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CONSTITUTIONAL LAW & ETHICS

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CONSTITUTIONAL LAW & ETHICS

UNIT 3- Cyber Law and IP Regime

Faculty of Law

Introduction to Intellectual Property Rights (IPR)



Definition: Legal mechanisms granting creators exclusive rights over their intangible assets

Objectives:

- Promote innovation and investment in R&D
- Ensure public disclosure of technical knowledge
- Balance interests of creators, users, and society

Relevance to Engineering:

- Protection of inventions (devices, processes)
- Safeguarding software code, circuit designs, and CAD models
- Commercialization: licensing, joint ventures

Quick Fact: Global R&D spending hit \$2.8 trillion in 2023; strong IP regimes correlate with higher investments.

NATURE OF IP



- **Tangible vs. Intangible:**
IP is intangible—no physical asset, but legally enforceable rights
- **Exclusive Rights:**
 - Right to use, license, assign, and enforce
 - Time-bound (e.g., patents: 20 years; trademarks: 10 years renewable)
- **Territoriality:**
 - Rights enforceable only within grant jurisdiction (e.g., Indian Patent Office)
 - Multinational filings (PCT, Madrid Protocol) for broader coverage
- **Example:** Ownership disputes in collaborative CAD projects—Relevance of clear IP clauses in contracts

- **Key Functions:**

- Source identification
- Quality assurance
- Marketing & brand equity creation

DURATION – To be Renewed every 10 years

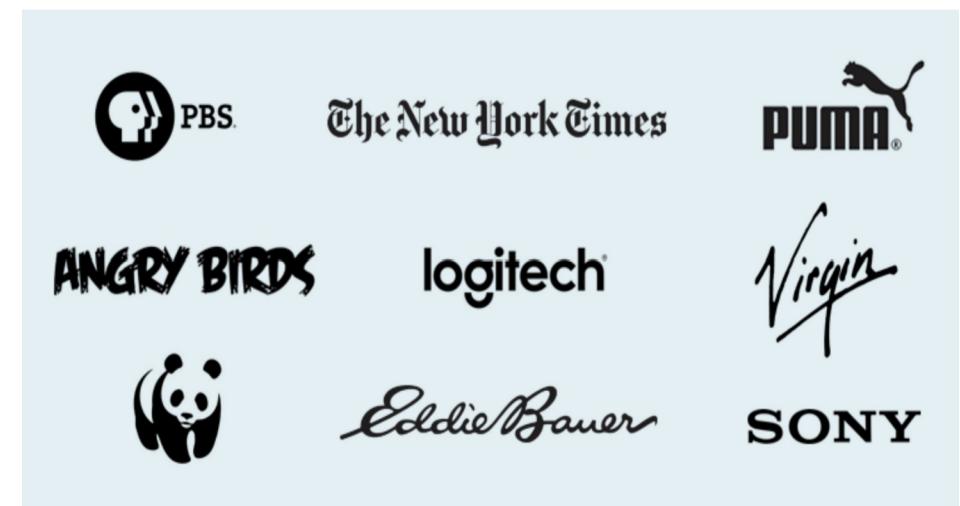
Conventional vs. Non-Conventional Trademarks

Conventional: Words (“Nikon”), logos (Apple’s apple), shapes (Coca-Cola bottle)

Non-Conventional:

Sound marks (Intel), Smell Marks (play dough), Motion marks (MGM Lion), Colour marks (purple shade in Dairy milk), shape marks (Toblerone), Pattern marks, structures/ buildings (Taj Mahal Hotel, Mumbai), Fluid Trademarks (Google)

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Copyright – Introduction



- **Definition:** Protection of original literary, dramatic, musical, artistic works, cinematograph films, and computer programs.
- Neighbouring Rights - Performer's Rights And Broadcasting Rights
- Section 13 of The Copyright Act, 1957 - Works in which copyright subsists.
- Section 14 of The Copyright Act, 1957 - Meaning of Copyright



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Copyright – Introduction



Exclusive Rights of the copyright owner

- Reproduce
- to issue copies of the work to the public
- to perform the work in public
- to make any cinematograph film or sound recording
- to make any translation of the work
- to make any adaptation of the work

In the case of Cinematography works, Software and Sound Recording

- to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme
- storing of it in any medium by electronic or other means
 - a photograph of any image forming part thereof (wrt cinematography work)

Definition of Computer Program (Section 2(ff)):

"Computer programme" includes a set of instructions expressed in any form, capable of being executed by a computer."

