, from the date of the international registration of a trademark where India has been designated or the date of the recording in the register of the International Bureau about the extension of the protection resulting from an international registration of a trademark to India, the protection of the trademark in India shall be the same as if the trademark had been registered in India. The Amendment Bill is yet to be notified.

Classification of goods and services : For the purpose of classification of goods and services for registration of trademarks, India follows the International Classification of Goods and Services (Nice Classification) published by World Intellectual Property Organization (WIPO). For the purpose of classification of the figurative elements of marks, India follows the Vienna Agreement.

Opposition proceedings : After advertisement of a trademark in the Trade Marks Journal, (which is available online at the website of Office of Registrar of Trademarks) an opposition challenging the application for registration can be filed by any person within a period of 3 months (which may be extended by a period not exceeding 1 month).

Renewal of registration : The trademark is initially registered for a period of 10 years, which is calculated from the date of filing of the application and in case of convention application, from the date of priority. The registration is required to be renewed within 6 months before the date of expiry of the registration, i.e., 10 years from the date of the application or subsequent renewals.

The failure in renewing the trademark within the stipulated period of time and a grace period of maximum 1 year granted for restoration of the trademark, automatically leads to removal of the trademark from the Register of Trademarks.

Rectification of trademark : An aggrieved person may file an application before the registrar of trademarks or to the Intellectual Property Appellate Board (IPAB) for cancellation or varying the registration of the trademark on the ground of any contravention or failure to observe a condition entered on the register in relation thereto.

The application for rectification can also be filed for removal of an entry made in register, without sufficient cause or wrongly remaining on the register and for correction of any error or defect in any entry in the Register.

Assignment, transmission and licensing of trademarks in India : Assignment means an assignment in writing by an act of the parties concerned. While in case of licensing, the right in the trademark continues to vest with the proprietor, the assignment of the trademark leads to a change in the ownership of the mark. A registered trademark is assignable with or without the goodwill in respect of all or only some of the goods/services for which the mark is registered. India is a member to TRIPS and Article 21 of the TRIPS dealing with Licensing and Assignment mandates that "... the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs." Section 39 of the (Indian) Trade Marks Act, 1999 allows for the assignment of an unregistered trademark with or without the goodwill of the business concerned.

Indian law contains embargo on the assignments of trademark, whether registered or unregistered, whereby multiple exclusive rights would be created in more than one person which would result in deception/confusion. However, the assignment with limitations imposed, such as goods to be sold in different markets, i.e., within India or for exports are valid. The Registrar is authorized to issue a certificate of validity of the proposed assignment on a statement of case by the proprietor of a registered trademark who proposes to assign the mark. The said certificate as to validity is conclusive unless vitiated by fraud.

2.4 Meaning and Practical Aspects of Registrations of Patents

2.4.1 Patent Filing

Patent is just like any other intellectual property. It can be transferred or sold by the inventor. A patent is a right granted to an individual or enterprise by the government that excludes others from making, using, selling or importing the patented product or process without prior approval.

Patent filing is the first step an inventor takes to protect his/her invention from being misused. Patent filing in India is a fairly complicated ordeal, however, with the right legal guidance it can be done easily. Any business entity or an individual who believes in securing their patent, which is one of the intellectual properties should get legal consultation from expert patent practitioners.

Patent can be filed by any individual or business that wants to protect an invention. An invention can be a new product or a new process.

Patent in India is a form of encouragement for innovations and inventions, and once a patent applicant files for it he or she becomes the exclusive owner of the invention if the patent is granted.

For patent filing in India, you must submit some forms at the patent office. If you own a digital certificate of Class 3, you can easily submit it online using the link <http://ipindiaonline.gov.in/epatentfiling/goForLogin/doLogin>. In the case of online applications, the patent office will be charging an additional 10 % fee.

Offices for patent filing in India are spread across major cities like Mumbai, Chennai, Kolkata and Delhi. You need to file your patent at the respective offices in your locality. Filing a patent in India is important as it restricts the contenders from copying, selling or importing the inventors' creation without their permission, and it is valid for a period of 20 years from the date of application of the patent.

A PCT application can be filed directly to the International Bureau as receiving office. The application may be filed by mail or hand-delivery to WIPO headquarters, or by facsimile provided that the original of the faxed application is furnished within 14 days from the date of the fax transmission, or by electronic filing (PCT Electronic Filing).

2.4.2 Advantages of Owning a Patent

A patented product is likely to improve brand perception and potentially enable your business to charge a premium.

Additionally,

- Patents can increase your business revenues while slowing down rivals for years to come.
- With exclusive rights, the owner of the patent controls the use of the invention for a full twenty years.
- Patents can be sold and licensed like other forms of property.

Exclusive rights of a patent holder : A patent holder or a patentee gets the exclusive rights to make, use, sell, offer for sale and import the invention to India. The patentee also has the right to initiate action for infringement. A person who has filed a patent in India can monetize his patent by either licensing it or selling it.

Licensing a patent : A patent owner can license his idea to a person, and assign rights to the licensee to sell or make the patented invention. The patent holder can control these rights. A license agreement must include an upfront payment and a royalty percentage. Royalty is the percentage of the revenue earned from the licensed product over a period of time.

Selling of patent : A patent filed in India can be sold to anyone within the country. That is, a patent can be sold in India if the inventor has patented his invention in India. By selling patents, inventors can usually demand a lump-sum payment and is best in the long run. He can be free from maintenance fees for the patent office, litigation fees and most importantly free from worrying about the future economic recession.

Registering a patent starts with filing the application till the granting of the patent. One can file both provisional patent and permanent patent applications .

2.4.3 The Process of Acquiring a Patent in India

Acquiring patent involves the following steps of patent application preparation and filing :

1. **Invention disclosure :** An authorized patent agent provides an invention disclosure format to facilitate inventors to provide relevant information. The invention disclosure format contains a list of questions arranged in a logical manner to capture the essence and details of the invention required to perform search and prepare patent specification draft. After reviewing the invention disclosure document, agent requests for one call or face to face meeting with the inventor to ensure that we understand the invention correctly.
2. **Patentability search :** Patentability search is not a mandatory step. In most projects, after receiving the invention disclosure and confirming our understanding with the inventor, agent performs a search and prepare the patentability search report. Our patentability search report provides information about relevant prior art existing and also provides a rating on the strength of the invention in relation to the closest prior art uncovered. With the help of the report, one can make an informed decision on whether one would like to go ahead with the next steps in the patent process or not. The turn-around time for a comprehensive patentability search report is 5-7 working days.
3. **Patent specification preparation :** If one choose to go ahead with the patenting process after reviewing the patentability search report, agent start the process of drafting the specification. The drafting process involves 2 to 3 iterations with the inventor where the analyst seeks

clarifications or inputs or review comments from the inventor. The turn-around time for drafting a specification is about 3 - 4 weeks. The turn-around time for drafting can vary significantly depending on the availability of the inventors.

- 4. Application preparation and filing :** While the drafting process is in progress, our portfolio will be in touch with the inventors and applicants to gather relevant information and signatures. The portfolio team prepares the application forms and keeps it ready for filing. Once the drafting process is complete and a specification is ready for filing, portfolio team files the application either using in-house resources or through a partner attorney, depending on the country of interest.

Filing an application after drafting typically takes 1- 3 days. Any patent agent or patent attorney can help you file a patent application in India. A patent application can be filed by a patent agent, or the applicant or inventor himself. However, given that most inventors not well versed with the patent laws and procedures, it is always advisable to file a patent application through a registered patent agent or patent attorney with a strong technology background.

2.4.4 Granting of the Patent

The procedure for the grant of the patent begins with the following steps;

Step 1 : Filing a patent application : For patent filing in India, one of the most crucial aspects to consider is the preparation of patent specifications. The entire process of patent specification drafting is a skilled task that can only be done by experienced professionals.

Ideation : Here, you need to clearly pen down the idea or concept, clearly mentioning the key details about the invention and the desired patent.

Visualisation : Visualise your idea and elements like diagrams that explain more about the invention.

Verification and Patentability search : The next step is to verify whether your invention is patentable as defined in the Indian Patent Act. Some inventions may not be patentable, and it is necessary that they meet the patentability requirements such as: Novelty, Non-obviousness, Usefulness and Patentable subject matter. You can also conduct a patent search on <http://ipindiaservices.gov.in/publicsearch> with the help of experts.

Drafting a patent application is an art in itself. Seeking the help of a patent professional will be a wise choice here. If you are in the initial stages of the research and development process, then it is best to file an optional preliminary application called provisional patent application.

Step 2 : Preparation of patentability report : Authorized patent professionals or patent agents will then do an extensive research and prepare the patentability report that contains the analyses based on the above-mentioned criteria.

Why provisional patent application is a good idea before filing the patent application :

A provisional patent application secures your date and work. This means that none of your competitors can file for a similar invention once you file for a provisional patent application. As India follows the first-to-file system, this ensures that the holder of the provisional patent would also be granted the permanent patent. There is a buffer time of 12 months to further develop your invention and to specify the complete details. The application gets abandoned upon expiry of 12 months of the application. The cost and resource involved for provisional patent application are less when compared to the permanent patent. The provisional specification helps you assess the market potential of your invention before taking the final plunge and filing a complete specification. Once you are ready with your R&D and your invention's detailed specifications, you can go in for a complete patent application.

Step 3 : Publication of patent application : The application is then published after 18 months. A request to the early filing of application can be made along with a prescribed fee.

- A. Patent examination :** Would be a formal submission of a request for the patent examination that must be filed within 48 months from first filing the patent (provisional patent or complete patent). If failed to file within the time frame, per the Patent Act the application will be treated as withdrawn by the patent office. The examiner then conducts a comprehensive investigation and releases the first examination report called patent prosecution.
- B. Patent objections :** It is common that patent applicants receive objections, like "inconsistent or unclear claims", "invention lacking novelty", etc. Hence, it is mandatory to analyse the patent examination report and draft a proper response to the objections.

Grant of patent : Once all the patentability requirements are met, the patent grant notification will be published in the patent journal.

Publication of filed patent

- For patent filing in India, the Indian patent office keeps every patent application confidential until it gets officially published in the Patent Journal.
- The publication of filed patent happens automatically after 18 months from filing the applications, and there is no need of any request to be raised.
- To get the patent published in advance, the applicant has to initiate a formal request and it will get published within 1 month of the request.
- The publication date does matter the most as the inventor is entitled to protect his work legally post publication.

2.4.5 Documents Required for Patent Filing

The best person to draft a patent specification is the person who has a sound technology background and has deep knowledge of the relevant laws and procedures. Usually, registered patent agents or patent attorneys with strong technology background are good candidates. An application for patent may be filed in three different ways, depending on whether it is an initial or fresh application or an application claiming priority from another application.

Common types of patent applications in India : The most common types of patent applications in India are

Ordinary or National application : An ordinary application is filed without claiming priority from any application or any reference to any other application under process in the Indian patent office. It is important to note that the filing date and the priority date are the same. An ordinary application is filed along with a complete specification and claims. A national application is an application for patent that does not claim priority from any other application. In other words, it is a fresh application. This type of application may be either provisional or complete. The following details are required :

- Name, Address and Nationality of applicant(s)
- Name, Address and Nationality of inventor(s)
- Complete Specification [or provisional specification if Provisional Application needs to be filed]
- Description, Claims, Abstract and Drawings, if any

Conventional application : If a patent application has already been filed in another country and when the patent is filed for the same invention in India, this type of application is called conventional application. It is mandatory for the applicant to file the application in Indian Patent Office within 12 months from the date of first filing it in another country. A convention application is an application claiming priority from an application filed in a convention country. The following details are required :

- Name, Address and Nationality of applicant(s)
- Name, Address and Nationality of inventor(s)
- Complete Specification including Description, Claims, Abstract and Drawings, if any
- Priority claim details (Priority date, Country and Application number)
- Certified copy of priority document (if not filed at International Bureau)
- Verified English translation of priority document (may submit later)
- Details of all corresponding foreign applications, including application number, date of filing and current status.

PCT National phase application : A PCT National Phase application can be filed within 31 months from the international filing date. This a type of patent application that takes the PCT gateway and enters national phase in India. The following details or documents are required:

- Name, Address and Nationality of applicant(s)
- Name, Address and Nationality of inventor(s)
- Complete Specification including Claims, Abstract and Drawings, if any. If the PCT application is in a language other than English, a verified English translation of the PCT specification is required.
- PCT Application Details (International Application Number and Date)
- Details of Priority application (if applicable)
 - i) Priority date, Country and Application number
 - ii) Certified copy of priority document (if not filed at International Bureau)
 - iii) Verified English translation of priority document (can be filed later)
- Details of all corresponding foreign applications, including application number, date of filing and current status
- Other Documents (if applicable)
 - i) Particulars of Amendments made to specification/claims during the International Phase (Verified English translation)
 - ii) Corrections or changes made at the International phase.

PCT International application : If you want to claim your priority in multiple countries, then filing a PCT application is important. It allows filing up to 142 countries. The time period is 30-31 months from the international filing date to enter and claim protection in each country.

2.4.6 A Patent Search

The process of obtaining patent rights can be laborious and costly. Before starting this process, it is important to know the chances of obtaining patent rights for a given invention. A patentability search report provides comprehensive analysis of relevant prior art and provides analysis on the chances for obtaining patent rights for any given invention. Using this report, applicants can make an informed choice on going ahead with the patent application process. Patent search can be performed in free and paid patent databases. Anyone can search (published and granted) Indian patent documents at official patent database of India as well as other paid databases. For patent search, one has to understand patent database search operators and syntax to conduct exhaustive keyword search. Patent analyst conducts patent search (including keyword and patent classification search) especially in paid databases which may be exhaustive in general, compare to patent search

done by yourself in free databases. Patent search can be done in almost all official patent databases. You can also conduct a patent search on <http://ipindiaservices.gov.in/publicsearch> with the help of experts.

Some of the **free databases** are,

- google patents (Coverage US, EP, WIPO, CN documents)
- freepatentsonline(Coverage US, EP, WIPO, Japan, German documents)
- USPTO (US documents)
- espacenet (EP documents)
- WIPO (PCT documents)
- SIPO (Chinese documents)
- IPDL (Japanese documents)

Some of the **paid databases** are,

- Totalpatents (Coverage)
- Questel Orbit (Coverage)
- Relecura
- Thomson Innovation

2.4.7 Licensed Patent agent in India

Before going for a patent filing in India, it is highly recommended to consider a licensed patent agent. A licensed patent agent in India is an individual registered for practising before the Indian Patent Office. Patent agents will help in filling out the necessary forms, contacting the patent office, prosecuting patent applications, and in following up with any issues that arise during the filing of patent. To become a patent agent, the individual should be a citizen of India above 21 years of age and must have cleared the patent agent examination. A patent examiner is a person who sends the list of rejections and at times when there arises the need to modify the patent application, a patent agent can intervene and address the issue or argue against the rejection.

Patent attorney : Often the terms "patent lawyer" or "patent agent" are interchangeable but still there are some differences between both at some instances. Patent lawyers are legally qualified to provide advice on intellectual property, infringement and represent others in a court of law. Patent lawyers are also registered with the bar council whereas a patent agent generally holds a degree in engineering, science, and technology.

Benefits of opting for a patent attorney/agent : Although the patent law does not mandate the assistance of a patent attorney or a patent lawyer, it is highly advisable to hire an agent because :

- Patent documents are complex in nature and requires technical expertise and legal knowledge to draft and file the application.
- Legislation of many countries requires an applicant, who resides in a foreign country or if the principal place of business is in some other country, be represented by a patent agent or attorney.

According to the Indian Patents Act, 1970, a patent agent is entitled to :

- Practice before the Controller.
- Prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under this Act.

Role of patent agent in the patent process : A patent agent has a significant role to play through out the patent process. Patent agent, being a person of expertise in a particular technical field has a strong understanding of the scientific and technical aspects of an invention. He helps the applicant to secure his patent by critically contributing his technical skills and legal knowledge to respond to the rejection and queries from examiner.

Patentability opinion or patentability analysis : The term patentability refers to the eligibility of an invention to obtain patent rights based on criteria laid by relevant patent laws. A patentability analysis report is prepared by an authorized patent agent and includes analysis based on the following criteria:

Novelty : An invention is said to be novel when the invention is not anticipated by any single prior art reference. In simple terms, the word anticipation means providing details regarding the workings and feasibility of the same invention.

Non-obviousness : An invention is said to be non-obvious, when the invention is not anticipated by any combination of known prior art references.

Useful : Invention is said to be useful if it has applications in an industrial setting.

Subject Matter : An invention is said to be eligible subject matter if the invention is not excluded by the patent law. The phrase subject matter refers to the concept or aspect that is intended to be protected by a patent. Few subject matters such as business methods are not patentable subject matter in India.

Patentability opinion refers to the legal opinion provided by an attorney. The substance of the report is the same as a patentability analysis report.

2.4.8 Invalidity Search

Invalidity search is performed in relation to an existing patent to prove that claims of the patent are invalid by discovering prior art which is filed before effective filing date of the patent-in-question. In other words, one can say that claims of the patent were granted by mistake by

discovering valid prior art which was missed by patent examiner earlier, during examination process of the patent. In invalidity search, claims of the patent are scrutinized to determine the validity of the patent. An invalidity search is also referred to as validity search. Irrespective of what we name the search, the goal is to check if a patent is valid or invalid.

2.4.9 Freedom to Operate (FTO) Search

FTO search is a search conducted on patent databases to ascertain if there is free to operate a product in the market without violating any third party patent rights (active patents) in specified countries. A product feature or process does not have freedom to operate in a country, when all elements of a claim of a relevant patent (active patent) from that country read on the proposed product feature or process. Freedom To Operate (FTO) does not guarantee patentability of a product. In ascertaining FTO, it is determined that whether a product feature is violating any rights of an active patent. Typically search in an FTO study is limited to the country where the product or feature is supposed to be launched or sold or used or manufactured. In other words, in FTO the search and analysis would be restricted to active patents and the country (or countries) where the product or feature is to be launched or sold or used or manufactured.

In ascertaining patentability, the product or feature is analyzed based on novelty and non-obviousness with respect to all available prior art. Here, the prior art could be patent as well as non-patent literature. In contrast, there is no need to search non-patent literature in as an FTO study is only concerned about ascertaining the freedom to put out the product in the market without infringing any patent rights.

Let us consider an example scenario where Company A has a patented fan. The fan includes - three blades connected to a motor housing. Further, Company B has come up with an improved fan with aerodynamic blades. Company B obtains patent rights for a fan with improved blades. Fan by Company B includes - three aerodynamic blades connected to a motor housing. Here, the improved fan from Company B is patentable because of the novel feature introduced by the aerodynamic blades. However, Company B cannot commercialize the improved fan without taking license to market a fan with three blades connected to a motor housing. In other words, Company B does not have freedom to operate the improved fan, even though the improved fan is patentable.

2.4.10 Prosecution History

A patent application goes through a review process at the patent office, where the application is filed. Patent examiners at patent office review the merit of the case by reviewing relevant prior art and send examiner reports called office actions. The most common office action is a rejection where the examiner cites close prior art in rejecting the patentability of invention covered by the patent application. The patent attorney or patent agent representing the inventors must review the

office action and prepare a detailed response including amendments to the application and any necessary arguments to rebut the claims of examiner.

The entire historical record of the examination of a patent application, including the original application, examiner reports, amendments and responses from patent attorneys or agents, and any relevant notices and filings is known as prosecution history. In many ways, prosecution history defines the strength of a patent application. An application that goes through a rigorous examination procedure is more likely to stand the test of validity in a court of law compared to an application that was granted without due examination.

Need of prosecution history : Apart from providing the entire record of patent examination relating a patent application, prosecution history can also provide answers relating to the scope of claims. When a patent application is filed, the scope of the claims are largely defined by the language in the patent specification. As a patent goes through the examination process, many amendments may be made to the patent application and specifically to the claims section. The final form of claims is a result of the examination process. The answers to the extent of protection sought by the applicant are usually found in the prosecution history of the application. Therefore, it is very important to refer to prosecution history of a patent to understand the scope of protection granted by the patent.

2.4.11 An Invention Disclosure Form

An invention disclosure form is a questionnaire format that allows a patent practitioner to collect necessary information from inventors and/or applicants to be able to conduct a patent search, draft a patent application, and file the patent application. Invention disclosure form includes questions relating to technical details of the invention, the information about inventors and applicants, the information regarding government involvement in developing the invention, information regarding previous disclosure or any planned disclosure of the invention, countries of interest for protecting the invention and so on.

Typically, questions in an invention disclosure form are structured so as to obtain information in a format that will be useful for practitioners to advise the right strategy for patent application, and useful in preparing a strong patent application.

Invention disclosure form : Inventor provides information regarding an invention in a form, referred to as an invention disclosure form. The invention disclosure form contains a list of questions arranged in a logical manner to capture the essence and details of the invention required to perform search and prepare patent specification draft.

2.4.12 Patent Opposition

Refers to the act of providing supporting material to reject a patent application. Indian patent law allows two kinds of patent oppositions which include pre-grant patent opposition and post-

grant patent opposition. Under pre-grant opposition, any person can represent for opposition to the Indian Patent Office, against the grant of a patent after the application for a patent has been published, but a patent has not been granted. A post-grant opposition may be filed by any interested person within 12 months from the date of publication of patent grant at the appropriate office.

Patent drafting : A patent specification is a complex techno-legal document. Drafting a patent specification requires deep understanding of the technology and a thorough knowledge of the relevant procedures and laws. Typically, drafting a patent specification involves the following steps:

Inventor interview : After review the invention disclosure form, inventor and patent agent get together for a discussion on the details of the invention to ensure that the patent agent understands the invention as understood by the inventor. During the discussion, the patent agent may suggest certain options using which the scope of the invention may be expanded. The process of expanding the scope of the invention happens in an iterative manner, where the patent agent asks a series of questions regarding variations in implementation and possible applications other than those already provided by the inventor. Using the questions as a framework, the inventor may come up with new ideas to expand the scope of the invention.

Patent specification preparation : Once the patent agent and the inventor(s) agree on the scope of the invention, patent agent starts drafting the specification. Typically, patent agent starts the process by preparing claims, drawings, and background sections. After inventor reviews the initial sections that define the scope, the patent agent goes ahead with preparing the rest of the specification including description.

2.4.13 The Defenses to Patent Infringement

One of the following could be a defense to patent infringement accusation :

Patent is not valid : For instance the defendant may allege that the invention embodied in the patent was not novel or that the patent was obtained wrongfully. The defendant may also argue that the invention was publicly known or publicly used in India, that the invention is not useful or that the specification does not sufficiently and fairly describe the invention and the method by which it is to be performed etc.

Patent claims are not relevant : Under this defense, the accused may argue that the claims of the patent do not read on the features of the product in question.

Legal concessions or excuses : Patent law allows for use of an invention for research or experimentation purposes. The accused may argue that the exploitation of the invention was only to the extent allowed by the law.

Indemnification : The accused may also use the defense that any violation is indemnified by another party through a relevant contract. In such scenario, the liability for infringement falls on the party that promised to indemnify.

2.4.14 Patent Watch

Patent watch is a process by which issued patents and pending applications are monitored to check if they are of any interest. The interest in watching patents could be related to:

- Finding infringement of any rights possessed;
- Finding relevant patents for acquisition or licensing;
- Finding activities of competitors in the patent space.

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2.4.15 Patent Renewal

A patent is valid for 20 years from the date of filing of the application. A patent must be renewed every year to keep it alive. This is a mandatory requirement and if the patentee does not comply with this requirement, the patent ceases to exist and the same passes on to the public domain. In India, the patentee can file renewal of patent by paying the prescribed fee consequent upon which the patent gets renewed for one year. When a patent has ceased to have effect due to non-payment of renewal fees within the prescribed time, the patent may be restored by filing an application for restoration, in Form-15, within eighteen months from the date on which the patent ceased to have effect.

2.5 Geographical Indications

2.5.1 Registration of Geographical Indications

In December 1999, the Parliament had passed the Geographical Indications of Goods (Registration and Protection) Act, 1999. This Act seeks to provide for the registration and better protection of geographical indications relating to goods in India. The Act would be administered by the Controller General of Patents, Designs and Trade Marks- who is the Registrar of Geographical Indications. The Geographical Indications Registry would be located at Chennai. The Act has come into force with effect from 15th September 2003.

Registration is not compulsory. Registration affords better legal protection to facilitate an action for infringement. The registered proprietor and authorised users can initiate infringement actions.

The authorised users can exercise the exclusive right to use the geographical indication. The registration of a geographical indication is valid for a period of 10 years. It can be renewed from time to time for further period of 10 years each. If a registered geographical indication is not renewed it is liable to be removed from the register. The Appellate Board or the Registrar of Geographical Indications has the power to remove the geographical indication or an authorised user from the register. Further, on application by an aggrieved person action can be taken.

An authorised user has the exclusive rights to the use of geographical indication in relation to goods in respect of which it is registered. The registered proprietor or authorised users of a registered geographical indication can initiate an infringement action. When an unauthorised user uses a geographical indication that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which mislead the public as to the geographical origin of such goods. When the use of geographical indication result in an unfair competition including passing off in respect of registered geographical indication. When the use of another geographical indication results in false representation to the public that goods originate in a territory in respect of which a registered geographical indication relates.

A geographical indication is a public property belonging to the producers of the concerned goods. It shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement However, when an authorised user dies, his right devolves on his successor in title.

2.5.2 Benefits of Registration of Geographical Indications

- It confers legal protection to Geographical Indications in India.
- Prevents unauthorised use of a Registered Geographical Indication by others.
- It provides legal protection to Indian Geographical Indications which in turn boost exports.
- It promotes economic prosperity of producers of goods produced in a geographical territory.

2.5.3 Indications which are not Registrable

For registrability, the indications must fall within the scope of section 2(1)e of GI Act, 1999. Being so, it has to also satisfy the provisions of section 9, which prohibits registration of a Geographical Indication.

- The use of which would be likely to deceive or cause confusion; or
- The use of which would be contrary to any law for the time being in force; or
- Which comprises or contains scandalous or obscene matter; or
- Which comprises or contains any matter likely to hurt the time being in force; religious susceptibilities of any class or section of the citizens of India; or

- Which would otherwise be dismantled to protection in a court; or
- Which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin or which have fallen into disuse in that country; or
- Which although literally true as to the territory region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality as the case may be.

Explanation 1 to section 9 says that for the purposes of this section, "Generic names of indications" in relation to goods which although relates to the place of the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for an indication of the kind, nature, type of other property or characteristic of the goods.

Explanation 2 further says a that "In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods."

2.5.4 Applicants for the Registration of a Geographical Indication

- Any association of persons, producers, organisation or authority established by or under the law can apply.
- The applicant must represent the interest of the producers
- The application should be in writing in the prescribed form
- The application should be addressed to the Registrar of Geographical Indications along with prescribed fee.

2.5.5 Registered Proprietors of GI

- Any association of persons, producers, organisation or authority established by or under the law can be a registered proprietor.
- Their name should be entered in the Register of Geographical Indication as registered proprietor for the Geographical Indication applied for.

2.5.6 An Authorised Users of GI

- A producer of goods can apply for registration as an authorised user.
- It must be in respect of a registered geographical indication.
- He should apply in writing in the prescribed form alongwith prescribed fee.

2.5.7 Producer in Relation to a Geographical Indication

- The persons dealing with three categories of goods are covered under the term Producer:
- Agricultural goods includes the production, processing, trading or dealing
- Natural goods includes exploiting, trading or dealing
- Handicrafts or Industrial goods includes making, manufacturing, trading or dealing.

2.5.8 The Registration Process

Step 1 : Filing of application

Please check whether the indication comes within the ambit of the definition of a GI under section 2(1)(e). The association of persons or producers or any organization or authority should represent the interest of producers of the concerned goods and should file an affidavit how the applicant claims to represent their interest.

- Application must be made in triplicate.
- The application shall be signed by the applicant or his agent and must be accompanied by a statement of case.
- Details of the special characteristics and how those standards are maintained.
- Three certified copies of the map of the region to which the GI relates.
- Details of the inspection structure if any to regulate the use of the GI in the territory to which it relates.
- Give details of all the applicant together with address. If there is a large number of producers a collective reference to all the producers of the goods may be made in the application and the G.I., If registered will be indicated accordingly in the register.

Please sent your application to the following address in India

Geographical Indications Registry
Intellectual Property Office Building
Industrial Estate, G.S.T Road
Guindy, Chennai - 600 032
Phone: 044 - 22502091-93 & 98
Fax: 044 - 22502090
E-mail:gir-ipo@nic.in
Website: ipindia.gov.in

The applicant must have an address for service in India. Generally, application can be filed by
(1) A legal practitioner (2) A registered agent.

Step 2 and 3 : Preliminary scrutiny and examination

- The examiner will scrutinize the application for any deficiencies.
- The applicant should within one month of the communication in this regard, remedy the same.
- The content of statement of case is assessed by a consultative group of experts will versed on the subject.
- The will ascertain the correctness of particulars furnished.
- Thereafter an examination report would be issued.

Step 4 : Show cause notice

- If the Registrar has any objection to the application, he will communicate such objection.
- The applicant must respond within two months or apply for a hearing.
- The decision will be duly communicated. If the applicant wishes to appeal, he may within one month make a request.
- The Registrar is also empowered to withdraw an application, if it is accepted in error, after giving on opportunity of being heard.

Step 5 : Publication in the geographical indications journal

Every application, within three months of acceptance shall be published in the Geographical Indications Journal.

Step 6 : Opposition to Registration

- Any person can file a notice of opposition within three months (extendable by another month on request which has to be filed before three months) opposing the GI application published in the Journal.
- The registrar shall serve a copy of the notice on the applicant.
- Within two months the applicant shall sent a copy of the counter statement.
- If he does not do this he shall be deemed to have abandoned his application. Where the counter-statement has been filed, the registrar shall serve a copy on the person giving the notice of opposition.
- Thereafter, both sides will lead their respective evidences by way of affidavit and supporting documents.
- A date for hearing of the case will be fixed thereafter.

Step 7 : Registration

- Where an application for a GI has been accepted, the registrar shall register the geographical indication. If registered the date of filing of the application shall be deemed to be the date of registration.

- The registrar shall issue to the applicant a certificate with the seal of the Geographical indications registry.

Step 8 : Renewal

A registered GI shall be valid for 10 years and can be renewed on payment of renewal fee.

Step 9 : Additional protection to notified goods

Additional protection for notified goods is provided in the Act.

Step 10 : Appeal

Any person aggrieved by an order or decision may prefer an appeal to the Intellectual Property Appellate Board (IPAB) within three months. The address of the IPAB is as follows :

Intellectual Property Appellate Board
Annexe 1, 2 nd Floor, Guna Complex,
443, Anna Salai, Chennai - 600 018

Affidavits

The Affidavits required by the Act and the rules to be filed at the Geographical indications Registry or furnished to the Registrar, unless otherwise provided in the matter or matters to which they relate, paragraphs consecutively numbered, and each paragraph shall as far as practicable be confined to one subject. Every affidavit shall state the description and the true place of abode of the person filing it and shall state on whose behalf it is filed.

Affidavits shall be taken

- In India-before any court or person having by law authority to receive evidence, or before any officer empowered by such court as aforesaid to administer oaths or to take affidavit,
- In any country or place outside India before a diplomatic or consular Officers (Oaths and Fee) Act, 1948, or such country or place, or before a notary public or before a judge or magistrate of the country or place.
- Where the deponent is illiterate blind or unacquainted with the language in which the affidavit is written a certificate by the person taking the affidavit that the affidavit has read translated or explained in his presence to the deponent made his signature or mark in his presence shall appear in the jurat.
- Every affidavit filed before the Registrar in connection with any of the proceedings under the Act or the rules shall be duly stamped under the law for the time being in force.

Inspection of Documents by the Public

- The documents mentioned in sub-section (1) of section 78 shall be available for inspection at the Head Office of the Geographical indications registry.
- A copy of the register and such of the other documents mentioned in section 78, as the Central Government may by inspection at each branch office of the Geographical Indications Registry as and when established.
- The inspection shall be on payment of the prescribed fee and at such times on all the days on which the offices of the Geographical Indications Registry are not closed to the public as may be fixed by the registrar.
- Distribution of copies of journal and other documents. The Central Government may direct the Registrar to distribute the necessary to such places as may be fixed by the Central Government in consultation with the State Government and notified from time to time in the Official Gazette.

2.6 Trade Secrets**2.6.1 Introduction**

Before understanding what trade secrets are, we must first understand the role of innovation in a modern capitalist system. The benchmark/reputation/success of a company hinges on their unique product and service offering, as it differentiates it from the rest to occupy a unique niche in the marketplace. Naturally, no company would like competitors to find out how it does things and dilute its competitive edge; these are its 'trade secrets.' Trade secrets can protect a company's confidential business information. This information usually distinguishes a company and sets it apart from rivals.

A trade secret is a type of intellectual property in the form of a formula, practice, process, design, instrument, pattern, commercial method, or compilation of information that is not generally known or reasonably ascertainable by others, and by which a person or company can obtain an economic advantage over competitors. In some jurisdictions, such secrets are referred to as confidential information. The precise language by which a trade secret is defined varies by jurisdiction, as do the particular types of information that are subject to trade secret protection. Three factors are common to all such definitions :

A trade secret is information that

- Is not generally known to the public;
- Confers economic benefit on its holder because the information is not publicly known; and
- Where the holder makes efforts to maintain its secrecy.

In international law, these three factors define a trade secret under article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, commonly referred to as the TRIPS Agreement.

Similarly, in the United States Economic Espionage Act of 1996, "A trade secret, as defined under 18 U.S.C. § 1839(3)(A),(B) (1996), has three parts: information; reasonable measures taken to protect the information; and which derives independent economic value from not being publicly known."

Trade secrets are an important, but invisible component of a company's Intellectual Property (IP). Their contribution to a company's value, measured as its market capitalization, can be major. Being invisible, that contribution is hard to measure. Patents are a visible contribution, but delayed, and unsuitable for internal innovations. Having an internal scoreboard provides insight into the cost of risks of employees leaving to serve or start competing ventures.

2.6.2 Types of Trade Secrets

Trade secrets may include

- **The ingredients used in the product :** For example, soft drinks manufacturer Coca-Cola keeps its ingredients a closely-guarded secret and the recipe is accessible only to a select few.
- **Way of manufacturing :** A company may get a competitive edge just by finding a new way of making things. These may include types of manufacturing equipment, processes or systems. For example, computer chip maker Intel came up with 'Copy Exactly!' to ensure consistent quality of products regardless of where it was manufactured.
- **Way of selling and distribution :** Companies often devise unique methods of selling and distributing products, which may give them an extra edge. A fitting example would be food brand Kellogg's coming up with a data-sharing strategy with retailers to reduce unsold inventory.

Advertising strategies : The success of any product or service also depends on the way of advertising. Firms will always want to keep their ad strategies protected. Most firms take necessary precautions to prevent inadvertent disclosure of trade secrets. This is because if a trade secret is disclosed, it is no longer possible to protect information, particularly in the age of social media. This is why most companies, while recruiting an agency to create an advertisement for business, will be required to keep a watch on who has access to the company's confidential business.

2.6.3 Trade Secret Law

A trade secret can be referred to as IPR, and the law does offer some amount of protection against its misuse. However, there are some differences between trade secrets and other forms of intellectual property. Unlike patents, you don't need to register a trade secret with the authorities or

make a public disclosure. There are some conditions on information being considered a trade secret. These conditions differ from one country to another. The first international steps to protect trade secrets were taken by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Protection of undisclosed information (trade secrets) is dealt with under Article 39 of TRIPS. Companies and individuals can prevent information from being disclosed without their consent if;

- It is not known or readily accessible to people within the circles that usually deal with the information in question.
- Has commercial value being secret and has been made subject to steps, by the person lawfully in control of the data, to keep it protected.

Usually, companies restrict information to only a few individuals. These individuals have to sign confidentiality pacts so that the information is kept within the company and not made accessible to outsiders. Recourse to the law can take place if there is a breach in the confidentiality agreement.

Trade secrets are part of any innovative company's armory. While they may not enjoy the same level of protection as other IPR-like patents, firms are backed by law if a trade secret is misappropriated.

