

ORIGIN OF IPR AND ITS PRESENT STATUS AND UTILITY IN INDIA

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STATEMENT OF PROBLEM

To study and analyze the concept of intellectual property rights and its present status & utility in India with the help of various conventions.

SCHEME OF RESEARCH PAPER

This research paper is an attempt to study the concept of intellectual property rights. This research is an attempt to highlight the various concepts related to intellectual property rights and utility & origin in India.

In the first part it deals with the concept of Intellectual property rights and its origin, nature and scope. In the next part of the research described the evolution and growth of intellectual property right and outline the present status in India. Then it highlights the development and importance of the concept of intellectual property rights in India economically socially and scientifically.

In the next part deals with the commercial exploitation of the intellectually property rights i.e. followed by the suggestion conclusion.

INTRODUCTION

Intellectual property is the creative work of the human intellect. It is an intellectual work, produced by the intellect of human brain. It is the product of human ingenuity, knowledge and skills besides labor and capital. For example, literary work produced by the authors, musical work produced by the musicians, coining of trademarks used in the course of business or trade, design of industrial products, etc. are intellectual properties as they are created by the human intellect. However, other intangible objects or opportunities with commercial applications and value also form intellectual property. Thus, geographical indications are also important component of intellectual property.

The main motivation of its protection is to encourage and reward creativity. The owner of the intellectual property has exclusive right over his intellectual property. No one can make use of

intellectual property without the consent of the owner of the intellectual property. However, the owner of the intellectual property may assign intellectual property itself or any interest in it in the favor of any other person in consideration of monetary gain. For example, an author may assign the copyright in his literary work in the favor of any other person in consideration of lump sum amount or royalty. Similarly, a musician may assign a composition composed by him to any other person in consideration of monetary gain. However, even after such assignment, the moral rights of the owners of intellectual property are protected.

The intellectual property system must maintain an equitable balance of interest between public goods and private interests, and should help promote socio-economic improvement, the general prosperity of society through the advancement and worldwide application of beneficial technology, the promotion of competitive trade and encouragement of innovators and creators.

The contribution of intellectual property to industrial and economic development of a country is substantial. The prosperity achieved by developed nations is the result of exploitation of their intellectual property. Intellectual property related to pieces of information which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property is not in those copies, but in the information reflected in those copies.

CONCEPT OF INTELLECTUAL PROPERTY RIGHTS

The intellectual property rights were essentially recognized and accepted all over the world due to some very important reasons. Some of the reasons for accepting these rights are:-

- To provide incentive to the individual for new creations.
- Providing due recognition to the creators and inventors.
- Ensuring material reward for intellectual property.
- Ensuring the availability of the genuine and original products

Kinds of Intellectual Property Rights

The knowledge of intellectual property rights is must to a common man. A common man everywhere and every time come across the things created, invented, discovered and produced by some human mind. A design of a house , the material used in a house , its furnishings like a carpet, sofa, fridge ,television, telephone, paintings, photographs, wall clock ; the articles of daily use like a pens, books, the newspapers ,tissue papers, shoes etc ; the things that are worn by him like Jeans ,T-shirts , trousers, hats ties , shoes etc ; the items of conveyance like cycles, cars, bikes etc...The list is endless! Almost all the

things that surround a common man are one way or other, property intellectual properties of some one. Somebody has spent his time, money and energy to invent and create them. Therefore, these all common things are intellectual property of someone and are protected by law. These items of intellectual properties can be classified into two main categories:-

- Industrial Property items¹
- Copyright and related rights items.²

The study of intellectual property rights, particularly in India, has gained considerable prominence in the recent past. These rights have an international flavor and with so many new and rapid developments taking place around the world, their study has become important also among the lawyers and judges. The scope of study is as vast as an ocean not only because of the variety of subjects involved but also because of technological complexities due to advancements made in science. In India, we have laws that govern copyrights, patents, trademarks and designs, each subject requiring a considerable amount of study and research. Within these subjects, there are several issues that arise from time to time.

Protection of intellectual property has its origin in the fierce competition generated by the Industrial Revolution, which swept Europe in the second half of the nineteenth century. The first international treaty on the subject was the **Paris Convention for the Protection of Intellectual Property**.³

The Paris Convention tackles three basic and substantive problems faced by the international community in relation to industrial property. The Convention has addressed itself to the concept of protection of rights of an inventor in other countries, known compendiously as **National Treatment**. Consequently, a patent is entitled to protection not only in the country of its registration, but also among other signatory countries. This gives sufficient protection to an inventor whose invention cannot be “stolen” by someone else working on a similar product in another country, the caveat being that protection is limited to only those rights that are recognized by the country of origin.

