

IPR and its Related Rights

Intellectual Property is a collection of ideas and concepts, which can be protected through trademarks, copyrights and patents.

IPR are the rights, which allow the patent holder, trademark carrier or copyrighted work to benefit them for their brainwork or investment.

Copyrights

It is the exclusive rights bestowed or given upon the creator, writer, author, artist or any one of their original works to print, publish or record for a fixed period of time.

Trademarks

It is a distinguishable symbol, signature or design of goods or products or services representing a particular company.

Patents

Patents can be termed as legal monopoly granted to an individual or a firm to make use of their brainwork by others (It may be for a product and process), which can be done by selling their invention and making it a restricted property for use. An invention can also be sometimes rendered as a solution to any specific technological problem that can be a product or a process.

There are three following conditions to recognise any invention:

1. It has to be a new invention
2. It should not be obvious and
3. Their needs should hold industrial application

Positive of Patents:

Encouragement of innovation and Research.

Protection of industries.

Economic assistance.

Benefit of Royalty.

Encouragement of Scientist with positivity.

Negative of Patents:

Dominating status of developed nations.

Economical exploitation by foreign companies.

Poor section of people could not access all important produce and services.

Industrial Design

Industrial Design trains one to blend art with applied science in order to improve a product in terms of visual aspects, its application and usage.

Trade Secrets

Protecting of certain recipes, processes, formulae or designs, patterns, information of certain product by a particular company or business firms, thereby giving themselves an edge and advantage over competitors.

Trade dress

Trade dress, like Trademark, is a source identifier or indicator to the customers but the difference is that it is not only the symbol or short phrase of the company but everything that a company does to their product, presenting itself to the customer distinctively, from giving visual appeal to a product or from packaging that signify the source of the product to consumers.

Plant Varieties

These are the rights given for the usage of a new plant species commercially, which is original and different and in order to get them registered, the variety's propagating material assessment is to be scrutinised.

Geographical Indication

NEED FOR INTELLECTUAL PROPERTY RIGHT

- Enhanced the economic growth, thereby creating new jobs and opportunities in industries.
- Helps in maintaining a balance between the interests of creators and the public, providing.

Persons Benefit:

1. Encourage human to continue further in their endeavour to produce improved and effective products.
2. Encourage consumers to opt and buy more reliable products or services

History of Intellectual Property Right in the world

In 1883, **Paris Convention for the Protection of Intellectual Property** was set to help creators in ensuring that their intellectual works are being protected in other countries.

In 1887, **Berne Convention for the Protection of Literary Work and Artistic Works** was approved and agreed to give right to the creator to control and receive the payments of their work on the international level and arena.

In 1893, **BIRPI (the United International Bureaux for the Protection of Intellectual Property)** was formed with the *amalgamation and submergence of the two secretariats set up to administer Berne and Paris Conventions.*

In 1970, **BIRPI transformed to WIPO (World intellectual property organisation)**, which is an intergovernmental organisation with 189 member countries based in Geneva, Switzerland.

Later in 1974, **WIPO, by joining the UN**, becomes a specialised agency thereby increasing the relevance of intellectual property.

- In **1995**, India joins World Trade Organisation (WTO). [SEP]
- In **1998**, India joined Paris Convention. [SEP]

- In 2005, **Patents Amendment Act 2005** came into force with effect from 1 January 2005.
[SEP-SEP]
- Due to the significant changes in the country's economic and political situations after India's independence, in the year **1949**, the Union Government formed a committee under the leadership of Justice '**Dr. Bakshi Tek Chand**', retired judge of High Court of Lahore **for reviewing the country's patent law** and for ensuring the contribution of the patent law towards the national interest.
- In **1957**, Justice '**N. Rajagopala Ayyangar**' Committee was appointed for examining the questions of revision of the Patent Law and advising to the government accordingly. On the basis of the committee recommendation, **Patents Bill 1965 was introduced**, which later got lapsed.
- **Patents Amendment Ordinance, 2004** was enforceable from 1 January 2005, which later got superseded by **Patents Amendment Act 2005**.