2.6.4 Risks of Lacking a Trade Secrets Registration System

The lack of a company trade secrets protection program and, in particular, a trade secrets registration system, entails the following risks for the company and its management team:

- **Loss of business opportunities :** There is a risk of not adequately protecting data, processes, formulas, substances, etc. that could be the starting point of inventions, creations, production methods or promising information for the company. Consequently, the company will be unknowingly jeopardizing its secrecy and facilitating its disclosure and losing the competitive advantage conferred by its use without the competitors' knowledge.
- **Non detection of unlawful acts of acquisition, use or disclosure of trade secrets :** The absence of a registration system identifying the employees and suppliers in charge of the custody of the confidential information and their specific functions may cause evidentiary problems in the event of unauthorized acquisition, use or disclosure of the information. Some examples could be the acquisition or disclosure of confidential information by employees by means of digital storage devices; unaware disclosure of trade secrets during meetings with potential customers or suppliers, access to trade secrets by competitors through technological means, etc.
- **Infringement of third parties rights :** In the absence of a reliable registration system and the adoption of reasonable measures to preserve trade secrets, if they consist of an invention which

meets the patentability requirements, they could be acquired -without the consent of the trade secret holder- by third parties who later decide to protect them under the patent system. Thus, said third party would obtain an exclusive right and it is possible that the original holder of the trade secret would not be in a position to prove its prior use.

Therefore, the legitimate holder of the trade secret could be damaged on two ways :

- It could be deprived of confidential information
- It could also be sued for infringement of a patent granted to the third party who illegitimately acquired the invention from legitimate owner and then protected it under the patent system.

Civil Liability : The infringement of trade secrets may result in three types of civil liability :

- Liability As A Result Of An Intentional Act
- Negligent Act And Even
- Good faith liability for taking advantage of a trade secret violation

Criminal Liability : The liability of legal entities for criminal offences against intellectual property, the market and consumers and private corruption is expressly established since the Spanish Criminal Code reform of 2015

Therefore, the non-adoption of reasonable measures to protect trade secrets by a legal entity could prevent it from accessing to the benefit of exemption of criminal liability in those cases where an offence is committed within the company with the aim of seizure, dissemination, disclosure or transfer of a third party's trade secret.

2.6.5 Trade Secret Protection in India

As a signatory of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), India is obligated to protect undisclosed information.(1) However, since Member States are allowed to have a *sui generis* mechanism in place as provided under Article 10bis of the Paris Convention and Articles 39(2) and 39(3), Indian Courts have preferred to apply common law principles to protect such information. India does not have a specific codified legislation to protect Trade Secrets.

In lieu of a statute, Trade Secrets are capable of being considered within the framework of contract, competition and intellectual property laws simultaneously. They can be protected by way of restrictive covenants, non-disclosure agreements and other contractual means. Additionally, Trade Secrets can also be protected by an action against misappropriation under common law, wherein misappropriation of trade secrets may occur by way of breach of an obligation of confidence, whether arising impliedly or expressly, as well as theft.

In true common law tradition, Indian courts have preferred to construe "trade secrets" as equitable rights, without likening them to absolute property rights.

Trade Secrets are, however, recognized by Courts as a class of information capable of being protected, and are often considered alongside other types of such information, including know-how and confidential information. In the absence of any codified law, trade secret disputes receive varied treatment by Courts depending on the facts and circumstances of the dispute.

The jurisprudence on Trade Secrets in India has developed rapidly since the 1990s owing to the liberalization of the Indian economy and a significant increase in creation of intellectual property having financial implications on businesses. Consequently, the change in the economic climate was also responsible for bringing disputes before Indian courts. Such disputes were the breaking ground for an understanding behind the classification of information, especially in its intangible form and the circumstances in which such information is required to be protected.

2.7 Registration of Industrial Designs in India and Abroad

2.7.1 Design

Design is a right created by the statue which is different from Trade Mark and Copyright. Without registration, the creator or owner of a design may be left without any right. In terms of Design Act, 2000, design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, which in the finished article appeal to and are judged solely by the eye. It is possible to conduct an online search in the records of the Controller of Design. This record has been updated recently, hence, the search facility is getting completed. Design is one of the categories of IPR where the design system focuses on the aesthetic feature of an article derived from its visual appearance. Relevant aspects are the shape, configuration, surface pattern, the colour or line or a combination thereof as applied to an article which produces an aesthetic impression on the sense of sight.

The objective of The Designs Rules, 2001 is to enable protection of newly created designs applying to particular articles manufactured by the industrial process. It refers in legal definition to:

- Any mode or principle of construction or anything which is in substance merely mechanical device;
- Any trademark which is a registered trade mark indicating connection in course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark;
- Any trademark which denotes the ownership of moveable property belonging to particular person; and
- Any trademark which is a painting, sculpture, drawing, an engraving or photograph or any work of architecture or any other work of artistic craftsmanship

2.7.2 Criteria of Design Registration

- Design should be new or original.
- It should not be published in any country.
- Not contrary to public order or morality.
- Should not attract the provision of section 4 of Designs Act,2000

Prohibition of registration of certain designs : A design shall not be registered if the design:

- Is not new or original; or
- Has been disclosed to the public :
- Any where in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
- Is not significantly distinguishable from, known designs or combination of known designs; or
- Comprises or contains scandalous or obscene matter.
- Designs incorporating official symbols or emblems, maps, buildings, stamps, medals etc. cannot be registered under The Designs Act, 2000

2.7.3 Why Design Registration

Nowadays, products are recognized more and more by their design. Think of the iPhone. Protection of the design by means of a design registration is therefore growing in popularity. The design act is to secure your original design and new designs is to be applicable of your modern developments and your earned objects is sometimes effected in the presence. The value of design registration is to see that the originator, creator, artisan, having their attractive look design is not applying others to their goods in some other states/Regions of the country. A product's design is an important distinguishing aspect in the minds of consumers. Unfortunately, well-known designs are often copied. In order to protect your distinctive design it is recommended to register your design as a design registration. The appearance of the design will then be protected and when competitors introduce their products they have to take distance of your design.

2.7.4 Advantages of Design Registration

A design is what makes an article attractive and appealing. Hence, it adds to the commercial value of a product and increases its marketability. When a design is protected, the owner i.e. the person or entity that has registered the design is assured an exclusive right against unauthorized copying or imitation of the design by third parties. This helps to ensure that the design of the products is exclusive to the owner and the customer can at once identify the design of the product as that of the owner. Other advantages are;

- Designs can make a product into a brand desired by customers and hence increase and consolidate market share.
- Licensing design rights can provide a valuable income stream.
- Designs can be used as a way of raising capital, for example, as security for a loan.
- The rights to exploit a design can be sold.
- A reputation for innovative product design can add significant value to your business.

Design registration can provide significant benefits to your business, including ownership of exclusive rights to manufacture and sale of the design. This will allow you to exclude competitors from the market as well as the potential to profitably sell or license your exclusive rights to your design to others. If you believe that your industrial design is original and has commercial potential, industrial design registration is a worthwhile investment. If you would like to learn more about how to get an industrial design registration in India do not hesitate to contact us for a complimentary and confidential telephone appointment.

2.7.5 Design Registration

An application for the registration of design should be submitted along with four specimen copies of the design. A statement of novelty should also be submitted which refers to a statement of how the design is unique. Additional copies of the specimen design may be included. The design so represented in the 'representation of the design' submitted should be precisely similar to the design or exact copies of the design. The reciprocity application submitted in the UK or a convention country or group of countries or an inter-governmental organisation means can be made with additional copies of the design according to rule 30. The Controller may or may not accept the registration of design. A statement of objections may be made by the controller to the applicant with necessary amendments. The date on which the controller's decision is dispatched is deemed as the date of appeal. Any applicant not completely and verifiably filed will be abandoned by the Controller. The particulars of the application and the representation of the article may be published in the Official Gazette.

Documents required for design registration

- A certified copy of the original or certified copies of extracts from disclaimers
- Affidavits
- Declarations and
- Other public documents can be made available on payment of a fee.

The affidavits should be in paragraph form and should contain a declaration of truth and verifiability. The costs involved in the design registration process may be regulated by the Controller according to the Fourth Schedule.

2.7.6 General Guidelines Regarding Design Registration

The design should be registered with all essential documents including reciprocity date and maintained on diskette and floppy or any other master folder. Any request for alteration of address should be made in Form 22. Under the Rule 33, details of the name, address and nationality of the person entitled should be recorded. The evidence of the transmission of copyright in a registered design or that affecting the proprietorship should be presented to Controller either in original, or notary certified true copy together with the application and may require any other proofs. The form of entry of the design registration application is a prescribed one and should conform to the relevant standards. The register of design can be made visible to the public except for during the time it requires office inspection. A note for rectification of design may be made to persons concerned and published in the Official Gazette. A notification of opposition to rectification of design can too be made by opponent.

2.7.7 Steps to Register a Design

It is important that complete and correct information is filed so that the application is processed faster. The application requires few information to be filed along with the application:

- Name and address of the Applicant;
- Legal Status of the Applicant i.e. whether the applicant is natural person, Company etc. If the Applicant claims to be a start-up (registered with the Government of India as a start-up), the certificate has to be filed.
- Description of article to be filled in along with identification of the class as per the classification.
- The nature of applicant determines the official fee for the application.
- The image or drawing of the article is to be filed along with the application.
- Claim of novelty is to be made in the application i.e. whether any part of the article or the entire article is novel.

The government fees for filing a design application for a natural person and start up is half of that of an artificial person like a Company. In order to encourage online filing, law provides for a 10 % discount for online filing vis-à-vis paper filing at Design office.

An important aspect of a Design : Application is the image / drawing of the article. An applicant could take some precautions to avoid objections which filing the image:

- Image should be clear.
- Taken on a contrasting background.
- Image should be taken from all angles like front, rear, top, bottom, sides, perspective view.

- Entire article should be visible in all the images and no part of the article should be missing.

After filing of the application, it is examined by the Controller of Design. The Design Office conducts a formal evaluation of the application to verify the formal particulars as well as detailed evaluation of the application.

At the formal evaluation, the formal compliances are checked. For example : whether the authorization from the applicant is filed, article fall in the claimed class or not, applicant's identification and particulars are correct or nor, any column which ought to have been filed while filing the application has been left out or not. Considering that applications are filed online by applicants directly, it makes sense to have a formal evaluation so that minor defects can be cured at the early stage itself.

In the detailed evaluation, it is verified whether the applied design is registrable. The novelty statement in the application is mapped with the article. It is also seen whether other parameters of the Act are met by the article in question or not.

The applicant is given an opportunity to file a written response to the examination report / office objection and make amendments to overcome the objection. If the Controller is satisfied with the written response, the application is accepted. If the Controller has any objection, generally, an opportunity of hearing is given. If the Controller is not convinced that the design is registrable, it is rejected at the hearing.

After the design is accepted, it is published in the Official Gazette. The General public thus becomes aware that a design has been registered.

It is possible to file a convention application from the priority date of the design application filed in a country outside India.

A registered design is valid for 10 years from the date of application, which can be renewed for another term of 05 years. The Design office is completing the entire process within 10 to 12 months in some cases which are straight forward cases of registration.

2.8 Two Marks Questions with Answers

Q.1 Copyright vs. trademark vs. patent – What is the difference ?

Ans. : A copyright covers original works of authorship, such as a book, song, or movie.

A trademark protects words, phrases, symbols, or designs made to identify a distinguishable source of a good or service.

A patent protects unique inventions and discoveries.

Q.2 Is it necessary to register a work to claim copyright ?

Ans. : No. Acquisition of copyright is automatic and it does not require any formality. Copyright comes into existence as soon as a work is created and no formality is required to be

completed for acquiring copyright. However, certificate of registration of copyright and the entries made therein serve as *prima facie* evidence in a court of law with reference to dispute relating to ownership of copyright.

Q.3 Where I can file application for registration of copyright for a work ?

Ans. : The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights and is located at Plot no. 32, Boudhik Sampada Bhawan, Sector 14, Dwarka, New Delhi- 110075. The applications are also accepted by post. Online registration through "E-filing facility " has been provided from 14th February 2014, which facilitates the applicants to file applications at the time and place chosen by them.

Q.4 What is the procedure for registration of a work under the Copyright Act, 1957 ?

Ans. : The procedure for registration is as follows :

- a) Application for registration is to be made on Form XIV (Including Statement of Particulars and Statement of Further Particulars) as prescribed in the first schedule to the Rules ;
- b) Separate applications should be made for registration of each work;
- c) Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules ;
- d) The applications should be signed by the applicant. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed, if applicable.
- e) The fee is to be paid either in the form of Demand Draft or Indian Postal Order favouring "Registrar Of Copyrights Payable At New Delhi" or through E payment each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically.
- e) The fee is either in the form of Demand Draft, Indian Postal Order favoring "Registrar Of Copyright Payable At New Delhi" or through E payment.

Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically.

Q.5 What is the fee for registration of a work under the Copyright Act, 1957 ?

Ans. : One can pay fee in favor of 'Registrar of Copyrights' payable at 'new Delhi'. The fee is not reimbursable in case of rejection of the application.

Some important fees are given below :

Sr. No.	Action	Official fee
1	For an application for registration of copyright in a- (a) literary, dramatic, musical or artistic work (b) literary or artistic work which is used or is capable of being used in relation to any goods	₹ 50 per work ₹ 400 per work

2	For an application for registration of copyright in a Cinematograph Film	₹ 600 per work
3	For an application for registration of copyright in a sound recording	₹ 400 per work

Q.6 Can I myself file an application for registration of copyright of a work directly ?

Ans. : Yes. Any individual who is an author or rights owner or assignee or legal heir can file application for copyright of a work either at the copyright office or by post or by e-filing facility from the copyright Office web-site "www.copyright.gov.in"

Q.7 What are the guidelines regarding registration of a work under the Copyright Act ?

Ans. : Chapter XIII of the Copyright Rules, 2013, as amended, sets out the procedure for the registration of a work. Copies of the Act and Rules can be obtained from the Manager of Publications, Publication Branch, Civil Lines, Delhi or his authorized dealers on payment or download from the Copyright Office web-site www.copyright.gov.in.

Q.8 Whether unpublished works are registered ?

Ans. : Yes. Both published and unpublished works can be registered. Copyright in works published before 21st January, 1958, i.e., before the Copyright Act, 1957 came in force, can also be registered, provided the works still enjoy copyright. Two copies of published or unpublished work may be sent along with the application. If the work to be registered is unpublished, a copy of the manuscript has to be sent along with the application for affixing the stamp of the Copyright Office in proof of the work having been registered. One copy of the same duly stamped will be returned, while the other will be retained, as far as possible, in the Copyright Office for record and will be kept confidential. It would also be open to the applicant to send only extracts from the unpublished work instead of the whole manuscript and ask for the return of the extracts after being stamped with the seal of the Copyright Office. When a work has been registered as unpublished and subsequently it is published, the applicant may apply for changes in particulars entered in the Register of Copyright in Form XV with prescribed fee. The process of registration and fee for registration of copyright is same.

Q.9 Which one of the computer Software or Computer Programme can be registered ?

Ans. : Yes. Computer Software or programme can be registered as a ‘literary work’. As per Section 2 (o) of the Copyright Act, 1957 “literary work” includes computer programmes, tables and compilations, including computer databases. ‘Source Code’ and “Object Code” have also to be supplied along with the application for registration of copyright for software products.

Q.10 How can I get copyright registration for my Web-site ?

Ans. : A website may be understood as a webpage or set of interconnected webpages, hosted or stored on a server, and is made available online to members of public. Users can access the information and other underlying work on a website through various means such as scrolling webpages, using internal hypertext links or a search feature.

Website usually consists of different rudiments which may be copyrightable subject matter that falls within any one of the classes of works set forth in Section 13 of Copyright Act, 1957. The component parts of website can be in different form of digital files such as text, tables, computer programmes, compilations including computer databases (“literary works”); photographs, paintings, diagram, map, chart or plan (“artistic works”); works consisting of music and including graphical notation of such work (“musical works”); “sound recordings” and “cinematograph films”. Website as a whole is not subject to copyright protection. Generally, non-copyrightable content particular to websites may include but are not limited to ideas or future plans of websites, functional elements of websites, unclaimable material, layout and format or ‘look and feel’ of a website or its webpage; or other common, unoriginal material such as names, icons or familiar symbols. Applicant is required to submit a separate application for each component work/content appearing on a website.

Q.11 How long I have to wait to get my work to get registered by the Copyright office ?

Ans. : After you file your application and receive diary number you have to wait for a mandatory period of 30 days so that no objection is filed in the Copyright office against your claim. In case any objection is filed, the Registrar of Copyrights after giving an opportunity of hearing to both the parties, may decide to register the work or otherwise.

If no objection is filed the application is examined by the examiners. If any discrepancy is found the applicant is given ordinarily 45 days time to remove the same. Therefore, it may take around 2 to 3 months time for registration of any work in the normal course. The cooperation of the applicant in providing necessary information is the key for speedy disposal the matter.

Q.12 Is an opportunity for hearing given in all the cases pertain to rejection of registration ?

Ans. : As per the rule 70(12) of the Copyright Rules, 2013, an opportunity of hearing must be given. However, only after hearing, it may be decided to register the work or to reject it. The applicant himself or his/her pleader may appear in the hearing.

As per section 72 of the Copyright Act, 1957 any person aggrieved by the final decision or order of the Registrar of Copyrights may, within three months from the date of the order or decision, appeal to the Intellectual Property Appellate Board (IPAB).

Q.13 Are the certificates qualify to be copyrightable subject matter ?

Ans. : Originality is considered as 'the bedrock principle of copyright' and 'the very premise of copyright law'. A work to be a copyrightable subject matter is to be created by the exercise of labour, skill and judgment of the author. Also, such exercise of efforts on the part of the author should not be trivial in nature and thus should not be a mere exercise of the mechanical function of copying the work of another. Variation must be substantial in nature than merely trivial thus requirement of degree of originality is quantitative in nature.

Certificates may be considered as a formal document or written assurance which states an official fact and are generally used as evidence for certain purposes. Certificates are usually monotonous as it contains mere common words or formats which are generic in nature. Certificates are not considered as copyrightable subject matter as it falls under the narrow category of works in which the creative spark is utterly lacking or so trivial as to be virtually non-existent.

Q.14 How can I get Copyright registration for App ?

Ans. : An App is a complete, self-contained computer program that is designed to perform specific tasks. Usually called 'Apps' for short, application programs are the most familiar forms of software and come in a very wide variety of types. An App usually has primarily dynamic content and is designed for user interaction. It may be used directly or indirectly in a computer or hand held electronic device. An App may be registered as a computer program under literary works as provided under Section 2(o) of the Copyright Act, 1957. For this purpose applicant is required to submit an application for registration under software category, accompanied by the source and object code as provided under Rule 70 (5) of the Copyright Rules 2013.

It is important to note that the registration will cover any screen displays generated by that program, provided that the computer program (code) generating the screen display is submitted by the applicant. Mere snapshots of screen displays of an app are not eligible for copyright protection.

Q.15 What is copyright society ?

Ans. : A copyright society is a registered collective administration society under Section 33 of the Copyright Act, 1957. Such a society is formed by authors and other owners. A copyright society can issue or grant licences in respect of any work for which it is authorized to by the authors or owners of the work.

Q.16 How do I register a copyright society ?

Ans. : Any association of persons whether incorporated or not, consisting of seven or more authors or owners of copyright (hereinafter referred to as 'Applicant') formed for the purpose of carrying of business of issuing or granting licenses in respect of any class of works for which it is registered may file an application with the Registrar of Copyrights on Form VIII. Every application shall be accompanied with :

- i. A true copy of the application by which the applicant is established or incorporated.
- ii. Consent of all the members included in the application to act as members of the Governing Body of the Application.
- iii. A declaration containing the objectives of the Applicant, the bodies through which it will function and arrangements for accounting and auditing.
- iv. An undertaking to the effect that the instrument is established or incorporated provides for conforming the same to the provisions of the Act and these Rules.

Q.17 What is the purpose of a Copyright Society ?

Ans. : Authors and other owner of copyright in any work cannot keep track of all the uses of his work. The copyright society is able to keep a vigil over the uses and collect royalties from the users of those works.

Q.18 What are the functions of a Copyright Society ?

Ans. : The function of a copyright society is to administer the business of issuing and granting licenses with respect to a copyright held by the authors or owners of the work. A copyright Society also undertakes collection of royalties on behalf of the authors or owners and disbursement of royalties.

Q.19 Are individual rights owners are entitled to issue licences and collect royalties who are not members of any copyright society ?

Ans. : As per Section 30 of the Copyright Act, 1957, the owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorized agent.

Q.20 Which copyright societies are registered in India ?

Ans. : Presently there are three registered copyright societies in India, namely ;

- I. For Literary works associated with Musical Works: The Indian Performing Right Society Limited (IPRS).
- II. For Reprographic (photo copying) works: Indian Reprographic Rights Organization (IRRO).
- III. For Performers (Singers) Rights: Indian Singers Rights Association (ISRA).

Q.21 What is the term of registration of a Copyright Society ?

Ans. : The registration granted to a copyright society shall be initially for a period of five years.

Q.22 Do I need a License from a copyright society for utilizing any literary, dramatic, musical or sound recording works in any marriage related functions ?

Ans. : No, a License is not required from a copyright society or other authors or owners of the copyright if the work is being utilised for a bonafide religious ceremony, including a marriage

function as the same is covered under the exceptions to infringement of copyright under Section 52 (1)(za) of the Copyright Act, 1947.

Q.23 How long does a copyright last ?

Ans. : A work is in public domain if it was published in the United States before 1923. Works published between 1922 and 1978 are protected for 95 years from the date of publication. As a general rule, if the work was created (but not published) before 1978, the copyright lasts for the life of the author plus 70 years. For an anonymous work, a pseudonymous work, or a work made for hire, the copyright lasts for 95 years from the year of its first publication or 120 years from the year of its creation, whichever expires first.

Q.24 Can I renew a copyright ?

Ans. : It's unlikely. You can't renew works created on or after January 1, 1978, but for works published or registered prior to January 1, 1978, renewal registration is optional after 28 years.

Q.25 Can a copyright be transferred ?

Ans. : Yes. Transfers are normally made via contracts because the U.S. Copyright Office doesn't have forms for transfers.

The Copyright Office does, however, record transfers of copyrights. This is not required for a valid transfer, but it can provide certain legal advantages and is also required in order to validate a transfer against a third party.

Q.26 How long does it take for something to get copyrighted ?

Ans. : For online registration, about 90 days. For hard-copy registrations, the average processing time is 10 months.

Q.27 What is a trade secret ?

Ans. : A trade secret is anything in your business that you keep secret that your competitors, if they knew the information, would be able to use it to their economic advantage. Trade secret is a matter of state law, and the rules about trade secrets in Minnesota are contained in the Minnesota statutes at Chapter 325C. Trade secrets in Minnesota are broadly defined, and just about anything can be covered. To qualify as a trade secret, you must keep the information a secret. Manufacturing processes are often held as trade secrets, and so is the formula for Coca-Cola®. Trade secret issues occur most often with former employees. A common scenario with trade secrets occurs when a sales person leaving one company takes a customer or prospect list to a competitor. In such cases, the original company can obtain an injunction to stop use of the customer list, and in some cases may also receive money damages for the loss of the secret.

Q.28 What is a patent ?

Ans. : A patent is an exclusive right granted for an invention. In other words, a patent is an exclusive right to a product or a process that generally provides a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain; that is, anyone can commercially exploit the invention without infringing the patent.

Q.29 What rights does a patent provide ?

Ans. : A patent owner has the right to decide who may – or may not – use the patented invention for the period in which the invention is protected. In other words, patent protection means that the invention cannot be commercially made, used, distributed, imported, or sold by others without the patent owner's consent.

Q.30 What kinds of inventions can be protected ?

Ans. : Patents may be granted for inventions in any field of technology, from an everyday kitchen utensil to a nanotechnology chip. An invention can be a product such as a chemical compound, or a process, for example or a process for producing a specific chemical compound. Many products in fact contain a number of inventions. For example, a laptop computer can involve hundreds of inventions, working together.

Q.31 How long does patent protection last ?

Ans. : Patent protection is granted for a limited period, generally 20 years from the filing date of the application.

Q.32 Is a patent valid in every country ?

Ans. : Patents are territorial rights. In general, the exclusive rights are only applicable in the country or region in which a patent has been filed and granted, in accordance with the law of that country or region.

Q.33 What happens after I've submitted my application ?

Ans. : The procedures vary significantly from one country to another, so it is impossible to provide an exhaustive step-by-step overview. If you wish to research a country's legislation in the field of patents independently, you can browse the WIPO Lex database of intellectual property (IP) legislation from around the world.

However it is recommended that you consult either a practicing lawyer specializing in IP or the relevant IP office. Consult our directory of national and regional IP offices.

Q.34 Can the decision to grant a patent be challenged ?

Ans. : The grant of a patent can be challenged either via a patent office or in a court of law. A court may invalidate or revoke a patent upon a successful challenge by a third party. In addition, many patent offices provide administrative procedures that allow third parties to oppose to the grant of a patent (including so-called "opposition systems"), for example, on the basis that the claimed invention is not new or does not involve an inventive step. Procedures for challenging patents differ from country to country. Find out more about opposition systems.

Q.35 Is it possible to extend the term of patent protection ?

Ans. : In some countries, patent protection may be extended beyond 20 years or a Supplementary Protection Certificate (SPC) may be issued in very specific cases. The extension aims to compensate for the time expended on the administrative approval procedure before products can be put on the market. The time taken for this procedure means that the patent owner may sometimes not be able to benefit from his right for a considerable period of time after the grant of the patent.

Q.36 What is considered as the date of patent ?

Ans. : The date of patent is the date of filing the application for patent (whether provisional or complete). The term of the patent is counted from this date.

Q.37 What is the term of a patent in the Indian system ?

Ans. : Term of the patent is 20 years from the date of filing for all types of inventions.

Q.38 How does one keep a patent in force for the full patent term ?

Ans. : A patent has to be maintained by paying the maintenance fees every year. If the maintenance fees are not paid, the patent will cease to remain in force and the invention becomes open to public. Anyone can then utilize the patent without the danger of infringing the patent.

Q.39 Can I discuss details of my invention with a potential investor before filing a patent application ?

Ans. : It is important to file a patent application before publicly disclosing the details of an invention. In general, any invention which is made public before an application is filed would be considered "prior art" (although the definition of the term "prior art" is not uniform at the international level, in many countries, it refers to any information which has been made available to the public anywhere in the world by written or oral disclosure before the filing date).

In countries which apply the above definition of the term "prior art", an applicant's public disclosure of an invention prior to filing a patent application would prevent him/her from obtaining

a valid patent for that invention, since the invention would not comply with the novelty requirement. Some countries, however, allow for a grace period usually between 6 and 12 months which provides a safeguard for applicants who disclosed their inventions before filing a patent application. Further, the novelty criteria may be interpreted differently depending on the applicable law.

If disclosing your invention before filing a patent application is unavoidable for example, to a potential investor or a business partner then any disclosure should be accompanied by a confidentiality or non-disclosure agreement. It should also be kept in mind that applying early for patent protection will generally be helpful when seeking financial support to commercialize an invention.

Q.40 What is patent information ?

Ans. : Patent information commonly refers to the information found in patent applications and granted patents. This information may include bibliographic data about the inventor and patent applicant or patent holder, a description of the claimed invention and related developments in the field of technology, and a list of claims indicating the scope of patent protection sought by the applicant.

Q.41 What is the cost of filing design application in India ?

Ans. : The fee for filing application for registration of design in India is ₹ 1,000/-.

Q.42 What is the penalty for the piracy of registered design ?

Ans. : If anyone contravenes the copyright in a design he is liable for every offence to pay a sum not exceeding ₹ 25,000/- to the registered proprietor subject to a maximum of ₹ 50,000/- recoverable as contract debt in respect of any one design.

Q.43 Are the registered designs open for public inspection ?

Ans. : Yes, registered designs are open for public inspection only after publication in the official gazette on payment of prescribed fee of Rs.500/- on a request in Form number -5.

Q.44 Can an applicant file the application for registration of design himself ?

Ans. : The application for registration of design can be filed by the applicant himself or through a professional person (i.e. patent agent, legal practitioner). However, applicants not residents of India have to file applications through an agent residing in India.

Q.45 Is it mandatory to make the article by industrial process or means before making an application for registration of design ?

Ans. : No, design means a conception or suggestion or idea of a shape or pattern, which can be applied to an article or intended to be applied by industrial process or means.

Q.46 Why is it important for filing the application for registration of design at the earliest possible ?

Ans. : First to file rule is applicable for registrability of design. If two or more applications relating to an identical or a similar design are filed on different dates, the first application will be considered for registration of design.

Q.47 Can the same applicant make an application for the same design again, if the prior application has been abandoned ?

Ans. : Yes, the same applicant can apply again since no publication of the abandoned application is made by the Patent Office, provided the applicant does not publish the said design in the meanwhile.

Q.48 What is a Register of Designs ?

Ans. : The Register of Designs is a document maintained by the Patent Office, Kolkata as a statutory requirement. It contains the design number, date of filing and reciprocity date (if any), name and address of proprietor and such other matters as would affect the validity of proprietorship of the design and it is open for public inspection on payment of prescribed fee and extract from register may also be obtained on request with the prescribed fee.

Q.49 What is the duration of the registration of a design ? Can it be extended ?

Ans. : The term of a registered design is 15 years. Initially the right is granted for a period of 10 years, which can be extended, by another 5 years by making an application and paying a fee of ₹ 2000/- to the Controller before the expiry of initial 10 years period. The proprietor of design may make application for such extension as soon as the design is registered.

Q.50 When does the applicant for registration of design get the registration certificate ?

Ans. : When an application for registration of a design is in order, it is accepted and registered, then a certificate of registration is issued to the applicant. However, a separate request should be made to the Controller for obtaining a certified copy of the certificate for legal proceedings with requisite fee.

Q.51 Can stamps, labels, tokens, cards, be considered an article for the purpose of registration of a design ?

Ans. : No. Because once the alleged design i.e., ornamentation is removed only a piece of paper, metal or like material remains and the article referred ceases to exist. Article must have its existence independent of the design applied to it. So, the design as applied to an article should be integral with the article itself.

Q.52 What is meant by an ‘article’ under the Designs Act, 2000 ?

Ans. : Article means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately.

Q.53 Who can apply for GI's registration ?

Ans. : Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods, who are desirous of registering geographical indication in relation to such goods can apply for GI's registration.

Q.54 Who is a registered proprietor of a geographical indication ?

Ans. : Any association of persons or of producers or any organisation or authority established by or under the law can be a registered proprietor. Their name should be entered in the Register of Geographical Indication as registered proprietor for the Geographical Indication applied for.

Q.55 Who can use the registered geographical indication ?

Ans. : An authorised user has the exclusive rights to the use of geographical indication in relation to goods in respect of which it is registered.

Q.56 Who is an ‘authorised user’ ?

Ans. : ‘Authorised user’ is any person claiming to be the producer of the goods in respect of which a geographical indication has been registered. For becoming an authorized user the person has to apply in writing to the Registrar in prescribed manner and by paying requisite fee.

Q.57 Who can be considered a ‘producer’ for the purposes of this act ?

Ans. : ‘Producer’ in relation to goods, means any person who :

- Produces, processes or packages agricultural goods
- Exploits natural goods
- Makes or manufactures handicraft or industrial goods.

Q.58 How is the Trademarks Act 1999 different from the Trade and Merchandising Marks Act 1958 ?

Ans. : Enactment of the Trademarks Act 1999 is a big step forward from the Trade and Merchandise Marks Act 1958 and the Trademark Act 1940. The newly enacted Act has some features not present in the 1958 Act and these are:

- Registration of service marks, collective marks and certification trademarks.
- Increasing the period of registration and renewal from 7 years to 10 years.
- Allowing filing of single application for registration in more than one class.
- Enhanced punishment for offences related to trademarks.

- Exhaustive definitions for terms frequently used.
- Simplified procedure for registration of registered users and enlarged scope of permitted use.
- Constitution of an Appellate Board for speedy disposal of appeals and rectification applications which at present lie before High Court.

Q.59 Describe Trademarks with ,few examples.

Ans. : A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. A trademark may be one or a combination of words, letters and numerals. It may also consist of drawings, symbols, three-dimensional colours and combination of colours. It is used by traders/companies/firms etc to distinguish their goods and services from those of their competitors. A consumer associates some level of quality/price/prestige with the goods of a particular trademark. In other words the consumer uses the trademark for making a choice while buying a particular product. There are so many examples in our day to day life such as TATA, BATA, Liberty, Brooke Bond, Dabur, Baidyanath, Park Avenue, SAIL and so on. Trademarks do not protect the design or the ideas behind the goods or services from imitation or duplication, but prevent other traders/company/firm from deceiving customers into believing that goods or services actually produced by them were produced by the trademark holder.

Q.60 What are "Well-known Trademarks" ?

Ans. : Well-known trademarks in relation to any goods or services, means a mark which has become known to a substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services is likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

Q.61 What is the meaning of "Service" in the Trademark Act 1999 ?

Ans. : Service means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

Q.62 How are the terms "Certification Trademarks" and "Collective Marks" defined in the Act ?

Ans. : Certification trade mark means a mark capable of distinguishing the goods or services in connection with which it is used in the course of trade which are certified by the proprietor of the

mark in respect of origin, material, mode of manufacture of goods or performance of services, quality and accuracy.

Collective Mark means a trademark distinguishing the goods or services of an association of persons (not being a partnership within the meaning of the Indian Partnership Act, 1932).

Q.63 What is the term of a registered trademark ?

Ans. : The initial registration of a trademark shall be for a period of ten years but may be renewed from time to time for an unlimited period by payment of the renewal fees.

Q.64 What is the Madrid Agreement ?

Ans. : The Madrid Agreement was adopted on April 14, 1891 to facilitate protection of a trademark or service mark in several countries by means of a single international registration. As on July 15, 1999, 54 countries are party to this Agreement mainly belonging to Europe, countries of Africa and four countries in the Far East namely, China, the Democratic People's Republic of Korea, Mongolia and Vietnam. The United Kingdom, the United States of America, most Latin American countries, Japan and India are not signatories to this agreement. The Agreement covers both trademarks and service marks.



3

Agreements and Legislations

Syllabus

International Treaties and Conventions on IPRs, TRIPS Agreement, PCT Agreement, Patent Act of India, Patent Amendment Act, Design Act, Trademark Act, Geographical Indication Act.

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3.1 International Treaties and Conventions on IPRs

The basis to the current IP protection lies in the international conventions. The industrial revolution (1760 to around 1840) paved the way for new methodologies and ideas in the industrial sector. This lead to plethora of inventions, especially in the field of science and technology. This prompted the need to protect the inventions across the countries. But, the issues involving documentation and synchronization of local laws were soon required to be addressed. Few countries especially from the west took the initiative thus leading to various meetings which took the form of conventions.

Some of the major conventions are as follows :

- Paris Convention for the protection of Industrial property (1883)
- Berne Convention for the Protection of Literary and Artistic works (1886)
- Patent Co-operation Treaty
- Madrid Agreement Concerning the International Registration of Marks, 1891 followed by a protocol in 1989.
- International Convention for the protection of performers, producers of phonograms and Broadcasting Organisation, also known as the Rome convention 1961
- Trips agreement, 1994
- WIPO treaty on Phonograms and Performances, 1996
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled-2013

All these conventions have had tremendous contribution to the growth and improvisation of Intellectual Property Rights (IPR) across all sectors.

The growing number of applicants and increasing awareness with respect to inventions there was a need to streamline the procedure involved. The step by step procedures were different in each of the countries thus complicating the patent grant procedure right from the filing stage.

Some of the important international treaties related to intellectual property rights, of which India is a member, are as follows :

1. **Berne Convention for the Protection of Literary and Artistic Works** : Adopted on September 9, 1886 at Berne and entered into force on December 4, 1887. This Convention on Copyrights rests on three basic principles - national treatment, automatic protection and independence of protection; it also contains a series of provisions determining the minimum protection to be granted. It came into force in India on April 1, 1928.

