

## UNIT - 1

### → Intellectual property rights (IPR)

It is intangible and cannot be defined by its physical parameters.

Earlier types - patents, copyright, trademarks, trade secrets.

Recent additions - geographical indications, protection of plant varieties, protection of semi conductors & integrated circuits & undisclosed information.

### → Intellectual property (IP)

Creations of human mind like inventions, literary & artistic works & symbols, names, images & designs used in commerce. It enable people to earn recognition or financial benefit from what they invent or create

Two categories - Industrial property & copyright

Four types - patents, copyright, trademarks, trade secrets

### → Patents

It is an exclusive right granted for an invention with industrial use. A patent provides patent owner with the right to decide how or whether the invention can be used by others. The patent owner makes technical information about invention publicly available in published patent document

Invention will be patented if - the invention is new, original useful & has some industrial application.

Rights - exclusive authority over patented information and earn from it.

Validity - Patent protection is territorial right & therefore it is effective only within India. & is valid for 20 yrs after

which it goes in public domain. Separate patents required to be filed for each country where protection is required.

eg: christ T michaels TV control device patented June 15, 1976  
design patents

### → Copy rights

It is a legal term used to describe rights that creators have over their literary, & artistic works, music, & dramatic works.

Works covered by copyrights range from books, music, paintings, sculpture & films to computer programs, & database, ads, maps & technical drawing.

Protection is granted to author for their original, creative or intellectual work.

#### → Works :

Rights : To distribute copies or phone records of work to public by sale or other transfer of ownership, or by rental, lease or lending. To perform work publicly in person or through audio transmission.

Vadility: registration not mandatory but recommended. Valid through lifetime of author & 60 yrs after his/her death. Owner has protection in most countries.

### → Trademarks

It is a sign capable of distinguishing goods or services of one enterprise from those of other enterprises. symbols of a registered organisation.

Trademark date back to ancient times when artisans used to put their signature or mark on their products

This is a brand element which distinguishes your goods and services from those of your competitors & other traders.

Marks - word mark, logo mark or slogan, shapes & unconventional marks like colours, sounds, gestures, animation, holograms. etc are also registrable as trademark.

Rights - exclusive rights to use mark & prevent anyone from using it, without permission. It also gives owner right to license, assign and sell the mark in return of some compensation.

Validity - 10 yrs which can be made perpetual, as long as renewed every 10 yrs. Should be applied separately in every country in which protection is required & has a market in.

## → Protection of intellectual property

- 1) first IP protection - Venetian Ordinance 1985
- 2) Patent protection - Statute of Monopolies in England 1623, US 1760, European countries 1880 - 1889
- 3) Patent act in India (1856) - Amended in 1911 aka Indian Patents & Designs Act.
- 4) Comprehensive bill on patent rights aka The Patents Act 1970
- 5) India in cooperation with TRIPS & WTO refined the acts protecting IPR
  - i) Copyright Act (1957) amended in 2012
  - ii) Patents Act (1970) amended in 2005
  - iii) Trade & Merchandise Marks Act (1958) - Trademarks Act (1999)
  - iv) Designs Act (1911) - amended in 2000
  - v) Geographical Indication of Goods (Registration & Protection) Act 1999.

## → Utility model

Exclusive right given for an invention & only right holder can prevent others from commercially using the protected invention.

Also called petty patents or innovation patents.

No legislation in India, US, UK, Canada, countries like Japan, China, UAE etc have legislation.

Suitable for SMEs (small medium enterprises)

## Utility model vs patent

- 1) in utility model, requirements of non obviousness & industrial application may be lower or absent.
- 2) Duration of utility models & patents is 7-10 yrs & 20 yrs.
- 3) Registration process for utility model is simpler & takes only 6 months
- 4) Utility models are cheaper to obtain & maintain
- 5) utility models cannot be obtained for processes in some countries.
- 6) Utility models are applied for SMEs
- 7) Subject matter for utility model vary from country to country

According to IP of Philippines, patent is grant issued by govt through IP. It is exclusive right granted for product, process or an improvement of product which is new, inventive or useful.

