



Intellectual property rights protection under Indian law.

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Abstract

Intellectual property rights ("IPR") refer to the legal ownership of intangible mental creations such as inventions, literary and artistic works, and commercial symbols, names, and pictures. IPR in India is critical for economic growth and competitiveness, and the government has made great progress in recent years to modernize its IPR framework. The three basic categories of IPR are trademarks, patents, and copyrights. The Indian government has implemented different laws and regulations to keep IP infringement and enforcement in India in check.

IPRs have taken on substantial importance in India's legal landscape. India has ratified the Accord on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), which is part of the agreement that established the World Trade Organization ("WTO"). As a result, Indian IP legislation, enforcement mechanisms, and dispute resolution methods are now fully TRIPS-compliant. The Trademarks Act, 1999 oversees trademark laws and regulations in India, while the Patents Act, 1970 covers patent grants for inventions. The Indian government has also established specialized organizations, such as the Intellectual Property Appellate Board ("IPAB") and the National Intellectual Property Rights Policy, to monitor IPR law enforcement via IP litigation in India and to foster innovation and creativity in the country. Despite these efforts, there are still issues and concerns about effective IPR infringement and enforcement in India.

Keywords:

IPR-Intellectual property rights, WTO- World trade organization, WIPO-the world Intellectual property organisation.GI- Geographical Indication, TRIPS- Trade-Related Aspects of Intellectual Property Rights.

Introduction

The intellectual property's concept is not a new one as Renaissance northern Italy is thought to be the framework of the intellectual property system. A Venetian Law of 1474 made the first methodical attempt to protect inventions in a form of patent, which allowed right to an individual for the first time. The invention of the printing press and

movable type by Johannes Gutenberg around the year 1450, helped in the origin of the first copyright system in the world.

By the end of 19th century, new creative ways of manufacture aided caused large-scale industrialization accompanied by fast growth of cities, the investment of capital, expansion of railway networks, and nationalism led many countries to establish their modern Intellectual Property laws. In this point of time, the International Intellectual Property system also began to take shape with the creation of the Paris Convention for the Protection of Industrial property in 1883 and the Berne Convention for the protection of Literary and Artistic Works in 1886. The evidence underlying Intellectual Property throughout its history has been that the rewards and credits related with ownership of inventions and creative works encourage further creative and inventive activity that, motivates economic growth.

The Convention establishing the World Intellectual Property Organization (1967) gives the following list of the subject matter protected by intellectual property rights:

- Trademarks, service marks, and commercial names and designations;
- Inventions in all fields of human endeavour;
- Industrial designs;
- Protection against unfair competition; and
- “All other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”
- Literary, artistic and scientific works; scientific discoveries;
- Performances of performing artists, phonograms, and broadcasts;

The role and importance of the intellectual property protection has been formed in the Trade-Related Intellectual Property Systems (TRIPS) Agreement, with the establishment of the World Trade Organization (WTO). At the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty in 1994, it was negotiated.

Intellectual property, in basic terms, refers to specific types of intangible assets which have been created (owing to application of one’s mental faculties). The requirements for obtaining registration for intellectual properties may vary as per the type of asset under consideration. The ownership of intellectual property rights affords various rights for protection and commercialization of such assets (which are protected by the law of intellectual property).

Intellectual property rights are classified in a universal manner across the globe (with minor jurisdiction-specific changes in terminology as well as requirements for registration). In India specifically, the different forms of intellectual property rights are – Copyright; Trademarks; Patents; Geographical Indications; Designs; Semiconductor integrated circuit layouts and Plant varieties.

The different types of Intellectual Property Rights in India

1. The Copyrights Act, 1957 (“Copyright Act”)

Copyright protects the expression of an idea rather than the idea itself. Under section 13 of the Copyright Act, a protection under copyright can be obtained for ‘original literary, dramatic, musical and artistic works; cinematograph films; and sound recording’. Interestingly, a copyright protection can also be obtained for computer programmes. A

copyright is an ‘exclusive right’ that is granted to a person to do or authorize to carry out certain activities with regards the copyrighted work. For eg: in case of a literary, dramatic or musical work, the owner (or any person authorized by the owner) is permitted to perform the work; make translation(s) of such work; make adaptations of the work, etc.

