

ICSI-NIRC

NEWSLETTER

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Regional Director

CS SONIA BAIJAL

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Motto

सत्यं वद। धर्मं चर।
इष्टं कुरु त्वत्कृतं बोधते त्वं त्वत् कुरु।

Vision

"To be a global leader in promoting
good corporate governance"

Mission

"To develop high calibre professionals
facilitating good corporate governance"

Published by :

CS Sonia Baijal, Regional Director for and on behalf of Northern India Regional council of the Institute of Company Secretaries of India, 4, Prasad Nagar Institutional Area, New Delhi-110005; E-mail: niro@icsi.edu; Phones: 493433000; Published at: NIRC-ICSI, 4, Prasad Nagar instl. Area, New Delhi.

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NIRC-ICSI NEWSLETTER

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“परिदों को नहीं दी जाती तालीम उड़ानों की, वो खुद ही तय करते हैं मंजिल आसमानों की, रखता हो जो हौसला आसमानों को छूने का, उसको नहीं होती परवाह गिर जाने की”

Dear Esteemed Members and Students,

As I write my final annotations as NIRC-ICSI Chairman, it seems like only yesterday that I was writing my first message for our members and students. This has been a fast but meaningful journey for me. While I wasn't sure where it would lead, one thing was clear to me that I am here to serve our profession.

Today, I experience being in an overwhelming state when I find myself travelling back in time recalling the feelings that I had when I entered the portals of this ostensible position as the Chairman of the entire Northern Regional Council of our ICSI. It was one of the most important professional moments of my life where I stood tall with sheer determination and gratitude realizing that how this unimaginable blessing was a part of the Almighty's plan for me to serve our sacred profession. Unbelievably, this unimaginable blessing felt like a dream come true on acknowledging my post as the Chairman and realizing that I was going to work for, work at and work on taking forward the mission and vision of the ICSI to achieve common and greater good.

Don't count the days, make the days count!

Muhammad Ali

Not counting the tenure of this Chairmanship as one year but a span 366 days, including a leap day in the year 2020 to my fortune, I worked and worked day in and day out to serve our coveted profession. Nevertheless, for every two steps forward, it felt like one step back, when the coronavirus hit our country and the new hopes, dreams and possibilities that I had started to see materializing for NIRC-ICSI soon turned rigid.

I gradually realized that this testing time became more awakening and acceptable to me, positively affirming myself of my potential and that how fortunate I was to share this fantastic platform with trustworthy NIRC team members and officials.

Being a part of those conversations, meetings, webinars, events and programs of the Northern Region of our ICSI, I feel that over the period of time the NIRC became an important part of my life and this entire Chairmanship that I have lived became an important part of me.

Today, I celebrate not only my completion as NIRC Chairman but also the NIRC!

None of us have achieved anything in isolation and the recognition and successes we have achieved and enjoyed together have been a result of our mutual respect, collaboration, and cooperation. On

this occasion of completion of my one-year tenure as Chairman of NIRC, it is my pleasure to share with all of you our endeavors and achievements that we could gain this year.

Our endeavors and achievements during 2020

For Members Welfare

Politics is not a Profession, it's a service" with the same perspective and zeal in my mind I started my tenure as the Chairman of our coveted profession and since the very beginning my emphasis was on members welfare as a Whole.

Brief highlights of some welfare activities that we did for our members and students:

- **Highest Tie-ups with various Hospitals and Diagnostic/ Pathology Laboratories across India till now, in a year, for discounted rates for our members, students and their dependents:** Realizing the prevailing times of COVID, your NIRC set up tie-ups with renowned Hospitals and Diagnostic/ Pathology Laboratories across India. The list of Hospitals/laboratories we tied up this year is given below:

1. Fortis Healthcare Limited (applicable for all 26 hospitals for fortis group across India)
2. Max Hospital (applicable for all 7 Hospitals of Max Healthcare in National Capital Region)
3. Venkateshwar Hospital, Dwarka
4. Medeor Hospital
5. LHDM & Dr. Prem Hospital Pvt. Ltd
6. Park Group of Hospitals
7. SRL Dignostic Lab (All India Branches)
8. Dr. Lal PathLabs Ltd. (All India Branches)
9. Balaji Action Hospital
10. Balaji Cancer Hospital (CGHS rates)
11. Artemis Hospital

The details w.r.t. the discount allowed and contact person at each hospital is available at the website of the Institute <https://www.icsi.edu/niro/medical-facility/>.

ACCLOUD SOFTWARE: NIRC was instrumental in arranging tie up of the Institute of Company Secretaries of India with Accloud Software. Accloud is a cloud-based ACCOUNTING AND TAX SOLUTION SOFTWARE. As per the MOU, for the first 2 YEARS the software is FREE for our members and after that we have tied up for 80% DISCOUNT. Very soon our members will be able to avail the benefits of this software.

- **FIRST ONLINE CAMPUS PLACEMENT FOR THE YOUNG MEMBERS:** In the interest of the young and budding members of our esteemed Institute, a Campus Placement was organized by the NIRC for recruitment of CS Professionals. Here I must recognize the tireless efforts of the NIRC staff, due to which, good number of Recruiters registered themselves for the Campus Placement, this being the largest number of Recruiters to register for the Campus Placement.

- **OPENING OF NEW CHAPTER IN THE NORTHERN REGION:** With a view to expand the reach of the Institute and to provide facilities to the members and students all over the Northern Region, the Karnal Chapter of ICSI was inaugurated on 29th January 2020.

For Members Academic Enrichment & Capacity Building

Master Classes: At the very start of my tenure, I focused on the knowledge enrichment of our members. The sole objective was to provide knowledgeable, interactive, enriching and affordable classes to our members. I invited top most faculties of the industry to deliberate and deliver the lectures on the classes.

During the year total 78 classes were held in 18 editions. The quick list of various themes purveyed by our Master Classes includes:

1. Role of CS in Arbitration,
2. Related Party Transactions,
3. Mergers & Acquisitions;
4. NCLT and NCLAT;
5. Corporate Laws;
6. FEMA

7. Arbitration
8. Labour Laws;
9. Securities Laws
10. GST
11. Drafting, Pleading & Appearances
12. Corporate Communication
13. Opportunities for professionals in MSME, Start-ups, Banking, RERA
14. NBFCs
15. Resource Mobilisation through IPO, Rights Issue, Preferential Allotment and Share based Employee Benefits
16. Recent Amendments in Corporate Laws.
17. Mergers & Acquisitions
18. Decoding Fund Raising by Unlisted Companies

I was overwhelmed with the response and appreciation mails from our members across India and abroad. The appreciation mails are my real wealth, which I earned during this chairmanship.

NIRC's conducted various seminars, webinars and State Conferences for its members and students: The seminars conducted by the NIRC proved to be encouraging for the CS fraternity. NIRC did 3 (three) physical state conferences (Uttar Pradesh, Chandigarh and Haryana State Conferences).

Theme based Newsletter: To ponder on various topics of the Corporate Laws in detail, we started theme-based Newsletter. I feel extremely happy to share with all of you that, in every edition of our newsletter, we received highest articles from our members and we were honoured to receive the special messages from the Hon'ble (Justice) Dipak Misra, former Chief Justice of India and Hon'ble (Justice) MM Kumar, founder President, NCLT & former Chief Justice, Jammu and Kashmir.

Research Paper Competition: Two Research Paper Writing Competition were arranged for the members of Northern Region. Our members gave their insight on the themes and a huge response was received in the form of around four hundred (400)

Research Papers.

FIRST ONLINE MOOT NCLT COMPETITION – 2020: ICSI-NIRC conducted the first ever Moot NCLT Competition for Members & Students of ICSI through online mode. The same was conducted to give platform to our members, so that they can enhance their skills in this Area.

Academic Collaborations: NIRC has been instrumental in doing various Academic Collaborations with the Universities including IIM Jammu, IGNOU etc. across the Northern Region for the welfare of members.

MOU WITH GOVERNMENT OF JAMMU & KASHMIR: NIRC was instrumental in the following academic collaborations with government of J&K:

1. Higher Education Department, Govt. J&K UT.
2. Skill Enhancement Courses between ICSI and Higher Education Department, Govt. J&K UT (Govt. SPMR college of Commerce, Jammu and Govt. Degree college, Bemina Srinagar shall be considered as Hub college for Jammu & Kashmir province respectively)

These MOUs with the government of J&K will be of great help for our members in following ways:

- ICSI will work as mentor organization with the government for running the courses on behalf of government.
- Our members will get job opportunities in education sector;
- We will be able to approach other state and our central government for similar arrangements;
- It will immensely benefit the branding of the institute. Virtual Alumni Meet of the Participants of Management Skill Orientation Programme: The NIRC-ICSI was instrumental in organizing the first ever Alumni Meet (Virtual) for its newly inducted members of Northern Region.

Request & Recommendation by NIRC

During the year, approx. 15 request/

recommendation were sent to the Head Quarter:

Various issues related to the welfare, urgent need and importance were discussed and deliberated in various regional council meetings and were sent to the President of ICSI for the consideration. These were the highest recommendation sent in a year.

REQUEST FOR ENTRY OF COMPANY SECRETARIES TO THE OFFICE OF INCOME TAX:

A detailed request in this regard has been submitted to the Income Tax Department and I have been assured that once this COVID pandemic is over, we will be allowed entry there with our CS ID Card.

REQUEST FOR ALLOWING ACCESS TO LIBRARY/ READING ROOM AT NCLT & NCLAT:

Without any doubt we as Company Secretaries are expanding our foot prints in the Quasi-Judicial authorities and therefore, we have approached and submitted a representation with our honorable NCLT, NCLAT to allow access of Library/Reading Room at NCLT & NCLAT to Company Secretaries.

Students are the greatest assets, backbone of an Institution and therefore there is a greater need to give them ample opportunities and best platform to learn, enquire and build themselves the future of our institution.

Brief highlights of what we did for our students:

- PAN India Real-Time Virtual Interactive Classes for the students at economical rates.
- Various Crash Courses for students were organized.
- First Region to conduct Online Interactive Management Skill Orientation Programme (MSOP), so that a sense of belongingness can be given to our students and make them feel part of NIRC-ICSI fraternity.
- NIRC did highest number of MSOPs this year across India amongst all the Regions.
- Webinars and podcast messages for students on various topics including “Master the Mind during Pandemic Times” and session on “Life Skills” to keep them motivated.

- Various students programmes including Executive Development Programme (EDP), Professional Development Programme (PDP) and oral tuition classes for students were organized through Physical and Interactive Online Mode.
- Online Mock Tests for students were arranged.
- With a view to provide quality education to students, many publications are added to NIRC Library.
- Student month was celebrated across the Northern Region and various activities were planned for students.

Today, I feel satisfied, when I recall the feedback received from students across India appreciating the virtual interactive MSOP, Student Program and Oral Tuition Classes. I also feel proud that even after this Pandemic I could reach and teach my students.

BRAND BUILDING

- **Career Awareness Programs in Schools and Colleges through Physical and Online Mode:** NIRC organized Many Career Awareness Programs through Physical as well as Online mode for students of class XI, XII and colleges. Total 28 Career Awareness Programs are organized.
- **Online Teachers’ Conclave for Faculties of Colleges and School Teachers:** NIRC organized Online Teachers’ Conference on the theme “Empowering Educators”. The Conference was attended by around 200 Teachers/Faculties.
- **Online Mega Career Awareness Program for Students and Teachers of Kendriya Vidyalaya:** NIRC organized Online Mega Career Awareness Program for Students and Teachers of Kendriya Vidyalaya from different Part of Northern Region. The Program was attended by more than 700 students and Teachers.
- **INVESTOR AWARENESS PROGRAMS:** NIRC

organized Investor Awareness Programs under the aegis of IEPF, Ministry of Corporate Affairs, GOI at various Colleges and Institutes for the benefit of students and faculties of Commerce department.

Grand celebration of National Festivals

- **Republic Day Celebration:** The members of the Institute came together and celebrated Republic Day with great joy and patriotic zeal on 26th January 2020. The evening was graced with the mesmerizing poetry of internationally renowned poet Dr. RahatIndori.
- **Independence Day Celebration:** 74th Independence Day was celebrated on Saturday, the 15th August, 2020. Flag hoisting ceremony was done at NIRC Premises. Famous Poet, Mr. Shambhu Shikhar was invited to grace the occasion.

Infrastructure development at NIRO:

- **Renovation of Building:** NIRO has undergone renovation of its building. The whole building was cleaned, painted and renovated.
- The tender of lift (elevator) for the premises of NIRC Prasad Nagar has been allotted and the secretariat building will be made Accessible for especially abled.
- New Council Room has been inaugurated.
- Reading room and library has been improved.

Society and Environment

- **Inauguration of Roof Top Solar Project:** Installation of the Solar Panels at the premises of the NIRC and its various chapters was done during the year.
- **Initiation of Rainwater Harvesting:** NIRC has initiated the process of installing the Rainwater Harvesting Equipments.
- **Plantation Day:** We at NIRC welcomed 2021 by organizing the Plantation Drive on January 1, 2021. The NIRC and its chapters across the Northern Region planted Trees

and contributed for the cleaner and greener environment.

But this is just the beginning! My Journey continuous!

“अभी तो आएं हैं ज़मीन पर, समान की उड़ान अभी बाकी है।”

I would like to convey my sincere thanks to our various Ministries and Regulatory Authorities, our President, Vice President, Central Council Members and all our Regional Council Members, stakeholders and students for their constant support and contribution in enabling me and my NIRC team to scale new heights in serving our Profession and making my chairmanship better and memorable.

Deeply rooted with remaining as well as new and empowering beliefs for further advancement of our CS Profession, I assure you all that my participation, in working towards my contemplations and dreams for our ICSI, that are somewhere still resting in my core, will be steady and promising.

But remember, the future success of our profession and our Nation is bound up with the skills, talents, participation and acceptance of responsibilities of all of us.

And last but not the least, it is our duty to make sure that in the toils of our hard work, the future generations of our ICSI aren't lost and we keep inspiring them with our sincere and honest deeds to further accelerate road to a healthy CS Profession.

My sincere wish for all of you, rise and shine, and this is not a goodbye.

May God continue to bless the ICSI!

Looking forward to receiving your valuable suggestions and feedback at cs.sureshpandey@gmail.com.



Yours own,
CS Suresh Pandey
Chairman-NIRC of ICSI
Mob. +91 9968300649

GLIMPSES

INAUGURATION FUNCTION – 8TH ONLINE BATCH OF MSOP (312TH BATCH OF NIRC)



Screen View: CS Sachin Jain, Vice President & Company Secretary, Paytm Payments Bank Limited, CS Suresh Pandey, Chairman, NIRC-ICSI, CS Sonia Baijal, Regional Director, NIRC-ICSI and Dr. Rajesh Gupta, Deputy Director, NIRC-ICSI addressing the Participants during Inaugural Session.

PLANTATION DAY – 1.1.2021



UP STATE CONFERENCE – 2.1.2021 AT LUCKNOW, U.P.



Shri Gopal Krishna Agarwal, National Spokesperson, Bharatiya Janata Party (Economic Affairs), CS Suresh Pandey, CS Amit Gupta, Regional Council Member, NIRC-ICSI Alongwith with other dignitaries

4 DAYS ONLINE MASTER CLASS ON AUDITING STANDARDS, SECRETARIAL STANDARDS AND COMPLIANCE & CORPORATE GOVERNANCE FROM 5TH JANUARY, 2021 TO 8TH JANUARY, 2021

Day 1: 5.1.2021



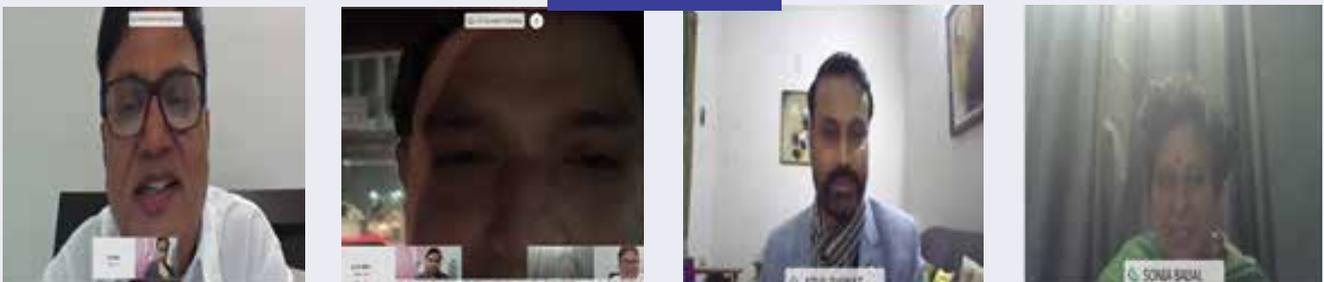
CS Deepak Sharma, Practicing Company Secretary addressing the Participants. Also seen CS Suresh Pandey, CS Shivam Rastogi, Moderator and CS Sonia Baijal.

Day 2: 6.1.2021



CS N K Jain, Former Secretary and CEO, ICSI addressing the Participants. Also seen CS GS Sarin, Immediate Past Chairman, NIRC-ICSI and CS Sonia Baijal.

Day 3: 7.1.2021



CS S Sudhakar, Cice-President (Corporate Secretarial) Reliance Industries Ltd. addressing the Participants. Also seen CS Suresh Pandey, CS Atul Kumar Rawat, Vice-Chairman, Lucknow Chapter of NIRC-ICSI and CS Sonia Baijal.

Day 4: 8.1.2021



CS Sampath K Rajagopalan, Partner – Entity Compliance and Governance, EY LLP and CA Purna Devi, Director- Global Compliance and Reporting, EY LLP addressing the Participants. Also seen CS Suresh Pandey and CS Himanshu Harbola, Regional Council Member, NIRC-ICSI.

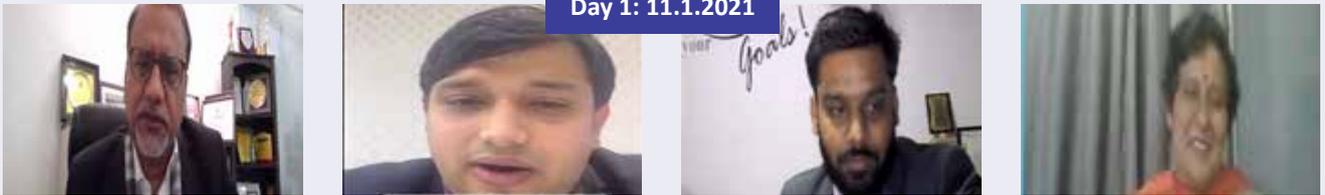
ICSI-NIRC HR CONCLAVE – 9.1.2021



Mr. Girish Bhatia, Founding Partner and Certified Coach Teacher and Speaker with John Maxwell Team addressing the Participants.

