



INTELLECTUAL PROPERTY RIGHTS AND ITS TREND ANALYSIS

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-----ABSTRACT-----

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time (Singh, 2004). Intellectual property is a broad concept that covers several types of legally recognized rights arising from some type of intellectual creativity, or that are otherwise related to ideas (Kinsella, 2001). The term intellectual property reflects an idea that the subject matter is the product of the mind or the intellect, and that Intellectual Property rights may be protected at law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. Intellectual property rights (IPR) have become important in the face of changing trade environment which is characterized by global competition, high innovation risks, and short product cycle. Intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources. The objective of this review is to describe the concepts of Intellectual Property rights and its importance towards society.

KEYWORDS- *Patents, Trademark, Copyrights, Trade secrets, TRIPS etc.* -----

BRIEF HISTORY

The laws and administrative procedures relating to IPR have their roots in Europe. The trend of granting patents started in the fourteenth century. In comparison to other European countries, in some matters England was technologically advanced and used to attract artisans from elsewhere, on special terms. The first known copyrights appeared in Italy. Venice can be considered the cradle of IP system as most legal thinking in this area was done here; laws and systems were made here for the first time in the world, and other countries followed in due course.[4] Patent act in India is more than 150 years old. The inaugural one is the 1856 Act, which is based on the British patent system and it has provided the patent term of 14 years followed by numerous acts and amendments. [1]

OBJECTIVES

1. To explain various types of IPRs and brief discussion about IPRs overviews.
2. To show trend analysis in Intellectual Property Rights Activities.
3. To discuss strategies for the patenting mechanism in India and abroad.

RESEARCH METHODOLOGY

This research paper widely used secondary data from various sources likes reference books, websites, internet, user manuals and journals related with IPRs. The data showed in this research paper purely secondary in nature.

International Law and Intellectual Property Rights

As in many other fields of intellectual property law, Professor Cornish was a pioneer in the way in which his commentaries and treaties on British intellectual property law were the first to locate the law in its European jurisprudential context. As the counterpart Herschel Smith Professor at the University of London said, this



contribution attempts to broaden that perspective to take account of the international law impact following the promulgation of the TRIPS Agreement.

Intellectual property rights exist primarily by virtue of national laws, so-called global intellectual property rights are a bundle of nationally enforceable rights. However, it is true to say that in most countries, those national rights exist not only as a consequence of domestic legislation or jurisprudence but also because of the international, multilateral bilateral and regional obligation. In a number of regional associations, such as the European Union, there is the possibility of regional legislation either with direct national effect or which prescribes national intellectual property norms. International intellectual property laws play an important role in harmonizing national substantive and procedural rules.

Types of IPR-

Patents

Copyrights

Trademarks

Trade Secrets

PATENT

A patent is awarded for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial or commercial application. Patents can be granted for products and processes. As per the Indian Patent Act 1970, the term of a patent was 14 years from the date of filing except for processes for preparing drugs and food items for which the term was 7 years from the date of the filing or 5 years from the date of the patent, whichever is earlier. No product patents were granted for drugs and food items. [9] A copyright generated in a member country of the Berne Convention is automatically protected in all the member countries, without any need for registration. India is a signatory to the Berne Convention and has a very good copyright legislation comparable to that of any country. However, the copyright will not be automatically available in countries that are not the members of the Berne Convention. Therefore, copyright may not be considered a territorial right in the strict sense. Like any other property IPR can be transferred, sold, or gifted.

COPYRIGHT

Standards cannot be developed without a considerable investment of resources in expertise, consultations, administration, translation, etc. Therefore it is not financially possible for standards to be made available free of charge. Moreover, CEN and CENELEC members depend on the income they generate through the sale of standards. Therefore, considerable attention is devoted to the copyright protection of standards and other deliverables. Stakeholders can use CEN-CENELEC copyrighted documents for commercial purposes in agreement with CEN and CENELEC and under certain conditions. CEN/CENELEC Guide 10 sets out the rules and modalities regarding the distribution and protection of any technical deliverables.

TRADEMARK

A trademark (also written trade mark or trade-mark [1]) is a type of intellectual property consisting of a recognizable sign, design, or expression which identifies products or services of a particular source from those of others,[2][3] although trademarks used to identify services are usually called service marks.[4][5] The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher, or on the product itself. For the sake of corporate identity, trademarks are often displayed on company buildings. It is legally recognized as a type of intellectual property.

The first legislative act concerning trademarks was passed in 1266 under the reign of Henry III, requiring all bakers to use a distinctive mark for the bread they sold. The first modern trademark laws emerged in the late 19th century. In France, the first comprehensive trademark system in the world was passed into law in 1857. The Trade Marks Act 1938 of the United Kingdom changed the system, permitting registration based on "intent-to-use", creating an examination based process, and creating an application publication system. The 1938 Act, which served as a model for similar legislation elsewhere, contained other novel concepts such as "associated trademarks", a consent to use the system, a defensive mark system, and a non claiming right system.



TRADE SECRETS

Trade secrets are a type of intellectual property that comprise formulas, practices, processes, designs, instruments, patterns, or compilations of information that have inherent economic value because they are not generally known or readily ascertainable by others, and which the owner takes reasonable measures to keep secret.[1] In some jurisdictions, such secrets are referred to as confidential information.