The second important area addressed by the Paris convention is the **Right of Priority**. An application for the registration of a patent or a trademark in one country gets its priority in the other countries also

¹ The industrial properties items include all sort of inventions, trademarks, industrial designs and geographic indicators of source

² Copyrights and related rights items include all literary works which range from articles, news-paper items, novels, story books, poetry books etc.

³ Although, the treaty was drafted in 1880, it actually came into force in 1884. It has been revised several times, most recent in Stockholm in 1967. It was last amended in 1979. The Convention concerns itself, inter alia, with patents, industrial designs, trademarks etc.

from the date of its filing, provided it is filed in the other country within a period of twelve months. To a very large extent, this obviated the problem earlier encountered because of differences in procedural laws between one country and another. Today, these provisions may seem fairly obvious and natural but it was not so at the time when competition fuelled by the Industrial Revolution was fierce.

The third important area covered by the Paris Convention is in laying down certain common rules in the administration and enforcement of rights relating to patents, trademarks, industrial designs, trade names, indication as to the source of the goods and those relating to unfair competition.

Once the ball was set rolling in the international community, other developments relating to intellectual property rights followed. The most notable initial thrust was in the area of copyrights. The **Berne Convention for the Protection of Literary and Artistic Works** was concluded in 1886. It laid down three basic principles of application. Firstly, literary or artistic works originating in one country are given the same protection in the other countries. The principle of National Treatment laid down by the Paris Convention was adopted in the Berne Convention. Secondly, the protection accorded by the national treatment was made automatic and did not require the completion of any formalities. Thirdly, the principle of “independence” of protection was accorded to all literary and artistic works. This is to say that protection in the other countries is available independently of protection being accorded to the literary or artistic work in the country of origin.

The result of all these breakthroughs in the international co-operation was the setting up of the World Trade intellectual property Organization of WIPO. The constituent convention called the WIPO Convention was signed in Stockholm in 1967 but entered into force only in 1970.

WIPO has two main objectives, namely, to promote the protection of intellectual property throughout the world and whenever necessary, with the assistance of other international organizations and to ensure cooperation among the intellectual property unions established by the treaties that WIPO administers.

Nature of IPR

Intellectual Property Rights are largely territorial rights except copyright, which is global in nature in the sense that it is immediately available in all the members of the Berne Convention. These rights are awarded by the State and are monopoly rights implying that no one can use these rights without the consent of the right holder. It is important to know that these rights have to be renewed from time to time for keeping them in force except in case of copyright and trade secrets. IPRs have fixed term except

trademark and geographical indications, which can have indefinite life provided these are renewed after a stipulated time specified in the law by paying official fees. Trade secrets also have an infinite life but they don't have to be renewed. IPRs can be assigned, gifted, sold and licensed like any other property. Unlike other moveable and immovable properties, these rights can be simultaneously held in many countries at the same time. IPRs can be held only by legal entities i.e., who have the right to sell and purchase property.

The importance of intellectual property in India is well established at all levels- statutory, administrative and judicial. India ratified the agreement establishing the World Trade Organization (WTO). This Agreement, inter-alia, contains an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1st January 1995. It lays down minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view to reducing distortions of and impediments to international trade. The obligations under the TRIPS Agreement relate to provision of minimum standard of protection within the member countries legal systems and practices. The Agreement provides for norms and standards in respect of following areas of intellectual property:

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

IPR is a general term covering patents, copyright, trademark, industrial designs, geographical indications, protection of layout design of integrated circuits and protection of undisclosed information (trade secrets).

Legislations Covering Intellectual Property Rights in India:

Patents: The Patents Act, 1970. The act was last amended in March 1999.

Design: The Designs Act, 1911. A new Designs Act 2000 has been enacted superseding the earlier Designs Act 1911.

Trade Mark: The Trade and Merchandise Marks Act, 1958. A new Trademarks Act, 1999 has been enacted superseding the earlier Trade and Merchandise Marks Act, 1958.

Copyright: The Copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999 and the Copyright Rules, 1958.

Layout Design of Integrated Circuits: The Semiconductor Integrated Circuit Layout Design Act 2000.

Protection of Undisclosed Information: No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872

Geographical Indications: The Geographical Indication of Goods (Registration and Protection) Act 1999.

DEVELOPMENT AND CHALLENGES OF INTELLECTUAL PROPERTY LAW IN INDIA

The various branches of intellectual property law—patents, trademarks, designs, and copyright ensure legal exclusivity in the market. In the new world economy, these property rights are invaluable in the fight to achieve and retain market shares. The term intellectual property presupposes an exclusive right to perform some well-defined activity, mainly manufacturing or marketing. The increase in the number of patents granted and trademarks registered indicate that intellectual property rights provide immense commercial returns. The importance of recognizing intellectual property rights is understood worldwide, and almost all countries have framed statutes for their protection as these laws safeguard ideas and information of commercial value.

