

**SAVEETHA INSTITUTE OF MEDICAL  
AND TECHNICAL SCIENCES**

**IPR POLICY**



## Intellectual property rights in India

India is one of the UK's priority overseas markets.

If you plan to do business in India, or if you are already trading there, it is essential to know how to use, guard and enforce the rights you have over the intellectual property (IP) that you or your business own.

This guide explains about IP in general, and gives guidance on how to apply these principles in the Indian market. It describes the issues you may face with IP infringement in India, offers advice on how you can effectively tackle these, and provides links to sources of further help.

## What are intellectual property rights?

Intellectual property (IP) is a term referring to a brand, invention, design or other kind of creation, which a person or business has legal rights over. Almost all businesses own some form of IP, which could be a business asset.

Common types of IP include:

- ☒ **Copyright** – this protects written or published works such as books, songs, films, web content and artistic works;
- ☒ **Patents** – this protects commercial inventions, for example, a new business product or process;
- ☒ **Designs** – this protects designs, such as drawings or computer models;
- ☒ **Trade marks** – this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

IP can be either registered or unregistered.

With **unregistered** IP, you automatically have legal rights over your creation. Unregistered forms of IP include copyright, unregistered design rights, common law trade marks and database rights, confidential information and trade secrets.

With **registered** IP, you will have to apply to an authority, such as the Intellectual Property Office in the UK, to have your rights recognised. If you do not do this, others are free to exploit your creations.

Registered forms of IP include patents, registered trade marks and

registered design rights. Copyright is also registerable.

## **International considerations**

India has been a World Trade Organisation (WTO) member since 1995. WTO member nations must include some IP protection in their national laws. This means that if you are doing business with India, you will find some similarity between local IP law and enforcement procedures, and those in force in the UK.

## **Treaties and reciprocal agreements**

India is also a signatory to the following international IP agreements:

- ☒ the Paris Convention – under this, any person from a signatory state can apply for a patent or trade mark in any other signatory state, and will be given the same enforcement rights and status as a national of that country would be;
- ☒ the Berne Convention – under this, each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals;
- ☒ the Madrid Protocol – under this, a person can file a single trade mark application at their national office that will provide protection in multiple countries;
- ☒ the Patent Cooperation Treaty – this is a central system for obtaining a 'bundle' of national patent applications in different jurisdictions through a single application.

India is not a signatory to the Hague Agreement, which allows the protection of designs in multiple countries through a single filing

## **Intellectual property rights – systems in India**

### **Copyright**

India is a signatory to the Berne Convention on copyright. However, it may be a good idea to register your copyright as doing so may help to prove ownership if there are criminal proceedings against infringers.

In most cases though, registration is not necessary to maintain a copyright

infringement claim in India. Registration is made, in person or via a representative, with the Copyright Office. Since 2016, copyright policy was moved to India's Ministry of Commerce and Industry. All IPRs are now administered by the Department for Industrial Property and Promotion (DIPP).

At SIMATS – Copyright for text books authored by our staff member is signed with the publisher.

## **Patents**

India's Patents Act of 1970, 2003 Patent Rules and the 2016 Patent Amendment Rules set out the law concerning patents. As in the UK, there is no provision for utility model patents.

The regulatory authority for patents is the Patent Registrar under the office of the Controller General of Patents, Designs and Trade Marks, which is part of India's Ministry of Commerce and Industry. Patents are valid for 20 years from the date of filing an application, subject to an annual renewal fee.

India's patent law operates under the 'first to file' principle – that is, if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent

If the idea/concept or design is ready with complete description

In SIMATS, the complete specification, request for publication and examination of patent are filed simultaneously.

## **Designs**

The laws governing designs are the Designs Act 2000 and the Designs Rules 2001. Designs are valid for a maximum of ten years, renewable for a further five years.

## **Registering and enforcing intellectual property rights in India**

To enjoy most types of intellectual property (IP) rights in India, you should register them.

For patents, individual registrations must be made in India, but for rights other

than industrial designs you can apply under the terms of the Patent Cooperation Treaty, which is usually easier and quicker.

For copyright, no registration is required but registering copyrights with the copyright authorities is advisable.

'Priority rights' under the Paris Convention can help in the local registration of trade marks, designs and patents by allowing rights previously registered elsewhere to become effective in India, if filed within a time limit.

## **Enforcing IP rights in India**

IP rights can be enforced by bringing actions to the civil courts or through criminal prosecution. India's IP laws set out procedures for both civil and criminal proceedings, as does the Competition Act. Criminal proceedings do not apply to patent and design infringements.

A disadvantage of civil litigation is that you are unlikely to recover large damages, and punitive damages against an infringer are rare. However, if you have an identified infringer, it may be advisable to launch civil litigation, because if an interim injunction is granted the infringement can be halted pending the outcome of the case. Damages are routinely awarded in cases of copyright piracy and trade mark infringement (which come under criminal litigation); less so in patent cases. Over the years, however, decisions in favour of foreign companies against local infringers have demonstrated the judiciary's impartial approach.

As in other countries, the Indian Government brings actions in criminal cases, although in most cases actions follow complaints to magistrates or police authorities by rights owners. Criminal proceedings against infringers carry the prospect of much harsher remedies, including fines and imprisonment.

Mediation or negotiation with an infringer can also be effective as an alternative form of dispute resolution. The Civil Procedure Code provides for a formal mediation process.

## **Where to get intellectual property help in India**

Whether you're resident in and doing business in India, or trading internationally with the country, there are a number of professional organisations that can offer

you advice and support:

- ☑ The British High Commission, New Delhi offers advice on working with India, including details of cultural relations. It provides a full range of diplomatic, consular and business-related services: <https://www.gov.uk/government/world/organisations/british-high-commission-new-delhi>
- ☑ The UK India Business Council (UKIBC) helps and supports British businesses with regard to trade with India: <http://www.ukibc.com>
- ☑ The Department for International Trade (DIT) India has a range of online information on doing business in India: <https://www.gov.uk/government/world/organisations/department-for-international-trade-india>
- ☑ Local law firms in India can offer you legal advice and services specific to your business. The Chambers and Partners website offers a search facility listing Indian local law firms: <http://www.chambersandpartners.com/Asia/Search/Location/110>



  
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