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INTELLECTUAL PROPERTY AND THE NEED TO PROTECT IT

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ABSTRACT

Intellectual Property refers to intellectual creativity of a creator. In contrast to physical property, intellectual property is an intangible asset of a person. Intellectual Property Rights (IPR) are the exclusive rights given to the creators to their creations. Common types of Intellectual Property Rights are patents, copyrights, trademarks, industrial designs, geographical indications, trade secrets, layout designs for integrated circuits and even ideas. Intellectual property rights provide an incentive to the creator to develop his creation and to share it with other people for the development of the society. The basic aim of the IPRs is to help in meeting the challenges in the development like reducing poverty, stimulating economic growth, improving the health status by providing medicines to the poor, improving access to education and contributing the overall sustainable development. Though IPRs provide incentive to the author or the creator and lead to a competition in the field of invention but it is also an intellectual protectionism or a form of a temporary monopoly enforced by the state.

KEYWORDS: Intellectual Property, Intellectual Property Rights, patents, copyrights, trademarks, geographical indications

The term *Intellectual Property* applies to intellectual creativity of a creator such as invention, musical, literary, symbols, names, designs, images and even ideas. Intellectual property is an intangible asset of a person. It is a legal concept which refers to creations of the mind for which exclusive rights are recognized. Intellectual property, like any other form of conventional forms of property, is an asset. The owner has the right to prevent the unauthorized use or sale of the property. Since Intellectual property is intangible, that is, it cannot be defined or identified by its own physical parameters, thus intellectual property must be expressed in some discernible way for enabling it to be protected.

Intellectual Property Rights (IPRs) are the legally recognized exclusive rights to creations of the mind. Under these rights, like any other form of a conventional property, intellectual property can be bought, sold, licensed or exchanged. Under intellectual property law, owners are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; words, phrases, symbols and designs. These laws protect the legal rights of creators and owners, in relation to intellectual creativity. IPR is a prerequisite for better identification, planning, commercialization, rendering and thereby protection of invention or creativity (Saha and Bhattacharya, 2011). The objective of intellectual property law is to grant incentive to the creator of a work. Inventive activity is supposed to result in innovation, which further leads to technological advancement,

industrial development and economic welfare (Reddy and Kadri, 2013).

NEED FOR IPR

Every creation requires time, energy and effort.

The time involved varies greatly between projects. It may vary from a few minutes to a few years. In addition, any creative work also requires certain amount of real capital and of course the education or knowledge. All these things add up to a huge investment on the part of any creative professional. Thus, it is necessary to recognize and respect the intellectual creations of a creator. Although many of the legal principles, governing intellectual property rights, have evolved over centuries, it was not until the 19th century that the term intellectual property began to be used. It was in the late 20th century that it became common in the most part of the world. The World Intellectual Property Organization (WIPO) was established, in 1967, as an agency of the United Nations. Since then the term really began to be used in the United States. There is an extensive international system for defining, protecting, and enforcing intellectual property rights, comprising both multilateral treaty schemes and international organizations such as Trade-Related Aspects of Intellectual Property Rights (TRIPs), World Intellectual Property Organization (WIPO), World Customs Organization (WCO), United Nations Commission on International Trade Law (UNCITRAL), World Trade Organization (WTO) and European Union (EU).

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KINDS OF INTELLECTUAL PROPERTY RIGHTS

The common types of intellectual property rights are: patents, copyright, trademarks, industrial design, trademarks, trade secrets, geographical indicators and layout design for Integrated Circuits.

Patents

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. An *invention* may be defined as the idea of making a new and useful article, method or substance. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. 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. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. He may also sell the right to the invention to someone else, who will then become the new owner of the patent. A Patent is granted for a period of 20 years from the date of filing the application of patent. Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention.

Copyright

Copyright is a legal term describing the rights given to creators for their literary and artistic works. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or works. The works covered by copyright include literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. The reproduction in various forms such as copying, printing, recording, public performance or adaptation are prohibited under these rights.

Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed (Simon, 2001). This right provides economic right to the creator that is the financial benefit for a period lasting of fifty years after the creator's death.

An industrial design

An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of patterns and colors in three dimensional forms, containing aesthetic value. It can be a two or three dimensional pattern, used to produce a product. Even the traditional craft items like hand-woven articles like carpets, cotton bed covers can also be registered for protection as an Industrial design (Kannan, 2010). The design has to be registered against imitation and unauthorized copying. The protection is provided for five years and it can be renewed for fifteen years.

Trademark

A trademark refers to a recognizable sign, design or expression which identifies products or services of a particular source from those of others. It can be patented like invention and industrial designs. The trade mark can be a combination of words, letters, numbers, drawings, images, symbols and even sounds. These are generally registered for seven years but they can be renewed indefinitely by applying again. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services or to authorize another to use it, in return for payment. It helps consumers identify and purchase a product or service because of its nature and quality, indicated by its unique trademark.

