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## Recent advancements in intellectual property rights with reference to patents

**Prerna Rani, Girija Kumari and Vikram Singh**

### Abstract

Intellectual Property Rights (IPR) have been defined as ideas, inventions, and creative expressions grounded on which there's a public amenability to bestow the status of property. IPR gives certain exclusive rights to the formulators or generators of that property, in order to enable them to capture marketable benefits from their creative work or character.

Intellectual Property Right is basically an intellectual property (IP) through which someone has the right to claim due to moral and profitable accounts and the main agenda of IPR is to extract more and more return of economic benefit from their intellectual property.

The goal of this article is to access the ways of increasing moral and economic benefits with the IP from the society. The article also tries to focus on the present scenario of IPR in least developed countries and to promote a clear conduct of filing of patent, trademark, copyright and all others without any type of duplicity or misconduct.

This article comprises of a detail of all the intellectual properties and their history in a stepwise manner along with a focus on role of World Intellectual property organization (WIPO) in IPR.

After the advancement in the field of IPR there are many quick ways to file a patent for a product and promote it, also gains a lot of economic benefit from the creation and in our country the Patent law is more aligned with TRIPs and may ease the process of patent. The pharmaceutical industry and some others industries nowadays may try to perform more focus on IPR strategy to promote betterment of trade and other works as the reach of IPR in under developing and least developed countries may promote and increase both social and economic benefit.

**Keywords:** IPR, patent, trademark, copyright, WIPO, TRIPs

### Introduction

Intellectual Property Rights (IPRs) are legitimate rights which safeguards creations and / or inventions derived from intellectual activity in the fields of industry, science, literature or arts.

It can be any original work developed using human intellect ranging from work of arts, articles, literature, software technologies, cinematography, music, designs or any scientific creations/ inventions or any other commercial signs which provides a new perspective <sup>[1]</sup>.

The purpose of intellectual Property Rights is to safeguard the legal rights of the creators/or inventors. It ensures the protection to any new invention or creation for a certain period of time <sup>[2]</sup>. These legal rights provides a proprietary rights for a given period of time to the inventors to employ their creation to the fullest without the fear of being copied or misused <sup>[3]</sup>.

Intellectual Property balances a wide range of activities. It has an important role to play in cultural as well as economic life and modern economy <sup>[4]</sup>. Therefore there is a dire need to give due importance to innovations or creations related to intellectual labour in order to make public good emerge from it.

There has been a quantum leap in the field of research and development (R&D) value with an associated jump in investments required to install new technology in the market place <sup>[5]</sup>.

Technology developer stakes has become exorbitant, so it is needed to protect the knowledge from illegal or unlawful use, at least for a certain period of time, which would secure a recovery of R&D and related costs and other related sufficient profits for ongoing investments in R&D <sup>[6]</sup>.

Since IPR provides an exclusive right to the inventors or creators for a given period of time to safeguard and utilize their creation to the fullest extent possible which ultimately makes it a strong tool to protect innovations, time, energy, ideas of the creators. So in this way, IPR supports the economic development of a country by encouraging healthy competition and uplifting industrial development and economic growth.

### Historical Background

The origination of laws and administrative procedures related to IPR their origin in Europe. The idea of granting patent began in the fourteenth century. In Italy, the first known copyright appeared. Most of the legal thinking in IP was done in Venice therefore it can be contemplated as the cradle of IP system. Laws and systems were made here for the first time in the world, and different other countries followed in due course [7].

### Development of Intellectual Property Law in India

The Intellectual Property Right (IPR) in India was introduced from west [8]. Patent acts in India is over 150 years old. The first one is the 1856 Act that is based on the British patent system and issued the 14 years patent term followed by a number of acts and amendments [2]. In India, George Alfred DePenning have made the first the very first application for a patent in the year 1856. In the year 1847, Copyright law entered in India via an enactment during the Eat India Company's regime.

The Indian Trade and Merchandise Marks Act 1884 was the first Indian law on IPR. New legislation was launched in the year 1888 to integrate and amend the law related to invention and designs in conformity with the amendments made in the UK law. The Indian Patents and Designs Act, 1911, was introduced in 1911 which replaced all the previous legislations on patents and designs. This Act lead patent administration under the management of Controller of Patents for the first time and was amended in the year 1920 to provide for entering into reciprocal harmony with UK and other countries for securing priority.

The Indian Trade and Merchandise Marks Act and the Indian Copyright Act have been replaced by the Trade and Merchandise Marks Act 1958 and the Copyright Act 1957 respectively [9].

India's statutory Trademarks Law dates back to 1860. Till the end of 1940 there was no official trademark law in India. The Government of India appointed the first committee to review current Patent and Designs legislation in 1948.

