

A REVIEW ON INTELLECTUAL PROPERTY RIGHTS WITH AN EMPHASIS ON PATENTS, COPYRIGHTS AND TRADE MARKS

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ABSTRACT

Intellectual property or Intellectual Property Right have been expounded as inventions, creative expressions based on public willingness to vouchsafe on status of the property and it is also referred as a legal protection to certain inventions or creations of the mind. There are several types of IPR's such as Patents, Copyrights, Trademarks, Trade Secrets, Geographical Indications, Industrial Designs, Plant Varieties etc. IPR provides certain exclusive rights on particular property of the inventor in order to procure benefits from their efforts. Patent is a proprietary right granted in recognition of an invention, which is novel and satisfies the non-obviousness and industrial application. Patent also protects the commercial inventions

such as new product or process. Patents are accompanied by diagrammatic representation through chemical structures, drawings of electrical, mechanical and also by textual descriptions. IPR is prerequisite for the identification, planning, rendering, commercialization and protection of creativity or an invention. The role of IPR's is to provide incentives to discover develop and market new drugs. In this review article we are providing the information about IPR with a special note on Patents, Copy rights and Trademarks.

KEYWORDS: IPR's, Patents, Copy Rights, Trade Marks.

INTRODUCTION

Intellectual Property Right (IPR) are the rights given to the persons over the creation of their minds, inventions, literary, artistic work, 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.^[1] The term intellectual property is related to human brain applied for creativity and invention various efforts in terms inputs of man power, time, energy, skill, money etc are required to invent or create something new.^[2] IPR is a strong tool, to protect investments, time, money, effort invested by the inventor/ creator of an IP. It is very well settled that IP plays a very vital role in the modern economy by promoting the healthy competition and encouraging the industrial development and growth of economy.^[3-4]

As per law, one has to register IPR at legal authority in methodically arranged form or orderly presentation to claim their benefits.^[2] Intellectual Property rights may be protected at law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. Intellectual property rights (IPR) have become important in the face of changing trade environment which is characterized by global competition, high innovation risks, and short product cycle. Intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources.^[5] From jurisprudential point of view, IPR works as a two way sword. On the one hand, there is a growing awareness that such protection is an indispensable of the motivational factor underlying the creation of an intellectual work. On the other hand, granting an absolute protection to the intellectual work can be prejudicial to the further progress of benevolence.^[6]

The purpose of IPR is a general term covering patents, copyrights, trademarks, industrial designs, geographical indications, layout design of integrated circuits and trade secrets.^[7] The owner can usually decide whether or not to license its use to someone else or to sell it to someone else through proper channel. It is also used for various legal entitlement which attach to certain types of information, ideas, or other intangibles in their expressed form.^[8]

History of IPR

The origin of Intellectual Property Rights can be traced back to the ancient times when monopolies existed in the Byzantine Empire.^[9] Ancient Greece in the 7th century BC granted monopoly to cooks to exploit new recipes for one year. But a few centuries later, Emperor Zeno in Rome rejected the concept of monopoly. The earliest of the legislations for the protection of intellectual property rights was in the area of patents.^[10] The origin of the intellectual property rights has a link with European enlightenment.^[11]

During that period people began to think that the knowledge came from the human mind working upon the senses, rather than through divine revelation, as sited by the study of ancient texts – that it became possible to imagine humans as creators and hence owners of new ideas rather than as mere transmitters of eternal verities.^[12] Besides being distinctively modern, intellectual property is a dense concept; woven together from at least three complex strands of jurisprudence- copyright, patent and trademark- each with its own success in premodern custom and law, and each with its own trajectory into our own era.^[13]

1. Prior to General Agreement on Tariffs and Trade (GATT), IPR's were not subject to formal international trade negotiations.
2. The Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS) come to crescendo at the end of seven years from 1986 to 1993, as a part of the Uruguay round of Multilateral Trade Negotiations of the GATT.^[14]
3. The TRIPS Agreement commenced on 1st January 1995 with the endowment of the World Trade Organization (WTO). To rack up this goal, WTO members have to transmute their Intellectual Property laws to make them continual with the new WTO standards.^[15]
4. The Trade Related Aspects of Intellectual Property Rights Agreement (1995) provides for minimum norms and standards in respect of the given categories of IPR's: Copyrights and Related rights (right of performers, producers of phonograms and broadcasting organizations), Trademarks, Geographical Indications, Industrial Designs, Patents, Layout Designs of Integrated Circuits and the protection of Undisclosed information.^[14]
5. The TRIPS agreement states that all patents shall be available for 20 years from the date of filing, whereas before this agreement the term of a patent varied among the countries (7,10,17 or 20years).^[15]

