

# Intellectual Property Rights and its development in India

Nupur Makkar  
Research Scholar  
M.D.U, Rohtak

Dr. Moolchand  
Associate Professor  
Dronacharya Govt.College, Gurugram

Seema Gosain  
Assistant Professor  
Sh L.N. College, Rohtak

## Abstract

The intellectual property is a collective term applied to a number of different types of legal rights granted by a country to the holder of intellectual property. Intellectual Property has a long history and it has proved to be a useful tool for the industry. The grant of IPR may be seen as a recognition by the country of the contribution of the innovator to the development of new or improved industrial processes and products. Intellectual property rights granted by the society to individuals and enterprises over their creative works, inventions, literary and artistic work, symbols, names and images. The TRIPS agreement provides for norms and standards in respect of patents, copyrights, trade marks, geographical indications, industrial designs and service marks. The basic aim of IPR is to drive economic growth, encourage innovation, generate breakthrough solutions to global challenges, protect consumers and entrepreneurs. . Moreover, the result of analysis shows that there is positive trend towards the usage of intellectual property rights in the last five years. The dissemination of IPR knowledge and its implementation is most important for any nation, so various awareness programmes have been started by the government to aware people regarding the usage of intellectual property rights. Further, status of India among several countries has been raised regarding IPR usage.

## Keywords:

Intellectual Property Rights, TRIPS, patents, trademarks, layout design, geographical indications.

## Introduction

Intellectual property is the creation of human intellect, thus designated as “intellectual property”. The long chain of small or big innovations—be it changes in designs or improvements that make the product look or perform the way it does today. Intellectual property rights are the rights granted by society to individuals and enterprises principally over their creative works, inventions, literary and artistic works and symbols, names, images and designs used in commerce. The creator gets the right to prevent others from making unauthorised use of their property for a limited period. In the global economy, particularly when the world has become boundless and access to information is at the touch of the key, it has become imperative to protect the intellectual property from piracy, copy or gray market. Intellectual property rights is a collective term applied to a number of different types of legal rights granted by a country to the holder of intellectual property. Their common property is that they stem from certain kinds of intellectual efforts and ingenuity. In technological field, the grant of IPR may be seen as a recognition by the country of the contribution of the innovator to the development of new or improved industrial processes or products.

## Licensing IPR

Licensing IPR is an effective tool for achieving business goals. A licensing agreement is a partnership b/w an intellectual property right's and another who is authorised to use such rights in exchange for an agreed payment. The various licensing agreements are as follows:

Technology licensing agreement

Trademark licensing agreement

Copyright licensing agreement

All of these agreements often part of one single contract since in transfers of this nature many rights are involved and not simply one type of intellectual property rights. All of these mechanisms either on their own or in combination will provide an enterprise, a wide variety of possibilities in conducting business in own country. As an intellectual property owner and a licensor, the enterprise can expand its business to the frontiers of partner's business and ensure a steady stream of additional income. As a licensee, enterprise can manufacture, sell, import, export, distribute and market various goods or services which it may be prevented from doing otherwise.

In the international context, a formal licensing agreement is possible only if the intellectual property right is also protected in the other country. If intellectual property is not protected in such other country or countries then it cannot be able to license it, but also have no legal right to put any restriction on its use by anyone else.

### **Need For Intellectual Property Rights**

Intellectual property (IP) contributes enormously to our national and state economies. Dozens of industries across our economy rely on the adequate enforcement of their patents, trademarks, and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products. We believe IP rights are worth protecting, both domestically and abroad. This is why:

#### **Intellectual Property Creates and Supports High-Paying Jobs**

- IP-intensive industries employ over 55 million Americans, and hundreds of millions of people worldwide.
- Jobs in IP-intensive industries are expected to grow faster over the next decade than the national average.
- The average worker in an IP-intensive industry earned about 30% more than his counterpart in a non-IP industry
- The average salary in IP-intensive industries pay \$50,576 per worker compared to the national average of \$38,768.

