

Intellectual Property

Archit Batra¹

The term intellectual innovation has been utilized for just about one hundred and fifty years to allude to general zone of law that incorporates copyright, patent, structures, and trademarks, and in addition a large group of related rights. Protected innovation law goes for defending makers and different makers of scholarly merchandise and ventures by allowing them certain time-restricted rights to control the utilization made of those preparations. Those rights don't have any significant bearing to the physical item in which the creation might be epitomized yet rather to the scholarly creation all things considered. Licensed innovation security has for quite some time been a region of enthusiasm for analysts, understudies, arrangement producers and experts. In the present time Intellectual property rights have turned out to be basic subject in every one of the controls of study. It is essential for the legal counselors, judges, law understudies as well as specialists, researchers, craftsmen, professionals, agriculturists, and additionally scientists moreover.

Protected innovation is viewed as an image of national riches that can support the advancement of the economy of the nation. High creation of licensed innovation materials ensured by protected innovation law will go about as stimulants to the improvement of the economy of the nation. Be that as it may, the achievement of the protected innovation arrangement of a nation depends particularly on the general population's dimension of mindfulness. To discover the consciousness of understudies about the idea of IPR Law and to recommend conceivable approaches to maintain a strategic distance from it, a spellbinding report was led. The destinations of the examination were to inspect the dimension of specialist's learning about idea of IPR, laws securing IPR, information about explicit IPRs, and impact of IPR Laws and to recommend conceivable approaches to anticipate unapproved utilization of IPRs.

¹ Student, Amity University

Watchwords: protected innovation law, licensed innovation rights training, mindfulness, duplicate right, patent, exchange marks.

Presentation

Protected innovation rights resemble some other property right. They permit makers, or proprietors, of licenses, trademarks or copyrighted attempts to profit by their very own work or interest in a creation. These rights are delineated in Article 27 of the Universal Declaration of Human Rights, which accommodates the privilege to profit by the insurance of good and material interests coming about because of origin of logical, scholarly or imaginative creations. Licensed innovation law makes property rights in a wide and assorted scope of things from books, PC programs, sketches, films, transmissions, and exhibitions, through to dress structures, pharmaceuticals, hereditarily changed creatures and plants. Licensed innovation secures utilizations of thoughts and data that are of business esteem. Licensed innovation Law manages the creation, use, and misuse of mental or imaginative work.

In the present time Intellectual property rights have turned out to be basic subject in every one of the controls of study. It is most vital for the legal advisors, judges, law understudies as well as designers, researchers, craftsmen, experts, ranchers, and analysts too. At the International dimension, WIPO, a specific Agency of the United Nation assume a critical job in advancing the educating of IP laws in colleges. In 1981, the International Bureau of WIPO started the foundation of a non-administrative association called ATRIP (International Association for the Advancement of Teaching and Research in Intellectual Property) Further it built up the WIPO World Wide foundation (WWA) so as to filling in as an instructive establishment for educating, preparing and inquire about in IP.

History of licensed innovation right in India

George Alfred Depenning should have made the primary application for a patent in India in the year 1856. On February 28, 1856, the Government of India declared enactment to give what was then named as "select benefits for the consolation of innovations of new produces" i.e. the

Patents Act. Copyright law entered India in 1847 through a sanctioning amid the East India Company's routine. In 1914, the then Indian governing body ordered another Copyright Act which just broadened most bits of the United Kingdom Copyright Act of 1911 to India. It did, be that as it may, make a couple of minor changes. The 1914 Act was proceeded with minor adjustments and changes till the 1957 Act was brought into power on 24th January, 1958.

