

INTRODUCTION TO INTELLECTUAL PROPERTY:

Intellectual Property refers to the ownership of human intellect like - Concept, Idea, Design, Inventions, Formulas, Brand names, Softwares, Trade Secrets, Words, Phrases, Symbols, music, literature, works of art etc, by the person who is the legal or defacto and de jure owner.

It is intellectual because, it is source of creative output of human intellect and knowledge.

It is property because it is viewed as a

Tradable Commodity in the field of commerce.

Intellectual Property deals with or refers to the creation of human intellect through Inventions, Discoveries, Artistic Works, Symbols, Names, Images, Words, Phrases etc used in trade and commerce.

But Intellectual Property (IP) deals with Intangible Assets only - Asset that does not exist as a physical object and it is not physical in nature as in case of Tangible Assets like - Land, Building, Machinery, Inventories etc.

Intangible Assets like - Patent, Trademark, Copyright, Trade Secrets, Goodwill, Brand, Recognitions, Franchises, etc - don't have physical value form. It remains as Indefinite/Definite Intangible Asset till the existence of a Company/ Concern/ Entity.

This is the reason the term IP is used in Property Law and Intellectual Property owners are legally protected through various Intellectual Property Rights of individual countries, State Law & Federal Law of USA, International Agencies, Treaties, Conventions etc.

These Intellectual Property Rights provide certain exclusive rights to the authorised owners of IP, which nobody can copy or reuse that intellectual creations (IP) without owner's consent or permission.

IP covers a wide variety of intangible assets — 1. Trademarks 2. Copyrights 3. Patents & Trade Secrets

(1) TRADEMARKS: A Trademark is a Name, Word, Slogan, Design, Symbol, Device, Heading, Label, Ticket, Signature, Letter, Numeral, Shape of goods, Packaging, or Combination of Colours that identifies a Product or Services or Organisation/ Company.

Trademarks are Words, Phrases, Symbols which represent a Company or Product and distinguishes the source of Product (trademark) or Services (servicemarks) of one business from its competitors.

Example - NIKE - Athletic footwear
The trademark owner can be an individual, business organization, or any legal entity.
It may be located on a package, a label, a voucher or on the product itself.

TYPES OF TRADEMARK:

- i) Word Marks ii) Device Marks iii) Service Marks iv) Collective Marks v) Certification Marks

a) WORDMARKS: Wordmarks may be words, letters or numerals. A Wordmark gives the owner a right in the word, letter, or numerical only.

b) DEVICE MARKS: Where the trademark lies in the unique representation of a word, letter, or numerical, it is called as Device Mark.

iii) SERVICE MARKS: Service marks do not represent goods, but the services offered by a person / company / organization.

A service mark is nothing but a mark that distinguishes the services from that of another.

In this category - Computer Hardware and Software Assembly & Maintenance, Restaurant and Hotel Services, Carrier Services, Transport Services, Beauty Parlour, Health Care Centres, Advertising, Publishing, Educational centres

iv) COLLECTIVE MARKS: A collective mark is a trademark owned by an organisation / association, used by its members to identify themselves with a level of quality or accuracy, geographic origin or other characteristics set by the organization.

v) CERTIFICATION MARKS: Certification marks are used to define standards and assure consumers that the product meets certain level of prescribed standards.

Examples: Toys, Electrical goods

The difference between Certification Marks and the Collective marks is that the Collective mark is being used by a particular enterprise or member of the association, while Certification mark is used by anybody who meets the defined or prescribed standards.

(2) COPYRIGHTS: Copyright refers to the legal right of the owner of Intellectual Property (IP). In simple terms, Copyright is the legal, authorised right to:

- i) Copy
- ii) reproduce
- iii) Issue
- iv) Rent
- v) Lend
- vi) Perform
- vii) Show
- viii) Play in public
- ix) Communicate or transmit a copy

This means that the Original creator or holder or owner of products as listed in the Copyright Laws, and anyone who are authorised, can exercise exclusive rights.