2. **Convention Establishing the World Intellectual Property Organization (WIPO) :** Adopted on July 14, 1967 at Stockholm and entered into force on April 26, 1970. WIPO was established under this Convention with two main objectives - to promote the protection of intellectual property worldwide and to ensure administrative cooperation among the intellectual property Unions established by the treaties that WIPO administers. India became a member on May 1, 1975.
3. **Agreement establishing the World Trade Organization (WTO) :** Adopted on April 15, 1994 at Marrakesh and entered into force on January 1, 1995. WTO was established to provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments. India became a member to this agreement on January 1, 1995.
4. **World Trade Organization (WTO) agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) :** Adopted on April 15, 1994 at Marrakesh and entered into force on January 1, 1995. The TRIPS agreement covers various types of intellectual property and provides guidelines for minimum standards for protection, procedures and remedies for enforcement of IPR rights and for issues related to dispute settlement. India became a member on January 1, 1995.
5. **Paris Convention for the Protection of Industrial Property :** Adopted on March 20, 1883 at Paris and entered into force on July 7, 1884. It provides basic guidelines for the protection of industrial property (patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition) and has substantive provisions for national treatment, right of priority and common rules. This treaty came into force in India from December 7, 1998.
6. **Patent Cooperation Treaty (PCT) :** Adopted on June 19, 1970 at Washington D.C. and entered into force on January 24, 1978. It facilitates patent protection for an invention simultaneously in a large number of countries; it came into force in India from December 7, 1998.
7. **Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure :** Adopted on April 28, 1977 at Budapest and entered into force on August 19, 1980. It provides guidelines for the deposition of micro-organisms with any "international depositary authority" for the purpose of patent procedures. This treaty came into force in India from December 17, 2001.
8. **Protocol relating to the Madrid Agreement Concerning the International Registration of Marks :** Adopted on June 27, 1989 at Madrid and entered into force on December 1, 1995. The Madrid Agreement facilitates the registration of trademarks outside India; it came into force in India from July 8, 2013.

3.2 TRIPS Agreement

The TRIPS Agreement, which came into effect on 1 January 1995, is to date the most comprehensive multilateral agreement on intellectual property. The areas of intellectual property that it covers are : copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data. The three main features of the Agreement are :

Standards : In respect of each of the main areas of intellectual property covered by the TRIPS Agreement, the Agreement sets out the minimum standards of protection to be provided by each Member. Each of the main elements of protection is defined, namely the subject-matter to be protected, the rights to be conferred and permissible exceptions to those rights, and the minimum duration of protection. The Agreement sets these standards by requiring, first, that the substantive obligations of the main conventions of the WIPO, the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) in their most recent versions, must be complied with. With the exception of the provisions of the Berne Convention on moral rights, all the main substantive provisions of these conventions are incorporated by reference and thus become obligations under the TRIPS Agreement between TRIPS Member countries. The relevant provisions are to be found in Articles 2.1 and 9.1 of the TRIPS Agreement, which relate, respectively, to the Paris Convention and to the Berne Convention. Secondly, the TRIPS Agreement adds a substantial number of additional obligations on matters where the pre-existing conventions are silent or were seen as being inadequate. The TRIPS Agreement is thus sometimes referred to as a Berne and Paris-plus agreement.

Enforcement : The second main set of provisions deals with domestic procedures and remedies for the enforcement of intellectual property rights. The Agreement lays down certain general principles applicable to all IPR enforcement procedures. In addition, it contains provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures, which specify, in a certain amount of detail, the procedures and remedies that must be available so that right holders can effectively enforce their rights.

Dispute settlement : The Agreement makes disputes between WTO Members about the respect of the TRIPS obligations subject to the WTO's dispute settlement procedures.

In addition the Agreement provides for certain basic principles, such as national and most-favoured-nation treatment, and some general rules to ensure that procedural difficulties in

acquiring or maintaining IPRs do not nullify the substantive benefits that should flow from the Agreement. The obligations under the Agreement will apply equally to all Member countries, but developing countries will have a longer period to phase them in. Special transition arrangements operate in the situation where a developing country does not presently provide product patent protection in the area of pharmaceuticals.

The TRIPS Agreement is a minimum standards agreement, which allows Members to provide more extensive protection of intellectual property if they so wish. Members are left free to determine the appropriate method of implementing the provisions of the Agreement within their own legal system and practice.

3.2.1 Certain General Provisions

As in the main pre-existing intellectual property conventions, the basic obligation on each Member country is to accord the treatment in regard to the protection of intellectual property provided for under the Agreement to the persons of other Members. Article 1.3 defines who these persons are. These persons are referred to as "nationals" but include persons, natural or legal, who have a close attachment to other Members without necessarily being nationals. The criteria for determining which persons must thus benefit from the treatment provided for under the Agreement are those laid down for this purpose in the main pre-existing intellectual property conventions of WIPO, applied of course with respect to all WTO Members whether or not they are party to those conventions. These conventions are the Paris Convention, the Berne Convention, International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), and the Treaty on Intellectual Property in Respect of Integrated Circuits (IPIC Treaty).

Articles 3, 4 and 5 include the fundamental rules on national and most-favoured-nation treatment of foreign nationals, which are common to all categories of intellectual property covered by the Agreement. These obligations cover not only the substantive standards of protection but also matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in the Agreement. While the national treatment clause forbids discrimination between a Member's own nationals and the nationals of other Members, the most-favoured-nation treatment clause forbids discrimination between the nationals of other Members. In respect of the national treatment obligation, the exceptions allowed under the pre-existing intellectual property conventions of WIPO are also allowed under TRIPS. Where these exceptions allow material reciprocity, a consequential exception to MFN treatment is also permitted (e.g. comparison of terms for copyright protection in excess of the minimum term required by the TRIPS Agreement as

provided under Article 7(8) of the Berne Convention as incorporated into the TRIPS Agreement). Certain other limited exceptions to the MFN obligation are also provided for.

The general goals of the TRIPS Agreement are contained in the Preamble of the Agreement, which reproduces the basic Uruguay Round negotiating objectives established in the TRIPS area by the 1986 Punta del Este Declaration and the 1988/89 Mid-Term Review. These objectives include the reduction of distortions and impediments to international trade, promotion of effective and adequate protection of intellectual property rights, and ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade. These objectives should be read in conjunction with Article 7, entitled "Objectives", according to which the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. Article 8, entitled "Principles", recognizes the rights of Members to adopt measures for public health and other public interest reasons and to prevent the abuse of intellectual property rights, provided that such measures are consistent with the provisions of the TRIPS Agreement.

3.2.2 Substantive Standards of Protection

3.2.2.1 Copyright

During the Uruguay Round negotiations, it was recognized that the Berne Convention already, for the most part, provided adequate basic standards of copyright protection. Thus it was agreed that the point of departure should be the existing level of protection under the latest Act, the Paris Act of 1971, of that Convention. The point of departure is expressed in Article 9.1 under which Members are obliged to comply with the substantive provisions of the Paris Act of 1971 of the Berne Convention, i.e. Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members do not have rights or obligations under the TRIPS Agreement in respect of the rights conferred under Article 6bis of that Convention, i.e. the moral rights (the right to claim authorship and to object to any derogatory action in relation to a work, which would be prejudicial to the author's honour or reputation), or of the rights derived therefrom. The provisions of the Berne Convention referred to deal with questions such as subject-matter to be protected, minimum term of protection, and rights to be conferred and permissible limitations to those rights. The Appendix allows developing countries, under certain conditions, to make some limitations to the right of translation and the right of reproduction.

In addition to requiring compliance with the basic standards of the Berne Convention, the TRIPS Agreement clarifies and adds certain specific points.

Article 9.2 confirms that copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

Article 10.1 provides that computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971). This provision confirms that computer programs must be protected under copyright and that those provisions of the Berne Convention that apply to literary works shall be applied also to them. It confirms further, that the form in which a program is, whether in source or object code, does not affect the protection. The obligation to protect computer programs as literary works means e.g. that only those limitations that are applicable to literary works may be applied to computer programs. It also confirms that the general term of protection of 50 years applies to computer programs. Possible shorter terms applicable to photographic works and works of applied art may not be applied.

Article 10.2 clarifies that databases and other compilations of data or other material shall be protected as such under copyright even where the databases include data that as such are not protected under copyright. Databases are eligible for copyright protection provided that they by reason of the selection or arrangement of their contents constitute intellectual creations. The provision also confirms that databases have to be protected regardless of which form they are in, whether machine readable or other form. Furthermore, the provision clarifies that such protection shall not extend to the data or material itself, and that it shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11 provides that authors shall have in respect of at least computer programs and, in certain circumstances, of cinematographic works the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. With respect to cinematographic works, the exclusive rental right is subject to the so-called impairment test: a Member is excepted from the obligation unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, the obligation does not apply to rentals where the program itself is not the essential object of the rental.

According to the general rule contained in Article 7(1) of the Berne Convention as incorporated into the TRIPS Agreement, the term of protection shall be the life of the author and 50 years after his death. Paragraphs 2 through 4 of that Article specifically allow shorter terms in certain cases. These provisions are supplemented by Article 12 of the TRIPS Agreement, which provides that whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13 requires Members to confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder. This is a horizontal provision that applies to all limitations and exceptions permitted under the provisions of the Berne Convention and the Appendix thereto as incorporated into the TRIPS Agreement. The application of these limitations is permitted also under the TRIPS Agreement, but the provision makes it clear that they must be applied in a manner that does not prejudice the legitimate interests of the right holder.

Related rights

The provisions on protection of performers, producers of phonograms and broadcasting organizations are included in Article 14. According to Article 14.1, performers shall have the possibility of preventing the unauthorized fixation of their performance on a phonogram (e.g. the recording of a live musical performance). The fixation right covers only aural, not audiovisual fixations. Performers must also be in position to prevent the reproduction of such fixations. They shall also have the possibility of preventing the unauthorized broadcasting by wireless means and the communication to the public of their live performance.

In accordance with Article 14.2, Members have to grant producers of phonograms an exclusive reproduction right. In addition to this, they have to grant, in accordance with Article 14.4, an exclusive rental right at least to producers of phonograms. The provisions on rental rights apply also to any other right holders in phonograms as determined in national law. This right has the same scope as the rental right in respect of computer programs. Therefore it is not subject to the impairment test as in respect of cinematographic works. However, it is limited by a so-called grand-fathering clause, according to which a Member, which on 15 April 1994, i.e. the date of the signature of the Marrakesh Agreement, had in force a system of equitable remuneration of right holders in respect of the rental of phonograms, may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

Broadcasting organizations shall have, in accordance with Article 14.3, the right to prohibit the unauthorized fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of their television broadcasts. However, it is not necessary to grant such rights to broadcasting organizations, if owners of copyright in the subject-matter of broadcasts are provided with the possibility of preventing these acts, subject to the provisions of the Berne Convention.

The term of protection is at least 50 years for performers and producers of phonograms, and 20 years for broadcasting organizations (Article 14.5).

Article 14.6 provides that any Member may, in relation to the protection of performers, producers of phonograms and broadcasting organizations, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention.

3.2.2.2 Trademarks

The basic rule contained in Article 15 is that any sign, or any combination of signs, capable of distinguishing the goods and services of one undertaking from those of other undertakings, must be eligible for registration as a trademark, provided that it is visually perceptible. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, must be eligible for registration as trademarks.

Where signs are not inherently capable of distinguishing the relevant goods or services, Member countries are allowed to require, as an additional condition for eligibility for registration as a trademark, that distinctiveness has been acquired through use. Members are free to determine whether to allow the registration of signs that are not visually perceptible (e.g. sound or smell marks).

Members may make registrability depend on use. However, actual use of a trademark shall not be permitted as a condition for filing an application for registration, and at least three years must have passed after that filing date before failure to realize an intent to use is allowed as the ground for refusing the application (Article 14.3).

The Agreement requires service marks to be protected in the same way as marks distinguishing goods (see e.g. Articles 15.1, 16.2 and 62.3).

The owner of a registered trademark must be granted the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion must be presumed (Article 16.1).

The TRIPS Agreement contains certain provisions on well-known marks, which supplement the protection required by Article 6bis of the Paris Convention, as incorporated by reference into the TRIPS Agreement, which obliges Members to refuse or to cancel the registration, and to prohibit the use of a mark conflicting with a mark which is well known. First, the provisions of that Article must be applied also to services. Second, it is required that knowledge in the relevant sector of the public acquired not only as a result of the use of the mark but also by other means, including as a result of its promotion, be taken into account. Furthermore, the protection of registered well-known marks must extend to goods or services which are not similar to those in respect of which the trademark has been registered, provided that its use would indicate a connection between those

goods or services and the owner of the registered trademark, and the interests of the owner are likely to be damaged by such use (Articles 16.2 and 3).

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties (Article 17).

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely (Article 18).

Cancellation of a mark on the grounds of non-use cannot take place before three years of uninterrupted non-use has elapsed unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark, such as import restrictions or other government restrictions, shall be recognized as valid reasons of non-use. Use of a trademark by another person, when subject to the control of its owner, must be recognized as use of the trademark for the purpose of maintaining the registration (Article 19).

It is further required that use of the trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form, or use in a manner detrimental to its capability to distinguish the goods or services (Article 20).

3.2.2.3 Geographical Indications

Geographical indications are defined, for the purposes of the Agreement, as indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin (Article 22.1). Thus, this definition specifies that the quality, reputation or other characteristics of a good can each be a sufficient basis for eligibility as a geographical indication, where they are essentially attributable to the geographical origin of the good.

In respect of all geographical indications, interested parties must have legal means to prevent use of indications which mislead the public as to the geographical origin of the good, and use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (Article 22.2).

The registration of a trademark which uses a geographical indication in a way that misleads the public as to the true place of origin must be refused or invalidated *ex officio* if the legislation so permits or at the request of an interested party (Article 22.3).

Article 23 provides that interested parties must have the legal means to prevent the use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication. This applies even where the public is not being misled, there is no unfair

competition and the true origin of the good is indicated or the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation" or the like. Similar protection must be given to geographical indications identifying spirits when used on spirits. Protection against registration of a trademark must be provided accordingly.

Article 24 contains a number of exceptions to the protection of geographical indications. These exceptions are of particular relevance in respect of the additional protection for geographical indications for wines and spirits. For example, Members are not obliged to bring a geographical indication under protection, where it has become a generic term for describing the product in question (paragraph 6). Measures to implement these provisions shall not prejudice prior trademark rights that have been acquired in good faith (paragraph 5). Under certain circumstances, continued use of a geographical indication for wines or spirits may be allowed on a scale and nature as before (paragraph 4). Members availing themselves of the use of these exceptions must be willing to enter into negotiations about their continued application to individual geographical indications (paragraph 1). The exceptions cannot be used to diminish the protection of geographical indications that existed prior to the entry into force of the TRIPS Agreement (paragraph 3). The TRIPS Council shall keep under review the application of the provisions on the protection of geographical indications (paragraph 2).

3.2.2.4 Industrial Designs

Article 25.1 of the TRIPS Agreement obliges Members to provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

Article 25.2 contains a special provision aimed at taking into account the short life cycle and sheer number of new designs in the textile sector : requirements for securing protection of such designs, in particular in regard to any cost, examination or publication, must not unreasonably impair the opportunity to seek and obtain such protection. Members are free to meet this obligation through industrial design law or through copyright law.

Article 26.1 requires Members to grant the owner of a protected industrial design the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

Article 26.2 allows Members to provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of

protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

The duration of protection available shall amount to at least 10 years (Article 26.3). The wording "amount to" allows the term to be divided into, for example, two periods of five years.

3.2.2.5 Patents

The TRIPS Agreement requires Member countries to make patents available for any inventions, whether products or processes, in all fields of technology without discrimination, subject to the normal tests of novelty, inventiveness and industrial applicability. It is also required that patents be available and patent rights enjoyable without discrimination as to the place of invention and whether products are imported or locally produced (Article 27.1).

There are three permissible exceptions to the basic rule on patentability. One is for inventions contrary to ordre public or morality; this explicitly includes inventions dangerous to human, animal or plant life or health or seriously prejudicial to the environment. The use of this exception is subject to the condition that the commercial exploitation of the invention must also be prevented and this prevention must be necessary for the protection of ordre public or morality (Article 27.2).

The second exception is that Members may exclude from patentability diagnostic, therapeutic and surgical methods for the treatment of humans or animals (Article 27.3(a)).

The third is that Members may exclude plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, any country excluding plant varieties from patent protection must provide an effective *sui generis* system of protection. Moreover, the whole provision is subject to review four years after entry into force of the Agreement (Article 27.3(b)).

The exclusive rights that must be conferred by a product patent are the ones of making, using, offering for sale, selling, and importing for these purposes. Process patent protection must give rights not only over use of the process but also over products obtained directly by the process. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts (Article 28).

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties (Article 30).

The term of protection available shall not end before the expiration of a period of 20 years counted from the filing date (Article 33).

Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application (Article 29.1).

If the subject-matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process, where certain conditions indicating a likelihood that the protected process was used are met (Article 34).

Compulsory licensing and government use without the authorization of the right holder are allowed, but are made subject to conditions aimed at protecting the legitimate interests of the right holder. The conditions are mainly contained in Article 31. These include the obligation, as a general rule, to grant such licences only if an unsuccessful attempt has been made to acquire a voluntary licence on reasonable terms and conditions within a reasonable period of time; the requirement to pay adequate remuneration in the circumstances of each case, taking into account the economic value of the licence; and a requirement that decisions be subject to judicial or other independent review by a distinct higher authority. Certain of these conditions are relaxed where compulsory licences are employed to remedy practices that have been established as anticompetitive by a legal process. These conditions should be read together with the related provisions of Article 27.1, which require that patent rights shall be enjoyable without discrimination as to the field of technology, and whether products are imported or locally produced.

3.2.2.6 Layout-designs of Integrated Circuits

Article 35 of the TRIPS Agreement requires Member countries to protect the layout-designs of integrated circuits in accordance with the provisions of the IPIC Treaty (the Treaty on Intellectual Property in Respect of Integrated Circuits), negotiated under the auspices of WIPO in 1989. These provisions deal with, *inter alia*, the definitions of "integrated circuit" and "layout-design (topography)", requirements for protection, exclusive rights, and limitations, as well as exploitation, registration and disclosure. An "integrated circuit" means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function. A "layout-design (topography)" is defined as the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture. The obligation

to protect layout-designs applies to such layout-designs that are original in the sense that they are the result of their creators' own intellectual effort and are not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of their creation. The exclusive rights include the right of reproduction and the right of importation, sale and other distribution for commercial purposes. Certain limitations to these rights are provided for.

In addition to requiring Member countries to protect the layout-designs of integrated circuits in accordance with the provisions of the IPIC Treaty, the TRIPS Agreement clarifies and/or builds on four points. These points relate to the term of protection (ten years instead of eight, Article 38), the applicability of the protection to articles containing infringing integrated circuits (last sub clause of Article 36) and the treatment of innocent infringers (Article 37.1). The conditions in Article 31 of the TRIPS Agreement apply mutatis mutandis to compulsory or non-voluntary licensing of a layout-design or to its use by or for the government without the authorization of the right holder, instead of the provisions of the IPIC Treaty on compulsory licensing (Article 37.2).

3.2.3 Protection of Undisclosed Information

The TRIPS Agreement requires undisclosed information -- trade secrets or know-how -- to benefit from protection. According to Article 39.2, the protection must apply to information that is secret, that has commercial value because it is secret and that has been subject to reasonable steps to keep it secret. The Agreement does not require undisclosed information to be treated as a form of property, but it does require that a person lawfully in control of such information must have the possibility of preventing it from being disclosed to, acquired by, or used by others without his or her consent in a manner contrary to honest commercial practices. "Manner contrary to honest commercial practices" includes breach of contract, breach of confidence and inducement to breach, as well as the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

The Agreement also contains provisions on undisclosed test data and other data whose submission is required by governments as a condition of approving the marketing of pharmaceutical or agricultural chemical products which use new chemical entities. In such a situation the Member government concerned must protect the data against unfair commercial use. In addition, Members must protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

Control of anti-competitive practices in contractual licences

Article 40 of the TRIPS Agreement recognizes that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on

trade and may impede the transfer and dissemination of technology (paragraph 1). Member countries may adopt, consistently with the other provisions of the Agreement, appropriate measures to prevent or control practices in the licensing of intellectual property rights which are abusive and anti-competitive (paragraph 2). The Agreement provides for a mechanism whereby a country seeking to take action against such practices involving the companies of another Member country can enter into consultations with that other Member and exchange publicly available non-confidential information of relevance to the matter in question and of other information available to that Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member (paragraph 3). Similarly, a country whose companies are subject to such action in another Member can enter into consultations with that Member (paragraph 4).

3.3 PCT Agreement or the Patent Cooperation Treaty (PCT)

3.3.1 Introduction of 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). The Patent Cooperation Treaty (PCT) is an international treaty with more than 148 Contracting States. It is administered by the World Intellectual Property Organization.(WIPO).The PCT is an international treaty which provides a system for filing a patent application and allow us to obtain patents in multiple countries around the world on the basis of a single patent application. As PCT simplifies the procedure for obtaining Patent protection in many countries, making it more efficient and economical for: a) Users of the patent system i.e an applicant/(s) and inventors b) National Offices. The PCT simplifies the patent filing process for applicant and the ultimate decision to grant a patent vests exclusively with each national or regional Patent Office. 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 save applicant time, effort and expense of preparing separate applications in various languages and file it in different signatories states. Patent Cooperation Treaty- file an application under the PCT, directly or within the 12-month period as provided for by the Paris Convention from the filing date of a first application, which is valid in all Contracting States of the PCT.

3.3.2 Need for Introducing PCT

PCT provides users with a worldwide system for the simplified and effective filing of patent applications,

- 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.

3.3.3 Basic Features of PCT System

- Formal examination done by one office.
- Retrieval is carried out by one office.
- International publication done by one office.
- Examination and authorization finished by national office.
- Single application with legal effect in all PCT countries.
- 148 countries and 4 regional patent systems.

3.3.4 PCT Advantages

The PCT, as an aid of the international patent system, provides a worldwide system for simplified filing and processing of patent applications which helps in,

- A single application in single language filed in a single country called the international application.
- Provides a strong basis for patenting decisions to the users.
- Harmonizes formal requirements.
- Used by the world's major corporations, universities and research institutions when they seek international patent protection.
- This single application has the effect of filing simultaneously in different countries (designated countries).
- Protects applicant from certain inadvertent errors.
- Evolves to meet user needs.

3.3.5 PCT Filing Process

Step 1 Filing of local application : First applicant need to file patent application in home country.

Step 2 Filing of PCT application : Applicant need to file a national application along with international application in one language and need to pay single set of fee. PCT application is to be

filed within 12 months after filing a national application. Priority date is given by the national office. PCT application can also be directly filed to RO (receiving office) office of WIPO.

Step 3 Checking for Defects : The check is conducted by the receiving office, it is divided into two parts. The first part concerns the requirements of according an international filing date as set out in Article 11(1) of PCT. The second part concerns the formal and physical requirements under Article 14.

Step 4 International Search Report : Application is transmitted to an International searching authority. An International Searching Authority search an application and check for a prior art and state of art. They made it clear whether or not document that have been presented is eligible for grant of patent. They establish it on the basis of their written opinion. Within **16 months** from the date of filing, ISR (International Search Report) will give search report with written opinion.

{Prior art : Everything which has been made available to the public anywhere in the world by means of written document which is capable of being of providing assistance in determining that the claimed invention is new or not and also that it does or does not involve an inventive step.}

Step 5 International Publication : After submitting the necessary document user application is published, after the completion of 18 months. Before that an application is kept secret. International Bureau (IB) of WIPO publishes the PCT application. Content of application is disclosed to the general public.

Step 6 International Search : Request for supplementary search is filed by the application before completion of **19 months** from the priority date. Under this applicant demand for international preliminary examination.

Step 7 International Preliminary Report : Search authority will give report on patentability, whether or not patent is to be granted. This is to be given within **28 months** by the competent authority.

Step 8 Enter in National Phase : After completion of all necessary requirements patent is granted by national office and likewise patent is granted in all other contracting states. Patent is granted to the applicant before the completion of **30 months**. After this applicant can seek protection.

3.3.6 e-PCT

- Apart from giving application in papers WIPO has evolved new concept of filing of an e-PCT which is easier for both applicant and patent office.
- Online e-filing portal that provides PCT services for applicants and office both.
- It was made available since May, 2011.

- It provides secure and direct interaction with PCT applications maintained by the International Bureau.
- Applicants can now easily conduct most PCT transactions electronically mode.

3.3.7 PCT Challenges

- Improving the quality of PCT international phase work products.
- Building trust between Patent offices, so that duplication of application in international phase and national phase processing can be reduced.
- Language issues faced by most countries :
- Helping developing countries benefit from the PCT.
- Making PCT accessible to applicants of all types from all Contracting States.
- Helping PCT users stay abreast of new developments and strategies.

3.3.8 Conclusion

Patent Cooperation Treaty brought great revolution in field of invention and innovation for the inventor due to this PCT enjoyed great success and continued growth across the world. It has a near global membership of 148 Contracting States with millions of inventors, big and small, who aids to the world's technological advancement through the use of the PCT and national patent systems. The PCT brought revolution in the way through which patents are obtained across the world. The time delay feature of the PCT preserves user patent options, delays costs, giving user an additional time to obtain financing and assess commercial, licensing and partnership opportunities.

The PCT helps user to obtain patents for his invention(s). It is the smart Patenting Solution - Applicant best option for obtaining patent on a global scale.

3.3.9 Suggestions

- It is very much important that the PCT system remain relevant to the needs of applicants and national Offices.
- Legal enhancements have been made over the years in order to further simplify the operations of the PCT system.
- Information technology have been introduced creating efficiency gains and reduced costs for applicants, national Offices and the International Bureau of WIPO.
- The operations and performance of the PCT system should be regularly monitored and assessed for the business needs and experiences of applicants, national Offices and the International Bureau of WIPO.

- PCT should try to bring harmony among the nations so that more and more technological advancement could be done, and also inventor could get motivated to do unique invention.
- PCT should also reward in terms of monetary benefit to those inventor whose invention is fabulous so that more technological advancement could be.

3.4 Patent Act of India

India's Patent Policy : India has a long history of patent policy which was framed after enormous study. India's approach to patents differs from those of industrialized countries in that India sees patents as a tool of public policy. India's policy is being challenged by the demand to reform IPR laws to conform to TRIPs. This section provides an overview of India's patent policy.

History of Indian Patent Law : The first legislation in India relating to patents was the Act VI of 1856. The objective of this legislation was to encourage inventions of new and useful manufactures and to induce inventors to disclose secret of their inventions. The Act was subsequently repealed by Act IX of 1857 since it had been enacted without the approval of the British Crown. Fresh legislation for granting 'exclusive privileges' was introduced in 1859 as Act XV of 1859. This legislation contained certain modifications of the earlier legislation, namely, grant of exclusive privileges to useful inventions only and extension of priority period from 6 months to 12 months. This Act excluded importers from the definition of inventor. This Act was based on the United Kingdom. Act of 1852 with certain departures which include allowing assignees to make application in India and also taking prior public use or publication in India or United Kingdom for the purpose of ascertaining novelty. In 1872, the Act of 1859 was consolidated to provide protection relating to designs. It was renamed as "The Patterns and Designs Protection Act" under Act XIII of 1872. The Act of 1872 was further amended in 1883 (XVI of 1883) to introduce a provision to protect novelty of the invention, which prior to making application for their protection were disclosed in the Exhibition of India. A grace period of 6 months was provided for filing such applications after the date of the opening of such Exhibition. This Act remained in force for about 30 years without any change but in the year 1883, certain modifications in the patent law were made in United Kingdom and it was considered that those modifications should also be incorporated in the Indian law. In 1888, an Act was introduced to consolidate and amend the law relating to invention and designs in conformity with the amendments made in the U.K. law.

The Indian Patents and Designs Act, 1911, (Act II of 1911) replaced all the previous Acts. This Act brought patent administration under the management of Controller of Patents for the first time. This Act was further amended in 1920 to enter into reciprocal arrangements with UK and other countries for securing priority. In 1930, further amendments were made to incorporate, inter-alia, provisions relating to grant of secret patents, patent of addition, use of invention by Government,

powers of the Controller to rectify register of patent and increase of term of the patent from 14 years to 16 years. In 1945, an amendment was made to provide for filing of provisional specification and submission of complete specification within nine months. After Independence, it was felt that the Indian Patents and Designs Act, 1911 was not fulfilling its objective. It was found desirable to enact comprehensive patent law owing to substantial changes in political and economic conditions in the country. Accordingly, the Government of India constituted a committee under the Chairmanship of Justice (Dr.) Bakshi Tek Chand, a retired Judge of Lahore High Court, in 1949 to review the patent law in India in order to ensure that the patent system is conducive to the national interest. The terms of reference of this Committee includes as follows :

- To survey and report on the working of the patent system in India ;
- To examine the existing patent legislation in India and to make recommendations for improving it, particularly with reference to the provisions concerned with the prevention of abuse of patent rights;
- To consider whether any special restrictions should be imposed on patent regarding food and medicine;
- To suggest steps for ensuring effective publicity to the patent system and to patent literature, particularly as regards patents obtained by Indian inventors;
- To consider the necessity and feasibility of setting up a National Patents Trust;
- To consider the desirability or otherwise of regulating the profession of patent agents ;
- To examine the working of the patent office and the services rendered by it to the public and make suitable recommendations for improvement;
- And to report generally on any improvement that the committee thinks fit to recommend for enabling the Indian Patent System to be more conducive to national interest by encouraging invention and the commercial development and use of inventions.

The committee submitted its interim report on 4th August, 1949 with recommendations for prevention of misuse or abuse of patent right in India and suggested amendments to sections 22, 23 and 23A of the Patents and Designs Act, 1911 on the lines of the United Kingdom Acts 1919 and 1949. The committee also observed that the Patents Act should contain clear indication to ensure that food and medicine and surgical and curative devices are made available to the public at the cheapest price commensurate with giving reasonable compensation to the patentee. Based on the above recommendations of the Committee, the 1911 Act was amended in 1950 (Act XXXII of 1950) relating to working of inventions and compulsory license/revocation. Other provisions were related to endorsement of the patent with the words 'license of right' on an application by the Government so that the Controller could grant licenses. In 1952 (Act LXX of 1952) an amendment was made to provide compulsory license in relation to patents in respect of food and medicines,

insecticide, germicide or fungicide and a process for producing substance or any invention relating to surgical or curative devices. The compulsory license was also available on notification by the Central Government. Based on the recommendations of the Committee, a bill was introduced in the Parliament in 1953 (Bill No.59 of 1953). However, the Government did not press for the consideration of the bill and it was allowed to lapse. In 1957, the Government of India appointed Justice N. Rajagopala Ayyangar Committee to examine the question of revision of the Patent Law and advise government accordingly. The report of the Committee, which comprised of two parts, was submitted in September, 1959. The first part dealt with general aspects of the Patent Law and the second part gave detailed note on the several clauses of the lapsed bills 1953. The first part also dealt with evils of the patent system and solution with recommendations in regards to the law. The committee recommended retention of the Patent System, despite its shortcomings. This report recommended major changes in the law which formed the basis of the introduction of the Patents Bill, 1965. This bill was introduced in the Lok Sabha on 21st September, 1965, which however lapsed. In 1967, again an amended bill was introduced which was referred to a Joint Parliamentary Committee and on the final recommendation of the Committee, the Patents Act, 1970 was passed. This Act repealed and replaced the 1911 Act so far as the patents law was concerned. However, the 1911 Act continued to be applicable to designs. Most of the provisions of the 1970 Act were brought into force on 20th April 1972 with publication of the Patent Rules, 1972. This Act remained in force for about 24 years without any change till December 1994. However, the Act of 1970 was amendment to comply with TRIPs Agreement. An ordinance effecting certain changes in the Act was issued on 31st December 1994, which ceased to operate after six months. Subsequently, another ordinance was issued in 1999. This ordinance was subsequently replaced by the Patents (Amendment) Act, 1999 that was brought into force retrospectively from 1st January, 1995. The amended Act provided for filing of applications for product patents in the areas of drugs, pharmaceuticals and agro chemicals though such patents were not allowed. However, such applications were to be examined only after 31-12-2004. Meanwhile, the applicants could be allowed Exclusive Marketing Rights (EMR) to sell or distribute these products in India, subject to fulfillment of certain conditions. The second amendment to the 1970 Act was made through the Patents (Amendment) Act, 2002 (Act 38 of 2002). This Act came into force on 20th May 2003 with the introduction of the new Patent Rules, 2003 by replacing the earlier Patents Rules, 1972. The third amendment to the Patents Act 1970 was introduced through the Patents (Amendment) Ordinance, 2004 with effect from 1st January, 2005. This Ordinance was later replaced by the Patents (Amendment) Act 2005 (Act 15 of 2005) on 4th April, 2005 which was brought into force from 1-1-2005. The Patents Act, 1970, was very weak for particular inventions, especially pharmaceuticals. The Act did not provide protection for products vital to the Indian economy, such as agricultural and horticultural products, atomic energy inventions, and all living things. A "stated

objective of the Indian Patents Act, 1970, was the development of an independent Indian pharmaceutical industry. The abolition of pharmaceutical product protection from the inherited British colonial law was seen as the key element in advancing this objective." "The Patent Act provided protection for method or processes of manufacture, but did not provide protection for compositions of matter such as medicine or drugs, food, or any other substance "prepared or produced by a chemical process". In addition, the method or process patents for medicines, food, or drugs expired quickly and lasted only "five years from the date of sealing of the patent, or seven years from the date of the patent whichever period is shorter. . ." Because medicine process patents expired, either five years from the grant of the patent, or after overcoming opposition and passing examination, or seven years from the time of application, whichever is shorter, "it is possible that a patent which is opposed will expire before the opposition is concluded." Under India's patent regime, patents for other inventions expired after only fourteen years from the date of the patent. In contrast to these short periods, the minimum term of protection under the TRIPs Agreement is twenty years from the date of filing for any kind of patent. Under the Patents Act, 1970, the examination and opposition procedures were lengthy. Patent examiners had to ensure that applications were in compliance with the procedural requirements of the Patent Act, and to determine whether there was any "lawful ground of objection to the grant of the patent" Patent examiners had to file a report with the Controller of Patents listing any objections to the grant of the patent within eighteen months after receiving a patent application. Objections could relate to the claims and the specification or anticipation of any claims. The Controller had to report any objections to the applicant and give the applicant an opportunity to amend its application. If the applicant fixed all of the objections and the Controller accepted the complete specification, it was then advertised in the Official Gazette.⁴⁶ After public advertisement, any person could give notice of opposition to the patent within four months of the publication date. If there was a public opposition, the Controller had to "notify the applicant and give the applicant and the opponent an opportunity to be heard before deciding the case." If the application was finally accepted, a patent would be granted if the applicant requested sealing. Under the weak regime of the Patents Act, 1970, there was little incentive for pharmaceutical companies in India to perform original research and to develop new drugs. Because pharmaceutical compounds could not be patented, and because process patents expired rather quickly, there was little financial incentive to perform long and costly research and development. To account for India's pharmaceutical needs, a large generic pharmaceutical industry with over sixteen thousand firms developed. These firms were well suited to reverse-engineer pharmaceuticals developed and patented in foreign countries, and to design a new process for producing the same patented drug in large quantities. The Patents Act, 1970, gave the Indian generic pharmaceutical industry has a great competitive advantage by allowing Indian firms to copy patented pharmaceuticals developed by foreign pharmaceutical companies by simply

designing a new method to make the same patented drug. Additionally, the Act placed the burden of proof on the patentee to prove infringement. To successfully claim infringement of process patents, a patent holder must prove that his particular product could only have been made through his patented process if the product could be made through any other possible process, the suit for infringement would fail. Because the Indian firms did not have to spend the same amount of time and money in research and development that other pharmaceutical companies did, they could sell the same drugs at a fraction of the price in the United States and Europe. "Indian drug makers have manufacturing costs almost 50 percent below that of multinational drug makers in Europe and the United States, and India's drug discovery cost remains at almost one-tenth of that in the Western world". Presently, patents in India are governed by the Patents Act, 1970, as amended by the Patents (Amendments) Acts of 1999, 2002, and 2005, and the Patents Rules, 2003, ("Patents Rules, 2003") as amended by the Patents (Amendments) Rules of 2005 and 2006. The present laws are the outcome of various amendments made to the Patents Act, 1970, and the Patent Rules, 2003, designed mainly to meet the requirements of TRIPs and India's obligations under international agreements. Some of the largest changes were made concerning the mandatory requirement of introducing product patents for drugs, food products and chemicals by January 1, 2005. TRIPs, however, does not extend to drugs that were already on the market, and only covers a newly discovered chemical entity.

3.4.1 India's Patent Policy in Pre-TRIPs Period

India's patent policy focused on balancing developmental concerns with the need for promoting innovations. India viewed patents as a tool for economic development and restricted the scope and term of patents. The sentiment in India on the issue of patents, especially on pharmaceuticals, is illustrated by an oft-quoted statement made by Indira Gandhi at the World Health Assembly in 1982 : "The idea of a better-ordered world is one in which medical discoveries will be free of patents and there will be no profiteering from life and death".