Trade secret

A trade secret is a formula, practice, process, design, instrument, pattern or compilation of information which is not generally known or reasonably ascertainable by which a business can obtain an economic advantage over competitors or customers. It may be confidential business information that provides an enterprise a competitive edge. Trade secrets include sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients and manufacturing processes. A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information.

Geographical indicators (GI)

Geographical indicators are the signs used on goods that have a specific geographical origin. A GI indicates that a product comes from a certain place and has special qualities due to that place of origin which

could be a village or town, a region or a country. It is an exclusive right given to a particular community and thus the benefits of its registration are shared by the all members of the community. It may be used by all producers or traders whose products originate from that place and which share typical characteristics. Well-known examples of GIs include Bordeaux (wine), Darjeeling (tea), Chanderi (sarees), Kullu shawls and Tuscany (olive oil).

Layout Design for Integrated Circuits

Semiconductor Integrated Circuit is a product, having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

Protection of New Plant Variety

New plant varieties can also be protected under IPR. The objective of this act is to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity.

IMPORTANCE OF IPR

Positive Impacts

IPRs play very important role in the progress and development of the society. IPRs not only provide incentive to the creator of his creation but also lead to a healthy competition among creators which ultimately leads to the progress of the society. Some of the positive impacts of IPR are:

- IPRs are important for free flow for energy for enhancing invention and research. IPRs provide incentive to the individuals for new creations. IPRs provide due recognition to the creators and inventors. These laws provide them both the means and incentive to create newer works, products and services
- Intellectual Property Rights enhance innovation and creativity by protecting the rights of inventors and artists. Since the filing of patents requires the disclosure of information that would enable others to replicate the inventor's discovery, others can use and build upon this shared knowledge to create newer and/or better products. IPRs ensure material reward for intellectual property.
- IPRs ensure the availability of the genuine and original products. Intellectual Property rights, such as

patent and copyrights, are an important means used by firms to help protect their investments in innovation (Shankar Narayanan, 2010).

- IPRs may be helpful in the solution to global challenges like in the field of alternate sources of energy, new products to the farmers and development of low cost drugs for poor people.
- IPRs are necessary to stimulate economic growth. Protection of intellectual property rights is essential in maintaining economic growth. They encourage fair trading which would contribute to economic and social development. Effective enforcement of intellectual property rights is critical to sustaining economic growth across all industries and globally.

Negative Impacts

Though the purpose of IPRs is to enhance innovation and creativity by protecting the rights of creators and leading to the growth and advancement of human beings but do IPRs actually play a constructive role in the progress and development of society and mankind or it is a form of intellectual protectionism or a form of a temporary monopoly enforced by the state, is an issue of great concern.

They are considered to benefitting concentrated i.e. IPRs confer authority over resources to a few. The few gain power over the goals of many. The objective of IPRs is to protect the public interest but, in fact, the public interest is harmed. Pharmaceutical product prices form substantial portion of health care costs and strong intellectual property protection is one of the major reasons for high health care costs (Agatha, 2013). For example, patent of life saving drugs had allowed the countries to charge higher than the marginal cost of the production in the name of cost of research and development. This has led to an increase in the cost of drugs and they are not affordable by the poor sections of the society. When there is control by some particular group, IPRs actually discourage invention. Patent of the ideas may prevent the owner of a property to utilize it according to his wishes. In order to serve the purpose IPRs must focus on the needs of the poor and developing countries but in reality intellectual properties tend to be governed by economic goals preventing the progress of poor. Thus, IPRs are considered as intellectual protectionism, intellectual monopoly or government-granted monopoly by which the public interest is harmed and progress is stopped.

CONCLUSION

The basic objective of the IPRs is to help in meeting the challenges in the development such as reducing poverty, stimulating economic growth, improving the health status, improving access to education and contributing the overall sustainable development. But the question is whether we have been able to accomplish our objectives completely or not. Intellectual property rights are one of the most important aspects of the creative world. The rights ensure incentive to invention, competition, recognition and financial support. IPRs must be given due credits. If we give due credits to IPRs, they will help in the sustainable development of mankind.

REFERENCES

- Agitha, T G(2013): Impact of IP on Public Health: The Developed Country Scenario. *JIPR* **18(4)** : 382-389
- http://www.bits-pilani.ac.in/uploads/Patent_Manual_Oct_25th_07.pdf
- <http://www.wipo.int/>
- http://www.wto.org/english/tratop_e/trips_e/intell_e.htm
- Kannan (2010) Importance of Intellectual Property Rights. *International Journal of Intellectual Property Rights* **1(1)**: 1-5
- Reddy, G B and Kadri, Harunrashid A (2013): Local Working of Patents - Law and Implementation in India. *JIPR* **18(1)** : 15-27
- Saha CN1, Bhattacharya S.(2011): Intellectual property rights: An overview and implications in pharmaceutical industry. *J Adv Pharm Technol Res* **2(2)**: 88-93.
- Sankar Narayanan, S. (2010) Intellectual Property Rights Economy Vs Science & Technology. *International Journal of Intellectual Property Rights* **1(1)**: 6-10
- Simon, Stokes (2001). Art and copyright. Hart Publishing. pp. 48–49.