There were a number of problems with fraud, infringement, law of passing off etc. and these have been resolved by application of Section 54 of the Special Relief Act, 1877 and it was clear that registration was judged by obtaining a confirmation of trademark ownership under Indian Registration Act 1908.

### World Intellectual Property Organization [WIPO]

WIPO is the universal forum for intellectual property services, information, policies and collaboration. The World Intellectual Property Organization was established in 1960. It governs the Paris and Berne Convention and WIPO was established in 1967 by these convention and then became a specialist group of the United Nations in 1974 [10].

The World Trade Organization (WTO) was formed in 1977 and became an important international body for the

development and understanding of IPR; following the General Agreement on Tariffs and Trade [11].

WIPO's work is primarily focused on four elements-

#### 1. Shaping International Rules

WIPO ensures improvement and implementation of international law on intellectual property.

Most of the IP law is restricted to a certain national sovereignty. International law is essential to ensure protection across national borders.

Now, there is more than 25 international IP contracts or treaties governed by WIPO, and conversations are going on to tackle new challenges.

WIPO offers neutral environment in which different countries can come together to discuss and settle down new rules, get a fair equilibrium between different interests.

#### 2. Delivering Global Services

WIPO brings international filing and registration services. Many examples of such are: international patent registration under the PCT system, international trademark registration under Madrid system, industrial design registration under the Hague system and filing of geographical signs in Lisbon System. To help resolve IP disputes, WIPO also offers arbitration and mediation services and collects fees for such services. More than 90% of its income is coming from such taxes.

This is uncommon for an international group. Most international groups are sponsored by their member states but nearly all of the WIPO's budget is paid for by the people and businesses that uses its assistance.

#### 3. Cooperating with countries and partners to make ip work for implement

An essential part of WIPO's mission is to assist all countries utilize and benefit from IP laws and protection systems. Lots of WIPO's member states already have really experienced and well established national IP systems, whereas some developing countries are operating to build this capacity.

#### 4. Providing information and shared infrastructure

WIPO main objective is to be a wide and an unbiased source global IP information issues. WIPO also has improved framework for acquiring and sharing knowledge which includes extensive databases of patents, logos, trademarks, title's origin and IP legislation.

#### Different Types of IP

IP is mainly divided into two main categories-

The first one is Industrial property which includes Patents for Inventions, trademarks, trade secrets, industrial designs and geographical indications.

The other type is the Copyright and related rights which includes literary, novel, poems, plays, films, music, artistic and scientific works.

An efficient and unbiased IP system contributes in the well-being of everyone from ordinary users to consumers and hence there is a dire need to balance the interests and rights of different groups of creators and consumers, businesses and their rivals, of countries with different rate of incomes [12].

Previously only Patents, trademarks and industrial designs were safeguarded as industrial property but now the IP has a much vast meaning and the Patents, copyrights, trademarks and trade secrets are among the most common IPRs.

## Patents

Patents were one of the first types of intellectual property to be recognized in modern legal systems. Now a days, patented inventions pervades all aspects of life, from electric lighting (patents held by Edison and Swan) to the iPhone (Apple holds the patents) <sup>[13]</sup>.

A patent is an intellectual property right related to inventions and the provision of exclusive rights, for a limited period of time that is provided by the Government to the patentee, in exchange for full disclosure of their creation and shutting others down from making, using, selling, importing the patented product or patented processes extracting that product for any reason. From 1992 and 2002, the patent applications number filed in Europe, Japan and the United States increased by over 40% <sup>[14]</sup>.

Three main pieces of legislation – The Patent Act 1970, Patent Rules of 2003, and Patent Amendment of 2005 – forms the foundation of patent law in India <sup>[15]</sup>. The main objective of this system is to promote inventions and creations by highlighting their promotion and employing so as to contribute to the growth of industries which in return contributes to the marketing of technological innovations and to the transfer and distribution of technology.

## Significance

1. Patents can be considered as a tool for promotion of technological development in low cost areas where a copy of an invention is likely to constrain economic incentives for innovation.
2. It ensures that information providers do not lose rights to the information by publishing it provided that intellectual information can be used by an infinite number of people at the same time.
3. Companies and inventors can get the most profits from their inventions during the patent protection period.
4. This will reward them for their possessions effort and thus motivates more invention which in return ultimately benefits the general public.
5. Revelation of the creation add up to the body of public knowledge, which will allow and encourage further research and inventions.

Patents can be granted for products and processes that fulfil the three main criteria of global novelty, non-obviousness, and industrial or commercial application <sup>[15]</sup>.

