

What is meant by IPRs?



Intellectual Property (IP) is any creations of human mind. Like tangible property, their creation has a value and, as with all property, it needs to be protected.

Intellectual Property Rights (IPR) gives them this protection, as well as helping them exploit and control their IP.

“The exclusive right granted by State, to prevent others from using, manufacturing, distributing - inventions, processes, applications, new and original designs, trademarks, new plant varieties, data bases and artistic and literary works”. Such a person is known as ‘rights owner’ or ‘rights holder’.

What is meant by IPRs?



Human Beings are distinguished from animals by the intellectual capability endowed on them by the Almighty. The Human Beings have thus elevated themselves to the present ‘Civilized State’ solely on account of exercise of their intellectual capabilities.

The property which comes into existence by application of human intellect is termed as Intellectual Property.

It is product of

- 1) Intellectual Capabilities and
- 2) Labour

What is meant by IPRs?



Intellectual Property relates to information which can be incorporated in tangible objects and reproduced in different locations. For Example, Patents, Designs, Trade Marks and Copyright. The rights accrued on the owner of such property (Intellectual Property) are termed as Intellectual Property Rights (IPR).

What is meant by IPRs?



Intellectual Property (IP) refers to the creations of the human mind, like inventions, literary and artistic works, and symbols, names, images and designs used in commerce.

It can be divided into two categories:-

1. Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and
2. Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works, such as, drawings, paintings, photographs and sculptures, and architectural designs.

What is meant by IPRs?



Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

Intellectual property rights protect the interests of creators by giving them property rights over their creations

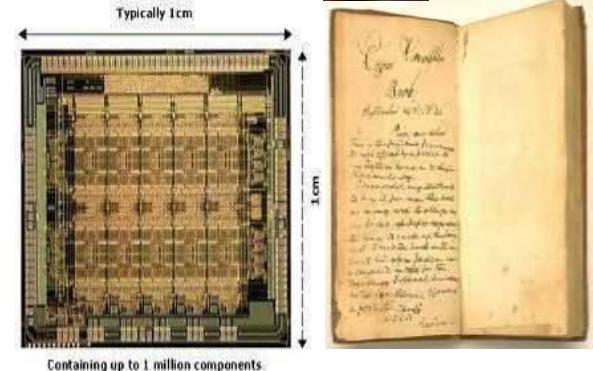
Types of IPRs

Intellectual Property



Industrial Property

Industrial Designs Patents Trademarks Trade Secrets Service marks



What is meant by IPRs?



The most noticeable distinction between Intellectual Property and other forms of properties is that:-

Intellectual Property is intangible, that is, it cannot be defined or identified by its own physical parameters. It must be expressed in some discernible way to be protectable. Generally, it encompasses four separate and distinct types of intangible properties, namely

- a) Patent
- b) Trademark
- c) Copyright and
- d) Trade Secret, which collectively are referred to as “Intellectual Property.”

What is meant by IPRs?



Patents: Necessity is mother of invention and inventions are need of hour. The person who invents something having industrial application is granted Patent on the invention. Intellectual Property right related to patents provides bundle of rights related to the invention including the right to use, assign etc. Patents are conferred in order to grant protection to certain new products, processes, apparatus, etc. provided the invention involved in it is non-obvious in nature in light of what already exists or has already been done before, it is not in public domain, and has not been disclosed anywhere in the world at the time of the application for grant of patent.

What is meant by IPRs?



Patents: The invention involved must have a utility i.e. a practical purpose. Patents are territory specific and thus are registrable nationally. Registration of patent provides its owner the right to prevent anyone else(other than the licensed user) from making, using, selling, or importing the invention for 20 years from the date of grant of patent. Patents are enforced by court proceedings.

What is meant by IPRs?



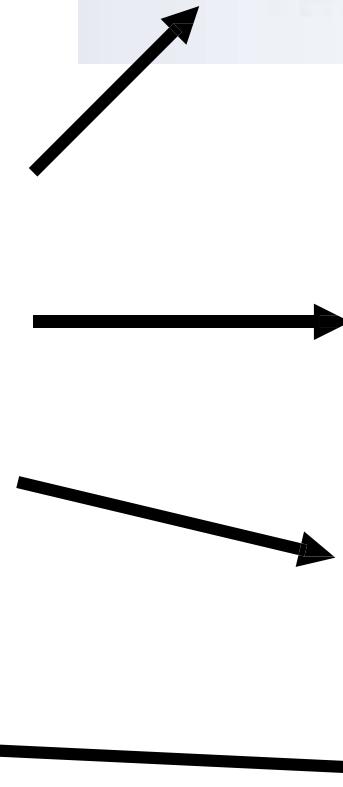
Trade Marks

A symbol in the form of a logo, words, shapes, jingles etc. which is employed to provide the product(s) or service(s) with a recognizable identity to distinguish them from the competing products is called as a Trade Mark. Trade Marks help in protecting the distinctive identification which make up the marketing identity of a brand. They can be registered by its founder/user nationally as well as internationally, thus enabling him to use such mark on his products along with the symbol ® which reflects the registration status of the symbol.