#### **Intellectual Property Drives Economic Growth and Competitiveness**

- America's IP is worth \$5.8 trillion, more than the nominal GDP of any other country in the world.
- IP-intensive industries account for over 1/3– or 38%– of total U.S. GDP.
- These industries also have 72.5% higher output per worker than the national average, valued at \$136,556 per worker.
- IP accounts for 74% of all U.S. exports- which amounts to nearly \$1 trillion.
- The direct and indirect economic impacts of innovation are overwhelming, accounting for more than 40% of U.S. economic growth and employment.

#### **Strong and Enforced Intellectual Property Rights Protect Consumers and Families**

- Strong IP rights help consumers make an educated choice about the safety, reliability, and effectiveness of their purchases.
- Enforced IP rights ensure products are authentic, and of the high-quality that consumers recognize and expect.
- IP rights foster the confidence and ease of mind that consumers demand and markets rely on.

#### **Intellectual Property Helps Generate Breakthrough Solutions to Global Challenges**

- Nearly all of the 300 products on the World Health Organization's Essential Drug List, which are critical to saving or improving people's lives around the globe, came from the R&D-intensive pharmaceutical industry that depends on patent protections.
- Innovative agricultural companies are creating new products to help farmers produce more and better products for the world's hungry while reducing the environmental impact of agriculture.
- IP-driven discoveries in alternative energy and green technologies will help improve energy security and address climate change.

#### **Intellectual Property Rights Encourage Innovation and Reward Entrepreneurs**

- Risk and occasional failure are the lifeblood of the innovation economy. IP rights incentivize entrepreneurs to keep pushing for new advances in the face of adversity.
- IP rights facilitate the free flow of information by sharing the protected know-how critical to the original, patented invention. In turn, this process leads to new innovations and improvements on existing ones.
- American's Founding Fathers so recognized the importance of innovation and ensured that strong IP rights for authors and inventors are protected in the U.S. Constitution, thus making America the world's entrepreneurial leader— a fact borne out by the overwhelming number of patents, copyrights and trademarks filed by the U.S. annually.

Bringing all of these important and diverse points together is the fact that protecting IP is a non-partisan issue that is shared by a broad coalition of interests. These rights are embraced by all sectors of industry—small, medium and large companies alike—and by labor organizations, consumer groups, and other trade associations we bring together.

### **Kinds of intellectual property rights**

The most common types of IPR are copyrights, patents, trademarks, Geographical indication, Industrial designs.

**1. Copyrights:** Copyright is a unique form of intellectual property. The right which a person acquires in a work, which is the result of intellectual labour. The primary function of copyright law is to protect the fruits of man's work, labour, skill or test been taken by other people. The copyright Act 1957, contains the legal provisions made to facilitate a creative individual to retain the ownership or the creative piece of work. It may relate to an article, a book, a drawing, a painting or for that matter any creation that is intellectually oriented and displays the exclusive competence of the individual, agency and a company. For any work to enjoy copyright protection, it must be original work. Copyright owners have the reproduction rights, performing rights, recording rights, motion picture rights, translation and adaptation rights and broadcasting rights. Copyright provides protection up to 50 years. It not only provides the legal right of ownership but is an estate in itself. The copyright law allows certain fair usage of the material by the users. The holder of the copyright may sell, lease, permit to copy a part or the whole of his creation to many individuals or companies on payment of specific amount against the use of the material.

#### Why to protect copyright?

Copyrights are essential to human creativity. It gives the creators incentives in the form of recognition and fair economic rewards. Under the system of rights, creators are assured that their works can be disseminated without fear of unauthorised piracy. This helps to increase access to and enhance the knowledge all over the world.

#### Trends in copyrights in India:

A total number of 16617 applications were received during 2016-2017. During the reporting year, total number of applications examined was 16584 whereas 3596 Register of Copyright (ROC) were generated and 12988 new discrepant letters were issued.