But intellectual property laws guarantee only limited protection against exploitation. The economic needs of the country always prevail over the commercial interest of an individual, and the legal protection is limited to giving the freedom to compete. The increasing awareness of intellectual property rights has brought a lot of pressure on the legal framework. The resources of the existing legal systems are feeling the strain.

Intellectual property rights have brought to light the increasing advantages of proprietary rights in an age of economic liberalization and cut-throat trade competition. Possession of a legally-recognized intellectual property helps one maintain an early lead in the business. They recognize the monopoly of the patent grantee or a trademark owner and monitor the activities of market competitors and licensees. But the degree of market power created by intellectual property varies from item to item. With substitute products flooding the market, it is difficult to determine the quantum of the product consumers want. Due to sociopolitical and economic reasons most intellectual property has little capacity to generate market power.

The development of these laws is strongly founded on political and economic history of the world. As a corollary to the economic development propelled by the Industrial Revolution, the first legislation that

recognized the laws was the Statute of Monopolies of 1624, in England. This was followed by the Copyright Act of 1709, which provided a writer with the sole right of printing his book for 14 to 21 years. Over the centuries, statutes have been drafted with greater clarity of expression and organization.

In India, most intellectual property rights are recognized by legislation and protected by statutes and a large number of judicial decisions in the realm of Law of Torts. The patent system in India has its legislative origins in the Act No. Six of 1856, this conferred certain privileges on inventors for 14 years. This was substituted by Act No. 15 of 1859 which recognized patent monopolies as “exclusive privileges”. The provisions of this law were founded on the English Patent Act of 1852.

Intellectual property such as patents, trademarks and industrial designs are also known as industrial properties. In India, trademarks of goods were protected by the Trade and Merchandise Marks Act 1958, which was amended in 1999. The Trade Marks Act of 1999 also provides for registration and protection of trademarks for services and goods. This amendment Act recognizes exclusive marketing rights: Chapter 9A grants patents for medicines, which was not possible under the 1970 Act. Designs are protected under the Designs Act, 1911. A Copyright, granted for artistic, literary and musical works (and lasting for 60 years after the author's death), protects the author and artist from unlawful reproduction, piracy and imitation. But the ideas and oral communication of the original contents are still unsafe. The Copyright (Amendment) Act, 1994 acknowledges performance right and computer program within the concept of copyright. But there is no comprehensive statute that addresses all problems that might arise in the field of intellectual property.

With the advent of WTO and other international bodies that regulate transnational commerce, intellectual property rights of the Third World are under siege. Transnational big-business interests commercially exploit traditional knowledge and bio-diversity of these countries. Inadequacy of legal coverage and the lethargy in the administration contribute to the crisis and make the Indian inventor, breeder and farmer vulnerable to the onslaught of transnational commercial bullies. But as a member of the WTO, India is bound to implement the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights) in toto. It is in discharge of this obligation that trademark, patent and copyright laws were amended in 1999, conforming to the provisions of the T RIPS Agreement.