The philosophy of India's Patents Act of 1970 varies enormously from the framework being established under TRIPs. There are several knowledge and information areas which India considers non-patentable. India has a large community of scientists and researchers among whom publication rather than gaining patents has been a concern. G.V. Ramakrishna, Chairman of the Disinvestment Commission points out that in India, "We (Indians) are accustomed to the notion that knowledge is free. Our whole orientation has to change from one that stresses intellectual attainment to one that protects intellectual property."

Industrialized nations conceive of patents as a fundamental right comparable to the right of physical property, whereas developing nations view it as "fundamentally as an economic policy question."

From the perspective of developed countries, intellectual property is a private right that should be protected as any other tangible property, but for developing nations, intellectual property is a public good that should be used to promote economic development.

India has always believed in the Principle of Dharma and wanted that this Principle be envisaged in the Laws that it enacts. On this basis Patents Law was legislated so that the fruits of innovation be reached to the least person and no person is deprived of it as India was against the commercialization of one's own intellect.

3.4.2 The Main Features of the Original Indian Patents Act, 1970

- The Act tries to strike a balance between the rights of the patent holder and his obligation to the society that grants him such rights.
- The basic philosophy of the Act, as laid down in Section 83, is that patents are granted to encourage inventions to accelerate indigenous industrial growth by securing their working in India on a commercial scale. And, those patents are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article.
- The Act totally excludes atomic energy and methods of agriculture from patentability. One cannot obtain any sort of patent whatsoever in these fields(Section 3).
- The Act permits product patents for all inventions except food, medicines, drugs and Substances produced by chemical processes; in these fields only process patent is available because food and health are crucial for the well-being of the people. Process patents in these areas enable the other competitors to find new, improved and economical processes for producing the same product.
- Section 53 provides patent protection for a period of 14 years from the date of filing. In case of food and medical drugs the period of protection is limited to seven years from the date of filing the patent or five years from the date of sealing, whichever is earlier. This shorter period of protection in case of food and medicines is believed to be necessary to prevent the patentee from exploiting the needs of society by charging exorbitant prices for the patented article. Further, in the field of medicine, the rate of obsolescence is high as new and improved molecules keep replacing the existing ones.
- The Act contains provisions for compulsory working of a patent. The Working of a patent means manufacturing the product in India. The patentee cannot hold the patent in India and import the product from another country, thereby compelling the Indian consumer to pay an excessive price.
- In public interest, patents are subject to strict and extensive governmental control and use. The provision on Compulsory Licensing under Section 84 of the Act ensures the working of the

patent after three years from the date of sealing. If the patent holder ignores this provision, any person may apply for compulsory license and he shall be licensed to manufacture the product. The rationale of compulsory license is that the state undertakes to protect IPRs only to ensure that new products are available cheaply and in abundance. Hence compulsory license is issued if it is in public interest or if the manufacturer does not work the patent.

- Every patent for an invention relating to a method or process for manufacture of Substances intended for use, or capable of being used, as food, medicines, or drugs, or relating to substances prepared or produced by chemical process (including alloys, optical glass, semi-conductors and inter-metallic compounds) shall be deemed to be endorsed "Licenses of Right" from the date of expiry of three years after the sealing of the patent. This patent law which was a model for other developing countries like Argentina, Mexico, Egypt, Brazil and Chile, has been replaced by the Indian Patent Act, 1999, which is modeled on the basis of the TRIPs (Trade-Related Aspects of Intellectual Property Rights) Agreement. This amendment seeks to implement the obligations that India has taken in the field of patents by signing the TRIPs Agreement. The bill generally aims at making the 1970 Patents Act as TRIPs compliant as possible. Besides TRIPs, India is also a member of the following international treaties related to intellectual property rights :
a) Convention establishing World Intellectual Property Organization (WIPO) b) Paris Convention for the protection of Industrial Property with effect from December 7, 1998 c) Patent Cooperation Treaty (PCT) with effective from December 7, 1998.

3.5 Patent Amendment Act

3.5.1 Patent Amendments in India after Trips Agreement

TRIPs provided a three-stage frame for countries such as India which did not grant product patent rights in pharmaceuticals, when TRIPs came into force on 1 January, 1995: 1. Introduction of a facility ("mail box") from January 1, 1995 to receive and hold product patent applications in the fields of pharmaceuticals (and agricultural chemicals). Such applications will not be processed for the grant of a patent until the end of 2004. But Exclusive Marketing Rights (EMRs) can be obtained for that application if a patent has been granted in some other WTO member country and the application has not been rejected in the country as not being an invention. 2. Compliance, from January 1, 2000 with other obligations of TRIPs, namely, those related to rights of patentee, term of patent protection, compulsory licensing, reversal of burden of proof and so on, and 3. Introduction of full product patent protection in all fields including pharmaceuticals from January 1, 2005. All the product patent applications held in the mail box are also required to be taken up for examination from January 1, 2005.⁵² An Ordinance was actually introduced a day before TRIPs came into effect. But the Ordinance lapsed because it could not be followed up with the necessary

legislation within the stipulated time required. Then the government introduced a Bill and it was passed in the Lok Sabha. But in the Rajya Sabha, where the opposition was in a majority, the Bill was stalled (the Bill was referred to a Parliamentary Select Committee) and the report could not be submitted by the time the Parliament was dissolved in May 1996, and India had to comply with the requirements of the TRIPs agreement by April 1999. Again a Bill was introduced, and this time it was passed in the Rajya Sabha on 22 December 1998, but the Bill could not come up for consideration in the Lok Sabha. Ultimately an Ordinance was promulgated followed by an Act passed in March 1999.⁵³ The Patents (Amendment) Act, 1999⁵⁴ amended the Patents Act, 1970 with retrospective effect from 1 January, 1995 to implement mail box facilities and EMRs. Another Bill was introduced in the Rajya Sabha in December, 1999 to bring about the other changes in the patent regime .This Bill too faced similar hurdles and could not be passed immediately. The Bill had to be referred to a joint parliamentary committee. This committee consulted a large number of people including, lawyers, economists, industry representatives, NGOs and others. Several objections were raised. Some of these were incorporated and the committee submitted a revised Bill in December, 2001 (Joint Committee 2001). This Bill with a few changes was approved by the Parliament in May, 2002. The amended Act (The Patents Amendment), 2002 came into force on May 20, 2003. The Patents (Amendment) Act, 2002 made 64 amendments to the Patents Act, 1970 relating to terms of patents (20 years), exceptions to exclusive rights, compulsory licensing and so on. A Third Amendment was necessary by the end of 2004 to replace the EMR system and to introduce product patent protection . A bill (The Patents (Amendment) Bill, 2003) was introduced in the parliament in December 2003. Though only two clauses were necessary to replace the EMR system and introduce product patents in all fields including pharmaceuticals, the bill actually included 70 other clauses. Before this bill could be passed, Lok Sabha was dissolved. After the elections, the new government which came into power in May 2004 refereed the issue of the Third Amendment to a Group of Ministers (GoM).

Many public interest groups and others demanded that the recommendations of the GoM should be made public and a debate be held before finalizing the amendments. But this was not done. In fact even without discussing it in the parliament, full fledged product patent regime has been introduced in India from 1 January, 2005 through a presidential decree (the Patents (Amendment) Ordinance, 2004) issued on December 26, 2004.

3.5.2 The Indian Patent Act (Post-Trips Amendments)

The first Indian patent laws were first promulgated in 1856. These were modified from time to time. New patent laws were made after the independence in the form of the Indian Patent Act of 1970. The Act has now been radically amended to become fully compliant with the provisions of TRIPs. The most recent amendment was made in 2005 which were preceded by the amendments in

2000 and 2003. India became a member of the Paris Convention, Patent Cooperation Treaty and Budapest Treaty. The patent right is territorial in nature and inventors/their assignees will have to file separate patent applications in countries of their interest, along with necessary fees, for obtaining patents in those countries. A new chemical process or a drug molecule or an electronic circuit or a new surgical instrument or a vaccine is patentable subject matter provided all the stipulations of the law are satisfied.

The salient features of the Patents Act, 1970 were :

- Elaborate definition of invention.
- No product patents for substances intended for use as food, drugs and medicines including the product of chemical processes.
- Codification of certain inventions as non-patentable .
- Mandatory furnishing of information regarding foreign application.
- Adoption of absolute novelty criteria in case of publication.
- Expansion of the grounds for opposition to the grant of a patent.
- Exemption of certain categories of prior publication, prior communication and prior use from anticipation.
- Provisions for secrecy of inventions relevant for defense purposes.
- Provision for use of inventions for the purpose of Government or for research or instruction to pupils.
- Reduction in the term of patents relating to process in respect of substances capable of being used as food or as medicine or drugs.
- Enlargement of the grounds for revocation of a patent.
- Provision for non-working as ground for compulsory licenses, licenses of right, and revocation of patents.
- Additional powers to Central Government to use an invention for purposes of government including Government undertakings.
- Prevention of abuse of patent rights by making restrictive conditions in license agreements or contract as void.
- Provision for appeal to High Court on certain decisions of the Controller.
- Provision for opening of branches of the Patent Office.

3.5.3 Patents Amendment Act, 1999

Even though India was given exemptions from implementing pharmaceutical/ agrochemical product patents until 2005, it was mandated to set up a mailbox facility for such product patent

applications filed during the TRIPs transition period and to assign each application a filing date. Another obligation under TRIPs was the provision dealing with the grant of EMRs for mailbox applications that met specified conditions during the transition period. India initially tried to implement the mailbox facility and grant EMRs by way of a presidential order. For various reasons the Indian parliament failed to pass the law dealing with mailbox facility and EMRs. This prompted the United States to utilize the WTO's dispute resolution mechanism to address India's failure to enact the mailbox and EMR regime into a law. The WTO's Appellate Body held in December 1997 that India's failure to make timely amendments to its patent laws had resulted in its non-fulfillment of obligations covered by Article 70.8(a) of the TRIPs Agreement, which mandated that India establish "a means" that adequately preserved novelty and priority of pharmaceutical product patent applications. Finally, in March 1999, the amendment was passed by the Indian parliament; India formally implemented the mailbox procedure for pharmaceutical product patent applications and gave it retroactive application from January 1, 1995. Mailbox applications were deposited in a "black box," and they were not taken out for examination until March 2005. During India's ten-year TRIPs transition period, 26 mailbox applications were filed in the four branches of the Indian Patent Office. The framework for filing mailbox applications, in order to comply with the TRIPs transition requirements, ended for India on December 31, 2004. This means that the provisions dealing with mailbox applications/ EMRs became obsolete in 2005 and they have been repealed by way of the 2005 amendment. Few applicants who filed mailbox applications during the TRIPs transition period took the additional step of seeking EMRs for their inventions. The grant of an EMR would have conferred the exclusive right to sell or distribute the invention in India for a period of five years from the date of the grant until either a patent was granted, or the application was finally rejected, whichever was earlier.

An EMR was granted only for those inventions claimed in mailbox applications that further satisfied the following requirements :

- An examination by the Indian Patent Office had established that the invention did not fall within any of the categories of subject matter considered as non-patentable inventions like business methods, frivolous inventions, mere admixture, or within the scope of the prohibition on patenting inventions relating to atomic energy;
- The mailbox/EMR applicant had filed a patent application for the same invention, claiming the "identical article or substance" in a "convention country" on or after January 1, 1995;
- The mailbox/EMR applicant had been granted a patent by the convention country on or after the date it filed its mailbox application in India;

- The convention country had issued "approval to sell or distribute the Article or substance" in the convention country, "on the basis of appropriate tests conducted" in the convention country on or after January 1, 1995;
- An authority on behalf of the Indian government had given approval to sell or distribute the article in India.

3.5.4 The Patents (Amendment) Act, 2002

Although the 2002 amendment brought into force numerous changes, the most significant was the extension of the patent term to twenty years. The 2002 Act amended the 1970 law to ensure that the terms of all patents granted in India would expire twenty years after their application filing date. Before this amendment, Indian process patents granted in the field of pharmaceuticals lasted for only five years from sealing, or seven years from the date of the patent, whichever was less, while the term of all other types of patents was fourteen years from the date of the patent. The 2002 amendment cemented India's accession to the Paris Convention and Patent Co-operation Treaty. The two treaties are administered by WIPO, and India signed both in 1998. This meant that India had to make its laws consistent with the Paris Convention's national treatment principle, which prohibits discriminatory treatment of foreign applicants as well as its right of priority; which permits foreigners who have previously filed a patent application in their home countries a twelve-month priority period within which they can file an application for the same invention in India, while still retaining the benefit of their earlier home country filing date. The 2002 amendment brought into force other changes aimed at bringing India's patents law in tune with the TRIPs Agreement, including

- New definitions of invention and inventive step,
- And new exclusions from patentable subject matter like business methods, algorithms, and traditional knowledge.
- The amendment also reversed the burden of proof provision involving cases of process patent infringement and streamlined the compulsory licensing framework.
- This also paved the way for patentability of microorganisms.
- This amendment provides three grounds for seeking a compulsory patent license. **First**, the law provides the broadest grounds for seeking a compulsory patent license in the case of non-working of patented inventions. Such a license can be sought only three years after the sealing of the concerned patent. **Second**, there is another provision for grant of compulsory licenses on notification of the Indian government in circumstances of national emergency or extreme urgency like the breakout of epidemics. **Third**, there is a provision for compulsory licenses in the case of certain patents that are essential to the efficient working of other patented inventions.

- The amendment abolished the concept of Licenses of Right. Under this concept, process patents pertaining to medicines and food "were automatically deemed to be endorsed with the words 'licenses of right,'" which would make them available for compulsory licensing by all applicants three years after the patent grant.

The second amendment to the 1970 Act was made through the Patents (Amendment) Act, 2002 (Act 38 Of 2002). This Act came into force on 20th May, 2003 with the introduction of the new Patents Rules, 2003 by replacing the earlier Patents Rules, 1972.

Salient features of the Patents (Amendment) Act, 2002 were :

- Further codification of non patentable inventions.
- 20 years term of patent for all technology.
- Provision for reversal of burden of proof in case of process patents.
- Provisions of compulsory licenses to meet public health concerns.
- Deletion of provision of license of right.
- Introduction of system of deferred examination.
- Mandatory publication of applications after 18 months from date of filing.
- Provision for process patent for micro organisms.
- Establishment of Appellate Board.
- Provision for parallel imports.
- Provision for exemption from infringement proceedings for use of a patented invention for obtaining regulatory approval for product based on that patented invention.
- Provision to protect biodiversity and traditional knowledge.

The third amendment to the Patents Act, 1970 was introduced through the Patents (Amendment) Ordinance, 2004 with effect from 1st January, 2005. This Ordinance was later replaced by the Patents (Amendment) Act, 2005 (Act 15 of 2005) on 4th April, 2005 which was brought into force from 1st January, 2005.

3.5.5 The Patents (Amendment) Act, 2005 (Act 15 of 2005)

The last step in India's implementation of the changes required to make its patent law TRIPs compliant happened by way of the 2005 amendment. Through this amendment, Indian law, for the first time since 1970, allowed patent protection to substances capable of being used as pharmaceuticals, food, and agrochemicals. The 2005 amendment was preceded by a presidential ordinance in 2004. After its promulgation, there were intense debates about the scope of various provisions, but the Indian Parliament enacted the 2005 amendment after making changes in the ordinance. The 2005 amendments contain many controversial features that have caused many

disputes. They include elaborate provisions concerning what is and is not considered patentable subject matter, a new definition of the "inventive step" criterion of patentability, procedures governing both pre- and post-grant opposition, and a more liberal framework for compulsory licensing. The Patents (Amendment) Act, 2005, ("Patents Act, 2005") was signed into law by the President of India on April 4, 2005, published in the Gazette of India, and brought India's patent laws fully into compliance with TRIPs. "This bill amends India's previous Patents Act to incorporate stricter patent laws, while simultaneously continuing to protect India's domestic pharmaceutical sector and the public health of her citizens.

The salient features of this amendment are :

- Extension of product patents to all fields of technology including food, drugs, chemicals and micro organisms.
- Deletion of the provisions relating to Exclusive Marketing Rights (EMRs).
- Introduction of a provision for enabling grant of compulsory license for export of medicines to Countries which have insufficient or no manufacturing capacity to meet emergent public health Situations.
- Modification in the provisions relating to opposition procedures with a view to streamlining the system by having both pre-grant and post grant opposition in the Patent Office.
- Strengthening the provisions relating to national security to guard against patenting abroad of dual use technologies.
- Rationalization of provisions relating to time-lines with a view to introducing flexibility and reducing the processing time for patent application.

3.6 Design Act**3.6.1 Introduction**

The Designs Act, 2000 ("the Act"), is a complete code in itself and protection under it is totally statutory in nature. It protects the visual design of objects that are not purely utilitarian. Section 2(d) of the Act, defines a Design as: "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958

(43 of 1958) or property mark as defined in section 479 of the Indian Penal Code (45 of 1860) or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957 (14 of 1957).

Designs are registered in different classes as per the Locarno Agreement. It is used to classify goods for the purposes of the registration of industrial designs which further helps in design searches. These classes are mainly function oriented. The copyright on a registered design is in total for 15 years. Initially the Copyright in Design is registered for 10 years, which can further be extended by 5 years on making an application for renewal.

In addition to the above, the design sought for protection must be new or original, i.e., not disclosed to the public in India or elsewhere in the world by prior publication or by prior use or in any other way. The design should be significantly distinguishable from designs or combination of designs that are already registered or pre-existing or disclosed to the public. Furthermore, the design shall not include any scandalous or obscene matter or any feature that is purely functional in nature.

As in case of any other IP rights, the design registration also bestows the monopolistic right to the proprietor by which the right holder can legally exclude others from reproducing, manufacturing, selling, or dealing in the said registered design without consent from the proprietor.

3.6.2 Remedies

As per Section 19 of the Designs Act, 2000, anytime during the subsistence of the design registration, any person can seek cancellation of the same by filing a Petition before the Controller, on the following grounds for Cancellation of design registration :

- That the design has been previously registered in India; or
- That it has been published in India or in any other country prior to the date of registration; or
- That the design is not a new or original design; or
- That the design is not registerable under this Act; or
- That it is not a design as defined under clause (d) of section 2...

Further an appeal against the order of the Controller can be made to the High Court.

On the other hand, Section 22 of the Designs Act, 2000, provides that any fraudulent or obvious imitation of a registered design without the consent of the proprietor is unlawful and also prohibits the import of such material which closely resembles a registered design. The section very specifically provides that in a civil case compensation payable shall not exceed Rs. 50,000/- in respect of infringement of one registered design. Because the compensation payable is statutorily limited, this is a good ground for insisting on an interim injunction even before the commencement of trial.

3.6.3 Comparison of Design Registration versus Different IPs

3.6.3.1 Design Registration versus Patents Registration

A patent protection is granted over a novel product or process comprising inventive step (technical advance) and exhibiting industrial applicability. One of the prime differentiators for design vis-à-vis patent protection is that contrary to designs, patents must contain a functional and/or structural feature of technical significance; while a design is judged on aesthetics only and not the functionality/technicalities of the shape/pattern of an article.

3.6.3.2 Design Registration versus Copyright

Both design and copyright protections relate to aesthetic features of the article. The differentiating factor is clearly provided under Section 15(1) of the Copyright Act, 1957, which states that :

- Copyright shall not subsist in any design registered under the Designs Act, 1911, or
- Copyright in any design capable of being registered under the Designs Act, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process.

3.6.3.3 Design Registration versus Trademark Registration

A registered design and a trademark (not yet registered) may have an overlapping area. Say if a unique shape is a registered design and the said unique shape of the article attains such level of popularity leading to brand recognition amidst available articles in the same classification of goods, the same may fall under consideration for a trade marks registration by the proprietor/company.

3.6.4 The Pros and Cons of the Indian Design System

Pros : India has a definite governing and established structure for the protection of industrial designs. Essential criteria for protection have been prescribed and are in line with international standards. The procedural formalities for filing design applications are simple and time constrained. It is important that the applicants ensure the procedural requirements carefully, as bulk of Indian design applications are rejected on procedural issues, while very few rejections are due to lack of fulfillment of substantive criteria. Thus, it is important to ensure that both the application form and the representation sheet comply with the guidelines so that design applications are processed speedily and efficiently.

Cons : One of the reasons why design is so infrequently protected is because in many industries such as jewelry and shoes, the designs change rapidly to keep up with consumer trends. The

requirement, that prior to registration a design cannot be in public domain, thus cannot be met by most of these industries. Another problem that the design protection regime faces is the term of protection. 15 years is too short a time. A company/individual would rather resort to trademark or copyright protection depending on the article in question, to get a longer term of protection.

3.7 Trademark Act

3.7.1 Introduction

Indian trademark law statutorily protects trademarks as per the Trademark Act, 1999 and also under the common law remedy of passing off. Statutory protection of trademark is administered by the Controller General of Patents, Designs and Trade Marks, a government agency which reports to the Department of Industrial Policy and Promotion (DIPP), under the Ministry of Commerce and Industry.

The law of trademark deals with the mechanism of registration, protection of trademark and prevention of fraudulent trademark. The law also provides for the rights acquired by registration of trademark, modes of transfer and assignment of the rights, nature of infringements, penalties for such infringement and remedies available to the owner in case of such infringement.

3.7.2 History

The law of trademark in India before 1940 was based on the common law principles of passing off and equity as followed in England before the enactment of the first Registration Act, 1875. The first statutory law related to trademark in India was the Trade Marks Act, 1940 which had similar provision like the UK Trade Marks Act, 1938. In 1958, the Trade and Merchandise Marks Act, 1958 was enacted which consolidated the provisions related to trademarks contained in other statutes like, the Indian Penal Code, Criminal Procedure Code and the Sea Customs Act. The Trade and Merchandise Marks Act, 1958 was repealed by the Trade Marks Act, 1999 and is the current governing law related to registered trademarks. The 1999 Act was enacted to comply with the provisions of the TRIPS. Though some aspects of the unregistered trade marks have been enacted into the 1999 Act, but they are primarily governed by the common law rules based on the principles evolved out of the judgments of the Courts. Where the law is ambiguous, the principles evolved and interpretation made by the Courts in England have been applied in India taking into consideration the context of the legal procedure, laws and realities of India.

3.7.3 Trademark

Trademark defined under Section 2 (zb) of the Trade Marks Act, 1999 as, "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 colours." A mark can include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colors or any such combinations.

3.7.3.1 Trademark Rules

With effect from 6 March 2017, the new trademark rules came into existence. The intention is to simplify the whole trademark registration process and make it hassle-free and quick. Some of the features of the new rules are :

- sound marks are made registrable;
- 3D marks are made registrable;
- e-filing is promoted;
- provisions pertaining to well-known mark;
- separate fees structure for an individual/startup/small enterprise and for others;
- expedited processing of application;
- hearing via video conferencing;
- and the number of forms has been cut down to 8 from the existing around 75 forms.

3.7.3.2 Trademark Classes

Trademark law 2002, suggests that trademark can be registered in India under the following classes:

Class 1 : Chemical used in industry, science, photography, agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesive used in industry.

Class 2 : Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordents; raw natural resins; metals in foil and powder form for painters; decorators; printers and artists.

Class 3 : Bleaching preparations and other substances for laundry use; cleaning; polishing; scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions, dentifrices.

Class 4 : Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels(including motor spirit) and illuminants; candles, wicks.

Class 5 : Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for destroying vermin; fungicides, herbicides.

Class 6 : Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

Class 7 : Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

Class 8 : Hand tools and implements (hand-operated); cutlery; side arms; razors

Class 9 : Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.

Class 10 : Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopaedic articles; suture materials.

Class 11 : Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying ventilating, water supply and sanitary purposes.

Class 12 : Vehicles; apparatus for locomotion by land, air or water.

Class 13 : Firearms; ammunition and projectiles; explosives; fire works.

Class 14 : Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and other chronometric instruments.

Class 15 : Musical instruments.

Class 16 : Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks.

Class 17 : Rubber, gutta percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

Class 18 : Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides, trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddler.

Class 19 : Building materials, (non-metallic), non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.

Class 20 : Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

Class 21 : Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paints brushes); brush making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

Class 22 : Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes) padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

Class 23 : Yarns and threads, for textile use.

Class 24 : Textiles and textile goods, not included in other classes; bed and table covers.

Class 25 : Clothing, footwear, headgear.

Class 26 : Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

Class 27 : Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

Class 28 : Games and playthings, gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

Class 29 : Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

Class 30 : Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces, (condiments); spices; ice.

Class 31 : Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.

Class 32 : Beers, mineral and aerated waters, and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

Class 33 : Alcoholic beverages(except beers).

Class 34 : Tobacco, smokers' articles, matches.

Class 35 : Advertising, business management, business administration, office functions.

Class 36 : Insurance, financial affairs; monetary affairs; real estate affairs.

Class 37 : Building construction; repair; installation services.

Class 38 : Telecommunications.

Class 39 : Transport; packaging and storage of goods; travel arrangement.

Class 40 : Treatment of materials.

Class 41 : Education; providing of training; entertainment; sporting and cultural activities.

Class 42 : Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

Class 43 : Services for providing food and drink; temporary accommodation.

Class 44 : Medical services, veterinary services, hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

Class 45 : Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

3.7.4 Symbols

The two symbols associated with Indian trademarks ™ (the trademark symbol) and ® (the registered trademark symbol) represent the status of a mark and accordingly its level of protection. While ™ can be used with any common law usage of a mark, ® may only be used by the owner of a mark following registration with the relevant national authority.

3.7.5 Trademark Passing Off

The Trademark Act, 1999 under Section 27 provides for the remedy of passing off for misuse of an unregistered trademark by the Defendant. It enumerates that no person shall be entitled to institute any proceeding to prevent infringement of an unregistered trademark. The law further entails that the provision shall not affect the rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

Section 27 of the Act recognizes common law rights of the trademark owner to take action against any person for passing off goods as the goods of another person or as services provided by another person or remedies thereof. The remedy made available under Section 27 protects the rights of the proprietor of an unregistered trademark to register complaint against another person

for passing off his goods as the goods of proprietor. An unregistered proprietor of trademark can also oppose an application for registration on grounds as enumerated under Section 11 of the Act[20].

In an action of passing off, the Plaintiff has to establish prior use to secure an injunction and that the registration of the mark or similar mark in point of time, is irrelevant [21].

3.7.6 Remedy for Trademark Infringement

Section 29 of the Act provides remedy in cases of trademark infringement. The statutory provision also enlists the circumstances under which a mark is infringed :

- Infringement of a mark occurs when a person not being registered proprietor uses a mark which is identical or deceptively similar to a registered mark in relation to goods or services in respect of which the trademark is registered.
- When a person not being a registered proprietor uses a registered trademark which because of its identity with registered trademark and similarity with goods or services is likely to cause confusion in public.
- When a person not being registered proprietor of a mark uses mark which is identical or similar to the registered trademark in relation to similar goods or services and the registered mark has a reputation in India.
- A registered trademark is infringed by a person if he uses such registered trademark as part of his trade name of his business concern dealing in goods or services in respect of which the trade mark is registered.
- A registered trademark is infringed by any advertising of that trademark if such advertising takes unfair advantage and is detrimental to its distinctive character.
- Under this Section we would deal with cases in which the Judiciary has shed light on trademark infringement law in India.

3.8 Geographical Indication Act

3.8.1 Introduction

Geographical Indications are indications which identify a good as originating in a place where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Some more well known examples of geographical indications are "Champagne", "Bordeaux" and "Chianti", the first two being regions in France and the third, a region in Italy, all famous for their wines. The Geographical Indications of Goods (Registration and Protection) Act, 1999 has been passed by the Government of India. The said Act was passed with the object of providing protection, as a Geographical Indication, to any agricultural goods, natural goods or manufactured goods or any goods of handicraft or good.

The Geographical Indications of Goods (Registration and Protection) Act, 1999 (GI Act) is a *sui generis* Act of the Parliament of India for protection of geographical indications in India. India, as a member of the World Trade Organization (WTO), enacted the Act to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights. India, has taken legislative measures by enacting the Geographical Indications of Goods (Registration and Protection) Act, 1999, which came into effect on 15th September, 2003 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002. The GI tag ensures that none other than those registered as authorised users (or at least those residing inside the geographic territory) are allowed to use the popular product name. Darjeeling tea became the first GI tagged product in India, in 2004-05, since then 323 goods had been added to the list as of August 2018.

According to section 2 (1)(e) of the Act, Geographical indication has been defined as "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a 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 and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be."

Some of the registered geographical indications includes, agricultural goods like Darjeeling tea, Kangra Tea, Malabar Pepper, Basmati Rice, Feni, Alphonso Mango, Alleppey Green Cardamom, Coorg Cardamom, Bangalore Blue Grapes, manufactured goods like Pochampalli Ikat, Kancheepuram Silk, solapuri chadars Bagh Prints, Madhubani paintings, Kohlapuri Chappal, Rasgulla etc.

By registering a geographical indication in India, the rights holder can prevent unauthorized use of the registered geographical indication by others by initiating infringement action by way of a civil suit or criminal complaint. Registration of the GIs in India is not mandatory as an unregistered GI can also be enforced by initiating an action of passing off against the infringer. It is, however, advisable to register the GI as the certificate of registration is *prima facie* evidence of its validity and no further proof of the same is required.

3.8.2 Registration of Geographical Indications

An application for the registration of a GI is to be made to the Registrar of Geographical Indications in the form prescribed under the Geographical Indications of Goods (Registration and Protection) Act, 1999 (the GI Act) read with the Geographical Indications (Registration and Protection) Rules, 2002 (the GI Rules).

3.8.3 Duration of Protection

A Geographical Indication is registered for a period of 10 years and the registration may be renewed from time to time for a period of 10 years at a time.

3.8.4 Infringement of Geographical Indications

The remedies relating to the infringement of Geographical Indications are similar to the remedies relating to the infringement of Trademark. Similarly, under the (Indian) Geographical Indications of Goods (Registration and Protection) Act, 1999, falsification of a Geographical Indication will carry a penalty with imprisonment for a term which may not be less than six months but may extend to three years and with a fine which may not be less than ₹50,000 (approx. US\$ 800) but may extend to ₹ 2,00,000 (approx. US\$ 3,000).

3.8.5 Registration Process

- An application for registration must be made before the Registrar of Geographical Indications by any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of the concerned goods.
- The application must be made in an appropriate form containing the nature, quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, manufacturing process, natural and human factors, map of territory of production, appearance of geographical indication (figurative or words), list of producers, along with prescribed fees.
- The examiner will make a preliminary scrutiny for deficiencies, in case of deficiencies, the applicant have to remedy it within a period of one month from the date of communication.
- The Registrar may accept, partially accept or refuse the application. In case of refusal, the Registrar will give written grounds for non acceptance. The applicant must file reply within two months. In case of re-refusal, the applicant can make an appeal within one month of such decision.
- Registrar shall, within three months of acceptance may advertise the application in the GI Journal.
- If there is no opposition, the Registrar will grant a certificate of registration to the applicant and authorised users.

3.8.6 Exclusions

Under Section 9 of the Act, the following indications cannot be registered

- Which would likely to deceive or cause confusion
- Which would be contrary to any law for the time being in force; or

- Which comprises or contains scandalous or obscene matter; or
- Which comprise or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or
- Which would otherwise be disentitled to protection in a court; or
- Generic names
- Falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be.

3.8.7 Effect of Registration and Infringement

Registration of a GI gives its owner and the authorised users the exclusive right to use the indications on the good in which it is registered. Further, registration gives right to institution of suit against infringement and recovery of damages for such infringement. Infringement can be caused by use of the GI on such goods which indicates that such goods originate in such place other than its true place of origin or due to unfair competition. However, in case of non-registered GIs, a case of passing off can be instituted. Registration acts as a *prima facie* evidence of validity of the indication and ownership. The registration cannot be transferred, mortgaged, assigned or licensed, except in case of inheritance of the mark upon death of an authorised user.

Any person who falsely applies or falsifies any geographical indication, tampers the origin of a good, make or have in possession of dye, blocks, machines to use in falsification of GI may be punished shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakhs rupees. In case of second and for every subsequent offence, a person can be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to two lakh rupees. However, the judge may under certain condition may reduce the sentence, and reasons for reduction of punishment must be written in the judgment. Other offences includes, falsely represent a GI to be registered, falsification of entries in register, falsely representing a place to be connected with GI Registry.

Every region has its claim to fame. Christopher Columbus sailed from Europe to chart out a new route to capture the wealth of rich Indian spices. English breeders imported Arabian horses to sire Derby winners. China silk, Dhaka muslin, Venetian Glass all were much sought after treasures. Each reputation was carefully built up and painstakingly maintained by the masters of that region, combining the best of Nature and Man, traditionally handed over from one generation to the next for centuries. Gradually, a specific link between the goods and place of production evolved resulting in growth of Geographical Indications (GIs).

3.9 Two Marks Questions with Answers

Q.1 What is the scope of protection in the copyright act, 1957 ?

Ans. : The copyright act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized uses. Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright protection for ideas, procedures, methods of operation or mathematical concepts as such

(Please see Article 9.2. of TRIPS).

Q.2 What is World Trade Organization (WTO) ?

Ans. : World Trade Organization (WTO) is an international organization which administers the rules of trade globally for liberalization and expansion of international trade by developing agreements, frameworks and dispute resolution processes. The WTO came into effect on January 1, 1995 under the Marrakech Agreement which replaced the General Agreement on Tariffs and Trade (GATT) of 1948. Majority of WTO's current work comes from the 1986-94 negotiations called the Uruguay Round and earlier negotiations under GATT. World Trade Organization has 162 members as on November 2015. It is headquartered in Geneva, Switzerland.

Q.3 What is the mandate of WTO ?

Ans. : The WTO's main functions are to regulate trade negotiations and enforcement of negotiated multilateral trade rules. These two functions are performed with mandates such as : Assisting in developing and transition of economies, specialized help for export; including establishment of international trade centre, global economic policy-making, establishing a transparent system between WTO and public worldwide.

Q.4 What is GATT ?

Ans. : GATT stands for General Agreement on Tariffs and Trade (GATT), which came into effect on January 1, 1948. GATT is a multilateral agreement for regulating international trade. As per its preamble, the purpose was "substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis." It lasted with 123 countries as members till Uruguay Round of Agreements dated April 14, 1994 and then the World Trade Organization (WTO) were established on January 1, 1995.

Q.5 What is WIPO ?

Ans. : The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations set up in 1974. The WIPO administers 26 international treaties in the area of intellectual property. WIPO has 148 member states and was established by a convention on 14 July 1967, entering into force in 1970. It is headquartered in Geneva, Switzerland.

Q.6 What are the main objectives of WIPO ?

Ans. : Following are the main objectives of WIPO :

- Intellectual property protection globally through cooperation among member states and where appropriate, in collaboration with any other international organization.
- Ensuring administrative cooperation among the intellectual property unions created by the Paris and Berne Conventions and sub-treaties concluded by the members of the Paris Union.

Q.7 What is International Bureau ?

Ans. : The International Bureau is the secretariat of the WIPO, which centralizes the administration of the unions created under the various conventions. International Patent applications may be filed directly with the International Bureau as Receiving Office to WIPO's headquarters as an alternative to filing with the competent national or regional Office.

Q.8 What are the linkages between WIPO and WTO ?

Ans. : There is an agreement of cooperation between WIPO and the WTO that came into force on 1 January 1996. The agreement provides cooperation in three main areas :

- National laws and regulations : Their access, translation and notification.
- Protection of national emblems by implementation of appropriate procedures.
- Technical cooperation.

Q.9 What is GATS ?

Ans. : The World Trade Organization introduced a treaty known as "General Agreement on Trade and Tariff in Services (GATS)" in January 1995 as a result of the Uruguay Round of negotiations. The major objectives of GATS are : Forming a reliable system of international trade rules; equal and fair treatment of participants, stimulating economic activity through guaranteed policy bindings; and liberalization in trade and its development.

Q.10 What is Paris convention ?

Ans. : Paris convention is an international convention for promoting trade by encouraging protection of industrial property among member countries. All the member countries provide national treatment to all the applications from the other member countries for protection of industrial property rights.

The convention was first signed in Paris, France, on March 20, 1883. Since then, the convention has been revised several times latest being in 1979. India became a member of the Paris convention on December 7, 1998. The convention currently has 176 members.

Q.11 What are the principal features of the Paris convention ?

Ans. : The fundamental extracts of the Paris convention are listed below:

National treatment, right of priority, independence of patents, parallel importation, protection against false indications and unfair competition.

Q.12 What is the meaning of national treatment under the Paris convention ?