4 DAYS ONLINE MASTER CLASS ON INSOLVENCY AND BANKRUPTCY CODE (IBC) 2016 AND LABOUR CODE' FROM 11TH JANUARY, 2021 TO 14TH JANUARY, 2021

Day 1: 11.1.2021



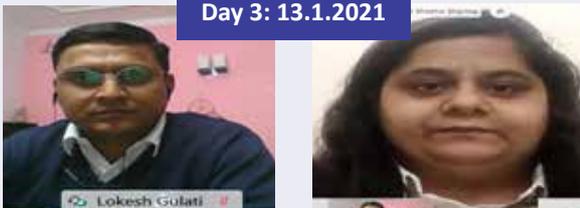
Mr. GP Madaan, Past Chairman, ICSI-NIRC and Managing Partner, Madaan Law Office addressing the Participants. Also seen CS Suresh Pandey, CS Shivam Rastogi, Moderator and CS Sonia Baijal.

Day 2: 12.1.2021



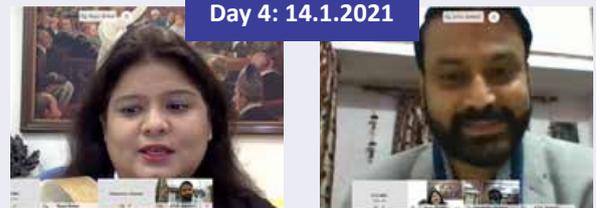
Mr. Spandan Biswal, Partner, Cyril Amarchand Mangaldas addressing the Participants. Also seen CS Suresh Pandey and CS GS Sarin.

Day 3: 13.1.2021



Mr. Lokesh Gulati, Executive Director, PWC addressing the Participants. Also seen CS Sheetal Sharma, Moderator.

Day 4: 14.1.2021



Ms. Raavi Birbal, Advocate Supreme Court of India addressing the Participants. Also seen CS Atul Kumar Rawat.

INAUGURATION FUNCTION – 9TH ONLINE BATCH OF MSOP (313TH BATCH OF NIRC)

INAUGURATION OF COUNCIL ROOM IN NIRC BUILDING



Screen View: CS Suresh Pandey and CS Himanshu Harbola addressing the Participants during Inaugural Session.



CS Suresh Pandey, CS Vimal Gupta, Vice-chairman, NIRC-ICSI, CS Susshil Daga, Secretary, NIRC-ICSI and CS Sonia Baijal

1ST NATIONAL CONFERENCE OF PRACTISING COMPANY SECRETARY



CS Suresh Pandey addressing the Participants. Also seen CS Ashish Garg, President, ICSI, CS Nagendra D Rao, Vice - President, ICSI, CS Manish Gupta, Council Member, ICSI, CS Rahul Verma, Chairperson, Bikaner Chapter of NIRC-ICSI and CS Bharat Chaudhary, Chairperson, Udaipur Chapter of NIRC-ICSI

CHANDIGARH STATE CONFERENCE



CS Suresh Pandey, Smt Banto Devi, Wife of Shri Rattan Lal Kataria, Hon'ble Minister of State for Jal Shakti and Social Justice and Empowerment , Govt of India, Shri Krishan Kumar Dhull, Honorary General Secretary , Haryana State Council for Child Welfare, , CS Kumar Gaurav Dhawan, Deputy Director(Admin), PGI Chandigarh, CS G S Sarin, CS Rahul Jogi, Past Chairperson, Chandigarh Chapter of NIRC-ICSI, CS Yogita, Chairperson, Patiala Chapter of NIRC-ICSI, CS Bhupesh Gupta, Regional Council Member of NIRC-ICSI, CS Anil Kumar, Chairman, Chandigarh Chapter.

HARYANA STATE CONFERENCE



CS Suresh Pandey, CS Atul Kumar Rawat, CS Sumit Grover, Chairperson, Panipat Chapter of NIRC-ICSI, CS Sanjay Bansal, Chairperson, Karnal Chapter of NIRC-ICSI and CS Amresh Joshi, Speaker of Session.

ICSI CONVOCATION OF NORTHERN REGION



CS Suresh Pandey addressing the Participants. CS Ranjeet Pandey, Immediate Past President, ICSI, CS Manish Gupta and CS Suresh Pandey.



ARTICLES ON THEME

**INTELLECTUAL
PROPERTY RIGHTS**

INTELLECTUAL PROPERTY RIGHTS (IPR) AND THEIR IMPORTANCE IN INDIAN CONTEXT



CS Pradeep Kumar Ray, FCS
fcsprkay@gmail.com

“Inventors are honorable not because they make a difference, but because they want to make a difference against all odds”

**— Kalyan C. Kankanala, Fun IP,
Fundamentals of Intellectual Property**

INTRODUCTION

The intellectual property rights (IPR) are intangible in nature and give exclusive rights to the inventor or creator for their valuable invention or creation. In the present era of globalisation, IPR remains as the focal point in global trade practices and livelihood across the globe. These rights boost the innovative environment by giving recognition and economic benefits to creator or inventor. In reverse side, the lack of IPR awareness and its ineffective implementation witness the death of inventions, high risk of infringement, economic loss and decline of an intellectual era in the country and accordingly hamper the economic, technical and societal developments of nation. Hence it is the utmost requirement for India to be acquainted with IPR knowledge and its appropriate implementation. Keeping in view of such objective, this article highlights various terms of IPR and their importance in Indian context.

INTELLECTUAL PROPERTY

Intellectual property is the product of the human intellect including creativity concepts, inventions, industrial models, trademarks, songs, literature, symbols, names, brands, etc. It is an intangible asset.

INTELLECTUAL PROPERTY RIGHTS (IPR)

IPR are those legal rights which

- a) Grant and allow to the owners of Intellectual Properties to benefit from the fruits of their

intellectual endeavour by creating a monopoly over these properties. Such benefits are not always natural rights but require recognition by a statute

- b) Aim at protecting the creations of the intellect, such as inventions, the appearance of products, literary, artistic and scientific works and signs, among others.
- c) Cover the privileges given to individuals who are the owners and inventors of a work, and have created something with their intellectual creativity. Individuals related to areas such as literature, music, invention, etc., can be granted such rights, which can then be used in the business practices by them.
- d) Provide the creator/inventor the exclusive rights against any misuse or use of work without his/her prior information. However, the rights are granted for a limited period of time to maintain equilibrium.
- e) Do not differ from other property rights. They allow their owner to completely benefit from his/her product which was initially an idea that developed and crystallized.
- f) Entitle the creator or inventor to prevent others from using, dealing or tampering with his/her product without prior permission from him/her. He/she can in fact legally sue them and force them to stop and compensate for any damages.
- g) Allow the owner can sell, buy or license his intellectual property just like physical property. Although one has to register IPR at legal authority in some presentable or tangible form to claim their benefits.
- a) Give especial rights to its inventor and or creator to sustain and harvest economic benefits which further motivate skill and societal developments

* The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI

ROLE OF IPR

IPR play a very pivotal role in every sector and have become the basis for crucial investment decisions. These are exclusive rights and therefore

- Strive to maintain balance between the interests of innovators and the interests of the society at large.
- Provide an adequate legal framework to protect the interests of innovators and
- Inspire confidence that their intellectual property would be protected and in turn triggering further innovation.

IMPORTANCE OF IPR

The purpose of intellectual property rights is to encourage new creations, including technology, artwork, and inventions, that might increase economic growth. These increase the incentives for individuals to continue to produce things that further create job opportunities and new technologies, while enabling our world to improve and evolve even faster. According to The U.S. Chamber of Commerce's Global Innovation Policy Center:

- Intellectual Property Creates and Supports High-Paying Jobs
- Intellectual Property Drives Economic Growth and Competitiveness

ACTIVITIES COVERED BY WIPO

The World Intellectual Property Organization(WIPO) was incepted in 1967 to protect the IPR throughout the world. It frameworks as well as regulate various policies concerned to IPR across the globe. It laid down following list of activities which are covered by the intellectual property rights -

- 1) Industrial designs
- 2) Scientific discoveries
- 3) Protection against unfair competition
- 4) Literary, artistic, and scientific works
- 5) Inventions in all fields of human endeavor
- 6) Performances of performing artists, phonograms, and broadcasts
- 7) Trademarks, service marks, commercial names, and designations
- 8) All other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields

The main objective of WIPO is the economic, social and sustainable cultural development

with preservation of biodiversities, traditional knowledge through a balance and effective international IP system. It is responsible to harmonise differences amongst various countries especially between the developed and developing nations by amending international regulation so that each of them get an equal opportunity in the emerging world.

TYPES OF IPR

Intellectual property is divided into two categories:

1. Industrial Property, which includes:
 - (a) inventions (patents),
 - (b) trademarks,
 - (c) industrial designs and models
 - (d) Geographic indications
 - (e) Trade Secrets and Confidential Information
 - (f) Database
 - (g) Plant Varieties
2. Artistic/ creative Property, which includes:
 - (a) Copyright--Literary works namely novels, poems, etc. artistic and scientific works,
 - (b) Performer rights--Plays, films, musicals, cartoons, paintings, photographs, statues and architectural designs, phonogram recordings by producers, and rights of broadcasters over radio and TV programmes



1. PATENT

A patent is an exclusive right granted by law to an inventor or assignee for an invention. It has the following characteristics:

- 1) It provides the patent owner with the right to decide how or whether the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the

- published patent document.
- 2) It prevents others from commercially benefiting from patented invention without permission, for a limited period of time in exchange for detailed public disclosure of patented invention.
 - 3) It gives the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention.
 - 4) It is an invention is a solution to a specific technological problem, which may be a product or a process and generally has to fulfill three main requirements: it has to be new, not obvious and there needs to be an industrial applicability.[31]:17 To enrich the body of knowledge and stimulate innovation, it is an obligation for patent owners to disclose valuable information about their inventions to the public.
 - 5) It prevents an invention from being created, sold, or used by another party without permission.

Patents are the most common type of intellectual property rights that come to people's minds when they think of intellectual property rights protection. A Patent Owner avails following rights:

- i) To commercialize his/her/its patent,
- ii) To buy or sell the patent
- iii) To grant a license to the invention to any third party under mutually agreed terms.

There are three different categories that patents can fall under:

- 1) **Utility:** A utility patent protects the creation of a new or improved product, process, composition of matter, or machine that is useful. An example of utility patent: Method for a driver assistance system of a vehicle
- 2) **Design:** A design patent protects the ornamental design on a useful item. An example of design patent: Electric bicycle
- 3) **Plant:** A plant patent protects new kinds of plants produced by cuttings or other nonsexual means. An example of plant patent: Crapemyrtle plant named 'CM1'

PATENTABLE INVENTIONS

The patentability of any invention needs to fulfill following criteria:

1. **Usefulness:** invention must have industrial applicability or applied for practical purpose.
2. **Novelty:** invention must be new technology which has not been published or available in prior art of the country or elsewhere in the world before the date of patent filing.
3. **Non obviousness:** Invention which can be done by any ordinary skilled person is obvious and cannot be patentable. Hence invention must not be obvious for patentability.

NON- PATENTABLE INVENTIONS

As per Section 3 of the Patent Act, 1970 the following are not patentable:

- a) Frivolous invention
- b) Invention against the natural laws
- c) Inventions which are not fair to health of human, animal, plant life, environment as well as contrary to public order or morality
- d) Discovery of any living thing; discovery of any non living substances occurring in nature;
- e) Formulation of any abstract theory;
- f) Discovery of any scientific principle
- g) Substance or chemical obtained by mere admixture resulting in the aggregation of the properties; mere arrangement or rearrangement of known devices
- h) Invention relating to atomic energy and related to security of India.

PATENT FILING STEPS

Patent filing steps are as follows

- Step 1: Filing of Patent Application or Priority Application
- Step 2: Publication of Application
- Step 3: Opposition of Patent
- Step 4: request for Examination
- Step 5: Examination and Clarification of Raised Objections, if any
- Step 6: Grant of Patent

2. TRADEMARKS

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. It has following characteristics:

- a) It is a sign that individualizes the goods or services of a given enterprise and distinguishes them from those of competitors. To fall under law protection, a trademark must be distinctive, and not deceptive, illegal

- or immoral.
- b) It is an another familiar type of intellectual property rights protection.
 - c) It is a distinctive sign which allows consumers to easily identify the particular goods or services that a company provides. Some examples include KFC, the Apple logo, and so on.
 - d) It can come in the form of text, a phrase, symbol, sound, smell, and/or color scheme.
 - e) Unlike patents, it can protect a set or class of products or services, instead of just one product or process.
 - f) It is a recognizable sign, design or expression which distinguishes products or services of a particular trader from similar products or services of other traders.

FORGERY AND COUNTERFEITING OF TRADEMARKS

Forgery of a trademark means a complete transfer being identical from the unique brand or transferring the main parts thereof making the forged brand greatly identical to the original one. Whereas Counterfeiting a trademark means making a brand similar in total to the original one in a manner that might mislead the public in connection with the source of goods that are marked by the brand in question.

3.INDUSTRIAL DESIGNS

An industrial design constitutes the ornamental or aesthetic aspect of an article. It has following characteristics:

- a) It may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.
- b) It is the aesthetics and ergonomics of a product.
- c) It consists of three-dimensional elements, such as the creation of the product's shape, or two-dimensional ones, such as graphics, patterns and colors.
- d) It 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.
- e) It can be used to produce a product, industrial commodity or handicraft.

- f) It is what makes a product look appealing, and as such, it increases the commercial value of goods.

INDUSTRIAL DESIGN RIGHTS

An industrial design right (sometimes called "design right" or design patent) protects the visual design of objects that are not purely utilitarian.

4. GEOGRAPHICAL INDICATIONS

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. It has following characteristics:

- a) It includes the name of the place of origin of the goods
- b) It is basically a notice stating that a given product originates in a given geographical area.

5. TRADE SECRETS

Trade secrets are IP rights on confidential information which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection. It has following characteristics:

- a) It is any information of commercial value concerning production or sales operations which is not generally known. The owner of a trade secret must take reasonable measures to maintain its confidentiality.
- b) It is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors and customers.
- c) Any invention or knowledge which is not innovative (not patentable) but useful for business and provides economical benefits can be kept as trade secret.
- d) This novel or creative information is also kept as trade secret when registration of patent, copyright, industrial design, etc are pending or in process.
- e) There is no formal government protection granted; each business must take measures

to guard its own trade secrets (e.g., Formula of its soft drinks is a trade secret for Coca-Cola.)

Trade secrets have three elements:

1. Subject matter must be a secret capable of adding economic value
2. The owner must take reasonable precaution to keep it secret
3. In case of breach, the owner must prove that the competitor got information in a wrong manner.

6. COPYRIGHT

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

It has following characteristics:

- a) It is a form of IPR concerned with protecting works of human intellect.
- b) The domain of copyright is literary and artistic works, might that be writings, musicals and works of fine arts, such as paintings and sculptures, as well as technology-based works such as computer programs and electronic databases.
- c) It gives the creator of an original work exclusive rights to it, usually for a limited time.
- d) It may apply to a wide range of creative, intellectual, or artistic forms, or “works”
- e) It does not cover ideas and information themselves, only the form or manner in which they are expressed

Copyright covers following types of works:

1. **Literary and scientific works:** novels, poems reference works, newspapers, plays, books, pamphlet, magazine, journals, etc.
2. **Musical work:** songs, instrument musical, choruses, solos, bands, orchestras, etc
3. **Artistic works:** such as painting, drawings, sculpture, architecture, advertisements, etc.
4. **Photographic work:** portraits, landscape, fashion or event photography, etc
5. **Motion pictures:** it includes the cinematography works such as film, drama, documentary, newsreels, theatrical exhibition, television broadcasting, cartoons, video tape, DVDs, etc
6. **Computer programmes:** computer programmes, softwares and their related databases, Maps and technical drawings

ADVANTAGES OF IPR

Intellectual property rights are advantageous in the following ways -

- i) These provide exclusive rights to the creators or inventors.
- ii) These encourage individuals to distribute and share information and data instead of keeping it confidential.
- iii) These provide legal defense and offers the creators the incentive of their work.
- iv) These help in social and financial development.

IPR IN INDIA

In order to protect the intellectual property rights in its territory, India has defined the formation of constitutional, administrative and jurisdictional outline whether they imply the copyright, patent, trademark, industrial designs, or any other parts of the intellectual property rights.

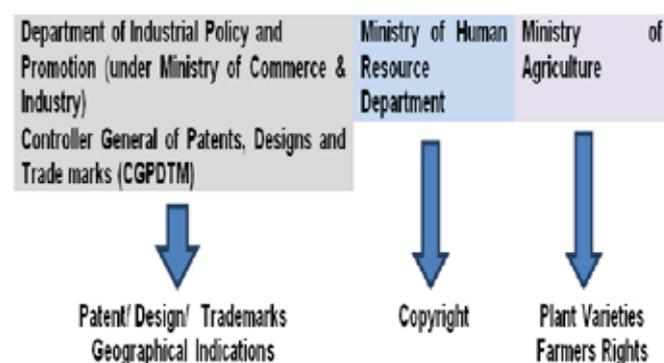
Back in the year 1999, the government passed an important legislation based on international practices to safeguard the intellectual property rights. Let us have a glimpse of the same -

In India, intellectual property rights are recognised under following statutes:

- 1) The Patents Act, 1970;
- 2) The Trade Marks Act, 1999;
- 3) The Copyright Act, 1957;
- 4) The Designs Act, 2000;
- 5) The Geographical Indications of Goods (Registration & Protection) Act, 1999;
- 6) The Semiconductor Integrated Circuits Layout Design Act, 2000;
- 7) The Biological Diversity Act, 2002;
- 8) The Protection of Plant Varieties and Farmers' Rights Act, 2001.

REGULATORS OF IPR

IPR are regulated under following government functionaries:



IPR STATUS OF INDIA

The World Bank carried out survey concerned to Knowledge Economy Index (KEI) of 140 countries across the world on the basis of their knowledge based initiative, policy frame work, economy incentive and institutional regime, information and communication technologies (ICT) infrastructure in 2007. India ranked at 101st position due to lack in aforesaid parameters. Similarly, India ranked at 14th, 9th and 13th position in patents, marks and designs respectively based on total (resident and abroad) IP filing activity by origin in 2014

The main reason for lagging behind in IPR participation is unawareness amongst youth, academicians, researchers, industrialists and traders in India about IPR and its benefits. Even, Micro, Small and Medium Enterprises (MSME) that constitute around 95% of all units; 40 % of total value addition; nearly 80% of the employment of the total manufacturing sector; and 35 % of total exports are also lacking in IPR edge. Due to aforesaid reasons, there is no Indian multinational company in top 100 patent applicants worldwide during 2003-12

PROMOTION OF IPR

Large number of countries including India care for IPR and seek to promote and protect these rights due to the following reasons:

- 1) New innovations in all IPR domains lead to Human progress and advancement.
- 2) Legal protection of new innovations encourages safe spending on other innovations.
- 3) Caring for and protecting IPR contribute to achieving economic and social development.