Trade Marks



Name
Logotype
Symbol
Slogan
Shape
Color



Trademarks & Service Marks



What is meant by IPRs?



Copyright is used to protect works like original creative works, published articles, sound recordings, films, and broadcasts. The right exists independent of the medium on which the work is recorded, and therefore buying a copy thereof does not confer a right to copy the work. Limited copying in the form of photocopying, scanning, and downloading without permission of the copyright owner is however permissible but only for research activities.

What is meant by IPRs?



Trade-secrets which is a fairly new branch of Intellectual Property Rights law is intended to protect commercially valuable information for instance, soft-drink formulas, confidential marketing strategies, etc. that the companies would like to conceal and protect from their competitors.

What is meant by IPRs?



PATENTS

What is meant by IPRs?



- Patent is an exclusive right given by a country to the owner of an invention to make, use, manufacturing and market the invention. provided the invention satisfied.
- Exclusive right implies that no one else can make, use, manufacture or market the invention without the consent of the patent holder.

What is meant by IPRs?



- Patents are granted by a government for a novel invention for a limited period of time. The patent gives the inventor exclusive rights to the invention and prevents others from making, using or selling the invention without the permission of the inventor.
- The law relating to patents in India is governed by Indian Patents Act, 1970 as amended by Patents (Amendment) Act, 1999 and Patents (Amendment) Act, 2002, which came into force with effect from May 2, 2003.

What is meant by IPRs?



- Designed by Thomas Jefferson in 1790 to provide a brief legal monopoly to give the inventor an opportunity to get the invention into the market and recoup development costs before competitors entered the market.
- Patent is a monopoly right granted by law for the exclusive use of an intellectual property to one or more individuals. The instrument by which such grant is made is known as ‘Patent’. The patent to whom a patent is granted is called the ‘Patentee’.

What is meant by IPRs?



Section 2(m) of the Indian Patents Act, 1970 defines Patent as – “Patent” means ‘*a new product or process involving an inventive step and capable of industrial application*’. Act lays down:

- Grant of revocation of patents,
- Items not patentable,
- Product patent,
- Patent period,
- Rights and obligations of patentee,
- Working of the patent,
- Compulsory licensing and
- Exceptions

Patents contd..

- In *Bishwanath Prasad Radheshyam Vs. Hindusthan Metal Industries*, [(1979) 2 SCC 511], the Supreme Court held that “the object of patent law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new inventions of commercial utility. The price of the grant of monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of the monopoly, passes into the public domain”.

TATA'S SEEK PATENT SECURITY FOR NANO AGAINST COPYCATS

MUMBAI: Tata Motors has applied for patent protection for over 37 inventions and innovations linked to its high-profile affordable car, Nano, in an aggressive move to protect the brand against imitation in the ultra-competitive car industry. It is also close to filing intellectual property rights (IPRs) claims for Nano in overseas markets, company officials said.

The company has used a number of new concepts and ideas to develop this vehicle and patents will help in protecting some of its innovative ideas, according to officials close to the development.



What is meant by IPRs?



OBJECTIVES

- To provide protection of creativity of creators.
- To promotes the creativity of new creators.
- To accelerate the technological and industrial development of the countries.
- To provide the exclusive right to invention and affords protection against unauthorized use of invention by third parties.

CHARACTERISTICS OF PATENT

1. Invention must be “NEW”-Invention must never have been made public in anyway, anywhere before the date on which the application for a patent is filled.

There will be no novelty, if there has been prior publication and prior use of same or an identical invention. In other words, the invention must involve any innovation or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application. The subject matter must not have fallen in the public domain.



CHARACTERISTICS OF PATENT

2. An invention must involve an “Invention Steps”- The invention must be non-obvious to person skilled in that particular art, ie, it must not follow plainly or logically from what is already known.

3. Invention must be having “Industrial Application”- For the patentable , the invention has to be capable of industrial application.