The primary enactment in India identifying with licenses was the Act VI of 1856. The Act was in this manner canceled by Act IX of 1857 since it had been authorized without the endorsement of the sovereign. The Act of 1859 gave insurance to creation just and not for structures though United Kingdom had been shielding plans from 1842 onwards. To expel this lacuna, the 'Examples and Designs Protection Act' (Act XIII) was passed in 1872. This Act corrected the 1859 Act to incorporate any new and unique example or plan or the utilization of such example to any substance or article of fabricate inside the significance of 'new make'. The Act XV of 1859 was additionally revised in 1883 by XVI of 1883. In 1911, the Indian Patents and Designs Act, 1911, (Act II of 1911) was gotten supplanting all the past enactments on licenses and structures. After Independence, it was felt that the Indian Patents and Designs Act, 1911 was not satisfying its target. In 1957, the Government of India designated Justice N. Rajagopala Ayyangar Committee. In 1967, a revised bill was acquainted which was alluded with a Joint Parliamentary Committee and on the last suggestion of the Committee, the Patents Act, 1970 was passed. Prior to 1940 there was no official trademark Law in India. Numerous problems arouse on infringement, law of passing off etc. and these were solved by application of section 54 of the Specific Relief Act, 1877 and the registration was obviously adjudicated by obtaining a declaration as to the ownership of a trademark under Indian Registration Act 1908. To overcome the aforesaid difficulties the Indian Trademarks Act was passed in 1940. The replacement to this act was the Trademark and Merchandise Act, 1958. This Act was to provide for registration and better protection of Trademarks and for prevention of the use of fraudulent marks on merchandise. This Law also enables the registration of trademarks so that the proprietor of the trademark gets legal right to the exclusive use of the trademark. The objective of this act was easy registration and better protection of trademarks and to prevent fraud. The repeal of the Trademarks and Merchandise Act gave rise to the Trademark Act 1999 this was done by the Government of India so that the Indian Trademark Law is in compliance with the TRIPS

obligation on the recommendation of the World Trade Organization. The object of the 1999 Act is to confer the protection to the user of the trademark on his goods and prescribe conditions on acquisition, and legal remedies for enforcement of trademark rights.

PATENT AMENDMENTS IN INDIA AFTER TRIPs AGREEMENT

TRIPs provided a three-stage frame for countries such as India which did not grant product patent rights in pharmaceuticals, when TRIPs came into force on 1 January, 1995:

1. Introduction of a facility (“mail box”) from January 1, 1995 to receive and hold product patent applications in the fields of pharmaceuticals (and agricultural chemicals). Such applications will not be processed for the grant of a patent until the end of 2004. But Exclusive Marketing Rights (EMRs) can be obtained for that

application if a patent has been granted in some other WTO member country and the application has not been rejected in the country as not being an invention.

2. Compliance, from January 1, 2000 with other obligations of TRIPs, namely, those related to rights of patentee, term of patent protection, compulsory licensing, reversal of burden of proof and so on, and

3. Introduction of full product patent protection in all fields including pharmaceuticals from January 1, 2005. All the product patent applications held in the mail box are also required to be taken up for examination from January 1, 2005.²

An Ordinance was actually introduced a day before TRIPs came into effect. But the Ordinance lapsed because it could not be followed up with the necessary Bill and it was passed in the Lok Sabha. But in the Rajya Sabha, where the opposition was in a majority, the Bill was stalled (the Bill was referred to a Parliamentary Select Committee) and the report could not be submitted by the time the Parliament was dissolved in May 1996, and India had to comply with the requirements of the TRIPs agreement by April 1999. Again a Bill was introduced, and this time it was passed in the Rajya Sabha on 22 December 1998, but the Bill could not come up for consideration in the Lok Sabha. Ultimately an Ordinance was promulgated followed by an Act

² See “Amendments to the Patents Act, 1970: Background Note,” Department of Industrial Policy and Promotion, Ministry of Commerce, New Delhi. See also the website of the Controller General of Patents, Designs and Trademarks, Government of India (www.patentoffice.nic.in).

passed in March 1999.³ The Patents (Amendment) Act, 1999.⁴ amended the Patents Act, 1970 with retrospective effect from 1 January, 1995 to implement mail box facilities and EMRs. Another Bill was introduced in the Rajya Sabha in December, 1999 to bring about the other changes in the patent regime as mentioned under (2) above. This Bill too faced similar hurdles and could not be passed immediately. The Bill had to be referred to a joint parliamentary committee. This committee consulted a large number of people including, lawyers, economists, industry representatives, NGOs and others. Several objections were raised. Some of these were incorporated and the committee submitted a revised Bill in December, 2001 (Joint Committee 2001). This Bill with a few changes was approved by the Parliament in May, 2002. The amended Act (The Patents Amendment), 2002 came into force on May 20, 2003.

