

Intellectual Property : It can be defined as inventions of mind, innovations, literary and artistic work, symbols, names and images used in commerce.

Objective :

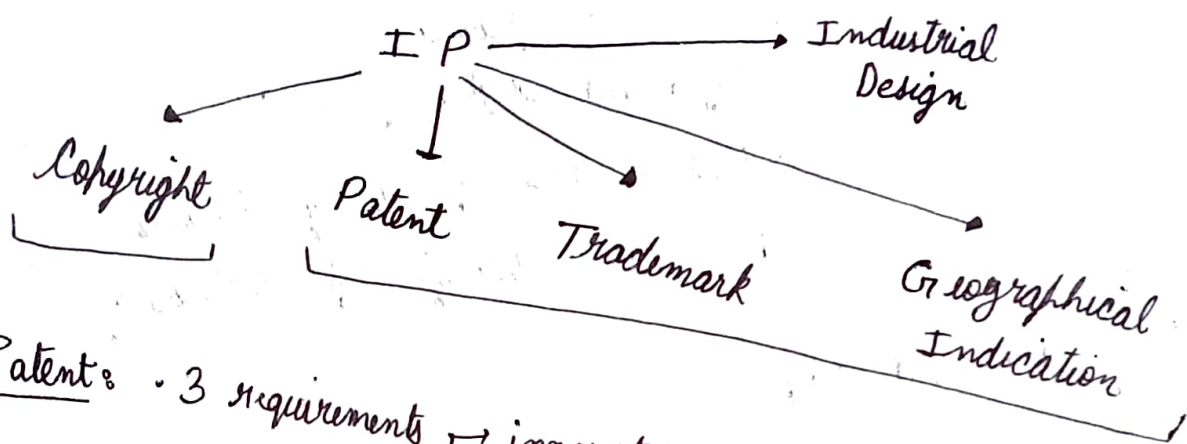
- encourage creativity of human mind for benefit of all.
- ensure benefit arising from exploiting a creation benefit the creator.
- encourage creative activity
- reasonable return to investors on their investment in R & D.

IP empowers individuals, enterprises or other entities to exclude others from the use of their creation without their consent.

Intellectual Property Rights :

- IPR are rights given to person over the creation of their minds : inventions , literary and artistic works , symbols , ~~no~~ names and images used in commerce.
- They give the creator an exclusive right over the use of his/her creation for a certain period of time.
- These are outlined in article 27 of Universal Declaration of Human Rights.
- First recognised in Paris Convention for Protection of Industrial Property (1883) administered by World Intellectual Property Organisation (WIPO).

Kinds of Intellectual Property:



Patent: • 3 requirements

- innovation
- inventive step
- industrial application

• not for idea or principle

Trademark: • Badge of origin

• guarantee quality

Geographical Indication: • Darjeeling tea, Basmati Rice

• protected under Geographical Indication of Goods (1999).

Industrial Design: • Shape, colour, texture of outer part.

• Eg: Coca-Cola bottle.

Need of IPR:

- Encourage innovation
- Economic growth
- Safeguard rights of creators
- Ensure ease of doing business
- Facilitate transfer of technology

India and IPR:

- India is a member of WTO, and committed since 1995 to Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement).
- India also member of World Intellectual Property Organisation, body responsible for promotion and protection of IPR all over the world.
- Also member of following WIPO-administered International Treaties and Conventions relating to IPRs.

TRIPS Agreement : ^{1st Jan}

- Came to force in 1995, part of agreement that established WTO.
- establish minimum standards for availability, scope and use of 7 forms of IP namely →
 - Copyright
 - Patent
 - trademark
 - geographical indication
 - industrial design
 - trade secrets
 - layout design for integrated circuits.
- applicable to all WTO members.
- frames IP in terms of innovation, tech transfer and public welfare.
- Also described as 'Berne and Paris-plus' Agreement.
- 73 articles in 7 parts ; most comprehensive agreement on IPR.
- Copyright must extend to 50 yr. after death of creator
- Films and photographs are required to have fixed 50 yr and 25 yr terms.