National Intellectual Property Right Policy

- **It is the first policy of India on IPR**, which was revealed by the Finance Minister (Union Government) in accordance with TRIPS in May 2016. So far, only specific Act regulates the IPR in India. **CIPAM (Cell for IPR Promotion and Management)**, a professional body created under DIPP, has been entrusted with the implementation of the National IPR Policy 2016. It is a vision document, which aims to create and exploit synergies between all forms of intellectual property, concerned statutes and agencies.
- The policy, which is in compliance with WTO's (World Trade Organisation) agreement on TRIPS (Trade Related aspects of IPRs), aims to sustain entrepreneurship and boost '**Make in India**' scheme.

Highlights of New Intellectual Property Policy

- The said Policy aims towards the **protection of public interest** through the **promotion of IPR as a profitable financial asset**; and further **encouraging the innovation and entrepreneurship**.

- There will be **reviewing of plan after every five years** in discussion with stakeholders.
- Various steps, such as **reviewing of the present IP laws**, their revision and improvisation for the removing of abnormalities and discrepancies, is required to be undertaken in order to have strong and effective IPR laws.
- There is complete **conformity of policy in accordance with WTO's agreement on TRIPS**.
- There should be **special focus on creation of IPRs awareness and its effective enforcement**, in addition to persuading of IP merchandising with the help of different incentives.
- As per the policy proposal, **for all the IPR related issues, the nodal agency will be the Department of Industrial Policy and Promotion**. Moreover, DIPP will also be responsible for tackling of all the copyrights-related issues in place of the Human Resource Development (HRD) Ministry.
- There is a rationalisation of trademark offices for **reducing the examination and registration time to just 1 month by the year 2017**. There is hiring of approximately 100 new examiners for trademarks by the government and there is **reduction of trademarks evaluation time from 13 months to 8 months, and ultimately bringing it to one month by March 2017**.

Madrid Protocol:

- It is an international treaty that allows a trademark owner to seek registration in any of the countries that have joined Madrid Protocol by filing a single application.
- International Bureau of the World Intellectual Property Organisation administers the international registration system.

- There will be the **coverage of films, music, and industrial drawings under the copyright**.
- The **policy helps in the filing of domestic IPR** from IPR generation to commercialisation and further helps in promoting the research and development through tax benefits.

- The **policy also facilitates** in the creation of **an effective loan guarantee scheme** for the promotion of start-ups promotion.
- **As per the policy, the country will persist** in the utilisation of the legislative space and **flexibilities offered in international treaties and the TRIPS Agreement**. These flexibilities consist of the **usage of provisions like Section 3(d) and CLs under the country's sovereign rights to ensure the availability of essential and life-saving drugs at affordable prices**.
- Due to the policy, the patent laws of the country remains intact and there is no opening up of Section 3(d) of the Patents Act, setting the standards in the country for reinterpretation.
- **In the field of compulsory licensing, the CL has been issued in the country only for a cancer drug**. As per Mr. Jaitley (when he was finance minister), the country rarely exercises this power. This being considered as significant statement as the developed countries, such as the US, have raised their apprehensions over the country's issuance of the CL. According to the standards of the WTO, a **government in public interest can raise CL allowing a company for making a patented product without the patent owner's permission**. As per the Indian Patents Act, a CL can be raised in the category of a drug if any medicine seems to be not reasonable, and the permission for drug manufacturing is given by the government to the **qualified generic drug manufacturer**.
- In view of the financial support on the export and sale of the items on the basis of IPRs produced from the research being publically funded is the outcome of the IPR policy, ultimately benefitting the government.

Iprism

It is an **Intellectual Property (IP) Competition** to promote a culture of innovation and creativity in the younger generation at **college and university-level students**.

Iprism promotes young creators and provides unique opportunity in their creations.

Iprism launched by various bodies: The Cell for IPR Promotion and Management

(CIPAM), Department of Industrial Policy and Promotion (DIPP), in collaboration with ASSOCHAM and ERICSSON India.

