

Intellectual Property Rights in India

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Abstract: *Intellectual property is in the nature of intangible incorporate property. It consist of a bundle of right in Relation to certain Material object create by the owner. Intellectual Property includes Patents, Design, Trade Mark, copyright, confidential information, Trade Secrets and knows how. It plays a crucial role in the development of Industry, commerce and trade the scope of intellectual property is expanding very fast and attempts are being made by person who creates new creative ideas to seek protection under the umbrella of Intellectual Property Rights. There are many similarities in the law regard to the different species of intellectual property in regard to the nature of the property, the mode of its acquisition, the nature of rights conferred, the commercial exploitation of those rights, the enforcement of those rights and remedies available against infringement of those rights.* [1]

Keywords: Patents, Design, Trade secrets, Copyright, Intellectual property rights, Acquisition

1. Introduction

Intellectual property is a type of property which, societies have decided, can be assigned specific property rights. They have some resemblance to ownership rights over physical property or land. But knowledge is much more than intellectual property. Knowledge is embodied in people, in institutions and in new technologies in ways that have loan been seen as a major engine of economic growth. [2]

Everyone knows what a property is. In day to day parlance we associate the word **property** with some object or land that belongs to a particular person. So if I have an apartment in Delhi, it is my property. Now in law, the word is a little differently understood. It refers to the bundle of rights that a person possesses in relation to a particular object. It is defined as an *exclusive right to possess, enjoy, use, transfer, alienate and exclude others from doing so an object*. It comes down to a simple thing: if I have an apartment in Delhi, I have a right to use and enjoy it or to sell it or bequeath it to somebody and to prevent others from using or enjoying it. The same thing applies to a person's artistic or creative works which constitute his intellectual property. **Intellectual property is nothing but a creation of one's mind.** It may be an article, a song, or an invention. The property rights when granted for such intellectual property become the intellectual property rights. [3]

1.1 Property

Creation, enjoyment, and accumulation of 'property' have been a central activity of human life. Out of four objects of human life, like Artha, Kama, Dharma, and Moksha the first object is i.e., money. It is a fundamental requirement of sustaining material life. [4]

Property means the highest right a man can have to anything, being that right which one has to land ire tenements,, goods or chattels which does not depend on another's courtesy: it includes ownership, estates, and interest in corporeal things, and also rights such as trademarks, copyrights, patents and even rights in person capable of transfer or transmission, such as debts; and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured. [5]

Property can be classified into two broad categories:

- a) Tangible – Movable and Immovable.
- b) Intangible – Intellectual Property.

1.2 Meaning of Intellectual Property

Human beings are superior from other living creatures because they possess intellect. Creation genius of human being creates intellectual property; which in turn, when property exploited, can earn wealth. [6] In the other word intellectual property is the product of human mind and intellect. Intellectual property, in its literal sense, means the things which emanate from the exercise of human brain. It is the product emerging out of the intellectual labour of a human being. It is involves the visual expression of a mental conception, the work of both brain and hand. Broadly speaking, the term 'intellectual property' includes on one level, ideas, concepts, know-how and other creative abstractions and on a second level, the literacy, artistic or mechanical expressions that embody such abstractions. [7]

The term "Intellectual Property Rights" refers to the legal rights granted with the aim to protect the creations of the intellect. These rights include Industrial Property Rights (e.g. patents, industrial designs and trademarks) and Copyright (right of the author or creator) and Related Rights (rights of the performers, producers and broadcasting organisations). [8]

1.2.1 Definition of intellectual property as given in WIPO

Literacy, artistic and scientific works, performances of performing artists, phonograms and broadcasts, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service mark, and commercial names and designations; protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.(convention establishing world Intellectual Property Organisation signed at Stockholm on July 14,1967). [9]

1.2.2 Basic Concepts of Intellectual Property Law

The law relating to intellectual property is based on certain basic concepts. Thus Patent law centres round the concept of novelty and Inventive step. Design law is based on novelty or originality of the design not previously published in India or any other country. The substantive Law of Trade Mark is based on the concept of distinctiveness and similarity of marks and similarity of goods. Copyright Mark is based on

the concept of originality and reproduction of the work in any Material form. [10]

Salmond says, the unnatural product of a man's brains may be as valuable as his hands or his goods. The law, therefore, gives him a propriety right in it.