- It can be used in an industry.
- It may include any useful , practical activity as distinct from purely intellectual or aesthetic activity.



NOT PATENTABLE MATTERS

- An invention, whose use could be contrary to the public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment. For example, a new type of gambling machine.
- Inventions relating to atomic energy because the Central Government has the sole responsibility for the development of atomic energy.



- Discovery of any living thing or non-living substances or objects occurring in nature.
- A substance obtained by a mere admixture of the components, or a process of producing such mixture.
- Mere arrangement or rearrangement or duplication of known devices.
- An invention which in effect is traditional knowledge.
- A mathematical or business method or a computer programme.



- A method of agriculture or horticulture.
- Any process for the medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings and animals.
- Plants and animals in whole or part thereof other than micro-organisms.
- Seeds and biological processes for production of plants and animals.
- A literary dramatic, musical or artistic work including cinematographic work and television productions.



Who can Apply for Patent?

An application for a patent for an invention may be made by a person-

- ✓ Person claiming to be the true and first inventor of the invention.
- ✓ Any person being the assignee of the true and firstinventor of the invention
- ✓ By the legal representative of any deceased person who immediately before death was entitled to make such an application.



Rights of Patentee

Section 48 of the Act, talks about the rights granted to a patentee.

- . A patentee has the exclusive right to make use, exercise, sell or distribute the patented article or substance in India, or to use or exercise the method or process if the patent is for a person. This right can be exercised either by the patentee himself or by his agent or licensees. The patentee's rights are exercisable only during the term of the patent.



Rights of Patentee

Section 48 of the Act, talks about the rights granted to a patentee.

- A patentee has the discretion to transfer rights or grant licenses or enter into some other arrangement for a consideration. A license or an assignment must be in writing and registered with the Controller of Patents, for it to be legitimate and valid. The document assigning a patent is not admitted as evidence of title of any person to a patent unless registered and this is applicable to assignee not to the assignor.



Rights of Patentee

Section 48 of the Act, talks about the rights granted to a patentee.

- A patentee has the right to surrender his patent, but before accepting the offer of surrender, a notice of surrender is given to persons whose name is entered in the register as having an interest in the patent and their objections, if any, considered. The application for surrender is also published in the Official Gazette to enable interested persons to oppose.
- A patentee has a right to institute proceedings for infringement of the patent in a District Court having jurisdiction to try the suit.



WHERE TO APPLY

For applicants resident in India, appropriate office is determined according to any of the following:

- place of residence/business/origin of invention.
- For applicants not resident in India or with no place of business in India, appropriate office would be according to the address for service given in the application form.

PATENT OFFICE

Head Office – Kolkata

Branch offices at

Mumbai

Delhi

Chennai

The Patent Office comes under the
Ministry of Commerce & Industry.

Each of the branch offices have their own fixed territory and accept application forms from areas lying within its geographical limits.

FEES:

- 1)The fees payable under section 142 in respect of the grant of patents and applications therefore, and in respect of other matters for which fees are required to be payable under the act shall be as specified in the first schedule.
- 2)The amount of the fees varies from 1000-4000.
- 3)The fees, payable under the act may either be paid in cash or may be sent by bank draft or cheque payable to the controller of patents.

STAGES FROM FILING TO GRANT OF A PATENT

OBTAINING A PATENT

File an application for patent

- With one of the patent offices based on territorial jurisdiction of the place of office or residence of the applicant /agent
- Pay the required fee

Information concerning application form and details of fee available at www.ipindia.nic.in

Guidelines for applicants also available on this website

FORMALITY CHECK

An Examiner checks the formal requirements before accepting the application and the fee – this is done immediately

Issue of application number and the cash receipt – this is done the same day

In case of receipt of application by post, cash receipt, application number is sent by post within 2-3 days

PUBLICATION

Application is kept secret for a period of 18 months from the date of filing.

In 19th month, the application is published in the official journal – this journal is made available on the website weekly.

Applicant has an option to get his application published before 18 months also. In that case, application is published within one month of the request.

REQUEST FOR EXAMINATION

Application is examined on request

Request for examination can be made either by the applicant or by a third party.

A period of 48 months, from the date of filing, is available for making request for examination.

EXAMINATION

Application is sent to an Examiner within 1 month from the date of request for examination

Examiner undertakes examination w.r.t.

- whether the claimed **invention is not prohibited** for grant of patent
- whether the invention **meets the criteria** of patentability

ISSUE OFFER

A period of 1 to 3 months is available to Examiner to submit the report to the Controller.

