

Intellectual Property Rights in India

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ABSTRACT

Intellectual property has increasingly assumed a vital role with the rapid pace of technological, scientific and medical innovation that we are witnessing today. Moreover, changes in the global economic environment have influenced the development of business models where intellectual property is a central element establishing value and potential growth. In India several new legislations for the protection of intellectual property rights (IPRs) have been passed to meet the international obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Intellectual property has therefore grown into one of the world's biggest and fastest-growing fields of law thereby necessitating the demand for IP professionals well versed in this area to deal with (IPRs) across the national and international borders.

Keywords : . Patent rights, Copy rights, Trademarks and design rights

PROPERTY:

Property is corporeal property and incorporeal property or tangible property and intangible property. Corporeal property indicates the material, tangible things owned by the human being, organizations, associations etc. they are the physical objects and hence they are perceptible by touch. While incorporeal property is intangible which, can be a subject matter of right. Such property does not have a physical existence and hence cannot be perceived by touch. From this point of view, actionable claims, goodwill, easementary rights, intellectual property rights are considered as intangible or incorporeal property.

INTELLECTUAL PROPERTY:

Intellectual property is a right pervading some material object. The intangible products of a man's brain are as valuable as his land, building, goods, money, belongings etc. it is quite different from real property or a formal property. In fiction, it is a property. Hence it is called as intellectual property. The rights relating to the intellectual property are recognized by law as the subject matter of rights of various intangible or immaterial products is human intelligence, skills and labor. In short intellectual property is basically a creation of intellect or relates to intellect. Intellectual property rights are legal rights which govern the use of creations of the human mind and work.

The **nature of intellectual property** is as,

- a) Intellectual property is only a property in fiction or a fictional property and not a real property though it is pervading some real property.
- b) Intellectual property includes the right relating to scientific discoveries, industrial designs, trademarks, service marks, literary, artistic and scientific works and all other rights resulting from intellectual activity in the industrial, scientific, literacy or artistic field.
- c) Intellectual property rights are legal rights governing the use of creations of the human mind. Legal protection is granted to the owner or creator of the Intellectual property under different acts such as Patents act, Trademarks act etc.
- d) Intellectual property can be divided mainly into four kinds or types i.e.

1. Patent rights
2. Copy rights
3. Trademarks right
4. Design rights

e) Intellectual property rights are protected under related acts.

f) The owner of an intellectual property can earn income by selling the rights of using the same. Such rights can be confined or extended to some prescribed period according to the provisions of the related acts.

IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS:

Intellectual property rights are accepted all over the world due to some important reasons. They were essentially recognized for the acceptations of these rights are:-

- Provides incentive to the individual for new creations.
- Providing due recognition to the creators and inventors.
- Ensuring the material reward for intellectual property.
- Ensuring the availability of the original products.
- For economic growth and advancement in technology sector protection of Intellectual property protection is important.
- They are benefited for the growth of the business in the field of technology.

To exploit your IP fully, it makes strong business sense to do all you can to secure it. You can then:

- protect it against infringement by others and ultimately defend in the courts your sole right to use, make, sell or import it
- stop others using, making, selling or importing it without your permission
- earn royalties by licensing it
- exploit it through strategic alliances
- make money by selling it

INTELLECTUAL PROPERTY LEGISLATIONS IN INDIA

India is a member of almost all international conventions. The obligation of the member state arising out of the conventions can be enforced on the basis of reciprocity only. No right or obligation is enforceable unilaterally. Therefore to pass own laws on Intellectual property is in the interest of every country. In 1999, a considerate passage of major legislations with regard to protection of Intellectual property rights in harmony with international practices and in compliance with India's obligations under TRIPS. These include,

1. The Patents (Amendment) Act, 1999 to amend the patents act of 1970 that provides for establishment of a mailbox system to file patents and accords exclusive marketing rights for five years.
2. The Trade marks Act, 1999 which repealed the Trade and Merchandise Act, 1958
3. The Copyrights (Amendment) Act, 1999.
4. A sui generis legislation for the protection of geographical indications called the Geographical Indications of Goods (Registration and protection) Act, 1999.
5. The Industrial Designs Act, 2000 which replaced the Designs act, 1911.
6. The patents (Second Amendment), 1999 further to amend the Patents Act, 1970.

