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**DEPARTMENT OF COMPUTER ENGINEERING**

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A Audit Course Report on

# **CERTIFICATE**

This is to certify that the Audit Course Report entitled  
**Intellectual Property Rights And Patents**

**Submitted by**

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SECO18109

Is a bonafide work carried out by the students under the supervision of **Mrs Mohini Avatade** and it is submitted towards the partial fulfillment of the requirement of Bachelor of Engineering (Computer Engineering)

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# INTRODUCTION

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is a recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of specialty. Pharmaceutical industry currently has an evolving IPR strategy requiring a better focus and approach in the coming era.

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers 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 is very well settled that IP play a vital role in the modern economy. It has also been conclusively established that the intellectual labor associated with the 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 a new technology in the market place

A patent is awarded for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial or commercial application. Patents can be granted for products and processes. As per the Indian Patent Act 1970, the term of a patent was 14 years from the date of filing except for processes for preparing drugs and food items for which the term was 7 years from the date of the filing or 5 years from the date of the patent, whichever is earlier. No product patents were granted for drugs and food items. A copyright generated in a member country of the Berne Convention is automatically protected in all the member countries, without any need for registration. India is a signatory to the Berne Convention and has a very good copyright legislation comparable to that of any country. However, the copyright will not be automatically available in countries that are not the members of the Berne Convention. Therefore, copyright may not be considered a territorial right in the strict sense. Like any other property IPR can be transferred, sold, or gifted.

# Intellectual Property

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers 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 is very well settled that IP play a vital role in the modern economy. It has also been conclusively established that the intellectual labor associated with the 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 a new technology in the market place. 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. Present review furnishes a brief overview of IPR with special emphasis on pharmaceuticals

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories:

Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications.

Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

# PATENT

A patent is an exclusive right granted for an invention – a product or process that provides a new way of doing something, or that offers a new technical solution to a problem.

A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years

A patent is awarded for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial or commercial application. Patents can be granted for products and processes. As per the Indian Patent Act 1970, the term of a patent was 14 years from the date of filing except for processes for preparing drugs and food items for which the term was 7 years from the date of the filing or 5 years from the date of the patent, whichever is earlier. No product patents were granted for drugs and food items. A copyright generated in a member country of the Berne Convention is automatically protected in all the member countries, without any need for registration. India is a signatory to the Berne Convention and has a very good copyright legislation comparable to that of any country. However, the copyright will not be automatically available in countries that are not the members of the Berne Convention. Therefore, copyright may not be considered a territorial right in the strict sense. Like any other property IPR can be transferred, sold, or gifted.

## **Why are patents necessary?**

Patents provide incentives to individuals by recognizing their creativity and offering the possibility of material reward for their marketable inventions. These incentives encourage innovation, which in turn enhances the quality of human life.

## **What kind of protection do patents offer?**

Patent protection means an invention cannot be commercially made, used, distributed or sold without the patent owner's consent. Patent rights are usually enforced in courts that, in most systems, hold the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.

## **How is a patent granted?**

The first step in securing a patent is to file a patent application. The application generally contains the title of the invention, as well as an indication of its technical field. It must include the background and a description of the invention, in clear language and enough detail that an individual with an average understanding of the field could use or reproduce the invention. Such descriptions are usually accompanied by visual materials – drawings, plans or diagrams – that describe the invention in greater detail. The application also contains various “claims”, that is, information to help determine the extent of protection to be granted by the patent.

# **History of Patent Law In India**

The history of Patent law in India starts from 1911 when the Indian Patents and Designs Act, 1911 was enacted. The present Patents Act, 1970 came into force in the year 1972, amending and consolidating the existing law relating to Patents in India. The Patents Act, 1970 was again amended by the Patents (Amendment) Act, 2005, wherein product patent was extended to all fields of technology including food, drugs, chemicals and micro organisms. After the amendment, the provisions relating to Exclusive Marketing Rights (EMRs) have been repealed, and a provision for enabling grant of compulsory license has been introduced. The provisions relating to pre-grant and post-grant opposition have been also introduced.

An invention relating to a product or a process that is new, involving inventive step and capable of industrial application can be patented in India. However, it must not fall into the category of inventions that are non-patentable as provided under Section 3 and 4 of the (Indian) Patents Act, 1970. In India, a patent application can be filed, either alone or jointly, by true and first inventor or his assignee.

This Act remained in force for about 24 years without any change till December 1994. An ordinance effecting certain changes in the Act was issued on 31 st December 1994, which ceased to operate after six months. Subsequently, another ordinance was issued in 1999. This ordinance was subsequently replaced by the Patents (Amendment) Act, 1999 that was brought into force retrospectively from 1 st January, 1995. The amended Act provided for filing of applications for product patents in the areas of drugs, pharmaceuticals and agro chemicals though such patents were not allowed. However, such applications were to be examined only after 31-12-2004. Meanwhile, the applicants could be allowed Exclusive Marketing Rights (EMR) to sell or distribute these products in India, subject to fulfilment of certain conditions.

The second amendment to the 1970 Act was made through the Patents (Amendment) Act, 2002 (Act 38 Of 2002). This Act came into force on 20 th May 2003 with the introduction of the new Patent Rules, 2003 by replacing the earlier Patents Rules, 1972

The third amendment to the Patents Act 1970 was introduced through the Patents (Amendment) Ordinance, 2004 w.e.f. 1 st January, 2005. This Ordinance was later replaced by the Patents (Amendment) Act 2005 (Act 15 Of 2005 ) on 4 th April, 2005 which was brought into force from 1-1-2005.

