

Intellectual Property Rights: Definition and Examples

What is the Definition of Intellectual Property Rights?

The definition of intellectual property rights is any and all rights associated with intangible assets owned by a person or company and protected against use without consent. Intangible assets refer to non-physical property, including right of ownership in intellectual property . Examples of intellectual property rights include:

- ❑ **Patents**
- ❑ **Domain names**
- ❑ **Industrial design**
- ❑ **Confidential information**
- ❑ **Inventions**
- ❑ **Moral rights**
- ❑ **Database rights**
- ❑ **Works of authorship**
- ❑ **Service marks**
- ❑ **Logos**
- ❑ **Trademarks**
- ❑ **Design rights**
- ❑ **Business or trade names**
- ❑ **Commercial secrets**
- ❑ **Computer software**

What Are the Types of Intellectual Property?

There are four main types of intellectual property rights, including patents, trademarks, copyrights, and trade secrets. Owners of intellectual property frequently use more than one of these types of intellectual property law to protect the same intangible assets. For instance, trademark law protects a product's name, whereas copyright law covers its tagline.

1. Patents

The U.S. Patent and Trademark Office grants property rights to original inventions, from processes to machines. Patent law protects inventions from use by others and gives exclusive rights to one or more inventors.

Technology companies commonly use patents, as seen in the **patent for the first computer** to protect their investment in creating new and innovative products. The three types of patents consist of:

☐ **Design patents:** Protection for the aesthetics of a device or invention.

Ornamental design patents include a product's shape (Coca-Cola bottle), emojis, fonts, or any other distinct visual traits.

☐ **Plant patents:** Safeguards for new varieties of plants. An example of a plant patent is pest-free versions of fruit trees. But inventors may also want a design patent if the tree has unique visual properties.

☐ **Utility patents:** Protection for a product that serves a practical purpose and is useful. IP examples include vehicle safety systems, software, and pharmaceuticals. This was the first, and is still the largest, area of patent law.

2. Trademarks

Trademarks protect logos, sounds, words, colors, or symbols used by a company to distinguish its service or product. Trademark examples include the Twitter logo, McDonald's golden arches, and the font used by Dunkin'.

Although patents protect one product, trademarks may cover a group of products. The Lanham Act, also called the Trademark Act of 1946, governs trademarks, infringement, and service marks.

3. Copyrights

Copyright law protects the rights of the original creator of original works of intellectual property. Unlike patents, copyrights must be tangible. For instance, you can't copyright an idea. But you can write down an original speech, poem, or song and get a copyright.

Once someone creates an original work of authorship (OWA), the author automatically owns the copyright. But, registering with the **U.S. Copyright Office** gives owners a head-start in the legal system.

4. Trade Secrets

Trade secrets are a company's intellectual property that isn't public, has economic value, and carries information. They may be a formula, recipe, or process used to gain a competitive advantage.

To qualify as a trade secret, companies must work to protect proprietary information actively. Once the information is public knowledge, then it's no longer protected under trade secrets laws. According to **18 USC § 1839(3)**, assets may be tangible or intangible, and a trade secret can involve information that's:

❑ **Business**

❑ **Financial**

❑ **Technical**

❑ **Economic**

❑ **Scientific**

❑ **Engineering**

Two well-known examples include the recipe for Coca-Cola and Google's search algorithm. Although a patent is public, trade secrets remain unavailable to anyone but the owner.

What Are Some Examples of Violations of Intellectual Property?

The significant violations of intellectual property consist of infringement, counterfeiting, and misappropriation of trade secrets. Violations of intellectual property include:

❑ **Creating a logo or name meant to confuse buyers into thinking they're buying the original brand**

❑ **Recording video or music without authorization or copying copyrighted materials (yes, even on a photocopier, for private use)**

❑ **Copying another person's patent and marketing it as a new patent**

❑ **Manufacturing patented goods without a license to do so**

Since intellectual property can be bought, sold, or leased out, it offers many protections equal to real property ownership. Likewise, similar remedies exist. A dispute may end with property confiscation, an order of monetary damages, or cease and desist orders.

Why is it important to register intellectual property?

While talking about protecting IPRs, it is first necessary to understand the importance of registration. When an individual or an organization develops a new product, which involves a lot of processes, content, resources etc., a lot of time and money is invested. It is natural for the inventor or organization to have the expectation of being able to own exclusive rights over the invention, while excluding others from benefiting from it.

This exclusivity is provided through IP systems and IP laws. Although it is not mandatory to register an IP or trademark, it provides the inventor certain advantages including the prima facie ownership proof that enables the owner to enforce IPR in a court of law, if deemed necessary.

There are several dangers if IPRs are not protected. For instance, not protecting IP can result in getting benefits from the unprotected invention in an unauthorized manner to anyone.

There is no law that can stop one from duplicating and seeking financial benefits from someone else's innovation if IP is not filed. Furthermore, it falls upon the owner to prove the ownership of the IP in a court of law if the IP is unregistered. If a trademark remains unprotected, the court cannot help the inventor, as it is not possible to claim ownership and/ or sue for infringement.

Need to protect IP

It is essential to protect IPRs. Firstly, inventors get exclusive control to use their IP to their benefits – both in terms of usage as well as financial benefits. The inventor can decide the price of the invention, the marketing and distribution channels and countless ways to turn a profit and earn a high return on investment.

Secondly, filing for IP allows the inventor to prohibit others from making financial benefits.

