

Importance of Intellectual Property Rights

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Abstract

The intellectual property rights (IPR) are intangible in nature and gives exclusive rights to inventor or creator for their valuable invention or creation. In present scenario of globalization, IPR is the focal point in global trade practices and livelihood across the world. These rights boost the innovative environment by giving recognition and economic benefits to creator or inventor whereas the lack of IPR awareness and its ineffective implementation may hamper the economic, technical and societal developments of nation. Hence dissemination of IPR knowledge and its appropriate implementation is utmost requirement for any nation. The present paper highlights various terms of IPR such as patents, trademarks, industrial designs, geographic indications, copyright, etc. with their corresponding rules, regulations, their need and role especially pertaining to Indian context. Further, status of India's participation in IPR related activities across the world has been discussed in brief.

Keywords: Intellectual property rights, WIPO, patents, trademarks, industrial designs, layout design of semiconductor integrated circuit, geographic indications, copyright and related rights.

INTRODUCTION

In wake of globalization, it is utmost important to be ahead in innovations and creativeness to compete the stiff competitions in technology and trade. India is well recognized for its intellectual skills in the fields of software engineering, missile technology, Moon or Jupiter mission and other technological areas. However, India lags in generation of IPR assets in terms of registered patents, industrial design, trademarks, etc. In a recent report by the US Chamber of Commerce, India stood at 29th position amongst 30 countries in IP index around the globe. It is very alarming condition for policy makers as well as for the nation as a whole [1–3].

The development of any society directly depends on IPR and its policy frame work.² Lack of IPR awareness resulted in the death of inventions, high risk of infringement, economic loss and decline of an intellectual era in the country. Thus, there is a dire need for dissemination of IPR information so as to boost indigenous inventions and developments in the field of research and technology [4–6].

In foregoing section of this paper an effort is made to highlight various intellectual property rights in context to India with their related corresponding rules, regulations, their need and role in society.

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INTELLECTUAL PROPERTY RIGHTS AND THEIR CLASSIFICATION

The term Intellectual property is related to human brain applied for creativity and invention. Various efforts in terms of inputs of manpower, time, energy, skill, money, etc. are required to invent or create something new. The ultimate idea by which invention or creation took place is an intangible property of the person, who took pains for the invention or creation. Therefore, as per law, legal rights or monopoly rights are given to creator or innovator to harvest the economic benefits on

their invention or creation [5, 6]. The Intellectual property rights (IPR) are territorial rights by which owner can sell, buy or license his Intellectual Property (IP) similar to physical property [7]. Although one has to register IPR at legal authority in some presentable or tangible form to claim their benefits. Each type of IPR gives especial rights to its inventor and or creator to sustain and harvest economic benefits which further motivates skill and societal developments [8-11]. On the basis of type of invention and creation of human mind and their applications the intellectual property rights are classified as follows: i) patents, ii) trademarks, iii) industrial designs, iv) layout design of semiconductor integrated circuit, v) geographic indications of source, vi) copyright and related rights (literary and artistic works, musical work, artistic works, photographic work, motion pictures, computer programmers and performing arts and broadcasting work) [7-9].

WIPO

The World Intellectual Property Organization (WIPO) was incepted in 1967 at Stockholm to protect the IPR throughout the world. 8, 16 later it becomes one of the agency of United Nation in 1974. WIPO frame works as well as regulate various policies concerned to IPR across the globe. The economic, social and sustainable cultural development with preservation of bio diversities, traditional knowledge through a balance and effective international IP system is main objective of WIPO. Besides this, it is responsible to harmonies 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 emerging world [10-12].

Patent

Patent is an intellectual property right granted to inventor by concerned government office for his novel technical invention [13]. The term invention means solution of any problem in terms of development of a product or a process. Among the different types of IPR, patents are considered the most valuable and rightly so [1, 14, 15].

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 [2, 16, 13].

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

- Frivolous invention
- Invention against the natural laws
- Inventions which are not fair to health of human, animal, plant life, environment as well as contrary to public order or morality
- Discovery of any living thing; discovery of any nonliving substances occurring in nature;

Formulation of any abstract theory; discovery of any scientific principle:

- Substance or chemical obtained by mere admixture resulting in the aggregation of the Properties; mere arrangement or re arrangement of known devices
- Invention relating to atomic energy and related to security of India.

In patenting process at one hand inventor is granted exclusive rights which give recognition as well as financial benefits but at the other hand inventor has to disclose all the relevant information in descriptive way to the patent office at the time of filing patent application. The information available in patent document can be seen by anybody and no doubt it gives direction to other researchers to innovate further in the relevant field [17]. In India, office of Controller General of Patents Designs

and Trademarks govern the patent registration process. This office comes under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry [3, 17, 18].

THE PATENT FILING STEPS ARE AS FOLLOWS

Step 1: Filing of Patent Application or Priority Application

There are four patent offices at Chennai, Mumbai, New Delhi and Kolkata (Head office). The applicant has to file patent application in appropriate form with all relevant information concerned to invention such as description, claims, drawing, abstract, etc. Applicant has option to file provisional specification to establish priority of the invention when disclosed invention is only at a conceptual stage. Thereafter, within 12 months applicant has to file complete specification in prescribed format [4, 19, 20].