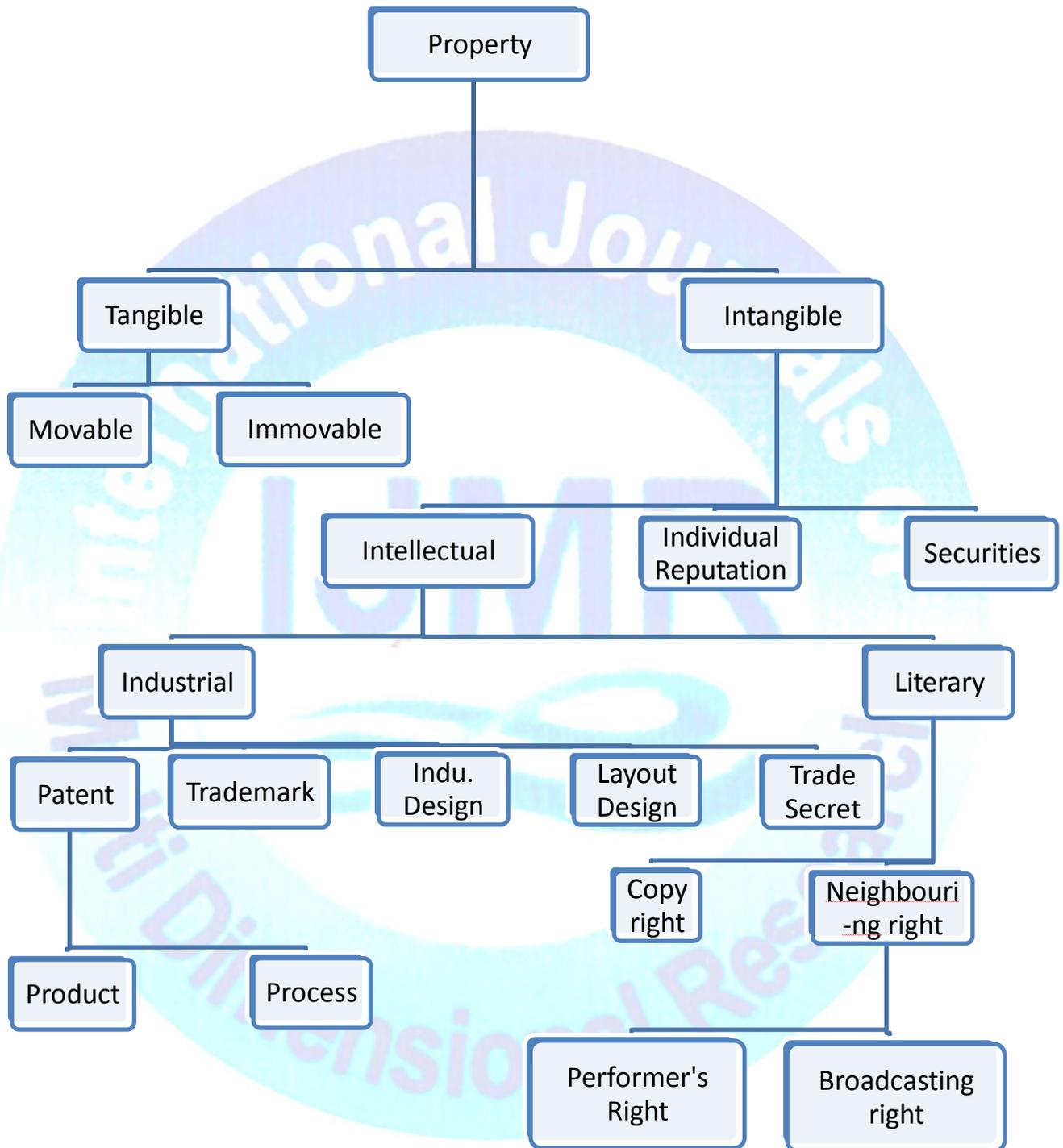
At any rate, the global scenario compels India to fight the pressures from within and outside the country; the future is not for the meek but the brave.

EVOLUTION AND GROWTH OF INTELLECTUAL PROPERTY RIGHTS

Outline of the present Intellectual Property System in India

Today's advanced economies live or die by their ability to get smarter. Growth comes not from competing on labor costs, raw materials or access to capital: our competitive edge depends on our capacity to innovate, especially in the high margin, knowledge intensive businesses which now exist across all sectors of the UK economy.

Uruguay round of GATT negotiations paved the way for WTO. Therefore India was put under the contractual obligation to amend its patents act in compliance with the provisions of TRIPS. Accordingly, the Government brought into force Patents Rules, 1972 w.e.f. 20.4.1972. These Rules were amended and replaced by the Patents Rules 2003 and further amended by the Patents (Amendment) Rules 2005, this includes provisions relating to time-lines with a view to introducing flexibility and reducing processing time gradually for patent applications, and simplifying and rationalizing procedure for grant of the patent. 8. There are four Schedules to the Patents (Amendment) Rules 2005; the First Schedule prescribes the fees to be paid; the Second Schedule specifies the list of forms and the texts of various forms required in connection with various activities under the Patents Act are set out in this schedule. These forms are to be used wherever required and if needed, they can be modified with the consent of the Controller. The Third Schedule prescribes form of Patent to be issued on Grant of the Patent. The Fourth Schedule prescribes costs to be awarded in various proceedings before the Controller under the Act.



BRIEF HISTORY OF INTELLECTUAL PROPERTY LAWS AND POLICIES IN INDIA

Intellectual Property Rights system in India is not new, but only after 1995 when India became part of World Trade Organization, Intellectual Property, activities in India have assumed greater importance and widespread role at all levels. Basically, the eco system of IP consists of IPR laws, their administering authorities, IP facilitation mechanism, awareness, a part of academic schedule in many forms like curriculum, research, professional courses, papers etc., legal system including IPR agents and attorneys, judges, courts, litigators and IP creators including scientists, technologists, authors, musicians, keepers of traditional art, industry, services or trade. Laws enacted with respect to IPR in the last 15 years include: New Trademarks law, New Design Law, Plant Variety protection, IC Layout Design, Geographical Indications. IP offices have been modernized. Other than enactment and enforcement of various laws in the country after joining WTO and TRIPS, India has also acceded to various international treaties like Paris Convention, Patent Cooperation Treaty (PCT), Budapest Treaty, Universal Copyright Convention, Phonogram Convention and is planning to accede to Madrid Protocol too. The significant resources have been employed by various agencies to create appropriate environment for protection and exploitation of IP in the country and this has been discussed in this paper in detail, particularly focusing on issues relating to patents in general and patenting facilities.⁴

The Patents Act, 1970 is a landmark in the industrial development of India. The basic philosophy of the Act is that patents are granted to encourage inventions and to secure that these inventions are worked on a commercial scale without undue delay; and patents are granted not merely to enable patentee to enjoy a monopoly for the importation of the patented article into the country.