KEY CHARACTERISTICS:

- I. Copyright Law protects creators/authors of original material from unauthorised duplication or use
- II. In order to get protection under Copyright Law, any "original works of authorship must be fixed in any physical or tangible medium of expression.
- III. In the Copyright Law of United States, under 17 USC 102, the work that is to be protected must satisfy the threshold/benchmark of Originality.
- IV. Originality, under Indian Copyright Law Sec 13(1)(q) of the Indian Copyright Act, 1957, is the prime requirement for Copyright protection to literary, dramatic, musical, and artistic works etc.
- V. Copyright Protection starts as soon as the work is created in a fixed, tangible form automatically until 70 years, after the creator's death.
- VI. Copyright Protection is available to both published and unpublished works of:
 - a) Literary Works - Books, Journals, Newspapers, Articles, letters Poetry, Computer Programmes, etc
 - b) Artistic Works - Photos, Paintings, Sculptures, Buildings Maps, etc
 - c) Musical Works -
 - d) Dramatic Works -
 - e) Sound Recordings -
 - f) Films & Broadcasts
 - g) Databases
- VII. A Copyright doesn't protect ideas, discoveries, concepts, theories, Brandnames, logos, slogans, Domain names and titles etc.
- VIII. Copyright protection varies from Country to Country

and can stand for 50 to 100 years after the author's death, depending on the territorial law of the Land/Country. ⑤

Copyright is a legal means of protecting an author's work by providing exclusive Publication, Distribution and Usage Rights for the Author.

3. PATENTS: A Patent is a prominent form of Intellectual Property (IP) that allows the owner/patent holder to prevent or exclude others from making, using, or selling an invention for a limited period of years.

¹³⁾ exchange of publishing or disclosure of the technical invention, product, process, design or improvements on such items.

The procedure for granting Patents and the extent of the exclusive rights vary widely from country to country in accordance with National Laws and International Agreements.

KEY CHARACTERISTICS:

- i. The invention must be new/novel - Patents are awarded to the first to invent.
- ii. The Invention must be Useful
- iii. The Invention must be Non-Obvious - The invention shall not be obvious or apparent to a person's ordinary skill in the field relating to the field of invention. — Ordinary Skill or Average Skill not expert in that technology.
- iv. The Invention must be Statutory (Subject matter of eligibility) - This is the primary condition under US Patent Law to provide an invention patentability.
- v. Patents are not available for Law of Nature, naturally occurring substances, new Scientific inventions, Abstract Principles, Fundamental Truths, Calculations, Methods, Mathematical Formulas.

- VI. Examples of Patentable Items:
- a) Computer Software and Hardware
 - b) Chemical formulas and Processes
 - c) Genetically engineered bacteria, plants and animals.
 - d) Drugs
 - e) Medical Devices
 - f) Furniture Designs
 - g) Jewelry Items
 - h) Fabrics and Fabric Designs
 - i) Musical Instruments

TYPES OF PATENTS: There are three types of Patents:

(i) Utility Patent (ii) Design Patents (iii) Plant Patents

- (I) UTILITY PATENT: The vast majority of patents are Utility Patents.
- a) A Utility Patent covers - Processes, Composition of Matter, Machines and Articles of Manufacture, that are new and useful.
 - b) A Utility Patent can also be obtained for new and useful improvements to the existing Processes, Composition of Matter, Machines and Articles of Manufacture.
- (II) DESIGN PATENTS: A Design Patent may be awarded to anyone who invents a new, original and ornamental design for an article of manufacture. A design patent can be defined as the "Surface Ornamentation of an object, which can include the shape or configuration of an object".
- a) A design patent can be defined as the "Surface Ornamentation of an object, which can include the shape or configuration of an object".
 - b) In order to obtain protection, the object and the design must be inseparable.
- (III) PLANT PATENTS: A Plant Patent can be obtained to protect new and distinctive plants, on fulfillment of the following conditions:
- a) the plant is not a tuber propagated plant (Potato)
 - b) the plant is not found in uncultivated state.
 - c) the plant can be asexually reproduced - instead of reproduced with seeds, the plant is reproduced by grafting or cutting the plant.
- Patent Protection Valid for 20 years.