Thirdly, if a competitor violates the IP laws that protect the inventors, the inventor can exercise the right to file a court case against the party attempting to benefit from the invention. If found guilty, the court may award a financial reward to the inventor, to be paid by an individual or entity attempting to gain financial benefits from the invention attributed to the owner of the IP.

As such, IP rights are essential because they provide inventors the incentive to keep innovating and benefitting from their inventions.

Protecting IP is a complicated process that involves IP registration, followed by a long process of verifying the authenticity of the creation.

The process – from registering IP to granting the patent, trademark, copyright or utility design involves a lot of research on the part of the individual or entity granting the IP. The entity granting the IP is required to ensure that the creation is original, authentic and not lifted from another innovation. It involves publishing the new creations in IP journals to fact-check any other individual or entity claiming IP rights against the same or similar creations.

The entire process – from registering to acquiring IP rights – can take anywhere between a few months to many years and includes various rounds of corrections on the part of the inventor.

Benefits of IPR

Intellectual property rights not only protect the ideas or concepts of business but also protect the genuine business assets that are vital to the products and services.

Several advantages to secure intellectual property rights include:

- **Enhances market value** - Intellectual property rights can help you generate business through the licensing, sale and even commercialization of the products and services protected under IPRs. This will ultimately improve the market share and helps in raising profits. Having registered and protected intellectual property rights can also raise the business' value in case of sale, merger or acquisition.
- **Turn ideas and thoughts into profit-making assets** - Ideas have little value on their own but registering ideas under intellectual property rights can help you turn it into commercially successful products and services. Copyrighting or licensing the patents can lead to a steady stream of royalties and additional income.
- **Market your products and services** - Getting intellectual property rights can help your business' image. Intellectual property rights like trademark registration can help you separate your products and services from others.

- Access or raise Capital** - Through sale, licensing, or by using IPRs as collateral for debt financing, an individual can monetize for debt financing. Intellectual property rights can be used as an advantage while applying for government funding like grants, subsidies, and loans.

- Enhances export opportunities** – A business that has registered IPRs will be able to use brands and designs to market its products and services to other markets as well. A business can also tap into the franchising agreements with overseas companies or export patented products.

Jurisprudence of Intellectual Property Rights

This article is about the jurisprudence of intellectual property rights.

Universal Declaration Of Human Rights Defines, Intellectual Property As:

The Right to the Protection of moral and material interests resulting from any Scientific, Literary, or Artistic production of which he is the author balanced by the right, to share in scientific advancement and its benefits.

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation.

Intellectual property rights (IPR) refer to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time. These legal rights confer an exclusive right to the inventor/creator or his assignee to fully utilize his invention/creation for a given period of time

It has also been conclusively established that the intellectual labor associated with innovation should be given due importance so that public good emanates from it. There has been a quantum jump in research and development (R&D) costs with an associated jump in investments required for putting new technology in the marketplace.

The stakes of the developers of technology have become very high, and hence, the need to protect the knowledge from unlawful use has become expedient, at least for a period, that would ensure recovery of the R&D and other associated costs and adequate profits for continuous investments in R&D. IPR is a strong tool, to protect investments, time, money, effort invested by the inventor/creator of an IP since it grants the inventor/creator an exclusive right for a certain period of time for use of his invention/creation. Thus IPR, in this way aids the economic development of a

country by promoting healthy competition and encouraging industrial development and economic growth.

The laws and administrative procedures relating to IPR have their roots in Europe. The trend of granting patents started in the fourteenth century. In comparison to other European countries, in some matters, England was technologically advanced and used to attract artisans from elsewhere, on special terms.

The first known copyrights appeared in Italy. Venice can be considered the cradle of the IP system as most legal thinking in this area was done here; laws and systems were made here for the first time in the world, and other countries followed in due course. The patent act in India is more than 150 years old. The inaugural one is the 1856 Act, which is based on the British patent system and has provided a patent term of 14 years followed by numerous acts and amendments.

In 1856, for the first time the Patent Legislation was introduced in India, and Intellectual Property was given the legal recognition, the act was subsequently repealed in 1857 and then in 1859. In 1911, the Indian Patents and Designs Act, 1911 was brought in replacing all the previous Legislations on patents and designs. With minor amendments in 1920 and 1930, a major amendment in 1945 took place. And after independent Committee constituted to ensure conducive Patent system for the National interest which finally made the Patent Act 1970 and Patent Rules 1972.

Copyright Law in India has evolved in three phases, the First phase was in 1847 the Second phase was in 1914. Number of times the amendments were brought into this Act and finally in 1957. The Copyright Act 1957 was enacted by Independent India by which we are governed till date.

The Trademark Act 1940 was the first statute in India on Trademark Law, the said enactment was amended in 1943 then in 1946. Then this enactment was replaced by the new legislation the Trade and Merchandise Act 1958. Then in 1999 a new Trademark Act came into force. The Trademark Act 1999 is governed by Trademark Rules 2002.

Geographical indications in India are governed by the Geographical indications of goods (registration and protection) Act, 1999.

Originally, only patents, trademarks, and industrial designs were protected as 'Industrial Property', but now the term 'Intellectual Property' has a much wider meaning.

IPR enhances technology advancement in the following ways:

- It provides a mechanism for handling infringement, piracy, and unauthorized use
- It provides a pool of information to the general public since all forms of IP are published except in the case of trade secrets.