# Indian Patent Act

**(1) In this Act, unless the context otherwise requires,-**

- (a) "Appellate Board" means the Appellate Board referred to in section 116;
- (ab) "assignee" includes an assignee of the assignee and the legal representative of a deceased assignee and references to the assignee of any person include references to the assignee of the legal representative or assignee of that person;
- (aba) "Budapest Treaty" means the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure done at Budapest on 28th day of April, 1977, as amended and modified from time to time;
- (ac) "capable of industrial application", in relation to an invention, means that the invention is capable of being made or used in an industry;
- (b) "Controller" means the Controller General of Patents, Designs and Trade Marks referred to in section 73;
- (c) "convention application" means an application for a patent made by virtue of section 135;
- (d) "convention country" means a country or a country which is member of a group of countries or a union of countries or an Intergovernmental organization referred to as a convention country in section 133;
- (e) "district court" has the meaning assigned to that expression by the Code of Civil Procedure, 1908 (5 of 1908);
- (f) "exclusive licence" means a licence from a patentee which confers on the licensee, or on the licensee and persons authorised by him, to the exclusion of all other persons (including the patentee), any right in respect of the patented invention, and exclusive licensee shall be construed accordingly;
- (g) [Omitted]
- (h) "Government undertaking" means any industrial undertaking carried on—
- (i) by a department of the Government, or
- (ii) by a corporation established by a Central, Provincial or State Act, which is owned or controlled by the Government, or
- (iii) by a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or
- (iv) by an institution wholly or substantially financed by the Government;
- (i) "High Court", in relation to a State or Union territory, means the High Court having territorial jurisdiction in that State or Union territory, as the case may be;
- (ia) "international application" means an application for patent made in accordance with the Patent Cooperation Treaty;
- (j) "invention" means a new product or process involving an inventive step and capable of industrial application;



(ja) "inventive step" means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art;

(k) "legal representative" means a person who in law represents the estate of a deceased person;

(l) "new invention" means any invention 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 with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art;

(la) "Opposition Board" means an Opposition Board constituted under sub-section (3) of section 25;

(m) "patent" means a patent for any invention granted under this Act;

(n) "patent agent" means a person for the time being registered under this Act as a patent agent;

(o) "patented article" and "patented process" means respectively an article or process in respect of which a patent is in force;

(oa) "Patent Cooperation Treaty" means the [Patent Cooperation Treaty](#) done at Washington on the 19th day of June, 1970 as amended and modified from time to time;

(p) "patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent;

(q) "patent of addition" means a patent granted in accordance with section 54;

(r) "patent office" means the patent office referred to in section 74;

(s) "person" includes the Government;

(t) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;

(ta) "pharmaceutical substance" means any new entity involving one or more inventive steps;

(u) "prescribed" means,—

(A) in relation to proceedings before a High Court, prescribed by rules made by the High Court;

(B) in relation to proceedings before the Appellate Board, prescribed by rules made by the Appellate Board; and

(C) in other cases, prescribed by rules made under this Act;

(v) "prescribed manner" includes the payment of the prescribed fee;

(w) "priority date" has the meaning assigned to it by section 11;

(x) "register" means the register of patents referred to in section 67;

(y) "true and first inventor" does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India.

**(2) In this Act, unless the context otherwise requires, any reference—**

(a) to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller in pursuance of section 73;

(b) to the patent office shall be construed as including a reference to any branch office of the patent office

# TRIPS

The **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** is an [international legal agreement](#) between all the member nations of the [World Trade Organization](#) (WTO). It sets down minimum standards for the regulation by national governments of many forms of [intellectual property](#) (IP) as applied to nationals of other WTO member nations. TRIPS was negotiated at the end of the [Uruguay Round](#) of the [General Agreement on Tariffs and Trade](#) (GATT) between 1989 and 1990 and is administered by the WTO.

The TRIPS agreement introduced intellectual property law into the multilateral trading system for the first time and remains the most comprehensive multilateral agreement on intellectual property to date. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a round of talks that resulted in the [Doha Declaration](#). The Doha declaration is a WTO statement that clarifies the scope of TRIPS, stating for example that TRIPS can and should be interpreted in light of the goal "to promote access to medicines for all."

Specifically, TRIPS requires WTO members to provide [copyright](#) rights, covering authors and other copyright holders, as well as holders of related rights, namely performers, sound recording producers and broadcasting organisations; [geographical indications](#); [industrial designs](#); [integrated circuit layout-designs](#); [patents](#); [new plant varieties](#); [trademarks](#); [trade names](#) and undisclosed or [confidential information](#). TRIPS also specifies [enforcement](#) procedures, remedies, and [dispute resolution](#) procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

# CONCLUSION

The current debate over patent protection tends to concentrate on the role of patent as an instrument of economic policy and development. The economical, social and cultural development of nations and societies now depend more on intellectual resources rather than materials or natural resources. It appears that today economic development and social progress are built around control over intellectual property rather than material wealth. The result was more and more emphasis on legal protection to intellectual property and the consequence was the competition among individuals and the nations to acquire more and more intellectual properties.

The patent, one among the several intellectual properties recognised worldwide, form the most important element of economic development of individuals' as well as States'. Since time immemorial, some form of protection legal or otherwise, has been recognised in respect of inventions made by individuals on the basis of the utility or usefulness to the society at large. Now, the basic idea underlying legal protection of patent for inventions is the fact that with the help of such inventions it is possible to produce goods and services that are useful to the society and its economic development. During the course of time, various justifications for legal protection have emerged. Thus, individual and public justifications have played prominent roles in the arguments in favour of patent for inventions and other kinds of intellectual property rights.

At various periods, the idea of patent as an instrument of justice to the inventor has been advanced and rewarding inventive ingenuity seems to underlie the legal protection of patents. However, every inventor may not benefited, but the protection in the form of a monopoly over an invention enable the inventor to get the economic benefits. As against market monopoly, it has been argued that there are other methods of rewarding inventive ingenuity.