India amended its Patents Act again in 2002 to meet with the second set of obligations (Term of Patent etc.), which had to be effected from 1-1-2000. This amendment, which provides for 20 years term for the patent, Reversal of burden of proof etc. came into force on 20th May, 2003. The Third Amendment of the Patents Act 1970, by way of the Patents (Amendment) Ordinance 2004 came into force on 1st January, 2005 incorporating the provisions for granting product patent in all fields of Technology including chemicals, food, drugs & agrochemicals and this Ordinance is replaced by the Patents (Amendment) Act 2005 which is in force now having effect from 1-1-2005.

Patents

⁴ Eco System for IPR in India Especially for Patents by Yashawant Dev Panwar (India)

A patent is termed as the exclusionary rights given by the government or the authorized authority to its inventor for a particular duration of time, in respect of his invention. It is the part of the intellectual property right, which connotes with all those rights which are granted to any person for protecting its invention, process, discovery, composition or new useful development etc. from its further usage without any authentication. If more than two persons have jointly applied for patent license, both will own the patent separately. The original word 'patent' has come up from the latin term 'patere', which means 'to lay open' or 'available for public usage'. Sometimes it is also related to the term 'letters patent', which marks to the royal decree granting exclusive rights to patentee. Unlike copyright, patent is not granted on giving mere suggestion or idea. An idea of mere manufacturing machine does not come under the purview of obtaining patent.

The concept of patent system is a very old one. It has witnessed a revolutionary change across the world in the past few centuries. One of the earliest systems was that originating in England during the reign of Queen Elizabeth-I. The practice of transferring technology and setting up new industries is not a new one. In England, it began to grow in the 12th century and by the 14th century grants of special privileges were being made by the Crown to individuals to protect them whilst they established new industries based on imported technology. This protection took the form of granting the introducer of new technology the sole right to use it for a period sufficiently long for him to establish it and train others in its use.

Trademarks

Trademarks are not a creation of times, even though certainly their current nature, their omnipresence at least in the market economy countries, is of rather recent origin.

Trademarks as marks of origin were affixed by the makers of bricks, leather books, weapons, cooking ware and other things even in the ancient cultures. These marks were letters, usually initials, or other symbolic sign stamped on the goods to signify the maker of the product. Certainly these marks did not exercise their present day function of facilitating distribution of goods in a complex economy. Trademarks although not yet called by that “term of art” a word created only in the 19th century continued to play a similar role throughout the greater part of history, including mediaeval time and the centuries beyond. The Indian trademark law defines the trademark as the signature, device, word, invented word, letter, numeral, brand, name written in the particular style, the shape of goods other than those for which the mark is intended to be used, or any combination thereof or the combination of

colors etc. Except in certain cases, the trademark may also signified by the name of living or dead person.

Copyright

The idea of copyright protection only began to emerge with the invention of printing, which made it possible for literary works to be duplicated by mechanical processes instead of being copied by hand. This led to the appearance of a new trade- that of printers and booksellers, in England called “stationers”.

By the end of 17th century the system of privileges- i.e. the grant of monopoly rights by the Crown- was being more and more criticized and the voices of authors asserting their rights began increasingly to be heard; and this led in England in 1709 to what is acknowledged to be the first copyright statute. In the 18th century there was continuous dispute and litigation over the relationship between copyright subsisting at common law and the copyright under the statute of Anne. This was finally settled by the House of Lords in the case of Donalson Vs. Beckett in 1774 which ruled that at common law the author had the sole right of printing and publishing his books, but that once a book was published the rights in it were exclusively regulated by the Statute. This common law right in unpublished works lasted until the Copyright Act, 1911, which abolished it; and today in England copyright subsists solely by statute.

The Indian copyright act facilitates the owner for reproducing or reusing their copyrighted items, to prepare its derivate, to public their work and to distribute copies of their creative items. Copyright aims to protect the work of creator, transformed in a tangible form of expression. It includes art work, plays, movies, shows, various types of music, sound and songs, books, manuscripts, written work and all types of images, photos, pictures, drawings, graphics.