This was a beginning of a new era in the field of Intellectual property. To streamline and strengthen the Intellectual property administration system in the country the government has taken several measures. Projects relating to the modernization of patent information services and trademarks registry have been implemented with the help from WIPO/UNDP. The government has implemented projects for upgrading of patent office's incorporating several components such as human resource development, recruiting additional examiners, infrastructure support and strengthening by the way of computerization and re-engineering work

practices and eliminating backlog of patent applications, an amendment to the patent rules also was notified to simplify the procedural aspects. The first Indian patent laws were first promulgated in 1856. From time to time these were modified. New patent laws Indian Patent Act 1970 were made after the independence. The Act has now been radically amended to become fully compliant with the provisions of TRIPS. The most recent amendment was made in 2005 which were preceded by the amendments in 2000 and 2003.

India's journey to intellectual property right protection:

Year Event

1967 The patent bill is introduced in parliament.

1972 The patents act 1970 comes into force.

1994 The Uruguay round negotiations are ratified.

1994 India accepts WTO membership.

1994 Ordinance to amend patent laws is promulgated.

1995 The Uruguay round agreement come into force.

1995 The patents (amendment) ordinance lapses.

1995 The patent (amendment) bill is introduced in the Lok Sabha.

1996 A patent Bill, 1995 Lapses after the Rajha Sabha fails to clear it.

1997 The US complains to the WTO that India is violating the TRIPS agreement.

1997 EU files complaint with the WTO on the failure to setup mailbox facilities.

1997 The WTO's dispute settlement body rules (DS 13) against India.

1997 India appeals against the DS 13 ruling.

1997 The WTO's appellate body rejects India appeal.

1998 The WTO formally asks India to amend her patent laws.

1998 India agrees to 15 month implementation period.

1998 The introduction of the amended patent act is deferred.

1998 India decides to accede to Paris convention.

1998 The DSB rules against India in EU complain.

1999 Deadline for complying with the recommendations of the DSB.

1999 "I" amendment in patents act 1970.

2001 Protection of plant varieties and farmers rights act 2001 passed.

2002 Doha declaration on TRIPS agreement and public health.

Jun-02 "II" patent (amendment) bill 2002 passed. New drug policy 2002 and drugs (price control) order 2002 published. (presently under litigation in supreme court)

Oct-02 Central government appeals in supreme court against stay on pharmaceutical policy 2002 by Karnataka high court.

Dec. 2002 The biodiversity bill 2002 passed by parliament.

2003 "I" patent ordinance.

2004 "II" patent ordinance

2004 The patent (amendment) act 2005 and the patents (amendment) rules 2005 passed W.E.F. - 1 -1- 2005.

4th April 2005 Act published in gazette.

(Source- Unpublished Data by Monika Khanna thesis, University Of Pune)

World Intellectual Property Organisation (WIPO)

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations. It is dedicated to developing a balanced and accessible international intellectual property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.

WIPO was established by the WIPO Convention in 1967 with a mandate from its Member States to promote the protection of IP throughout the world through co-operation among states and in collaboration with other international organizations. Its headquarters are in Geneva, Switzerland.

Trade Related Aspects of Intellectual Property Rights (TRIPS)

Reasons for Formation of GATT and WIPO

After World War II, economy in many European and Asian countries was shattered. After the UNO was born, three bodies were born in 1947, i.e., World Bank, International Monetary Fund (IMF) and International Trade Organization (ITO). It was the US senate, which blocked the ITO.

The objective of these organizations was to revive the economy especially in developing countries. It was in the same year India signed General Agreement on Tariffs and Trade (GATT). The agreement was designed to provide international free trade within member states by regulating and reducing tariffs on traded goods. The main objective was to encourage trade.

On January 1, 1948, 23 contracting states including India ratified GATT. Mean while, with the increasing awareness of the intellectual property, in 1960, in order to bring closer to United Nations and other international organizations, BIRPI was shifted from Berne to Geneva. In 1967, in order to modernize and for better administration of the unions with respect to protection of the intellectual property and artistic works, while fully respecting the independence of each of the union, World Intellectual Property Organization (WIPO) replaced the BIRPI.