CONCLUSION

In the present knowledge based economy, the necessity of IPR for progressive societal development is imperative. The IPR is significant to be a part of local as well as global competitive trade. The government should include IPR in basic educational system and promote IPR registration by encouraging the innovators and creators. India is having all the resources in terms of available raw material, cheap labour, innovative and creative dedicated manpower. Upon their utilization in a constructive way, undoubtedly India will harness its proportionate share in global trade by exploration in Intellectual Property Rights. ■



INTELLECTUAL PROPERTY RIGHTS



CS Ankita Mehrotra, ACS
ankita.mehrotra14@gmail.com

Intellectual Property Rights in general refers to the set of intangible assets including invention, creation, and contribution to the contemporaneous field of knowledge which is owned and legally protected by an individual or company from the outside use or implementation without approved consent. The economic growth, financial incentive and motivation for advanced innovations imbedded in the balanced legal protection of Intellectual Property Rights entails proficient, directed and timely updated guidance in the field of Intellectual Property Rights.

Intellectual property is a product of human intellect and the rights granted on it allow its owner to benefit from the fruits of this intellectual endeavour by creating a monopoly over it. Such benefit is not always a natural right but requires recognition by a statute.

The significance of intellectual property

can be traced to the ancient use of stamps on bricks by Roman brick-makers for the purpose of identification, and even before that when the leaders of the ancient Greek city of Sybaris granted monopoly for one year on cooking a delicious dish to its creator. Obviously, much has changed since then with the advancement of science and technology and global business.

Intellectual property has increasingly assumed a vital role with the rapid pace of technological, scientific and medical innovation that we are witnessing today. Moreover, changes in the global economic environment have influenced the development of business models where intellectual property is a central element establishing value and potential growth. In India several new legislations for the protection of intellectual property rights (IPRs) have been passed to meet the international obligations under the WTO Agreement on Trade-



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Related Aspects of Intellectual Property Rights (TRIPS).

Intellectual property has therefore grown into one of the world's biggest and fastest-growing fields of law thereby necessitating the demand for IP professionals well versed in this area to deal with (IPRs) across the national and international borders.

The recognition and protection of these rights is of recent origin. Patents, designs and trademarks are considered as industrial property. As per International Convention for the protection of industrial (Paris Convention) the protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations or origin and the repression of unfair competition when copyrights, Geographical indicators, layout Designs and confidential information were included to industrial property, they all become intellectual property.

Intellectual property rights (IPRs) play a key role in every sector and have become the basis for crucial investment decisions. IPRs are exclusive rights and therefore there is always a challenge to strike a balance between the interests of innovators and the interests of the society at large. Another important factor is having an adequate legal framework to protect the interests of innovators and inspire confidence that their intellectual property will be protected, in turn triggering further innovation.

Intellectual Property Rights in India

Indian government approved its first Intellectual Property Rights Policy in May 2016. National Intellectual Property Rights Policy was approved by the Indian cabinet on 12 May 2016 to ensure compliance to the Doha Development Round and TRIPS Agreement. With its seven objectives, it aims at creating a “Creative India; Innovative India”.

Intellectual Property Rights are legal rights governing the use of creations of the human mind. The recognition and protection of these rights is of recent origin. Patents, designs and trademarks are considered as industrial property. As per International Convention for the protection of industrial (Paris Convention) the protection of industrial property has as its object patents, utility models, industrial designs, trademarks,

service marks, trade names, indications of source or appellations or origin and the repression of unfair competition when copyrights, Geographical indicators, layout Designs and confidential information were included to industrial property, they all become intellectual property.

Copyright & Related Rights:

The subject-matter of copyright is the literary, dramatic and musical or artistic work, a cinematograph film and a sound recording. Literary work includes computer programmes, tables and compilations including computer databases.

The object of this right is not the material thing produced, but the form impressed upon it by the maker. The picture, in the abstract sense of the artistic form made by visible by that paint and canvas, belongs to him who made it.

Trade Mark:

Trademark is anything which identifies the origin of the goods or services. It can be a name, symbol, logo, colour, sound etc. Trademark symbolizes the value or goodwill associated with the goods and its specific source. It distinguishes one firm from others.

Benefits of trademarks are several-fold:

It helps consumers to identify products with desirable attributes quickly.

It encourages firms to improve quality of their product. In absence of any identification mark, it would be difficult to distinguish the duplicates from high quality products. This will lower the incentive of the firm to make high quality products as the returns would be same as that of inferior products. Trademark protection gives a “monopoly power” over the distinctive trademark in the sense that others are debarred from using the same or a confusingly similar trademark. However this kind of monopoly power does not involve any welfare loss as its aim is not to prevent similar products but only to prevent use of similar or deceptive marks with the aim of confusing the consumer. As a result, trademarks have mostly a positive incentive effect. It may seem that overall the economics of trademark protection and the intellectual property law of those marks are non-conflicting.

There are, however, some grey areas:

Issue of umbrella branding (brand extension) whereby a company uses a trademark made



famous by sale of one product to enter into another market. For example Reliance entering retail marketing, entertainment industry, restaurants etc. Such brand extension strategies raise legitimate competition policy issues as a firm is essentially using an advantage acquired in other market to sell its products. Consumers are likely to try the products associated with a well-known brand name rather than an unknown brand with same quality making it difficult for a new company to enter the market.

Patents:

The subject-matter of a patent-right is an invention. He whose skill or labour produces the idea of a new process, instrument or manufacture has that idea as his own in law. He alone is entitled to use it and to draw from it the profit inherent in it.

Geographical Indications:

A geographical indication is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g. a town, region, or country). India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 has come into force with effect from 15 September 2003. GIs have been defined under Article 22(1) of the WTO Agreement on Trade-Related Aspects of Intellectual Property

Rights(TRIPS) Agreement as: “Indications which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or characteristic of the good is essentially attributable to its geographic origin.”

Industrial Designs:

Industrial design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or both forms, by any industrial process or means whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction and does not include any trademark.

Lay-out Designs of Integrated Circuits:

In the case of layout designs of integrated circuits the property consists in the exclusive right to apply the layout design registered under statute in relation to the class of goods for which it is registered for a prescribed period. The right can also be licensed for use by third party or assign to any person.

Protection of undisclosed Information:

Confidential information and know-how can be protected only so long as the owner is able to

keep them secret and takes action against unlawful use of such information by others by an action for breach of confidence or contract.

The law relating to property and intellectual property has similarities regarding the nature the mode of acquisition, the nature of rights conferred, the commercial exploitation of those rights, the enforcement of those rights and the remedies available against infringement of those rights. Property rights include not all a person's right but only his corporeal property rights consisting of material things. But intellectual property is in the nature of intangible incorporeal property. The rights of intellectual property are created by statute. The invention may relate to a new product or an improvement of an existing product or a new process of manufacturing an existing or a new product. The acquisition of the monopoly of intellectual property, the conditions to be satisfied for acquisition, its duration, the licensing of this monopoly rights or their assignment to others are strictly governed by the statutes. The commercial exploitation of intellectual property may be assigned his rights or license them to industrialists for a lump sum payment or on a royalty basis the right of material property is transferred for sufficient consideration. As per the TRIPS Agreement, member countries of WTO may provide for criminal procedures and penalties to be applied in other cases of infringement of IPRs, in particular where they are committed wilfully on a commercial scale. In respect of trademark, the civil remedied available against infringement are an injunction, either damages or an account of profits and the delivery-up of the infringing articles for destruction. Civil and Criminal remedies are available against infringement of intellectual property.

Purpose of Intellectual Property Law:

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods for consumers. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. Because they can then profit from them, this gives economic incentive for their creation. The intangible nature of intellectual property presents difficulties when compared with traditional property like land

or goods. Unlike traditional property, intellectual property is indivisible – an unlimited number of people can “consume” an intellectual good without it being depleted.

By exchanging limited exclusive rights for disclosure of inventions and creative works, society and the patentee/copyright owner mutually benefit, and an incentive is created for inventors and authors to create and disclose their work.

“If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions”.

This absolute protection or full value view treats intellectual property as another type of “real” property, typically adopting its law and rhetoric.

Protection of Intellectual Property:

Intellectual Property (IP) Protection is fundamental for innovation to thrive. It rewards creativity and can generate tangible benefits to businesses, employees and society.

Many companies do not realise that their intellectual property assets may be integral to the core services of the business and overall long-term viability. Also, many smaller companies believe that exploiting their IP is too time consuming, too expensive and difficult to see a return on an investment. This is not the case and any company irrespective of its size or the nature of its business should have a strategy which considers the importance of any IP assets. It is also important to have a strategy in place to protect any unique products or services that you own as competitors can essentially steal or piggy back on your success to take away market share. Not considering your IP will adversely impact on your company's ability to grow and consolidate its revenue stream.

Protecting Intellectual Property also means preventing piracy. Controlling the technology used to copy or develop a product prevents piracy. For example, in the days of LP records - the poly vinyl records were the means of distributing music. Since these records could be manufactured by a select few firms, piracy was restricted. But with the advent of compact cassettes, small fly-by-night operators began to sell pirated music cassettes. In India, thousands of small time operators sprung

up in 1980's who were selling pirated music. With the advent of CD recorders, copying music CDs became very easy - even individuals could copy CDs in their home PCs. Later with the advent of Internet, Peer-to-peer networks, and MP3 formats piracy became a global menace.

Currency note is another example of controlling the piracy via control of manufacturing equipment. Machines used to print currency notes are highly regulated and controlled. This enables governments to control the use of counterfeit currency.

Difficulty in copying & distributing counterfeit products is a proven method to protect an IP. For example, semiconductor chips and cars cannot be counterfeited. But individual patents which are used in developing the product can be violated. If patents or trademarks or copy rights are violated, then one has to resort to legal measures to protect their IP.

Some of the main advantages of IP protection are set out below:

- Protecting IP gives an exclusive property right and can help a business to do better than it otherwise would, or it can kick-start a new business.
- Developing effective IP protection strategies will depend on a particular business. An effective strategy may involve a range of IP protection options. As an example, one may seek patent protection for its product, register its design and develop a branding strategy based on a registered trademark.
- IP protection can allow turning knowledge/idea into a tangible asset capable of assignment, transfer and licensing.
- Protected IP can be used as leverage for attracting investors, as collateral for obtaining finance.
- Protecting IP can reduce the risks associated with commercialization by deterring competitors from using the protected IP.
- Protecting IP can help generate revenue and provide a return on investment in R&D.
- Protecting IP can allow generating royalty income from licensing.

A trade mark/brand can operate as a “badge of origin” and be used to promote your goods/services thereby providing a guarantee of source and quality to customers/prospective customers

WTO & IP protection:

The most comprehensive agreement on IP protection was developed by World Trade Organization (WTO) in 1994. During Uruguay round of negotiations, a comprehensive & binding agreement was drawn upon all members' states.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) is an international treaty administered by the WTO which sets down the minimum standards for most forms of intellectual property regulation for all member countries of the World Trade Organization.

Specifically, TRIPs deals with: Patents, Copyright and associated rights, such as rights of performers, producers of sound recordings and broadcasting organisations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout-designs; patents, including the protection of new varieties of plants; trademarks; trade dress; and undisclosed or confidential information, including trade secrets and test data.

TRIP(s) also specifies enforcement procedures, remedies, and dispute resolution procedures. However, the variances in the local implementations of IP protection laws create challenges in protecting an IP globally.

The idea under TRIPs was to apply IP rules equally to all member states, however developing countries were allowed extra time to implement the applicable changes to their national laws. Two tiers of transition were agreed on depending on their level of development. Developing countries such as India, Brazil, Russia, China etc. had to transition to a common standard by 2005. The transition period for least developed countries was extended to 2016, and could be extended beyond that.

The TRIPS agreement introduced intellectual property law into the international trading system for the first time, and remains the most comprehensive international agreement on intellectual property to date.

India, having ratified the final act of Marrakesh and being the member country of WTO has implemented the TRIPS Agreement. India implemented all the provisions of the TRIPS Agreement along with other conventional agreements by enacting the new law or by amending the existing law.

INTELLECTUAL PROPERTY RIGHTS



CS Deepak Pathak, ACS
DEEPAKPATHAK95@GMAIL.COM

DEFINITION OF INTELLECTUAL PROPERTY RIGHTS:

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

INDIAN CONTEXT

LAWS PROTECTING INTELLECTUAL PROPERTY IN INDIA

1. Trade Marks Act, 1999
2. The Patents Act, 1970 (as amended in 2005)
3. The Copyright Act, 1957
4. The Designs Act, 2000
5. The Geographical Indications of Goods (Registration and Protection) Act, 1999
6. The Semiconductor Integrated Circuits Layout Design Act, 2000
7. The Protection of Plant Varieties and Farmers' Right Act, 2001

8. The Information Technology Act, 2000

INTELLECTUAL PROPERTY RIGHTS AND PROCEDURE FOR REGISTRATION IN INDIA

1. TRADEMARK

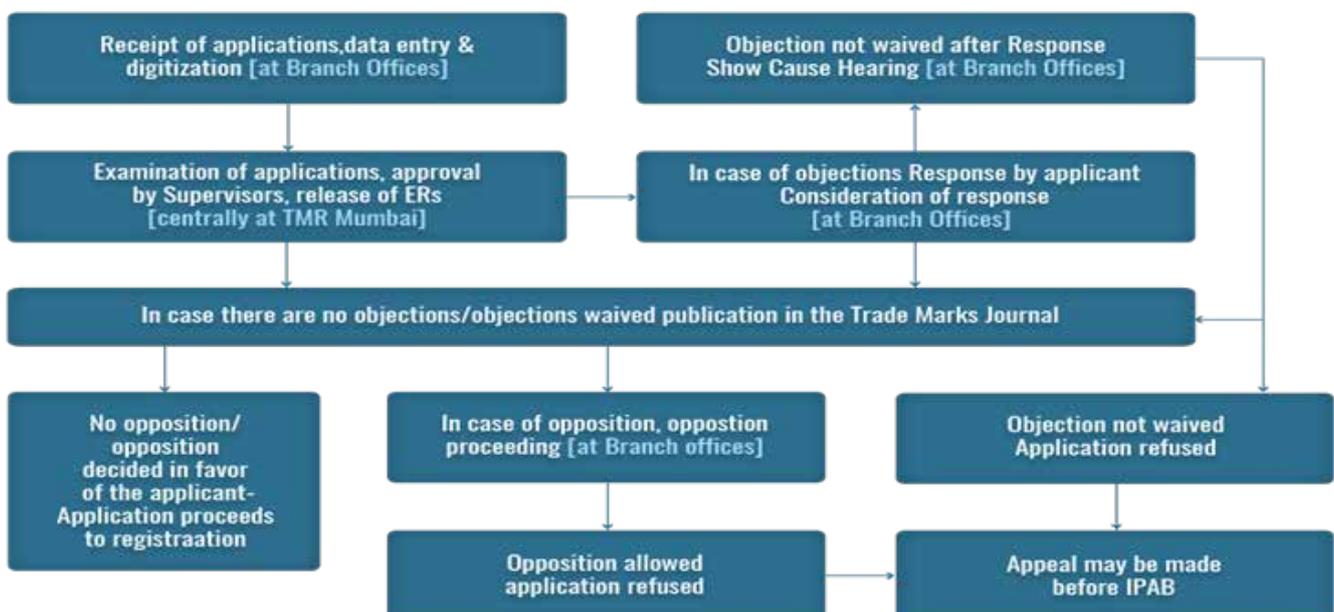
A Trademark is a type of recognizable sign, design or expression which identifies products or services from others.

In India the Trademark Registry administers the Trademark Act, 1999 and rules made thereunder.

The Objective of the Act is to register the Trademark applied and to protect the trademark for goods and services and to prevent fraudulent use of trademark.

The Controller General of Patents, Designs and Trade Marks heads the TRADE MARKS Registry offices and functions as the Registrar of TRADE MARKS.

PROCEDURE FOR REGISTRATION OF TRADEMARK



Source: <http://www.ipindia.nic.in/workflow-chart.htm>

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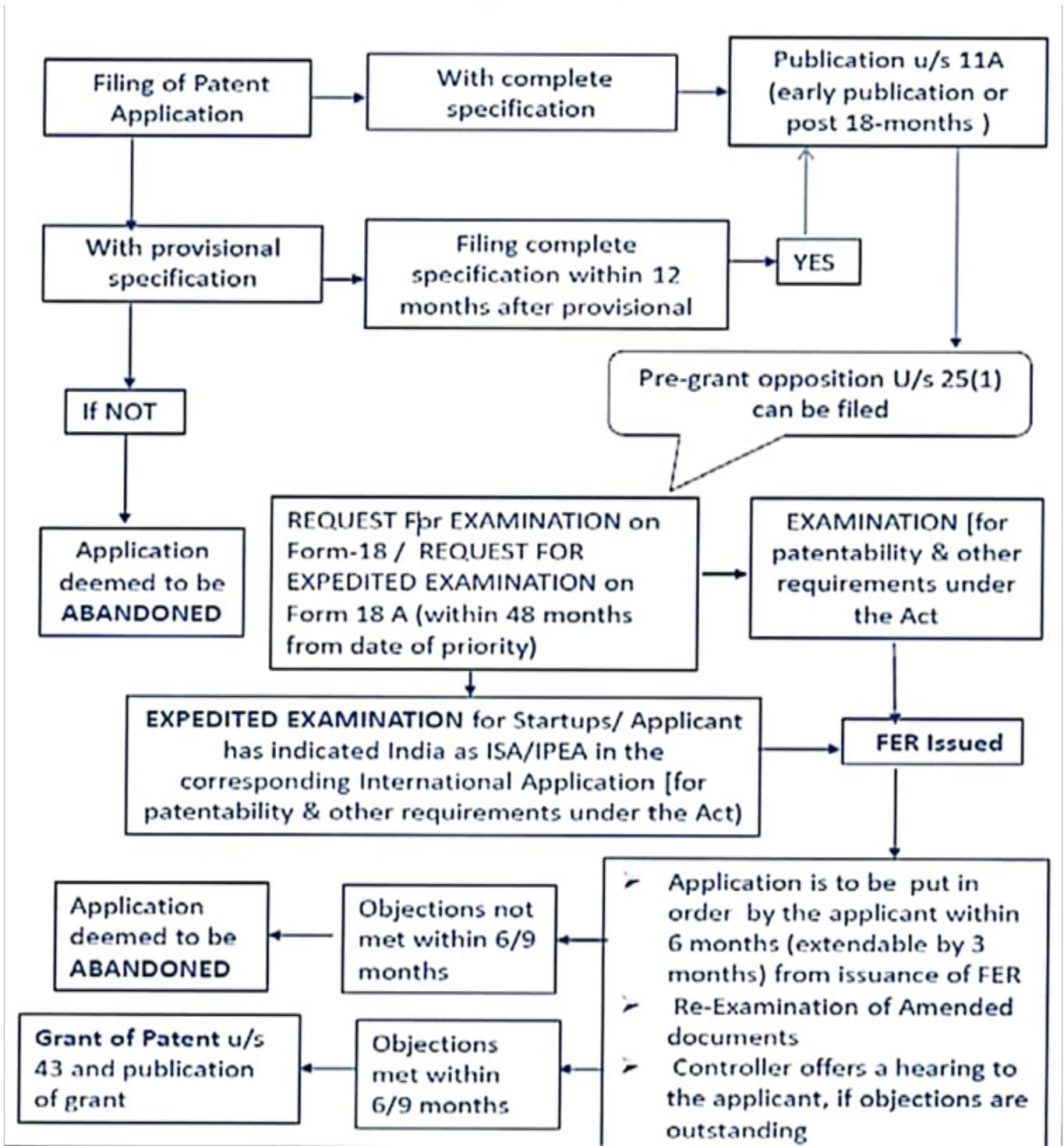
2. PATENT

A Patent is a statutory right for an invention, granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent.