1 month's time available to Controller to assess the Examiner's report.

First Examination Report (FER) containing list of the objections is issued within 6 months from the date of filing of request.

RESPONSE FROM THE APPLICANT

6 months' time, from the date of issue of FER, is available to the applicant to meet the objections.

If objections are met, grant of patent is approved by the Controller – within a period of 1 month.

PRE-GRANT OPPOSITION

After publication, an opposition can be filed within a period of 6 months.

Opportunity of hearing the opponent is also available.

EXAMINATION OF PRE-GRANT OPPOSITION

Opposition (documents) is sent to the applicant

A period of 3 months is allowed for receipt of response

CONSIDERATION OF PRE-GRANT OPPPOSITION

After examining the opposition and the submissions made during the hearing, Controller may

- Either reject the opposition and grant the patent
- Or accept the opposition and modify/reject the patent application

This is to be done within a period of 1 month from the date of completion of opposition proceedings.

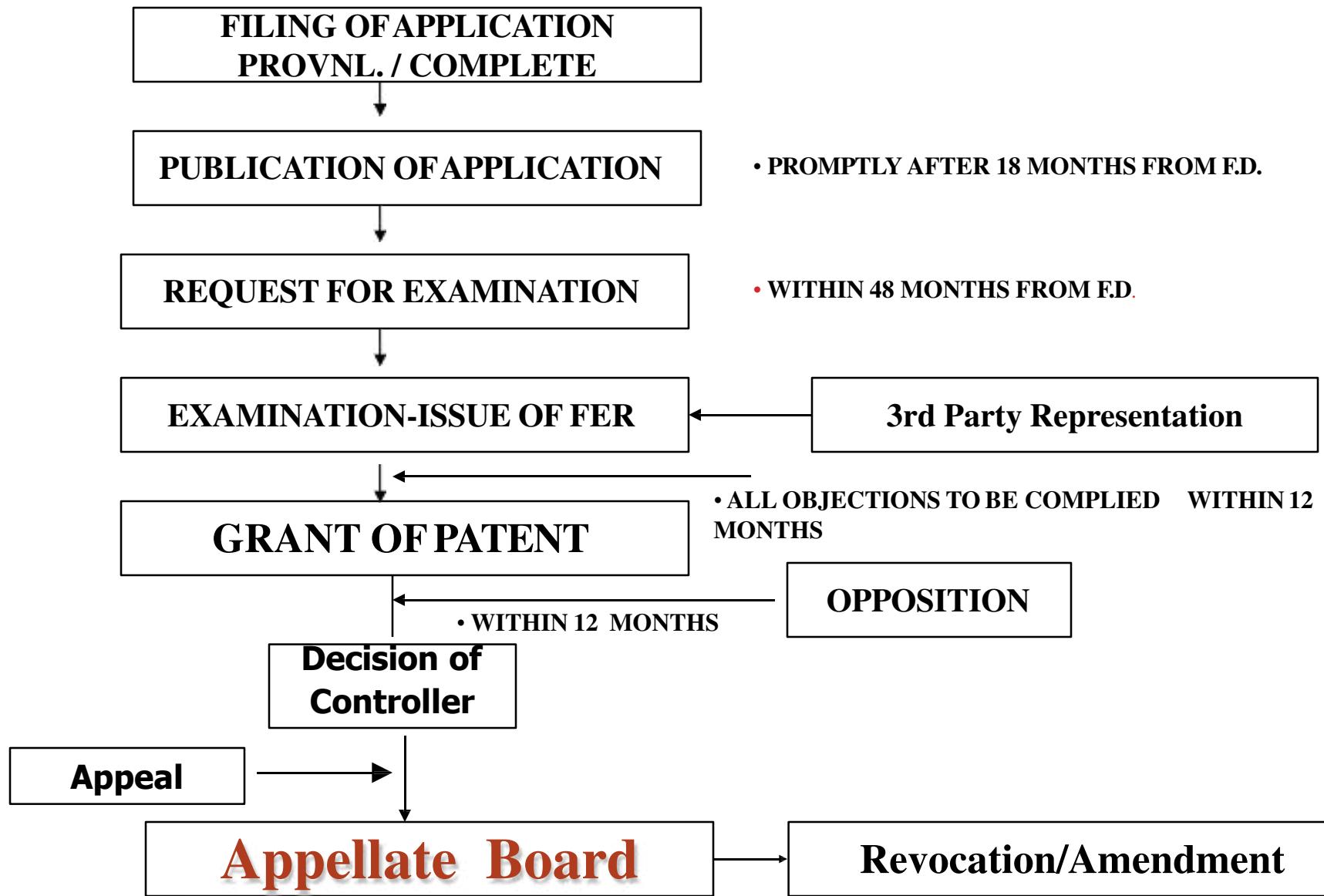
GRANT OF A PATENT

A certificate of patent is issued within 7 days.