Step 2: Publication of Application

The patent application is published in the office journal after expiry of 18 months. The applicant can also put up request for early publication by paying additional prescribed fee [5, 21].

Step 3: Opposition of Patent

The pre grant patent opposition, if any may be filed within three months of patent publication. This type of opposition representation is entertained by controller of patent office if patent filing applicant has put up a request for patent examination. There are also provisions for post grant patent opposition [6, 22].

Step 4: Request for Examination

The applicant has to apply separately for patent examination within 48 months of filing of patent application with prescribed fees [7].

Step 5: Examination and Clarification of Raised Objections, if any

The patent examiner checks all aspects of patentability i.e. Novelty, inventiveness, non-obviousness and industrial applicability and issues First Examiner Report (FER) to the applicant. If objections are there in examination report then applicant has to clarify the objections within one year [8].

Step 6: Grant of Patent

The patent is granted to applicant by Controller after overcoming the objections raised in examination process. As per Patent Amendment Act 2002, the applicant has to pay renewal fee time to time to keep patent in force. The full details pertaining to Indian patent can be referred to DIP&P website [19]. The patent can also be filed since 2007. After getting the rights, the owner can explore these rights by industrial production or can sell, distribute or licensing the rights as per his will. The rights of patent are granted for 20 years. Once a patent expires then the invention enters into public domain and anybody can use that knowledge [9].

COMPULSORY LICENSES

Compulsory Licenses the Patent Act gives monopoly to inventor to harvest financial gains for invention but contrary in case of national emergency as per Section 92 of Patent Act, 1970 government can issue compulsory licenses to third party for noncommercial use of public. Besides these when authorized patent owner is not fulfilling the demand of society by will or unable to produce the patentable product or service such as in case of drugs, food, medical equipment, vaccination, lifesaving equipment, etc. the government is fully authorized to allow somebody else to produce patentable product by giving compulsory license. In this case government is liable to pay fair justifiable economic benefits to patent owner [10].

Patent Cooperation Treaty (PCT)

The patents are territorial rights; therefore, applicant has to apply patent application to patent offices of different countries individually. This practice requires huge amount of investment, time and

energy. In the same concern Patent Cooperation Treaty (PCT) concluded in 1970 which provides a facility to file a single international patent application instead of filing several separate national or regional patent applications. Although granting of patent remains under the national or regional patent authorities of various PCT member nations but applicant get the priority date of first filing applicable in all member countries which is more than 145 in number with this single patent application [1, 21, 22].

Industrial Design

The creative activity of achieving an ornamental or aesthetic appearance of mass produced products or articles is covered under industrial design. The design can be expressed either by two dimensional or by three dimensional forms. The Design Act 1949 of the United Kingdom refers to feature of shape, configuration, pattern or ornament. Broadly, shape, surface, pattern, lines, color, etc. appearance related features of industrial products such as watches, vehicles, mobiles, laptops, different home appliances, buildings, textile designs or handicraft products are covered under industrial design. The aesthetic value or how a product appeals is the main concern in selling besides its technical quality and other aspects [20] to be protected under most national laws, an industrial design must be new or original and nonfunctional. Hence industrial design is only concerned with aesthetic features and any technical features or aspects of the product to which it is applied are not protected by the design registration. Although the technical features, if are novel could be protected by getting the patent.⁸ Beside these, design which is literary or artistic in character such as cartoon, label, leaflet, map, dressmaking pattern, etc. is protected under copyrights instead of industrial design. The term of industrial design rights vary from country to country from 10 to 25 years. In India as per Design Act, 2000 duration of protection of industrial design is for 10 years. This duration can be extended further for 5 years. An industrial design encourages creativity and skill development amongst the individual and manufacturing sector by promoting more aesthetically pleasing products for the society. The design and shape of the product not only create aesthetic appearance but in case of machine, furniture, automobile, etc. design is also indirectly associated with ergonomics and plays a major role in customers' comfort [2, 3].

The patent offices at Chennai, Mumbai, New Delhi and Kolkata also deal with industrial design. The patent office, Kolkata maintain the register of design as statutory requirement of all concerned information of filed industrial design [4, 5].