IP protection can be sought for a variety of intellectual efforts including:

1. Patents law grants protection for new inventions which can be products, processes or designs and provides a mechanism for protection of the invention. The patent law promotes the sharing of new

developments with others to foster innovation. The patent owner has the right to protect others from producing, using, distributing or importing the protected item. Essentially the patent is a property right that can be licensed, sold, mortgaged or assigned.

2. Industrial designs relate to features of any shape, configuration, surface pattern, the composition of lines, and colors applied to an article whether 2-D, e.g., textile, or 3-D, e.g., toothbrush.

3. Trademarks relate to any mark, name, or logo under which trade is conducted for any product or service and by which the manufacturer or the service provider is identified. Trademarks can be bought, sold, and licensed. Trademark has no existence apart from the goodwill of the product or service it symbolizes.

4. Copyrights relate to the expression of ideas in material form and includes literary, musical, dramatic, artistic, cinematography work, audiotapes, and computer software.

5. Geographical indications are indications, which identify as good as originating in the territory of a country or a region or locality in that territory where a given quality, reputation, or other characteristics of the goods is essentially attributable to its geographical origin.

The intellectual property rights function with the underlying principle of protecting the products of human intellect in the same way physical properties are safeguarded. The theories of intellectual property rights play a definite role in making someone understand the rights offered and the reason behind the same. It is interesting to note that although trade secret law is a branch of intellectual property rights, it differs significantly from other intellectual properties.

With the focus majorly on specific duties, this branch of intellectual property only concerns wrongfulness that is determined by reference to independent legal norms. Thus intellectual property theories play a relevant role in trade secret law. This article will provide a detailed discussion of the different theories of protection of trade secrets that have been formulated by various philosophers with a purpose, and an objective behind them.

The five theories that this article encompasses are:

1. The natural rights theory has been constructed on the basis of John Locke's idea.
2. The utilitarian theory is based on the Benthamite ideal of "the greatest good for the greatest number."
3. The deterrence theory supports morality.
4. The ethic and reward theory promotes the ethical and moral aspect of intellectual property rights.
5. The personhood theory, which was propounded by Kant and Hegel.

What Is a Patent?

A patent is the granting of a property right by a sovereign authority to an inventor. This grant provides the inventor exclusive rights to the patented process, design, or invention for a designated period in exchange for a comprehensive disclosure of the invention.

They are a form of [incorporeal right](#).

Government agencies typically handle and approve applications for patents. In the United States, the U.S. Patent and Trademark Office (USPTO), which is part of the Department of Commerce, handles applications and grants approvals.

KEY TAKEAWAYS

- A patent is the granting of a property right by a sovereign authority to an inventor.
- A patent provides the inventor exclusive rights to the patented process, design, or invention for a certain period in exchange for a complete disclosure of the invention.
- In June of 2018, the U.S. Patent and Trademark Office issued its 10 millionth patent.
- Utility patents are the most common patent issued in the United States, accounting for 90% of all issued patents.
- Utility and plant patents are granted for 20 years, whereas design patents are granted for either 14 or 15 years, depending on when filed.

What is Copyright?

Copyright is a type of intellectual property that protects **original works of authorship** as soon as an author **fixes** the work in a **tangible form of expression**. In copyright law, there are a lot of different types of works, including paintings, photographs, illustrations, musical compositions, sound recordings, computer programs, books, poems, blog posts, movies, architectural works, plays, and so much more!

Copyright is originality and fixation

Original Works

Works are original when they are independently created by a human author and have a minimal degree of creativity. Independent creation simply means that you create it yourself, without copying. The Supreme Court has said that, to be creative, a work must have a “spark” and “modicum” of creativity. There are some things, however, that are not creative, like: titles, names, short phrases, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; and mere listings of ingredients or contents. And always keep in mind that copyright protects expression, and never ideas, procedures, methods, systems, processes, concepts, principles, or discoveries.

Fixed Works

A work is fixed when it is captured (either by or under the authority of an author) in a sufficiently permanent medium such that the work can be perceived, reproduced, or communicated for more than a short time. For example, a work is fixed when you write it down or record it.

“Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

— United States Constitution

Article I, Section 8

Copyright has been a part of U.S. law since the nation’s founding. Congress passed the first federal copyright law in 1790, and has updated it throughout the years to keep up with the times. Our copyright [timeline](#) explains more of copyright’s history.

Who is a copyright owner?

Everyone is a copyright owner. Once you create an original work and fix it, like taking a photograph, writing a poem or blog, or recording a new song, you are the author and the owner.

Companies, organizations, and other people besides the work’s creator can also be copyright owners. Copyright law allows ownership through “works made for hire,” which establishes that works created by an employee within the scope of employment are owned by the employer.

The work made for hire doctrine also applies to certain independent contractor relationships, for certain types of commissioned works.

Copyright ownership can also come from contracts like assignments or from other types of transfers like wills and bequests.

What rights does copyright provide?

S. copyright law provides copyright owners with the following exclusive rights:

- Reproduce the work in copies or [phonorecords](#).
- Prepare derivative works based upon the work.
- Distribute copies or phonorecords of the work to the public by sale or other transfer of ownership or by rental, lease, or lending.
- Perform the work publicly if it is a literary, musical, dramatic, or choreographic work; a [pantomime](#); or a motion picture or other audiovisual work.
- Display the work publicly if it is a literary, musical, dramatic, or choreographic work; a pantomime; or a pictorial, graphic, or sculptural work. This right also applies to the individual images of a motion picture or other audiovisual work.
- Perform the work publicly by means of a digital audio transmission if the work is a sound recording.