This competition encourages students in submitting piracy and counterfeiting-based films under dual 30 and 60 seconds categories and further on gaming mobile applications. Due to the piracy and counterfeiting, the industry is encountering a considerable loss and thereby posing serious safety threats to the consumers. This type of awareness will help tackle such types of crimes as the little knowledge on piracy and circulation of fake items lead to negative socio-economic impacts on the society.

Department of industrial Policy and Promotion (DIPP)

It was **set up in the year 1995** and the Department of Industrial Development was merged with DIPP in the year 2000 working under the Ministry of Commerce and Industry, Government of India.

Considering the national priorities and socio-economic goals, **DIPP facilitates the industrial sector growth through the formulation and implementation of promotional and developmental measures and also liable for assisting and raising the country's FDI flows.**

The department is **also responsible for** the items intellectual property rights in relation to **patents, designs, trademarks, and geographical indication** and further manage the actions in linkage to their encouragement and protection.

DIPP is now called as **Department for Promotion of Industry and Internal Trade (DPIIT).**

Cell for IPR Promotion and Management (CIPAM)

With the slogan of “**Creative India; Innovative India**”, the Government approved CIPAM, a professional body under the aegis of DIPP **to take forward the implementation of the National IPR Policy in May 2016.**

CIPAM has been created to work towards public awareness of IPRs, promotion in filing of IPRs, to provide various inventors to commercialise their IP assets. CIPAM also works for implementing the National IPR Policy, in

collaboration with various Government Ministries/Departments and other stakeholders.

Provision of Copyright and its Related Rights

The Law of Copyright grants **legal protection to the work of authors, artists and other creators**. A closely linked field is “Related Rights,” which cover rights similar to copyright, but are limited, for they last for very short time as their durations are short. **In “Related Rights” creators included are: actors, musicians in their act; producers of phonograms in their sound recordings; and broadcasting organisations in their radio and TV programmes.**

- Economic Rights of Creator lasts for a limited period of 50 years approximately after the Creator’s death, this is as per the copyright law (as relevant in the WIPO Treaty).

Recent Delhi High Court Copyright Judgement (DU Photocopy Case)

- On 09 December 2016, the ruling was **no restriction books photocopied, as long as “justified by the demands of the course”**. Under **Section 52(1)(i) of the Copyright Act, photocopying material, which is copyrighted for using/usage purpose “in the course of instruction” is permitted**. The court concluded that “qualitative and quantitative” tests for fair use are not included in the law.
- The large publishing companies such as Oxford University Press and Cambridge confronted the University of Delhi and its photocopier for violation of copyright. As per the Delhi High Court ruling, the course pack photocopying for the education point is within the restrictions of law.
- **Photocopying, in itself, does not lead to violation of copyright.** According to the court, copyright is to create equilibrium between challenging ideas of private and public interests.
- The software programming can be considered as a “literary work”. According to the Copyright Act, 1957, there is inclusion of software programmes, tables and compilations, including databases as literary work. In order to register the

software products' copyright, along with the application, source code has also to be submitted.

Indian Patent Act, 1970 & 2005

The main **purpose of patent** system is to encourage innovation and eventually results in technological development. The present **Patents Act, 1970** came into force in the year 1972, amending and incorporating the existing **laws relating to Patents and Designs act 1911** in India

Section 3(j) of the **Patents Act 1970** states that “**plants and animals in whole or any part there of other than micro- organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals**” are **not inventions as per the act** and hence **not patentable**.

The Patent (amendment) Act 2005 came into force from 1st January 2005, which brought changes in the previous patent system of India wherein **product patent was extended to all subjects of technology consisting of food, drugs, chemicals and micro organisms**. Moreover, Section 3(d) introduced in to the said amendment act 2005 and introduces pharmaceutical product patents in India for the first time. The Patent (amendment) Act 2005 defines what invention is and makes it clear that any existing knowledge or thing cannot be patented. The provision defines that a ‘novelty’ standard - which, along with ‘non- obviousness’ or ‘inventive step’ and industrial applicability, are the three prerequisites for ‘patentability’. “Discovery” essentially refers to finding out something which already existed in nature but was unknown or unrecognised. Therefore, discoveries are excluded from patent protection under section 3 of the Indian Patent Act 1970.