Geographical Indication

In India the geographical indications regime is regulated by the Geographical Indications of Goods (Registration & Protection) Act, 1999 and the Geographical Indication of Goods (Regulation and Protection) Rules, 2002. However registering of the GI is not compulsory in the India as the owner of the unregistered GI can also enforce the actions with the help of passing off against the infringer but it is recommendable to register the GI as the registration certificate acts as the prima facie evidence in the court at the time of arising of any dispute and no additional evidence is required to proof the validity. Examples of some of the popular geographical indicators are- Basmati Rice, Kanjeeपुरam Sarees,

Darjiling Tea. In the Indian act, geographical indication is used for identifying the goods from a particular geographical location and its origin. It encircles the agriculture goods, natural goods and is extended up to the manufacture goods also. In order to register the geographical indication, the goods should possess the unique characteristic, reputation with other qualities attributed to its geographical origin, for e.g., climate, quality of soil, processing methods etc. Normally the geographical indicators signify to the rights of community or a group therefore, an individual cannot register geographical indication on his/her name. The Indian Geographical Indication Act has established the Geographical Indication Registry, the statutory body, for completing the geographical indication registration. The body prepares the Register of Geographical Indications which is prepared in two parts- Part A and Part B. While Part A consists of the important attributes of the goods along with the name of the registered owner whereas Part B details down the various rules which are related to the geographical indicator authorized users' registration.

Industrial Design

In present scenario, the Designs Act, 2000 and the Designs Rules, 2001 are governing the India's design law. The industrial design registration grants the proprietor the exclusionary rights of selling, importing and applying it to any product. India has adopted the 'first to file' system, which means that the right holder should file the application on the earliest point of time to rule out the possibility of any other person claiming for the rights of the intended designs. All such persons can apply for the industrial design rights if they are the proprietor of the design and as far as the design is new, not previously published in any nation, reproducible through the industrial means, not against to the public order, distinct from the known designs, not consists of any obscene material, eye catching. According to the designs law in India, the proprietor can file for the design application only if they have their business center in India otherwise they are required to file the application through the attorney/agent who will in turns design search, prepare file and finally done the prosecution of the application..

Invention and Technology

Technology has been defined as systematic knowledge for the manufacture of a product, or the rendering of a service in industry, agriculture or commerce, whether that knowledge be reflected in an invention, a utility model, an industrial design, a plant variety, or in technical information in the form of documentation, or in skills or experience of experts, for the design, installation, operation or

maintenance of an industrial plant or its equipment or for the management of an industrial or commercial enterprise or its activities.

IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

Property, whether tangible or not, is crucial to the operation of a market economy. Industrial property rights such as patents, designs and plant variety rights give an incentive to produce new inventions and other innovations by awarding an exclusive right for a limited period. Such industrial property rights facilitate entry of newcomers to a market by helping to attract venture capital and enabling production to be licensed to incumbents.

Intellectual property contributes enormously to our national and state economies. Dozens of industries across our economy rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers use intellectual property to ensure they are purchasing safe, guaranteed products. We believe intellectual property rights are worth protecting, both domestically and abroad. This is why:

Intellectual Property Creates and Supports High-Paying Jobs

- Intellectual property-intensive industries employ over 55 million Americans, and hundreds of millions of people worldwide.
- Jobs in intellectual property-intensive industries are expected to grow faster over the next decade than the national average.
- The average worker in an intellectual property-intensive industry earned about 30% more than his counterpart in a non-intellectual property industry

Intellectual Property Drives Economic Growth and Competitiveness

- America's intellectual property is worth \$5.8 trillion, more than the nominal GDP of any other country in the world.
- Intellectual property-intensive industries account for over 1/3-- or 38%-- of total U.S. GDP.
- These industries also have 72.5% higher output per worker than the national average, valued at \$136,556 per worker.

Strong and Enforced Intellectual Property Rights Protect Consumers and Families

- Strong intellectual property rights help consumers make an educated choice about the safety, reliability, and effectiveness of their purchases.
- Enforced intellectual property rights ensure products are authentic, and of the high-quality that consumers recognize and expect.

- Intellectual property rights foster the confidence and ease of mind that consumers demand and markets rely on.

Intellectual Property Helps Generate Breakthrough Solutions to Global Challenges

- Nearly all of the 300 products on the World Health Organization's Essential Drug List, which are critical to saving or improving people's lives around the globe, came from the R&D-intensive pharmaceutical industry that depends on patent protections.
- Innovative agricultural companies are creating new products to help farmers produce more and better products for the world's hungry while reducing the environmental impact of agriculture.
- Intellectual property -driven discoveries in alternative energy and green technologies will help improve energy security and address climate change.