In the other word Intellectual Property Rights: Basic Concepts offers basic knowledge of IPR tools, which are essential to secure a competitive edge in both local and global markets. Though there are a number of books on IPR, this is probably the first, which has tried to establish a relationship among ideas, creativity, inventions, innovations and intellectual property.

Intellectual property includes Patents, Designs, Trade Marks, Copyright, Confidential Information and Industrial Know-how.

1.3 Scope of Intellectual Property Rights

The convention establishing World Intellectual Property Organisation (WIPO) has given a wider definition of IPRs. According to this definition the IPRs shall include the rights relating to:

- 1) Literacy, artistic and scientific work;
- 2) Performing artists, phonograms and broadcasts;
- 3) Inventions in all fields of human endeavour;
- 4) Scientific discoveries;
- 5) Industrial designs;
- 6) Trademarks, service marks, and commercial names and designations;
- 7) Protection against unfair competition and; all other rights resulting from intellectual activity in the industrial, scientific literary or artistic fields.

1.4 Components of IPRs

Intellectual property rights include patents, copyright, industrial design rights, trademarks and trade secrets, geographical indications, biological diversity and plant varieties and farmer's rights. There are also more specialized varieties of *sui generis* exclusive rights, such as circuit design rights (called mask work rights in U.S. law, protected under the Integrated Circuit Topography Act in Canadian law, and in European Union law by Directive 87/54/EEC of 16 December 1986 on the legal protection of topographies of semiconductor products), plant breeders' rights, plant variety rights, industrial design rights, supplementary protection certificates for pharmaceutical products and database rights (in European law).

The various components of IPRs as envisaged by WIPO and TRIPs have specific aims and objects. Although a detailed study of these specific rights will be made in brief, their meaning hereunder:

- 1) Patents,
- 2) Copyright,
- 3) Industrial Design Rights,
- 4) Trademarks and Service Marks
- 5) Geographical Indications,

- 6) Biological Diversity
- 7) Plant Varieties and Farmer's Rights

1) Patent

The term "Patent" has its origin in the term "Letter Patent". The expression "Letter Patent" meant open letter as distinguished from closed letters. These were instruments under the Great Seal of the King of England addressed by the Crown to all the subjects at large, in which the Crown conferred certain rights and privileges on one or more individual in the kingdom. [11]

Patent is granted for inventions which have industrial and commercial value. Any person whose invention has, novelty, involving step and is of industrial application, can be granted a monopoly right for a certain term to commercially exploit his invention and earn profit out of his invention. [12]

In modern usage, the term patent usually refers to the right granted to anyone who invents any new, useful, and non-obvious process, machine, article of manufacture, or composition of matter. Some other types of intellectual property rights are also called patents in some jurisdictions: industrial design rights are called design patents in the US, plant breeders' rights are sometimes called plant patents, and utility models and Gebrauchsmuster are sometimes called petty patents or innovation patents. [13]

2) Copyright

The word "copyright" is derived from the expression 'copier of words' first used in the contest according to the Oxford dictionary in 1586. Copyright is a unique kind of intellectual property. The right which a person acquires in a work, which is the result of his intellectual labour' is to protect the fruits of a man's work, labour, skill or test from being taken away by other people. [14]

The subject matter of copyright is the literary, artistic, dramatic, musical, cinematographic films, sound recording. Literary works now also in clued computer programmes, tables, compilation, including computer database. [15]

Copyright is a legal right created by the law of a country that grants the creator of an original work exclusive rights to its use and distribution, usually for a limited time, with the intention of enabling the creator (e.g. the photographer of a photograph or the author of a book) to receive compensation for their intellectual effort. The exclusive rights are, however, not absolute and do not give the creator total control of their works because they are limited by limitations and exceptions to copyright law.