Copyright also provides the owner of copyright the right to authorize others to exercise these exclusive rights, subject to certain statutory limitations.



How long does copyright protection last?

The length of copyright protection depends on when a work was created. Under the current law, works created on or after January 1, 1978, have a copyright term of life of the author plus seventy years after the author's death. If the work is a joint work, the term lasts for seventy years after the last surviving author's death. For works made for hire and anonymous or pseudonymous works, copyright protection is 95 years from publication or 120 years from

creation, whichever is shorter. Works created before 1978 have a different timeframe. Learn more about copyright duration in our Duration of Copyrights [Circular](#).

An **industrial design right** is an [intellectual property](#) right that protects the visual design of objects that are purely utilitarian. An [industrial design](#) consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft.

Under the [Hague Agreement Concerning the International Deposit of Industrial Designs](#), a [WIPO](#)-administered treaty, a procedure for an international registration exists. To qualify for registration, the national laws of most member states of WIPO require the design to be novel. ^[1] An applicant can file for a single international deposit with WIPO or with the national office in a country party to the treaty. The design will then be protected in as many member countries of the treaty as desired. Design rights started in the [United Kingdom](#) in 1787 with the Designing and Printing of Linen Act and have expanded from there.

Registering for an industrial design right is related to granting a [patent](#).^[2]

Traditional Knowledge and IPR are two terms that we don't often hear together. While IPR stands for Intellectual Property Rights, Traditional knowledge is something we all possess and tend to take for granted without realising its value. Do you remember those delicious family recipes your grandma claimed she learnt from her grandmother? Do you remember the stories and folk-tales she told you about indigenous tribes and how their life was entirely different from yours? Yes, these are all examples of traditional knowledge – the type of knowledge you've imbibed orally and that you will pass on to the coming generations.

Owned collectively by a community, traditional knowledge can take many forms such as songs, stories, proverbs, folklore, beliefs, rituals, local languages, community laws and so on. It can also take a practical form in fields such as agriculture, horticulture, forestry, fisheries, health and environmental management, among other things. For the longest time, traditional knowledge went unprotected. Despite being surrounded by it, we've underestimated and undermined its value. While it is quite a challenge, traditional knowledge can now be protected under Intellectual Property Rights. This article highlights what traditional knowledge protection is, how this knowledge base can be protected and the role of Intellectual Property Rights in traditional knowledge protection. Read on to find out.

What is traditional knowledge?

Traditional knowledge is the knowledge base, skills and practices developed and sustained by local, indigenous and native communities. It has been preserved and passed on from one generation to another and has been the spiritual and cultural identity of that community.

The simplest examples of traditional knowledge in action are a combination of spices added in a recipe or the time it takes to cook a particular recipe. Indian practices like yoga and Ayurveda are also examples of traditional knowledge. Simply put, traditional knowledge is that knowledge base which has ancient roots and is often shared orally.

Traditional Knowledge Protection

There are three important aspects while understanding traditional knowledge protection :

- The Need to protect traditional knowledgeIt is incredibly essential to preserve traditional knowledge, especially in these ever-changing times. Protecting traditional knowledge can stop unauthorised, commercial misuse of this knowledge base. If it remains unprotected, indigenous people who are responsible for bringing it to the forefront can end up suffering huge losses, on an emotional as well as a financial level. By protecting traditional knowledge, one can protect and preserve ancient practices.**
- How to protect traditional knowledge?Traditional knowledge in IPR is usually protected through two methods – positive protection and defensive mechanism.**
- Positive protectionPositive protection is the act of providing traditional knowledge holders with the rights to take necessary action and seek remedies against the misuse of the knowledge base. It involves the enactment of specific rules and regulations and laws, as well as access to benefit-sharing provisions, royalty payments, etc.**
- Defensive mechanismDefensive mechanism, on the other hand, refers to the steps taken by traditional knowledge owners to prevent the acquisition of their Intellectual Property rights. This knowledge protection method helps traditional knowledge holders protect intellectual property rights that are illegitimately acquired by third parties.**
- The threat to traditional knowledgeIndividuals holding traditional knowledge often end up facing several difficulties. If it remains unprotected, the very survival of the knowledge could be at stake, as it could threaten the culture of communities.**

Traditional means of maintaining and passing on knowledge to future generations are weakened by several social and environmental factors such as encroaching modern lifestyles, migration, etc. What's more, traditional knowledge holders do not receive appreciation and respect for their wisdom. With the rapid advancement of science and technology, traditional knowledge often gets overlooked. While modern concepts have replaced our understanding of traditional knowledge, we must give credit where it is due. It is incredibly essential to preserve and protect traditional knowledge.

Traditional knowledge Protection under IPR

Perhaps the most critical aspect of traditional knowledge in IPR is its protection. While there have been several debates about protection under the Intellectual Property

regime, there are also several challenges at hand. For instance, it is difficult to determine the Intellectual Property Rights under which traditional knowledge may be protected. It is also challenging to ascertain how traditional knowledge can get continuous protection since every IP protection lasts for only a limited period. Traditional knowledge protection primarily exists to tackle the problem of biopiracy – where traditional knowledge has been used for commercial purposes without proper and prior authorisation of the concerned indigenous community. Devising an effective traditional knowledge protection strategy

A traditional knowledge protection strategy must take into account the community as well as the regional, national and international dimensions of IP rights. Moreover, mechanisms implemented to protect traditional knowledge must give unbiased and independent considerations to the original traditional knowledge holders. It is just as critical to address the economic aspects of developing the knowledge base and to ensure that such protection can be accessed, understood and afforded by knowledge holders. The protection afforded should fundamentally be concerned with recognising the rights held by the original knowledge holders and the unauthorised acquisition of rights by third parties.