An invention is patentable subject matter if it meets the following criteria –

- i) It should be novel.
- ii) It should have inventive step or it must be non-obvious
- iii) It should be capable of Industrial application.
- iv) It should not attract the provisions of section 3 and 4 of the Patents Act 1970

Flow Chart for Patent Application



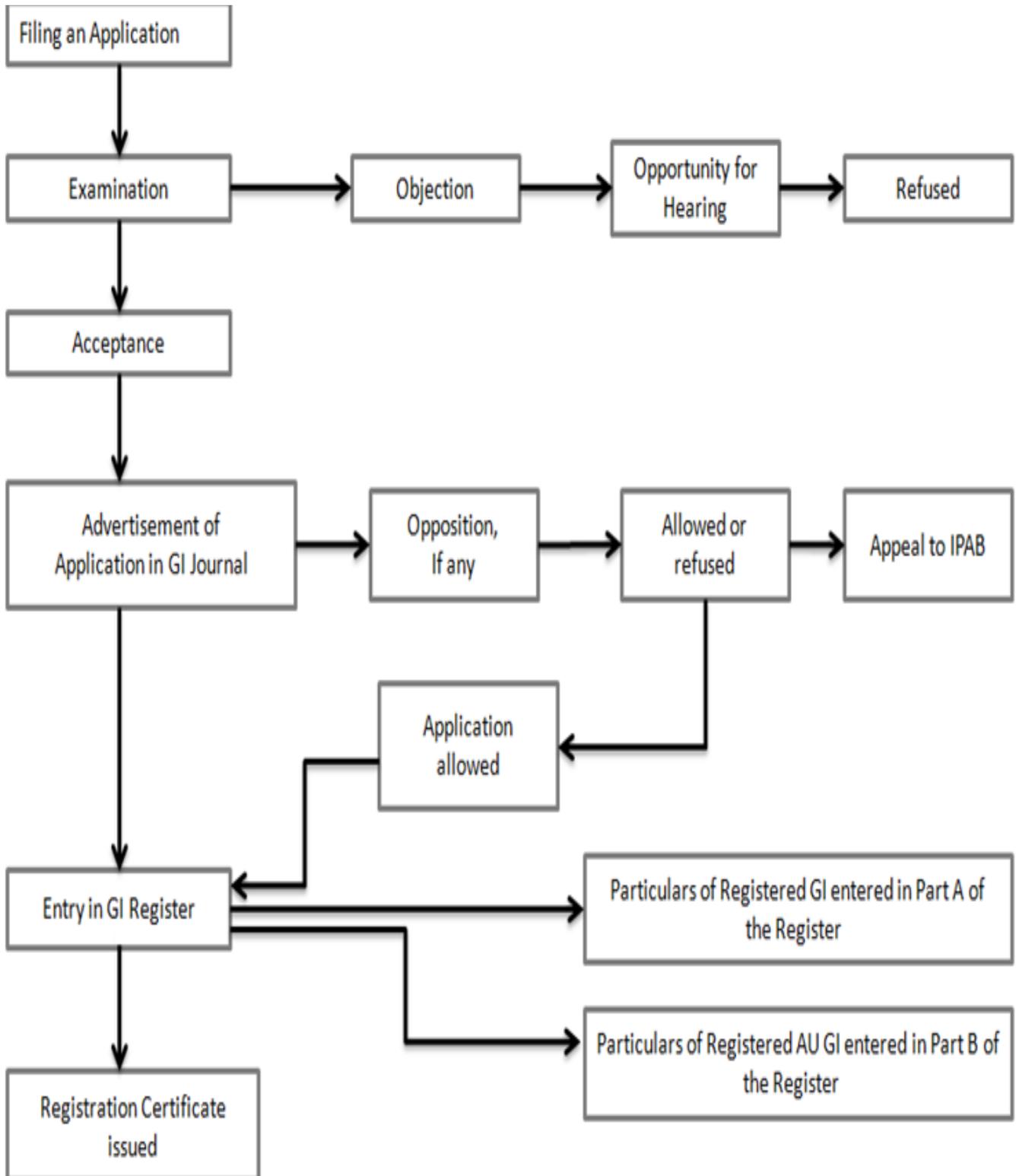
Source: <http://www.ipindia.nic.in/workflow-chart.htm>

3. GEOGRAPHICAL INDICATIONS

Geographical Indications of Goods are defined as that aspect of industrial property which refer to the geographical indication referring to a country or

to a place situated therein as being the country or place of origin of that product, Such a name conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality, region or country.

PROCEDURE FOR APPLICATION



Source: <http://www.ipindia.nic.in/workflow-chart.htm>

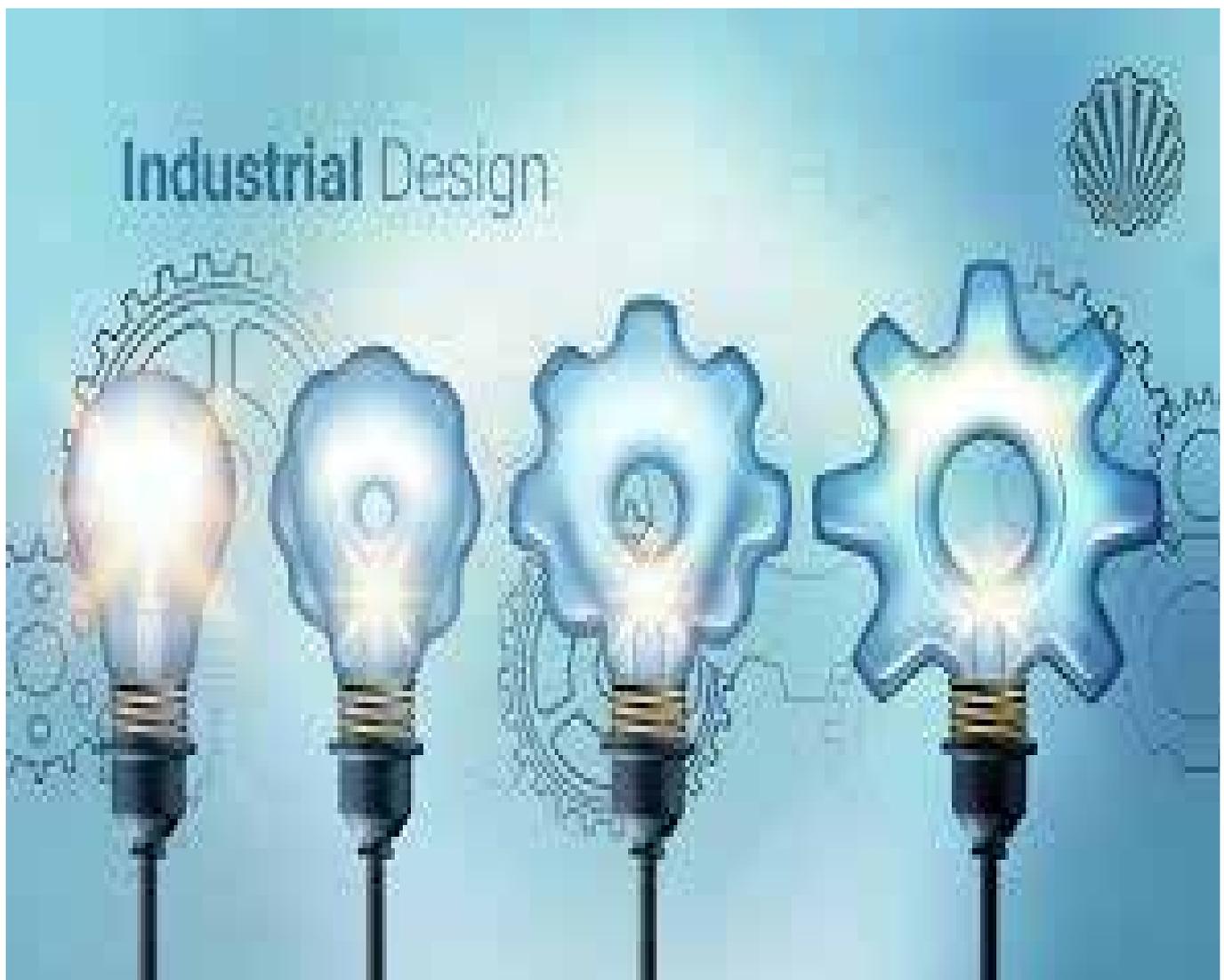
4. INDUSTRIAL DESIGN

The registration and protection of industrial designs in India is administered by the Designs Act, 2000 and corresponding Designs Rules, 2001 which came into force on 11th May 2001 repealing the earlier Act of 1911.

The industrial design recognizes the creation new and original features of new shape, configuration, surface pattern, ornamentations and composition of lines or colours applied to articles which in the finished state appeal to and are judged solely by the eye.

PROCEDURE FOR REGISTRATION OF DESIGN

1. Application is filled in form 1 (refer section 5 and 44 of the Design Act, 2000)
2. Representations should be prepared as prescribed under Rule 12, 13 and 14 of The Designs Rules and should be submitted in duplicate.
3. Form-21 (Power of authority/General Power of authority) in original (if filed through patent agent/advocates) (as in Schedule-II) If the applicant files copy of General Power of authority (GPA), it should be endorsed with the design application number, with which the original GPA has been filed.
4. Form-24 in prescribed format (if small entity status is claimed) and;
 - (a) It should be accompanied with evidence of registration under MSME Act, 2006 in case of Indian entities.
 - (b) It should be accompanied with affidavit deposed by the applicant or authorised signatory as Rule 42 of Designs Rules in case of Foreign entities.
5. Original Priority document under Rule 15 of The Designs Rules.
6. Authenticated English translated copy of the Priority document (if original priority document is other than English)



INTELLECTUAL PROPERTY RIGHTS



CS Jaspreet Kaur Dhanjal, ACS
jaspreetkhanjal@yahoo.com

Intellectual Property Rights are the rights that are given to the persons for the creations of their mind. It is an exclusive right given to the creator for the use of his/her creation for a certain period of time. Intellectual Property is the creations of mind and could be inventions, literary and artistic works; designs; and symbols, names and images used in commerce. The Intellectual Property is protected by law and it gives the benefit to the people to earn recognition or financial benefit from what they create or invent. The need of Intellectual Property Rights is to strike a balance between the interests of innovators and interest of public at large. The Statute of Monopolies (1624) and the British

Statute of Anne (1710) are seen as the origins of patent law and copyright respectively, firmly establishing the concept of intellectual property.

SIGNIFICANCE OF INTELLECTUAL PROPERTY

The significance of intellectual property can be traced to the ancient use of stamps on bricks by Roman brick-makers for the purpose of identification, and even before that when the leaders of the ancient Greek city of Sybaris granted monopoly for one year on cooking a delicious dish to its creator. Obviously, much has changed since then with the advancement of science and technology and global business.

TYPES OF INTELLECTUAL PROPERTY

S r . No.	Types of Intellectual Property	Description
1	Copyright	Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.
2	Patents	A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document.
3	Trademarks	A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or "mark" on their products.
4	Industrial Designs	An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

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5	Geographical indications	Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.
6	Trade secrets	Trade secrets are IP rights on confidential information which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.

NATURE OF INTELLECTUAL PROPERTY

- **Intangible Rights over Tangible Property:** The main Property that distinguishes IP from other forms of Property is its intangibility. While there are many important differences between different forms of IP, one factor they share is that they establish property protection over intangible things such as ideas, inventions, signs and information whereas intangible assets and close relationships are a tangible object. In which they are embedded. It allows creators or owners to benefit from their works when they are used commercially.
- **Right to sue:** In the language of the law, IP is an asset that can be owned and dealt with. Most forms of IP are contested in rights of action that are enforced only by legal action and by those who have rights. IP is a property right and can, therefore, be inherited, bought, gifted, sold, licensed, entrusted or pledged. The holder of an IPR owner has a type of Property that he can use the way he likes subject to certain conditions and takes legal action against the person who without his consent used his invention and can receive compensation against real Property.
- **Rights and Duties:** IP gives rise not only to property rights but also duties. The owner of the IP has the right to perform certain functions in relation to his work/product. He has the exclusive right to produce the work, make copies of the work, market work, etc. There is also a negative right to prevent third parties from exercising their statutory rights.
- **Coexistence of different rights:** Different types of IPRs can co-exist in relation to a particular function. For example, an invention may be patented, and the invention photograph may be copyrighted. A design can be protected under the Design Act, and the design can also be incorporated into a trademark. There are many similarities and differences between the various rights that can exist together in IP. For example, there are common grounds between patent and industrial design; Copyright and neighbouring rights, trademarks and geographical indications, and so on. Some intellectual property rights are positive rights; the rest of them are negative right.
- **Exhaustion of rights:** Intellectual property rights are generally subject to the doctrine of exhaustion. Exhaustion basically means that after the first sale by the right holder or by its exhaustion authority, his right ceases and he is not entitled to stop further movement of the goods. Thus, once an IP rights holder has sold a physical product to which IPRs are attached, it cannot prevent subsequent resale of that product. The right terminates with the first consent. This principle is based on the concept of free movement of goods which is in force by consent or right of the rights holder. The exclusive right to sell goods cannot be exercised twice in relation to the same goods. The right to restrict further movements has expired as the right holder has already earned his share by the act of placing goods for the first sale in the market.
- **Dynamism:** IPR is in the process of continuous

development. As technology is rapidly evolving in all areas of human activities, the field of IP is also growing. As per the requirement of scientific and technological progress, new items are being added to the scope of IPR, and the scope of its preservation is being expanded. Bio Patents, Software Copyrights, Plant Diversity Protection, these are few names which reflect contemporary developments in the field of IPR. The importance of intellectual property and its mobility is well established and reflected at all levels, including statutory, administrative and judicial.

NEED TO PROMOTE AND PROTECT INTELLECTUAL PROPERTY

There are several reasons for promoting and protecting intellectual property. Some of them are:

1. Progress and the good of humanity remain in the ability to create and invent new works in the field of technology and culture.
2. IP protection encourages publication, distribution, and disclosure of the creation to the public, rather than keeping it a secret.
3. Promotion and protection of intellectual Property promote economic development, generates new jobs and industries, and improves the quality of life.

RECOGNITION OF INTELLECTUAL PROPERTY UNDER STATUTE IN INDIA:

Intellectual Property Rights play an important role in every sector and it is also a basis of crucial investment decisions. It is always a challenge to make a balance between the interest of the creators and the interest of the public at large. Intellectual property is a result of human intellect and the rights granted for allowing its owner to benefit from the fruits of this intellectual endeavour by creating a monopoly over it. But this benefit is not always a natural right but requires recognition by a statute. They are governed by different statutes as per their use. The applicability of law restricts the use of Intellectual property without the permission of the creator. The importance of adequate legal framework is to protect the interests of the innovators in turn triggering further innovation.

In India, intellectual property rights recognised under statute are:

- The Patents Act, 1970;
- The Trade Marks Act, 1999;
- The Copyright Act, 1957;
- The Designs Act, 2000;
- The Geographical Indications of Goods (Registration & Protection) Act, 1999;
- The Semiconductor Integrated Circuits Layout Design Act, 2000;
- The Biological Diversity Act, 2002;
- The Protection of Plant Varieties and Farmers' Rights Act, 2001.

RECENT LANDMARK INTELLECTUAL PROPERTY RIGHTS JUDGEMENTS

I. BAJAJ ELECTRICALS LIMITED vs. GOURAV BAJAJ & ANR.

Facts: The Plaintiff was a part of the renowned Bajaj industry conglomerate, and had electrical stores of the same brand name. The Defendant owned 2 electrical stores and used the name 'Bajaj' as a part of his store names and also had a website for the same. Besides this, the Defendant used the expression "Powered by: BAJAJ" in the course of his trade. The Plaintiff established their right over the name by proving that 'Bajaj' had been legally granted the status of a well-known trademark, and thus the Defendant had no right to use it. It was further contended that the use of the above stated expression by the Defendant was a clear attempt to deceive the public by suggesting that the Plaintiff sponsored/ endorsed the Defendant's stores. Thus the Plaintiff filed a suit for an injunction against the infringing act by the Defendant.

Held: The Bombay High Court pondered the question as to whether the present case came under the defense of use of personal name. They held that such defense was not valid as the Plaintiff had adequately proved the mala fide intention of the Defendant behind the adoption of the name 'Bajaj' in the course of trade. The Court passed an interim injunction against the use of the trademark in the store names as well as the domain name of the Defendant

II. MARICO LIMITED VS. ABHIJEET BHANSALI

Facts: The Defendant herein was a social media influencer, who also operated a YouTube channel of his own. In a video posted on the channel, the Defendant made denigrating

comments about Parachute Coconut Oil, which is the Plaintiff Company's product. The Plaintiff Company had earned immense goodwill in the market owing to the good quality of their goods and were vigilant regarding the disparaging comments being made about their product, as well as the use of their trademark 'Parachute'. The use of the trademarked name violated the exclusive right conferred to the Plaintiff as the proprietor of the trademark, which amounted to infringement. Thus they approached the Bombay High Court seeking an injunction against the Defendant.

Held: The Court relied on the Trademarks Act, 1999 and in a clear interpretation of Section 29 of the Act, held that the Defendant was guilty of infringing the trademark of the Plaintiff by using it without prior authorization in his video. Hence, an interim injunction was passed against the Defendant along with an order for the removal of the impugned vide.