Highlights of India's Patent Policy-2016 [SEP]

The policy is in compliance with the WTO's agreement on TRIPS and in particular the focus is being laid in the policy on awareness generation on IPRs and its enforcement in an effective manner, in addition to IP commercialisation promotion

with the help of different incentives. [1]
[SEP]

- The Department of Industrial Policy and Promotion (DIPP) has been made the nodal agency for all IPR-related issues and issues linked to **copyrights have also been shifted to DIPP** from that of the Human Resource Development Ministry.
- There is a rationalisation of **trademark offices for reducing the examination and registration time to just 1 month by the year 2017**.
- There is reduction of trademarks evaluation time from 13 months to 8 months, and ultimately bringing it to one month by March 2017.
- The policy **helps in filing of domestic IPR** from IPR generation to commercialisation and further helps in promoting the research and development through tax benefits.
- The policy also facilitates in the **creation of an effective loan guarantee scheme** for the promotion of start-ups. As per the policy, the country will persist in the utilisation of the legislative space and flexibilities offered in international treaties and the TRIPS Agreement. These flexibilities consist of the usage of provisions like Section 3(d) and CLs under the country's sovereign rights to ensure the availability of essential and life-saving drugs at affordable prices.

In the year 2013, the Supreme Court had upheld the decision of **Intellectual Property Appellate Board** regarding the rejection of giving patent protection to the application of Novartis for a **new drug form termed as imatinib** but branded as Glivec.

Novartis had challenged Section 3 (d) of the country's patent act, which guarantees that the companies do not get the patent protection by merely altering the already existing drug without there being any subsequent changes in its healing effects.

At the time of giving decision, Section 3(d) of the Indian Patents Act, 1970 was validated by the Supreme Court.

Moreover, the court noted the product named as beta crystalline had already been identified earlier to the year 1995, with the past patent being held by the Novartis.

The outcome of the decision is that the country's patent law was completely upheld and the granting of patents will be undertaken only for authentic innovation and there will be no acceptance of any litigative patenting. **This means that the patent cannot be granted if any old molecule is kept in a new substance, just creating a minor modification, and presenting it as an entirely new invention.**

The creation of trivial modifications into the original product for the claiming of another patent to extend the period for the validation of patent is termed as the **ever-greening of patents**.

Note: The compulsory licensing has only been issued once for a cancer drug, **Sorafenib tosylate (Nexavar)**. As per the Indian Patents Act, a CL can be raised in the category of a drug if any medicine seems to be not reasonable, and the permission for drug manufacturing is given by the government to the qualified generic drug manufacturer.

Secondary Patents and its Recent Issue for India

About 1,700 rejections for pharmaceutical patents at the Indian Patent Office were applications that sought protection in the form of secondary patents for blockbuster medicines.

Secondary patents

- The owners market is being offered by the patents exclusivity for a restricted time period. In case of medicines, the exclusivness should last as long as the primary patent, which relates to the **active pharmaceutical ingredient (API)** of the medicine and is effective, particularly for 20 years.
- The patent cliff is being described as the ending of patent exclusivity as the prices of the drug subsequently drop sharply by 80 per cent due to generic competition.
- The pharmaceutical companies discover new ways due to the risk of their huge profit reduction, which made them delay their exclusivity through the filing of secondary patents for derivatives and variants of the API, such as a physical variant of the API, a new formulation, a dosage regimen, or a new method of administering the medicine.

- The secondary patents pop up before the expiry of a primary patent, thereby stretching the exclusivity beyond, a practice that is called “evergreening”. This strategy is most lucrative when employed in the context of so-called blockbuster medicines, which reap annual
- Revenues exceeding \$1 billion.
- These provisions also extend to biologics, the New big players in the therapeutics marketplace. Biologics, due to their complex structure, offer more opportunities in secondary patenting for extending patent terms.

Dr Ravi Agrahari