

# Importance of Intellectual Property Rights in Indian Situation

Mr. Keshav Lengare  
Professor in Commerce, SCS College,  
Omerga, Osmanabad(MS) India

## Abstract:

The intellectual property rights (IPR) are essentially intangible and grant inventor or developer exclusive rights for their valuable invention or development. Under today's globalization setting, IPR is the focal point of global trade and livelihood activities around the world. Such rights improve the creative environment by giving creator or inventor recognition and economic benefits while the lack of awareness of IPR and its ineffective enforcement may hamper the nation's economic, technological, and societal developments. Therefore the dissemination of IPR information and its suitable implementation is the highest requirement for any country. The present paper discusses various IPR concepts, such as patents, trademarks, product designs, geographical indications, copyright, etc., with their corresponding laws, legislation, needs and roles directly related to the situation in India. However, the status of India's involvement in IPR related activities worldwide has been briefly discussed.

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

## 1. Introduction:

In the wake of globalization, it is necessary to be ahead in innovation and creativity in order to compete with the stagnant technology and

trade competitions. India is well known for its intellectual skills in software engineering, missile technology, the Moon or Jupiter project and other technological fields. In terms of registered patents, industrial design, trademarks, etc., India lags in the generation of IPR properties. India ranked 29th among 30 countries in the IP index around the globe in a recent report by the US Chamber of Commerce. It is a very worrying situation for both the policy-makers and the country as a whole. Any society's growth depends directly on IPR and its policy frame work. Lack of awareness of IPR resulted in the death of innovations, a high risk of piracy, economic loss and the deterioration of the country's intellectual age. Thus there is an urgent need for the dissemination of IPR knowledge to improve indigenous research and technology innovations and developments. In the foregoing section of this paper, an effort is made to highlight various situational intellectual property rights to India with their corresponding laws, regulations, needs and role in society.

## 1.1 Intellectual Property Rights and their Classification:

The term Intellectual Property is linked to the imagination and ingenuity attributed to the human brain. Numerous efforts are needed to develop or create something new in terms of manpower inputs, time, resources, ability, money etc. The ultimate concept by which an innovation or development happened is an intangible property of the person who has taken pains for the invention or creation. Consequently, according to the statute, the

inventor or innovator is granted legal or exclusive rights to reap the economic benefits of their invention or production. Intellectual Property Rights (IPR) are proprietary rights through which proprietors may sell, lease or license their Intellectual Property (IP) similar to physical property. But one has to sign IPR in some presentable or measurable form at the legal authority to assert their benefits. Growing form of IPR gives the author and/or developer special rights to maintain and reap economic benefits that further encourage skills and societal innovations.[4]

Based on the type of invention and development of the human mind and its uses, the intellectual property rights are defined as follows: I patents, (ii) trademarks, (iii) industrial designs, (iv) layout design of an integrated semiconductor circuit, (v) geographical source indications, (vi) copyright and related rights (literary and creative works, musical works, artistic works, photographic works.

## 2. WIPO:

The World Intellectual Property Organization (WIPO) was founded at Stockholm in 1967 to protect the IPR worldwide. It later became one of United Nations agencies in 1974. The WIPO system functions as well as governing various IPR-related policies internationally. WIPO's main objective is economic, social and sustainable cultural development with biodiversity protection, traditional information through a balanced and efficient international IP framework. In addition, it is responsible for harmonizing differences between different countries, especially between developed and developing nations, by amending international regulations to ensure that each of them has equal opportunities in the emerging world. [17]

### Patent:

Patent is an intellectual property privilege given to the inventor in respect of his novel

technological innovation by the government office concerned. The word innovation implies the solution of any problem regarding product or process development. Patents are considered the most important among the different types of IPR, and understandably so. Any invention has to meet the following conditions for patentability:

- **Usefulness:** invention must have industrial applicability or applied for practical purpose.
- **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.
- **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.

**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 non living 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 rearrangement of known devices
- Invention relating to atomic energy and related to security of India.