3) Industrial Design Rights

India's Design Act, 2000 was enacted to consolidate and amend the law relating to protection of design and to comply with the articles 25 and 26 of TRIPS agreement. The new act, (earlier Patent and Design Act, 1911 was repealed by this act) now defines "design" to mean only the features of shape, configuration, pattern, ornament, or composition of lines or colours applied to any article, whether in two- or three-dimensional, or in both forms, by any industrial process or means, whether manual or 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. [16]

A well designed chair is not just a pleasure to sit on, but a pleasure to look at as well. This can be said for almost every manufactured product: its success in the marketplace will depend not only on its functionality, but on its aesthetic appeal. That is why manufacturers invest a great deal of money and know how in their industrial designs and why an original design is considered a valuable intellectual property.

An industrial design is the shape, pattern or ornamentation applied to a useful article that is mass produced. It may be the shape of a table, the ornamentation on the handle of a spoon, and it may be made by hand, tool or machine. The design has features intended for visual appeal. However, merits of those features are not part of the application. [17]

An industrial design right is an intellectual property right that protects the visual design of objects that are not purely utilitarian. An industrial consists of the creation of a shape, configuration or composition of pattern or colour, or combination of pattern and colour 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. [18]

4) Trademarks and Services marks

Trademarks are distinctive indicators or signs that individuals, businesses, or other legal entities use. They use these indicators or signs to communicate that services or products to consumers that are connected to the trademarks stem from a unique source. Trademarks are also utilized to differentiate services or products from those of other legal entities. Trademarks are commonly designated by three, different symbols based on whether they are unregistered, registered, or simply unregistered service marks. If trademark infringement occurs, owners of a registered trademark have the option of filing a lawsuit to head off any unauthorized usage of his trademark. Commonly, trademarks can either be symbols, logos, names, phrases, words, images, designs, or even a mix of any of these elements. [19] When a trade mark is used in connection with services such as banking telecommunication, airlines, tourism, etc. they are called service marks. [20]

5) Geographical Indications

A geographical indication (GI) 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). The use of a GI may act as a certification that the product possesses certain qualities, is made according to traditional methods, or enjoys a certain reputation, due to its geographical origin. An indication which identifies goods, such as agricultural goods, natural goods or manufactured goods as originating in the territory of a country, or a region or locality in that territory are as geographical indications. These indications denote quality, reputation or other characteristics of such goods essentially attributable to its geographical origin. The right conferred on geographical indication confers the right to prevent competition from commercially exploiting the respective rights to the detriment of the owner of that property. [21]

6) Biological Diversity

Biodiversity plays vital role in sustaining conservation of nature development of bio-technology industry. The Biological Diversity Act, 2002 is an Act of the Parliament of India for preservation of biological diversity in India, and provides mechanism for equitable sharing of benefits arising out use of traditional biological resources and knowledge. The Act was enacted to meet the obligations under Convention on Biological Diversity (CBD), to which India is a party. [22] Biodiversity is basic to progress in improving the productivity of plants, animals, fishes and all living organisms. Conservation of biodiversity ensures ecological stability and also involves protection of socio-ecological interest of the people actively associated with conservation. All over the world legal strategies at global, regional and local level have been developed for ensuring protection to such interest alongside main tenancies of ecological stability. [23]

7) Plant Varieties and Farmer's Rights

The Protection of Plant Variety and Farmers Right Act, 2001 (PPVFR Act) is an Act of the Parliament of India enacted to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders, and to encourage the development and cultivation of new varieties of plants. This act received the assent of the President of India on the October 30, 2001. [24] The development of new improved plant varieties with higher quality and productivity increases the value and marketability of crops. In addition, breeding programmes for ornamental plants can be of substantial economic importance for an exporting country. The breeding and exploitation of new development. Therefore, an effective system for protection of plant variety is essential to encourage breeders it invest in the plant breeding and contribute to the development of agriculture, horticulture and forestry and the benefit of society as a whole. [25]

2. Conclusion

The Intellectual Property Rights (IPR) will have wide range of socio, economic, technological and political impacts. Rapid technology obsolescence and fierce competitions lead one to protect the innovations using the tools of IPR such as patents, trademarks, service marks, industrial design registration, copy rights and trade secrets. The legal framework for IPR is in a stage of dynamic adjustments and changes to accommodate the challenges and new situations that result from convergence of technology.

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