Trademark

Trademarks already existed in the ancient world. The Indian crafts men used to engrave their signature on their jeweler or artistic creation around 3000 years ago. With industrialization the trademark become key factor in modern world of international trade. A trade mark is a distinctive sign or logo that denotes about the particular item is produced or provided by a specific person or industry or enterprise. Similar to trademark, service mark distinguish service providing enterprises with their competitors. A company may have different types of trademarks for their various products but to distinguish themselves from other company or enterprise trade name is being used. ⁸ Trade mark or trade name helps companies to make their recognition, reputation and trust amongst the customers. In most of the cases, consumers rely on trademarks where it is difficult to inspect a product or service quickly to determine its quality [21, 22]. A particular segment of customers is very much concerned about the brand and pay heavily for brands prestige even for similar sort of quality to distinguish themselves from the crowd. A trademark/ service mark comprises of words (name, surname, geographical name, slogan, etc.), letters and numerals, drawing, logo, symbol, phrase, image, design or a combination of these elements to distinguish a business or service from the other. Beside these, there are certain other 'non- traditional' trademarks as follows ⁹ : Smell or olfactory marks: the smell of fresh cut grass for tennis balls, the odor of beer for dart flights and roses for tires have been registered in the UK. Similarly, fresh floral fragrance reminiscent of Plumier blossoms was registered in US for sewing thread and embroidery yarn. Audible sign or Sound Marks: the distinguished sound

marks in form of musical note can be registered as sound mark. The NBC successfully registered the musical notes as a trademark in 1950 for its radio broadcasting services. The lion's roar is also registered sound trademark for MGM. Colored marks: this category includes words, devices with their color combination or color as such. Similarly few taste and shapes (three dimensional signs such as the three pointed Mercedes star) as nontraditional trademarks can be also registered in some specific cases [6, 7, 11, 12].

Important Criteria of Trademark Registration

As per UK Trademarks Act, 1994, the three main requirements for registering a trademark are as follows:

- a. The trademark should be a sign or anything that can convey information.
- b. The sign should be capable of distinguishing products or services of one undertaking from that of another. This is clearly a requirement of distinctiveness of trademarks.
- c. The trademark is capable of graphical representation to provide precise identification in the trademark registry.

Broadly Followed Rules of Trademark Registration

- The word "apple" or an apple device cannot be registered for apple as in this case it is not distinguishable. But it is registered being highly distinctive in case of computers.
- Similarly Camel trademark is registered for cigarettes. The generic term like "furniture" Cannot be registered as trademark for chair, table, or similar type of items.
- In case of use of letters or numerals, in certain countries registration is allowed only when at least few numbers of letters and/or numerals are combined or in case of letters the combination of word is pronounceable.
- Similarly, common surnames are not registered in some countries as they are not Distinctive in nature.
- Beside these, deceptive sign or trademark which is misleading or violates the public order or morality is not qualified for registration.
- The signs which are reserved for state, public institution, organization or international Body cannot be registered as trademark [3, 4].

Indian Trademarks Act

The Indian Trademarks Act specifies that any mark which is distinctive i.e. capable of distinguishing goods and services of one undertaking from another and capable of being represented graphically can be trademarks. Since trademarks do not grant exclusive right that could be exploited, there is no need to limit their validity. But without time limit, trademark validity would lead to unnecessary number of registered trademarks without any applicability. In India, the initial term of trademark registration is for 10 years and thereafter it has to be renewed from time to time. The applicant can apply for trademark registration at Trade Mark Registry Office, Mumbai (head office), Delhi, Kolkata, Ahmadabad and Chennai [5, 6].

Right of Reproduction and Related Rights

A closely associated field is "related rights" or right related to copy right that encompass rights similar to those of copyright. The rights covered under related rights are performer's rights (such as actors and or musicians) in their performance; producers of phonograms (for example, compact discs of films or sound or compositions) their recording and broadcasting in radio and television programs. The WIPO Performance and Phonograms Treaty (WPPT) which was adopted in Dec 1996 and came into force on May 20, 2002, provides that definition of performer for purposes of treaty includes performer of an expression of folklore.

One gets copyright automatically after completion of work by virtue of creation, hence it is not mandatory to register copyright. However, registration of copyright provides evidence that copyright exist in work and creator is genuine owner [7, 8].

Copyright for Computer Software

In concern to computer software, the Indian Copyright Act, 1957 was amended in 1994 which came in to effect from 10 May 1995. As per this act without permission or authorization making copies and distribution of software is criminal offence. Although, this act gives, rights to authorized users to make at least backup copies of the software or any other computer programs. The registration of copyright is carried out under the Indian Copyright Act, 1957. Recently the act was amended in 2012 known as The Copyright (amendment) Act, 2012. As per rule, author gets copy rights just after creating its work without any formality but work can be registered at Register of copyrights maintained in the Copyright office of Department of Education as prima- facie evidence [9, 14, 12].

The Protection of Plant Variety and Farmers' Right Act, 2001 (PPVFR Act)

This Act recognizes the individual and community roles played by farmers and their interests in improvement and conservation of varieties. This sui generis law has a blend of IPR savvy and public interests provisions hence harmonies the balance between farmers and giant seeds manufacturing or genetically advance research labs and marketing companies [4].

CONCLUSION

In knowledge based economy, intellectual property rights are very much essential for progressive societal development. The IPR is basic necessity to be a part of local as well as global competitive trade as without dissemination of IPR knowledge and implementation, creating the innovative environment is really impossible. It is essential for policy makers to 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 labor, innovative and creative dedicated manpower. No doubt that India and other developing countries will definitely Harness its proportionate share in global trade by exploration in Intellectual Property Rights.

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