Meanwhile, utility model is a protection option which is designed to protect innovations that are not sufficiently inventive to meet the inventive threshold required for standard patent application.

## → Biodiversity & IPR

Biodiversity - diversity among various life forms within biosphere. It is crucial for functioning of ecosystem.

### Classification

- 1) Ecosystem diversity - bio geographic regions & habitats

- 2) species diversity - variability at family, genus & species.
- 3) genetic diversity - variability within species.

Conservation at local, state, national & international stakeholders.

Developing countries are rich in biodiversity & have 80% of earth terrestrial biodiversity. Have raw material for biotechnology

Developed countries trail behind developing countries in bio diversity but well equipped in research & accesses to bio genetic resources

### Convention on Biological diversity (CBD) 1992

~~Opened for signature at earth~~

Biodiversity - the variability among living organisms from all sources including inter alia, terrestrial, marine and other aquatic ecosystems & ecological complexes of which they are part, this includes diversity within species, between species & of ecosystem.

Principle of state sovereignty - one states environment policies not affecting the environment of some other state.

CBD protects bio diversity as well as recognizes commercial value of germplasm.

International trade agreements may destroy dir biodiversity

Refinement of IPR laws to conform with TRIPS agreement.

India's ratification of CBD - biological diversity act 2002 conservation of biological resources & their access through sustainable & just process.

## → Berne Convention for Protection of Literary and Artistic Works

Three basic principles - works in all contracting states given same protection, unconditional protection, denial of protection in country of origin reflects validity in other countries.

Minimum protection:

- 1) Protection in literary, scientific & artistic domain
- 2) Permitted reservation - right to translate, make adaptations of work, perform in stages / dramas, communicate to public about work, broadcast.
- 3) Moral rights - right to claim authorship of work and object to any modification.
- 4) Duration of protection - 50 yrs after author's death even if it is anonymous work.
- 5) same holds for audiovisual works
- 6) For art & photographic works it is 25 yrs.

## → Universal copyright convention (UCC)

Adopted in Geneva, Switzerland, 1952. Developed by UNESCO as alternative to Berne Convention for those states which disagreed with aspects of Berne Convention.

The US only provided copyright protection for fixed, renewable & term & required that in order for a work to be copyrighted it must contain a copyright notice & be registered at copyright notice.

Beine convention, does not require registration or inclusion of copyright notice for copyright to exist.

States that require formal registration should treat works from foreign states that are signatories of convention as though they had been registered in state provided that they carry notice which includes ~~©~~ symbol & states the name of owner.

It sets a min duration of copyright protection as 25 yrs from date of publication & typically not less than 25 yrs from author's death. photographic & applied arts work has protection of 10 yrs.

It recognises the economic rights of author, authors right to make translation of work.

It specifies particular exception which may be applied to developing countries.

#### → Paris Convention for protection of industrial property

It is applicable for patents, marks, industrial designs and trade names.

Categories of provision of convention:

- 1) National treatment - Peer contracting states can protect their industrial property & non contracting states can protect their property in case they have commercial establishment.
- 2) Right of priority - applicable for patents, marks and industrial designs. an applicant in one of contracting states may apply for protection of IP in any of the states.  
time period - 12 months for patents & utility model  
6 months for industrial design & marks.

### 3) Common rules

#### a) Patent

- i) they are independent in different states
- ii) patent in one state does not oblige in another
- iii) refuse of patent in one state - not in another
- iv) name inventor of each patent
- v) no revocation of patent based on domestic law
- vi) compulsory license when no rectification of patented invention could be made & patent holder could give legitimate reasons for his inaction
- vii) revocation of patent after 2 yrs from date of issue of first compulsory license.