The Patents (Amendment) Act, 2002 made 64 alterations to the Patents Act, 1970 identifying with terms of licenses (20 years), exemptions to restrictive rights, obligatory authorizing, etc. A Third Amendment was vital before the finish of 2004 to supplant the EMR framework and to present item patent assurance as referenced under (3) above. A bill (The Patents (Amendment) Bill, 2003) was presented in the parliament in December 2003. In spite of the fact that just two conditions were important to supplant the EMR framework and present item licenses in all fields including pharmaceuticals, the bill really included 70 different provisos. Before this bill could be passed, Lok Sabha was disintegrated. After the decisions, the new government which came into power in May 2004 refereed the issue of the Third Amendment to a Group of Ministers (GoM). Many open intrigue gatherings and others requested that the proposals of the GoM ought to be influenced open and a discussion to be held before finishing the alterations. In any case, this was not done. Actually even without talking about it in the parliament, undeniable item patent routine has been presented in India from 1 January, 2005 through a presidential announcement (the Patents (Amendment) Ordinance,

2004) issued on December 26, 2004.

THE INDIAN PATENT ACT (POST-TRIPs AMENDMENTS)

³ For a discussion of the background and the delay, see Peoples' Commission on Patent Laws for India 2003, pp. 17-20.

⁴ The text was accessed from www.patentoffice.nic.in. visited on 11th May 2011

The principal Indian patent laws were first proclaimed in 1856. These were adjusted every now and then. New patent laws were made after the autonomy as the Indian Patent Act of 1970. The Act has now been drastically changed to end up completely agreeable with the arrangements of TRIPs. The latest correction was made in 2005 which were gone before by the alterations in 2000 and 2003. India turned into an individual from the Paris Convention, Patent Cooperation Treaty and Budapest Treaty.

The patent right is regional in nature and innovators/their trustees should document separate patent applications in nations of their enthusiasm, alongside essential expenses, for getting licenses in those nations. Another synthetic procedure or a medication particle or an electronic circuit or another careful instrument or an immunization is patentable topic given every one of the stipulations of the law are fulfilled.

The striking highlights of the Patents Act, 1970 were:

1. Expand meaning of development.
2. No item licenses for substances expected for use as nourishment, medications and drugs including the result of compound procedures.
3. Codification of specific innovations as non-patentable.
4. Obligatory outfitting of data in regards to remote application.
5. Selection of outright oddity criteria if there should arise an occurrence of distribution.
6. Development of the justification for restriction to the concede of a patent.
7. Exclusion of specific classifications of earlier distribution, earlier correspondence and earlier use from expectation.

8. Arrangements for mystery of innovations significant for protection purposes.
9. Arrangement for utilization of innovations with the end goal of Government or for research or guidance to understudies.
10. Decrease in the term of licenses identifying with process in regard of substances equipped for being utilized as nourishment or as prescription or medications.
11. Growth of the reason for repudiation of a patent.
12. Arrangement for non-filling in as ground for necessary licenses, licenses of right, and repudiation of licenses.
13. Extra powers to Central Government to utilize a creation for reasons for government including Government endeavors.
14. Counteractive action of maltreatment of patent rights by making prohibitive conditions in permit understandings or contract as void.
15. Arrangement for offer to High Court on specific choices of the Controller.

Law relating to IP in India

- The Rules and Laws governing Intellectual Property Rights in India are as follows:
- The Copyright Act, 1957, The Copyright Rules, 1958
- The Patents Act, 1970 The Patents Rules, 2003, The Intellectual Property Appellate Board (Patents Procedure) Rules, 2010 and The Patents (Appeals and Applications to the Intellectual Property Appellate Board) Rules, 2011
- The Trade Marks Act, 1999, The Trade Marks Rules, 2002, The Trade Marks (Applications and Appeals to the Intellectual Property Appellate Board) Rules, 2003 and The Intellectual Property Appellate Board (Procedure) Rules, 2003
- The Geographical Indications of Goods (Registration and Protection) Act, 1999 and
- The Geographical Indications of Goods (Registration and Protection) Rules, 2002

- The Designs Act, 2000 and The Designs Rules, 2001
- The Semiconductors Integrated Circuits Layout-Design Act, 2000
- The Semiconductors Integrated Circuits Layout-Design Rules, 2001
- The Protection of Plant varieties and Farmers' Rights Act, 2001
- The Protection of Plant varieties and Farmers Rights' Rules, 2003
- The Biological Diversity Act, 2002 and The Biological Diversity Rules, 2004
- Intellectual Property Rights (Imported Goods) Rules, 2007

Types of Intellectual Property Rights

Broadly the IPRs are divided into two categories: industrial and non-industrial property.