Grant of patent is published in the official journal.

For a term of **20 years** from the Date of filing the Patent Application.

STAGES - FILING TO GRANT OF PATENT



EXAMPLE:

क्रमांक : St. No. : 044 | 10919



INTELLECTUAL
PROPERTY INDIA
PATENTS | DESIGNS | TRADE MARKS
GEOGRAPHICAL INDICATIONS



भारत सरकार
GOVERNMENT OF INDIA
पेटेंट कार्यालय
THE PATENT OFFICE
पेटेंट प्रमाणपत्र
Patent Certificate
(Rule 74 of Patents Rules)

Patent No. : 236495
Application No. : 937/CHE/2005
Date of Filing : 13/07/2005
Patentee : VISION RESEARCH FOUNDATION

It is hereby certified that a patent has been granted to the patentee for an invention entitled A SEMINESTED POLYMERASE CHAIN REACTION (PCR) METHOD FOR RAPID DETECTION AND SPECIFIC IDENTIFICATION OF MYCOBACTERIUM CHELONAE as disclosed in the above mentioned application for the term of 20 years from the 13 day of JULY 2005, in accordance with the provisions of the Patents Act,1970.


Controller of Patents

Date of Grant: 05/11/2009


Controller General of Patent,
Design & Trade marks

Note.-The fees for renewal of this patent, if it is to be maintained, will fall / has fallen due on 13 day of JULY 2007 and on the same day in every year thereafter.

FEE SCHEDULE

On What payable	Form	Individual	Legal entity
Application for Patent	1	1000*	4000*
Request for extn.time	4	300 p.m.	1200
Request for publn	9	2500	p.m.
Request for examn.	18	2500	10000
Renewal Fees			10000
3 rd to 6 th year		500	
7 th to 10 th year		1500	2000
11 th to 15 th year		3000	6000
16 th to 20 th year		5000	12000
			20000

Patents -Infringement

❖ *Infringement:*

- ✓ Use by a person other than the patentee or his assignee or licensee would be an infringement of the patent.
- ✓ Civil remedy is filing of a suit in a court of competent jurisdiction.
- ✓ The plaintiff on satisfying the court about the infringement would be entitled to the following reliefs –
 - *injunction*
 - *damages*
 - *account of profits*
- ✓ When the subject-matter of a patent is a process for obtaining a product, the onus is on the defendant to prove that the process used by him is different from the patented process.

What Is Patent Infringement?

- ◆ Patent infringement is the commission of a prohibited act with respect to a patented invention without permission from the patent holder.
- ◆ It occurs when someone violates the patent rights an inventor has in his invention by making, using or selling the invention without the patent owner's permission (or if the patent has been licensed), in a way not permitted by the license.

Types of Patent Infringement

1. Direct Infringement

- ◆ It directly states that the third party has willfully or intentionally stole the technology from the inventor without his prior permission.
- ◆ It occurs when someone directly makes, uses or sells the patented invention.

2. Indirect Infringement

- ◆ It means any form of alleged patent where the accused infringer is not directly infringing the subject Patent, but is in some manner contributing to a Third Party's direct infringement of such right, for example supplying designs, parts or instructions to the Third Party that enable such Third Party to infringe directly such right.

Remedies of Patent Infringement

Monetary Relief

1. Compensatory damages

-- a patent owner may recover lost profits or infringement

2. Increased damages

-- up to three times the compensatory damages can be recovered in cases of willful or deliberate infringement

Equitable Relief

1. Preliminary injunctions

2. Permanent injunctions

Cost & Attorney's Fees

Costs are typically recoverable and in rare cases where there has been willful infringement , so are attorney's fees.



Several Cases of Patent Infringement



Time: 2011

Event: Huawei filed lawsuits in Germany, France and Hungary against ZTE for infringing a series of its patents relating to data card and LTE technologies.

Time: 2010

Event: Apple filed a lawsuit against HTC for infringing on 20 Apple patents related to the iPhone's user interface, underlying architecture and hardware.

Time: 2009

Event: Nokia sued Apple for violation of 10 patents it holds on several wireless technologies.