Ans. : Paris convention ensures that national of a member country is given equal treatment when he/she protects the invention in other member country as his own national. For example; if an Indian Pharmaceutical company applies for the grant of a patent for a novel drug compound in USA, as per the Paris Convention, the US Patent Office shall apply the same norms and rules to the applicant from India, as applicable to a US citizen for granting a patent. Therefore, there no requirement for domicile or establishment in the country where protection is sought.

Q.13 Is there a provision for compulsory license in the Paris convention ?

Ans. : Under the Paris convention, each member country has a right to advocate for the grant of compulsory licenses to prevent the abuses resulting from the exclusive rights offered by a patent. Compulsory licenses for failure to work or insufficient working of the invention may be requested after four years from the date of filing of patent application or three years from the date of the grant. Such licenses are non-exclusive and non-transferable.

Q.14 What is PCT ?

Ans. : PCT or Patent Cooperation Treaty is administered by the WIPO. It was adopted in 1970 and became operational in 1978. It is an international treaty which facilitates the blocking of priority date with simultaneously designating the country where the invention is intended to be protected. Currently PCT has 148 Contracting States including India.

Q.15 What are the advantages of filing PCT application ?

Ans. : The PCT simplifies the process of obtaining patents in a number of countries by filing of a single application. It greatly benefits the applicants, Patent Offices of the designated countries and the general public as well. The advantages of filing patent application through the PCT process are indicated below.

Advantages for the applicant are ; PCT saves time, work and money, for any applicant seeking protection for an invention in a number of countries. Under the PCT, the applicant needs to file single application (international application) in one country, in one language and in one format and pay one initial set of fees in one currency as stipulated. The applicant is accorded a date of filing, which will be effective in all the designated countries. By designating any or all of the PCT countries, the applicant can simultaneously seek patent protection for an invention in each of a large number of countries. Applicant gets 18 months or more to decide if he/she actually wants to proceed ahead with his / her application. Due to this extra time (more than what is available under the traditional patent system) gained by the applicant through filing of PCT application. The inventor can keep all the options open for protecting his / her invention while still investigating its commercial possibilities abroad until 18 the month window period.

Through international search report, the applicant can evaluate the possibilities of his / her invention being patented before incurring major costs in foreign countries. Further the PCT provides an option for international preliminary examination utilizing which an applicant can be doubly sure before entering national phase. If the applicant files his/her international application in the form prescribed by the PCT, he / she is reasonably assured that it cannot be rejected on formal grounds by any designated office during the national phase of processing the application.

Q.16 What are the advantages for patent office of designated country because of PCT ?

Ans. : The national patent office of designated countries can have the advantage in handling more patent applications because the verification and other formal requirements would have generally been checked during the international phase.

The search and examination is done by WIPO, therefore the need for search and examination by the national patent office can be considerably reduced or virtually eliminated. In most cases, the examining patent office benefit from these two kinds of special reports generated in the international phase. In case of non-examining patent offices, they are in a much better position to complete the process faster if they receive an application already examined in the international phase.

The patent office's can also save publishing costs. If the international application is published in the official language of the country, the national patent office can forego the publishing altogether.

The general public is also benefitted by PCT as technical information in patent documentation is disseminated globally and can lead to worldwide information exchange.

Q.17 Where can international patent applications be filed ?

Ans. : The international applications can be filed:

i. At the national office of or acting for the contracting state of which the applicant is a resident.

ii. International Bureau (IB) of World Intellectual Property Organization (WIPO).

Indian inventors desiring to file an international application must file with any of the receiving offices at Kolkata, New Delhi, Mumbai and Chennai or the International Bureau of WIPO, Geneva.

Q18 What is an International Search Authority (ISA) ?

Ans. : The designated International search authority examines the PCT application for patentability and provides the international search and written opinion. The application is examined on the criteria of patentability and queries on the same are raised. In accordance with Article 19 of the PCT, a period of 2 months is provided to answer the objections with necessary changes in the application; this improves the chances of patent acquiring in national phase.

Q.19 Which are the International Search authorities (ISA) for Indian applicants ?

Ans. : An applicant from India can choose any one of the following ISA/ International Preliminary Examination; Authority (IPEA) for international search and preliminary examination :

Indian Patent Office, Australian Patent Office, Austrian Patent Office, European Patent Office, State Intellectual Property Office of the People's Republic of China, Swedish Patent and Registration Office, United States Patent and Trademark Office.

Q.20 What is the fee structure for search by ISA ?

Ans. : The search fees is different for each ISA and may be revised from time to time, For Indian patent office as the ISA, search fees is INR 10,000 (\$154) for large entity whereas INR 2500 (\$ 38) for a natural person, whereas if the designated office is any International Patent office then the fees ranges from 330 \$ for State Intellectual Property Office of the People's Republic of China to 2097 \$ for European Patent Office. Some International Search Authorities such as European patent office and Austrian Patent Office also provide 75 % reduction for natural persons. For the supplementary searches, only Austrian, Swedish and European patent office are available for an Indian applicant and the fees ranges from CHF 928 to CHF 2046, along with CHF 200 as handling fees which is same for all the international search authorities.

Q.21 Is there any relationship between the Paris convention and the TRIPS agreement ?

Ans. : It has been made mandatory for the member countries of the TRIPS Agreement to comply with the Article 1 to 12 and Article 19 of the Paris Convention.

Q.22 What are the essential elements to be included in an international application ?

Ans. : The International application must contain a request, a description, one or more claims, one or more drawings (where required) and an abstract. It must comply with the prescribed physical requirements and should be in one of the prescribed languages added with payment of the required fees. In case of biological inventions, the microbial strain must be deposited in an International Depository Authority (IDA) under the Budapest treaty.

Q.23 Can an international application be withdrawn ?

Ans. : Yes, an International application can be withdrawn by a notice at any time before technical preparations for International publication have been completed i.e. not later than 15 days before the date of publication.

Q.24 What is the Budapest Treaty ?

Ans. : When a biological invention involves the use of a microorganism, the specification describing the invention cannot efficiently enable third parties to carry out the invention in the absence of biological material. Therefore, for all such inventions, deposition of biological

material is imperative. For this purpose, the Budapest treaty was signed in Budapest on April 28, 1977 and later on amended in September 26, 1980. The Budapest treaty has recognized institutes in all its member countries and mandates the deposition of the microbial strain in the International Depository Authority (IDA) and its disclosure in the patent application. India became a member of this Treaty, with effect from December 17, 2001.

Q.25 What role does WIPO play with regards to patents ?

Ans. : WIPO works to develop a balanced and effective international Intellectual Property (IP) system, a key part of which is dedicated to patents. WIPO's member states collaborate in various areas, including on agreeing the treaties and conventions that underpin the international IP system and that make the global exchange of creativity and innovation possible. The IP services that WIPO offers, such as the facilitation of international patent protection under the PCT System, complement services available at the national and/or regional level. It's important to remember that WIPO does not actually grant patents per se; the grant or refusal of a patent still rests with the relevant national or regional patent office.

Q.26 What are the major provisions in the amended copyright act, 1999 with regards to computer programs ?

Ans. : The major provisions of Copyright Act are :

- i) He doing of any act necessary to obtain information essential for operating interoperability of an independently created computer program with other programs by a lawful possessor of a computer program provided that such information is not otherwise readily available;
- ii) The observation, study or test of functioning of the computer program in order to determine the ideas and principles which underline any elements of the program while performing such acts necessary for the functions for which the computer program was supplied;
- iii) The making of copies or adaptation of the computer program from a personally legally obtained copy for non-commercial personal use.

Q.27 What does hague agreement on industrial designs signify ?

Ans. : The hague agreement concerning the international deposit of industrial designs first came into existence in 1925. The agreement aims at providing a mechanism for securing protection of an industrial design in all the member countries by means of an international deposit. The international deposit could be in the form of the industrial product or drawing or photograph or any other graphic representation of the said design. The duration of protection was 15 years from the date of deposit; this term is divided in two periods namely, one period of five years and the other of ten years. This Agreement is now being implemented by the WIPO.

Q.28 What is opposition under the Indian patents Act 1970 ?

Ans. : The act now provides for pre-grant and post-grant opposition. Pre-grant opposition can be filed after the publication of patent application and before the grant of patent. Post-grant opposition can be filed within one year of the grant of the patent. An opposition board will be constituted for each of the opposition notifications accepted by the controller for the post grant opposition proceedings. Opposition in both cases will be allowed on all grounds specified in the act.

Q.29 What does the term 'Design' mean according to the designs act, 2000 ?

Ans. : We see so many varieties and brands of the same product (e.g., car, television, a piece of furniture, mineral water bottle etc.) in the market, which look quite different from each other. If the products have similar functional features or have comparable price tags, the eye appeal or visual design of a product determines the choice. Even if similarities are not close, a person may decide to go for a more expensive item because that item has a better look or color scheme suiting the person's taste and choice. What is being said is that the external design or color scheme or ornamentation of a product plays a key role in determining the market acceptability of the product over other similar products. Therefore, if you have a good external design that gives you an advantage then you must have a system to protect the features. This protection is provided by the designs act, 2000 in India. "Design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device. Functional aspects of design are not covered in this act.

Q.30 What are the exclusive marketing rights omitted under patent amendment act-2005 ?

Ans. : Following exclusive marketing rights were omitted under this act;

- Acceptance of complete specification.- [Omitted by the Patents (Amendment) Act, 2005].
- Advertisement of acceptance of complete specification.- [Omitted by the Patents (Amendment) Act, 2005].
- Effect of acceptance of complete specification.-[Omitted by the Patents (Amendment) Act, 2005].
- Application for grant of exclusive rights.- [Omitted by the Patents (Amendment) Act, 2005].
- Grant of exclusive rights.- [Omitted by the Patents (Amendment) Act, 2005].
- Compulsory licences.- [Omitted by the Patents (Amendment) Act, 2005].

- Special provision for selling or distribution.- [Omitted by the Patents (Amendment) Act, 2005].
- Suits relating to infringements.- [Omitted by the Patents (Amendment) Act, 2005].
- Central Government and its officers not to be liable.¬ [Omitted by the Patents (Amendment) Act, 2005].

Q.31 What was the criticism of Section 3(D) of Indian patent act 1970 ?

Ans. : Section 3(d) specifically disallows patent protection for mere discovery of known substances unless such substance express substantial efficacy in the known substance. In effect of this provision it expressly excludes such substances having incremental innovations. The provision is disputed as being violative of TRIPS agreement not only on the ground that the provision does not provide any specific guidelines for incremental innovation but also lake the standard protection to all categories of inventions as provided by TRIPS. Novartis's case further pointed out that the TRIPS agreement gives WTO members the option of providing patent rights more generous than the basic criteria mandated by TRIPS but does not allow members to go in the opposite direction by implementing stricter requirements for obtaining a patent. The court defines the scope of the term efficacy as therapeutic efficacy. However the scope of the term is unclear as to what count as therapeutic efficacy. The court fails to give the rationale as to why subject matter lacks enhanced efficacy. Consequently, because of the interpretation aforesaid mentioned any kind of incremental innovation will not get patent protection in India.



4

Digital Products and Law

Syllabus

Digital Innovations and Developments as Knowledge Assets – IP Laws, Cyber Law and Digital Content Protection – Unfair Competition – Meaning and Relationship between Unfair Competition and IP Laws – Case Studies.

Contents

- 4.1 *Digital Innovations*
- 4.2 *Challenges to Protect Digital Innovations*
- 4.3 *IP Law*
- 4.4 *Cyber Law*
- 4.5 *History of Competition Act*
- 4.6 *CCI (Competition Commission of India)*
- 4.7 *Case Studies*
- 4.8 *Two Marks Questions with Answers*

Digital Innovations and Developments as Knowledge Assets**4.1 Digital Innovations**

Today, digital innovation is at the heart of every organization. You need to digitize internal operations to do things better, faster, and cheaper; find new ways to engage users; and bring new products and services to market. But driving digital innovation is hard work. Changing market conditions mean that you're planning around a moving target, and with disruptive startups popping up all over, competition is mounting. You need a faster path to transform your innovative new ideas into winning applications. That's where digital innovation platforms come in.

Create a Faster Path : More and more organizations are creating innovation labs, or fast-track teams, that act as incubators within their enterprises. These groups provide a fast lane through the business to speed discussions and delivery of applications that tie into digital innovation initiatives. But speeding end-to-end results requires the right people, process, and platform. Here are a few tips to get you started;

- **People :** Select two to three people from across business and IT teams who are passionate about delivering business value. No more large scale teams, just a small group of highly focused people who can collaborate to find digital solutions to complex business challenges.
- **Process :** Leverage an agile, iterative process to drive innovation without disrupting existing operations or development efforts. By continuously iterating toward the perfect solution, you can release new digital functionality more frequently, show progress, and collect more market feedback (which then can be auctioned more quickly through additional development sprints).
- **Platform :** Find the right technology to empower your people and reinforce your process. Look for a unified platform that manages the entire application lifecycle, including program management, team collaboration, rapid application development, instant cloud deployment, and application management.
- **Portfolio :** Creating a project portfolio of quick wins and high-value initiatives allow you to realize immediate success and create a wow factor, while high-value initiatives justify broader organizational change, especially when the applications are tied to relevant strategic initiatives.

With the right people, process and platform in place you're ready to drive digital innovation at lightning speeds.

Driving Digital Innovation for a Competitive Edge : We're now living in the age of digital Darwinism, where you evolve or you become irrelevant. In fact, 4 out of 10 companies will be dead in 10 years if they fail to drive digital innovation. In order to stay relevant, you need to deliver the right applications at the right time. While you likely have a host of new ideas, focus

first on those ideas that have the greatest bang for your digital buck. The top digital solutions focus on the following three areas :

- **Customer, Partner or Supplier Engagement :** Simplify the way information is accessed and transactions are processed. Remember, people want to engage wherever and whenever is convenient for them. Applications that support this goal include advisement tools, fact finding assistance for employees, and customer portals.
- **Product and Service (Innovation) :** Differentiate your business by enhancing existing products and services with digital components or even creating net new products or services. Product and service innovation often involves new applications that enable mobile services, personalized product offerings, and new business models.
- **Internal Systems Processing, Reporting, or Access :** Digitize your back-office processes to improve efficiency, ultimately reducing the cost of service and support, while improving response times and customer satisfaction. Consider how you can automate complex internal workflows, enable faster reporting and decision making, and empower your workforce through new applications that enable better access to data and better mobility.

4.2 Challenges to Protect Digital Innovations

Since as long as there have been ideas, there have always been others that emulate them. Human beings are social by nature and mimicking comes naturally to most of us. Even as young children, we learn to imitate as a form of educating ourselves and as adults, many times, emulate others in many differing forms of culture, language and behavior overall. As well, there appear to be group proclivities to go along with the masses, as seen, for example in politics or sports. There is also the perception, if not reality, of strength and safety in numbers, potentially as a form of survival. All of this leads to a natural behavior of doing as others do. None of the above is new or in any way wrong theoretically. That said, there are times when groupings around dangerous or harmful ideologies have changed the course of history for the worse. Mass movements in business, culture, religion, science and politics can and has had a great impact on our species and the world we live in. Society is defined as the aggregate of people living together in an ordered community.

Innovation : Considering the above definition of society, progress should be determined on a fair and balanced playing field, so that the best ideas float to the top and everyone benefits. With this format in place, the ability for those who innovate successfully and receive rewards and incentive to continue doing so and those who have problems in need of solutions both benefit.

Products : One form of micro imitation is seen in product offerings. A good idea can be added to and improved upon and, as in science, retested by the market or end-user thus providing a better tool for all to use.

Today's Challenges of Protecting Intellectual Property : Unfortunately, many do not add to an initial idea and simply copy it for their own benefit and to the detriment of those who have spent their time innovating, ideating and bringing useful products to market. Regrettably, this exact form of imitation harms the ability of those who initiated the ideas, brought them to market first and thus spent time and money in doing so. Damaging the ability to recoup value for one's efforts creates a problem both for the original inventor and for the society as well. The message this sends to those entering the market is one that imitation is enough when this causes progress to slow down. Ideas without improvement are redundant and unnecessary for the greater good. Individually those who invent are less capable of being rewarded for their talents and time.

Global Online Marketplaces and Intellectual Property : More specifically, in 2020, it is even easier to not only copy ideas and products but to market them and sell them globally through digital open market places. In the past, IP protection has been a valued and effective tool to dissuade those who would do this, especially in western developed countries like the United States. Now that distribution has become digitally interconnected and global at a rapid pace, IP protection is of even more significance to overall progress that we, as a species, are capable of. Harmfully, regulation has not kept pace with technology, thus allowing for nefarious actors to simply profit on others' work.

Regulation of Online Marketplaces : Governments are dissimilar, and thus inconsistent on setting the rules around intellectual property protection's allowing many businesses, who play in the global marketplace, to choose not to get involved and simply allow fraudulent products to be offered en masse. Governments are, by nature, very large and bureaucratic, but also imbalanced and skewed to the largest businesses in a society today. These large marketplaces disproportionately impact economies and have the power to influence policy-making. Therefore, the government pays great attention to these actors, affording them the ability to make relatively independent decisions on what products they want to offer and why. Additionally, many global digital open marketplaces offer as many products as possible, as each of these is a paying customer and this adds to overall profit. Many of the same selling platforms also choose not to get involved with anything that adds risk like defending intellectual property rights for a "third party" outside of court orders. The fact that legal regulations in the digital space have not caught up to the physical brick and mortar arena allows for less regulation of many product offerings in multiple business sectors.

Patents and Enforcement : Unfortunately, having a patent is only as valuable as your interest in utilizing that patent to stop others causing problems of duplicate costs and effort. Inventors innovate and file for intellectual property rights. Once granted, and unless challenged, those rights should be respected by all resellers and if not, there should be regulations in the form of built-in penalties and / or fines imposed by government. The fact that after one spends money and time to

garner intellectual property protection, but still spend more money and time prohibiting those who have not gone through this process in a fair and just way in order to protect themselves makes the patent process useless for majority inventors. The additional cost of personally having to re-enforce rights versus the government affords large corporations an unfair advantage over early-stage companies. The system we see today is anti-growth and innovation in nature and does not move innovation forward. It favors very large companies and creates more red tape and legal waste versus reward for new ideas and problem-solving.

IP Laws

4.3 IP Law

We live in an age where companies hold prime of their assets in the digital space. Being well exposed to the term intellectual property, a question still boggles our mind; what actually it is, for a company and how to protect it ? To our surprise, not knowingly, every company has intangible assets often referred as intellectual property. According to researchers, it is said that 87 percent of a company's assets are intellectual property. With such high reliance on intellectual property comes the need of securing and safeguarding a company's assets. Prior to making the product live, tech companies often seek out for legal protection such as patents and secured trademarks.

For tech companies, there are numerous forms of Intellectual property : like; Copyrights, Trademarks, Trade secrets and Patents.

For a software product, intellectual property can be found in databases or embedded in the code. To safeguard the database most efficiently, you should identify two variables :

- What does your IP consist of ?
- How is your IP protected legally ?

Commonly practiced in the space of software development, three types of intellectual properties are widely talked about : copyrights, trade secrets and patents.

A copyright is known to protect the solution or how an app serves the purpose, but there's a limitation involved. Copyright can only protect the solution but not the idea behind it. It is best used when protecting source code, object code and user interfaces.

A patent, whereas, protects the idea behind a particular solution or an app. Patents are commonly used to protect software architecture and proprietary algorithms. Getting patented is a painstaking process, complex as well costly to undergo. Therefore, being an option not possible for small scaled tech companies. Not only is costly, it does not secure that execution of the idea. In order to secure this, another form of protection is to be used.

Trade secrets hold proprietary information that a software development company discovers and works with. The pros of trade secrets allow a company to keep intact its processes for an indefinite time period until discovered by other company. A trade secret can only go public when a company of same nature practices the same ideation with the same process.

Cubix is exposed to the most commonly voiced queries of clients that address issues related to protecting the source code and non-disclosure of the idea along with the proprietary algorithms to third parties.

4.3.1 IPR and Digital Rights

In the digital age the issue of privacy is an important subject where unauthorized data sharing, data integration, unethical data utilization and unauthorized public disclosure are the major areas of concern. The major issues are to be considered as follows :

1. Is digitization to be considered as similar to reproduction, for example using Xerox machine ?
2. Is digitization a creative activity such as translation from one language to another ?
3. Can transmission of digitized documents through Internet be considered as commercial distribution or public communication similar to broadcasting ?
4. Can we consider database as a special collected work that should be protected by the copyright law ?
5. What can be considered as fair use in the Internet environment ?
6. What are the concerns of the library community ?
7. In the digital context if access restricted by the copyright owner, how could the public exercise fair use with those work ?

Whether all these activities will continue in the digital age ? If digitization is considered as reproduction work, it is quite clear that in digitization the initial work is merely changed into the digital form and the process of changing is accomplished by a machine, without any creativity. If it is considered as a translation from one language to another, the digitization is also a change from natural human language in to machine language. However in digitization, there is no creativity involved and it could be considered as a similar activity to reprography. The copyright protects only creative works. Simply transformation in to the digital form of an original document cannot be considered as creative work. The transmission of information on Internet can be considered similar to broadcasting; hence copyright law cannot be applied.

4.3.2 Ways for Protection of Digital / Intellectual Property

Digital Rights Management (DRM) technologies (also known as Electronic Rights Management Systems) ensure copyright through identifying and protecting the content, controlling access of the work, protecting the integrity of the work and ensuring payment for the access. DRM technologies prevent illegal users in accessing the content. Access is protected through user ID and password, licensing agreements. Another way to protect digital content is through Technical Protection Measures (TPM). These technologies allow publishing companies in securing and protecting content such as music, text and video from unauthorized use. If an author wishes to collect fee for use of his or her work, then DRM technology can be used. The TPM and DRM technologies are increasingly employed to sell and distribute content over the Internet.

Cryptography : Cryptography is the oldest mechanism employed to ensure security and privacy of information over networks. This involves scrambling (or encryption) of the information to render it unreadable or not understandable language, which only the legitimate user can unscramble (or decrypt). However cryptography protects the work during transmission or distribution only. After the work is decrypted, it does not provide any protection.

Digital Watermark Technology : A digital watermark is a digital signal or pattern inserted into a digital document. It is similar to the electronic on-screen logo used by TV channels. A unique identifier is used to identify the work. The message might contain information regarding ownership, sender, recipient etc or information about copyright permission. The system consists of a watermark generator, embedding and a watermark detector decoder. The legal user can remove these watermarks with a predetermined algorithm. The watermarking technology is extensively used in protecting multimedia works.

Digital Signature Technology : Digital signature includes identity of the sender and/or receiver date, time, any unique code etc. This information can be added to digital products. This digitally marks and binds a software product for transferring to a specified customer. Digitally signed fingerprints guarantee document authenticity and prevent illegal copying.

Electronic Marking : In this technique, the system automatically generates a unique mark that is tagged to each of the document copies. This technique is used to protect copyright as well as in electronic publishing where documents are printed, copied or faxed.

Security Features of Operating System : For protection of files, data etc. the operating system of computer such as Windows 2000 Professional, Windows 2000 Server, MS-SQL Server has some unique special security and integrity features.

A number of issues are associated with the usage of digital information i.e. issue of single articles versus full issues of e-journals, user-friendliness, incompatible hardware and software, formatting, graphics, scholarly recognition and obsolescence. While it is important to protect the

copyright of the publishers, it is equally important to protect interest of the libraries and the user. In digital environment it is difficult to draw a boundary line between what is permissible, to what extent and what is infringement. Small scale violations which do not conflict with owner's rights may be accepted as a part of fair use. In the context of digital information, it is difficult to judge, comprehend fair use, access and control the infringement of copyright law. It is almost impossible for a copyright owner to know which person used his/her work. In this context it is necessary to modify the copyright law. The librarians in the digital environment have some responsibility to collect information and help the readers by giving it even if it is an electronic form. The copyright protection should be encouraging the creativity and not for creating hurdles in the use of information.

The core reason for focusing on of two types of legal protection of intellectual property (IP); Copyright and Trade Secrets, is because they are most applicable to our clients' needs in terms of IP protection.

Protection of Source Code through Copyright : There are two major aspects of protecting source code :

Source Code Ownership : Product owners have to make sure that source code is their intellectual property and not a developer's.

Ensure Confidentiality : Product owners have to make sure that all the details about the technical side of their product are considered confidential.

Creating source code is a creative process and has a unique identity, which means that the result of such work can be protected by copyright law. While it is agreeable by many that creating a source code includes series of smaller tasks and thus smaller tasks are not protected by copyright. Being the first to market with an app or software program has never been more important. You alone should be allowed to make money from the software you created from scratch. Copyright is protected by the Constitution for a reason; it is the key to protecting creative works of all kinds, including things the Founders couldn't have imagined that long ago.

Copyright is the only sure way to protect your software creation. Technically speaking, under current copyright law, you automatically obtain a copyright when you write a piece of software, but practically speaking, having a copyright and proving it when you have to are two different concepts. If you go to court to protect yourself, you will have to be able to prove that you own it and also that you were the first one to write it. In the United States, copyright law protects your software and every aspect of its creation, including all images and design elements. Copyright protection is valid for life. When you make a copyright deposit of your software, it cannot be altered, which means there will always be a pristine copy of your software, archived with officers who are obliged to retain all documents deposited in a way that makes your copyright ownership

incontestable, even though it is easily retrievable by the copyright holder at any time they need to establish their ownership rights.

Cyber Law and Digital Content Protection

4.4 Cyber Law

Cyber law also called IT law is the law regarding Information-technology including computers and internet. It is related to legal informatics and supervises the digital circulation of information, software, information security and e-commerce.

IT law does not constitute a separate area of law rather it encloses different aspects of contract, intellectual property, privacy and data protection laws. Intellectual property is a key element of IT law. The area of software licence is controversial and still evolving in Europe and elsewhere.

According to Ministry of Electronic and Information Technology, Government of India : “Cyber laws yields legal recognition to electronic documents and a structure to support e-filing and e-commerce transactions and also provides a legal structure to reduce, check cyber crimes.”

4.4.1 Importance of Cyber Law

- It covers all transaction over internet.
- It keeps eyes on all activities over internet.
- It touches every action and every reaction in cyberspace.

4.4.2 Area of Cyber Law

Cyber laws contain different types of purposes. Some laws create rules for how individuals and companies may use computers and the internet while some laws protect people from becoming the victims of crime through unscrupulous activities on the internet. The major areas of cyber law include :

Fraud : Consumers depend on cyber laws to protect them from online fraud. Laws are made to prevent identity theft, credit card theft and other financial crimes that happen online. A person who commits identity theft may face confederate or state criminal charges. They might also encounter a civil action brought by a victim. Cyber lawyers work to both defend and prosecute against allegations of fraud using the internet.

Copyright : The internet has made copyright violations easier. In early days of online communication, copyright violations were too easy. Both companies and individuals need lawyers to bring actions to impose copyright protections. Copyright violation is an area of cyber law that protects the rights of individuals and companies to profit from their own creative works.

Defamation : Several personnel use the internet to speak their mind. When people use the internet to say things that are not true, it can cross the line into defamation. Defamation laws are civil laws that save individuals from fake public statements that can harm a business or someone's personal reputation. When people use the internet to make statements that violate civil laws, it is called defamation law.

Harassment and Stalking : Sometimes online statements can violate criminal laws that forbid harassment and stalking. When a person makes threatening statements again and again about someone else online, there is violation of both civil and criminal laws. Cyber lawyers both prosecute and defend people when stalking occurs using the internet and other forms of electronic communication.

Freedom of Speech : Freedom of speech is an important area of cyber law. Even though cyber laws forbid certain behaviors online, freedom of speech laws also allow people to speak their minds. Cyber lawyers must advise their clients on the limits of free speech including laws that prohibit obscenity. Cyber lawyers may also defend their clients when there is a debate about whether their actions consist of permissible free speech.

Trade Secrets : Companies doing businesses online often depend on cyber laws to protect their trade secrets. For example, Google and other online search engines spend lots of time developing the algorithms that produce search results. They also spend a great deal of time developing other features like maps, intelligent assistance and flight search services to name a few. Cyber laws help these companies to take legal action as necessary in order to protect their trade secrets.

Contracts and Employment Law : Every time you click a button that says you agree to the terms and conditions of using a website, you have used cyber law. There are terms and conditions for every website that are somehow related to privacy concerns.

4.4.3 Advantages of Cyber Law

- Organizations are now able to carry out e-commerce using the legal infrastructure provided by the Act.
- Digital signatures have been given legal validity and sanction in the Act.
- It has opened the doors for the entry of corporate companies for issuing Digital Signatures Certificates in the business of being Certifying Authorities.
- It allows Government to issue notification on the web thus heralding e-governance.
- It gives authority to the companies or organizations to file any form, application or any other document with any office, authority, body or agency owned or controlled by the suitable Government in e-form by means of such e-form as may be prescribed by the suitable Government.

- The IT Act also addresses the important issues of security, which are so critical to the success of electronic transactions.

4.4.4 Protect Against Cyber Attacks

The internet has seen a massive rise in usage over the last decade. Reason is smart phones, super-computers and the hardworking developer community that has made development and use of the software more and more easy with the requirement of lesser and lesser technical sophistication. The capabilities of software programs have also enhanced exponentially. The need for distributed computing and connectivity to the world for staying updated on current trends is the reason for businesses to increase their online presence. Some of these businesses are completely online with no offline element in their service or product. With all the emphasis on usability, an aspect has been mostly ignored since it has been a hurdle in usability. The security of online assets is a factor that was getting less attention than it deserved until the last four years. Cybercrimes were not that frequent before 2013. The rise in internet usage has resulted in rise of cybercrimes. The rise in cyber crimes resulted in an increased awareness of the importance of cyber security. But, a single successful attack can be enough to cause a loss of multi-billion dollars. Companies know it and hence are working towards making their products safer. However, you as an end-user can not fully rely on the security measures taken by the companies that sell you the products you use. There are a lot of ways you can commit mistakes and render all the security measures futile. But there are certain habits which when developed can be of great benefit to the internet security of an average user. These habits are simple practices that are easy to adaptable;

Use an internet security suite : If you know anything at all about a computer and the internet, the chances are very high that you might be using an antivirus already (And if not then do not take the risk unless you are seasoned cyber security professional with data backups in place). An antivirus program combined with an internet security program set helps you in :

- Avoiding malicious downloads done by mistake.
- Avoiding malicious installs done by mistake.
- Preventing from being a victim to Man In The Middle Attack (MITM)
- Protection from phishing.
- Protection from damage that trojan horses may cause. Some trojan horses are built in a way that the majority of the code is for doing useful and seemingly innocent things while a small portion does something nasty like acting as a backdoor or escalating privileges.

Use strong passwords : This can't be emphasized enough. If you have "qwerty123" as your bank's password and a lot of money in the account, you must be ready for a surprise transaction. You should not fully rely on the rate-limiting measures used by websites that you visit. Your

password should be strong enough to be practically unbreakable. A strong password is one that is 12+ characters long and contains a diverse use of alphabets (both cases), numbers and symbols (and spaces). Setting a really unbreakable password should not be difficult specially when there are help available as random password generators. You can use this one or this one.

Keep your software up-to-date : Despite the developer's best intention to create secure software and thorough reviews from the security teams, there are unfortunately many zero-days that are revealed once the software is being used by a large user base. Companies are well aware of this fact and that is why they release frequent updates to patch these vulnerabilities. This is the reason why those updates, however annoying they may be, are important. They help in preventing attacks that can easily skip the radar of the antivirus programs on your computer.

Avoid identity theft : Identity theft is when someone else uses your personal information to impersonate you on any platform to gain benefits in your name while the bills are addressed for you. It's just an example, identity theft can cause you to damage more serious than financial losses.

The most common reason for identity theft is improper management of sensitive personal data. There are some things to be avoided when dealing with personally identifiable data :

- Never share your Aadhar/PAN number (In India) with anyone whom you do not know/trust.
- Never share your SSN (In US) with anyone whom you do not know/trust.
- Do not post sensitive data on social networking sites.
- Do not make all the personal information on your social media accounts public.
- Please never share an Aadhar OTP received on your phone with someone over a call.
- Make sure that you do not receive unnecessary OTP SMS about Aadhar (if you do, your Aadhar number is already in the wrong hands)
- Do not fill personal data on the website that claim to offer benefits in return.

Take appropriate actions if you have been a victim : There are few things that should be done as soon as you realize you have been hacked :

- File a formal complaint with the police and inform the other relevant authorities.
- Try regaining access to your compromised accounts by utilizing secondary contacts.
- Reset the password for other accounts and websites that were using the same password as the account that was compromised.
- Perform a factory reset and proper formatting of your devices that are affected (assuming you have your data backed up already).
- Stay aware of the current data breaches and other incidents of the cyber world to prevent such incidents from happening again and staying safe online.

Cyber crime : In simple way we can say that cyber crime is unlawful acts wherein the computer is either a tool or a target or both. Cyber crimes can involve criminal activities that are traditional in nature, such as theft, fraud, forgery, defamation and mischief, all of which are subject to the Indian Penal Code. The abuse of computers has also given birth to a gamut of new age crimes that are addressed by the Information Technology Act, 2000.

We can categorize cyber crimes in two ways;

- **The computer as a target :** Using a computer to attack other computers. e.g. Hacking, Virus/Worm attacks, DOS attack etc.
- **The computer as a weapon :** Using a computer to commit real world crimes. e.g. Cyber Terrorism, IPR violations, Credit card frauds, EFT frauds, Pornography etc.

Cyber crime regulated by Cyber laws or Internet laws

Technical aspects : Technological advancements have created new possibilities for criminal activity, in particular the criminal misuse of information technologies such as;

Unauthorized access and hacking : Access means gaining entry into, instructing or communicating with the logical, arithmetical or memory function resources of a computer, computer system or computer network.

- Unauthorized access would therefore mean any kind of access without the permission of either the rightful owner or the person in charge of a computer, computer system or computer network.
- Every act committed towards breaking into a computer and/or network is hacking. Hackers write or use ready-made computer programs to attack the target computer. They possess the desire to destruct and they get the kick out of such destruction. Some hackers hack for personal monetary gains, such as to stealing the credit card information, transferring money from various bank accounts to their own account followed by withdrawal of money.
- By hacking web server taking control on another persons website called as web hijacking.

Trojan attack : The program that acts like something useful but do the things that are quiet damping. The programs of this kind are called as Trojans. The name Trojan Horse is popular. Trojans come in two parts, a Client part and a Server part. When the victim (unknowingly) runs the server on its machine, the attacker will then use the Client to connect to the Server and start using the trojan. TCP/IP protocol is the usual protocol type used for communications, but some functions of the trojans use the UDP protocol as well.

Virus and worm attack : A program that has capability to infect other programs and make copies of itself and spread into other programs is called virus. Programs that multiply like viruses but spread from computer to computer are called as worms.

E-mail and IRC related crimes

- **Email spoofing :** Email spoofing refers to email that appears to have been originated from one source when it was actually sent from another source.
- **Email spamming :** Email "spamming" refers to sending email to thousands and thousands of users , similar to a chain letter.
- **Sending malicious codes through email :** E-mails are used to send viruses, Trojans etc. through emails as an attachment or by sending a link of website which on visiting downloads malicious code.
- **Email bombing :** E-mail "bombing" is characterized by abusers repeatedly sending an identical email message to a particular address.
- **Sending threatening emails**
- **Defamatory emails**
- **Email frauds**
- **IRC related :** Three main ways to attack IRC are : "verbal>8218;#8220; attacks, clone attacks and flood attacks.

Denial of service attacks : Flooding a computer resource with more requests than it can handle. This causes the resource to crash thereby denying access of service to authorized users. Examples include : attempts to "flood" a network, thereby preventing legitimate network traffic attempts to disrupt connections between two machines, thereby preventing access to a service attempts to prevent a particular individual from accessing a service attempts to disrupt service to a specific system or person.

Distributed DOS : A distributed denial of service (DoS) attack , is accomplished by using the Internet to break into computers and using them to attack a network. Hundreds or thousands of computer systems across the Internet can be turned into “zombies” and used to attack another system or website.

Types of DOS : There are three basic types of attack ;

- **Consumption** of scarce, limited, or non-renewable resources like NW bandwidth, RAM, CPU time. Even power, cool air or water can affect.
- **Destruction or alteration of configuration information**
- **Physical destruction or alteration of network components**
- **Pornography :** The literal meaning of the term 'Pornography' is “describing or showing sexual acts in order to cause sexual excitement through books, films, etc.” This would include pornographic websites; pornographic material produced using computers and use of internet to download and transmit pornographic videos, pictures, photos, writings etc.

