

# Epsilon<sub>08</sub>

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## Intellectual Property Rights:

Intellectual Property: In law, **intellectual property** (IP) is an umbrella term for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the IP. The term *intellectual property* reflects the idea that this subject matter is the product of the mind or the intellect, and that IP rights may be protected at law in the same way as any other form of property.

Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. However, these laws are becoming increasingly harmonized through the effects of international treaties such as the 1994 World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), while other treaties may facilitate registration in more than one jurisdiction at a time. Certain forms of IP rights do not require registration in order to be enforced.

### **Types of intellectual property**

- Copyrights and related rights
- Trade Marks
- Geographical Indications
- Industrial Designs
- Lay out Designs of Integrated Circuits
- Protection of Undisclosed Information (Trade Secrets)
- Patents
- Plant varieties

### **COPYRIGHTS**

India's copyright law, laid down in the Indian Copyright Act, 1957 as amended by Copyright (Amendment) Act, 1999, fully reflects the Berne Convention on Copyrights, to which India is a party. Additionally, India is party to the Geneva Convention for the Protection of rights of Producers of Phonograms and to the Universal Copyright Convention. India is also an active member of the World Intellectual Property Organisation (WIPO), Geneva and UNESCO.

The copyright law has been amended periodically to keep pace with changing requirements. The recent amendment to the copyright law, which came into force in May

1995, has ushered in comprehensive changes and brought the copyright law in line with the developments in satellite broadcasting, computer software and digital technology. The amended law has made provisions for the first time, to protect performer's rights as envisaged in the Rome Convention

Several measures have been adopted to strengthen and streamline the enforcement of copyrights. These include the setting up of a Copyright Enforcement Advisory Council, training programs for enforcement officers and setting up special policy cells to deal with cases relating to infringement of copyrights.

### TRADE MARKS

Trade marks have been defined as any sign, or any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings. Such distinguishing marks constitute protectable subject matter under the provisions of the TRIPS Agreement. The Agreement provides that initial registration and each renewal of registration shall be for a term of not less than 7 years and the registration shall be renewable indefinitely. Compulsory licensing of trade marks is not permitted.

Keeping in view the changes in trade and commercial practices, globalisation of trade, need for simplification and harmonisation of trade marks registration systems etc., a comprehensive review of the Trade and Merchandise Marks Act, 1958 was made and a Bill to repeal and replace the 1958 Act has since been passed by Parliament and notified in the Gazette on 30.12.1999. This Act not only makes Trade Marks Law, TRIPS compatibility but also harmonises it with international systems and practices. Work is underway to bring the law into force.

### GEOGRAPHICAL INDICATIONS

The Agreement contains a general obligation that parties shall provide the legal means for interested parties to prevent the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good. There is no obligation under the Agreement to protect geographical indications which are not protected in their country of origin or which have fallen into disuse in that country.

A new law for the protection of geographical indications, viz. the Geographical Indications of Goods (Registration and the Protection) Act, 1999 has also been passed by the Parliament and notified on 30.12.1999 and the rules made thereunder notified on 8-3-2002.

### INDUSTRIAL DESIGNS

Obligations envisaged in respect of industrial designs are that independently created designs that are new or original shall be protected. Individual governments have been

given the option to exclude from protection, designs dictated by technical or functional considerations, as against aesthetic consideration which constitutes the coverage of industrial designs. The right accruing to the right holder is the right to prevent third parties not having his consent from making, selling or importing articles being or embodying a design, which is a copy or substantially a copy of the protected design when such acts are undertaken for commercial purposes. The duration of protection is to be not less than 10 years.

A new designs law repealing and replacing the Designs Act, 1911 has been passed by Parliament in the Budget Session, 2000. This Act has been brought into force from 11.5.2001.

## PATENTS

The basic obligation in the area of patents is that, invention in all branches of technology whether products or processes shall be patentable if they meet the three tests of being new involving an inventive step and being capable of industrial application. In addition to the general security exemption which applied to the entire TRIPS Agreement, specific exclusions are permissible from the scope of patentability of inventions, the prevention of whose commercial exploitation is necessary to protect public order or morality, human, animal, plant life or health or to avoid serious prejudice to the environment. Further, members may also exclude from patentability of diagnostic, therapeutic and surgical methods of the treatment of human and animals and plants and animal other than micro-organisms and essentially biological processes for the production of plants and animals.

The TRIPS Agreement provides for a minimum term of protection of 20 years counted from the date of filing.

India had already implemented its obligations under Articles 70.8 and 70.9 of TRIP Agreement.

A comprehensive review of the Patents Act, 1970 was also made and a bill to amend the Patents Act, 1970 was introduced in Parliament on 20 December, 1999 and notified on 25-6-2002 to make the patent law TRIPS compatible.

Web links to help you through IPR issues:

This module contains material on Intellectual Property Rights such as trademarks, copyrights, patents and other related matters etc.

<http://www.laws4india.com/ipr.asp>