COPYRIGHT

- Copyright is a monopoly right restraining others from exercising that right which has been conferred on the owner of copyright.
- It is a negative right meaning thereby that it is prohibitory in nature. It is a right to prevent others from copying or reproducing the work.
- The object of copyright is to encourage authors, composers and artists to create original works by rewarding them the exclusive right for a specific period to reproduce the works for publishing and selling them to the public.
- Copyright is not a single right. It is a bundle of rights in the same work. For e,g. in the case of a literary work, copyright consists of reproduction in print media, the right of dramatic and cinematographic versions, the right of translation, abridgement and the right of public performance.

COPYRIGHT CONTD..

- The owner of a copyright has no monopoly in the subject-matter. Others are at liberty to produce the same result provided they do so independently and though they are not first in the field, their work is nonetheless ‘original’.
- There is no copyright in ideas. Copyright subsists only in the material form to which the ideas are translated. Since there is no copyright in ideas or information, it is no infringement of copyright to adopt the ideas of another or to publish information derived from another, provided there is no copying of the language in which those ideas have or that information has been previously embodied.

COPYRIGHT CONTD...

- Copyright subsists in “original literary, dramatic, musical and artistic works; cinematographic films and sound recordings”.
- Literary work includes computer programs, tables, compilations incl. computer data bases. Dramatic work includes any piece for recitation, choreographic work or entertainment in a dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include cinematographic film.
- Music work means a work consisting of music and includes any graphical notation of such work, but does not include any works or action intended to be sung, spoken or performed with the music.
- An artistic work means a painting, a sculpture, a drawing (incl. diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality; a work of ‘architecture’ means any building or structure having an artistic character or design or any model for such building or structure.

COPYRIGHT CONTD....

- Cinematographic film means any work of usual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and ‘cinematograph’ shall be construed as including any work produced by any process analogous to cinematography including video films.
- Sound recording means a recording of sounds from which such sounds may be reproduced regardless of the medium on which such recording is made or method by which the sounds are produced.
- The word ‘original’ does not mean that the work must be expression of original or inventive thought. It only means the work must not be copied from another work, that is, it should originate from the author.

COPYRIGHT CONTD.....

- Copyright is a bundle of rights consisting of 1) economic rights and 2) moral rights.

ECONOMIC RIGHTS:

(a) In the case of a literary, dramatic or musical work, not being a computer program, the right consists of , -

- 1) to reproduce the work in any material form incl. the storing of in any medium by electronic means;
- 2) to issue copies of the work to the public ;
- 3) to perform the work in public, or communicate it to the public;
- 4) to make any cinematographic film or sound recording in respect of the work;
- 5) to make any translation of the work;
- 6) to make any adaptation of the work;
- 7) to do, in relation to translation or adaptation of the work, any of the acts specified in relation to the work in sub-clauses (1) to (6)

(b) In the case of computer program,-

- 1) to do any of the facts specified in clause (a);
- 2) to sell or give on hire, or offer for sale or hire any copy of the computer program, regardless of whether such copy has been sold or given on hire on earlier occasions;

COPYRIGHT CONTD.....

(c) in the case of an artistic work,-

- 1)to reproduce the work in any material form incl. depiction in two dimensions of a three dimensional work;
- 2) to communicate the work in public;
- 3) to issue copies of the work to the public;
- 4) to include the work in any cinematographic film;
- 5) to make adaptation of the work;
- 6)to do in relation to an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (1) to (4).

(d) in the case of cinematographic film,-

- 1)to make a copy of the film, incl. a photograph of any image forming part thereof;
- 2)to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
- 3) to communicate the film to the public.

COPYRIGHT CONTD.....

(e) in the case of a sound recording,-

- 1) to make any other sound recording embodying it;
- 2)to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
- 3) to communicate the sound recording to the public.

MORAL RIGHTS:

- 1) the right to decide whether to publish or not to publish the work;
- 2) the right to claim authorship of a published or exhibited work;
- 3) the right to prevent alteration and other actions that may damage the author's honour or reputation – the right of integrity;
- 4) to restrain or claim damages.

TERM (Period) OF COPYRIGHT

- In the case of any literary, dramatic, musical or a artistic work (other than a photograph), life time of the author + 60 years.
- In the case of photograph, cine films, sound recording and Govt. Work, 60 years from the beginning of the calendar year next following the year in which the work is first published.
- In the case of broadcasters/performers, reproduction right shall subsist until 25 years from the calendar year next following the year in which the broadcast/performance is made.