Industrial Property includes patent, trademarks, Geographical indications, Design, plant variety etc.

Non industrial property includes copyright.

A Patent aims to protect inventions in the field of industry (the term “industry” is taken in its etymological sense and covers, in particular, agriculture), subject to the criteria of novelty and inventive step. The right to protection conferred is generally 20 years from the date of filing of the application for protection. Designs protects creations of an aesthetic nature in which the aesthetic aspect is arbitrary, i.e. not dictated by the possible function of the object for which protection is sought. Protection for Plant Variety Rights covers the creation of new plants, and its term of protection is also variable, often of 20 or 25 years, and the term may also vary depending on the botanical species involved.⁵ Trademark is a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors.⁶ A trademark is a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors^[9]. Trademarks relate to any mark, name, or logo under which trade is conducted for any product

⁵ Available on <http://www.msc-ip.com/property.htm> last visited 17/04/2017.

⁶ Available on <https://www.upcounsel.com/intellectual-property-protection#sthash.TRoYLZPy.dpuf> last visited 17/04/2017

or service and by which the manufacturer or the service provider is identified. Trademarks can be bought, sold, and licensed.⁷

Conclusion and Recommendations

This research work was undertaken to study the level of awareness regarding intellectual property rights among research scholars and P.G. students of Babasaheb Bhimrao Ambedkar University, Lucknow. The finding of this study reveals that maximum number of respondent are not aware of intellectual property rights. Although, some of them were only heard about intellectual property rights. It was also observed that the researcher have a very little knowledge about fair use of copyrighted material and use of patent in their research. On the basis of the above study following suggestions can be proposed:

- a) Intellectual property rights education must be promoted among all the institutions of higher learning.
- b) University and institutions should organize seminar/workshop/conference on intellectual property right for the P.G. and Ph.D. students.
- c) There must be a compulsory paper of Intellectual Property Rights in the Ph.D. programme.
- d) The P.G. and Ph.D. students may be provided practical knowledge about plagiarism and fair use of copyrighted material.
- e) A comprehensive Course curriculum may be included in research course work comprising of Trademark, Design, Patent and copyright knowledge.
- f) Students may be provided a manual having information about the consequences of violation IPR Law.

⁷Chandra Nath Saha and Sanjib Bhattach, “ Intellectual property rights: An overview and implications in pharmaceutical industry” *J Adv Pharm Technol Res.* 2011 Apr-Jun; 2(2): 88–93.



References

1. Sherman and Bently, Intellectual Property Law, Oxford University Press, UK, 2008 at 1.
2. Wipo Intellectual Property Handbook, WIPO,
http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf, 2004.
3. Philippe Cullet, Intellectual Property Protection and Sustainable Development. 2005,
4. Philippe Cullet, Intellectual Property Protection and Sustainable Development, Lexis Nexis, New Delhi, 2005.

5. Shahid Alikhan, Raghunath Mashelkar, Intellectual Property and Competitive Strategies in the 21st Century, Kluwer Law International; 2nd Revised edition, 2009.

6. Chidi Oguamanam, Intellectual Property in Global Governance- a Development Question, Routledge, 2011

7. Rajkumar, Adukia S. Handbook On Intellectual Property

Rights In India, available on http://www.caaa.in/image/34_hb_on_ipr.pdf

8. Government of India Ministry of Commerce and Industry of Industrial Policy & Promotion, National IPR Policy, 2016.

9. Leonel Bently and Brad Sherman, Intellectual Property Law, Oxford University Press, UK, 2008.

10. Peter Drahos, Intellectual Property And Human Rights, I.P.Q. 1999, 3, 349-371.

11. VJ Taraporevala, Law of Intellectual Property, edn.2nd, 2013, Thomson Reuters, New Delhi, 2013.
12. Rattan Singh, Legal Research Methodology, Lexis Nexis, New Delhi, 2013.
13. Cornish W, Llewelyn D. Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights, Sweet and Maxwell, London, 2007
14. Raghunath Marshelkar, Shahid Alikhan, Intellectual Property and Competitive Strategies in the 21st Century
15. Avinash Shivande, Intellectual Property Manual, Lexis Nexis Butterworths, New Delhi, 2004.



JUS IMPERATOR