- **Forgery** : Counterfeit currency notes, postage and revenue stamps, mark sheets etc. can be forged using sophisticated computers, printers and scanners.
- **IPR violations** : These include software piracy, copyright infringement, trademarks violations, theft of computer source code, patent violations, etc.

Cyber squatting : Domain names are also trademarks and protected by ICANN's domain dispute resolution policy and also under trademark laws. Cyber squatters registers domain name identical to popular service provider's domain so as to attract their users and get benefit from it.

Cyber terrorism : Targeted attacks on military installations, power plants, air traffic control, banks, trail traffic control, telecommunication networks are the most likely targets. Others like police, medical, fire and rescue systems etc. Cyber terrorism is an attractive option for modern terrorists for several reasons. Like; it is cheaper than traditional terrorist methods, cyber terrorism is more anonymous than traditional terrorist methods, the variety and number of targets are enormous, cyber terrorism can be conducted remotely, a feature that is especially appealing to terrorists, cyber terrorism has the potential to affect directly a larger number of people.

Banking/credit card related crimes : In the corporate world, Internet hackers are continually looking for opportunities to compromise a company's security in order to gain access to confidential banking and financial information. Use of; stolen card information or fake credit/debit cards are common. Bank employee can grab money using programs to deduce small amount of money from all customer accounts and adding it to own account also called as salami.

E-commerce/investment frauds : Sales and Investment frauds. An offering that uses false or fraudulent claims to solicit investments or loans, or that provides for the purchase, use or trade of forged or counterfeit securities.

Merchandise or services that were purchased or contracted by individuals online are never delivered.

The fraud attributable to the misrepresentation of a product advertised for sale through an Internet auction site or the non-delivery of products purchased through an Internet auction site.

Investors are enticed to invest in this fraudulent scheme by the promises of abnormally high profits.

- **Sale of illegal articles** : This would include trade of narcotics, weapons and wildlife etc., by posting information on websites, auction websites, and bulletin boards or simply by using email communication. Research shows that number of people employed in this criminal area. Daily peoples receiving so many emails with offer of banned or illegal products for sale.
- **Online gambling** : There are millions of websites hosted on servers abroad, offer online gambling. In fact, it is believed that many of these websites are actually fronts for money laundering.

- **Defamation :** Defamation can be understood as the intentional infringement of another person's right to his good name. Cyber defamation occurs when defamation takes place with the help of computers and / or the Internet. E.g. someone publishes defamatory matter about someone on a website or sends e-mails containing defamatory information to all of that person's friends. Information posted to a bulletin board can be accessed by anyone. This means that anyone can place. Cyber defamation is also called as Cyber smearing.

Cyber stalking : Cyber stalking involves following a person's movements across the Internet by posting messages (sometimes threatening) on the bulletin boards frequented by the victim, entering the chat-rooms frequented by the victim, constantly bombarding the victim with emails etc. In general, the harasser intends to cause emotional distress and has no legitimate purpose to his communications.

Pedophiles : Also there are persons who intentionally prey upon children. Especially with a teen they will let the teen know that fully understand the feelings towards adult and in particular teen parents. They earn teens trust and gradually seduce them into sexual or indecent acts. Pedophiles lure the children by distributing pornographic material, and then they try to meet them for sex or to take their nude photographs including their engagement in sexual positions.

Identity theft : Identity theft is the fastest growing crime in countries like America. Identity theft occurs when someone appropriates another's personal information without their knowledge to commit theft or fraud. Identity theft is a vehicle for perpetrating other types of fraud schemes.

Data diddling : Data diddling involves changing data prior or during input into a computer. In other words, information is changed from the way it should be entered by a person typing in the data, a virus that changes data, the programmer of the database or application, or anyone else involved in the process of having information stored in a computer file. It also includes automatic changing the financial information for some time before processing and then restoring original information.

Theft of internet hours : Unauthorized use of Internet hours paid for by another person. By gaining access to an organisation's telephone switchboard (PBX) individuals or criminal organizations can obtain access to dial-in/dial-out circuits and then make their own calls or sell call time to third parties. Additional forms of service theft include capturing 'calling card' details and on-selling calls charged to the calling card account, and counterfeiting or illicit reprogramming of stored value telephone cards.

- **Theft of computer system (Hardware) :** This type of offence involves the theft of a computer, some part(s) of a computer or a peripheral attached to the computer.
- **Physically damaging a computer system :** Physically damaging a computer or its peripherals either by shock, fire or excess electric supply etc.

- Breach of privacy and confidentiality

Privacy : Privacy refers to the right of an individual/s to determine when, how and to what extent his or her personal data will be shared with others. Breach of privacy means unauthorized use or distribution or disclosure of personal information like medical records, sexual preferences, financial status etc.

Confidentiality : It means non disclosure of information to unauthorized or unwanted persons. In addition to personal information some other type of information which useful for business and leakage of such information to other persons may cause damage to business or person, such information should be protected.

Generally for protecting secrecy of such information, parties while sharing information forms an agreement about the procedure of handling of information and to not to disclose such information to third parties or use it in such a way that it will be disclosed to third parties.

Many times party or their employees leak such valuable information for monetary gains and causes breach of contract of confidentiality.

Special techniques such as social engineering are commonly used to obtain confidential information.

Unfair Competition, Meaning and Relationship between Unfair Competition and IP Laws

4.5 History of Competition Act

The Government of India in April 1964 appointed the Monopolies Inquiry Commission under the Chairmanship of Justice K. C. Das Gupta, a judge of the Supreme Court, to inquire into the extent and effect of concentration of economic power in private hands and prevalence of monopolistic and restrictive trade practices in important sectors of economic activity other than agriculture. To regulate advertising, in 1984, Parliament inserted a chapter on unfair trade practices in the Monopolies and Restrictive Trade Practices Act, 1969. The Monopolies and Restrictive Trade Practices Commission was constituted in the year 1970. The Monopolies and Restrictive Trade Practices Act, 1969 had its genesis in the Directive Principles of State Policy embodied in the Constitution of India. It received the assent of the President of India on 27 December, 1969. The Monopolies and Restrictive Trade Practices Act was intended to curb the rise of concentration of wealth in a few hands and of monopolistic practices. It was repealed on September 2009. The Act has been succeeded by The Competition Act, 2002. The Competition Bill, 2001 was introduced in Lok Sabha by Finance Minister Arun Jaitley on 6 August 2001.

4.5.1 Introduction

The Competition Act, 2002 was enacted by the Parliament of India and governs Indian competition law. It replaced the archaic, The Monopolies and Restrictive Trade Practices Act, 1969. Under this legislation, the Competition Commission of India was established to prevent the activities that have an adverse effect on competition in India. This act extends to whole of India except the State of Jammu and Kashmir.

It is a tool to implement and enforce competition policy and to prevent and punish anti-competitive business practices by firms and unnecessary government interference in the market. Competition laws is equally applicable on written as well as oral agreement, arrangements between the enterprises or persons. The Competition Act, 2002 was amended by the Competition (Amendment) Act, 2007 and again by the Competition (Amendment) Act, 2009. The Act establishes a Commission which is duty bound to protect the interests of free and fair competition (including the process of competition), and as a consequence, protect the interests of consumers. Broadly, the Commission's duty is :

- To prohibit the agreements or practices that have or are likely to have an appreciable adverse effect on competition in a market in India, (horizontal and vertical agreements / conduct);
- To prohibit the abuse of dominance in a market;
- To prohibit acquisitions, mergers, amalgamations etc. between enterprises which have or are likely to have an appreciable adverse effect on competition in market(s) in India.

In addition to this, the Competition Act envisages its enforcement with the aid of mutual international support and enforcement network across the world,

Definitions of different terms used in the Act

Acquisition : Acquisition means, directly or indirectly, acquiring or agreeing to acquire shares, voting rights or assets of any enterprise or control over management or assets of any enterprise.

Cartel : Cartel includes an association of producers, sellers, distributors, traders or service providers who, by agreement among themselves, limit control or attempt to control the production, distribution, sale or price of goods or provision of services.

Dominant position : It means a position of strength, enjoyed by an enterprise, in the relevant market which enables it to operate independently of competitive forces prevailing in the market or affect its competitors or consumers in its favour.

Predatory pricing : Predatory pricing means the sale of goods or provision of services, at a price which is below the cost of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Rule of reason : It is the analysis of any activity under the challenge on the basis of business justification, competitive intent, market impact, impact on competition and on consumer. It is the logic behind the conclusion for any order.

4.5.2 Salient Features of the Competition Act 2002

Anti Agreements : Enterprises, persons or associations of enterprises or persons, including cartels, shall not enter into agreements in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which cause or are likely to cause an "appreciable adverse impact" on competition in India. Such agreements would consequently be considered void. Agreements which would be considered to have an appreciable adverse impact would be those agreements which;

- Directly or indirectly determine sale or purchase prices,
- Limit or control production, supply, markets, technical development, investment or provision of services,
- Share the market or source of production or provision of services by allocation of inter alia geographical area of market, nature of goods or number of customers or any other similar way,
- Directly or indirectly result in bid rigging or collusive bidding.

Types of agreement : A 'horizontal agreement' is an agreement for co-operation between two or more competing businesses operating at the same level in the market. A vertical agreement is an agreement between firms at different levels of the supply chain. For instance, a manufacturer of consumer electronics might have a vertical agreement with a retailer according to which the latter would promote their products in return for lower prices.

Abuse of dominant position : There shall be an abuse of dominant position if an enterprise imposes directly or indirectly unfair or discriminatory conditions in purchase or sale of goods or services or restricts production or technical development or create hindrance in entry of new operators to the prejudice of consumers. The provisions relating to abuse of dominant position require determination of dominance in the relevant market. Dominant position enables an enterprise to operate independently or effect competitors by action.

Combinations : The Act is designed to regulate the operation and activities of combinations, a term, which contemplates acquisition, mergers or amalgamations. Combination that exceeds the threshold limits specified in the Act in terms of assets or turnover, which causes or is likely to cause adverse impact on competition within the relevant market in India, can be scrutinized by the Commission.

Principal features of the Competition Act, 2003 : The Competition Act, 2003 provides for the setting up of a Competition Commission of India (CCI) with a view to :

- Prevent practices having adverse effects on competition,
- Curtail abuse of dominance,
- promote and sustain competition in market,
- Ensure quality of products and services,
- Protect the interest of consumers and
- Ensure freedom of trade carried on by other participants in domestic markets.

A subsequent Competition Amendment Bill (2007) seeks to make the CCI function as a regulator and give impetus to factors like :

- Quality of products and services,
- Healthy competition,
- Faster mergers and acquisitions of companies,
- Regulation of acquisitions and mergers coming within the threshold limits,
- Allowing dominance with prevention of its abuse to give effect to the second generation economic reforms on the pattern of the global standards set by the more developed countries, etc.

4.6 CCI (Competition Commission of India)

Competition Commission of India is a body corporate and independent entity possessing a common seal with the power to enter into contracts and to sue in its name. It is to consist of a chairperson, who is to be assisted by a minimum of two, and a maximum of six, other members. It is the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in the markets of India. The commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues. Objectives of CCI are;

Anti-competitive agreements : This covers both the horizontal and vertical agreements. It states that four types of horizontal agreements between enterprises involved in the same industry would be applied. These agreements are those that :

Lead to price fixing; limit or control quantities; share or divide markets; and result in bid-rigging. It also identifies a number of vertical agreements subject to review under rule of reach test.

Abuse of dominance : The Act lists five categories of abuse :

- Imposing unfair/discriminatory conditions in purchase of sale of goods or services (including predatory pricing);

- Limiting or restricting production, or technical or scientific development;
- Denial of market access;
- Making any contract subject to obligations unrelated to the subject of the contract; and
- Using a dominant position in one market to enter or protect another.

Combinations Regulation (Merger and Amalgamation) : The Act states that any combination that exceeds the threshold limits in terms of value of assets or turnover can be scrutinized by the CCI to determine whether it will cause or is likely to cause an appreciable adverse effect on competition within the relevant market in India.

Enforcement : The CCI, the authority entrusted with the power to enforce the provisions of the Act, can enquire into possibly anti-competitive agreements or abuse of dominance either on its own initiative or on receipt of a complaint or information from any person, consumer, consumer's association, a trade association or on a reference by any statutory authority. It can issue 'cease and desist' orders and impose penalties. The CCI can also order the break-up of a dominant firm.

The new competition law in India, despite some concerns expressed in certain quarters, is much more consistent with the current anti-trust thinking than the outgoing MRTP Act. Although the success of the new Indian model will now turn on its implementation, India would appear to have taken a very substantial step towards the adoption of a modern competition policy.

Commission has the power to inquire into unfair agreements or abuse of dominant position or combinations taking place outside India but having adverse effect on competition in India, if any of the circumstances exists :

- An agreement has been executed outside India.
- Any contracting party resides outside India.
- Any enterprise abusing dominant position is outside India.
- A combination has been established outside India.
- A party to a combination is located abroad.
- Any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

To deal with cross border issues, commission is empowered to enter into any memorandum of understanding or arrangement with any foreign agency of any foreign country with the prior approval of central Government.

Review of orders of Commission : Any person aggrieved by an order of the Commission can apply to the Commission for review of its order within thirty days from the date of the order. Commission may entertain a review application after the expiry of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time. No order

shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings.

Appeal : Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission. No appeal shall lie against any decision or order of the Commission made with the consent of the parties.

Penalty : If any person fails to comply with the orders or directions of the Commission shall be punishable with fine which may extend to 1 lakh for each day during which such non compliance occurs, subject to a maximum of 10 crore.

If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under this section, he shall be punishable with imprisonment for a term which will extend to three years, or with fine which may extend to 25 crores or with both.

Section 44 provides that if any person, being a party to a combination makes a statement which is false in any material particular or knowing it to be false or omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than 50 lakhs but which may extend to 1 crore.

Case Studies

4.7 Case Studies

4.7.1 Case Studies on Unfair Use of Competition Act

Fair trade watchdog CCI is dealing with as many as seven cases of alleged abuse of dominant position by state-owned Coal India. Competition Commission of India (CCI), which keeps a tab on unfair trade practices at market place, has investigated these cases. Out of seven cases, the latest case relates to complaint by Sponge Iron Manufacturers Association against Coal India and its six subsidiaries. The association has alleged that CIL indulged in various unfair ways such as one-sided Fuel Supply Agreement and supplying less amount of the dry fuel despite an assured quantity under FSA. While ordering probe in this particular case in July, Commission had asked the DG to club it with three other matters of similar nature that were already under investigation related to CIL.

"It is pertinent to note that several cases against CIL are already under investigation for alleged abuse of dominance," the regulator has said in its July-September newsletter.

Besides Coal India, world's largest coal producer, the complaint has been filed against its subsidiaries : Central Coalfields, Eastern Coalfield, Western Coalfields, South Eastern Coalfields, Northern Coalfields and Mahanadi Coalfields.

As per the association, all these entities enjoy a virtual monopoly over production and supply of coal. They produce over 80% of the dry fuel in the country.

The miner has drawn flak from various quarters, especially from power sector players, for inadequate supply of dry fuel. Shortage of coal is a major factor hurting power generation in the country.

Abuse of dominance by an enterprise is a violation under the Competition Act and the Commission has vast powers to curb such practices. These include slapping huge penalties and even asking the concerned entity to break itself into smaller groups.

A slew of factors, including an enterprise's market share, size and importance of competitors, extent of entry and exit barriers in the market, would be taken into consideration while deciding on cases pertaining to abuse of dominant position.

4.7.2 Case Study : Tea Board of India Vs. ITC Ltd.

Arguments given by the plaintiff : According to the plaintiff, defendant has infringed the registered geographical indication rights having a fraud and malice intention and the rights of the plaintiff are being hampered in this way ;

- a) The defendant has fraudulently used the tag of Geographical Indication (GI) in naming one of its business premises as 'DARJEELING LOUNGE' which is a registered GI.
- b) The defendant having malice intention used the name 'DARJEELING' for the presentation and sale of goods which it sells in such lounge.
- c) The defendant has disguised its customers by suggesting that the goods which it sells at the said 'DARJEELING LOUNGE' originate in the said geographical area.
- d) The defendant by using the registered GI has hampered the rights of the plaintiff as the defendant misleads its customers by telling them that the products are originated from the designated place of origin.
- e) The use of the name 'DARJEELING' for the purpose of the said lounge and for the purpose of publicity and selling of goods has created an unfair competition and the plaintiff can use his right of passing off and other rights for the matter.
- f) The defendant's use of the name 'DARJEELING' for naming the lounge, advertising and selling products against the honest trade practices.
- g) The defendant, by using the impugned name 'DARJEELING' for the purpose of the lounge has threatened the commercial activities of the persons who are actually in the business of the Darjeeling Tea.

- h) The use of the name 'DARJEELING' for the purposes of its lounge and all purposes relating thereto is a serious threat to the trade of the existing tea business and also disregard to the registered GI tag having a particular standard.
- i) The wrongful acts of the defendant in using the 'DARJEELING' name and logo is a highly misleading to the general public as regards the nature or manufacturing process or characteristics and suitability of the goods actually sold in the said lounge.

In order to prevent the defendant from violating the above rights of the GI tag holder in reference with the Trademark Act and Geographical Indications, the plaintiff had moved an interlocutory application for temporary injunction to restrain the defendant from infringing the rights in any manner possible.

Arguments by the Defendant : According to the defendant, there is no cause of action for filing the suit as the suit was barred by limitation. Since the plaintiff had only certification trademark, no right or cause of action could arise for the plaintiff under such certification trademark against the defendant's using the "DARJEELING LOUNGE" in view with the Trademark Act. As per the defendant the suit is also not maintainable under section 26 of the Geographical Indications Act.

Judgement : The Hon'ble Justice Sahidullah Munshi of Calcutta High Court, opined that the suit by Tea Board was barred by limitation as the hotel lounge was started in January 2003. But the suit was filed only in 2010 which is beyond the limitation provided under Section 26(4) of the GI act which is for 5 years.

The court went into the merits of the case and Justice Munshi observed that, "It is also not found that there has been any infringement under the Geographical Indications of Goods Act because the defendant's 'Lounge' is not relating to goods. Plaintiff's rights conferred by the registration of the word 'Darjeeling' is only in relation to tea. 'Darjeeling' is not a trade mark. It is only used to indicate geographical indication of a place of origin of tea originating from Darjeeling. The law relates to geographical indication is confined only to goods. The plaintiff does not own any right in the name of 'Darjeeling' for any goods other than tea. The Geographical Indications Act can only extend to goods and admittedly, the defendant's lounge does not fall within the category of 'goods'".

The hon'ble court further found that there is no unfair competition under the definitions of Geographical Indications Act as the business area of plaintiff and defendant is totally different and among the 87 tea estates none of them had raised any issue. The board also claimed that its rights under Trademarks Act 1999 also stood violated by the use of name 'Darjeeling' for the lounge. But the court noted that the board only had certification trademark within the meaning of Section 2(e) of the Trademarks Act 1999, which does not amount to a registered trademark. The certification

trademark gave the board only the authority to certify that the concerned tea is connected with Darjeeling region and here the defendant is dealing with service.

The court stated that there is no relation between the defendants 'DARJEELING LOUNGE' and the plaintiff's rights under Trademark or GI act and the allegations are baseless and the court dismissed the suit for ₹ 10 lakhs.

Conclusion : From the above case we can conclude that a registered GI gives right to the GI tag holder to stop any person or entity from using the registered mark of GI or its name in a product which might be similar or deceptively similar to the registered product or it might not be similar to the registered product, but have the registered name in it. But if a person is using the registered name or logo of GI in a service then that will not come under the ambit of The Geographical Indications of Goods (Registration and Protection) Act, 1999 because if we look at the definition of GI itself given in the TRIPS and in the Section 2(e) of the domestic GI act then we will find the use of word "good/s" in it and the word service is mentioned nowhere and GI is about the product with special characteristics because of environment, climate and human intervention of a specific region. So, on this merits court dismissed the appeal by the plaintiff.

4.7.3 Important Cyber Law Case Studies

Pune Citibank MphasiS Call Center Fraud : Some ex-employees of BPO arm of MPhasiS Ltd MsourcE defrauded US Customers of Citibank to the tune of ₹ 1.5 crores. It was one of those cyber crime cases that raised concerns of many kinds including the role of "Data Protection".

The crime was obviously committed using "Unauthorized Access" to the "Electronic Account Space" of the customers. It is therefore firmly within the domain of "Cyber Crimes".

ITA-2000 is versatile enough to accommodate the aspects of crime not covered by ITA-2000 but covered by other statutes since any IPC offence committed with the use of "Electronic Documents" can be considered as a crime with the use of a "Written Documents". "Cheating", "Conspiracy", "Breach of Trust", etc. are therefore applicable in the above case in addition to the section in ITA-2000.

Under ITA-2000 the offence is recognized both under Section 66 and Section 43. Accordingly, the persons involved are liable for imprisonment and fine as well as a liability to pay damages to the victims to the maximum extent of ₹ 1 crore per victim for which the "Adjudication Process" can be invoked.

SONY.SAMBANDH.COM Case : India saw its first cybercrime conviction in 2013. It all began after a complaint was filed by Sony India Private Ltd, which runs a website called www.sony-sambandh.com, targeting Non-Resident Indians. The website enables NRIs to send Sony products to their friends and relatives in India after they pay for it online.

The company undertakes to deliver the products to the concerned recipients. In May 2002, according to the cybercrime case study, someone logged onto the website under the identity of Barbara Campa and ordered a Sony Colour Television set and a cordless headphone. She gave her credit card number for payment and requested the products to be delivered to Arif Azim in Noida. The payment was duly cleared by the credit card agency, and the transaction was processed. After following the relevant procedures of due diligence and checking, the company delivered the items to Arif Azim.

At the time of delivery, the company took digital photographs showing the delivery being accepted by Arif Azim. The transaction closed at that, but after one and a half months the credit card agency informed the company that this was an unauthorized transaction as the real owner had denied having made the purchase.

The company lodged a complaint about online cheating at the Central Bureau of Investigation which registered a case under Section 418, 419 and 420 of the Indian Penal Code. The matter was investigated, and Arif Azim was arrested. Investigations revealed that Arif Azim while working at a call centre in Noida gained access to the credit card number of an American national which he misused on the company's site.

The CBI recovered the colour television and the cordless headphone, in this one of a kind cyber fraud case. In this matter, the CBI had evidence to prove their case, and so the accused admitted his guilt. The court convicted Arif Azim under Section 418, 419 and 420 of the Indian Penal Code - this being the first time that cybercrime has been convicted.

The court, however, felt that as the accused was a young boy of 24 years and a first-time convict, a lenient view needed to be taken. The court, therefore, released the accused on probation for one year. The judgment is of immense significance for the entire nation. Besides being the first conviction in a cybercrime matter, it has shown that the Indian Penal Code can be effectively applied to certain categories of cyber crimes which are not covered under the Information Technology Act 2000. Secondly, a judgment of this sort sends out a clear message to all that the law cannot be taken for a ride.

The Bank NSP Case : One of the leading cybercrime cases is the Bank NSP case is the one where a management trainee of the bank was engaged to be married. The couple exchanged many emails using the company computers. After some time the two broke up and the girl created fraudulent email ids such as "indianbarassociations" and sent emails to the boy's foreign clients. She used the bank's computer to do this. The boy's company lost a large number of clients and took the bank to court. The bank was held liable for the emails sent using the bank's system.

Andhra Pradesh Tax Case : Dubious tactics of a prominent businessman, from Andhra Pradesh, were exposed after officials of the department got hold of computers, used by the accused

in one of the many cyber fraud cases in India. The owner of a plastics firm was arrested and ₹ 22 crore cash, was recovered from his house by sleuths of the Vigilance Department. They sought an explanation from him regarding the unaccounted cash within 10 days.

The accused submitted 6,000 vouchers, to prove the legitimacy of trade and thought his offence would go undetected but after careful scrutiny of vouchers and contents of his computers, it was revealed that all of them were made after the raids were conducted. It was later revealed that the accused was running five businesses under the guise of one company and used fake and computerised vouchers to show sales records and save tax.

SMC Pneumatics (India) Pvt. Ltd. vs. Jogesh Kwatra : In India's first case of cyber defamation, the High Court of Delhi assumed jurisdiction over a matter where a corporation's reputation was being defamed through emails and passed an important ex-parte injunction.

Amongst the many cyber cases in India, in this case, the defendant Jogesh Kwatra being an employee of the plaintiff company started sending derogatory, defamatory, obscene, vulgar, filthy and abusive emails to his employers as also to different subsidiaries of the said company all over the world with the aim to defame the company and its Managing Director Mr. R K Malhotra. The plaintiff filed a suit for permanent injunction restraining the defendant from doing his illegal acts of sending derogatory emails to the plaintiff.

On behalf of the plaintiff, it was contended that the emails sent by the defendant were distinctly obscene, vulgar, abusive, intimidating, humiliating and defamatory in nature. Counsel further argued that the aim of sending the said emails was to malign the high reputation of the plaintiff all over India and the world. He further contended that the acts of the defendant in sending the emails had resulted in an invasion of the legal rights of the plaintiff.

Further, the defendant is under a duty not to send the aforesaid emails. It is pertinent to note that after the plaintiff company discovered the said employee could be indulging in the matter of sending abusive emails, the plaintiff terminated the services of the defendant.

After hearing detailed arguments of Counsel for Plaintiff, Hon'ble Judge of the Delhi High Court passed an ex-parte ad interim injunction, observing that a *prima facie* case had been made out by the plaintiff. Consequently, in this cyber fraud case in India, the Delhi High Court restrained the defendant from sending derogatory, defamatory, obscene, vulgar, humiliating and abusive emails, either to the plaintiff or to its sister subsidiaries all over the world, including their Managing Directors and their sales and marketing departments. Further, Hon'ble Judge also restrained the defendant from publishing, transmitting or causing to be published any information in the actual world, as also in cyberspace, which is derogatory or defamatory or abusive.

This order of Delhi High Court assumes tremendous significance as this is the first time that an Indian Court assumes jurisdiction in a matter concerning cyber defamation and grants an ex-parte

injunction restraining the defendant from defaming the plaintiff by sending derogatory, defamatory, abusive and obscene emails either to the plaintiffs or their subsidiaries.

Bazee.com case : CEO of Bazee.com was arrested in December 2004 because a CD with objectionable material was being sold on the website. The CD was also being sold in the markets in delhi.

The Mumbai Police and the Delhi Police got into action. The CEO was later released on bail. This opened up the question as to what kind of distinction we draw between internet service provider and content provider. The burden rests on the accused that he was the service provider and not the content provider. It also raises a lot of issues regarding how the police should handle cybercrime cases.

State of Tamil Nadu Vs Suhas Katti : The Case of Suhas Katti is notable for the fact that the conviction was achieved successfully within a relatively quick time of 7 months from the filing of the FIR, making it one of the notable cyberlaw cases in India. Considering that similar cases have been pending in other states for a much longer time, the efficient handling of the case which happened to be the first case of the Chennai Cyber Crime Cell going to trial deserves a special mention.

The case is related to the posting of obscene, defamatory and annoying message about a divorced woman in the Yahoo message group. E-mails were also forwarded to the victim for information by the accused through a false e-mail account opened by him in the name of the victim. The posting of the message resulted in annoying phone calls to the lady in the belief that she was soliciting.

Based on a complaint made by the victim in February 2004, the Police traced the accused to mumbai and arrested him within the next few days. The accused was a known family friend of the victim and was reportedly interested in marrying her. She, however, married another person. This marriage later ended in divorce, and the accused started contacting her once again. On her reluctance to marry him, the accused took up harassment through the Internet.

On 24-3-2004, a charge sheet was filed, u/s 67 of the IT Act 2000, 469 and 509 IPC before The Hon'ble Addl. CMM Egmore by citing 18 witnesses and 34 documents and material objects. The same was taken on file in C.C.NO.4680/2004. On the prosecution side, 12 witnesses were examined, and entire documents were marked as Exhibits.

The Defence argued, in this cyber crime case, that the offending emails would have been given either by the ex-husband of the complainant or the complainant herself to implicate the accused as accused alleged to have turned down the request of the complainant to marry her.

Further, the defence counsel argued that some of the documentary evidence was not sustainable under Section 65 B of the Indian Evidence Act. However, the court relied upon the expert

witnesses, and other evidence produced before it, including the witnesses of the Cyber Cafe owners, and came to the conclusion that the crime was proved.

Ld. Additional Chief Metropolitan Magistrate, Egmore, delivered the judgement on 5-11-04 as follows : "The accused is found guilty of offences under section 469, 509 IPC and 67 of the IT Act 2000, and the accused is convicted and sentenced for the offence to undergo RI for 2 years, under 469 IPC, and to pay a fine of Rs.500/- and for the offence u/s 509 IPC sentenced to undergo 1 year simple imprisonment and to pay a fine of Rs.500/- and for the offence u/s 67 of the IT Act 2000 to undergo RI for 2 years and to pay a fine of Rs.4000/-. All sentences to run concurrently."

The accused paid the fine amount, and he was lodged at Central Prison, Chennai. This is considered as the first case convicted under section 67 of the Information Technology Act 2000 in India.

Nasscom vs. Ajay Sood and Others : In a landmark judgment in the case of National Association of Software and Service Companies vs. Ajay Sood & Others, delivered in March, '05, the Delhi High Court declared 'phishing' on the internet to be an illegal act, entailing an injunction and recovery of damages. A cybercrime case study has been conducted on the same.

Elaborating on the concept of 'phishing', in order to lay down a precedent in India, the court stated that it is a form of internet fraud where a person pretends to be a legitimate association, such as a bank or an insurance company in order to extract personal data from a customer such as access codes, passwords, etc. Personal data so collected by misrepresenting the identity of the legitimate party is commonly used for the collecting party's advantage.

The court also stated, by way of an example, that typical phishing scams involve persons who pretend to represent online banks and siphon cash from e-banking accounts after conning consumers into handing over confidential banking details.

The Delhi HC stated that, even though there is no specific legislation in India to penalize phishing, it held phishing to be an illegal act, by defining it under Indian law as "a misrepresentation made in the course of trade, leading to confusion, as to the source and origin of the email causing immense harm, not only to the consumer, but even to the person whose name, identity or password is misused." The court held the act of phishing as passing off and tarnishing the plaintiff's image.

The plaintiff, in this case, was the National Association of Software and Service Companies (Nasscom), India's premier software association. The defendants were operating a placement agency involved in headhunting and recruitment. In order to obtain personal data, which they could use for purposes of headhunting, the defendants composed and sent emails to third parties, in the name of Nasscom.

The high court recognised the trademark rights of the plaintiff and passed an ex-parte ad interim injunction restraining the defendants from using the trade name or any other name deceptively similar to Nasscom. The court further restrained the defendants from holding themselves out as being associated with or a part of Nasscom.

The court appointed a commission to conduct a search at the defendants' premises. Two hard disks of the computers, from which the fraudulent e-mails were sent by the defendants to various parties, were taken into custody by the local commissioner appointed by the court. The offending emails were then downloaded from the hard disks and presented as evidence in court.

During the progress of the cyberlaw case in India, it became clear that the defendants, in whose names the offending e-mails were sent, were fictitious identities created by an employee on defendants' instructions, to avoid recognition and legal action. On discovery of this fraudulent act, fictitious names were deleted from the array of parties as defendants in the case.

Subsequently, defendants admitted to their illegal acts and the parties settled the matter through the recording of a compromise in the suit proceedings. According to the terms of compromise, the defendants agreed to pay a sum of ₹ 1.6 million to the plaintiff as damages for violation of the plaintiff's trademark rights. The court also ordered the hard disks seized from the defendants' premises to be handed over to the plaintiff who would be the owner of the hard disks.

This case achieves clear milestones : It brings the act of "phishing" into the ambit of Indian laws, even in the absence of specific legislation ; it clears the misconception that there is no "damages culture" in India for violation of IP rights. this case reaffirms IP owners' faith in the Indian judicial system's ability and willingness to protect intangible property rights and send a strong message to IP owners that they can do business in India without sacrificing their IP rights.

Cyber Attack on Cosmos Bank : In August 2018, the Pune branch of Cosmos bank was drained of ₹ 94 crores, in an extremely bold cyber attack. By hacking into the main server, the thieves were able to transfer the money to a bank in Hong Kong. Along with this, the hackers made their way into the ATM server, to gain details of various VISA and Rupay debit cards.

The switching system i.e. the link between the centralized system and the payment gateway was attacked, meaning neither the bank nor the account holders caught wind of the money being transferred.

According to the cybercrime case study internationally, a total of 14,000 transactions were carried out, spanning across 28 countries using 450 cards. Nationally, 2,800 transactions using 400 cards were carried out.

This was one of its kinds, and in fact, the first malware attack that stopped all communication between the bank and the payment gateway.

Tampering with Computer Source Documents : In a case of manipulation, Tata Indicom employees were taken into custody in relation to the tampering of the electronic 32-bit number (ESN) that is programmed into cell phones. The theft was for Reliance Intercom. In a verdict on a later date, the court said that since the source code was manipulated, it calls the use of Section 65 under the Information Technology Act.

BSNL, Unauthorized Access : In a leading cybercrime case, the Joint Academic Network (JANET) was hacked by the accused, after which he denied access to the authorized users by changing passwords along with deleting and adding files. Making it look like he was authorized personnel, he made changes in the BSNL computer database in their internet users' accounts.

When the CBI carried out investigations after registering a cybercrime case against the accused, they found that the broadband Internet was being used without any authorization. The accused used to hack into the server from various cities like Chennai and Bangalore, amongst others. This investigation was carried after the Press Information Bureau, Chennai, filed a complaint.

In the verdict by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, the accused from Bangalore would be sent to prison for a year and will have to pay a fine of ₹ 5,000 under Section 420 IPC and Section 66 of the IT Act.

BPO Fraud : In another incident involving MphasiS, India, four call centre employees gained the PIN codes, from four of the MphasiS's client, Citi Group, in spite of not being authorized to do so. Various accounts were opened in Indian banks, under false names and within two months, they managed to transfer money to these accounts from Citigroup customers accounts using their PINs and other personal information.

This cyber fraud case occurred in December 2004, but it wasn't until April 2005 that the Indian police were able to identify the individuals to make an arrest. It was made possible with a tip provided by a U.S. bank when the accused tried to withdraw cash from these fake accounts. From the \$ 426,000 that was stolen, only \$ 230,000 were recovered.

The accused were charged under Section 43(a), unauthorized access involved to carry transactions.

Bomb Hoax Mail : In an email hoax, sent by a 15-year-old boy from Bangalore, the Cyber Crime Investigation Cell (CCIC) arrested him in 2009. The boy was accused of sending an email to a private news company saying, "I have planted 5 bombs in Mumbai, you have two hours to find them". The concerned authorities were contacted immediately, in relation to the cyber case in India, who traced the IP address (Internet Protocol) to Bangalore.

A Look-alike Website : A 9-person crime, was registered under Sections 65, 66, 66A, C and D of the Information Technology Act, along with Sections 419 and 420 of the Indian Penal Code. Under the complaint of this cyber fraud case in India, a company representative in the business of

trading and distribution of petrochemicals in India and abroad had filed the report against the 9 accused of using a similar looking website to carry on the trade.

The accused ran a defamation campaign against the company, causing them crores of rupees of loss from their customers, suppliers and even producers.

Cyber Terrorism : Since the changes were carried out in the Information Technology Act in Mumbai, this case of cyber terrorism was its first project. A threat email had been delivered to the BSE and NSE, at 10:44 am on Monday. With the MRA Marg police and the Cyber Crime Investigation Cell (CCIC) working together on the cyber crime case, the accused has been detained. The IP address had been traced to Patna, Bihar. When checked for any personal details, two contact numbers were found, which belonged to a photo frame maker in Patna.

4.8 Two Marks Questions with Answers

Q.1 What is Intellectual Property and how it is protected ?

Ans. : Intellectual Property is the set of intangibles that you thought of, like logos, designs, symbols, taglines, books, slogans, product names, literature or businesses, and is legally protected by you or your company against outside use without permission. There are several cyber laws for the ownership and the right distribution of the Intellectual Property like Copyright, Patents, Trademarks or Service Marks, Trade Secrets, Domain Disputes, Contracts, Privacy, Employment, Defamation, Data Retention, and Jurisdiction.

Q.2 What are the different categories of intellectual property and how do they relate to Digital products ?

Ans. : A copyright is known to protect the solution/ or how an app serves the purpose, but there's a limitation involved. Copyright can only protect the solution but not the idea behind it. It is best used when protecting source code, object code, and user interfaces. A patent, whereas, protects the idea behind a particular solution or an app. Patents are commonly used to protect software architecture and proprietary algorithms. Trade secrets hold proprietary information that a software development company discovers and works with. The pros of trade secrets allow a company to keep intact its processes for an indefinite time period until discovered by other company. A trade secret can only go public when a company of same nature practices the same ideation with the same process.