#### Copyright Applications in 2016-17

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

**2. Patents:** Patents rights are exclusive rights given to inventors. Any invention is patented in the name of the inventor who subsequently may give the rights for commercial exploitation. Inventions can be patented only if they are new, capable of industrial applications, industrial designs or original aesthetic creation determining the appearance of industrial products. Under patent act 1970, a patent is granted by the Controller to the inventor for a period of 20 years. This act conveys to the inventor substantive rights and secures to him the valuable monetary rights which he can enforce for his own advantage either by using it himself or by conveying the privileges to others.

The following products or the processes are excluded from being patented:

- Diagnostic, Therapeutic and surgical methods for the treatment of humans or animals.
- Plants and animals other than micro-organisms
- Biological processes for the production of plants and animals.

#### Patents- A route to Profit making

Successful business is the consequence of innovativeness and creative ideas. Ideas by themselves have little values. They need to be developed so as to enable organisations to reap the benefits of innovation and creativity. IP, patents in particular, can be crucial for turning innovative ideas and inventions into competitive products that significantly increase profit margins. Patents can be used to earn royalty revenue by licensing patented inventions to other firms that have the capacity to commercialise them. This may not only save money but also provide a stream of income from invention.

#### Why to protect patent?

Possibilities to license, sell or transfer technology will be severally hindered. Without patents, transfer of technology would be difficult if not impossible. Transfer of technology, presupposes ownership of a technology which can only be effectively obtained through appropriate patents. Moreover, wherever negotiations do take place for transferring a given technological development without IP protection over the technology in question, parties are suspicious of disclosing their inventions.

### Recent Developments in India:

- India acceded to the Paris Convention and Patent Cooperation Treaty
- The Government of India notified 130 countries as convention countries for the purpose of claiming priority, it includes 20 non-Paris Convention countries.
- The government of India has notified 150 Paris Convention countries as convention countries for the purpose of claiming priorities in respect of patent and trademarks.

### Trends in Patents Applications in India:

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	43674	42951	42763	46904	45444
Examined	12268	18615	22631	16851	28967
Granted	4126	4227	5978	6326	9847
Disposal	9027	11411	14316	21987	30271

During 2016-17, the number of patent applications examined increased by 72.2%, number of grant of patents increased by 55.3% and disposal of applications increased by 37.7%, as compared to 2015-16. Domestic filing of patents applications was 29.2% in 2016-17 as compared to 28% in the previous year, thereby showing 1.2% increase as compared to 2015-16.

**3. Trademark:** A trademark is defined as any word, name, symbol or device that is adopted and used by manufacturer to identify his goods and distinguish them from those manufactured by others. Trademark may consist of one or more distinctive words, letters, slogans, names, numerals, figurative elements, geometrical shapes and combinations of colours. The basic purpose of trade mark is to distinguish the laws of most countries provide that any product to be marked should be distinguished. Trademark in India is governed by Trademark Act, 1999. Trademark provide exclusive right for 10 years to use distinctive signs.

Trademark, also called a brand name, by which people can speak of the product. A trademark will include some pictorial or design element. The Logo design is an extremely important element in the successful marketing of a product. The creation of Logo is necessary that a number of firms have been established whose primary purpose is to design of logos, packages and corporate identity. Designers attempt to forego a compatible relationship among the package design, logo and advertising for the product.

### Why to protect Trademark?

There are different kinds of marks than can be legally registered for protection. A trade mark identifies who makes a given product. A certification mark is usually given by a trade association or other kind of governing body and affirms that product meet its standards. Organisation can themselves register a collective mark which identifies them as a group that works collectively together. Trade marks are usually followed by a word (R) which means that mark has been registered and not copied or used by anyone else without permission.

### Trends in Trade Marks Applications In India

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	194216	200005	210501	283060	278170
Examined	202385	203086	168026	267861	532230
Registered	44361	67876	41583	65045	250070
Disposal	69736	104756	83652	116167	290444

In this year, 278170 applications for trademark registration were filed at all five locations of Trade Marks Registry. The number of applications examined increased by 98.7%, whereas number of registrations of trademarks showed a phenomenal increase of 284.5%. Disposal of applications, which includes registered, refused, withdrawn and abandoned applications, increased by 150% as compared to 2015 -16.