Intellectual Property Rights Encourage Innovation and Reward Entrepreneurs

- Risk and occasional failure are the lifeblood of the innovation economy. Intellectual property rights incentivize entrepreneurs to keep pushing for new advances in the face of adversity.
- Intellectual property rights facilitate the free flow of information by sharing the protected know-how critical to the original, patented invention. In turn, this process leads to new innovations and improvements on existing ones.

Economic Importance of Intellectual Property Rights

The contribution of intellectual property to the economic and cultural development of a country is substantial. The granting of patent monopoly in consideration of the disclosure of the invention enables competitors in the field to manufacture new products or improved products or effect improvements in the process of manufacture. But for a patent system much of the technological information would have remained secret and lost to the world. As it is the patent specifications which are available to the public contains practically all the information relating to any field of technology. Industrial design protection encourages people with creative faculty to devote their talent and energy in developing new designs for products. This is particularly so in the case of consumer products including toys, garments, furniture and so on.

Today copyright affects every industry conceivable. The printing, publishing and entertainment industries like the film and recording industry are almost completely dependent on copyright protection. The manufacture of any kind of machinery or machine is based on industrial drawings which enjoy copyright protection.

Economists recognize several channels through which intellectual property rights could stimulate economic development and growth.

In most developing economies there are significant amounts of labor employed in copying unauthorized goods. As these nations upgrade their laws and enforcement activities, these workers must find alternative employment. This displacement problem should pose the initial challenge for policymakers in introducing stronger intellectual property rights.

Social Importance of Intellectual Property Rights

The intellectual property rights have both positive and negative impact on the dynamic welfare of the society. The positive impact of intellectual property rights on dynamic welfare are creativity, accessing high technology of others, ability to license/ cross license, globalization, technological development, technology transfer, technology innovation, plant variety protection, geographical indications, biological diversity and indigenous knowledge and much more. The negative impact of intellectual property rights on static welfare is the higher prices of goods.

Scientific Importance of Intellectual Property Rights

The intellectual property rights are very important scientifically as they help in the growth and development of the society with the technical improvement and advancement and with the new protection and preservation techniques, development in telecommunication equipment industry, technology transfer, computer and hardware industry, semiconductor industry, lay-out design protection, internet, computer software and database protection. A strong intellectual property portfolio is of enormous value to life science companies since much of their value is derived from the intellectual property rights, particularly patents, they possess.

COMMERCIAL EXPLOITATION OF INTELLECTUAL PROPERTY RIGHTS

There is increasing awareness of intellectual property rights, both commercially (e.g. through the recognition that innovation and design can create specific demand, influence consumer preference and generate ongoing product/brand loyalty) and legally (including the ability to secure monopoly use rights for inventions or unique works, and through registration and enforcement of statutory rights). Owners and creators of intellectual property rights will usually seek to exploit those rights for their economic benefit.

The commercial exploitation of different kinds of intellectual property is made in different ways. In the case of patent the patentee may himself exploit the patent or assign his rights or license them to industrialists for a lump-sum payment or on a royalty basis. A registered design can be similarly exploited by assigning or licensing the rights to others capable of exploiting it on a royalty or lump-sum basis. Copyright can also be exploited in a similar manner, the scope of assignment or licensing being much wider having regard to the variety of rights conferred on the copyright owner. Commercial exploitation of a registered trademark by licensing others to use it on a royalty basis is not permissible except by registration of the licensee as a registered user under conditions prescribed by the statute. Unregistered licensing of a registered trademark subject to the conditions is permitted under the Trademark Act, 1999. Licensing of an unregistered trademark under suitable conditions is recognized by courts. Such licensing is called common law licensing.

The strategy for making commercial gain from intellectual property will vary depending on the specific circumstances, including:

- The product/industry type;
- Market dynamics and entry/exit barriers;
- Capital requirements and sources;
- Risk appetite;
- Immediate/long term objectives, notably exit strategy;
- Revenue streams and costs;
- Tax implications (including transfer pricing for cross-border ventures).

Conclusion and Suggestions

Intellectual Property Rights (IPR), concern ideas that are translated into tangible products, writings, etc. and are protected by the state for a limited period of time from unauthorized commercial exploitation. They include patents, trademarks, trade secrets, and copyrights. A competitive advantage in the new world economy is based more on the development of new technologies than on availability of natural resources. The advantage created by technology cannot be sustained without adequate intellectual property rights. It was found that strong intellectual property protection had a positive influence on foreign direct investment (FDI) in countries in which the economic environment was less favorable for investment and in which there was limited industrial and technological infrastructure. In addition, IPR

protection has a positive effect on market-and export oriented investments with products and processes that are relatively easy to imitate, which leads to the conclusion that IPR protection has some positive influence in the case of developed countries.