Criteria

- **Originality** (Section 13):
Must be original work of the author; not copied from existing code.
- **Fixation in a Tangible Medium**:
Source code and object code must be recorded (on a storage device) to qualify.
- **Author's Identity**:
Natural person or joint authorship; corporate authorship recognized if commissioned work.

Source Code:

Human-readable code written in programming languages (e.g., C, Java, Python).

Contains comments, variable names, and is understandable by programmers.

Typically stored in text files (.c, .java, .py).

Protected as a "literary work" once fixed in a tangible medium (printed or saved).

Object Code:

Machine-readable code generated by compiling source code (binary executables, .exe, .class files).

Executable by hardware or virtual machines, not human-readable.

Not independently protected as literary work; protection derives from underlying source code but the binary format itself is considered functional output.

Registration:

- Recommended but optional;
- Form XIV with a copy of code's first and last 25 pages (computer print), along with fee.
- Registration confers *prima facie* evidence of ownership.

Duration: 60 + Lifetime of The Author

Exceptions & Limitations (Section 52):

- Fair dealing for private use, research, reverse engineering for interoperability.

Key Challenges at the AI-Copyright Intersection

- **Data Sourcing & Licensing:**

- Identifying proprietary vs. public-domain data in large-scale web crawls
- Negotiating bulk licenses for text, code, images, audio datasets

- **Defining Authorship & Ownership:**

- Determining human vs. AI-generated contributions for copyright eligibility
- Allocation of rights when multiple stakeholders (developers, data providers, users) are involved

- **Fair Use / Fair Dealing Ambiguities:**

- Lack of clear guidelines in Indian law on transformative use for model training
- Risk of infringement claims for corpora including unlicensed user-generated content

Jurisdictional Conflicts:

- Cross-border data flows vs. territorial copyright regimes, conflicting licenses
- Enforcement difficulties for global AI platforms accessing Indian data

Remedy Limitations:

- Difficulty in proving actual damage or attribution in AI-generated outputs
- Need for new remedy forms (statutory licensing, mandatory disclosures)

Artificial Intelligence and Copyright



ANI vs. OpenAI (Delhi High Court, 2024)

Plaintiffs: Asian News International (ANI)

Allegation: Unauthorized scraping and use of newswire text/images in ChatGPT training dataset

Relief Sought: Injunction against usage of ANI content; damages for copyright infringement

Status: Interim application admitted; Hearing scheduled Q3 2025; court highlighted importance of licensing AI datasets

Authors Guild, Inc. v. OpenAI (U.S., 2023)

Plaintiffs: Group of authors and visual artists

Allegation: Unauthorized use of books, articles, and images in AI model training

Status: Ongoing; court considering whether training models constitutes "transformative use"

Definition: Exclusive rights granted to inventors for novel inventions (product or process)