Advantages of Trade Secrets:

- I. Trade Secrets are not expensive to obtain, because they do not require any registration process or fee.
- II. Trade Secrets retain their protection for ever so long as the Secrecy is not revealed to public.
- III. Trade Secrets have an immediate effect as there are no lapsing time for protection enforcement.
- IV. Trade Secrets are not required to comply with any governmental disclosure law as is done in other IPs.
- V. Trade Secrets can protect 'abstract idea' including Software design, codes and algorithms.

DisAdvantages of Trade Secrets:

- I. If a trade Secret is made public, it loses protection.
- II. If any competitor develops the same process that of yours, one can freely use the process.
- III. Trade Secrets are difficult to enforce as done in other IPs, because the holder has to demonstrate that the person using the secret information, obtained it unlawfully.

Protection of Trade Secrets in USA:

- I. In the US, trade Secrets are defined and protected by the Economic Espionage Act of 1996 (outlined in Title 18, Part I, Chapter 90 of the US Code).
- II. 47 States out of 50 states in USA, have adopted some version of the Uniform Trade Secrets Act (UTSA) regarding providing protection.

Protection of Trade Secrets in India:

India has no specific Trade Secret Law. However, Indian Courts have upheld trade Secret protection under various Statutes - Contract Law, Copyright Law, Principles of Equity.

(4) TRADE SECRETS: Trade Secrets are a type of valuable IP that consist of - formulas, practices, processes, designs, instruments, patterns, plans, compilations, programmes, methods, techniques, procedures, codes, techniques etc that have inherent economic value, because they are not disclosed or readily ascertainable by others and which the owner adopts reasonable steps to keep secret.

In terms of Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, commonly referred as the TRIPS Agreement under 18 U.S.C 1839 of the United States Economic Espionage Act, 1996, Trade Secrets have three vital components:

- i) Secrecy - The information must be secret and are not for public information
- ii) Commercial Value - Their secrecy provides an economic benefit to the holder.
- iii) Reasonable Effort to Maintain Secrecy - Their Secrecy is actively protected by the holder.

Generally trade secrets are not registered with Govt. agencies, as it is done in case of Copyrights, Patents and trademarks.

Common issues, involving trade secrets are:

- i. Non-Disclosure Agreement / Confidentiality Agreement
- ii. Non-Compete
- iii. Infringement
- iv. Enforcement

Famous Trade Secrets Examples:

- i) KFC - Kentucky Fried Chicken
- ii) Coca-Cola -
- iii) Listerine
- iv)

INTERNATIONAL ORGANIZATIONS, Agencies And TREATIES⁽¹⁾ RELATING TO INTELLECTUAL PROPERTY RIGHTS (CIPR)

Intellectual Property Laws are generally national in nature, confined to one country only. However, there are many conventions and treaties, agencies under which nations agree to provide certain levels of protection to IP holders of other countries beyond the national regional territory.

WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO)

The WIPO Convention, the constituent of the World Intellectual Property Organization (WIPO), was signed at Stockholm, on 14th July, 1967, entered into force in 1970 (26th April, 1970). WIPO is an intergovernmental organization that became in 1974, one of the specialized agencies of United Nations Organization (UNO).

WIPO's two main objectives are:

- I) To Promote the Protection of Intellectual Property worldwide
- II) To Ensure administrative cooperation among intellectual property unions established by the treaties that WIPO administers.

The headquarters of the organization are in Geneva, Switzerland. The organization has external offices in Brazil (Rio de Janeiro), Japan (Tokyo), Singapore (Singapore) and the United States of America (at the United Nations in New York).