COPYRIGHT - OWNERSHIP

AUTHOR AND OWNERSHIP OF COPYRIGHT: [See Sec. 2(d)]

The author in relation to various categories of works is as follows:-

- Literary or dramatic work – author of the work
- Musical work – composer
- Artistic work – Artist
- Photograph – Photographer
- Cinematograph film – Film producer
- Sound recording – the producer
- Literary, dramatic, musical or artistic work which is computer generated – the person who causes the work to be created.

The owner of copyright:

- Normally the author of the work will be the first owner, subject to the following exceptions.

COPYRIGHT – OWNERSHIP : EXCEPTIONS

- Where a work is made by the author in the course of his employment by the proprietor of a newspaper/magazine/ periodical for publication therein, then such proprietor will be first owner.
- Where a photograph is taken or a painting or a portrait drawn or an engraving or cine film made for a consideration at the instance of any person, then such person shall be the first owner.
- When a work is made in the course of the author's employment under a contract of service/apprenticeship, the employer will be the first owner.
- Where any person has delivered any address or speech in public, that person will be first owner of the copyright.
- In the case of Government work, government is the first owner.

INFRINGEMENT OF COPYRIGHT

INFRINGEMENT OF COPYRIGHT:

Copy Right infringement is the use or production of copy right- protected material without the permission of the copy right holder.

Copy right infringement means that the right afforded to a copy right holder, such as the exclusive use of the work for a set period of time, are being breached by the third party.

As a general matter, copy right infringement occurs when a copyrighted work is reproduced, distributed, performed and publicly displayed without the permission of the copy right owner.

INFRINGEMENT OF COPYRIGHT ..

- There is no infringement of copyright in copying an idea, theme, plot, historical or legendary fact. Infringement occurs only in the form, manner, arrangement and expression of the idea of author of the original work.
- If the theme is the same but it is differently treated or presented by different writers or authors and the subsequent work takes the form of a completely new work, then there would be no infringement.
- The better test is to see whether a spectator or viewer after having read or seen both the works is clearly of the opinion with an unmistakable expression that the subsequent work appears to be a copy of the original.

Acts not constituting infringement (Section 34)

- A fair dealing with a literary, dramatic, musical or artistic work,-
 - (i)for the purpose of private use, incl. research, criticism or review of the work.
 - (ii) for the purpose of reporting current events.
 - (iii)by a teacher or a pupil in the course of instruction or writing answers to a question in an examination.
 - (iv) for the purposes of judicial proceeding or for reporting a judicial proceeding.

INFRINGEMENT OF COPYRIGHT...

- **Remedies:** There are two types of remedies against infringement of copyright. These are
- (1) Civil Remedies (injunction, impounding and disposition of infringing articles, damages and profits (actual damages + Profit, Statutory damages, Full cost + Attorney's Fees) (before the District Court) and
- (2) Criminal remedies (before Judicial or Metropolitan Magistrate). All the remedies can be availed simultaneously in the form of fines and imprisonment.

Right to Information Act



Introduction

Bringing Information to the Citizens

Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a— RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments.



Objective of the Right to Information Act

The basic objective of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable. The Act is a big step towards making the citizens informed about the activities of the Government.



Right to Information Act, 2005

Under the provisions of RTI Act, any citizen of India may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. In case of matter involving a petitioner's life and liberty, the information has to be provided within 48 hours. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally.



Right to Information Act, 2005

Scope of the Act:

The Act is applicable to the whole of India. Earlier, J&K Right to Information Act was in force in the state of Jammu and Kashmir. However, after the revocation of much of Article 370 of the Constitution of India, the Union Territory of Jammu and Kashmir (and also the Union Territory of Ladakh) came under the Central Act also. It covers all the constitutional authorities, including executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature.



The Right to information in India is governed by two major bodies:

- Central Information Commission (CIC) – Chief Information commissioner who heads all the central departments and ministries-with their own public Information officers (PIO)s. CICs are directly under the President of India.
- State Information Commissions – State Public Information Officers or SPIOs head over all the state department and ministries. The SPIO office is directly under the corresponding State Governor.



Information Technology Act, 2000

- The Information Technology Act, 2000 or ITA, 2000 or IT Act, was notified on October 17, 2000. It is the law that deals with cybercrime and electronic commerce in India.

Objectives of the Act

The Information Technology Act, 2000 provides legal recognition to the transaction done via electronic exchange of data and other electronic means of communication or electronic commerce transactions.