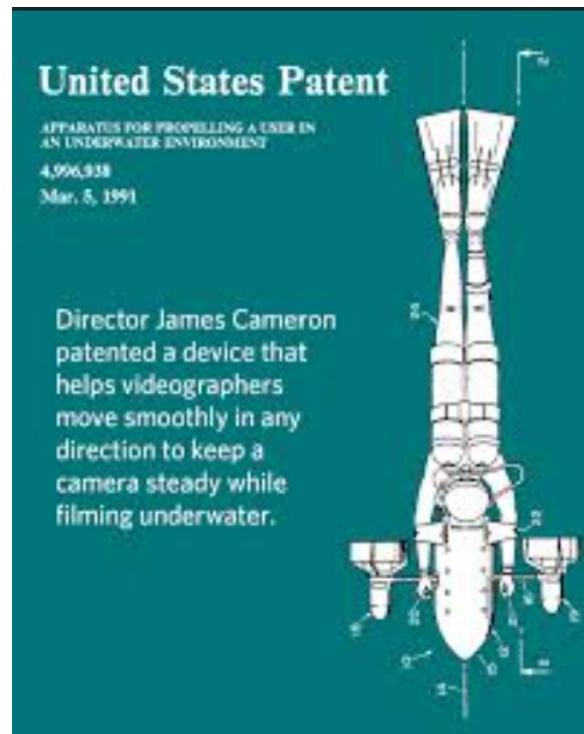
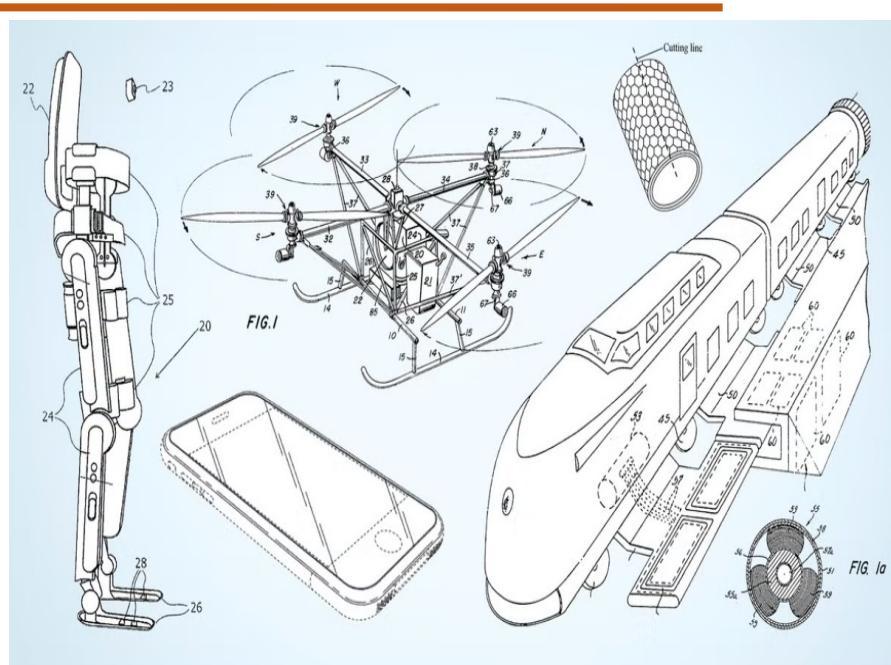
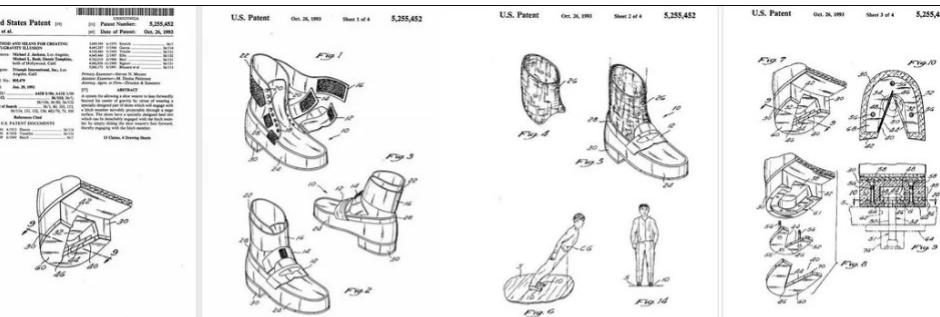
- Section 2(m) of Patents Act

Key Criteria:

- **Novelty:** Invention must be new globally (Section 2(1)(l))
- **Inventive Step:** Non-obvious to a person skilled in the art (Section 2(1)(ja))
- **Industrial Applicability:** Capable of being made or used in any industry

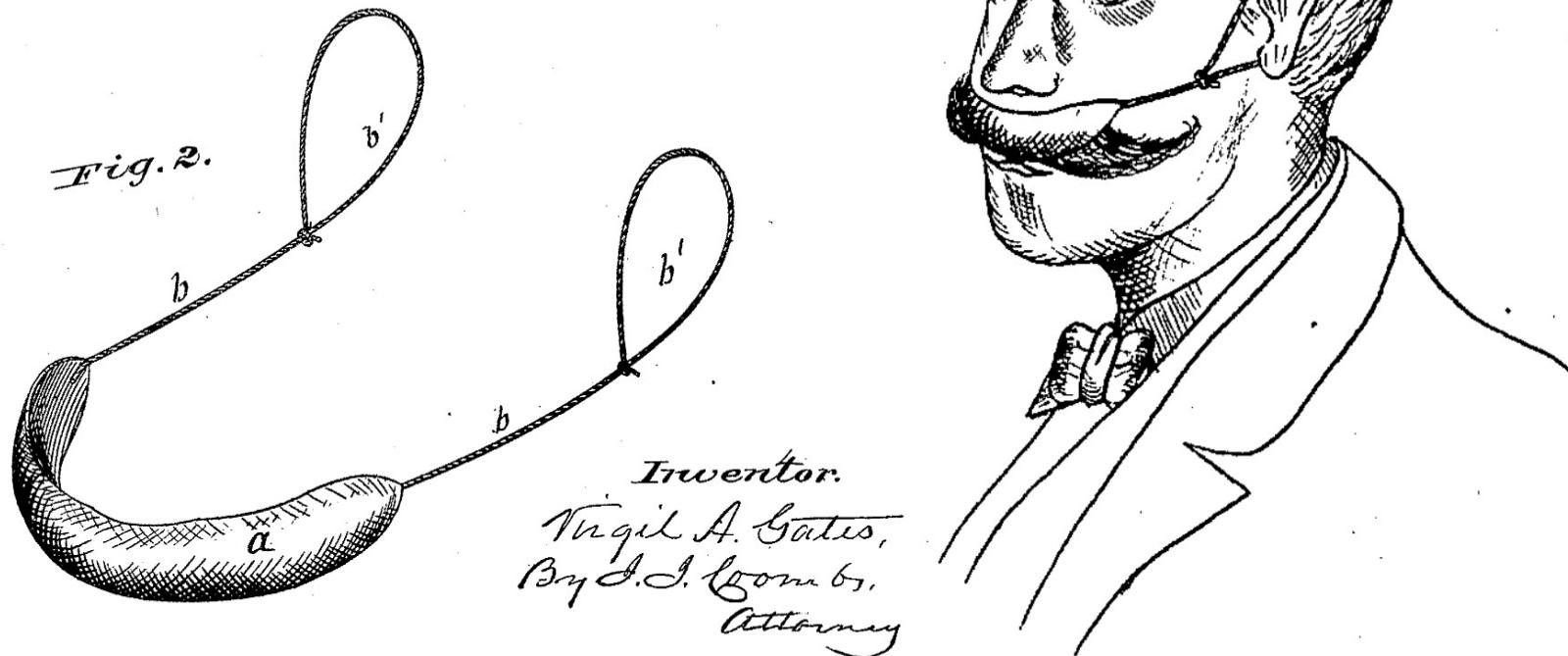
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Patents – Introduction & Criteria



V. A. GATES MOUSTACHE GUARD

Patented April 18, 1876
No. 176,175



Non-Patentable Inventions (Section 3):

Frivolous or contrary to law/morality, mere discovery of scientific principle
Computer programs per se, business methods (subject to interpretation)

Term & Rights:

20 years from filing date (Section 53)
Exclusive right to prevent third parties from making, using, selling

Opposition & Revocation:

Pre- and post-grant oppositions (Section 25)
Revocation on grounds of lack of novelty or inventive step

Patent Offices:

Four controllerates: Delhi, Mumbai, Chennai, Kolkata
e-filing and expedited examination under Startup India initiative

Software Patenting in India – Key Cases & Principles



- **Section 3(k) Exclusion:**

- "A mathematical or business method or a computer programme per se or algorithms" are non-patentable.
- Patentable if claimed in conjunction with novel hardware or a technical application/effect.