IPR IN INDIA: AN OVERVIEW

India is an immense nation with more than 1.2 billion people seeking to create a civilization focused on intelligent, equitable, and ecological awareness. India has been renowned for its vast past of science presentation, the broad society and common awareness over the decades. Nil, along with the decimal numeral form called Arabic, was developed by India. An Indian had noticed an axial movement of the Planet by the fifth century (Stevens, 1982). The fine fabrics of cotton and silk, binding, painted and enamelling objects, arms, knives and gold and silver were produced in India (INSA, 2001). Stylistical and good quality objects were made in India. The community of IP in India, which originates in the centuries and seeks to stimulate the population in order to fulfil both domestic and foreign needs, must be fiercely maintained. On 15 April 1994 India signed an agreement to develop minimum requirements, protocols and solutions to secure IPRs with Trade-Related Aspects for Intellectual Property Rights (TRIPS). The TRIPS arrangement also permits a strong degree of legal pluralism among WTO representatives on patentability requirements and core flexibilities, for all patentable subject-matter and obligatory licensing purposes (CLs) (Jishnu, 2014).

TRENDS IN IPR – AT A GLANCE

INTRODUCTION

In addition, there has been a significant rise in many divisions under the regulatory jurisdiction of the Controller General of Patents, Designs and Trademarks (CGPD). However, the overall number of patent, design and trade mark applications submitted this year declined marginally from 2015-16, while GI and copyright applications followed a rising increase. In general, the request volume (3.55.393) declined marginally from the preceding year by 0.37% (3.56.713);

Trends in last five years in respect of filing of intellectual property applications are shown below.

Application	2012-13	2013-14	2014-15	2015-16	2016-17
Patent	43,674	42,951	42,763	46,904	45444
Design	8,337	8,533	9,327	11,108	10213
Trade mark	1,94,216	2,00,005	2,10,501	2,83,060	278170
Geographical Indication	24	75	47	14	32
Copyrights	Copyright administration shifted to DIPP/ CGPDTM in 2016-17			14812	16617
Semiconductor Integrated Layout Designs (SCILD)	SCILD administration shifted to DIPP/ CGPDTM in 2016-17			-	--
Total	2,46,251	2,51,564	2,62,638	3,55,898	3,50,467

Source-<http://www.wipo.int/ipstats/en/wipi/index.html>

Trends in respect of IP activities:

Trends in Patent Applications

Patents: During this budgetary year, 45444 patent applications were documented showing a slight dip of 3.2% in the recording when contrasted with the earlier year. The patterns of most recent five years in regard of patent



applications recorded, analyzed, allowed and arranged are given beneath. Removal of utilizations incorporates patents conceded/declined by the patent office and furthermore applications pulled back and relinquished by the candidates.

Trends in Patent Applications Year 2012-13 2013-14 2014-15 2015 2016

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	43,674	42,951	42,763	46,904	45,444
Examined	12,268	18,615	22,631	16,851	28,967
Granted	4,126	4,227	5,978	6,326	9,847
Disposal	9,027	11,411	14,316	21,987	30,271

Source-<http://www.wipo.int/ipstats/en/wipi/index.html>

During 2016-17, the quantity of patent applications analyzed expanded by 72.2%, number of award of patents expanded by 55.3% and removal of uses expanded by 37.7%, when contrasted with 2015-16. Homegrown recording of patents applications was 29.2% in 2016-17 when contrasted with 28% in the earlier year, along these lines indicating 1.2% expansion when contrasted with 2015-16

Trends in Design Applications

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	8,337	8,533	9,327	11,108	10,213
Examined	6,776	7,281	7,459	9,426	11,940
Registered	7,252	7,178	7,147	7,904	8,276
Disposal of Applications	7,300	7,226	7,218	8,023	8,332

Source-<http://www.wipo.int/ipstats/en/wipi/index.html>

Trademarks: In this year, 278170 applications for brand name enrollment were recorded at all five areas of Trade Marks Registry. The quantity of utilizations analyzed expanded by 98.7%, though number of enrollments of brand names indicated a wonderful increment of 284.5%. Removal of uses, which incorporates enrolled, won't, pulled back and relinquished applications, expanded by 150% when contrasted with 2015 - 16.

Trends in Trade Marks Applications for Last 5 Years

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	1,94,216	2,00,005	2,10,501	2,83,060	2,78,170
Examined	2,02,385	2,03,086	1,68,026	2,67,861	5,32,230
Registered	44,361	67,876	41,583	65,045	2,50,070
Disposal	69,736	1,04,756	83,652	1,16,167	2,90,444

Source-<http://www.wipo.int/ipstats/en/wipi/index.html>



Copyrights: Between 2016-2017, a total of 16,617 requests were submitted. The total number of applications checked in the reporting year was 16 584; 3596 copyright registers (ROC) were created and 12988 new letters were given.