1. **Novelty:** This simply means that the invention must be new and must not have been thought of before.
2. **Non-obviousness:** The invention must be creative, inventive and unique which means it should have a new characteristic that is not known in the field before.
3. **Usefulness:** it means the invention must provide some noteworthy benefits to the society and must be capable of industrial application.

The patents can be granted for up to 20 years from the date of filing of the patent application except for methods for preparing food items and drugs for which the term of 7 years is available from the date of the filing or 5year term from the date of the patent, whichever is earlier. No product patent were provided for food items and drugs <sup>[16]</sup>.

There are only limited rights available to sue the infringers between the time applications is filed and when the respective patent issues. After the patent is issued, and before it expires, the patent are considered as the holder's

personal property that may be sold, given away, or licenced to anyone chosen by the patent holder. And after the expiration of a patent, it becomes available in the public domain <sup>[17]</sup>.

## There are basically three types of patents

1. Utility patent-These patents are granted for a process, machine, article of manufacture, composition of matter, or any new and innovative and useful discovery or improvisations thereof.
2. Design patent- These are granted for the ornamental design for an article of manufacture. These patents are granted for 14 years from the date the patent issues from an application.
3. Plant patent- These patents are granted for discovering or inventing any new plant variety that was not known before. These patents are granted for 20 years from the date of application filing.

## Analysis of Trends of Patents

Patents trend over the last 25 years in India have their roots in the formulation and implementation of the Indian Patent Act 1970, which progressed towards being effective from April 20, 1972. There was a calculated shifting from the liberal property of the Indian Patents and Designs Act 1922 to the new systems that offered restrictive changes associated to patenting of inventions particularly in the field of chemicals, pharmaceuticals, agrochemicals and foods <sup>[18]</sup>. The granting of patents for creations which claims substances designed for use or efficient of being used as, food, medicine or drug or all substances developed from chemical processes was withdrawn. The compulsory licensing conditions were also built equitably liberal along with the introduction of the notion of "license of right" for patents associated to drugs, pharmaceuticals and foods <sup>[19]</sup>. The law concerning the patents is defined by the Indian Patent Act 1970, Patent Regulations 2003 and Patent Amendment Regulations 2016. As in the UK, there is no facility for utility model patents. The governing authority for the patents is the Patent Registrar under the office of Director General of Patents, Designs and Trade Marks, that is the part of the Ministry of Commerce and Industry of India. Indian patent law operates under the principle of 'first to file' - that is, if two people apply for a patent on a similar invention, the first person to submit the application will receives the patent <sup>[20]</sup>.

## Copyright

According to the 1847 enactment, the term of copyright was for the lifetime of the author plus seven years after the death. It contains literary and artistic works that is books, paintings, musical compositions, Radio/ T.V programs, performance and other artistic works. It works under the Berne Convention and defines how a database should be safeguarded <sup>[21]</sup>.

Copyright is covered under copyright act 1957, it is a right which grants protection to the unique expression of ideas. The most recent advancement in copyright is that the term of duration of copyright is increased for 50 years and copyrights are preserved for longer duration. The Berne convention will protect the computer programs and ensures the data safety of the computer programs <sup>[22]</sup>.

It also covers the rental rights. Some of the copyrights are preserved for 25 years while sound recording rights are

preserved for 50 years by their directors. The copyright act was amended many times after the enactment, the amendments may include the changes in process of copyright filing, the extension of time duration of the copyright and the fee. The law was amended to keep the pace of the recent technology advancements <sup>[23]</sup>.

### Trademark

A trademark is a unique mark that identifies certain goods or services as those that have been exported or provided by a specific person or enterprise <sup>[24]</sup>. The trademark owner has an absolute right to utilize it to recognize goods or services exported or offered by him <sup>[25]</sup>. India's trademark laws include the Trademarks Act 1999 and the Trademarks Rules 2002 and 2017.

In India, the number of patent filings has increased in the past few years, but the percentage of filings by Indians is fairly low. In the case of trademarks, India is in the top five filers in the world, with the maximum number being filed by Indians. Trademark is generally assigned by the companies for making uniqueness in the product and may ease the purpose of advertisement of the product. Trademarks are the unique identities of any company which defines the company by just a sight.

The trademark is for industrial properties like physical matters. It is covered under trademark act 1999 it includes symbol, logo, colour, design, word, sound <sup>[26]</sup>.

TM- application filed for product SM- application filed for services.

The trademark is valid for 10 years and then extended for 10 more years by giving the extension fee.

### Trade Secrets

Trade secrets are sensitive business information, which involves manufacturing information and commercial information such as sales methods, customer accounts, advertising strategies, supplier's lists and client's lists, which give a business a competitive edge <sup>[27]</sup>. Trade secrets are safeguarded by keeping the information unpublished or undisclosed in the public domain.