The Copyright Act, under section 17, clearly states that the author of the original work (for which protection under copyright has been obtained) shall be the first owner of the work. Further, the owner has the right to license the copyright of their work to third-parties through a written agreement.

In case of published literary works, dramatical works and artistic works, copyright protection shall be provided to such works for a term of 60 (sixty) years in addition to the life of the author.

Incidental to the protection awarded under a copyright, the Copyright Act, also confers certain special rights on the author, under section 57. An author/ owner of the copyright work, even after assigning the work to another person (wholly or partially), has the right to ‘claim authorship of the work’ and the right to ‘claim damages’ with respect to any ‘distortion, mutilation or modification’ of the author’s original work, in the event such distortion or any other act is damaging to the author’s reputation.

2. The Trade Marks Act, 1999 (“Trade mark Act”)

The Trade Marks Act, under section 2(zb) defines a ‘trade mark’ as ‘a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours’. In simpler words, a trademark provides protection for symbols, colours, shapes, words, etc. representing and relating to a good or a service.

Interestingly, a trademark application need not be filed in respect of marks which are in use (but can also be filed in respect of marks which are intended to be used in the future). The primary requirements for registration of a trademark includes that it should consist of a mark capable of distinguishing the goods/services from those of others and that it is capable of graphical representation. The Trade Marks Act provides for absolute grounds of refusal of registration such as – (a) the mark not having a distinctive character; (b) a mark being deceptive and confusing to the public; (c) if a mark is hurtful to religious sentiments; (d) the mark is offensive, scandalous, or obscure, etc. In addition to the absolute grounds of refusal, the statute also provides for relative grounds of refusal of registration.

Further, India is a signatory to the Madrid Protocol under which a trademark can be applied for and registered internationally. However, the prerequisite for filing and registering an international application (under the Madrid Protocol) in a foreign jurisdiction is that the mark needs to be first filed in India.

A protection afforded from a trademark registration is imperative as it protects the brand name, logo, sound, shape, etc., and distinctively identifies the goods/services to the brand bringing uniqueness to the mark. Also, the validity of a trademark registration is for an initial period of 10 (ten) years which can renewed perpetually for successive period of 10 years (subject to timely filing of renewal applications).

3. The Patents Act, 1970 (“Patents Act”)

A ‘Patent’ is an intellectual property right which protects any new invention. It is an exclusive right that protects the rights of the inventor and prevents other people to unauthorizedly use and misappropriate the registered patent.

A patent is granted for a term of 20 (twenty) years from the date of filling of the application. It is important to note that patent for a new invention is registered only if the invention is ‘novel’ and ‘original’ i.e. it has not been introduced in the public domain in India or anywhere in the world; is ‘capable of industrial application’ which refers to the ability of the invention to be used in an industry; and is an invention that requires to employ a process of ‘inventive steps’, which is defined as ‘a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art’, under the Patents Act.

The Patents Act bestows each inventor, whose patent has been registered, with certain rights, namely:

- With respect to a patent for a product, the right to prevent third parties from using, selling, making, importing, etc. the product without prior consent; and
- With respect to a process for which a patent is obtained, the right to prevent third parties from using, selling, offering, etc. a product obtained from that process, without the prior consent of the original inventor.

Further, India is a signatory to the Patent Cooperation Treaty (PCT) which permits an applicant to file an application for registration of an international patent. Upon filing such application, an inventor can obtain patent protection in multiple countries (members of PCT), simultaneously.

4. The Design Act, 2000 (“Design Act”)

A ‘design’ under the Designs Act [section 2(d)] means and includes ‘only the features of shape, configuration, pattern, ornaments or composition of lines or colours, applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to an are judged solely by the eye’.