In the patenting process, on the one hand, inventor is given exclusive rights that offer

recognition as well as financial benefits, but on the other hand, at the time of filing the patent application, inventor must reveal all relevant information in a concise manner to the patent office. Anyone can see the information available in the patent document and there is no doubt that it gives other researchers guidance to further innovate in the relevant area. In India the patent registration process is regulated by the office of the Controller General of Patent Designs and Trademarks. This office falls under the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion. The steps to patent filing are as follows:

- Step Filing of Patent Application or Priority Application
- Publication of Application
- Opposition of Patent
- Request for Examination
- Examination and Clarification of Raised Objections, if any
- Grant of Patent

#### **Compulsory Licenses:**

The Patent Act gives inventor monopoly on extracting financial gains for invention however, contrary to Section 92 of the Patent Act, 1970 government may grant compulsory licenses to third parties for non-commercial public use in the event of a national emergency. Besides these, if approved patent proprietors do not satisfy society's demand through willingness or unable to produce the patentable product or service such as medicines, food, medical equipment, vaccine, life-saving equipment, etc., the government is completely allowed to enable someone else to produce the patentable product by issuing compulsory licenses. In this case the government is liable to pay the patent owner equally justifiable economic benefits.

#### **Patent Cooperation Treaty (PCT):**

The patents are sovereign rights; the applicant must therefore apply the patent application directly to the patent offices of different countries. The profession requires huge amounts of energy, time and money. In the same regard, the Patent Cooperation Treaty (PCT) concluded in 1970 offering a facility for filing a single international patent application, rather than filing multiple different national or regional patent applications. Although the award of the patent remains within the national or regional patent authorities of various PCT member nations, the applicant enjoys the first filing priority date available in all member countries, which is more than 145 in number with this single patent application.

#### **Industrial Design:**

Industrial design encompasses the creative activity of creating an ornamental or decorative appearance of mass produced goods or papers. The architecture can be represented in two dimensional forms or in three dimensional forms. United Kingdom's 1949 Design Act refers to shape, form, pattern, or ornamental feature. Broadly speaking, form, structure, pattern, lines, colour, etc. appearance related features of industrial products such as watches, cars, mobiles, laptops, various home appliances, houses, textile designs or handicrafts are protected under industrial design. Apart from its technical quality and other factors, the aesthetic value or how a product appeals is the main concern in sales. The industrial design must be new or original and non-functional, to be legal under most national laws. Therefore industrial design is concerned only with aesthetic features and the design registration does not cover any technical features or characteristics of the product to which it is applied. Although the technological features could be covered if novel by securing the patent.<sup>8</sup> Besides these, design that is literary or artistic in character like cartoon, mark, leaflet, chart, dressmaking pattern, etc. is

protected under copyright rather than industrial design. The definition of industrial design privileges ranges from 10 to 25 years, from country to country. Throughout India, according to the Design Act, there is a 10-year term for the safety of industrial design. This term may be further extended to 5 years. By encouraging more aesthetically pleasing goods for society, an industrial design promotes innovation and skill development among the individual and manufacturing sectors. The product's form and shape not only produces visual appearance but also implicitly correlates with ergonomics in the case of vehicle, furniture, car, etc., and plays a major role in the comfort of customers. Industrial design is also dealt with by patent offices at Chennai, Mumbai, New Delhi and Kolkata. The patent office, Kolkata, maintains the design registry as the statutory requirement of all of the submitted industrial design knowledge concerned.

#### **Trademark:**

Trademarks already existed in the ancient world. The Indian craftsmen used around 3000 years ago to engrave their signature on their jewellery or artistic creation. With industrialisation the trademark become key factor in modern world of international trade. A trade mark is a distinctive sign or logo which denotes the particular item being manufactured or supplied by a particular person or industry or enterprise. Compared to a trademark, service mark identifies service providing its rivals to businesses. A corporation may have different types of trademarks for its different products which is being used to differentiate itself from other brand or business name.

Trade mark or trade name helps businesses give their consumers visibility, credibility and confidence. In most cases, customers depend on trademarks in which quick inspection of a product or service is difficult to determine its price. To differentiate themselves from the

crowd, a particular segment of consumers is very concerned about the brand and strongly pays for prestige brands, even for similar quality.

A trademark / service mark involves terms (name, title, geographical name, slogan, etc.), letters and numerals, illustration, emblem, icon, term, picture, design or a combination of those elements to differentiate between a company or service. Besides these, there are some other 'non-traditional' trademarks as follows: scent or olfactory marks: the smell of fresh cut grass for tennis balls, the smell of dart flights beer and tire roses were licensed in the United Kingdom. Likewise, for sewing thread and embroidery yarn fresh floral fragrance reminiscent of Plumeria blossoms has been recorded in the US.