This also involves the use of alternatives to a paper-based method of communication and information storage to facilitate the electronic filing of documents with the Government agencies.



The objectives of the Act are as follows:

- i. Grant legal recognition to all transactions done via electronic exchange of data or other electronic means of communication or e-commerce, in place of the earlier paper-based method of communication.
- ii. Give legal recognition to digital signatures for the authentication of any information or matters requiring legal authentication
- iii. Facilitate the electronic filing of documents with Government agencies and also departments
- iv. Facilitate the electronic storage of data
- v. Give legal sanction and also facilitate the electronic transfer of funds between banks and financial institutions



Features of the Information Technology Act, 2000

- All electronic contracts made through secure electronic channels are legally valid.
- Legal recognition for digital signatures.
- Security measures for electronic records.
- A procedure for the appointment of adjudicating officers for holding inquiries under the Act is finalized.
- Provision for establishing a Cyber Regulatory Appellant Tribunal under the Act.
- An appeal against the order of the Cyber Appellant Tribunal is possible only in the High Court.
- The Act applies to offences or contraventions committed outside India
- Senior police officers and other officers can enter any public place and search and arrest without warrant
- Provisions for the constitution of a Cyber Regulations Advisory Committee to advise the Central Government.



Applicability of the Act:

According to Section 1 (2), the Act extends to the entire country, which also includes Jammu and Kashmir.

Section 1 (2) along with Section 75, specifies that the Act is applicable to any offence or contravention committed outside India as well. If the conduct of person constituting the offence involves a computer or a computerized system or network located in India, then irrespective of his/her nationality, the person is punishable under the Act.



Electronic Record and E-Governance

According to the World Bank, E-Governance is when government agencies use information and communication technologies to transform relations with citizens, businesses, and other government agencies. One of the prime objectives of the IT Act, 2000 is the promotion of electronic governance.



Provisions for e-governance under the IT Act, 2000:

1. Legal Recognition of Electronic Records (Section 4)
2. Legal recognition of digital signatures (Section 5)
3. Use of electronic records and digital signatures in Government and its agencies (Section 6)
4. Retention of electronic records (Section 7)
5. Publication of rules, regulations, etc., in Electronic Gazette (Section 8)
6. Power to make rules by Central Government in respect of digital signature (Section 10)



Digital Signature

According to Section 2(1)(p), digital signature means ‘authentication of any electronic record using an electronic method or procedure in accordance with the provisions of Section 3’.

Further, authentication is a process for confirming the identity of a person or proving the integrity of information. Authenticating messages involves determining the source of the message and verifying that it has not been altered or modified in transit.



Digital Signature

Digital signature is a mathematical scheme to verify the authenticity of digital documents or messages. Also, a valid digital signature allows the recipient to trust the fact that a known sender sent the message and it was not altered in transit.

The three important features of digital features are:

Authentication – They authenticate the source of messages. Since the ownership of a digital certificate is bound to a specific user, the signature shows that the user sent it.

Integrity – Sometimes, the sender and receiver of a message need an assurance that the message was not altered during transmission. A digital certificate provides this feature.

Non-Repudiation – A sender cannot deny sending a message which has a digital signature.



Introduction to Cyberspace

Two decades ago, the term cyberspace seemed right out of a science fiction movie. In the second decade of the twenty-first century, cyberspace is probably the place where most of us spend a major part of our lives. It has become an inseparable element of our existence.

Cyber Appellate Tribunal

The Information Technology Act, 2000 also provides for the establishment of the Cyber Appellate Tribunal.

Establishment of Cyber Appellate Tribunal (Section 48)

- The Central Government notifies and establishes appellate tribunals called Cyber Regulations Appellate Tribunal.
- The Central Government also specifies in the notification all the matters and places which fall under the jurisdiction of the Tribunal.

The composition of Cyber Appellant Tribunal (Section 49)

The Central Government appoints only one person in a Tribunal – the Presiding Officer of the Cyber Appellate Tribunal.



Cyber Appellate Tribunal

The qualifications for appointment as Presiding Officer of the Cyber Appellate Tribunal (Section 50)

A person is considered qualified for the appointment as the Presiding Officer of a Tribunal if –

- a. He has the qualification of the Judge of a High Court
- b. He is or was the member of the Indian Legal Service and holds or has held a post in Grade I of that service for at least three years.

The Term of Office (Section 51)

The Term of Office of the Presiding Officer of a Cyber Appellate Tribunal is five years from the date of entering the office or until he attains the age of 65 years, whichever is earlier.