**4.Geographic Indication:**The aim of geographic indication is to inform the consumer that a good has the quality reputation or other characteristics which is essentially attributable to its geographical origin.According to the TRIPS agreement,the countries shall not permit registration of trademarks containing a misleading indication of geographic origin of goods.A geographical indication consists of the name of the place of the origin of goods.A sign functions as a geographic indication is a matter of national law and consumer perception.Geographical indication may be used for a wide variety of agricultural products.

#### Trends in Geographical Indication Applications In India

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	24	75	47	17	32
Examined	30	42	60	20	28
Registered	21	22	20	26	34

During the reporting year, 32 applications were filed and 28 applications were examined. A total number of 34 Geographical Indications were registered. The trends in GI applications filed, examined and registered during the last five years are given below

**5.Industrial Designs:**Industrial designs cover the ornamental features of the products including shapes,lines,motives and colors or any 3-dimensional forms which give a special appearance to a product or handicraft.Industrial designs are protected mainly in consumer articles of which textiles,leather and leather products are examples.The designs thus need to be either novel or original to qualify for protection.The owner of the protected designs has exclusive rights to its use and even can third parties who have not obtained his or her consent from making,selling or importing articles bearing or embodying a design which is a copy or substantially a copy of the protected design.They protect the ornamental or aesthetic aspects of a useful article,which usually appears to the sense of sight or touch can be reproduced in significant quantities.

#### Why to protect industrial designs?

Industrial design can be protected through registration.In many countries,no search is made and no examination as to substance is carried out prior to registration of the industrial designs.Some countries provide for a search and examination in the event that the industrial design application has been published and a third party has objected to its registration by giving note of opposition.A general rule to qualify for protection through industrial design,the design must be new or original.The duration of protection from differs from country to country.While the usual term of protection is 15years.Renewal of protection is usually subject to the payment of renewal fee.however,protection of industrial designs,once granted is not subject to cancellation if they are not actively used.

#### Trends in Design Applications In India

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	8337	8533	9327	11108	10213
Examined	6776	7281	7459	9426	11940
Registered	7252	7178	7147	7904	8276
Disposal of applications	7300	7226	7218	8023	8332

During 2016-17, 10213 design applications were filed. The number of applications examined increased by 25.7% and number of design registrations increased by 3.1% in 2016- 17 as compared to 2015-16.

**7.Service Marks:** Service marks provides protection against signs which are considered a reproduction,initiation or translation of that mark provided that the are likely to cause confusion in the relevant sector of the public.Service marks are usually protected,irrespective of whether they are registered or not,in resoect of goods or services which are identical with,or similar to,those for which they have gained their reputation.There are also certain conditions protected for dissimilar goods and services.Service marks may take the advantage of WIPO Joint,Recommendation on the protection of service marks.

#### Why to protect Service Marks?

Many countries protect service marks in accordance with their international obligations under the Paris Convention for the Protection on Industrial Property and the agreement on Trade Related Aspects of Intellectual Property Rights(TRIPS).Consequently, not only big companies but also SMEs may have good chance of establishing enough goodwill with customers so that their marks will be recognised as service marks and acquire protection without registration.It is nevertheless advisable to seek registration,taking into account that many countries provide for an extended protection of registered service marks against diluton i.e reputation of the mark being weakened by the unauthorised use of mark by others.