III. SAMEER WADEKAR & ANR. VS. NETFLIX ENTERTAINMENT SERVICES PVT.LTD & ORS.

Facts: The present suit was instituted upon the basis of an allegation that the Defendant had copied the literary work of the Plaintiff and converted the same into a web series without his consent, thereby infringing his copyright. The main contention raised by the Plaintiff was that there were several similarities between his work and the web series, and that he had previously shared his work with an individual who was a known associate of the Defendant. Hence he claimed copyright infringement and sought an injunction against the release of the web series.

Held: The Bombay High Court scrutinized both the works, and concluded that the similarities were not sufficient to declare the web series as a copy of the literary work of the Plaintiff. The similarities that arose were merely related to the concept, and no infringement could be claimed for the same. It also held that the mere fact that the Plaintiff had shared his work with an associate of the Defendant was not enough to establish a prima facie case of copyright infringement. Thus the application for injunction was dismissed and the release of the web series was permitted.

IV. STAR INDIA PVT.LTD. VS. MOVIESTRUNK.COM & ORS

Facts: The Plaintiff herein was a film production and distribution company, whereas the Defendants operated several online streaming websites. The present suit was filed against the illegal streaming of one of the Plaintiff's films on the Defendants' websites, which amounted to copyright infringement. The Plaintiff thus approached the Delhi High Court seeking relief against the infringement.

Held: The Court recognized the right of the Plaintiff granted by the Copyright Act, 1957 over the exclusive exploitation and distribution of their copyrighted content. There was a clear case of infringement against the Defendants who had made the film available to the public without the knowledge and consent of the Plaintiff. Hence the Court granted an injunction and also awarded suitable damages.

V. INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS (ISKCON) VS.ISKCON APPAREL PVT. LTD & ORS

Facts: The present suit was filed before the Bombay High Court for alleged trademark infringement and passing off. The Plaintiff contended that by selling garments under the name of 'Iskcon', the Defendant was infringing their trademark and attempting to pass off his brand as being associated with the Plaintiff group. The Plaintiff also sought to get their mark declared as a well-known trademark.

Held: The Court declared that in the present scenario, a clear case of trademark infringement had been established, and hence ordered the Defendants to refrain using the Plaintiff's mark. It was also concluded that the Plaintiff's mark satisfied all the statutory requirements of a well-known trademark, and thus the Court declared it as such.

CONCLUSION

Creativity and innovation can transform any Society. We have to recognize it, foster it and protect it. The Intellectual Property Rights are an encouragement for the creators and inventors and also refrain anyone from using it without the creator's permission.

PRIOR USER V/S REGISTERED USER UNDER TRADEMARK



CS Lalit Rajput, ACS
lalitrajput537@gmail.com

“An Act to amend and consolidate the law relating to trade marks, to provide for registration and better protection of trade marks for goods and services and for the prevention of the use of fraudulent marks. – Preamble of Trademark Law in India”

Trademark, which is also known as “Brand Name” / “Unique Symbol” means any symbol, word, name, device, numerals or combination of both, which can be represented graphically can be registered as trademark under the provisions of Trademark Law in India subject to conditions and requirements laid down in the Trademark Act.

❑ Rights of Prior User v/s Registered User

It is a well settled principle of Trademark Law that prior use of the goods will override the subsequent user, even though subsequent user has a registered trademark. Thus, the rights conferred by registration of trademark are subject to the rights of the prior user of the mark.

The rights of the Prior Users are protected under Section 34 of the Trade Marks Act, 1999 (including Unregistered Users). Section 34, enumerates that a registered proprietor or registered user of a trademark cannot interfere with the use of any identical or similar mark is a person has been using a mark from an earlier date.

❑ Fundamental requirements for the acknowledgement of “Prior Use”

Acknowledgement of “Prior Use” constitutes the following:

- the use of a mark identical or nearly resembling the registered mark, by a third person, must be in relation to the goods and services for which the first-mentioned mark is registered;
- the use must be a continuous use of the

trademark in India;

- the trademark must be used by the proprietor in order to avail the protection;
- the mark must have been used from a date prior to the use of the registered trademark or the date of registration whichever is earlier.

Legal Provisions under Trademark Law:

❑ Section 34 of Trademark Act: Saving for vested rights

Nothing in this Act shall entitle the proprietor or a registered user of registered trade mark to interfere with or restrain the use by any person of a trade mark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a date prior-

- to the use of the first-mentioned trade mark in relation to those goods or services be the proprietor or a predecessor in title of his; or
- to the date of registration of the first-mentioned trade mark in respect of those goods or services in the name of the proprietor of a predecessor in title of his;

whichever is the earlier, and the Registrar shall not refuse (on such use being proved) to register the second mentioned trade mark by reason only to the registration of the first-mentioned trade mark.

It is clearly stated that the rights of prior user are superior to that of registration and are unaffected by the registration rights under the Act.

Provisions under Section 34 of the Act, provides for protecting the vested rights preventing a proprietor or registered user of a trademark from

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interfering with the honest use of an identical trademark or a mark nearly resembling with the registered mark.

❑ **Section 27: No action for infringement of unregistered trade mark**

Section 27(2): Nothing in this Act shall be deemed to affect rights of action against any person for passing off goods or services as the goods of another person or as services provided by another person, or the remedies in respect thereof.

From the reading of Section 27(2) of the Act, it is clear that the right of action of any person for passing off the goods/services of another person and remedies thereof are not affected by the provisions of the Act. Thus, the rights in passing off are emanating from the common law and not from the provisions of the Act and they are independent from the rights conferred by the Act.

❑ **Section 28 : Rights conferred by registration**

Provisions under Section 28 of the Trademark Law, confers an exclusive right on the registered proprietor of a trade mark to use the mark and also to prevent others from using an identical or deceptively similar mark, one of its exception is enunciated under Section 34 of the Act. This Section gives rights to a user when its user is prior to the user of the proprietor and prior to the date of registration of the proprietor, whichever is earlier.

Judicial Interpretation:

1. Case Law: S. Syed Mohideen vs. P. Sulochana Bai

Supreme Court of India held that the scheme of the Act is such where rights of the prior user are recognised superior than that of the registration and even the registered proprietor cannot disturb interfere with the rights of the prior user.

2. Case Law: Neon Laboratories Ltd. v. Medical Technologies Ltd. & Ors.,

The Supreme Court of India opined that a registered proprietor of a trademark does not possess the right to prevent use by another party of an identical mark if that use commenced prior to the use of the registered mark.

3. Case Laws: N.R. Dongre v. Whirlpool Corpn. [N.R. Dongre v. Whirlpool Corpn., 1995 SCC Online Del 310 : AIR 1995 Del 300]

Decision: The Division Bench of the Delhi High

Court recognized that the registration is not an indefeasible right and the same is subject to rights of prior user.

The said decision of Whirlpool [N.R. Dongre v. Whirlpool Corpn., 1995 SCC Online Del 310 : AIR 1995 Del 300] was further affirmed by the Supreme Court of India in N.R. Dongre v. Whirlpool Corpn. [N.R. Dongre v. Whirlpool Corpn., (1996) 5 SCC 714]

Para 31: A reading of the aforesaid sections taken together show that: A trademark is ordinarily used in relation to goods of a manufacturer. A trademark can be registered but ordinarily registration is not granted if the mark falls under sub-sections 1(a) to 1(c) of Section 9. The proviso however, provides for entitlement to registration although ordinarily not permissible under Sections 9 (1) (a) to (c), provided that the mark has acquired a distinctive character as a result of its use prior to registration or is otherwise a well known trademark. Registration is only prima facie evidence of its validity and the presumption of prima facie validity of registration is only a rebuttable presumption

❑ **Key Analysis:**

Further, the prior user is responsible and is under the obligation to prove / to represent the facts / documents regarding the prior user of the same. After receiving Sufficient documents / clarifications, Authorities / Court will grant them Trademark Approval. The Registered user will always be in strong position as he has done registration as per provisions given under the Law. In case of a prior user of the mark, the concerned person is required to submit an affidavit along with evidence to support his claim of priority.

Further, a registered user can't restrain the third party from using an identical or similar mark if the third party has been continuously using the mark in relation to the same goods or services for which the mark of a registered user is registered provided the third party has been using the mark from a date prior to the date of use of registered mark or date of registration, whichever is earlier.

Let's discuss about key advantages of Trademark Registration in brief:

1. The owner of Registered Trademark enjoys exclusive right over the trademark.
2. The Owner can enjoy the sole ownership of

the Trademark and can stop other from the unauthorized use of the Trademark under the same class where it is registered.

3. Trademark makes easy for customers to find your products.
4. The logo can communicate the vision, quality or unique characteristic of any organization.
5. It helps in Builds trust and Goodwill and creating permanent customers who are loyal and always opt for the same brand.
6. Registration of Trademark creates an intangible asset i.e. Intellectual Property for an organization.
7. It gives recognition to the quality of the product and helps in attracting new customers as they can differentiate the quality of a product by the logo/brand name.
8. It is exclusive of all types of usages as well as rights. If someone else use the trademark then you can also sue the party if the trademark is registered.
9. No competitor or other person can use the wordmark or logo registered by prior user or registered user under trademark and can get the legal protection under the Act and stop any other person doing so.
10. Registration and Renewal cost is very less and helps an organization or a company create an unique image.

it is advisable that organizations and individuals or any other form of business, who are seeking trademark registration under the provisions of Trademark Law in India shall conduct a prior trademark search of similar marks which though not registered are in being used prior to registration of their trademark. "first user" rule is a seminal part of the Act and it has always enjoyed pre-eminence. Section 28(1) provides that the registered proprietor of a trademark can seek legal remedy in case of an infringement of his trademark in the manner provided by this Act. The proprietor of an unregistered trademark cannot initiate the infringement proceeding in the event of a deliberate counterfeiting.

Trademark can be use a safeguard and it protects a business' commercial identity or brand by discouraging other businesses from adopting a name or logo that is "confusingly similar" to an existing trademark.

Disclaimer:

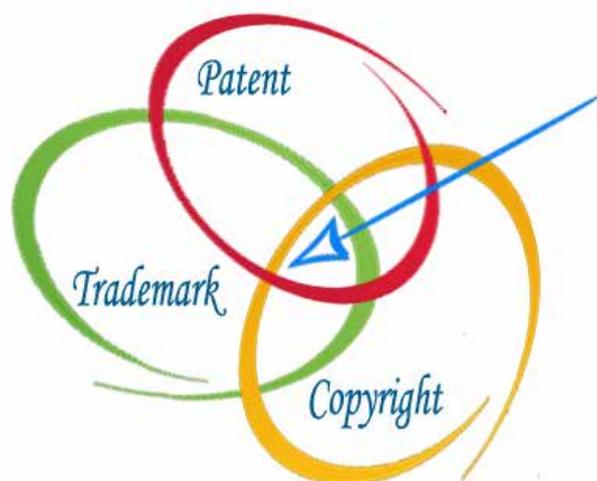
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INTELLECTUAL PROPERTY RIGHTS



CS Mohit Saini, ACS
smohit76@ymail.com



Intellectual Property



“Intellectual property is the oil of the 21st century. Look at the richest man a hundred years ago; they all made their money extracting natural resources or moving them around, all today's richest man have made their money out of intellectual property rights.”

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

TYPES OF INTELLECTUAL PROPERTY

Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

Patents

A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes

technical information about the invention publicly available in the published patent document.

Trademarks

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or “mark” on their products.

Industrial designs

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

Geographical indications

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

Trade secrets

Trade secrets are IP rights on confidential

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information which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.

WORLD IP DAY

On April 26 every year we celebrate World Intellectual Property Day to promote discussion of the role of IP in encouraging innovation and creativity.

POWERING CHANGE: WOMEN IN INNOVATION AND CREATIVITY

Every April 26, we celebrate World Intellectual Property Day to learn about the role that intellectual property rights (patents, trademarks, industrial designs, copyright) play in encouraging innovation and creativity.

This year's World Intellectual Property Day campaign celebrated the brilliance, ingenuity, curiosity and courage of the women who are driving change in our world and shaping our common future.

ABOUT WORLD IP DAY

WIPO's member states initiated World IP Day in 2000 to raise public awareness about the role of IP in daily life, and to celebrate the contribution made by innovators and creators to the development of societies across the globe. World IP Day is celebrated annually on April 26, the date on which the Convention establishing WIPO entered into force in 1970.

YOUR BUSINESS GROWS BECAUSE OF INTELLECTUAL PROPERTY

In the startup world, securing venture capital funding means securing patents.

Software startups, in particular, should pay close attention to their intellectual property. Often, these companies outsource development to cut costs.

61% of software used in most Asian countries suffers from pirating. 58% of software in India suffers the same fate.

When a startup outsources their software development, they must protect their intellectual property. This includes the web, apps, or mobile software.

But what about executives in large businesses?

Without conversations about intellectual property, you can kiss joint ventures and acquisitions goodbye. Both need clear agreements on IP.

Don't meet either of these examples? Does your work align more with arts and sciences? Intellectual property rights protect your work, your publications, and writings. These protections extend to your personal brand.

As you can see, the importance of intellectual property rights transcends industries.

SIGNIFICANCE OF INTELLECTUAL PROPERTY

The significance of intellectual property can be traced to the ancient use of stamps on bricks by Roman brick-makers for the purpose of identification, and even before that when the leaders of the ancient Greek city of Sybaris granted monopoly for one year on cooking a delicious dish to its creator. Obviously, much has changed since then with the advancement of science and technology and global business.

Intellectual property is a product of human intellect and the rights granted on it allow its owner to benefit from the fruits of this intellectual endeavour by creating a monopoly over it. Such benefit is not always a natural right but requires recognition by a statute.

In India, intellectual property rights recognised under statute are:

- The Patents Act, 1970;
- The Trade Marks Act, 1999;
- The Copyright Act, 1957;
- The Designs Act, 2000;
- The Geographical Indications of Goods (Registration & Protection) Act, 1999;
- The Semiconductor Integrated Circuits Layout Design Act, 2000;
- The Biological Diversity Act, 2002;
- The Protection of Plant Varieties and Farmers' Rights Act, 2001.

KEY ROLE

Intellectual property rights (IPRs) play a key role in every sector and have become the basis for crucial investment decisions. IPRs are exclusive rights and therefore there is always a challenge to strike a balance between the interests of innovators and the interests of the society at large. Another important factor is having an adequate legal framework to protect the interests of innovators and inspire confidence that their intellectual

property will be protected, in turn triggering further innovation.

IPR LITIGATION IN INDIA

IPR litigation in India is quite diverse owing to the large number of courts, varying degree of experience of the judicial officers in IPR matters and varying manners of practice. As a result, some courts have become preferred forums over others.

Most of the suits for infringement are filed in Delhi and Mumbai, especially in High Courts of these cities. Although these jurisdictions are preferred due to its courts' extensive experience and

greater understanding of IPR matters, their large volume of cases are also attributable to the fact that Delhi is the capital of India and Mumbai is the country's economic capital. Thus, large volumes of commercial disputes are natural.

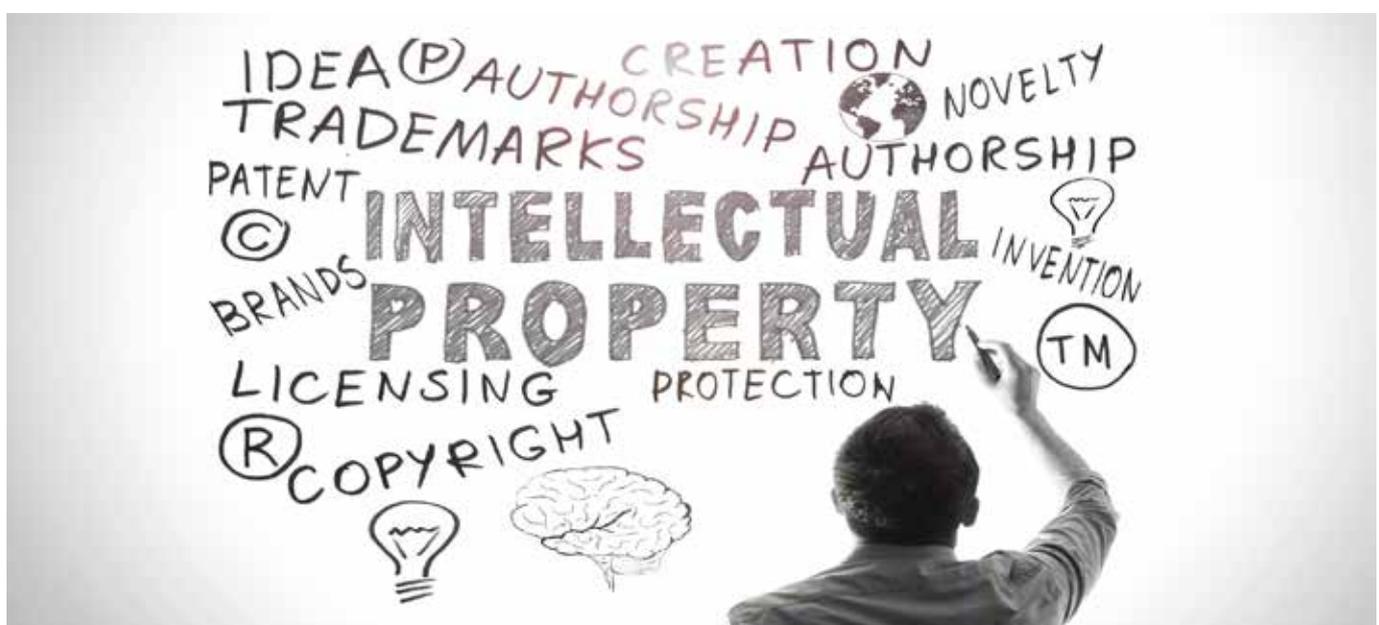
The Indian Legislature established commercial courts in India by passing a new Act in 2015, which came into effect in 2016, with the objective of streamlining and expediting commercial lawsuits, including IP disputes. Under this act, commercial courts have been established at the district level and commercial divisions have also been established within High Courts having ordinary original civil jurisdiction. This new enactment has given a separate treatment to commercial cases, which include cases relating to intellectual property. Given the large volume and often tardy progress of cases, the new Act gives stringent timelines for different stages of a suit with almost

no room for slow progress. Under the said Act, if any party feels that its opponent has no real prospect of succeeding in or defending a claim, and that recording evidence would be superfluous, then it may apply for a summary judgment. The endeavor is to hear and conclude oral arguments within six months of the time when the parties have finished reviewing all the documents. This procedure is meant to ensure the speedy disposal of suits.

India is beginning to be recognized as a pro-innovator jurisdiction with courts having a greater understanding of IPR laws. Moreover, with a proper legal framework in place and no discrimination on the nationality of the entities asserting their IP rights, India has seen a manifold increase in the assertion of IP rights by innovators.