Audible sign or sound marks: the distinguished sound marks may be registered as sound marks in the form of a musical note. In 1950 the NBC successfully licensed its radio broadcasting services as a trademark for the musical notes. The lion's roar is also a sound trademark registered with MGM. Coloured marks: this category includes words, devices with their colour combination or colour as such. Likewise, in some specific cases, few tastes and shapes (three-dimensional signs such as the three pointed Mercedes star) can also be registered as non-traditional trademarks.

#### **Important Criteria of Trademark Registration:**

The three main requirements for the registration of a trademark are as follows, according to the UK Trademarks Act, 1994:

- 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.

#### **Indian Trademarks Act:**

The Indian trademarks act specifies that any mark which is distinctive, i.e. capable of distinguishing between goods and services of one undertaking and capable of being graphically depicted, may be trademarks. Because trademarks do not grant exclusive rights that could be abused, their validity is not limited. Nevertheless, without time limit, the validity of a trademark will result in excessive number of registered trademarks without any applicability. Throughout India, the initial period for registration of trademarks is 10 years, and must be extended from time to time afterwards. The applicant may apply at Trade Mark Registry Office, Mumbai (head office), Delhi, Kolkata, Ahmadabad and Chennai for registration of a trademark.

#### **Infringement of Trademark:**

Infringement happens when someone else uses a trademark for the same or similar goods or services which is the same or identical to a registered trademark. In the case of fraud, in the perception of a genuine product, fake merchandise is passed on to the customer, so the word "passing off" is also used for these activities. The "passing off" product is very harmful to trade, as it reduces legitimate producers' market share as well as consumers are also deceived by getting the sub-quality product. Upon obtaining a product of sub-quality, without understanding the reality of "passing off," consumers may choose some other brand in the future with the false impression that manufacturing produces a product of inferior quality. The effect of imitation in trade is often known as counterfeited product.

#### **Collective and Certificate Marks:**

Collective marks and certificate marks are used in many countries to show that the output of

the companies has specific standards. For example, in the case of textile chemical processing (dyeing and printing), a group of companies that use herbal or eco-friendly chemicals strictly that think of some collective marks in addition to their individual marks. The collective / certificate mark is just a few examples of the ISO, hallmark, wool label etc. Therefore, certificate marks; safeguard the interest of the consumer by helping them choose among the deceptive goods, the quality product.

#### **Trade Secrets:**

Every innovation or information that is not revolutionary (not patentable) but economically useful and offers economic benefits can be kept as a trade secret. Besides this novel or artistic information, when patent registration, copyright, industrial design, etc. is pending or in process, is often held as a trade secret. Technological knowledge or processes such as recettes, concepts, tools, software, blue prints, designs, formulas, charts, architectural plans and manuals or any commercial information or business strategy or secret in the form of any data collection or databases, marketing plans, financial information, personal records, etc. can be kept as trade secret. This right has huge potential to transform secret knowledge into economic gains. Hence, most companies shield their inventions by trade secret rather than patent. Trade secrets serve as an opportunity for incremental technical progress which does not satisfy the non-evident requirements of patent law and copy rights. It takes years of experience, study and skill to create a trade secret. Coca-Cola's structure for its formula is a good example of trade secrets. Specific rules for trade secrets exist in some jurisdictions, such as the Unfair Competition Prevention Act in Japan, the Uniform Trade Secrets Act in the USA. Under 'undisclosed details,' the TRIPS Agreement acknowledges trade secrets but remains silent on processes and modalities.



According to common law, contract law etc.

### **Geographical Indications:**

Requirements of regional or local origin to classify products for commercial purposes are no new phenomenon. Many agricultural products have special characteristics which are affected by geographical environment or soil. WIPO has chosen the term Geographical Indication (GI) to include all existing means of protecting such names and symbols, irrespective of whether they indicate that the qualities of a given product are due to its geographical origin (such as appellations of origin) or merely indicate the place of origin of the product (such as indication of source).