Conclusion: The only way to ensure that traditional knowledge remains safe is to take the necessary measures to protect it. There is an imminent need to afford adequate traditional knowledge protection to indigenous communities residing in under-developed and developing countries. With globalization and international co-operation and co-ordination becoming every-day trends, it is has become all the more necessary to protect as well as establish traditional knowledge. Thanks to Intellectual Property Rights, there is hope that traditional knowledge will be preserved.

Intellectual Property Rights

Geographical Indications

Geographical Indications (or GI) are granted to identify products that bear a close association with the region or a specific geographical area, where they are found/originated/manufactured.

The protection is granted to the undertakings and establishments located in that particular area and may use the 'geographical indication' on the exclusive goods produced in such area. This allows the owners of GI to take prompt action against any potential or real violation of a registered Geographical Indication.

We have expertise in taking action against parties violating the registered Geographical Indications. We also provide legal advice against civil and criminal proceedings.

Our Attorneys handle Geographical Indication filings for agricultural products, industrial products, hand-crafted goods, food and other items of consumption.

India: Intellectual Property Rights - Geographical Indications

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Geographical Indications FAQ's

[What is a Geographical Indication \(GI\)?](#)

GI is an indication, originating from a definite geographical territory. It is used to identify agricultural, natural or manufactured goods produced, processed or prepared in that particular territory due to which the product has special quality, reputation and/or other characteristics.

[Is registration of a GI compulsory and how does it help the Applicant?](#)

Registration of a GI is not compulsory. Registration of a GI has the following benefits:

- **Legal protection:** This enables to IP holder to secure protection against infringement of the registered GI;
- **Exclusive rights:** Prevents unauthorised use of a registered GI by others and assures safety of individuality;
- **Demand:** Boosts exports of the registered GI products since they receive their individual identification on every legal platform and also invite media coverage;
- **Economic Growth:** Promotes economic prosperity of producers of goods produced in a geographical territory.

Overview: the TRIPS Agreement

The TRIPS Agreement, which came into effect on 1 January 1995, is to date the most comprehensive multilateral agreement on intellectual property.

- The areas of intellectual property that it covers are: [copyright](#) and [related rights](#) (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); [trademarks](#) including service marks; [geographical indications](#) including appellations of origin; [industrial designs](#); [patents](#) including the protection of new varieties of plants; the [layout-designs of integrated circuits](#); and [undisclosed information](#) including trade secrets and test data.
- The three main features of the Agreement are:
 - Standards. In respect of each of the main areas of intellectual property covered by the TRIPS Agreement, the Agreement sets out the minimum standards of protection to be provided by each Member. Each of the main elements of protection is defined, namely the subject-matter to be protected, the rights to be conferred and permissible exceptions to those rights and the

Agreement will apply equally to all Member countries, but developing countries will have a longer period to phase them in. Special transition arrangements operate in the situation where a developing country does not presently provide product patent protection in the area of pharmaceuticals.

The TRIPS Agreement is a minimum standards agreement, which allows Members to provide more extensive protection of intellectual property if they so wish. Members are left free to determine the appropriate method of implementing the provisions of the Agreement within their own legal system and practice.

Madrid Agreement for International Registration of Trademarks

What is the Madrid System?

The Madrid System popularly and officially known as Madrid System for the international registration of marks is a system which is centrally administered by the World Intellectual Property Organization (WIPO).[1] This system can be availed of by an individual or a company to obtain many or to say bundle of trademark registrations in separate jurisdictions, which create a basis for “international registration” of marks. The Madrid System is a very simple and a great way to register one’s trademark worldwide. A person by single Madrid registration can protect his/her trademark up to 122 countries around the world.

Treaties regulating the Madrid System

❑ **The Madrid Agreement:** The treaty of Madrid Agreement was concluded in the year 1891 and was revised at Brussels in the year 1990. This treaty has been revised many times. After Brussels it was revised in Washington in the year 1991, subsequently in Hague in 1925, then in London in 1934, Nice in 1954, Stockholm in 1967 and finally it was amended in 1979.

❑ **Protocol:** Although it is named as protocol, it is not a protocol and is actually the treaty of the Madrid system. The protocol which was released in furtherance to the Madrid Agreement concluded in the year 1989, was made to make the Madrid System flexible and more adaptable to the domestic legislation of other countries or intergovernmental organizations which were not able to adapt or were not in favour of accepting the Madrid Agreement.

The combination of the Madrid Agreement and Madrid Protocol is known as the Madrid System

Purpose of establishing the Madrid Agreement

The sole purpose of establishing the Madrid Agreement was to provide a mechanism that would allow an individual to file a single international trademark registration. This process was only simplified worldwide registration but also made it cost-effective and an inexpensive technique of registration of an international trademark. The Madrid Agreement not only simplified the process of

registration of international trademark but also eliminated the need for filing, prosecuting or maintaining separate registration applications in multiple countries. The Madrid Agreement provides the same legal status to the mark across all the member countries as that provided in the registered country from where it is designated. If the Trademark office, which is situated in the designated country does not send a refusal to the World Intellectual Property Organization within 12 months, then the mark will have the protection of the registered national mark in that country. The Madrid Agreement also provides a simple renewal system of a mark by a single filing with the WIPO.