Courts in India, especially in IP matters, have recognised the importance of curtailing willful infringement of IP rights and have been liberally granting punitive damages to the innovators. Although the amount of punitive damages granted by the courts is not very large, such damages are granted in addition to the real damages and act as a deterrent.

Thus, as can be seen from the above discussions, Indian litigation trends present a very balanced approach by the courts in IP matters. On one side, courts do not shy away from granting ex parte injunctions against infringers, and prolonged ex parte injunctions are also frowned upon. Moreover, with new laws in place, the time taken to complete a trial has been shortened significantly.



INTELLECTUAL PROPERTY RIGHTS



CS Parul Jain, ACS

CSPARULNISHUJAIN101212@GMAIL.COM

History of Intellectual Property Rights

Intellectual Property Rights is not a new concept. It is believed that IPR initially started in North Italy during the Renaissance era. In 1474, Venice issued a law regulating patents protection that granted an exclusive right for the owner. The copyright dates back to 1440 A.D. when Johannes Gutenberg invented the printing press with replaceable/moveable wooden or metal letters. Late in the 19th century, a number of countries felt the necessity of laying down laws regulating IPR. Globally, two conventions constituting the basis for IPR system worldwide had been signed; Paris Convention for the Protection of Industrial Property (1883) Berne Convention for the Protection of Literary and Artistic Works (1886).

Intellectual Property refers to...

Intellectual property is the product of the human intellect including creativity concepts, inventions, industrial models, trademarks, songs, literature, symbols, names, brands, etc.

Intellectual property is a product of human intellect and the rights granted on it allow its owner to benefit from the fruits of this intellectual endeavour by creating a monopoly over it. Such benefit is not always a natural right but requires recognition by a statute.

Intellectual Property Rights

Intellectual Property Rights are legal rights governing the use of creations of the human mind. The recognition and protection of these rights is of recent origin. Patents, designs and trademarks are considered as industrial property. As per International Convention for the protection of industrial (Paris Convention) the protection of industrial property has as its object patents, utility models, industrial designs, trademarks,

service marks, trade names, indications of source or appellations or origin and the repression of unfair competition when copyrights, Geographical indicators, layout Designs and confidential information were included to industrial property, they all become intellectual property.

Intellectual Property Rights do not differ from other property rights. They allow their owner to completely benefit from his/her product which was initially an idea that developed and crystallized. They also entitle him/her to prevent others from using, dealing or tampering with his/her product without prior permission from him/her. He/she can in fact legally sue them and force them to stop and compensate for any damages.

Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, geographical indications, and in some jurisdictions trade secrets.

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

In India, intellectual property rights recognised under statute are:

- The Patents Act, 1970;
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Importance of Intellectual Property Rights

Intellectual property rights (IPRs) play a key

role in every sector and have become the basis for crucial investment decisions. IPRs are exclusive rights and therefore there is always a challenge to strike a balance between the interests of innovators and the interests of the society at large. Another important factor is having an adequate legal framework to protect the interests of innovators and inspire confidence that their intellectual property will be protected, in turn triggering further innovation.

The progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.

Encourages innovation: The legal protection of new creations encourages the commitment of additional resources for further innovation.

Economic growth: The promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.

Safeguard the rights of creators: IPR is required to safeguard creators and other producers of their intellectual commodity, goods and services by granting them certain time-limited rights to control the use made of the manufactured goods.

It promotes innovation and creativity and ensures ease of doing business.

It facilitates the transfer of technology in the form of foreign direct investment, joint ventures and licensing.

IPR litigation in India is quite diverse owing to the large number of courts, varying degree of experience of the judicial officers in IPR matters and varying manners of practice. As a result, some courts have become preferred forums over others.

Most of the suits for infringement are filed in Delhi and Mumbai, especially in High Courts of these cities. Although these jurisdictions are preferred due to its courts' extensive experience and greater understanding of IPR matters, their large volume of cases are also attributable to the fact that Delhi is the capital of India and Mumbai is the country's economic capital. Thus, large volumes of commercial disputes are natural.

India is beginning to be recognised as a pro-innovator jurisdiction with courts having a greater understanding of IPR laws. Moreover, with a proper legal framework in place and no discrimination on the nationality of the entities asserting their IP rights, India has seen a manifold increase in the

assertion of IP rights by innovators.

With the trade related Aspects of Intellectual Property Rights (TRIPS) Agreement of World Trade Organisation (WTO), the intellectual property rights attained the authority to enforce the law internationally. According to TRIPS, the intellectual property rights are:

1. Copyright and Related Rights

- a) Rights of artists, painters, musicians, sculptors, photographers, and authors for copyright in their works;
- b) Rights of computer programmes whether in source or object code for a copyright in their programmes and compilation data;
- c) Rights of performers producers of phonogram's and broadcasting organizations in respect of fixation on their programmes for copyright in their work.

2. Right of traders in their trademarks.

3. Right of manufacturers & producers on geographical indication in relation to such products and produce.

- a) Right of designers for their distinctive designstriking to the eye.
 - b) Right of the inventor for patent is his invention.
- 4. Rights of plant breeders and farmers.**
 - 5. Rights of biological diversity.**
 - 6. Right of computer technologist for their layout design of integrated circuits.**
 - 7. Right of businessmen for protection of their undisclosed information on technology and management.**

Intellectual property rights are customarily divided into two main areas:

- i. Copyright and rights related to copyright: The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author.
- ii. Industrial property: Industrial property can be divided into two main areas:
 - ✓ Protection of distinctive signs, in particular trademarks and geographical indications. Trademarks distinguish the goods or services of one undertaking from those of other undertakings.
 - ✓ Geographical Indications (GIs) identify a

good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin.

- ✓ The protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services.
- ✓ The protection may last indefinitely, provided the sign in question continues to be distinctive.
- ✓ Industrial designs and trade secrets: Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), industrial designs and trade secrets.

Copyright

Copyright is a legal term used to describe the intellectual property rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

Copyright protects the expression of an idea when it is materialised in various forms, such as a book, a CD, or a computer file. The idea itself is not protected by copyright. In practice, it is sometimes difficult to make a clear distinction between the idea and its expression.

The copyright regime has closely followed the evolution of technology. Every new invention, such as the printing press, radio, and television, has affected both the form and the application of copyright rules. The Internet is no exception.

The traditional concept of copyright has been challenged in numerous ways, from those as simple as 'cutting and pasting' texts from the Internet to more complex activities, such as the mass distribution of music and video materials online.

Patents

A patent is used to prevent an invention from being created, sold, or used by another party without permission. Patents are the most common type of intellectual property rights that come to people's minds when they think of intellectual property rights protection. A Patent Owner has every right to commercialize his/her/its patent,

including buying and selling the patent or granting a license to the invention to any third party under mutually agreed terms.

There are three different categories that patents can fall under:

Utility: A utility patent protects the creation of a new or improved product, process, composition of matter, or machine that is useful.

Design: A design patent protects the ornamental design on a useful item.

Plant: A plant patent protects new kinds of plants produced by cuttings or other nonsexual means.

A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document.

Trademarks

Trademarks are another familiar type of intellectual property rights protection. A trademark is a distinctive sign which allows consumers to easily identify the particular goods or services that a company provides.

Some examples include McDonald's golden arch, the Facebook logo, and so on. A trademark can come in the form of text, a phrase, symbol, sound, smell, and/or color scheme. Unlike patents, a trademark can protect a set or class of products or services, instead of just one product or process.

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or "mark" on their products.

Trademark is anything which identifies the origin of the goods or services. It can be a name, symbol, logo, colour, sound etc. Trademark symbolizes the value or goodwill associated with the goods and its specific source. It distinguishes one firm from others.

Benefits of trademarks are several-fold:

- ❖ helps consumers to identify products with desirable attributes quickly.
- ❖ encourages firms to improve quality of their product. In absence of any identification mark, it would be difficult to distinguish the

- ❖ duplicates from high quality products.
- ❖ will lower the incentive of the firm to make high quality products as the returns would be same as that of inferior products.
- ❖ gives a “monopoly power” over the distinctive trademark in the sense that others are debarred from using the same or a confusingly similar trademark. However, this kind of monopoly power does not involve any welfare loss as its aim is not to prevent similar products but only to prevent use of similar or deceptive marks with the aim of confusing the consumer.

As a result, trademarks have mostly a positive incentive effect. It may seem that overall, the economics of trademark protection and the intellectual property law of those marks are non-conflicting.

Issue of umbrella branding (brand extension) whereby a company uses a trademark made famous by sale of one product to enter into another market. For example, Reliance entering retail marketing, entertainment industry, restaurants etc. Such brand extension strategies raise legitimate competition policy issues as a firm is essentially using an advantage acquired in other market to sell its products. Consumers are likely to try the products associated with a well-known brand name rather than an unknown brand with same quality making it difficult for a new company to enter the market.

Compulsory licensing of trademarks - Competition policies forcing companies to license their trademark may result in shoddy work at premium price associated with the brand. This will also ruin the reputation associated with the brand. This would affect the firm's incentive to provide consumers with high quality goods.

Industrial designs

An industrial design constitutes the ornamental or aesthetic aspect of an article.

Industrial design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or both forms, by any industrial process or means whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not

include any mode or principle of construction and does not include any trademark.

Lay-out Designs of Integrated Circuits:

In the case of layout designs of integrated circuits, the property consists in the exclusive right to apply the layout design registered under statute in relation to the class of goods for which it is registered for a prescribed period. The right can also be licensed for use by third party or assign to any person.

Protection of undisclosed Information:

Confidential information and know-how can be protected only so long as the owner is able to keep them secret and takes action against unlawful use of such information by others by an action for breach of confidence or contract.

Geographical indications

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

A geographical indication is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g., a town, region, or country). India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 has come into force with effect from 15 September 2003. GIs have been defined under Article 22(1) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement as: “Indications which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or characteristic of the good is essentially attributable to its geographic origin.”

Trade secrets

Trade secrets are IP rights on confidential information which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret

protection.

A trade secret is any information of commercial value concerning production or sales operations which is not generally known.

The owner of a trade secret must take reasonable measures to maintain its confidentiality.

Type of creation	Intellectual Property Rights
literary, artistic and scientific works	copyright
performances of performing artists, phonogram recordings by producers, and rights of broadcasters over radio and TV programmes	related rights or neighbouring rights
inventions	patents and utility models
product appearance	design
signs - words, phrases, symbols or designs (or a combination of these) which are used as brands of goods and services	trade mark

Although intellectual property rights protection may seem to provide a minimum amount of

protection, when they are utilized wisely, they can maximize the benefit and value of a creation and enable world-changing technology to be developed, protected, and monetized.

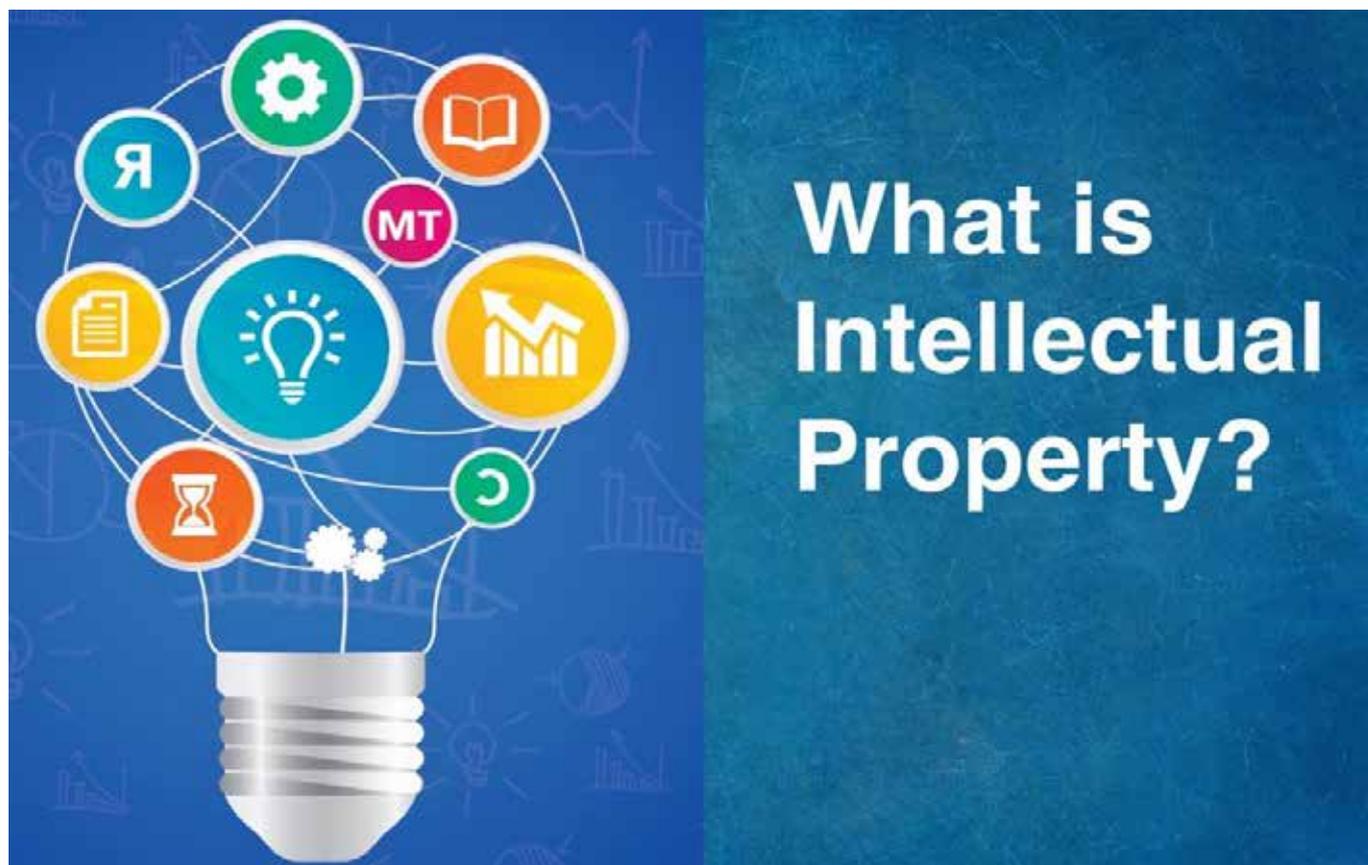
Since 2016, copyright policy was moved to India's Ministry of Commerce and Industry. All IPRs are now administered by the Department for Industrial Property and Promotion (DIPP).

Conclusion

India has made a number of changes in its IPR regime to increase efficiency and has cut down the time required to issue patents. The culture of innovation is taking centre stage in the country. India is well poised to focus on R&D (Research and Development). This has been reflected in its improved ranking in Global Innovation Index over the years.

Government's effort to strengthen National IPR policy, IP appellate tribunal, e-governance and commitment to abide by the TRIPS agreement of WTO in letter and spirit will help in improving perception of India globally.

An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social & cultural well-being.



INTELLECTUAL PROPERTY RIGHTS - INTRODUCTION AND THEIR IMPORTANCE



CS Shashank Kothiyal, ACS
shashank.kothiyal9@gmail.com

Introduction

Intellectual Property Rights in general refers to the set of intangible assets including invention, creation, and contribution to the contemporaneous field of knowledge which is owned and legally protected by an individual or company from the outside use or implementation without approved consent. The economic growth, financial incentive and motivation for advanced innovations imbedded in the balanced legal protection of Intellectual Property Rights entails proficient, directed and timely updated guidance in the field of Intellectual Property Rights.

Meaning

- ✓ Intellectual property rights (IPR) are the rights given to persons over the creations of their minds: inventions, literary and artistic works, and symbols, names and images used in commerce. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.
- ✓ These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.
- ✓ The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

Rights

- a. **Patents:** A patent is a form of right granted by the government to an inventor or their successor-in-title, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention
- b. **Copyright:** A copyright gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or “works”. Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.
- c. **Industrial design rights:** An industrial design right (sometimes called “design right” or design patent) protects the visual design of objects that are not 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.
- d. **Plant varieties:** Plant breeders rights or plant variety rights are the rights to commercially use a new variety of a plant. The variety must amongst others be novel and distinct and for registration the evaluation of propagating material of the variety is considered.
- e. **Trademarks:** A trademark is a recognizable sign, design or expression which distinguishes products or services of a particular trader from similar products or services of other traders.

for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process and generally has to fulfill three main requirements: it has to be new, not obvious and there needs to be an industrial applicability to enrich the body of knowledge and stimulate innovation, it is an obligation for patent owners to disclose valuable information about their inventions to the public.

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- f. **Trade dress:** Trade dress is a legal term of art that generally refers to characteristics of the visual and aesthetic appearance of a product or its packaging (or even the design of a building) that signify the source of the product to consumers.
- g. **Trade secrets:** A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors and customers. There is no formal government protection granted; each business must take measures to guard its own trade secrets (e.g., Formula of its soft drinks is a trade secret for Coca-Cola.)

Need

The progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.

- i. **Encourages innovation:** The legal protection of new creations encourages the commitment of additional resources for further innovation.
- ii. **Economic growth:** The promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.
- iii. **Safeguard the rights of creators:** IPR is required to safeguard creators and other producers of their intellectual commodity, goods and services by granting them certain time-limited rights to control the use made of the manufactured goods.
- iv. It promotes innovation and creativity and ensures ease of doing business.
- v. It facilitates the transfer of technology in the form of foreign direct investment, joint ventures and licensing.

Objectives

- a. **IPR Awareness:** Outreach and Promotion - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
- b. **Generation of IPRs-** To stimulate the generation of IPRs.
- c. **Legal and Legislative Framework-** To have strong and effective IPR laws, which balance

the interests of rights owners with larger public interest.