It is one of the fifteen (15) specialized agencies of UNO, focusing on promotion and protection of Intellectual Properties (IP) and Intellectual Property Rights (CIPR). The present membership is 192 countries and India became member of WIPO on 1st May, 1975.

PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY:

Paris Convention was adopted on 20th March, 1883 at Paris and came into force from 7th July, 1884. The Paris Convention applies to industrial property in the widest sense.

- It provides basic guidelines for the protection of industrial property (Patents, Utility models, Industrial Designs, Trademarks, Service marks, Tradenames)
- It provides/indicates the sources or appellations of origin
- It adopts steps/measures to control Unfair Competition
- The substantive provision of the Paris Convention falls into three main categories:
 - i. National Treatment
 - ii. Right of Priority
 - iii. Common Rules.

i. NATIONAL TREATMENT: Under this provision, the Convention, ~~provides~~ as regards the industrial property, each Contracting (Member) state must grant same protection to nationals of other Contracting State like its own nationals.

ii. RIGHT OF PRIORITY: Under this provision, right of Priority is applicable to Patents, Utility models, marks and industrial designs. The Right of Priority means that any holder filed application in one of the Contracting States, may also within certain periods of time (12 Months for Patent & Utility models, 6 Months for Industrial Designs & Marks) apply for protection in any of the other Contracting State.

iii. The Convention lays down a few Common Rules that all Contracting States must follow.

The Paris Convention, concluded in 1883, was revised at Brussels in 1900, at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967 and was amended in 1977. This Treaty came to India from 7th Dec 1998.

MADRID AGREEMENT & MADRID PROTOCOL IN MADRID SYSTEM.
The Madrid System for the International Registration
of Marks is governed by two treaties:

- i. The Madrid Agreement, concluded in 1891 and revised
at Brussels (1900), Washington (1911), The Hague (1925),
London (1934), Nice (1957) and Stockholm (1967) and
amended in 1979
- ii. The Protocol, relating to that Agreement,
concluded in 1989, which aims to make Madrid
System more flexible and more compatible

The Madrid System offers several advantages
for trademark owners. In stead of filing a separate
national application in each country of interest, in
several different languages in accordance with
different national or regional rules and fees,
a single international registration may be
obtained by simply filing one application
and paying one set of fees only.

PATENT COOPERATION TREATY (PCT). - The Patent Cooperation
Treaty (PCT) is an international Patent Law treaty
signed at Washington, USA on 19th June, 1970
and the treaty came into force from 24th January,
1978.

The Patent Cooperation Treaty (PCT) makes it possible
to seek patent protection for an invention simultaneously
in each of a large number of countries by filing
an "international" patent application. This PCT
international application can be filed by any
national or resident of a PCT Contracting State
or Member Country. This application is generally
~~not~~ filed in the National Patent of the Contracting
State or with International Bureau of WIPO
in Geneva.

The PCT offers - great deal of advantages for applicants, Patent offices and the general public:

- Assists applicants in seeking Patent Protection internally for their inventions.
- Helps Patent Offices with their Patent granting Decisions.
- Facilitates public access to a host of technical information relating to invention
- Helps filing One International Patent Application under PCT.
- Reduces the major costs associated with International patent protection
- Used by the world's major corporations, research institutions and Universities in seeking International patent protection.

PCT contains 152 member countries.

It is basically administered by WIPO.

BERNE CONVENTION FOR THE PROTECTION OF LITERARY & ARTISTIC WORKS (1886)

The Berne Convention, adopted/concluded at Berne, on 9th September, 1886 and came into force from 4th December, 1887. This was revised at Paris in 1896, of Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967, at Paris in 1971 and was amended in 1979.

The Berne Convention deals with the protection of works and the rights of their authors. This Convention on Copyrights rests on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them.