Micromax Informatics Ltd. v. Telefonaktiebolaget LM Ericsson (2015, Delhi HC):

Court reaffirmed the need to demonstrate technical advancement; Ericsson's patents on network-related software found valid and infringed.

Patent Office Guidelines (2017):

Clarify examination of computer-related inventions: focus on technical effect or solution to technical problems.

- **Registration Process:**

- Application to GI Registry (Chennai)
- Examination, publication, opposition
- Registration valid for 10 years, renewable

- **Rights & Remedies:**

- Exclusive right to use GI tag

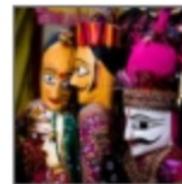
Civil remedies:

injunction, damages

Case Study: Basmati rice GI dispute with Pakistan—successful trilateral negotiations under WTO

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Geographical Indications Act, 1999



Geographical Indications

- The Geographical Indications of Goods (Registration and Protection) Act
- Infringement
 - Injunction
 - Damages
 - Delivery of the infringing labels and indications containing products
 - Criminal remedies

International Framework:

- TRIPS Agreement: Minimum GI protection standards
- Geneva Act (2015) of the Lisbon Agreement: International registration

India's Participation:

- TRIPS signatory since 1995
- Observer status in Lisbon system

Benefits:

- Market access, protection against misappropriation
- Technology transfer opportunities for local producers

Traditional Knowledge – Introduction



Definition:

Collective, traditional practices, expressions, and innovations of indigenous communities

Biomimetic design inspired by indigenous architecture (e.g., termite mound cooling systems)

Traditional water harvesting techniques for sustainable engineering projects

• **Purpose:** Prevent wrongful patents on traditional formulations and processes

• Features:

- Database of 400K+ formulations in Ayurveda, Unani, Siddha
- Translated into English, French, German to assist patent examiners

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Traditional Knowledge Digital Library (TKDL)



•Background:

- Neem (*Azadirachta indica*) long used in Indian agriculture for its pesticidal properties
- 1994: U.S. Patent No. 5,436,150 granted to W.R. Grace et al. for a "Neem-based fungicidal composition"

Opposition & Revocation:

- 1995: Indian Council of Scientific and Industrial Research (CSIR) and NGOs filed opposition at European Patent Office (EPO)
- 2000: EPO revokes European equivalent patent (EP 0 469 289) citing lack of novelty and inventive step in light of traditional use

Key Lessons:

- Importance of prior art research in traditional knowledge databases (TKDL)
- Role of collective action by public institutions and NGOs in protecting indigenous knowledge

Industrial Design – Introduction

Definition: Protection of aesthetic features (shape, configuration, ornamentation) of articles

Importance:

- Enhances product appeal and marketability
- Complements technical patents

Engineering Examples:

- Ergonomic design of a drone controller
- Aesthetic casing for consumer electronics

Registration Requirements:

- Novel, original design not disclosed before application
- Not purely functional: aesthetic appeal must be primary

- Design Act of 2000
- 10 years
- Infringement
 - Injunction
 - Damages
 - Criminal Prosecution

Infringement Types:

Unauthorized manufacture, sale, import, distribution

Civil Remedies:

Interim & permanent injunctions

Damages or account of profits

Criminal Remedies:

Fines up to ₹2 lakhs, imprisonment up to 3 years (Copyright Act)

Case Study: Qualcomm vs. Micromax (2016)—Delhi HC injunction & cross-licensing settlement