An application for registration of an industrial design is to be made to the Controller- General of Patents, Designs and Trade Marks. However, a design shall only be considered for registration if – (a) it is novel and an original innovation i.e., it has not been produced before or reproduced by anyone; (b) it has not been disclosed to the public anywhere in India or outside the jurisdiction of India; and (c) it can be easily distinguished from other known designs. Furthermore, once a design is registered, the registered proprietor is afforded protection for an initial period of 10 (ten) years, which is extendable (upon filing an application for extension) for a further period of 5 (five) years.

5. The Geographical Indications of Goods (Registration and Protection) Act, 1999 (“GI Act”)

Many goods in India are widely popular owing to their place of origin. For instance, ‘Darjeeling tea’ is unique and popular owing to many factors including but not limited to its origin, the skill set of the tea farmers of Darjeeling and the weather prevailing in that area. Other such examples of products which have a bearing of the place of origin (or factors specific to the place of origin includes Banaras Saree; Basmati Rice, etc).

A ‘Geographical Indication’ is defined as ‘an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality as the case may

be'. The GI Act covers only goods such as agricultural goods, food stuff, handicraft goods, manufactured goods, and natural goods.

An application for registering a good under the GI Act requires a statement explaining how the geographical indication affects to the origin of the good in terms of the quality, characteristics, and reputation of the good; the class of goods; particulars with regards the appearance of the geographical indication and the map of the territory/area/country where the good has originated.

A registered geographical indication is awarded protection for a term of ten (10) years with the option of renewing and extending such protection for further tenures of ten (10) years from the date of expiration of the original registration.

6. The Protection of Plant Varieties and Farmer's Rights Act, 2001 ("Plant Varieties Act")

The objective of the Protection of Plant Varieties and Farmer's Right Act, 2007, is to recognize rights of Indian farmers and to provide protection to plant varieties in order to encourage the growth and development of more plant varieties.

In 1994, India became a member to the Trade Related Aspect of Intellectual Property Rights Agreement (TRIPS) under which all members are required to accommodate and provide for the protection of plant varieties [Article 27(3)(b) of TRIPS]. All plant varieties that have been registered and awarded protection are entered and recorded into the National Register of Plant Varieties.

The Plant Varieties Act permits any breeder, farmer and any person as authorized, to apply for registration of a new plant variety. A new plant variety is registrable if it satisfies the conditions of 'novelty, distinctiveness, uniformity and stability'. To elaborate, the condition of novelty requires that at the date of filing the application (for protection), the plant variety must not be sold. Further, distinctiveness encompasses the requirement of having at least one distinguishing factor from all other existing and protected plant varieties. The requirement of uniformity means that all essential characteristics of the plant variety must be uniform. Lastly, the plant variety being registered for is required to be 'stable', meaning that the essential characteristics of the plant variety must remain unchanged after repeated propagation of such plant variety.

The validity of registration for the protection of a plant variety is for a period of nine (9) years in the case of trees and vines, and for a period of six (6) years in the case of crops, with the option of renewal of such registrations.

7. The Semiconductor Integrated Circuits Layout- Design Act, 2000 ("SICLD Act")

A 'semiconductor integrated circuit' is defined as 'a product having transistors and other circuitry elements which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function'.

Under the SICLD Act, all layout-designs capable of being registered are required to be original; commercially unexploited anywhere in India and in any convention countries; inherently distinctive and inherently distinguishable from other registered layout- designs. An application for registration of design layouts has to be in writing and is required to be filed before the Registrar in the Semiconductor Integrated Circuits Layout-Design Registry present in the territorial limits of the principal place of business of the applicant.

Further, the protection afforded to registered layout-designs is for a period of 10 (ten) years.

Conclusion

To conclude, the various modifications and amendments to earlier Intellectual Property Laws are an indication of India's move towards new IPR regime so as to prepare ourselves for the global trade competition.

In India, there are different forms of intellectual property rights, allowing a person to obtain protection for their assets. India has actively become party to many conventions and treaties in order to afford international recognition and protection for intellectual property rights recognized in India. Some conventions have led India to introduce new enactments such as the Plant Variety Act, in order to award protection to goods that represent the heritage, agricultural background of India.

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