Chronological development of IPR:

- 1947 → Patent & Design Act, 1911
- 1995 → India join WTO
- 1998 → India join Paris Convention / PCT
- 1999 → Patent Amendment
- 2003 → Second "
- 2005 → Patent Act, 2005

Major Issues in IPR:

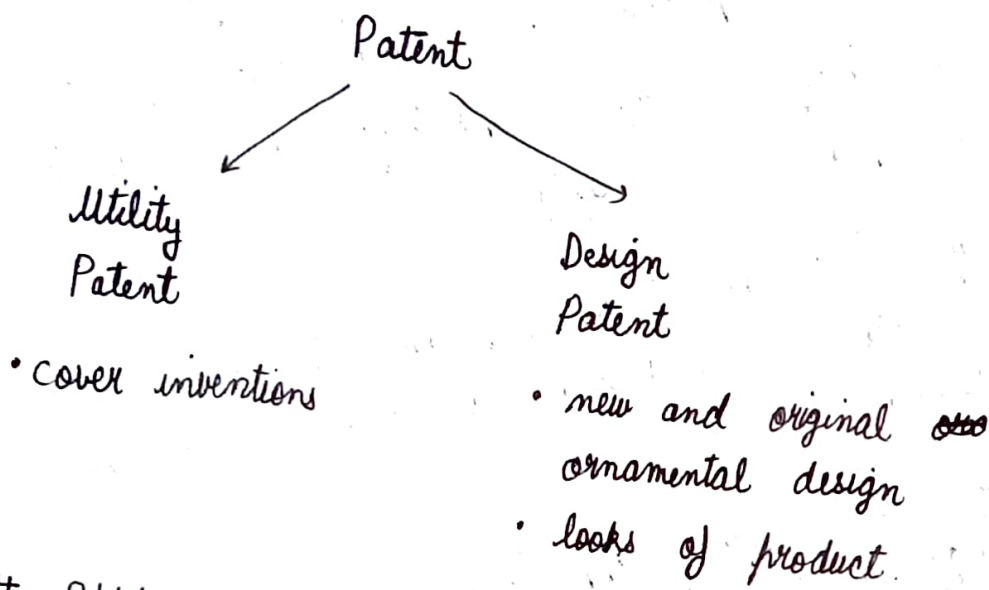
- lack effective implementation
- issue in having IP fund
- overprotection of IP in terms of overlap
- Plagiarism
- Least level at judicial level.

UNIT-2

- # Patent :
- Government granted right for fixed time period to exclude others from making, selling, using, importing an invention, product, process or design
 - Monopoly rights are powerful, and in return, the inventor is required to describe invention in writing.
 - generally 20 yr. from application date; after that, technology is free to use by public.
- # History :

- 1911 → Indian Patents and Designs Act
- 1970 → Patents Act
- 1972 → " " came to force
- Patent office headquarter → Calcutta
branches → New Delhi
Chennai
Mumbai
- 1999, 2002, 2005, 2006 → Amendment in Patents Act, 1970
- To make it TRIPS compliant
- 2012, 2013, 2014 → Rules were amended.
- CGPDTM → Controller General of Patent, Design and Trade Mark.
↓
body responsible for Indian Patent Act.

Types of Patents:



Applying for Patent:

- ① Finalise.
- ② Patentable or not
 - novel (not disclosed)
 - inventive (unique)
 - industrial
- ③ Filing → Country → Limited to ^{applicability (feasible)} ~~Boundaries~~ → World [Patent Corporation Treaty] / 40 ~~countries~~ ^{country}.
 - Reviewed by officer for normal
 - examination process, brief on design, structure
- ④ Maintain under certain laws.

Rights of Patent Holder:

- illegal for third party creator to use, create, offer, sell without permission.
- entitled to licence agreements, patent assignments and succession transfers.

Example: Bajaj Auto v/s TVS Motor Company Ltd.
TVS → DTsi use Kiya without authorization
BAJAJ → Belonged to them; applied in 2002,
granted in 2005 (Plaintiff)
Madras High Court → ruled out.

① Right to exploit the patent: • authority to use, market, produce and distribute protected goods is granted to patent holder

- legally protect their ideas, no one can copy them for set limit of time. (mostly 20 yr.)

② Right to grant or Assign Licenses: • authority to delegate or give licences to third party for producing and distributing goods.

- When several patent owners, all must agree to issue licence to third party as grp.

- licence must be written and filed with Patent Authority.

③ Right to surrender the patent: • authority to legally abandon the patent
patent
Eg: Police drop.

④ Right before selling:

⑤ Right to apply for patent of addition: — Thank — legal — claim (by)

⑥ Right to sue in case of infringement:

Obligations of Patentees:

- ① Duty to disclose patent
- ② Duty to request for examination
- ③ Duty to respond to objections
- ④ Duty to clear all objections
- ⑤ Duty to pay statutory fees.

Apple vs Samsung:

2011 → Apple sue Samsung

- using design and features of phone which are patent under law.
- 2.5B lawsuit

Initial Partnership → outsource relationship
4% of Samsung revenue

- 1B given by Samsung
- 9 countries filed by Samsung, mixed result
Korea ✓ Germany X