The year 1999 witnessed the passage of major legislation with regard to protection of intellectual property rights in harmony with international practices and in compliance with India's obligations under WTO. At the same time, India showed signs of resistance to quick enforcement of international intellectual property right (IPR) protection laws as demanded by the developed countries, particularly the US. Under the WTO, India was required to implement WTO-standard IPR protection laws by 2005. It must be acknowledged that there has been remarkable progress in IPR protection in the field of software and cinema products.

Under pressure from its own domestic industry and other countries, India strengthened its copyright law in May 1994, which reflects the provisions of the Berne Convention on copyrights, to which India is a party. Classification of copyright infringements as "cognizable offenses" expands police search and seizure authority. While the formation of appellate boards under the new legislation should expedite prosecution, local attorneys indicate that some technical flaws in the laws, which require administrative approval prior to police action, need to be corrected. Trademark protection is important, and has been raised to international standards with the passage of a new trademark bill (this has now become the Trademarks Act, 1999) that codifies existing court decisions on the use and protection of foreign trademarks, including service marks.

Passage of the trademark bill was in 1998, which enforced trademark owner rights, which had been weak in the past, but is steadily improving as the courts and police respond to domestic concerns about the high cost of piracy to Indian rights' holders.

India has significantly upgraded its laws and the legal system to handle patent-related litigation and allow patents in all areas of technology. Accordingly, the provisions relating to the setting up of the Intellectual Property Appellate Board (Tribunal) contained in the Trade Marks Act, 1999, with suitable modifications, have been made applicable to the Patent Law by the Patents (Amendment) Act, 2002. This was done to ensure speedy disposal of appeals against the decisions of the Controller of Patents, which, at present, lie to the High Court. The Patent Act, 1970, as amended by the Patents (Amendment) Act, 2002 has fulfilled India's international obligations contained in the Trade Related Intellectual Property Rights (TRIPs) Agreements of World Trade Organization (WTO) Agreement.

India's entry into the World Trade Organization (WTO) is a milestone in its joining the mainstream of the trade regulatory environment at the global level. India's participation in an increasingly rule based

system in the governance of international trade is likely to ensure more stability and predictability, which ultimately would lead to more trade and prosperity for itself and the 134 other nations which now comprise the WTO.

The Department of Education, at the Ministry of Human Resource Development, Government of India has initiated several measures in the past for strengthening the enforcement of copyrights that include constitution of a Copyright Enforcement Advisory Council (CEAC).

To overcome the weaknesses in the patent laws and be able to meet the WTO standards, the new law passed in December 2004 amending India's 1970 Patent Act, affects everything from electronics to software to medicines. But after joining the World Trade Organization in 1995, India had to change its patent laws by 1 January 2005 to meet its commitments under the WTO's agreement on Trade Related Intellectual Property Rights (TRIPS). The new bill, finally passed by the Indian Parliament on 23 March 2005, now recognizes both product and process patents.

Intellectual property has long been a concern for many industries, particularly for those, which have a heavy reliance on protection afforded by national IPR laws. A nation can have strong laws or weak laws, but unless they are enforced, they are virtually non-existent in terms of protection afforded intellectual property owners and investors. There is a well-established statutory, administrative and judicial framework to safeguard intellectual property rights in India, and international trademarks have been protected in India even when they were not registered there. The Indian Trademarks Law has been extended through court decisions to service marks in addition to trademarks for goods. Computer software companies have successfully curtailed piracy through court orders. Computer databases have also been protected. Right to privacy, which is not protected even in some developed countries, has been recognized in India. The Indian government has formed an advisory committee to recommend changes in the 1970 Indian Patents Act and the bottom line is that India considers itself a responsible member of the WTO which suggests that international class IPR protection should be in place. Protection of intellectual property rights in India continues to be strengthened further. The year 1999 witnessed the passage of major legislation with regard to protection of intellectual property rights in harmony with international practices and in compliance with India's obligations under WTO and TRIPS.

The Government of India has taken some important measures to strengthen the intellectual property administration system in the country. Projects relating to the modernization of patent information services and trademarks registry have been implemented with help from WIPO/UNDP. The Trade Marks Registry has been strengthened and modernized. A project for modernization was earlier implemented during 1993-96. And further strengthening of the Registry is being taken up at a cost of USD 2 million.

The Government also brought out *A Handbook of Copyright Law* to create awareness about copyright laws and its importance amongst the stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public. Copies of the Handbook were circulated free of cost to the state and central government officials and police personnel. National Police Academy, Hyderabad and National Academy of Customs, Excise and Narcotics conducted several training programs on copyright for the police and customs officers. Modules on copyright have been included in their regular training programs.

Future improvements to the intellectual property can arise from a variety of sources, including licensees/franchisees, manufacturers, contractors and employees. Business contracts should, where appropriate, secure rights to own/use these improvements.

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