#### Revenue & Expenditure through IPR In India:

During the year 2016-17, the total revenue generated was Rs. 608.31 crore, which is about 4% higher than that of the previous year, while total expenditure was only Rs. 129.8 crore. The total revenue generated by the Patent and Design Office was Rs. 415.54 (Patents Rs. 410.03 & Designs Rs. 5.51crore), whereas the Trade Marks Registry generated a revenue of Rs.192.3 crore, GIR Rs. 0.12 Crore and PIS & RGNIPM Rs. 0.276 crore. The details of revenue received and expenditure with regard to Intellectual Property (IP) administration for the year 2016-17 as compared to the last year are given below in table.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

#### IP- Awareness Activities In India :

**Awareness Programmes:** In continuation with the goal of creating awareness on Intellectual Property and Innovation Management, R&D Institutions and universities and NRDC have conducted IP related programmes pan India in association with Intellectual Property Offices. 41 programmes have been successfully conducted and approximately 5000 participants (university students/lecturers and scientists from research organizations) have attended the programme and they have been sensitised regarding importance of protection IPRs.

The list of universities/organisations where the programmes have been conducted is as follows:

Industry Associations	University	College	MSME	Total
CII	01	04	04	09
PHD Chambers	01	04	04	09
CWEI	01	04	04	09
FICCI	01	04	04	09
ASSOCHAM	NIL	02	03	05

The objective was to strengthen and consolidate the efforts for creating more awareness on intellectual property rights at the universities/research organization level. The programs specifically targeted students, research scholars, lecturers and professors and intended to contribute towards imparting awareness at this stage.

( B). World IP Day celebrations:

**National Intellectual Property Awards 2016-17** are conferred every year on the occasion of World Intellectual Property Day by the Office of CGPDTM and DIPP in association with CII in the field of patent, trademark, designs and geographical indications. The objective of National Intellectual Property (IP) Awards is to recognize and reward individuals and enterprises for their creations and commercialization of IP which have contributed to harnessing the country's intellectual capital and creating IP eco-system that boosts creativity and innovation. This year the programme was conducted on 26th April 2016 at New Delhi. Smt. Nirmal Sitharaman, Minister of Commerce and Industry, who was the Chief Guest on the occasion of the Awards ceremony, graced the function and presented the awards to the IP award winners. On the occasion, three WIPO Awards which are annually given by the World Intellectual Property Organisation (WIPO) to the distinguished achievers in IP and linked to appropriate categories of National IP Awards, were also conferred along with National IP Awards 2016 on the winners in respective categories. National IPR Conference The National IPR Conference on "Aligning IP with business strategy" was organized by CII in association with Department of Industrial Policy and Promotion (DIPP) and Intellectual Property Office (IPO), on the occasion of National IP Awards 2016.

**Federation of Indian Chambers of Commerce and Industry (FICCI)**, Government of India, organised a conference on 'Intellectual Property: A Key Enabler for Strengthening India's Business Landscape' on 25th April 2016 in New Delhi. Mr. Ramesh Abhishek, Secretary, DIPP, Ministry of Commerce and Industry, Government of India, Mr. Rajiv Aggarwal, Joint Secretary, DIPP, Ministry of Commerce and Industry, Government of India, Mr. O P Gupta, Controller General of Patents, Designs and Trademark, Government of India, and Dr. A Didar Singh, Secretary General, FICCI, were the key dignitaries who attended the conference.

## Conclusion

Intellectual property allows entrepreneurs to own their creativity and innovation in the same way that they can own physical property. The entrepreneur owning IP, can control and be rewarded for its use. IP Laws encompass four separate and distinct types of intangible property, namely-patents, trademarks, copyrights, service marks, industrial designs and geographical indications. The duration of protection differs from country to country. Copyrights protects the right for a period of 50years, trademarks provides exclusive rights for 10years, Industrial design provides protection for 10years and patents provide protection for 20years in India. While, licensing of IPR is an effective level for achieving business goals. Moreover, the result of analysis shows an upward trend regarding the usage of IPR, the number of applications filed, granted and examined has been increased upto 25.7% from 2012 to 2017. The total revenue generation from patent, trademarks and industrial design in 2016-17 was Rs. 608.31 crore, which is about 4% higher than that of the previous year, while total expenditure was only Rs. 129.8 crore. For promoting IPR in India for the protection of consumers and entrepreneurs, lots of awareness programmes have been started by Government of India, FICCI and NRDC.

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