Q.3 Can one obtain a patent for a software-related invention ?

Ans. : Possibly, but laws and practices in this regard can differ from one country or region to another. For example, in some countries, “inventions” within the meaning of patent law must have a “technical character”. In other countries, such requirements do not exist, meaning that in these countries software is generally patentable subject matter. However this does not mean that

all software will be able to be patent protected. In order to obtain a patent, a software invention must not fall under other non-patentable subject matter (for example, abstract ideas or mathematical theories) and has to fulfill the other substantive patentability criteria (for example, novelty, inventive step ,non-obviousness, industrial applicability and usefulness). It is therefore recommended to consult a practicing lawyer specializing in intellectual property or the intellectual property offices of those countries in which one is interested in obtaining protection.

Q.4 What are the cyber laws in India ?

Ans. : Cyber Laws in India prevent any crime done using technology, where a computer is a tool for cybercrime. The laws for cybercrime protects citizens from dispensing sensitive information to a stranger online. Ever since the introduction to cyber laws in India happened, IT Act 2000 was enacted and amended in 2008 covering different types of crimes under cyber law in India. The Act explains the types of cybercrime and punishment.

By definition, cyber law states that it's a subset of law which specifically deals with the internetwork technology. Meaning cyber law in India deals with the crimes done through a computer or any other digital device.

Q.5 Why cyber laws are needed ?

Ans. : The realm of cyberspace which is largely dependent upon the internet and use of technology, incidents of cybercrimes are reported to have increased. To protect one from cybercrime, there was a need for cyber laws and so the implementation of cyber laws in India began in the year 2000, with the IT Act as an introduction to Indian Cyber Law.

Q.6 What are the fields associated with cyber laws ?

Ans. : Role of law in the cyber world is related to the below : Cyber Crimes, Electronic and Digital Signatures, Intellectual Property and Data Protection and Privacy.

Q.7 What is the importance of cyber law in India ?

Ans. : Cyber laws in India or cybercrime law in India are important because of the prime reason that cybercrime act in India encompasses and covers all the aspects which occur on or with the internet - transactions, and activities which concern the internet and cyberspace. According to Advocate Krishnamohan K Menon, "The Cyber Laws in India has paved the way for electronic commerce and electronic governance in the country by ensuring maximum connectivity and minimum cyber security risks. Also, enhancing the scope and expanding the use of digital mediums' .

Q.8 What are the popular cyber crime ?

Ans. : There are many popular cyber crimes like ;

Identity-theft : When personal information of a person is stolen with the purpose of using their financial resources or to take a loan or credit card in their name then such a crime is known as Identity theft.

Cyber-terrorism : When a threat of extortion or any kind of harm is being subjected towards a person, organization, group or state, it is known as the crime of Cyber Terrorism. Generally, it includes the well-planned attack strategies on the Government and corporate computer system.

Cyber-bullying : When a teenager or adolescent harasses, defames, or intimidates someone with the use of the internet, phone, chat rooms, instant messaging or any other social network then the person is said to be committing the crime of Cyber-bullying. When the same crime is done by adults it is known as Cyber-stalking.

Hacking : The most common cybercrime is Hacking. In this crime, the person gets access to other people's computers and passwords to use it for their own wrongful gain.

Q.9 What are the advantages of Cyber Laws ?

Ans. : Advantages of cyber laws are;

- Secured E-Commerce Infrastructure for online businesses.
- Digitally sign your contracts/ papers.
- Introduced new businesses for Certifying Authorities.
- Proficient use of E-Forms as prescribed.
- Secured websites with Digital Certificates.
- Meticulous monitoring on the web traffics.
- Electronic Transactions safeguarded.
- Emails are a legal form of communication and are approved in the court of law.

Q.10 How to Prevent Cyber Crime ?

Ans. : No doubt that the cyber-security laws or cyber laws in India provide protection from cybercrime. However, prevention is always better than cure. Therefore, one should take the following steps for preventing a cybercrime :

Unsolicited text message : We all get text messages from an unknown number. One should be cautious and try to avoid responding to text messages or automated voice messages from an unknown number.

Downloads on the mobile phone : Download everything on the mobile phone from a trustworthy source only.

Rating and feedback : Always check for the seller's rating and feedback of customers for the seller. Be sure that you are checking current feedbacks. Also, beware of feedbacks that are 100% seller favoring or have an entry on the same date.

Personal Information Request : Everyone must have received a call or mail. In which, the person on the other side asks for personal information. This includes your card CVV or an mail containing an attachment, which requires you to click on embedded links. Be sure to never respond to such emails or calls.

Q.11 What is the Information Technology Act, 2000 ?

Ans. : When the emphasis was on the need for cyber law or cyber-security laws, then, it was imperative to implement an IT law in India. Thus, the Information Technology Act, 2000 or also known as the Indian Cyber Act or the Internet Law came to force in India. Since the enactment, the Indian Internet Laws were drafted to bring in view all the electronic records and online/electronic activities to legal recognition. The IT Act also addresses the important issues of security, which are critical to the success of electronic transactions. The Internet Laws in India not only validates digital signatures but also provides for how authentication of the documents, which has been accepted and generated by using the digital signatures, can be done. As IT Act is a cyber-security law introduced to secure cyberspace, the Information Technology Law was amended under ; the Indian Penal Code, the Indian Evidence Act, the Banker's Book Evidence Act, the Reserve Bank of India. The prime focus of cyber law in India is to prevent : computer crime, forgery of electronic data & record in e-commerce and electronic transaction

IT Act, 2000 went through amendments in the year 2008. These were made in light of the laws on cybercrime - IT Act, 2000 by way of the IT Act, 2008. They were enforced at the beginning of 2009 to strengthen the cyber-security laws. Modifications in the Information Technology Act, 2008 included the change in the definition of some terms such as communication devices. The amendment for the definition of communication device was to include : the current use, to validate the digital signature, to make the IP address owner accountable and to impose liability for data breaches.

Q.12 Can I patent my app ?

Ans. : Whether you can obtain patent protection for an app depends on which element of your app you wish to protect. If you want to protect a technical idea or feature relating to the app, patent protection is a potential option. Depending on the applicable national law, the software that runs your app may be able to be protected by patents if it has certain technical features. You must be mindful however that your technical idea must meet all of the patentability requirements to obtain patent protection, and it may take years to get a patent. In addition, it is important to ask yourself which element(s) of your app should be protected from free use by competitors. The software that runs your app can be protected by copyright (potentially also by patents, as described above). If you are interested in protecting logos or signs contained within your app however, you should consider protecting them using trademarks. Literary and artistic works included within your app, such as original databases, musical works, audiovisual works, works of fine art and photographs, are protected by copyright. Graphical objects and layouts can be protected using industrial designs.

Q.13 What are the thrust areas of top digital solutions ?

Ans. : The top digital solutions focus on the following 3 areas :

Customer, Partner or Supplier Engagement: Simplify the way information is accessed and transactions are processed. Remember, people want to engage wherever and whenever is convenient for them. Applications that support this goal include advisement tools, fact finding assistance for employees, and customer portals.

Product and Service Innovation : Differentiate your business by enhancing existing products and services with digital components - or even creating net new products or services. Product and service innovation often involves new applications that enable mobile services, personalized product offerings, and new business models.

Internal Systems Processing, Reporting, or Access : Digitize your back-office processes to improve efficiency, ultimately reducing the cost of service and support, while improving response times and customer satisfaction. Consider how you can automate complex internal workflows, enable faster reporting and decision making, and empower your workforce through new applications that enable better access to data and better mobility.

Q.14 What is unfair competition ?

Ans. : The law of unfair competition generally relates to commercial law and includes many components having intellectual property connections. Many issues pertaining to unfair competition involve conduct in the marketplace that may cause economic injuries to commercial good will and damaging trade values and opportunities. Some aspects of unfair competition relate to trademark law and involve trademark dilution, infringement, and misappropriation. Other aspects of unfair competition are for related activities including passing off, false advertising, and commercial disparagement. Unfair competition can also involve trade names and trade dress.

Q.15 How unfair competition diminishes reputation of any company or individual ?

Ans. : All forms of deceptive trade practices can diminish the value associated with a commercial activity, product, service, or business value by confusing consumers, diverting sales, tarnishing reputations of goods, services, and commercial activities and can result in economic loss as well as injury. For example, a consumer may suffer injuries by mistakenly purchasing substandard products/services thinking they are related to another company or manufacturer.

Q.16 How to solve the issues related with unfair competition ?

Ans. : Unfair competition can involve both state and federal laws, and accordingly different courts (state vs. federal) are appropriate depending on the issues involved, the types of parties involved in the dispute, and which type of law (state vs. federal) is relevant. Moreover, consumers are further protected with the help of the Federal Trade Commission (FTC), which is organized to protect consumers from deceptive trade practices.

Q.17 What is Unfair Competition Prevention Act ?

Ans. : The Unfair Competition Prevention Act aims to prevent unfair competition and ensure fair competition among enterprises in a society that allows free competition. This law provides individuals whose business profits are lost or at a risk of being lost due to unfair competition with a right to seek injunctions and remedies such as compensation for damage.

Q.18 What are various forms of “Unfair Competition” ?

Ans. : A wide range of acts are considered as Unfair Competition. These acts are :

- unauthorized use of well-known indications (acts causing confusion with indications of well-known goods and the like, or unauthorized use of indications of well-known goods and the like);
 - distribution of goods which imitate the configuration of another individual's goods without permission;
 - infringement of trade secrets;
 - distribution of devices and the like that interfere with copy protection technology;
 - unfair acts regarding domain name(s);
 - acts which are likely to mislead the public as to the place of origin and the like of goods;
 - acts which damage the reputation of competitors;
 - unauthorized use of trademarks by representatives and others.
- Also, the law prohibits certain acts based on treaties and international agreements. These prohibited acts are :
- commercial use of foreign national flags and similar symbols;
 - commercial use of marks of international organizations;
 - providing bribes and the like to foreign public officials and others.

Q.19 How Unfair Competition Prevention Act is helpful for ‘Protection of Brands, Anti-Counterfeiting Measures and Protection of Trade Secrets’ ?

Ans. : The Unfair Competition Prevention Act can be used to prevent the unauthorized use of one's brand as an indication of the business of a third party, to prevent the sale of a third party's goods that imitate the configuration of another's goods without permission, and the like. At TMI, our Intellectual Property Team will take effective legal action utilizing the Unfair Competition Prevention Act with regard to the unauthorized use of well-known indications and taking anti-counterfeiting measures. Further, as for trade secrets, this act provides a wide range of services in accordance with clients' needs, from the preparation of company regulations that comply with the necessary requirements for protection under the Unfair Competition Prevention Act to taking legal action against trade secret infringement.



Notes

5

Enforcement of IPRs

Syllabus

Infringement of IPRs, Enforcement Measures, Emerging issues-Case studies.

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5.1 Infringement of IPRs

Infringement : Infringement is the violation of the terms of an agreement, encroachment, trespass or disregard of others' right, such as invasion of an exclusive right of intellectual property rights.

5.1.1 Infringement

Infringement is encroachment upon an owner or an authorized user's property by an outsider without the owner's prior approval. An illegitimate use of somebody else's property consequently leads to infringement. Infringement is breach or the contravention of the prescribed procedure of the law. When a person acts ultra virus, it becomes a breach of law which ultimately results in violation or infringement of law. Infringement is described as "a crime less serious than a felony." In general terms, IP infringement is any breach of intellectual property rights. IP rights are infringed when a work protected by IP laws is used, copied or otherwise exploited without having the proper permission from a person who owns those rights. Examples of an IP infringement are "counterfeiting" and "piracy."

Counterfeiting is the practice of imitating genuine goods, often to inferior quality, with the intent to take advantage of the superior value of the imitated product.

Piracy is an unauthorized copying, use, reproduction and/or distribution of materials protected by intellectual property right.

Intellectual property laws distinguish deliberate theft and innocent infringement. Different rules apply to different types of intellectual property.

5.1.2 Infringement of Intellectual Property

The use of intellectual property by a stranger without the prior consent of the owner is infringement of intellectual property. The infringement of intellectual property takes place due to the encroachment in the intellectual property of an owner. Hence it is essential to protect the ideas from getting into wrong hands. **Legislation** covers both civil infringement against patents, trade marks, designs and copyright and criminal offences in the case of trade marks and copyright. Ignorance, ie not knowing that a work is protected, is not a defense for either copyright or design right infringement. An intellectual property infringement is the infringement or violation of an intellectual property right. There are several types of intellectual property rights, such as copyrights, patents, trademarks, and industrial designs. Therefore, an intellectual property infringement may for instance be one of the following :

- Copyright infringement
- Patent infringement

- Trademark infringement
- Design infringement

5.1.2.1 Patent Infringement

Infringing a patent means manufacturing, using, selling or importing a patented product or process without the patent owner's permission. The owner of a patent can take legal action against you and claim damages if you infringe their patent.

A person can use a patented product by seeking permission from the owner. This permission may typically be granted in the form of a license. Patent infringement is the act of utilizing a patented invention without permission from the patent holder. In many countries a use is required to be commercial (or to have a commercial purpose) to constitute a patent infringement. Patents are territorial and infringement is only possible in a country where a patent is in force. In case of India, the patent infringement proceedings can be initiated only after the grant of patent. Persons involved in making, using, selling, distributing, importing or offering any of the above may be held liable for infringement.

Exceptions : Defenses to patent infringement are given under section 60(5) of the Patents Act 1977. In general it is permissible to use a patent if it is done privately and for non-commercial purposes. Also patent laws in most European countries include a "research exception" (or "research exemption") which permits use of a patented invention for experimental purposes without infringing the rights of the holder.

It is likely that the experimental use defense is becoming increasingly important as patenting enters the traditional domains of 'pure' scientific research carried out within universities.

Prior use : Section 64 of the Patents Act 1977 gives third parties a right to continue acts which would otherwise infringe a patent, if those acts were begun before the priority date. The prior acts (or preparations) must have been done in "good faith". This is a common English legal term and is generally understood to exclude acts done on the basis of information originating from the inventor and performed without consent.

The burden of proof of establishing the infringement is on the plaintiff. However, in case of patent involving the process for obtaining a product where the plaintiff first establishes that the products obtained are identical, the Court may shift the onus on the defendant.

5.1.2.2 Trade Mark Infringement

It is a violation of exclusive rights attaching to a trademark without the authorization of the trademark owner or licensees (provided that such sanction was within the scope of the license). Infringement may occur when one party, the "infringer", uses a trademark which is identical or

confusingly similar to a trademark owned by other party, in relation to products or services which are identical or similar to the products or services which the registration covers.

The test for determining whether there is infringement/ passing off trademark has been laid down in Amritdhara Pharmacy VS. Satyadeo Gupta [12] which states that “Any unwary purchaser of average intelligence and imperfect recollection would not, as the High Court supposed, split the name into its component parts and consider the etymological meaning thereof or even consider the meaning of the component words as ‘current of nectar’ (‘Amritdhara’) or ‘current of Lakshman (‘Lakshmandhara’). He would go more by the overall structure and phonetic similarity and the nature of medicine he has previously purchased or has been told about, or about which has otherwise learnt and which he wants to purchase.” Applying this principle of average intelligence and imperfect recollection it is possible to find whether there is a similarity between two trademarks and whether there is a likelihood of causing any confusion between the two trademarks.

A registered trade mark is a property right whereby the owner is granted exclusive rights in relation the use of the trade mark. If someone uses an identical or similar trade mark for identical or similar goods or services to a trade mark already in use without the owner's consent, that person infringes the trade mark. Remedies are available to the owner to prevent an ongoing infringement, including damages for past infringements.

Exceptions : The Trade Mark Act 1994 specifies the following defenses to trademark infringement, all of which must be done in accordance with honest practices in industrial or commercial matters :

Use of another registered trademark : If someone else has in fact registered another trademark in relation to the same goods and services as an already existing trademark then there will be no trademark infringement.

Use of own name and address : If a company uses their name and address as a trademark then this will not be seen as trademark infringement.

Use of certain indications : If someone else uses certain indications such as the kind of goods or services, the quality and quantity of the goods or services, the value or geographical origin of the goods or services then this will not constitute an infringement of a registered trademark.

Use of a trade mark : Where it is necessary to indicate the intended purpose of a product or service will mean that there will be no infringement.

The use of an earlier mark : There will be no infringement where there has been use of an earlier right in the course of trade in a certain area.

Passing off : If you have not registered your trade mark you may still be able to take action against someone , who uses your mark on his or her goods or services without your permission, using a "passing off" legal action. Passing off comprises three elements, goodwill,

misrepresentation and damage. To be successful you must prove that : The mark is yours; You have built up a reputation in the mark; You have been harmed in some way by the other person's misrepresentation of your mark.

5.1.2.3 Copyright Infringement

Copyright infringement or copy right violation is the unauthorized use of material that is covered by copyright law, in a manner that violates one of the copy right owner's exclusive rights, such as the right to reproduce or perform the copyrighted work, or to make derivative works. For electronic and audio visual media, unauthorized reproduction and distribution is occasionally referred to as piracy.

The infringement of copyright takes place by reproducing the work in any material form, issuing copies of the work to the public not being the copies already in circulation including the work in any cinematographic film, making an adaptation of the work, communicating the work to the public, if aware that such act shall amount to infringement of copyright, making, selling, letting on hire, distributing, importing or holding trade exhibits in public of the infringed work.

The true test to determine infringement is when a trader, spectator or viewer after having read or seen both the works should get an unmistakable impression that the subsequent work appears to be a copy of the first.

Copyright : Copyright is only infringed if the unauthorized use involves the whole or a 'substantial part' of the copyright work. Unauthorized use usually involves copying, issuing copies, renting or lending, performing, showing, playing, communicating or adapting the copyright work. In order to succeed with an action for infringement, it is necessary to establish that the alleged infringing party actually copied the work protected rather than arrived at their work by means of independent creative activity.

Copyright crime : Deliberate infringement of copyright on a commercial scale may be a criminal offence. This activity is usually known as copyright piracy and is often also linked to willful infringement of trade marks known as counterfeiting where criminal offences also exist. Piracy and counterfeiting are often also referred to as intellectual property or IP crime.

So, if the infringement of a copyright work is intentional, is on a large scale and copies of a work are being made for sale, being imported, distributed, sold or put on the internet, then it is worth informing the police or the local trading standards department. They can decide whether action by them, including possible prosecution, is justified.

Exceptions : For copyright a number of exceptions and defenses apply to schools, universities and other educational establishments when using content that belongs to someone else. In general use of a copyright work is not an infringement if it is used fairly and with acknowledgement, for

the purpose of non-commercial research, private study, illustration for instruction or criticism or review.

5.1.2.4 Designs Infringement

A design right protects the design from copying. By registering a design the proprietor obtains the exclusive right for twenty five years (provided renewal fees are paid every five years) to make, offer, put on the market, import or export the design, or stock the product for the above purposes. These rights are infringed by a third party who does any of the above with the design, for commercial gain without the permission of the rights holder.

For a design protected by design registration however, it is merely a matter of considering the similarities between the designs irrespective of whether the alleged infringing design might have been created quite independently from reference to the alleged infringed design.

Registered design : A competitor will infringe if they produce a product which uses the same design as the registered design, or which uses any design which does not produce a different overall impression on the informed user. This means that the competitor should not escape being liable for infringement merely by making trivial changes to the registered design.

Exceptions : There are exceptions which provide that use of a design will not generally be infringement when, for example, the use was for non-commercial purposes, for experimental purposes or for citations and teaching purposes. The limitations are that the use is fair and does not prejudice the normal exploitation of the design and that the source is acknowledged.

5.1.3 Techniques to Detect (or Deter) Intellectual Property Infringement

Include :

Fictitious entry, such as : Fictitious dictionary entry. An example is equivalence included in the New Oxford American Dictionary (NOAD).

Trap street, a fictitious street included on a map for the purpose of "trapping" potential copyright violators of the map.

Watermarking : Designing around a patent may in some cases constitute a way to avoid infringing it.

5.1.4 Remedies Available for Infringement

When there is a violation or an infringement of an intellectual property, it becomes the sole right of the intellectual property holder to obtain a remedy for the infringement of something that he has acquired with a lot of hard work and tremendous efforts. Hence it is necessary to grant

remedies to the intellectual property holders. The remedies granted to the intellectual property holders are of three types : Criminal, Civil and Administrative Remedies.

5.1.4.1 Patent Infringement Remedies

A Suit for infringement of patent has to be filed before the District Court or the High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen. However if the counter claim for revocation has been filed against the same, only the High Court has the jurisdiction to entertain the matter. The right to move the court of law to enforce a patent is vested with any person who holds a valid claim on the subject matter of the patent.

The reliefs that a court may grant in a patent infringement suit, would include an injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff either damages or an account of profits. The court may also order that the goods which are found to be infringing and materials and implement, the predominant use of which is in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.

5.1.4.2 Trademark Infringement Remedies

An owner of a trademark may commence legal proceedings against a party which infringes its registration. In case of trademark, statutory protection is available to both registered as well as unregistered trademarks. They are given both civil as well as criminal remedies for infringement or passing off. A suit for infringement has to be filed before the District Court or the High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen.

The proprietors of the trademark as well as licensed users have the option to initiate criminal prosecution against the infringers. The acts recognized as offences against which criminal complaints can be filed are falsifying and falsely applying a trademark, making or processing instruments for falsifying a trademark, applying false description, applying false indication of the country of origin, tampering with an indication of origin already applied to goods, selling goods or possessing or exposing for sale of goods falsely marked, falsely representing a trademark as registered, improperly describing a place of business as connected with the trademark office and falsification of entries in the register.

The criminal remedies available are that a suit for the above offences can be filed before the magistrate within whose territorial jurisdiction the offence is committed or Police can register an FIR and prosecute directly; (statutory requirement to obtain the Registrar's approval). Besides

confiscation of goods and machinery, the Code of Criminal Procedure, 1973, also provides for the imprisonment starting from six months which can be extended to three years or fine of Rs. Fifty thousand which can be extended to two lakhs or both.

5.1.4.3 Copyright Infringement Remedies

A suit for infringement of copyright has to be filed in a District Court or a High Court (depending on the pecuniary jurisdiction) within whose territorial jurisdiction the cause of action has arisen.

Copyright infringement is a cognizable (non-bailable) offence punishable with an imprisonment of six months which can be extended to three years or a fine not less than fifty thousand which can be extended to two lakhs. For the second and subsequent conviction, the minimum term of imprisonment has increased to one year which may extend to three years and minimum fine has increased to one lakh which may be extended to two lakh rupees. (These are the criminal remedies available to the copyright holders for infringement of their copy right).

The copyright act authorizes a police officer, not below the rank of a sub-inspector to seize without a warrant, all copies of work, and all plates used for the purpose of making infringing copies of work and produce them before the magistrate.

These should be considered as an alternative to civil remedies/actions, since they are conducted by local authorities, thereby causing a great cost saving to the intellectual property owner.

The civil remedies available to the aggrieved parties are almost the same for all the intellectual properties. They are injunctions against future violations civil raids and seizures, damages or accounts of profits, delivery up/ discovery of infringing material / documents, preservation of assets and interim / interlocutory injunction.

There are also administrative remedies available to the copyright, trademark and patent which include ban of import or export of goods including protection of patents, trademarks and copyrights confiscation of infringing material by Excise Authorities and delivery to the owner and restrictions against parallel importation of goods.

5.2 Enforcement Measures

Enforcement is the process of ensuring compliance with laws, regulations, rules, standards and social norms. Governments attempts to effectuate successful implementation of policies by enforcing laws and regulations.

5.2.1 Enforcement of Intellectual Property Laws in India

India has a well-established statutory, administrative and judicial framework to safeguard Intellectual Property Rights (IPRs), however, it is still facing problems with the enforcement of IPR. It has always been a concern about slow judicial system involving lengthy and time-consuming procedure of trial in India, however, in recent years; Indian Courts have shown dynamism and zeal for effective protection of intellectual property rights. It has been observed that by adopting right policies and strategies, IPR can be effectively protected with the help of law enforcement authorities.

Enforcement Measures

<p>IP Enforcement-Remedies – Civil • Infringement • Passing off – Criminal – Administrative</p> <p>Civil action : Reliefs • Injunctions against future violations • Civil raids and Seizures</p> <ul style="list-style-type: none"> • Damages OR Accounts of Profits • Delivery up/ Discovery of infringing material /documents • Preservation of assets <p>Criminal Remedies- TM • Falsification of trademarks / Infringement of copyright is a cognizable offence • A complaint may be filed before a Magistrate; OR • Police can register an FIR and prosecute directly; (statutory requirement to obtain the Registrar's approval.</p> <ul style="list-style-type: none"> • Registration is not a requirement. • Imprisonment- 6 months to 3 years • Fine- ₹ 50,000 to 2 lakhs • Enhanced penalty on subsequent convictions. • Seizure, forfeiture and destruction of infringing goods/ material for placing before the Magistrate <p>Administrative remedies • Indian Customs Act, 1962 – Deals with import/ export of goods including protection of patents, trademarks and copyrights. • Confiscation of infringing material by Custom Authorities • Restrictions against parallel importation of goods</p> <p>Oppositions, Cancellation and Rectifications of IPR In case the registration has been obtained by – Fraud – Misrepresentation – Wrongly – Against the rights of some other party / opponent – Registered by the Registrar erroneously – Registration prohibited under some law – Registration is against public policy or morals</p>
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For any IPR related litigation, it is necessary to understand the Indian Judicial system and its psychology. It has been observed that the Indian Courts are very active in granting equitable reliefs like injunctions, etc., but are still reluctant in awarding punitive pecuniary damages.

Authorities involved in the execution of orders of courts : The Government Authorities including police are bound to execute and enforce the orders of court, and as such the courts are empowered to direct any government authority to do or not to do or prevent / compel any person to comply with the orders of the court. There are effective methods for the enforcement of the orders

of the Court, including Contempt of Court proceedings, which provides for a fine as well as imprisonment, in case of non-compliance of the order of the Court. Execution/ compliance of the orders of the court are also done by way of appointment of the Local Commissioner/Receivers by the Court. In India, certain State Governments have formed Special Intellectual Property Cells, which deal with offences relating to infringement of IPR.

In any civil action for enforcement of intellectual property rights, the following reliefs may be claimed in such suit :

- Permanent injunction;
- Interim injunction;
- Damages;
- Accounts and handing over of profits;
- Anton pillar order (Appointment of Local Commissioner by the Court for custody/ sealing of infringing material/accounts);
- Delivery up of goods/packing material/dies/plates for destruction.

Additionally, in case of infringement of trademark, infringement of copyright, geographical indication, plant variety and semiconductor integrated circuits layout design following **Criminal** action can also be initiated :

- Registration of First Information Report (FIR); or
- Filing of a criminal complaint before a competent Magisterial Court with application for issue of search and seizure warrants directing the police to raid of the premises of the accused for seizure of the infringing material and arrest of the infringers.

It is interesting to note that in India, wherever provisions have been made for criminal prosecution for violation of any intellectual property rights, a criminal case can be filed against known as well as unknown persons. It is also important to note that both civil and criminal remedies, wherever applicable, can be availed simultaneously and both the remedies are coexistent.

Competent Court : In India, a suit may be instituted in any Court of original jurisdiction, subject to their pecuniary and territorial jurisdiction. In relation to IPR litigation, the designation of the lowest court is "District and Sessions Judge". These cases can also be filed in the High Court, directly, if such High Court is having original jurisdiction. The jurisdiction of the High Court can be invoked, subject to the payment of court fees. The structure of court fees payable varies from State to State.

Border control measures for enforcement of IPR : The Government of India under Section 11 of the (Indian) Customs Act, 1962, is empowered to prohibit importation and exportation of goods of specified description, if it deems necessary to do so. The provision, inter alia, empowers the government to prohibit the import or export of goods for 'the protection of patents, trademarks

and copyrights. The goods imported in contravention of the provisions of the Customs Act or any other laws for the time being in force are liable to be confiscated. In this regard, a customs officer is empowered to inspect any premises, conveyance, x-ray any person and effect search and seize in case where they have reasons to believe that the goods are of contraband nature. They can also investigate or interrogate any person and arrest him.

Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 : India has notified the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The rules comply with border measures as required by the TRIPS Agreement empowering the Customs Officers to enforce IPR over the imported products. Actions under Customs Act are independent to the remedies provided under various statutes on intellectual property. As per Rule 2(b) of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, intellectual property includes patents, designs, and geographical indications together with trademarks and copyrights.

Upon receipt of the application, in the prescribed format, the Custom Authorities may register the complaint and enforce border control measure for the protection of the intellectual property Rights. It is important to note that this right is not unfettered. Certain provisions have been also made and an elaborate procedure has been laid down for the release of the seized goods upon an application of the importer of the goods.

When you become aware about the possible unlawful use of your rights by third parties, should precisely identify the alleged infringers in order to eventually bring to an end to the infringing activity.

There are several ways to enforce your IP rights, ranging from relatively simple measures to complex litigation. Court proceedings are costly and lengthy and therefore other preliminary tools should be used so as to prevent subsequent litigation. In many cases private negotiation via legal professional is more effective and should be considered as a viable option, particularly for SMEs which often are faced with budgetary constraints.

It is a common practice to approach the person who is supposedly infringing your IP rights by sending a letter of demand, also known as "cease and desist letter". The letter will advise the alleged infringer that a court action may be taken if the infringing activities do not stop within a certain period of time. It is to be noticed that you should avoid posing threats to the other party, or include false statements as this may lead to your legal liability. A previous consultation with a lawyer may be advisable in this respect.

In case a letter of demand does not result in cessation of the alleged infringement, further legal steps are available, such as customs actions, settlements (through informal negotiations, mediation or arbitration) and/or litigation (civil actions or criminal prosecution where available).

In any case, it is advisable to seek a proper legal advice, since the course of action will depend on the circumstances of each particular case.

Every out-of-court attempt for settling our dispute has failed. What can we do now ?

You should keep in mind that the laws concerning the enforcement of IP are not the same in every country. Hence, since law harmonisation is not the case in IP enforcement, it is safer to try - at least at the first stage - to resolve any IP dispute out of court. However, if all of the attempts to find an out-of-court solution fail, IP owners shall rely on court proceedings. The contribution of an IP lawyer is pivotal at this point.

In this context, two different proceedings can take place; civil actions and criminal prosecution. Bringing a civil action to the court means that you are about to enforce your IP rights by filing a lawsuit for infringement in a national specialised civil court. That is to say, you are applying for a preliminary or permanent injunction or other forms of interim measures (i.e. seizure of bank account) and claiming for a compensation through the award of damages. Other relief measures may also be confiscation as well as the destruction of illegal goods. It is to be noticed that since IP legal proceedings are rather costly, you are advised to anticipate an approximate budget for enforcement litigation and insuring the organisation against the financial costs linked to it.

Criminal prosecution, on the other hand, is also possible under certain circumstances and sanctions such as criminal fines, confiscation, destruction of goods and even imprisonment can be posed by courts. However, these criminal offences can be brought to trial only by public prosecutors and decided upon by criminal courts. Furthermore, it is to be noticed that criminal prosecution is mainly for trademarks and design "counterfeiting" as well as for copyright "piracy" or theft of confidential business information since the legal base of prosecution is usually the infringer's intention to benefit financially from the commercial advantage of the IP owner.

Although some of our IP rights have been infringed, but we do not wish to get involved in long-term and costly litigation proceedings, a set of alternative measures available are;

First of all, you should approach the person/organisation that is supposedly infringing your IP rights by sending a letter of demand, also known as "cease and desist letter". The letter will advise the alleged infringer that a court action may be taken if the infringing activities do not stop within a certain period of time. It is to be noticed that you should avoid posing threats to the other party, or include false statements as this may lead to your legal liability.

In case the alleged infringement involves shipments of goods from outside of EU (or from EU to third countries) you can bring your claim to the competent customs authority. You can apply a notice with the customs authorities in order to stop shipments of infringing goods directly at the EU border. The intervention application requests the inspection of possible infringing goods imported from or exported to third countries and, where the customs find

grounds for infringements, their consequent seizure. This application is valid for one year but can be renewed and no fees are required upon submitting it.

Another viable option is applying one of the Alternative Dispute Resolution (ADR) mechanisms. ADR refers to non-litigious methods to resolve disputes. Depending on the intended result you can choose between informal negotiations and more formal proceedings such as mediation and arbitration. ADR may be advantageous from the point of view of costs and of the likelihood and speed of settlements, as well as appropriate for avoiding that the organisations reputation and, hence, their relations with other organisations and customers be damaged. Parties may agree in advance to resolve any disputes by ADR before initiating any legal proceeding, by including ADR clauses within commercial agreements. On the other hand, a court decision may order the parties to pursue a specific form of ADR.

In broad terms, negotiation refers to a voluntary and non-binding out-of-court settlement. Even though the assistance of a lawyer is not mandatory, it is strongly recommended that the resulting settlement agreement is to be drafted by a lawyer, since there are complex legal aspects which have to be covered within the final document (compensation, damages etc.).

Mediation is also a non-binding procedure in which an external third party assists the participants in reaching their own decision over a dispute. Mediation is a confidential procedure assuring the parties that any admissions, proposals or offers for settlement will not have any consequences beyond the mediation process. They cannot, as a general rule, be used in subsequent litigation or arbitration. Most important, the mediator has no decision authority and any settlement result is normally enforceable as a contract, a breach of which is enforceable in subsequent litigation.

On the other hand, arbitration is a formal procedure in which the parties submit a dispute to a tribunal of one or three arbitrators who issue an enforceable binding decision. What differentiates the arbitration proceedings from the traditional litigation proceedings is that the arbitrator is not bound to follow substantive law, but may also employ concepts of equity and justice, business practices and whatever technical expertise relevant to the case.

In all those cases, it is advisable to seek a proper legal advice, since the course of action will depend on the circumstances of each particular case.

5.3 Emerging Issues

Ideas and knowledge are an increasingly important part of trade. Many products that used to be traded as low-technology goods or commodities now contain a higher proportion of invention and design in their value. Films, music recordings, books, computer software, on-line services, clothing, food, plants, biotechnology products and many others are bought and sold because of the

information, creativity and identity they contain not usually because of the plastic, metal, cloth, paper or other material used to make them.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated in the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time. It's one of the three main areas of work in the WTO, alongside trade in goods and services. The TRIPS Council's job is to monitor how countries are applying the TRIPS Agreement and to discuss issues that arise from that.

Principles

A balance : The balance is described in different ways. It's a balance between private rights (incentives to create) and public interest (ability to use or access the creations). It's also a balance between the short and long term.

- **Long-term :** Society benefits from creations and inventions, including when the period of protection expires and they enter the public domain.
- **Short-term :** Intellectual property protection is mostly limited in time (there are some exceptions). Generally, private rights are protected in the short-term as an incentive to create and invent. Where intellectual property protection has social costs, governments can meet their objectives for social welfare and development by adapting the protection through various exceptions and flexibilities, for example to tackle public health problems.

Technology transfer : Intellectual property protection should contribute to technical innovation and the transfer of technology. Producers and users should be benefitted. So should economies and societies at large.

Equal treatment

- **National treatment :** Treating one's own nationals and foreigners equally, with limited exceptions.
- **Most-favoured-nation treatment :** Equal treatment for nationals of all trading partners in the WTO, with limited exceptions.

Different legal systems : The TRIPS Agreement respects countries' own legal systems, which can vary considerably. Each can decide how to protect intellectual property and implement the agreement's provisions so long as they meet the TRIPS Agreement's minimum standards. Countries have to meet minimum standards set by the TRIPS Agreement, such as the minimum number of years of protection. Each country is also free to set its own standards at a higher level than the agreement requires, sometimes called "TRIPS-plus", so long as this is consistent with the agreement.

TRIPS and public health : The 2001 Doha Declaration on TRIPS and Public Health was a political statement affirming that intellectual property protection and public health objectives do not contradict each other : “We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health.”

It gave governments the confidence to use the flexibilities available in the TRIPS Agreement. For example : Compulsory licensing and parallel imports .

Rule-change needed : The “paragraph 6 system”. One issue needed a change in the rules. The declaration’s paragraph 6 dealt with TRIPS Article 31(f), which limited the amount nations could export under a compulsory license to countries needing the medicines. A “waiver” agreed in 2003, and a pending amendment agreed in 2005, allow generic medicines to be made under compulsory licenses exclusively for export to countries that cannot produce the medicines themselves. This “Par.6 system” is routinely reviewed in the TRIPS Council.