Copyright Applications in 2016-17

Total applications received	Total application examined	Register Of Copyright (ROC) generated	New discrepant letter issued
16617	16584	3596	12988

Source-<http://www.wipo.int/ipstats/en/wipi/index.html>

Comparative Trends of IPRs granted/registered (and disposed)-

Trend of IPRs granted/ registered:

A comparative trend of IPRs granted/registered during the last 5 years is given below. The figures in brackets give the total disposal of applications.

Comparative Trends of IPRs granted/registered (and disposed)

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Patents	4,126 (9,027)	4,227 (11,411)	5,978 (14,316)	6,326 (20,429)	9,847 (30,271)
Designs	7,252 (7,300)	7,178 (7,226)	7,147 (7,218)	7,904 (8,023)	8,276 (8,332)
Trade Marks	44,361 (69,736)	67,876 (1,04,756)	41,583 (83,652)	65,045 (1,16,167)	25,0070 (2,90,444)
Geographical Indication	21	22	20	26	34
Semiconductor Integrated Layout Design	Transfer of Semiconductor Integrated Layout Design to DIPP/ CGPDTM in 2016-17				Nil
Copyrights	Transfer of Copyrights to DIPP/ CGPDTM in 2016-17				3,596

Source-<http://www.wipo.int/ipstats/en/wipi/index.html>

Publication and pre-grant opposition

86 766 patent applications were released during the reporting year under section 11A and only 206 pre-grant oppositions were issued under section 25(1) of the 1970 Act on Patents, which constitutes approximately 0.23 percent of the applications issued. The specifics of the current and previously submitted proposals for grants are given below:



Year	Publication	Pre-grant opposition
2011-12	27753	193
2012-13	26159	279
2013-14	31413	309
2014-15	26934	247
2015-16	41752	290
2016-17	86,766	206

Source-<http://www.wipo.int/ipstats/en/wipi/index.html>

Comparison of Revenue for the Year 2015-2016 and 2016-17

Year	2015-16 (Rs. lakh)	2016-17 (Rs.lakh)
Patents	39840.40	41003.18
Designs	557.72	551.44
Trade Marks	18316.01	19236.89
GIR	3.32	12.40
PIS/RGNIIPM	27.42	27.60
Total	58744.89	60831.51

Source-<http://www.wipo.int/ipstats/en/wipi/index.html>

STRATEGIES FOR PATENTING

Inventors and investors are actively interested in the development of exclusive, precious and global patents. However, few policies are required to support and secure the patents and develop the patenting mechanism in India and abroad. Include these

- Supportive eco-system for creativity and innovation: university, scientific community, tools, facilities, rewards, teamwork, skills, speeches etc.
- Prior art search, an important element to reveal/review existing research literature.
- Creating awareness of traditional and publicly available knowledge which cannot be patented.
- Patent filing or provisional patent filing.
- Processing of statements, or disclosures that allow others to exploit the innovation (defined precisely based on nature, characteristics and structure).
- Abundance of trademarks, regulations and security in order to discourage confrontations and violations by patent trolls;
- Evaluation of quality of patents to avoid in patent absurdity and piling of in consequential patents
- Assured economic viability and societal value of the patent
- Collaboration among individuals, institutes, and industries in creation of innovative spirit and promotion of patents
- Encouragement of open innovation
- Reverse innovation (Dartmouth) to encourage low-cost goods.



Evolution of Law of Trademarks

Statutory forms of trade mark law only make their appearance late in the second half of the nineteenth century, even though trademarks had been in use for much longer. In the passing of trials the English courts established rights for labels. This has shown to be in satisfactory and statutory registry schemes for trademarks in Europe for a range of purposes.

In the second half of the 19th century, domestic intellectual property systems proliferated in Europe. The era of development was somewhat complicated, and intellectual property law between states was extensively borrowed and pollinated.

The Indian rule of Anglo Marks was born in 1266. The Bakers Labeling Rule was often named. As the name states, bakers wanted to identify the bakers on the bread they sold, which marked the maker. This date of 1275 needs each baker to position its known stamp on his bread. The customs of Winchester. Marks have been registered with the local official are constructed of wood or metal and basic floral and design techniques.

Philosophical Justifications of IPRs-

Why should one person have the exclusive right to possess and use something which all people could possess and use concurrently? The burden on defending the usage of intellectual property is very much among anyone that will minimize the full use. A person may be justified in exempting people from ownership and usage of a physical item if such exclusion is required for the possession and unimpeded use of that entity. No such rationale for proprietary rights and usage of intellectual property is available. One explanation why intellectual property is commonly practiced is because certain individuals find unwarranted in restricting others from intellectual property.

Also, the illegal picture should not sound like stealing with an abstract property. Stealing a physical object means that the property is robbed of another, whereas stealing a physical object doesn't rob the person, but the owner is deprived of future gain.

Historians found that, in the 11th century, the distinction between body and intangible property was first drawn by Stoics in philosophy; then modified to bourgeois intellectual property law in the 18th century. Copyright is of specific positive origin, contrasted with ground and chattel property rights. Before the establishment of a neoliberal legal structure focused on abstract and impersonal legal subject, intellectual property rights undoubtedly existed. However, they formed part of a legal structure which implied specific privileges and freedoms and distinguished status rights.

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