The Champagne, Havana, Darjeeling tea, Arabian horses, Alphonso Mango, Nagpur orange, Basmati, etc. are some well-known examples of names that are recognized worldwide with their unique quality product and registered as GI. Likewise, the basic qualities of the goods are linked to human factors and their expertise in the field of handicrafts, textiles, etc.. Brand reputation is built up and preserved in the best suited environment by masters or creators of that talent which belongs to a particular region or locality. The ability is typically passed from one generation to the next by particular tribe or area, with great cautions and compromises. Known examples of Geographical indicators for state-of-the-art craftsmanship are the, Dhaka muslin, Venetian glass, China silk, Mysore silk, Chanderi sari, Kanchipuram silk saree, Kullu shawls, Solapur chaddar, Solapur Terry Towel, Kashmiri handicrafts etc.

In India, registration of such goods can be performed under the Registration and Protection of Geographical Indication of Goods Act 1999 and the Registration and Protection of Geographical Indication of Goods Regulations 2001. The GI Act is governed by GI's registrar, the Controller General of Patents, Copyright and

Trade Marks. Chennai's central government has set up "Geographic Indication Registry" where right holders from all Indian jurisdictions can register their GI. Protection under these laws is granted under GI for 10 years, and extension is possible for another 10 years from time to time.

### **3. Copyrights and Related Rights:**

Copyrights protect expression of idea of author, artist and other creators which is concerned with mass communication. It protects only form of expression of idea, not the idea as such. Development of any country or society depends upon creativity of their people. Thus copyright encourage such type of activities. The following literary and artistic works are covered under copyrights:

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

### **Reproductive right and the associated rights:**

A closely related area is "associated rights" or copyright rights that are identical to copyright rights. The privileges protected by such rights are the rights of performers (such as actors and or musicians) in their performance;

manufacturers of phonograms (such as compact picture discs or sound or compositions) recording and transmitting them in radio and television programs. The WIPO Performance and Phonograms Treaty (WPPT), which was adopted in Dec 1996 and entered into force on May 20, 2002, specifies that the concept of performer for treaty purposes includes performer of a folklore phrase. Someone automatically obtains copyright after completion of the work by virtue of creation, hence registration of copyright is not necessary. Nonetheless, copyright registration provides evidence that copyright occurs in the workplace and that author is legitimate owner.

#### **Copyright for Computer Software:**

The Indian Copyright Act, 1957, was amended in 1994 with regard to computer software, which came into effect from 10 May 1995. As per this act, producing copies and transmitting software without permission or authorization is a criminal offence. Although this act gives authorized users the right to at least make backup copies of the software or any other computer programs.

Copyright registration is done under the Indian Copyright Act, 1957. The act was recently revised in 2012 as The Copyright (amendment) Act, 2012. As a rule, the author gets copy rights immediately after creating his work without any formality, but work can be registered as prima facie evidence at the copyright register maintained in the Department of Education's copyright office.

#### **Copyright Duration:**

Copyrights for literary, dramatic, musical, and artistic works remain in India for 60 years after the creator's death. In the case of photography, video, copyright term for sound recording is 60 years from the beginning of the calendar year next year in which it is published or issued in. In addition to these, author always obtains

moral rights for his works.

#### **Copyright Infringement:**

Violation of copyright means making, selling or taking financial advantage of copyrighted work without copyright owner's consent. It is a criminal offence and as per the act, minimum violation penalty is imprisonment for six months with a minimum Rs 50,000/- fine.

#### **Plagiarism:**

When someone else's work of writing is taken without permission and said to be his own work than it is considered plagiarism. While facts regarded as common knowledge are not protected by copyright law, and can therefore be used by anyone. According to copyright, the fair use of some other work is permitted by paraphrasing the text or by using quotation marks with the original author's credit giving appropriate reference or citation.