#### b) Marks

- i) filing of marks in each contracting state controlled by domestic law.
- ii) Lapse of registration of mark in one state does not affect its validity in another state
- iii) When mark is registered in country of origin, it must be protected in other states
- iv) Refusal of registration - affects morality, deceives public.
- v) Revocation of compulsory license only after stipulated time & justification of inaction of owner
- vi) Prohibition of use of marks - mere reproduction or imitation of marks
- vii) State emblems, official signs, hallmarks of contracting states - international bureau of WIPO prohibit.
- viii) protect collective marks.

→ Patent cooperation treaty

Seeks patent protection for invention in many countries simultaneously.

Application can be filed by national/resident in any of contracting states

Applicant can mention state where he/she wants to file his/her application.

International search is conducted for application by one of major patent offices

This report is given to applicant either withdraw or wait for 20 months for translation of application into official language

Again 10 months extension for international preliminary examination report

Advantages:

- 1) Applicant is given 18 months more for protection of invention in foreign countries
- 2) appoint local patent agents
- 3) Prepare translations & pay national fees.

→ Trade related aspects of intellectual property right agreement (TRIPS)

Part I general GATT principles, international agreements

Part II scope & use

Part III enforcement

Part IV acquisition & maintenance

## Part V dispute prevention

## Part VI & VII Transitional & institutional arrangements

Time given to developing countries to change their laws  
expiry in 2005 & for least developed countries till 2016.

TRIPS came into effect on Jan 1<sup>st</sup> 1995

Areas of IP covered by TRIPS:

- 1) Copyright
- 2) Trademarks
- 3) Geographical indication
- 4) Industrial designs
- 5) Patents
- 6) Layout designs of IC's
- 7) undisclosed information including trademarks  
trade secrets & test data

Issues covered under TRIPS:

- 1) application of basic principles of IP arrangements
- 2) ways to provide adequate protection to IPR
- 3) enforcement of rules in every country
- 4) settling of disputes
- 5) transitional agreements while introducing new system.

Features of agreement:

- 1) Standards - setting of min standards of protection
- 2) Enforcement - domestic procedures & remedies of IPR enforcement.
- 3) Dispute settlement - WTO's dispute settlement procedures.

→ World intellectual property organisation (WIPO)

It is specialized agency of UN dedicated to developing a balanced IP system.

## UNIT-2

→ Patent: Monopoly grant that enables the inventor to control the output & within the limits set by demand, the price of patented products.

First patent to promote culinary arts in Greece around 500 BC  
1623 - Statute of Monopolies - monopoly privilege to first & true inventor.

Mid 17<sup>th</sup> century to 19<sup>th</sup> century - Europe & North America

Indian patent system - 1856.

Patent & design Act (1911) - provisions for product & process patents - more beneficial to farmers, foreigners.

Amendment of 1911 Act in 1950 - by Justice Dr. Bakhshi Tek Chand - Food (or) medicine (or) surgical devices available to public commensurate with giving compensation to patentee.

Amendment in 1950 - Compulsory license for food, medicine & insecticide (or) fungicide.

1957 - Justice N. Raghavulu Ayyangar - discussion on patents related to chemical inventions & food (or) medicine.

New patent law in 1970 based on his report in 1959.

→ Patent Act (1970)

This act was in force for 24 years till Dec 1994.

Patents for both patentee & public.

Products vital for agriculture/horticulture atomic energy inventions are non-patentable.

Third Amendment - 2005 product patent in all fields of technology.

Exclusive right granted by country to owner of invention to make/use/manufacture/market the invention adhering to law conditions.

can be inherited/assigned/sold/licensed.

State can revoke patents.

Right is territorial & must be filed in each country of interest to the patentee.

Patent is valid for 20 yrs.

#### → Product / process patents

Product patent is for product

Process patent - Patent is for process, anyone can produce the same product using some other kind of process, less protection to the inventor.

No product patent to medical/surgical/treatment/food/chemical

License of Rights - Rights to use invention for three yrs

from date of filing.

#### → Duration of Patent:

Duration: 20 yrs

Invalid after that period.

Renewal fee must be paid after 2 yrs from expiry date.

6 month extension for renewal.

Quote patent number, fee & yr while paying renewal fee

Can pay fees in advance.