- d. **Administration and Management-** To modernize and strengthen service-oriented IPR administration.
- e. **Commercialization of IPRs-** Get value for IPRs through commercialization.
- f. **Enforcement and Adjudication-** To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- g. **Human Capital Development-** To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

National IPR Policy

- a. The National Intellectual Property Rights (IPR) Policy 2016 was adopted in May 2016 as a vision document to guide future development of IPRs in the country.
- b. It's clarion call is "Creative India; Innovative India".
- c. It encompasses and brings to a single platform all IPRs, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies.
- d. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.
- e. Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce, Government of India, has been appointed as the nodal department to coordinate, guide and oversee the implementation and future development of IPRs in India.
- f. The 'Cell for IPR Promotion & Management (CIPAM)', setup under the aegis of DIPP, is to be the single point of reference for implementation of the objectives of the National IPR Policy.
- g. India's IPR regime is in compliance with the WTO's agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Achievements under new IPR policy

- i. **Improvement in GII Ranking:** India's rank in the Global Innovation Index (GII) issued by WIPO has improved from 81st in 2015 to

- 52nd place in 2019.
- ii. Strengthening of institutional mechanism regarding IP protection and promotion.
 - iii. **Clearing Backlog/ Reducing Pendency in IP applications:** Augmentation of technical manpower by the government, has resulted in drastic reduction in pendency in IP applications.
 - iv. Automatic issuance of electronically generated patent and trademark certificates has also been introduced.
 - v. **Increase in Patent and trademark Filings:** Patent filings have increased by nearly 7% in the first 8 months of 2018-19 vis-à-vis the corresponding period of 2017-18. Trademark filings have increased by nearly 28% in this duration.
 - vi. **IP Process Re-engineering Patent Rules, 2003** have been amended to streamline processes and make them more user friendly. Revamped Trade Marks Rules have been notified in 2017.
 - vii. **Creating IPR Awareness:** IPR Awareness programs have been conducted in academic institutions, including rural schools through satellite communication, and for industry,

police, customs and judiciary.

- viii. **Technology and Innovation Support Centres (TISCs):** In conjunction with WIPO, TISCs have been established in various institutions across different states.

Conclusion

- India has made a number of changes in its IPR regime to increase efficiency and has cut down the time required to issue patents. The culture of innovation is taking centre stage in the country. India is well poised to focus on R&D. This has been reflected in its improved ranking in Global Innovation Index over the years.
- Government's effort to strengthen National IPR policy, IP appellate tribunal, e-governance and commitment to abide by the TRIPS agreement of WTO in letter and spirit will help in improving perception of India globally.
- An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social & cultural well-being.

National Intellectual Property Rights Policy

रचनात्मक भारत; अभिनव भारत
Creative India; Innovative India

TRADEMARK RIGHTS: ROAD TO आत्मनिर्भर BHARAT



CS Shubham Budhiraja, ACS
Shubhambudhiraja02@gmail.com

वसुधैव कुटुम्बकम् - The world is one family

INTRODUCTION

Indian economy at eve of Independence was characterized as backward and stagnant economy coupled with poor Infrastructure, low productivity and Industrial failures. The Primary goal was to achieve self-sufficiency in matter of food security. Though there were plans (not goals) to achieve structural transformation and Industrial Policy of 1956 and Green revolution, 1960's are instances of same. The Principles of Comprehensive planning were adopted to achieve aims of socialistic and capitalistic views. Though the goals of compressive planning seem to be a social distancing objective with regulated economy and worst crunch of foreign reserves pushed India to expand its horizon to the globe. This marked the beginning of market economy where demand and supply forces determine the system. Indian policies has always been uncertain of exclusive capitalistic (market economy) or exclusive socialistic (regulated economy). It has always remained a question of debate with regard to the composition of mixed economy. One who favor the dominance of socialistic features, argue for principle of socialist in preamble and concept of social welfare state and substantive equality. On the other hand one who favor the dominance of capitalistic features, argue for private rights of business, occupation & profession and liberal economy. The truth is that no country in the world can claim itself to be exclusive socialistic and exclusive capitalistic even though manifested as same. The only difference between India & other countries is an expressive balance of mixed economy. Indian economy expressively guide itself with balancing features whereas the countries impliedly perform the same as and when

required. Pre 1991 LPG, Indian economy was having a defensive approach and same is evident through policy of import substitution. The policy of Import substitution focused on protecting the domestic economy by restricting the imports. Post 1991 LPG, the import substitution sustain with an amendment that result into promoting the domestic economy with export promotion and same policy is still in subsistence. Post 1991 marked as structural transformation with objective of achieving growth with development.

Hence, it is submit that the Policy of आत्मनिर्भर is a new version of Import substitution with a tyndall effect which has scattered the lights of export promotion with an objective to achieve self-sufficiency without expressly compromising the imports in a short run, the result of which in long run supposed to be uplifting of domestic economy.

GLOBAL TREND

From the early days of the Silk Road to the creation of the General Agreement on Tariffs and Trade (GATT), trade has played an important role in supporting economic development. The General Agreement on Tariffs and Trade (GATT) traces its origins to the 1944 Bretton Woods Conference, which laid the foundations for the post-World War II. Though GATT was only a set of rules and multilateral agreements and lacked institutional structure. This is the primary reason for the birth of World trade organization on January 1, 1995 to which India is a founding member. The Policy of WTO is to favor the states having market economy status. Thus, under the pressure / influence of same, Indian marked its economic and legal reforms to which Trademarks act, 1999 is a classic example.

HISTORY OF TRADE MARK LAW

The Anglo Indian trademark law had its origin

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dating back to 1266. It was also called as Bakers marking law. The law required bakers to place a mark on the loaves of bread that they sold, identifying the baker. Any bread offered for sale unstamped was at once confiscated by officer of abundance and the offending bake was mulcted in heavy damages.

The venetian law of 1474 is the first systematic Intellectual property law which provides that “each person who will make in this city any new & indigenous contrivance, (which is not made before in our dominion) then it would be forbidden for any other to use it in any resemble form without consent and license of author up to 10 years.

1877-1940:

From 1858 onwards, Indian British system marked as CROWN RULE and the systematic process of legislation initiated. E.g. The Indian contract act, 1872, Indian penal code, 1860, Indian evidence act, 1872.

Britain parliament passed the English trademarks registration act, 1875 and accordingly, Bombay mill owners association in 1877 made the first demand for law on trademark in India.

Britain Parliament Introduced a bill in 1879 which referred to select committee but lapsed. A Fresh bill re-introduced in 1880 but opinion gets divided. The select committee favored adoption of a scheme for registration of Indian marks in England. The suggestion met with severe opposition and the Bill was dropped.

In 1884, Britain Govt. of India denied for access to Paris convention. This put Indian manufacturers and traders at a disadvantage in International arena. Thus, Indian traders had to sell products outside Indian under foreign brand name to which they had to pay them heavy royalty.

In 1905, the Association of chambers of commerce of U.K stated that – “There was no valid why Indian empire should stand in Isolation from rest of the world in this matter”. Commerce Industry in U.K wanted IP law in India because German, Australian were selling their copied products in Indian market.

In 1927, Commercial congress UK passed a resolution doubting efficacy of common law for protecting trademark and were demanding for trademark law in India[1]. In 1935, Chief Justice of Patna High court endorsed the demand for trademark legislation in India[2].

The delay of about 60 years in legislation and slow pace of Industrial development appears to be largely responsible why Indian cannot boast of Internationally famous trademarks. Also, during this period foreign trade marks established strong foothold in India market making it difficult for Indian brands to develop even within Indian market.

1940-1958:

1940 act established trademark registry combined with patent office which by 1943 amendment separated to a separate registry.

In 1953, Government of India appointed a committee known as trademark enquiry committee for reforms in trademark law. Justice N. RajagopalaAyyangar of Madras High court was appointed to examine the committee report.

In October 1955, Government of India asked Dr. Venkatesawaran, Officer on special duty (trademark, patents & design) to draft a comprehensive law on basis of Ayyangar report.

The Trade & Mercandise act, 1958 passed as act no. 17 of 1958 which brought in force from 25th November 1959.

1958-1999:

The Judgment of Calcutta High court in American Home v. Mac (Dristan case), which made it almost impossible for foreign trademark to get registered in India. The apex court overruled this judgment in 1985.

The necessity to amend the law also become important due to pressure and influence of International events such as Indian becoming original member of WTO in 1995 and Joining the Paris convention with effect from December 8, 1998.

TRADEMARK : INSIGHT INTO INDIAN ECONOMY

Trademark rights are private and negative rights based on principle of national treatment which has far reaching implications. The Indian government joined the Madrid protocol, 1989 and on February 7, 2007 decided to accept this protocol. Trademark amendment act of 2010 allows any person or enterprise to seek registration in any of 84 member countries of Madrid protocol through a single application. There are 3 dominant players in exploitation of Intellectual property:

- 1. Intellectual property right holder
- 2. Licensee
- 3. Consumer

The system of exploitation has to be fair

and reasonable to all the players. If the subject matter of IPR has good demand in market and right holder do not apply it then necessarily the pirates will produce parallel products and thus grey market producers will supply the product to market. The philosophy of IPR is that one else can supply the market even in the dire need and anyone who supplies it would commit Infringement. But the question is should the right holder have the right to short supply or not to supply the market ? These questions have been raised with respect to medicines and drugs in pharmaceutical sector but they are equally important in all sectors of various subject matters covered by IPR as they are vital to Industry and economy.

Monopoly and Competition are two sides of IPR. An IPR must give way only if it operates as monopoly and subject matter to be fairly allowed be used by other as well.

Each country has its own strength or weakness in relation to different types of IPR. Increased protection to one form of IP may be advantages to domestic enterprises or consumers whereas may not be useful if enhanced rights given to other type of IP.

Example, U.S did not join Berne convention on Copyright till 1987 because copyright protection was not advantageous in his country. Post 1987, U.S not only joined the Berne convention but also become the vocal supporter of it because of high copyright stakes in Hollywood Industry and software. Hence, U.S diplomatically played comparative advantage.

Thus, to generate wealth for one's country, it is imperative to analyze in what particular field the country have potential of generating wealth. Worldwide there is no well-known trademark of India. Even FMCG sector is dominated by foreign trade mark. India will not be benefited if judiciary throw its weightage in favor of foreign trade marks without keeping Interest of domestic market. India's Interest lies not in protecting Well known trademarks but in licensee rights.

There is a need to have debate on whether rights granted are used to contribute to the society. There is a need to appreciate the abuse of IPR together with impact of IPR on development, growth, establishment and displacement of Industry and most importantly the access to market.

Marketing or sales are ways to part a person from his money. Thus, trademark are the most

important player in this activity. Trademark deserve more attention than patents or copyright. Even though trademarks are for limited duration as compared to patents still they have much more value because trademark have a direct impact on mind of its users. Patents have an impact limited to producers only. Even copyright works and its contents are sold under trademark of publishers. A patent would be fruitful only if it reaches the mass which is through a reputed brand name/trade mark.

The market access, market power, ownership of Industry, displacement of local industry are related to ability to sell which are achieved through TRADEMARK.

COMPETITION LAW: CREAM OVER CAKE FOR IPR

In TRIPS, the competition law were designated to protect against abuse of IPR. However, India has not successfully utilized the competition law to turn IPR to its advantage. It is the policy of competition law and the public Interest that anti-competitive agreements are to barred and declared void. Section 3(5) of competition act is a root cause of abuse of IPR.

Section 3(5) in the Competition Act, 2002

Nothing contained in this section shall restrict— the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under:

- (a) the Copyright Act, 1957 (14 of 1957);
- (b) the Patents Act, 1970 (39 of 1970);
- (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
- (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
- (e) the Designs Act, 2000 (16 of 2000);
- (f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000)
- (ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

Section 33(3) of MRPT act was somewhat similar to Section 3(5) of competition act. But the purpose

of competition act is to strengthen the competition and remove the difficulties experienced in MRTPA act. The use of “as may be necessary” suggest that all steps or conditions or clauses secured by IP right holder would be considered as reasonable because agreement would couch the conditions in the language in a manner which would establish necessity condition to protection IP rights.

On face of it, Section 3(5) looks perfectly fine. Necessarily, IP right holders should have a right to restrain Infringements and should be in a position to protect IP. There is nothing wrong in permitting them to impose reasonable conditions as necessary for protection of IPR. But these rights are already granted to right holders under respective IP legislations. Section 3(5) does not make the protection against Infringement any stronger for right holder.

All forms of IP have the potential to raise competition law problem. There is a dichotomy between IPR and competition law here former endangers the competition while latter engender the competition. There is a need to appreciate the existence of a right and its exercise but if during exercise of such a right any anti-competitive practice is visible to the detriment of consumer Interest or Public Interest then it must be dealt with by competition law. Thus, tool of IPR cannot/should not become a reason to justify anti-competitive agreements.

CONCLUSION:

SELF SUFFICIENCY- A SOCIAL DISTANCING ?

The original goal of LPG policy was to Promote the domestic economy with export promotion

through dominance of market economy over regulated economy. It is important to note that

Indian traders failed to have a well-known reputed trademark due to 2 major reasons.

- a) No legislation for 60 years (1877-1940)
- b) Dominance of Foreign trade mark in Indian market during this course

These uncontrollable reasons prevent small & medium Indian traders have a fame & reputed trade mark worldwide. Noting these lacunas, 1991 LPG was Introduced to assist the domestic economy and to make these domestic traders self-sufficient. However, the practice to achieve this aim was somewhat contrary owing to influence of WTO TRIPS & Paris convention.

At one hand, India wanted to achieve self-sufficiency and help domestic traders reputed globally and on other hand, the trademark law of 1999 giving excessive special rights to foreign trade marks. India under the pressure of world diplomacy enacted laws and policy which result into giving excessive benefit to the foreign trade marks through statutory rights, and special relief against anti-competitive agreements which squarely failed the aim of self-sufficiency. All these chocolates have spoon feed the giants and prevented domestic players to have their stake and thus in this way special focus required in trademark policy

[1] Ventakteswaran, 1937

[2] COURTNEY TERRAL,CJ , Patna High Court in the foreword to a book by S. Venkateswaran on the Law of Trade and Merchandise marks in India, Madras, Madras law journal office,1937.



PATENT- STIMULUS TO INDUSTRIAL INNOVATION



CS Shweta Jain, ACS
Shweta.jain2003@gmail.com

In general parlance, Patent is a monopoly grant, derived from the Greek word 'mono (alone) and polein (sale)'. Since ancient times, monopolistic privileges are been granted for encouraging innovation and creativity among the Inventors. Moreover, inculcating the sense of security and self-assurance among the budding inventors as well as talent hubs the grant of patent initiated way back in 14th century.

Utility, innovation, investment to industry and encouragement to creativity is the prime motive behind Patent Laws. With the emergence of revolution in industries, entrepreneurship specifically the creative bend inevitably required to be protected from being copied and imitated. Because ultimately innovative technology leads to rise in nation's valuable and tradable assets at large. The law relating to patents contained in the Patents Act, 1970 has been amended in the year 1995, 1999, 2002 and 2005 to meet India's obligations under the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). The reason behind amendments were to create harmony and synchronisation with the international IPR system and practices. Moreover, updation is the key to success and hence industrial growth and development always demanded stronger and more updated Patent Laws.

What is Patent?

A Patent is a statutory right for an invention granted for a limited period of time to the patentee by the Government, against complete disclosure of his/her invention for evading others, from making/ using/ selling/ importing the patented product or process for producing that product without patentee's consent. In other words, "Patent" signifies the patent (monopolistic right) for any invention granted under the Patents

Act, 1970 whereas "Invention" means a new product or new process involving an innovative or inventive step having capability of industrial application.

What remains the term of Patent?

Section 53 of the Act provides that the term of every patent granted after the commencement of the Patents (Amendment) Act, 2002 and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, shall be 12 years from the date of filing of application for the patent. Explanation to Section 53(1) clarifies that the term of patent in case of international applications filed under the Paris Convention Treaty (PCT) designating India, shall be 20 years from the international filing date accorded under the PCT.

Important 'terms' to understand-

Invention- Section 2(1)(i) defines invention as to mean a new product or process involving an inventive step and capable of Industrial application.

Inventive Step- Section 2(1)(ja) defines the term 'inventive step' as to mean a feature of an invention that involvestechnical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art.

New Invention- Section 2(1)(l) defines the term new invention as to mean 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 into public domain or that it does not form part of the state of the art.

* The views expressed are personal views of the author and it should not be taken as views of the NIRC-ICSI



What is not 'invention' ?

Section 3 clearly describes what shall not be considered as 'invention' under the act; Roughly we may configure following heads as exceptions to 'inventions'-

- (a). invention contrary to established natural law
- (b). invention against or contrary to public order or morality or ethics within society, causing harm to living beings
- (c). invention resulting admixture of various components which causing aggregation in the properties of components forming parts of
- (d). any such invention not causing increase in efficacy or performance of known substance
- (e). any horticulture or agriculture method
- (f). presentation of information
- (g). literary/ dramatic/ musical/ artistic work/ or any other aesthetic creation
- (h). any such invention which is mere duplicity of well-established tradition or traditional knowledge
- (i). invention relating to atomic energy; & many more....

What is provisional specification?

- Provisional specification describes the nature of the invention to have the priority of the date of filing the application in which inventive idea has been disclosed. It must be followed by a complete specification

describing the details of the invention along with a statement of claims, to be filed within 12 months of filing the provisional application. If the complete specification is not filed within the prescribed period of 12 months, the application is considered to have been abandoned.

- Provisional application is an application filed with provisional specification, which is useful in establishing a priority date for your invention.
- Provisional application allows sufficient time to the applicant to assess and evaluate the market potential of his invention before filing complete specification.
- Though, filing provisional application is not necessary and one can file application directly with complete specification i.e. final application.

Who can make Patent Application?

Patent Application may be made by—

- (a). Any person claiming to be the true and first inventor of the invention
- (b). Any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application
- (c). legal representative of any deceased person, entitled to make patent application.

Is any 'patent' valid worldwide?

There is no patent valid worldwide. Patent protection is within territorial limits and therefore it is effective only within the territory of India. Separate patents should be obtained in each country where the applicant requires protection of his invention. However, an international application known as PCT application can be filed through the Receiving Office (RO) for International application located at Kolkata, Chennai, Mumbai and Delhi.

LANDMARK CASES- PATENT ACT

1. **Hoffmann-La Roche Ltd vs Cipla Ltd., Mumbai Central-** First Patent Litigation in India post India's 2005 Product Patent regime which included public interest and pricing issues.
2. **Bajaj Auto Ltd. vs Tvs Motor Company Ltd-** Speedy disposal of Intellectual property rights cases
3. **NovartisAG vs Union of India -** Rejection of a patent for a Drug which was not 'inventive' or had superior 'efficacy'.
4. **Bayer Corporation & Anr vs Union of India & Ors -** India's First Compulsory License
5. **Dr Snehlata C. Gupte v. Union of India & Ors- The Actual Date Of Grant Of A Patent** is the date on which the controller passes an order to that effect on the file i.e. on the day in which the Controller makes a decision to grant a patent. The issue of a certificate at a later date is then nothing more than a mere formality.
6. **Strix Ltd v Maharaja Appliances Ltd.-** High Court granted interim injunction restraining Maharaja Appliances from manufacturing and marketing Maharaja Whiteline electric kettle Model No EK 172 as it infringed Strix's patent.
7. **Glochem Industries Ltd vs Cadila Healthcare Ltd.-** Petition filed by Glochem Industries, after its pre-grant opposition to Cadila's drug patent application was dismissed by the ACP (Assistant Controller of Patents).