The three basic principles are the following:

- I. NATIONAL TREATMENT
- II. AUTOMATIC PROTECTION
- (iii) INDEPENDENCE OF PROTECTION.

I. NATIONAL TREATMENT: Works originating in one of the Contracting States either national origin or first published in such state must be given the same protection in each of the other Contracting States as that of the works of its own nationals.

II. AUTOMATIC PROTECTION: Protection must not be conditional upon compliance with any formality.

III. INDEPENDENCE OF PROTECTION: Protection is independent of the existence of protection in the country of origin of the work (Principle of independence of protection)

The Berne Convention came into force in India on 1st April, 1928.

TRIPS (TRADE-RELATED ASPECTS OF IPR) AGREEMENT:
The TRIPS Agreement, which came into effect on 1st January, 1995, is full date the most comprehensive multilateral agreement on intellectual property that it covers areas of intellectual property rights including:
i) Copyright and related rights
ii) trademarks including service marks
iii) geographical indications
iv) industrial designs
v) Patents including the protection of new varieties of plants, integrated circuits
vi) the layout designs of integrated circuits including trade secrets and
vii) undisclosed information test data.

The three main features of the Agreement are:

1. Standards
2. Enforcement
3. Dispute Settlement

i. STANDARDS: The TRIPS Agreement provides minimum standards of protection to be provided to each Member in respect of the areas of IP.

- (2) ENFORCEMENT: The second main set of provisions deals with the procedures and remedies for the enforcement of intellectual property rights.
- (3) DISPUTE SETTLEMENT: This is an very important feature of TRIPS Agreement. It provides operational system for the settlement of disputes between governments of Members about compliance with their respective obligations relating to intellectual property rights.

This TRIPS Agreement is truly an international legal agreement before all the member nations of the World Trade Organization (WTO). India became a member on 1st January, 1995.

SRINIVAS COLLEGE OF ENGINEERING
BALASORE

LECTURE NOTES ON IPR - INTELLECTUAL PROPERTY RIGHTS
MODULE - 01 - CHAPTER - 01 - PREPARED BY - MANOJ KU. BEHERA

M. NO - 9438020941
LECTURER.

IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS: 24/07/2020

The Present Century is heading towards continual process of Learning, Creating "New knowledge" and further transferring the new concept of knowledge into "Value-added knowledge" with appropriate "Proprietary protection" and fair distribution of its benefit. This is what exactly happening in the field of Intellectual Property (IP) and its related rights both in domestic and international economy.

The dynamics components of IP - Trademark, Copyrights, Patents, Trade Secrets etc are enlarging the horizons of IP Market and increasing the importance of Intellectual Property Rights. The whole world is passing through this boom including USA, where IPR is protecting more than US \$ 1 Trillion worth products and services.

The importance of IPR can be enumerated as follows:

1. IPR protects the interests of authorised, lawful owners of Intellectual Properties through various State Law & Federal Law in USA, other Act/ Law of other countries, and through various Treaties, Conventions & International Organizations

from violations/infringement of unauthorised use.

2. IPR protects the rights of the consumers/clients by promoting choices about Safety, Reliability, Effectiveness and creates confidence in the consumer's mind.

3. IPR in protecting and promoting IPs ultimately creates more jobs in the commercial sector.

4. IPR encourages Innovations, Rewards to New and existing Entrepreneurs/Enterprises.

5. It drives economic growth and competitiveness in the global market.

6. It provides many breakthroughs towards solutions of global challenges.

7. IPR ~~provides~~ ^{plays} vital role in marketing and branding of products/services.

8. IPR helps in selling, Assigning, Licensing the IP products/services.

9. IPR encourages/enhances the Market value of the business.

10. IPR provides information to create new products/services

Intellectual Property Rights are to ownership and Proprietary Rights granted to the Inventor/Creator/authorised owner/holder in relation to innovative works of Intellectual Properties (IP)