## Product patent

- 1) Patent protection is provided to the end result (or) the product.
- 2) Once protection is granted - less ~~per~~ competition.
- 3) Higher level of monopoly is enjoyed by the inventor.
- 4) Product patents were introduced as part of the Patents (Amendment) Act, 2005.

## Process patent

- 1) Process patent protection is provided to only the process & not the resulting end product.
- 2) Protection shall remain the same.
- 3) Inventors do not enjoy monopoly since other persons can still manufacture the same product using diff process.
- 4) Process patents have been recognized in India ever since the Indian Patent Act, 1970 was enforced.

## Elements of Patentability

Patent for invention & not for discovery.

The elements are - Novelty, non-obviousness & utility.

i) Novelty: An invention is not considered novel if -

(i) It is anticipated in any publication before filing or after Jan 1<sup>st</sup> 1992.

(ii) It is anticipated by publication made before date of filing in any country.

(iii) It is claimed in any specification before filing but published after filing.

(iv) It is used by local community in India (or) elsewhere even if there is no written proof.

## Novel

The invention must be original, although it can be improvement in an earlier product.

Patent search <sup>should be conducted</sup> to check for prior art that may already encompass your ideas.

Usually the more Novel & Unique - better chance you will have at getting your invention approved.

You are allowed to resubmit an application for rejected invention after you have made adjustments so that the prototype differs from any existing patents.

## 2) Non-Obviousness

- (i) Technically advanced than existing knowledge / having economic growth.
- (ii) A product (or) process is obvious if it is already known to a person skilled in art.
- (iii) can be single person (or) group of persons.  
in Your new idea cannot be something that anyone could have easily imagined.

Eg: Once trend become big , such as smartphones , you cannot just invent next gen super smartphone that simply faster & more efficient .

(v) The best way to convince a reviewer that your invention is non-obvious is to provide detailed drawings that classify device specific components & functions , clearly illustrating why its different from what is already available.

(vi) Your invention solves an existing problem in society .

3) Utility: An invention in industry - can be made, can be used in any activity.

(i) can be reproduced with same characteristics.

(ii) An invention must be useful.

(iii) Need not be a commercial success.

(iv) Following directions of use, gives desired result mentioned by applicant.

(v) Useful for purpose mentioned by applicant.

(vi) Even if improved invention is available, existing patent is not outdated.

#### → Non-patentable

• Combinations of inventions of known features.

• Living things

• Cinematographic works

• Software products

• Methods of human treatment

• Method of performing an act (like hairstyle)

• Therapeutic procedures

• plants

#### → Non-patentable Subject Matter

1) An invention contrary to natural laws.

2) Causing harm to humans / plants / animals.

3) Discovery of scientific principle / discovery of living/non-living substances in human nature.

4) Discovery of substance that doesn't lead to improve efficiency

5) Combination of compounds with combined properties

- 6) Duplication of known devices.
- 7) Inventions omitted by Patents Act, 2002.
- 8) Agriculture / horticulture method
- 9) Medicinal / surgical / therapeutic procedure for humans & animals.
- 10) Plants / animals / seeds / species other than micro-organisms
- 11) Computer programs / set of hardware components.
- 12) Literary / dramatic / musical / artistic work.
- 13) Performance / Act / method of playing a game
- 14) Presentation of information
- 15) Integrated circuits
- 16) An invention that incorporates traditional knowledge
- 17) An invention related to ~~atomic~~ atomic energy.

#### → Application for patent

Patent can be filed by

- (i) True inventor of invention
- (ii) Assignee of person - can be a person / research organization / educational institute
- (iii) Legal representative of deceased inventor

#### → Form of Application

Patents

→ Types of Patent Applications

- 1) Ordinary Application - does not claim any priority of application / refer any other application in patent office.
- 2) Convention Application - claims priority date based on similar application in one of the convention countries.
- 3) PCT Application - application governed by PCT & valid in 142 countries
- 4) Divisional Application - includes more than one invention
- 5) Patent of Addition - slight modification of the invention , expires with parent application.