Features of Madrid Agreement

- ❑ The mark first should be registered at the national level in the national or home country which is the country of origin. The first registration is known as the 'Basic registration'
- ❑ The International filing should be only through the office of origin to the International bureau
- ❑ The country of origin should be a member state
- ❑ Central scrutiny feature of the Agreement.
- ❑ Complementary fees must be paid.

As every coin has two sides and the Madrid Agreement, despite having so many advantages, has some defects in its structure. These defects are such as:

- ❑ One should register the mark in the home country before the protection is awarded to the mark internationally
- ❑ There is a risk of "Central attack" [2] to the mark
- ❑ There is a very short examination period
- ❑ There is also a limitation on assignability

Due to these defects, many countries like Australia, Denmark, Japan, United Kingdom, Sweden, etc never joined the Madrid Agreement. There are in total 57 countries which are members of the Madrid Agreement presently.

Hague Agreement

On December 18, 2012, the [Patent Law Treaties Implementation Act of 2012](#) (Act) was signed into law. Among other things, the Act set forth provisions implementing the [1999 Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs](#) (Hague Agreement), thus making the United States a party to the agreement that covers 93 countries. These provisions are in Title I of the Act, which took effect on May 13, 2015.

The Hague Agreement is an international registration system which offers the possibility of obtaining protection for up to 100 industrial designs in designated member countries and intergovernmental organizations, referred to as contracting parties. As of 2022, there are [76 contracting parties](#) under the Hague Agreement.

An applicant can file a single international application for design protection, in a single language, either directly with the International Bureau of the [World Intellectual Property Organization](#) (WIPO) or indirectly, through the office of the appropriate contracting party.

Beginning in May 2015, U.S. applicants have been able to file international design applications through the USPTO as an office of indirect filing. Applicants filing international design applications can designate the United States for design protection. In addition, U.S. design patents resulting from applications filed on or after May 13, 2015, have a 15-year term from issuance.

August 24, 2021/in Hague Convention, International/by Ancillary Legal

Attorneys And Paralegals Frequently Ask “Is India A Member Of The Hague Convention?” The Short Answer Is Yes. However, The Question Is A Bit More Complicated Than A Simple Yes.

The “Hague Convention” is a term that is used interchangeably for several different treaties that many countries are parties to. Overall, there are 42 “Hague Conventions”. The most commonly referred to treaty is the Service Treaty. The full name is The Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. So when asking about the Service Convention, yes, India is a member. This means that process service in India must conform to the protocols and requirements of the Convention. This is mandated by international law and the Supreme Court of the United States. However, India has gone one step further and declares that the only valid service is service through Article 5 of the Convention. Thus, India’s central authority is the only recognized agency for service. Even further, India has special requirements for their pleadings and transmittal of the service documents. Failure to comply with India’s requirements means you will lose time and money. When you have a **service request for India**, make sure to hire someone that knows India’s rules.

Ancillary has decades of experience **serving process in India**. We have relationships with their agents and know exactly what they need for service. Ancillary guarantees its translations and submissions to India for accuracy to India’s specific requirements. We are happy to help you serve documents in India, with competitive prices, attorney-reviewed

documents, and decades of knowledge to make sure your request is not returned for improper submission.

Summary of the WIPO Copyright Treaty (WCT) (1996)

The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention that deals with the protection of works and the rights of their authors in the digital environment. Any Contracting Party (even if it is not bound by the Berne Convention) must comply with the substantive provisions of the 1971 (Paris) Act of the Berne Convention for the Protection of Literary and Artistic Works (1886). Furthermore, the WCT mentions two **subject matters** to be protected by copyright: **(i)** computer programs, whatever the mode or form of their expression; and **(ii)** compilations of data or other material ("databases"), in any form, which, by reason of the selection or arrangement of their contents, constitute intellectual creations. (Where a database does not constitute such a creation, it is outside the scope of this Treaty.)

As to the **rights granted to authors**, apart from the rights recognized by the Berne Convention, the Treaty also grants: **(i)** the right of distribution; **(ii)** the right of rental; and **(iii)** a broader right of communication to the public.

- **The right of distribution** is the right to authorize the making available to the public of the original and copies of a work through sale or other transfer of ownership.
- **The right of rental** is the right to authorize commercial rental to the public of the original and copies of three kinds of works: **(i)** computer programs (except where the computer program itself is not the essential object of the rental); **(ii)** cinematographic works (but only in cases where commercial rental has led to widespread copying of such works, materially impairing the exclusive right of reproduction); and **(iii)** works embodied in phonograms as determined in the national law of Contracting Parties (except for countries which, since April 15, 1994, have had a system in force for equitable remuneration of such rental).
- **The right of communication to the public** is the right to authorize **any** communication to the public, by wire or wireless means, including "the making available to the public of works in a way that the members of the public may access the work from a place and at a time individually chosen by them". The quoted

expression covers, in particular, on-demand, interactive communication through the Internet.

As to **limitations and exceptions**, Article 10 of the WCT incorporates the so-called "three-step" test to determine limitations and exceptions, as provided for in Article 9(2) of the Berne Convention, extending its application to all rights. The Agreed Statement accompanying the WCT provides that such limitations and exceptions, as established in national law in compliance with the Berne Convention, may be extended to the digital environment. Contracting States may devise new exceptions and limitations appropriate to the digital environment. The extension of existing or the creation of new limitations and exceptions is allowed if the conditions of the "three-step" test are met.