#### **4. Traditional Knowledge and Biodiversity IPR in Situation:**

Traditional knowledge (TK) means creativity and practices of indigenous and local communities embodying traditional life-styles; expertise accumulated over many centuries of holistic traditional scientific use of land, natural resources, and climate. The use of turmeric, neem, tulsi, etc. herbs as per practice in day-to-day life is a well-known example of traditional knowledge occurring in India. [10]

The US patent was granted for the use of turmeric in wound healing at the University of Mississippi; W was awarded a European patent. R. Grace and Company for their discovery of neem oil fungicidal effects; the agro-biotech company, Syngenta, tried to seize the rights of thousands of rice varieties that already existed in India. These are all few cases of biopiracy in which privileges in favor of a legitimate owner of traditional knowledge have been cancelled after wards. TK-related rights such as

cultivation methods, plant or herbal medicinal uses and plant varieties as well as their genetic resources are protected under the Sui generic means unique land or area systems, as they are not covered or suited under standard IPR systems. The WIPO Convention on Biological Diversity (CBD) was convened in 1992 with a primary objective of biodiversity conservation, the sustainable use of its components and the equal distribution of benefits resulting from the use of conventional genetic resources. India being a member of this convention passed parliamentary legislation to protect traditional knowledge and the rights of farmers.

**Increasing support for targeted capacity building and technical assistance:**

The world's leading creative countries need to support their case for renewed focus on IP and innovation by providing new or higher levels of targeted funding to help developing countries truly committed to improving the capacity of their economies to create, use, and manage intellectual property. Given its work on patents, trademarks, industrial designs, geographical indications and copyrights, WIPO's technical assistance portfolio is a prime vehicle for renewed funding and activity. WIPO's technical assistance work focuses on three main areas of activity: regional IP policies, policy and legislative consultation, and business solutions for IP offices. [18]

WIPO has long-term relations with a number of key donor countries through its Funds in Trust (FIT) program, which offers FITs for human capacity building projects and technical assistance to developing countries and countries with economies in transition. Donors often use FITs to support services that are applicable to specific issues, countries and regions. Some of the leading innovation nations in the world offer significant funds for the FIT system of the WIPO, while others are obviously

absent. For 2018-2019, everyone contributed money to the FIT from Australia, China, France, Italy, Japan, Mexico, Portugal, Korea, and Spain.

The list of FIT contributors, such as the United States, Germany, Norway and Sweden, reveals some notable omissions. If the US wants to be a global leader in trade and innovation, and if it wants others to follow in their footsteps, it is vital that America also contributes to the program. In 2017 the USPTO donated 63,000 Swiss francs (about \$61,000 at the time). [17]

Country	Amount Contributed (US \$)
Japan	\$17,400,000
Korea	\$4,350,000
France	\$1,000,000
China	\$748,000
Australia	\$664,000
Spain	\$440,000
Italy	\$368,000
Mexico	\$144,000
Portugal	\$63,800
United States	0

Figure 1: Contributed Amount to WIPO Funds-in-Trust Program by Countries

For example, in the Asia-Pacific region Australia uses its FIT to build IP and innovation systems. The fund was set up in 2012 through the Australian government's \$2 million AUD contribution funded under the multilateral "Help for Trade" program of Australia. In 2015, a further \$3 million AUD contribution was made to continue advancing the Development Agenda of the WIPO through the provision of technical assistance.168 Meanwhile, Japan has long used FIT to provide a range of technical assistance and capacity building for developing countries in the Asia-Pacific and Africa.

The leading innovation countries in the world will review their IP-related bilateral development programs and their approach to



multilateral frameworks such as the WIPO FIT to see where they can broaden their efforts. Another part of this would be the commitment of developed countries to a global fund to further finance the programme. Countries may pool their funds to conduct work on specific topics or regions (such as donors from the FIT get WIPO to provide technical assistance in specific areas). Like other international development-focused programs, donor countries could build support into programs and resources for aid. This effort should certainly not be the primary responsibility of any country, but the United States and other developed countries have the ability to contribute to the FIT in making a global (previously experimental) Competitive Research Stimulus Program (EPSCOR) a reality, further driving science, technology research, and IP globally.

##### 5. Conclusion:

In a knowledge-based economy, intellectual property rights are very important for the sustainable development of society. The IPR is a basic necessity to be part of local as well as global fair exchange, since without disseminating IPR awareness and application, it is really impossible to create the creative environment. Including IPR in the basic education system and facilitating IPR recognition by empowering innovators and developers is important for policy makers. India has all the resources available in terms of raw materials, cheap labour, innovative and dedicated creative manpower. There is no question that by pursuing intellectual property rights, India and other developing countries will certainly leverage its proportionate share of world trade.

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