### Geographical Indications

Geographic Indicators (GI) are indications or suggestions used on products to signify specific geographic origin that corresponds to product characteristics or reputation as a result of such geographical origin. Those ones holding GI registration or certification for the product may prohibit other representatives of similar product but of different geographical origin from the use of the GI <sup>[28]</sup>. Employing the place name when the product was made somewhere else or when it lack the usual features can deceive consumers, and can lead to inequitable competition. Some exceptions are permitted, for example if the name is already protected as a trademark or has become a general term <sup>[29]</sup>.

Some common examples of geographical indications are Darjeeling tea from India, Tequila liquor from Mexico.

### Acts and Policies

Creativity and innovation have been sustained in the growth and development of any knowledge economy. India has always been an abundance source of creative and innovative energies. Although India has always been an innovative society, much of its intellectual property (IP) produced remains unprotected both due to lack of awareness and the perception that IP protection that exists is either unnecessary or the process for obtaining it is unnecessarily complicated. The reason for National IPR Policy lies in the necessity to

generate awareness about the significance of intellectual property rights (IPRs) as a merchantable financial asset and an economic gadget <sup>[30]</sup>. Intellectual property in India is governed by a number of laws, rules and regulations under the jurisdiction of various Ministers/Departments. It is governed by a number of authorities and offices.

Patents to safeguard creation and inventions were granted in Venice dates back as far as the fifteenth century. Modern initiative with the combination of international law such as The Paris Convention for the Protection of Industrial Property (1883) and The Berne Convention for the Protection of Literary and Artistic Works (1886) has contributed in the protection of IP.

There are more than 25 International Treaties on IP that are administered by WIPO. IP rights are also protected by Article 27 of the Universal Declaration of Human Rights.

### International considerations

India is a World Trade Organization (WTO) member since 1995. WTO member nations must include some IP protection in their national laws. This implies that if someone is doing business with India, one will find some similarity between local IP law and enforcement policies, and those in force in the UK <sup>[31]</sup>.

### Treaties and reciprocal agreements

India is also a signatory to the following international IP agreements:

- The Paris Convention – under this, any person from a signatory state can apply for a patent or trade mark in any other signatory state, and will be granted the same enforcement rights and status as a national of that country would be.
- The Berne Convention – In this, each member state acknowledge the copyright of authors from other member states in the same way as the copyright of its own nationals.
- The Madrid Protocol – under this, a person can file a single trade mark application at their national office that will provide safety and security in multiple countries.
- The Patent Cooperation Treaty – These are central system for acquiring a 'bundle' of national patent applications in different jurisdictions through a single application.

India is not a signatory to the Hague Agreement, which allows the protection of designs in multiple countries through a single filing <sup>[32]</sup>.

The Policy sets out seven Objectives which are discussed in steps that must be taken by those concerned nodal ministry / department <sup>[33]</sup>. The aims are briefly described below-

#### 1. IPR Awareness: Outreach and Promotion

To generate public awareness about the economic, communal and cultural advantages of IPRs among all sections of society a nationwide promotion program should be launched.

#### 2. Generation of IPRs

To stimulate the generation of IPRs, there is a need to tap the fruitful knowledge resources and stimulate the generation of IP assets.

#### 3. Legal and Legislative Framework

To have robust and effective IPR laws, that maintains the interests of rights holders with a greater public interest.

#### 4. Administration and Management

To administer and strengthen IPR administration aimed at services that will provide ease in constructive and coordinated working between different IP offices.

#### 5. Commercialization of IPR

Obtain value for IPRs via trading or commercialization. Entrepreneurship should be promoted so that the financial value of the IPRs may be captured. It is essential to connect investors and IP creators so as to obtain value for IPRs.

#### 6. Enforcement and Adjudication

To strengthen administration and adjudicatory mechanisms for countering IPR breaches

#### 7. Human Capital Development

To build-up and expand human resources, centers and capacities for teaching, training, research and skill building in IPRs

#### Conclusion

This review paper discusses overall history of IPR and intellectual properties like patent, copyright, trademark, trade secret and others along with special emphasis on WIPO and advancements in patent. The overall conclusion of the paper is that after the incorporation of TRIPs in Indian patent law, it may help in bringing uniformity in terms of examinations of the patented applications in all patent offices across India that in return will provide the inventors and applicants with a certainty about how their application will be examined. The paper also suggests that there must be a lot of scope of research in the field of advancement in the law and patent process.

The paper also suggests that by making the patent rights reach to the least developed countries, it might help in gaining more benefit on social and economic side and some new laws may be created for challenging the patent filed applications.

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