Role of GATT

It was under GATT, the biggest advancement in international trade liberalization have come in to existence through multilateral trade negotiations. The role of GATT is to provide a stable and predictable international trade system. Secondly, it acts as a mediator in settling the disputes between countries regarding trade. Thirdly, it holds frequent negotiations, encourages reductions in tariffs so that expansion in world trade becomes possible. The objective of India signing the GATT agreement is to export indigenous products and in turn purchase oil, industrial raw materials, machines, new technology and other things that are domestically needed. During 1950s and 1960s, continuous reductions of tariffs led to high rate of world trade growth. Thus in the GATT era, trade liberalization helped in trade growth consistently instead production growth.

Role of WIPO

The role of WIPO is to promote international cooperation with respect to creation, dissemination, use and protection of works of the human mind for economic, social, cultural progress of all mankind. It enhances a worldwide balance of the creation i.e., by protecting moral, material interests of the creators and providing access to the socio-economic and cultural benefits to others. WIPO promotes protection of intellectual property and bring out cooperation among the union. In addition to these, WIPO sets norms, standards and execute legal technical assistance, registration activities for intellectual property protection to member countries. It is the WIPO; which is responsible for the formation of Patent Co-operation Treaty (PCT).

GATT Tuning to WTO

In 1970s despite, GATT's success in trade growth through tariff reductions, global competition led a series of economic recessions leading to high rate unemployment, factory closures. To overcome this, governments were driven to devise other forms of protection i.e., bi-lateral market sharing agreements within competitors and embark subsidies to maintain holds on agricultural trade. In addition to this, advancements in science, individual needs, world trade became complex. Trade services were found promising globalization of world economy, but rules not covered in GATT. These changes undermined the credibility and effectiveness of GATT. Together, these and other factors influenced among GATT members and concluded to vest multilateral system. This led to Uruguay round of negotiations; the last and largest round of GATT.

Uruguay Round

Having found some setbacks in the rules of GATT, the members came together to negotiate issues regarding international trade liberalization, improve the rules. Starting in 1986, the negotiations ended in 1993. Not only the inclusion of the traditional areas of trade in goods, the rules relating, trade in services, trade related intellectual property rights (TRIPS) in the

negotiations, but also the approval of farm trade by services, market access, anti-dumping rules and the proposed creation of new institution by all member countries dragged attention on Uruguay round. It was on April 15, 1994 at Marrakesh, Morocco, the ministries of 125 governments signed the agreement.

WTO, Trips Origin

The agreement signed at Marrakesh, Morocco led to replacement of GATT by the World Trade Organization (WTO), on January 1, 1995. Upon signing the agreement all the countries became WTO members. Under the annex 1C of WTO agreement an agreement regarding Trade Related Aspects of Intellectual property has been included.

Role of WTO

The World Trade Organization mainly deals with agriculture, textiles, clothing, banking, telecommunications, government purchases, industrial standards and products safety, food sanitation regulations and intellectual property. The principle is foundation of multilateral trade system by treating foreigners and locals equally, bringing free through negotiations, predicting through binding and transparency, promoting fair competition, encouraging development and economic reforms. To improve welfare of the people of the member countries WTO bring benefits like peace, solving disputes among countries, free trade that in turn reduce cost of living, choice of products, quality, economic growth and good government. Thus in turn WTO improves welfare of people of the member countries.

How WTO Different from GATT

Despite GATT's commitments are being provisional; the WTO is being complete and permanent. GATT rules were applied to trade in merchandise goods where as the WTO rules were applied to trade in services, trade-related aspects in intellectual property additionally. In case of dispute settlements, the WTO system of dispute settlement is faster, automatic and less susceptible to blockage when compared with GATT. In addition to these, the 'GATT 1947' will continue to exist until the end 1995, meanwhile ascending the members to WTO. One should keep in mind that the amended version of GATT 1947 i.e., "GATT 1994" exists as an integral part of the WTO agreement. In 1974, WIPO became a specialized agency of the United Nations system of organizations to administer the intellectual property matters recognized by the member states of the UN.