WHO-WIPO-WTO cooperation : An important result of the 2001 declaration has been closer work between the World Health Organization, World Intellectual Property Organization and WTO. This has focused both on access to medicines and on incentives for research and development so that new medical technologies become available. It has underscored the fact that intellectual property is only part of the picture. Ensuring poorer patients are able to access medicines and other health products,, involves proper (“rational”) use of the products, affordable prices, properly designed health systems, suitable financing, and carefully selecting strategies for procuring the products.

TRIPS, biodiversity, traditional knowledge, plants and life forms : In the TRIPS Council, these topics are usually discussed under three merged agenda items a “triplet” of related issues. They come under the Doha Development Agenda although members disagree on whether they are negotiations. These issues are also discussed in separate consultations chaired by the Director-General or a deputy.

Animals and plants : TRIPS Art.27.3(b) deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties. It has been under review in the TRIPS Council for several years. The Doha Declaration added :

- TRIPS and CBD; the relationship between the TRIPS Agreement and the UN Convention on Biological Diversity.
- Traditional knowledge ;the protection of traditional knowledge and folklore.

The TRIPS Council’s review of the three is guided by the TRIPS Agreement’s objectives (Article 7 which says the objective is innovation and technology transfer for social and economic benefits) and principles (Article 8, which refers to health and other social and economic objectives, and to abuse of rights), and must take development fully into account.

Members agree on the objectives :

- The need to avoid inappropriate patenting, such as patenting a claimed invention that is not new or does not involve an “inventive step”
- The need to avoid what is sometimes loosely called “biopiracy”. This is the unauthorized use of genetic resources or traditional knowledge (as laid down in the international treaty on biodiversity), ie, without the permission of the countries or communities considered to be the rightful owners complex concepts that are still being debated.

They disagree about how to achieve this. One proposal would amend the TRIPS Agreement so that patent applicants are required to disclose the origin of genetic resources and any traditional knowledge used in the inventions. This “disclosure” would avoid inappropriate patenting and provide evidence that the patent applicants received “prior informed consent” (a term used in the UN Convention on Biological Diversity), and evidence of “fair and equitable” benefit sharing. Others envisage some other forms of disclosure.

Some advocate other ways of achieving these objectives without amending the TRIPS Agreement and without “disclosure”. These include contracts with whoever is considered to be the rightful owner, and databases that patent examiners can use to avoid bad patenting.

Some countries oppose patenting all life forms outright, meaning patenting would not be possible at all and disclosure would not be relevant.

Geographical indications : Geographical indications are place names (in some countries also words associated with a place) used to identify the origin and quality, reputation or other characteristics of products (for example, “Champagne”, “Tequila” or “Roquefort”).

The TRIPS Agreement handles this in three articles.

- **Standard :** Article 22 defines geographical indications and sets a standard level of protection. All have to be protected in order to avoid misleading the public and to prevent unfair competition.
- **Higher :** Article 23 applies only to protection for wines and spirits and says that subject to a number of exceptions their names have to be protected against incorrect use even where this would not mislead the public.
- **Exceptions :** Article 24. For example, a term does not have to be protected in a country if it has become generic or has already been protected as a trademark in that country.

Two issues are debated in the TRIPS Council under the Doha mandate : Negotiations to create a multilateral geographical indications register for wines and spirits; and discussions on extending the higher (Article 23) level of protection beyond wines and spirits.

'Non-violation' complaints : WTO agreements allow countries to bring cases against each other if one feels that another government's action or a specific situation has deprived it of an expected benefit, even if no agreement has been violated.

But opinions differ among WTO members on whether non-violation cases are feasible in intellectual property. The TRIPS Agreement contains a temporary restraint (a "moratorium"; Article 64.2) on bringing non-violation complaints. This has been extended several times, more recently from one Ministerial Conference to the next.

Technology transfer : Developing and least developed countries, in particular, see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement includes a number of provisions on this. For example, it says one of the purposes of protecting intellectual property is to promote innovation and technology transfer, and it requires developed countries' governments to provide incentives for their companies and institutions to transfer technology to least-developed countries (Article 66.2).

Least developed countries' priority needs : As least developed countries use their transition period to prepare to implement the WTO's intellectual property provisions, they have been asked to identify their needs in order to receive support. An overview of the process of identifying and responding to least developed countries' needs, with links to working materials, updates and tools for coordinating this on-going work can be found [here](#).

Enforcement : Intellectual property rights have to be enforceable. Or, more precisely, the TRIPS Agreement says governments have to provide effective procedures for enforcement. The question of discussing enforcement routinely in the TRIPS Council has sometimes been controversial.

Some developed countries considered counterfeiting and piracy to be a serious problem and wanted to discuss it; developing countries resisted, fearing that this would target them and be used to argue for new standards more stringent than those in TRIPS.

Recently (around 2011) the discussion has focused on an Anti-Counterfeiting Trade Agreement (ACTA) negotiated by a group of countries. The ACTA countries said the opposition to undertaking work on enforcement in the WTO was one reason why they negotiated the agreement outside the WTO.

A number of developing countries said they were concerned about the possibility that access to medicines could be impeded, that pressure would increase on countries to protect intellectual property to a higher standard than required in the WTO (the ACTA countries said they would not), and about the implications for the WTO system of discussing an agreement negotiated outside the WTO.

5.4 Case Studies

5.4.1 Bio Piracy of Traditional Knowledge of India

In the recent past, several cases of bio-piracy of traditional knowledge from India have been reported. The following are the most prominent cases with regards to misappropriation of TK from India.

Turmeric patent : Turmeric is a tropical herb grown in east India. Turmeric powder is widely used in India as a medicine, a food ingredient and a dye to name a few of its uses. For instance, it is used as a blood purifier, in treating the common cold, and as an anti-parasitic for many skin infections. It is also used as an essential ingredient in cooking many Indian dishes. In 1995, the United States awarded patent on turmeric to University of Mississippi medical center for wound healing property. The claimed subject matter was the use of "turmeric powder and its administration", both oral as well as topical, for wound healing. An exclusive right has been granted to sell and distribute. The Indian Council for Scientific and Industrial Research (CSIR) had objected to the patent granted and provided documented evidences of the prior art to USPTO. Though it was a well known fact that the use of turmeric was known in every household since ages in India, it was a herculean task to find published information on the use of turmeric powder through oral as well as topical route for wound healing. Due to extensive researches, 32 references were located in different languages namely Sanskrit, Urdu and Hindi. Therefore, the USPTO revoked the patent, stating that the claims made in the patent were obvious and anticipated, and agreeing that the use of turmeric was an old art of healing wounds. Therefore, the TK that belonged to India was safeguarded in Turmeric case.

Neem patent : The patent for Neem was first filed by W.R. Grace and the Department of Agriculture, USA in European Patent Office. The said patent is a method of controlling fungi on plants comprising of contacting the fungi with a Neem oil formulation. A legal opposition has been filed by India against the grant of the patent. The legal opposition to this patent was lodged by the New Delhi-based Research Foundation for Science, Technology and Ecology (RFSTE), in co-operation with the International Federation of Organic Agriculture Movements (IFOAM) and Magda Aelvoet, former green Member of the European Parliament (MEP). A tree legendary to India, from its roots to its spreading crown, the Neem tree contains a number of potent compounds, notably a chemical found in its seeds named azadirachtin. It is used as an astringent in so many fields. The barks, leaves, flowers, seeds of neem tree are used to treat a variety of diseases ranging from leprosy to diabetes, skin disorders and ulcers. Neem twigs are used as antiseptic tooth brushes since time immemorial. The opponents' submitted evidence of ancient Indian ayurvedic texts that have described the hydrophobic extracts of neem seeds were known and used for centuries in India, both in curing dermatological diseases in humans and in protecting agricultural plants from fungal

infections. The EPO identified the lack of novelty, inventive step and possibly form a relevant prior art and revoked the patent. Apart from this, several US patents were recently taken out Neem-based emulsions and solutions.

Basmati patent : The US patent office granted a patent to 'RiceTec' for a strain of Basmati rice, an aromatic rice grown in India and Pakistan for centuries .Rice is the staple food of people in most parts of Asia, especially India and Pakistan. For centuries, the farmers in this region developed, nurtured and conserved over a hundred thousand distinct varieties of rice to suit different tastes and needs. In 1997, in its patent application Ricetec also acknowledged that "good quality Basmati rice traditionally come from northern India and Pakistan...Indeed in some countries the term can be applied to only the Basmati rice grown in India and Pakistan." However, the company then went on to claim that it had invented certain "novel" Basmati lines and grains "which make possible the production of high quality, higher yielding Basmati rice worldwide." The Indian Government had pursued to appeal only 3 claims out of 20 claims made in the original patent application of RiceTec Inc. What were being challenged were only claims regarding certain characteristics of basmati (specifically starch index, aroma, and grain dimensions). It is to be noted that WTO Agreement does not require countries to provide patent protection to plant varieties. It only requires countries to legislate so that plant varieties are protected in some manner (not necessarily through patents). However, US being a strong proponent of patent protection of plant varieties allowed the patent application. Three strains development by RiceTec are allowed patent protection and they are eligible to label its strain as "Superior Basmati Rice". Therefore, in Basmati case, RiceTec altered the strain through crossing with the Western strain of grain and successfully claimed it as their invention and the case is an example of problems illustrated in TRIPS with regards to patenting biotechnological processes.

Year 2018 saw some interesting developments in the field of IPR. The following list enumerates the major ones :

5.4.2 Highlights in Trademarks and Copyrights

Supreme Court of India (July 2018) - "Similar trademarks for different items not breach of law". The Supreme Court of India has held that there is no infringement of law if two distinctly different products are marketed by two different companies with deceptively similar trademarks. This infringement case had been ongoing for a decade between Karnataka Cooperative Milk Producers Association which has been trading milk and milk products under the trademark 'Nandini' since 1985 and a group adopted the name 'Nandhini' for its restaurant and food products business since 1989. The matter moved from the Trademark Registry to IPAB to High Court. The Hon'ble High Court had put restraints on the group from using the trademark "Nandhini". The matter was eventually filed before the Supreme Court in the year 2015. The bench consisting of

A.K. Sikri and Ashok Bhushan distinguished the goods for which the deceptively similar trademarks were being used. The Court's decision was eased when the Restaurant group decided to give up its claim over "milk and milk products".

Glenmark Pharmaceuticals Ltd. v. Curetech Skincare : In the case of Glenmark Pharmaceuticals v. Curetech Skincare and Galpha Laboratories Ltd., the Bombay High Court awarded damages of an unparalleled amount of INR 1.5 Crore in view of the Defendant No.2, Galpha Laboratories being found guilty of habitual infringement of trademarks and copyrights. In this case, the plaintiff made an unusual choice and requested to transfer the entire amount of the exemplary damages to a charitable organization. Thus, the Court directed the payment of damages towards the Kerala Chief Minister Distress Relief Fund. This is most probably the largest order of exemplary costs in a trademark infringement case. The Galpha Laboratories' mark CLODID-B was alleged to be infringing the plaintiff's trademark CANDID-B. It was further alleged that Galpha Laboratories had even copied the word mark, artwork, color scheme, and trade dress of the plaintiff. Defendant No.1 Curetech Skincare is a contract manufacturer, who was manufacturing on behalf of Galpha Laboratories. Therefore, the Defendant No.1 was provided with the art-work, labels and the mark by Defendant No. 2 under a Contract Manufacturing Agreement. Interestingly, the defendants, in this case, accepted the allegations made by the plaintiff and willingly submitted to the decree by not contesting the suit.

Carlsberg Breweries v. Som Distilleries : With this judgment, the court has cleared the fog over maintainability of a composite suit of infringement of design as well as passing off. In a recent judgment dated December 14, 2018, a five-judge bench of Delhi High Court has ruled that a plaintiff can join two causes of action - one of infringement of the registered design of the plaintiff and the second of the defendant passing off its goods, against one defendant in a composite suit. The suit in question was filed, complaining of infringement of a registered design as well as passing off (of the plaintiff's trade dress) in respect of the bottle and overall get up of the "Carlsberg" mark. The defendant objected to the frame of the suit, pointing out that per Mohan Lal, the two claims (for passing off and reliefs regarding design infringement) could not be combined in one suit. The question was sent to Delhi High Court for reference which constituted a special bench to decide the issue.

The issue in front of the court was to decide whether in one composite suit, there can be joinder of two causes of action, one cause of action being of infringement by the defendant of a design of the plaintiff which is registered under the Designs Act, 2000 and the second cause of action being of passing off by the defendant of his/its goods/articles as that of the plaintiff's.

With this judgment, the court has cleared the fog over maintainability of a composite suit of infringement of design as well as passing off. The judgement upholds the fundamental rationale behind the provision of joinder of causes of action i.e. avoiding needless multiplicity of suits. The

judgment has also affirmed that remedy for passing off for a registered design can be brought if the said design is not functioning as a trademark and if the remedy of passing off is claimed for trade dress infringement or any other similar infringement. With ever escalating cost of IP litigation, the ruling in respect to the maintainability of the court, in particular, will bring massive relief to the plaintiffs. Composite suits for design infringement and passing off will also promote convenient disposal of such disputes.

The Indian Performing Society v. Vodafone Idea Ltd : The Calcutta HC directed Vodafone to deposit a whopping amount of ₹ 2.5 crore in a copyright infringement suit filed by IPRS. The decision raised two main issues, amongst others : (1) The nature of the "right to receive royalty" available to authors of musical and literary works and (2) Against whom this particular right can be exercised and the enforcement mechanism for ensuring the same. The right to receive royalty is not an exclusive right under Section 14 of the Copyright Act and that it is, in effect, a contractual term used between the assignor and assignee of the copyright in underlying works, as mandated by the statute.

Navigators Logistics v. Kashif Qureshi : In this case an employer alleged that a former employee was using their customer list to compete with them. With respect to copyright, the court held that the employer had failed to establish that the list was 'original' under the 'skill and judgment' standard espoused in Eastern Book Company v D.B. Modak. On grounds of confidentiality, the court held against the employer. It concluded that it is not possible to claim confidentiality in every customer list, since most details are available in the public domain. Therefore, the plaintiff must specifically establish the economic or commercial value of their customer list in order to protect it.

Sanjay Kumar Gupta & Anr v. Sony Pictures Networks India P Ltd. : Delhi High Court rejected the plea of copyright infringement against Sony Entertainment in relation to 'Kaun Banega Crorepati'. The appellants, in this case, had a concept termed "Jeeto Unlimited", where home viewers of a quiz show could participate live in a quiz show and were rewarded for answering correctly. It was alleged that, on presenting this concept to Sony, they were compelled to sign a consent letter which allowed Sony to use the concept without incurring any liability. The Court applied the 'scenes a faire doctrine' stating that since the idea was to enable home viewers to simultaneously play along with contestants, some similarities were bound to arise, but upon scrutiny, crucial differences were found in concepts of the appellant and respondent. The Court held that there was no breach of confidentiality as the appellants had signed a consent letter authorizing Sony to use the concept.

5.4.3 Request for GI Tag

Madhya Pradesh (MP) request for 'Basmati' GI tag is rejected by the GI Registry : In March 2018, Geographical Indications Registry rejected the plea of MP to include 13 of its districts under GI tag of "Basmati producing areas". Rejection was based on 2 reasons as stated below :

- Rice grown in MP is distinct and does not match the quality parameters of Basmati rice;
- MP is not popular among people as Basmati producing area.

MP, however, not convinced with the decision has filed a writ petition in the Madras High Court challenging the decision of the Registry.

5.4.4 Important Judgement on IPR

Bajaj Auto Limited Vs. TVS Motor Company Limited JT 2009 (12) SC 103 IPR Law :

Dispute over patent for the use of Twin-Spark Plug Engine Technology : Speedy disposal of intellectual property rights cases. The Supreme Court of India by this landmark judgment has directed all the courts in India for speedy trial and disposal of intellectual property related cases in the courts in India. In two-year-old dispute involving two companies, which have been locked in a patent dispute over the use of a twin-spark plug engine technology, the Supreme Court observed that suits relating to the matters of patents, trademarks and copyrights are pending for years and years and litigation is mainly fought between the parties about the temporary injunction. The Supreme Court directed that hearing in the intellectual property matters should proceed on day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit. The Supreme Court further directed to all the courts and tribunals in the country to punctually and faithfully carry out the aforesaid orders.

The Coca-Cola Company Vs. Bisleri International Pvt. Ltd Manu/DE/2698/2009 IPR Law-Infringement : Export : Threats : Jurisdiction : The Delhi High Court held that if the threat of infringement exists, then this court would certainly have jurisdiction to entertain the suit. It was also held that the exporting of goods from a country is to be considered as sale within the country from where the goods are exported and the same amounts to infringement of trade mark. In the present matter, the defendant, by a master agreement, had sold and assigned the trade mark MAAZA including formulation rights, know-how, intellectual property rights, goodwill etc for India only. with respect to a mango fruit drink known as MAAZA. In 2008, the defendant filed an application for registration of the trade mark MAAZA in Turkey started exporting fruit drink under the trade mark MAAZA. The defendant sent a legal notice repudiating the agreement between the plaintiff and the defendant, leading to the present case. The plaintiff, the Coca Cola Company also claimed permanent injunction and damages for infringement of trade mark and passing off. It was held by the court that the intention to use the trade mark besides direct or indirect use of the trade mark was sufficient to give jurisdiction to the court to decide on the issue. The court finally granted an interim injunction against the defendant (Bisleri) from using the trade mark MAAZA in India as well as for export market, which was held to be infringement of trade mark.

5.5 Two Marks Questions with Answers

Q.1 What is an IP infringement ?

Ans. : IP infringement is any breach of intellectual property rights. IP rights are infringed when a work protected by IP laws is used, copied or otherwise exploited without having the proper permission from a person who owns those rights. Examples of an IP infringement are “counterfeiting” and “piracy.” Counterfeiting is the practice of imitating genuine goods, often to inferior quality, with the intent to take advantage of the superior value of the imitated product. Piracy is an unauthorized copying, use, reproduction and/or distribution of materials protected by intellectual property right.

Q.2 I suspect that my IP rights have been infringed. What can I do ?

Ans. : When you become aware about the possible unlawful use of your rights by third parties, should precisely identify the alleged infringers in order to eventually bring to an end to the infringing activity. There are several ways to enforce your IP rights, ranging from relatively simple measures to complex litigation. Court proceedings are costly and lengthy and therefore other preliminary tools should be used so as to prevent subsequent litigation. In many cases private negotiation via legal professional is more effective and should be considered as a viable option.

Q.3 What is a cease and desist letter ?

Ans. : It is a common practice to approach the person who is supposedly infringing your IP rights by sending a letter of demand, also known as “cease and desist letter”. The letter will advise the alleged infringer that a court action may be taken if the infringing activities do not stop within a certain period of time.

Q.4 What is ADR ?

Ans. : Alternative Dispute Resolution (ADR) mechanisms refers to non-litigious methods to resolve disputes.

Q.5 Can I use someone else's song without their permission ? Can someone use my song without my permission ?

Ans. : The legal use of music is more complicated than it is for other forms of intellectual property. Many uses of your music, such as public performances of your music and the use of it on non-interactive digital streaming services, are available to third parties through license agreements with BMI, ASCAP, SESAC, and Sound Exchange. However, to create a remix or a cover version of a song, you need permission from the owner of the rights to the original music or sound recording.

Q.6 What can I do if someone else is using my work without my permission ?

Ans. : If your work is registered with the Copyright Office, and a third party is liable for copyright infringement, you can sue them. To do this, you'll need to hire an attorney. Keep in mind that limited use of your work may be acceptable under fair use laws.

Q.7 What may be the punishment in case of IP infringement cases ?

Ans. : In this context, two different proceedings can take place; civil actions and criminal prosecution. Bringing a civil action to the court means that you are about to enforce your IP rights by filing a lawsuit for infringement in a national specialized civil court. That is to say, you are applying for a preliminary or permanent injunction or other forms of interim measures (i.e. seizure of bank account) and claiming for a compensation through the award of damages. Other relief measures may also be confiscation as well as the destruction of illegal goods. It is to be noticed that since IP legal proceedings are rather costly, you are advised to anticipate an approximate budget for enforcement litigation and insuring the organisation against the financial costs linked to it.

Q.8 What may be criminal prosecution in case of IP infringement ?

Ans. : Criminal prosecution, on the other hand, is also possible under certain circumstances and sanctions such as criminal fines, confiscation, destruction of goods and even imprisonment can be posed by courts. However, these criminal offences can be brought to trial only by public prosecutors and decided upon by criminal courts. Furthermore, it is to be noticed that criminal prosecution is mainly for trademarks and design “counterfeiting” as well as for copyright “piracy” or theft of confidential business information since the legal base of prosecution is usually the infringer’s intention to benefit financially from the commercial advantage of the IP owner.

Q.9 What are civil and administrative procedures and remedies for enforcement of IP rights according to TRIPS agreement ?

Ans. : The TRIPS agreement provides that a right holder must be able to initiate fair and equitable civil judicial procedures against an infringer of IP rights covered under the agreement. It also contains disciplines on evidence, the right of information and indemnification of the defendant. Judicial authorities must be able to award three types of remedies: injunctions to order a party to stop its infringing action, damages to compensate for the injury caused by the infringement, as well as other remedies, such as the removal of infringing goods from channels of commerce or their destruction, subject to certain conditions. Some national legal systems deal with certain IP enforcement cases through administrative procedures, rather than court proceedings.

Q.10 What are criminal procedures under TRIPS agreement for enforcement cases ?

Ans. : Under the TRIPS agreement, criminal procedures and penalties are only mandatory in cases of willful trademark counterfeiting or copyright piracy carried out on a commercial scale. Members may, but are not obliged to, provide for criminal procedures to be applied in other cases of infringement of IP rights, in particular where those are committed willfully and on a commercial scale.

Q.11 What is trademark infringement ?

Ans. : Trademark infringement is a violation of the exclusive rights attached to a trademark without the authorization of the trademark owner or any licensees (provided that such authorization was within the scope of the licence). Infringement may occur when one party, the "infringer", uses a trademark which is identical or confusingly similar to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services which the registration covers. An owner of a trademark may commence civil legal proceedings against a party which infringes its registered trademark. In the United States, the Trademark Counterfeiting Act of 1984 criminalized the intentional trade in counterfeit goods and services. If the respective marks and products or services are entirely dissimilar, trademark infringement may still be established if the registered mark is well known pursuant to the Paris Convention. In the United States, a cause of action for use of a mark for such dissimilar services is called trademark dilution. In some jurisdictions a party other than the owner (e.g., a licensee) may be able to pursue trademark infringement proceedings against an infringer if the owner fails to do so.

Q.12 What are the major challenges faced in India for implementation of IPR ?

Ans. : From process to product patents : One of the binding point in TRIPS agreement is that all member countries are required to shift their patent regime from "Process Patent" to "Product Patent." The fundamental difference between a Process Patent regime and a Product Patent regime lies in the fact that the former protects for processes only while the latter products. It becomes a contentious issue when it comes to getting IP rights on pharmaceuticals and food products. Unlike developed countries where Capitalist Economic Model is working India has adopted a mixed development model striking a balance between Capitalism and Socialism. This approach was taken to safeguard the interest of ordinary people those are struggling for their basic needs including food and medicines. Developed countries are accusing countries like India and Brazil being protectionist when it comes to granting patents in pharmaceuticals and food sectors.

Section 3(d) of the Indian patent act : Another challenge that it is facing is the condemnation of section 3(d) of the Indian Patent Act. This section prevents multinational companies ever greening their patents simply by making minor changes. Implementation of

3(d) was exercised in challenging the patent of Novartis Glevac drug. The Court rules that multinational companies can't evergreen their patents simply by making minor changes in earlier patents and they need to show considerable "Therapeutic Efficiency" to get patent protection in already existing patents.

Compulsory licensing : With the provision of compulsory licensing, the Govt of India can compel the owner company or other companies to mass produce some drugs in emergency irrespective of who got the patent. Multinationals are accusing India of being opportunistic in their stand and are asking to abrogate this provision. However, Indian Govt is not willing to cancel this provision to safeguard the interests of mass.

Provision of drug price control order : With this provision companies can't charge an unfair price for drugs that they are producing. The price has to be justified regarding investments, and if someone plays foul, then the Govt has the right to intervene.

Food security and IPR : India is a land of farmers wherein most of the people are engaged in doing farming for their livelihood. In such a country Govt offers many subsidies to farmers. India's domestic support schemes are generally in the form of "minimum support price" for major agricultural commodities and "input" subsidies provided to farmers in the types of electricity, fertilizers, seeds, etc. However, for complete implementation of TRIPS agreements, these subsidies will have to be reduced or eliminated. Thus, the Indian Government is struggling to create a balance between food security and providing IP rights in India.

IPRs, community property rights and indigenous knowledge : Traditional knowledge gives ready-made leads for pharmaceutical companies and then simply come up with the new formulation to show the efficacy of the general traditional understanding. The Indian Government is bound to protect the rich source of traditional knowledge by not allowing multinationals to get patents on traditional culture. As a defensive mechanism, the Government has created TKDL (Traditional Knowledge Digital Library) to challenge patenting traditional Indian understanding. Multinationals and developed countries are also opposing this move.

Q.13 What action can be taken in case of design infringement ?

Ans. : In regard to design infringement, you may, through the court civil procedures, seek an injunctive order against the infringement, demand damages, demand the restitution of unjust enrichment, or demand measures for the recovery of reputation. Further, if the infringement case turns criminal, the alleged infringer may be found punishable as a result of court criminal procedures.

Q.14 What action may be taken according to 'Design Law Article 37' against design infringement ?

Ans. : Against design infringement (Design Law Article 37), and the action below may be taken ;

- Demand that the alleged infringer stop such infringement.
- Demand that the person who acts in a way likely to infringe on the design at issue take preventive measures or
- Demand the destruction of products constituting or resulting from such infringement, the elimination of equipment used for such infringement, or any other measures necessary to prevent such infringement.

Of these options, it is only possible to demand (3) with (1) or (2). As for injunctive relief, no intent or negligence on the side of the infringer is required to exercise the right to demand these measures. Yet, given that infringed registered design is a secret design, and its content is not published to the general public through the Design Gazette, you can seek injunctive relief only after presenting the content of the registered design and warning to the infringer (Design Law Article 37, Paragraph 3). In the event that the design infringements have actually occurred, and if the problem is not immediately addressed, irrecoverable damages could possibly be incurred there from, the right holder may before trial petition the court to issue a preliminary injunction order to stop such infringement.

Q.15 What is criminal prosecution against design infringement ?

Ans. : As design infringement is punishable by 3 years or less of imprisonment or by fines of 3,000,000 yen or less, criminal prosecution may be involved in a design right infringement case (Design Law Article 69). As for corporations, there is a so called dual liability provision, which provides that when an employee commits an offense of infringement of a design right in connection with the corporation's business, a fine is imposed on the corporation in addition to the penalty for the infringer (Design Law Article 74).

Q.16 What are copyright infringement issues ?

Ans. : Copyright infringement (colloquially referred to as piracy) is the use of works protected by copyright law without permission for a usage where such permission is required, thereby infringing certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works. The copyright holder is typically the work's creator, or a publisher or other business to whom copyright has been assigned. Copyright holders routinely invoke legal and technological measures to prevent and penalize copyright infringement.

Q.17 How to resolve copyright infringement disputes ?

Ans. : Copyright infringement disputes are usually resolved through direct negotiation, a notice and take down process, or litigation in civil court. Egregious or large-scale commercial

infringement, especially when it involves counterfeiting, is sometimes prosecuted via the criminal justice system. Shifting public expectations, advances in digital technology, and the increasing reach of the Internet have led to such widespread, anonymous infringement that copyright-dependent industries now focus less on pursuing individuals who seek and share copyright-protected content online, and more on expanding copyright law to recognize and penalize, as indirect infringers, the service providers and software distributors who are said to facilitate and encourage individual acts of infringement by others.

Q.18 What is poor man's copyright ?

Ans. : The idea behind poor mans copyright is that if you mail yourself a copy of your work and leave it unopened, the official federal date can be used to enforce copyright infringement protection. This is a nice idea, but it doesn't work. In order to have access to the courts, you need to register your work with the Copyright Office, which you can do yourself online at copyright.gov, with the help of an attorney.

Q.19 How are patent rights enforced ?

Ans. : Patent rights are usually enforced in a court on the initiative of the right owner. In most systems a court of law has the authority to stop patent infringement. However the main responsibility for monitoring, identifying, and taking action against infringers of a patent lies with the patent owner.

Q.20 What conditions must be met to obtain patent protection ?

Ans. : There are numerous conditions that must be met in order to obtain a patent and it is not possible to compile an exhaustive, universally applicable list. However, some of the key conditions include the following :

- The invention must show an element of novelty; that is, some new characteristic which is not known in the body of existing knowledge in its technical field. This body of existing knowledge is called “prior art”.
- The invention must involve an “inventive step” or “non-obvious”, which means that it could not be obviously deduced by a person having ordinary skill in the relevant technical field.
- The invention must be capable of industrial application, meaning that it must be capable of being used for an industrial or business purpose beyond a mere theoretical phenomenon, or be useful.
- Its subject matter must be accepted as “patentable” under law. In many countries, scientific theories, aesthetic creations, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods, methods for medical treatment (as opposed to medical products) or computer programs are generally not patentable.

- The invention must be disclosed in an application in a manner sufficiently clear and complete to enable it to be replicated by a person with an ordinary level of skill in the relevant technical field.

Q.21 Suppose employee of a company has invented a new product or process then who will own the rights to the patent ?

Ans. : In most countries, if an employee has developed an invention in execution of his/her employment contract i.e. usually during his/her working time within the enterprise – the invention (and the related patent rights) will belong to the enterprise. To avoid confusion and possible disputes, employers often specify issues of intellectual property ownership in employment contracts. Depending on the merits of the case, the employee may, however, have a right to equitable remuneration in accordance with legislative provisions or the employment contract. In any case, the employee will always retain the right to be mentioned as the inventor, unless he/she expressly renounces this right.

Q.22 If an independent third party develops a program for a company, who owns the copyright ?

Ans. : The copyright in works created by third parties on commission do not automatically belong to commissioning party. If the third party is an independent contractor, it is essential for the commissioning party to obtain the copyright through a written deed of assignment. It is a common misconception that the copyright automatically belongs to the commissioning party. Thus, it is only where the developer is an employee creating the work under a contract of service that the rights belong to the employer.

Q.23 If an employee in a company develops a program, would this employee own the copyright ?

Ans. : No. In the case of a program made in the course of author's employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright.

Q.24 What are the rights of a copyright holder (which when violated lead to infringement) ?

Ans. : The rights of a copyright holder which are considered to be violated in case of infringement are ;

(a) In the case of literary, dramatic or musical work, not being a 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 not being copies already in circulation;

- to perform the work in public, or communicate it to the public;
 - to make any cinematography film or sound recording in respect of the work;
 - to make any translation of the work; to make any adaptation of the work;
 - to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);
- (b) In the case of computer program -
- to do any acts specified in clause (a);
 - to sell or give on hire, or offer for sale or hire any copy of the computer program, regardless of whether such copy has been sold or given on hire on earlier occasions;
- (c) In the case of an artistic work;
- 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 the work to the public;
 - to issue copies of the work to the public not being copies already in circulation;
 - to include the work in any cinematography film;
 - to make any adaptation of the work;
 - to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);
- (d) In the case of a cinematography film;
- 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, regardless of whether such copy has been sold or given on hire on earlier occasions;
 - to communicate the film to the public;
- (e) In the case of sound recording;
- to make any other sound recording embodying it;
 - to sell or give on hire or offer for sale or hire, any copy of the, sound recording, regardless of whether such copy has been sold or given on hire on earlier occasions;
 - to communicate the sound recording to the public;

Q.25 What is the punishment in the Act for falsifying GI ?

Ans. : A sentence of imprisonment for a term between six months to three years and a fine between fifty thousand rupees and two lakh rupees is provided in the Act. The court may reduce the punishment under special circumstances.

Q.26 What is the term of GI protection ?

Ans. : The registration of a GI shall be for a period of ten years but may be renewed from time to time for an unlimited period by payment of the renewal fees.

Q.27 Is a patent granted in one country automatically enforceable in other countries ?

Ans. : No. There is nothing like a global patent or a world patent. Patent rights are essentially territorial in nature and are protected only in a country (or countries), which has (have) granted these rights. Therefore, the patent could only be enforced in such countries. In other words, for obtaining patent rights in different countries one has to submit patent applications in all the countries of interest for grant of patents. This would entail payment of official fees and associated expenses, like the attorney fees, essential for obtaining patent rights in each country. However, there are some regional systems where by filing one application, one could simultaneously obtain patents in the member countries of a regional system; European Patent Office is an example of a similar system.

Q.28 Does grant of a patent in one country affect its grant or refusal in another country ?

Ans. : Each country is free to grant or refuse a patent on the basis of scrutiny by its patent office. This means that grant of a patent in one country does not affect grant or refusal in another country.



Notes

Solved Model Question Paper

(As per New Syllabus)

Intellectual Property Rights

Semester - VI (Common to All Branches)

Time : 3 Hours]

[Maximum Marks : 100

Attempt all questions.

[PART - A] (10 x 2 = 20 Marks)

Q.1 *What are Intellectual Property Rights (IPR) ? (Refer Q.1 of Chapter 1)*

Q.2 *What does the term 'Geographical Indications (GI)' stand for ?
(Refer Q.12 of Chapter 1)*

Q.3 *How long does a copyright last ? (Refer Q.22 of Chapter 2)*

Q.4 *What is a trade secret ? (Refer Q.25 of Chapter 2)*

Q.5 *What is the mandate of WTO ? (Refer Q.3 of Chapter 3)*

Q.6 *What are the main objectives of WIPO ? (Refer Q.6 of Chapter 3)*

Q.7 *What are the cyber laws in India ? (Refer Q.4 of Chapter 4)*

Q.8 *What is Unfair Competition Prevention Act ? (Refer Q. 17 of Chapter 4)*

Q.9 *What is an IP infringement ? (Refer Q. 1 of Chapter 5)*

Q.10 *How are patent rights enforced ? (Refer Q.19 of Chapter 5)*

[PART - B] (5 x 13 = 65 Marks)

Q.11 (a) (i) *What is the need of Intellectual Property Rights ? (Refer section 1.2)*

(ii) *What may be the consequences of not patenting the inventions ?
(Refer section 1.3.6)*

OR

(b) *Discuss about IPR in India and Abroad. (Refer section 1.6)*

Q.12 (a) *What is the procedure for registration of a work under the Copyright Act, 1957?
(Refer section 2.1)*

OR

(b) *What are the advantages of trademark registration? (Refer section 2.2.2)*

Q.13 (a) *What are the advantages of filing PCT application? (Refer section 3.3.5)*

OR

(b) *What is the procedure for registration of patent in India ?*

(Refer section 2.3)

Q.14 (a) *Discuss few Case Studies on Unfair Use of Competition Act in India.*

(Refer section 4.7.1)

OR

(b) *Discuss about Cyber laws or IT laws of India. (Refer section 4.4)*

Q.15(a) (i) *Discuss about Patent Amendment Act of India. (Refer section 3.5)*

(ii) *Discuss about trade secrets and trademarks. (Refer sections 2.2 and 2.5)*

OR

(b) *Write a note on 'Enforcement of IPR Laws in India'*

(Refer section 5.2.1)

[PART - C] (1 x 15 = 15 Marks)

Q.16 (a) *What are the remedies available for different infringement cases in India ?*

(Refer section 5.1.4)

OR

(b) (i) *What is the Trips Agreement Why was it established ?*

(Refer section 1.8)

(ii) *Write a note on 'Development of IPR in India'. (Refer section 1.6.3)*



For Semester - VI (CSE)

- 1) Distributed Systems (*I. A. Dhotre*)
- 2) Mobile Computing (*V. Jeyasri Arokiamary*)
- 3) Compiler Design (*A. A. Puntambekar*)
- 4) Internet Programming (*A. A. Puntambekar*)
- 5) Artificial Intelligence (*Anamitra Deshmukh-Nimbalkar*)
- 6) Embedded Systems (*I. A. Dhotre*)
- 7) Agile Methodologies (*A. Priya, Dr. J. Janet, Dr. K. Sasikala Rani*)
- 8) Data Warehousing & Data Mining (*Pranjali Deshpande, Soudamini Patil*)
- 9) Software Testing (*Dr. D. Chitra, A. Kaliappan*)
- 10) Intellectual Property Rights (*Dr. Meenu Pandey, Dr. Prabhat Pandey*)



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