INTELLECTUAL PROPERTY RIGHTS (IPR)



CS Manju Singh, ACS
singh.manju1205@gmail.com

“Intellectual Property Rights” are the rights granted by the law to the person over the creations of their mind such as inventions, literally or artistic works, symbols, names and pictures utilised in commerce.

These rights are safeguarded by Article 27 of the Universal Declaration of Human Rights.

The importance of Intellectual Property (IP) was first recognized within the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). These treaties are administered by the World Intellectual Property Organization (WIPO). Now there are more than quite 25 international treaties which are administered by WIPO.

Why is IP important?

The progress and well-being of humanity depend on our ability to come up with new ideas and creativity. Technological progress requires the development and use of new inventions, while a healthy culture will always seek new ways to express themselves.

Inventors, artists, scientists and businesses put a lot of time, money, energy and imagination into developing their innovations and creations. To encourage them to do so, they need the opportunity to make a decent return on their investment. That means giving them the right to protect their intellectual property.

IP rights have long been recognized within various legal systems. For e.g. patents to protect inventions were granted in Venice as far back as the 15th century.

Types and categories of IP

Intellectual Property Rights are more often divided into two main categories:

i. Copyright and related rights

Copyright covers an huge range of works – not just books, music, paintings, sculpture and films, but also computer programs, databases, advertisements, maps and technical drawings, among other things.

What rights does copyright grant?

Copyright includes both ‘economic’ and ‘moral rights’. Essentially, economic rights include the right to control the distribution of a work. In other words, a copyright owner can stop anyone from copying or using a work without permission. How the owner enforces these rights will depend on the national laws of the country concerned, but countries generally provide a combination of civil and criminal penalties for copyright infringement.

Copyright also includes certain moral rights of the creator – including, among others, the right to be acknowledged as the author of a work and to prevent it from being altered in a way that could damage the creator’s reputation.

Transfer and trades in copyright:

Generally, economic rights can be transferred and divided. A right owner may agree to let someone use a work under certain conditions (licensing), or they may give or sell the rights to someone who then becomes the new owner (assignment). And if the copyright owner dies, their heirs or successors will receive their economic rights. It is very common for rights to be transferred, e.g.

- Book authors, music composers and recording artists often license or assign rights to publishers in exchange for payments known as royalties.
- Copyright owners may choose to give away their work for free, or to let other people use it freely based on certain conditions.

National and international copyright law:

There are different national laws on copyright in different territories, as with other forms of intellectual property. However, international law establishes certain minimum standards of protection such as:

- Copyright arises as soon as a work is created. There is no need for a creator to register a work or complete any other formalities in order to gain protection (though some countries do operate voluntary copyright registration schemes).
- Countries are required to protect most copyrighted works throughout the life of the creator and for at least 50 years after the creator's death.
- International law means that copyrighted works are generally protected in most countries, not just the country in which they were created.
- These minimum standards are guaranteed by a series of international treaties administered by WIPO. States that have joined these treaties can provide more than the minimum protection – for example, a longer copyright term – but they cannot provide less.

Related rights

The law also protects the rights of certain people or groups who are involved in creative work but do not qualify for copyright protection in many jurisdictions, including performers such as singers and actors, broadcasting organizations, and organizations such as record companies that produce sound recordings. These are known as “related rights or neighboring rights” because they are related to copyright.

The protection offered is similar to copyright. Generally, right owners can stop people from recording, communicating, or broadcasting their work without their permission. However, the term of protection is usually shorter than copyright; in most countries, it lasts for 50 years from the date of the performance, recording or broadcast.

ii. Industrial Property

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

(a) Patents:

Patents were one of the first types of intellectual property to be recognized in modern legal systems. Today, patented inventions pervade every aspect of life, from electric lighting (patents held by Edison and Swan) to the iPhone (patents held by Apple).

By patenting an invention, the patent owner gets exclusive rights over it, meaning that he or she can stop anyone from using, making or selling the invention without permission.

The patent lasts for a limited period of time, generally 20 years. In return, the patent owner has to disclose full details of the invention in the published patent documents. Once the period of protection has come to an end, the invention becomes off patent, meaning anyone is free to make, sell or use it. In this way, the patent system aims to benefit everyone:

Obtaining Patent

Patents are territorial: protection is granted within a country under its national law. Different countries have different laws. Generally, in order to gain protection, an inventor or firm will need to file an application with a patent office describing the invention clearly and in sufficient detail. Such descriptions usually include drawings, plans or diagrams. The application also contains various claims, that is, information to help determine the extent of protection to be granted by the patent. The application will then be examined by the patent office to determine if it qualifies for protection.

National, Regional and International protection

Inventors and firms must decide in which territories they want patent protection. Several groups of countries have developed regional patent systems that help reduce these costs, for example the African Regional Intellectual Property Organization (ARIPO). Under most of these systems, an applicant requests protection for an invention in one or more countries in the group, and each country then decides whether to offer patent protection within its borders. WIPO administers the PCT System, an international system that allows applicants to request protection under the Patent Cooperation Treaty in as many signatory states as they wish through a single application.

(b) Trademarks

Trademarks are signs capable of distinguish the goods or services of one undertaking from those of other undertakings. Trademarks date back to ancient times when artisans used to put their signature or “mark” on their products.

Protecting Trademarks

The best way of protecting a trademark is to register it. Owners of a registered mark have the exclusive right to control who uses it. To register a mark in a territory, the applicant needs to submit a reproduction of it to the trademark office plus a full list of the goods or services to which it would apply.

Once a trademark has been granted, the owner can sue in the relevant national court if it is infringed by someone else. Equally, a trademark owner could be sued by third party arguing that it is similar to their own mark.

A trademark will only be granted for a limited period – in most countries, 10 years – but the mark can be renewed further on payment of additional fees, provided it is still being used, so in practice a trademark can be protected indefinitely.



Administrative steps involved for registration of trademark in India:

National, regional and international protection

Like most IP law, trademark protection is territorial. However, regional and international systems have developed to make it easier to obtain trademark protection in many countries. WIPO offers international registration under the Madrid System. By filing a single application, users can obtain trademark protection in as many of the countries that have joined the System as they wish.

(c) Geographical Indications (GIs)

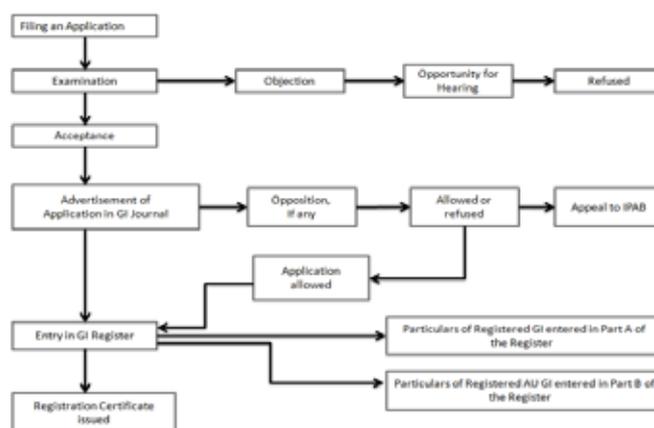
Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly,

a geographical indication includes the name of the place of origin of the goods.

Examples: Roquefort cheese from France, Darjeeling Tea from India and Tequila liquor from Mexico.

India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003.

The Registration Process of GI (India)-



International protection to GI

International recognition of appellations of origin and “indications of source” dates back to the Paris Convention of 1883. More recently, the agreement on Trade-Related Aspects of Intellectual Property (TRIPS) included some further provisions to prevent the misuse of GIs. In addition, WIPO administers the international Lisbon System. This used to apply only to appellations of origin, but the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, adopted in 2015, extended the System to make it possible to register other geographical indications internationally too.

(d) Industrial designs:



An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the

shape or surface of an article, or of two-dimensional features, such as patterns, lines or color. These aesthetic aspects can be hugely important in the modern economy. Industrial designs are applied to a wide variety of industrial products and handmade goods: cars, telephones, computers, packaging and containers, technical and medical instruments, watches, jewelry, electrical appliances, textile designs, and many other types of goods.

What designs can be protected?



To qualify for protection as an industrial design under most national laws, the design must be new and show a degree of originality or individuality, meaning that it is not identical or very similar to any previous design. Moreover, it must be capable of being produced industrially, so unique artworks are not covered.

Obtaining protection Industrial design rights are territorial, so designers or firms may need to deal with many different national systems if they want protection in many countries. However, regional systems exist for some groups of countries. WIPO administers the Hague System. Under the Hague Agreement Concerning the International Registration of Industrial Designs, applicants can file a single international application covering up to 100 designs in as many signatory states as they choose.

(e) Trade secrets:

Trade secrets are IP rights on confidential information which may be sold or licensed. In general, to qualify as a trade secret, the information must be:

- commercially valuable because it is secret,
- be known only to a limited group of persons, and
- be subject to reasonable steps taken by the rightful holder of the information to keep it secret, including the use of confidentiality agreements for business partners and employees.

The unauthorized acquisition, use or disclosure

of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.

The Paris Convention for the Protection of Industrial Property (Paris Convention) administered by WIPO deals partly with the protection of trade secrets as does the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

What kind of protection does a trade secret offers?

Depending on the legal system, the legal protection of trade secrets forms part of the general concept of protection against unfair competition or is based on specific provisions or case law on the protection of confidential information.

While a final determination of whether trade secret protection is violated or not depends on the circumstances of each individual case.

A trade secret owner, however, cannot stop others from using the same technical or commercial information, if they acquired or developed such information independently by themselves through their own R&D, reverse engineering or marketing analysis, etc. Since trade secrets are not made public, unlike patents, they do not provide "defensive" protection, as being prior art.

India and IPR

India is a member of the World Trade Organisation and committed to the Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement).

India is also a member of World Intellectual Property Organization, a body responsible for the promotion of the protection of intellectual property rights throughout the world.

National IPR Policy

- The National Intellectual Property Rights (IPR) Policy 2016 was adopted in May 2016 as a vision document to guide future development of IPRs in the country.
- It's clarion call is "Creative India; Innovative India".
- It encompasses and brings to a single platform all IPRs, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of

intellectual property (IP), concerned statutes and agencies.

- It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.
- India's IPR regime is in compliance with the WTO's agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Achievements under new IPR policy

Improvement in GII Ranking: India's rank in the Global Innovation Index (GII) issued by WIPO has improved from 81st in 2015 to 52nd place in 2019.

Strengthening of institutional mechanism regarding IP protection and promotion.

Clearing Backlog/ Reducing Pendency in IP applications: Augmentation of technical manpower by the government, has resulted in drastic reduction in pendency in IP applications.

Automatic issuance of electronically generated patent and trademark certificates has also been introduced.

IP Process Re-engineering Patent Rules, 2003 have been amended to streamline processes

Technology and Innovation Support Centres (TISCs): In conjunction with WIPO, TISCs have been established in various institutions across different states.

Issues in India's IPR regime

- Section 3(d) of the Indian Patent Act 1970 (as amended in 2005) does not allow patent to be granted to inventions involving new forms of a known substance unless it differs significantly in properties with regard to efficacy. This means that the Indian Patent Act does not allow evergreening of patents.
- This has been a cause of concern to the pharma companies. Section 3(d) was instrumental in the Indian Patent Office (IPO) rejecting the patent for Novartis' drug Glivec (imatinib mesylate).
- Issue of Compulsory licencing (CL): CL is problematic for foreign investors who bring technology as they are concerned about the misuse of CL to replicate their products. It has been impacting India-EU FTA negotiations.
- India continues to remain on the United

States Trade Representative's (USTR's) 'Priority Watch List' for alleged violations of intellectual property rights (IPR).

- In its latest Special 301 report released by the United States Trade Representative (USTR), the US termed India as "one of the world's most challenging major economies" with respect to protection and enforcement of IP.
- Data Exclusivity: Foreign investors and MNCs allege that Indian law does not protect against unfair commercial use of test data or other data submitted to the government during the application for market approval of pharmaceutical or agro-chemical products. For this they demand a Data Exclusivity law.
- Enforcement of the Copyright act is weak, and piracy of copyrighted materials is widespread.

Opportunities and scope for Company Secretaries under IPR:

Protection of intellectual property has become so important that companies today carry out intellectual property audits to identify their intellectual wealth and form special departments to manage them. The legal professional who specializes with matters related to intellectual properties are termed as Intellectual Property Attorneys/Agents. The major job of all Intellectual property (IP) Professionals is to protect the intellectual property rights of their clients.

All the intellectual property rights are protected under various sub-divisions of law such as Patent under patent law; Trademark under trademark law and Copyright under copyright law etc. An intellectual property Professional can specialize in any or all of these fields, and their roles and responsibilities vary according to the fields.

- Patents Attorney:
- Trademarks Attorney:
- Copyrights Attorney:

These professionals specialize with copyright related matters such as copyright registration and protection services which involves protection of the original creative work of the creators such as music, books, manuscripts,

Besides the patent, copyright, trademark areas professionals can also work in the field of industrial design, layout design of integrated

circuit, geographical indication, trade secrets and protection of plant varieties, information and communication technology law (cyber laws).

Company Secretary having all Skills required for IPR Professionals.

Our prestigious organization The Institute of Company Secretaries of India has given us all that is enough to make a career in the IPR, yet we shout at creating a career in it. We have so much knowledge of working in this profession that all of us can make a good career on our own hard work. When we look at the syllabus of our CS, we find that we have read all those who want to work in this profession.

Since IPR law is an innovation-oriented profession, Intellectual Property rights professionals should possess scientific, technical, technological and business skills. They should possess an eye for detail to understand all kinds of information and must have some technical skills in engineering,

technology, physics, chemistry or biology.

Conclusion

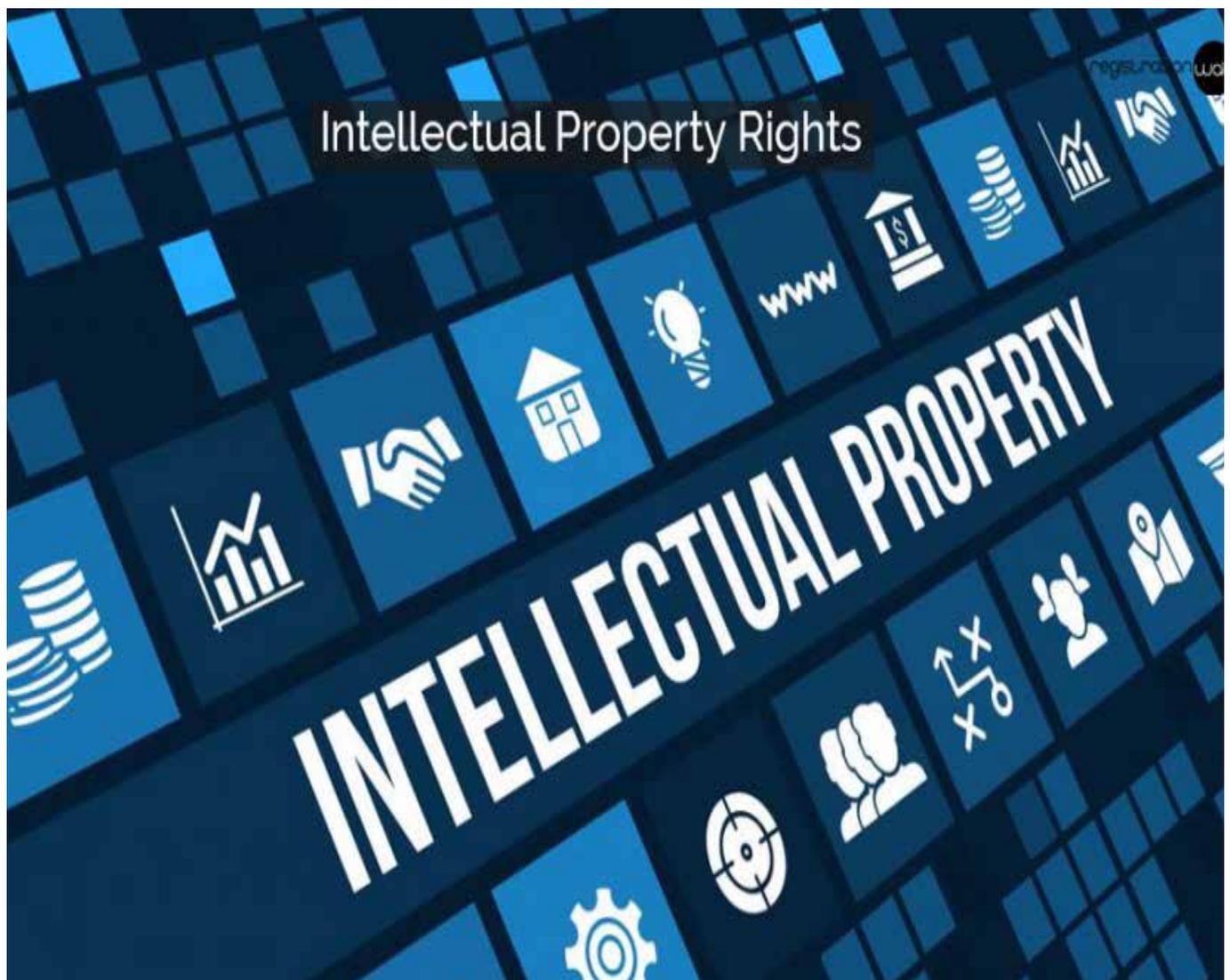
India has made several changes in its IPR regime to increase efficiency and has cut down the time required to issue patents.

Government's effort to strengthen National IPR policy, IP appellate tribunal, e-governance and commitment to abide by the TRIPS agreement of WTO in letter and spirit will help in improving perception of India globally.

An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social & cultural well-being.

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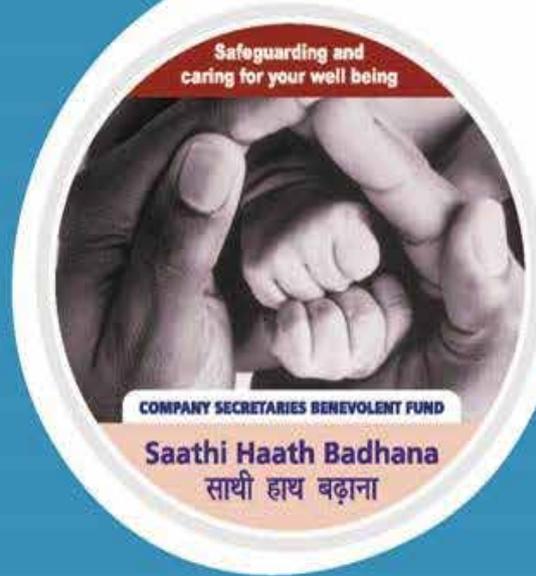


**THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CSBF
**COMPANY SECRETARIES
BENEVOLENT FUND**



What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

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Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

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To finance your children's education and other needs

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4

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