As to **duration**, the term of protection must be at least 50 years for any kind of work. The enjoyment and exercise of the rights provided for in the Treaty cannot be subject to any formality.

The Treaty obliges Contracting Parties to provide legal remedies against the circumvention of technological measures (e.g., encryption) used by authors in connection with the exercise of their rights, and against the removal or altering of information, such as certain data that identify works or their authors, necessary for the management (e.g., licensing, collecting and distribution of royalties) of their rights ("rights management information").

The Treaty obliges each Contracting Party to adopt, in accordance with its legal system, the measures necessary to ensure the application of the Treaty. In particular, each Contracting Party must ensure that enforcement procedures are available under its law so as to permit effective action against any act of infringement of rights covered by the Treaty. Such action must include expeditious remedies to prevent infringement as well as remedies that constitute a deterrent to further infringement.

The Treaty establishes an Assembly of the Contracting Parties whose main task is to address matters concerning the maintenance and development of the Treaty. It entrusts to the Secretariat of WIPO the administrative tasks concerning the Treaty.

The Treaty was concluded in 1996 and entered into force in 2002.

The Treaty is open to States members of WIPO and to the European Community. The Assembly constituted by the Treaty may decide to admit other intergovernmental organizations to become party to the Treaty. Instruments of ratification or accession must be deposited with the Director General of WIPO.

WIPO leads the development of a balanced and effective global intellectual property ecosystem to promote innovation and creativity for a better and more sustainable future.

Media Contact

Budapest Treaty

8 languages

- The **Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure**, or **Budapest Treaty**, is an international [treaty](#) signed in [Budapest, Hungary](#), on April 28, 1977. It entered into force on August 19, 1980,^[5] and was later amended on September 26, 1980. The treaty is administered by the [World Intellectual Property Organization](#) (WIPO).

Membership^[edit]

As of April 2022, 86 countries are party to the Budapest Treaty.^[2] The accession to the Treaty is open to States party to the Paris Convention for the Protection of Industrial Property of 1883. The African Regional Industrial Property Organization (ARIPO), the Eurasian Patent Organization (EAPO) and the European Patent Organisation (EPO) have filed a declaration of acceptance under Article 9(1)(a)^[6] of the Treaty.

Content^[edit]

The treaty allows "deposits of microorganisms at an international depositary authority to be recognized for the purposes of patent procedure".^[7] Usually, in order to meet the legal requirement of sufficiency of disclosure, patent applications and patents must disclose in their description the subject-matter of the invention in a manner sufficiently clear and complete to be carried out by the person skilled in the art (see also: reduction to practice). When an invention involves a microorganism, completely describing said invention in the description to enable third parties to carry it out is usually impossible. This is why, in the particular case of inventions involving microorganisms, a deposit of biological material must be made in a recognised institution. The Budapest Treaty ensures that an applicant, i.e. a person who applies for a patent, needs not to deposit the biological material in all countries where he/she wants to obtain a patent. The applicant needs only to deposit the biological material at one recognised institution, and this deposit will be recognised in all countries party to the Budapest Treaty.

International depositary authority^[edit]

The deposits are made at an international depositary authority (IDA) in accordance with the rules of the Treaty on or before the filing date of the complete patent application. Article 7 of the Budapest treaty outlines the requirements for a facility to become an International Depositary Authority. As of July 23, 2018, there were 47 IDAs in approximately 25 countries worldwide.^[7]

Depositable subject matter[edit]

IDA's have accepted deposits for biological materials which do not fall within a literal interpretation of "microorganism". The Treaty does not define what is meant by "microorganism."

The range of materials able to be deposited under the Budapest Treaty includes:

- cells, for example, bacteria, fungi, eukaryotic cell lines, plant spores;
- genetic vectors (such as plasmids or bacteriophage vectors or viruses) containing a gene or DNA fragments;
- organisms used for expression of a gene (making the protein from the DNA).

There are many types of expression systems: bacterial; yeast; viral; plant or animal cell cultures;

- yeast, algae, protozoa, eukaryotic cells, cell lines, hybridomas, viruses, plant tissue cells, spores, and hosts containing materials such as vectors, cell organelles, plasmids, DNA, RNA, genes and chromosomes;
- purified nucleic acids; or
- deposits of materials not readily classifiable as microorganisms, such as "naked" DNA, RNA, or plasmids

Indian Patent Law is defined by various provisions of the Patents Act, 1970. Under this law, patent rights are granted for inventions covering a new and inventive process, product or an article of manufacture that are able to satisfy the patent eligibility requirements of having novelty, inventive steps, and are capable of industrial application.

This article will discuss in detail about the Indian Patent Acts in context with the [IAS Exam](#).

Patents Act in India – Overview

What is a patent?

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

- The history of Patent law in India starts from 1911 when the Indian Patents and Designs Act, 1911 was enacted.
- The Patents Act, 1970 is the legislation that till date governs patents in India. It first came into force in 1972.