Patent

A Patent is an exclusive right granted for an invention, which is a product or process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.^[16]

An invention relating either to a product or process that is new, involving inventive steps and capable of industrial application can be patented. An invention is patentable subject matter if it meets the following criteria:

- a. 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.
- b. 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.
- c. Usefulness: invention must have industrial applicability or applied for practical purpose.^[2-17]

A patent application can be filled either by true and first assignee, either alone or jointly with any other person. However, legal representative of any deceased person can also make an application for patent. The Patent system is governed by the Patents Act, 1970 as amended by the Patents act, 2005 and the patent rules 2003. The term of a patent granted is 20 years from the date first filling of application. However, for application filed under national phase under Patent Cooperation Treaty (PCT), the term of patent will be 20 years from international filling date accorded under PCT.^[17]

The Patent filling procedure includes few steps, they are as follows:

Step 1: Filing of patent application or filing 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

Trademarks

A Trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks are protected by the Intellectual Property Right.^[18] Trademark existed in the ancient world. Even at times when people either prepared what they needed themselves or, more usually, acquired it from local craftsmen. Indian craftsmen used to engrave signatures over 3000 years. With the flourishing trade of the Middle ages, the use of signs to distinguish the goods of merchants and enterprises and expanded several hundred years ago.

Trademarks started to play an important role with industrialization, and they have since become a key factor in the modern world of international trade and mark-oriented economics.

A trademark comprises of words, letters, numerical, logo, drawings, picture, phrase, design or combination of all the above elements to identify or distinguish the service or enterprise from one another.^[19] Apart from the new trademarks, there are “unconventional” marks which are as follows,^[20]

- Color trademarks
- Sound marks
- Shape of goods, packaging
- Smell trade marks
- Holograms

Color trademarks

A color or combination of colors is capable to distinguish the goods and services of one trader from those of other traders. If a particular color of packaging has become distinctive, indicating the goods of a particular trader, there is no reason why it should not be protected by registration.

A single color may be registered as a trade mark if it is very unusual and peculiar in a trade and is recognized by traders and consumers alike that it serves as a badge of origin for that class of goods.

Sound marks

A trade mark may consist of sound and represented by a series of musical notes with or without notes. According to the law, sound marks like, smell marks are not capable of being perceived visually, but must be represented by graphically on the application form.

The acceptability of a sound mark must be like, words or other types of trademarks, depend upon the sound is or has become a distinctive sign. In particular, the following falls in this category

- a. Very simple piece of music
- b. Songs used as chimes
- c. Well known popular music in respect of entertainment services, park services
- d. Children’s nursery rhymes, for goods or services aimed at children.

Smell trademarks

The regime has now seen the emergence of unconventional forms such as smell, sound, taste marks but smell marks are a rare breed. The scent of a product may be registrable if it is used in a nonfunctional manner. The smell of grass for tennis balls, the odour of a perfume or an air freshener and smell reminiscent of roses as applied to vehicle tires was first registered in UK. Similarly, fresh floral fragrance reminiscent of Plumeria blossoms was registered in US for sewing thread and embroidery yarn.^[21-22]

Copyrights

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Economic and social development of a society is dependent on creativity.^[23]

The copyright Act, 1957 came into effect from January 1958. The Act has been ameliorated five times since then. The copyright (amendment) Act, 2012 is the most substantial. This act, include to bring in conformity with two WIPO treaties concluded in 1996, specifically, WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).^[24]

Profound lists of works covered by copyright are usually not to be found in legislation. Howbeit, broadly speaking, works commonly protected by copyright throughout the world include,^[25]

- Films, musical compositions and choreography;
- Advertisements, maps and technical drawings
- Artistic works such as paintings, drawings, photographs and sculptures
- Literary works such as novels, poems, newspaper articles, reference works.

CONCLUSION

The Intellectual Property Rights is one of the cornerstones of modern economic policy, it is obvious that management of IP and IPR is a multidimensional task and calls for many different actions and strategies which need to be aligned with national laws and international treaties and practices. With Intellectual Property Rights (IPRs) increasingly influencing trade, harnessing benefits which depends on the degree of protections enjoyed by the owners of the IPRs. The existence of laws is predominant for protecting; elevate awareness on IP laws and

their functions. Each pharmaceutical industry should make headway its own IP policies, strategies depending on its area of specialty. Since there exists the increased possibility that some IPRs are invalid, antitrust law, therefore, needs to step in to ensure that invalid rights are not being unlawfully asserted to establish and maintain illegitimate, monopolies within the pharmaceutical industry. Nevertheless, many things remain to be unraveling in this context.

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