- The Office of the Controller General of Patents, Designs and Trade Marks or CGPDTM is the body responsible for the Indian Patent Act.
- The Patent Office has its headquarters in Calcutta and has branches in New Delhi, Chennai and Mumbai. The office of the CGPDTM is based in Mumbai. Nagpur hosts the office of the Patent Information System and also the National Institute for Intellectual Property Management.
- The Controller General supervises the Act's administration and also offers advice to the government on related matters.
- The Patents Act has been repeatedly amended in 1999, 2002, 2005, 2006 respectively. These amendments were required to make the Patents Act TRIPS compliant. TRIPS stands for Trade-Related Aspects of Intellectual Property Rights.
- The major amendment in the Patent Act was in 2005, when product patents were extended to all fields of technology like food, drugs, chemicals and microorganisms. The Rules under Patent Act were also amended in 2012, 2013, 2014.

Get a list of all the [important acts that transformed India](#) in the link.

Patent Law Amendment Act 2005

Salient features of the Patents (Amendment) Act 2005 related to product patents:

- 1.Extension of product patent protection to products in sectors of drugs, foods and chemical.
- 2.Term for protection of product patent shall be for 20 years.
- 3.Introduction of a provision for enabling grant of compulsory license for export of medicines to countries which have insufficient or no manufacturing capacity; provided such importing country has either granted a compulsory license for import or by notification or otherwise allowed importation of the patented pharmaceutical products from India (in accordance with the Doha Declaration on TRIPS and Public Health)
- 4.Section 3 (d) regarding patentability.

Effects of Patent Amendment Act 2005

- 1.Due to the new patent regime, increased prices of products was considered to be a major hindrance during the time. However, the government has taken proactive measures to ensure low prices for essential drugs, and has used compulsory licensing as a tool to keep exorbitant prices under check.
- 2.The amendment intended to make Indian drug and pharmaceutical industries competitive at par with multinational companies.
- 3.Despite initial reservations, Indian pharmaceutical companies manufacturing generic drugs have flourished in the last decade.
- 4.Also, MNCs have opened Research and Development Centres in India.

Aspirants can go through the relevant links given below for the preparation of their UPSC exams even better-

Intellectual Property Rights	National IPR Policy
WIPO – World Intellectual Property Organisation	World Intellectual Property Day

Pharmaceutical & Biotech Patents

Pharmaceutical and Biotech patents are registered in India after undergoing a stringent examination process.

In Section 3, which specifies inventions that are not patentable, under clause (d) where new use of the existing substance, process, the machine results in a new product or at best one new outcome, can be patented.

Also, the provisions of the patent law allow patenting of products in chemicals, biotechnology, food processing, drugs and pharmaceuticals, not just the process.

Rights granted by a Patent

- 1.If the patent is for a process, then the patentee has the right to prevent others from using the process, using the product directly obtained by the process, offering for sale, selling or importing the product in India directly obtained by the process.
- 2.If the grant of the patent is for a product, then the patentee has a right to prevent others from making, using, offering for sale, selling or importing the patented product in India.

Term of Patent

The term of every patent in India is 20 years from the date of filing the patent application, irrespective of whether it is filed with provisional or complete specification.

However, in case of applications filed under the Patent Cooperative Treaty (PCT), the term of 20 years begins from the international filing date.

India: Patent (Amendment) Rules 2017

Department of Industrial Policy and Promotion (DIPP) has amended Patent Rules 2003 with effect from 1st December 2017 called as the Patent

(Amendment) Rules, 2017. The definition of “startup” under rule 2(fb) has been substituted with a new definition. A more liberal definition of startup has been incorporated that can allow domestic as well as foreign entities to claim benefits such as fast-track mechanism and lower fee for filing patents.

According to the Patent (Amendment) Rules, 2017:

“Startup” means

(a) an entity in India recognized as a startup by the competent authority under Startup India Initiative.

(b) In case of a foreign entity, an entity fulfilling the criteria for turnover and period of incorporation/ registration as per Startup India Initiative and submitting declaration to that effect.

Explanation: In calculating the turnover, reference rates of foreign currency of Reserve Bank of India shall prevail.[\[1\]](#)

According to the [Patents \(Amendment\) Rules, 2016](#) startups were defined as entities which are working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or [intellectual property](#) where more than five years have not been lapsed from the date of incorporation/registration with a maximum turnover of INR 25 crore per year.[\[2\]](#) However, according to the Patent (Amendment) Rules, 2017, a startup can be any Indian entity recognized as a startup by the competent authority under the Startup India Initiative or a foreign entity that fulfils criteria for turnover and period of incorporation/registration as per Startup India Initiative.

Under Startup India Initiative an entity shall be considered as a Startup, if it fulfils following criteria:

- 1.incorporated as a private limited company or registered as a partnership firm or a limited liability partnership in India;
- 2.incorporated or registered in India not prior to seven years, however for Biotechnology Startups not prior to ten years;
- 3.turnover for any of the financial years since incorporation/ registration has not exceeded INR 25 crores;
- 4.has not been formed by splitting up or reconstruction of a business that was already in existence; and
- 5.working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.[\[3\]](#)

In view of the foregoing, it can be concluded that the period of incorporation/registration that was 5 years under 2016 rules has been extended to 7 years (10 years in case of biotechnology startups) by the 2017 rules. Also, foreign companies can now claim benefits if they fulfill above mentioned criteria for turnover and period of registration as per Startup India Initiative. Further, to claim benefits for filing patents, Indian entity should be recognized as a startup by a competent authority under Startup India Initiative, whereas foreign entity may provide equivalent documents as an evidence for fulfilling criteria for turnover and period of incorporation/registration as per Startup India Initiative along with a declaration to that effect.