

# ENTREPRENEURSHIP AND IPR

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Intellectual property (IP) refers to the creations of the human mind like inventions, literary and artistic works, and symbols, names, images and designs used in commerce.

Intellectual property is divided into two categories :

**Industrial property**, which includes inventions (patents), trademarks, industrial designs, and geographic indications; and

**Copyright**, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

The concept of Intellectual Property Right has emerged as a result of the concept of globalization, privatization and liberalization that has necessitated the protection of rights of production, design, trademarks etc.

## CONCEPT OF INTELLECTUAL PROPERTY RIGHT

Intellectual property can be defined as a conceptual or virtual product produced from the intellectual capacities of a certain person. For example, an author writes a book. It is his intellectual property. A Painter paints a picture, it is his intellectual property. An Engineer creates a design, it is his intellectual property. Thus, a book, a picture, a song, a music note, a design, a product etc. which is the creation of one's mind and intellect is an intellectual property. Intellectual property created in this way may prove useful for others. For example, a design created by someone can be used for production of goods or a trademark created by a company has a goodwill in the market.

Thus it has an economic value. This economic value must be protected. Hence the concept of protection of intellectual property right has been brought in the purview of law,



### MEANING OF INTELLECTUAL PROPERTY

Intellectual property means 'a property created by human brain'. It is not similar to that of a land or house. The subject-matter of intellectual property is very wide and includes literary and artistic works, films, computer programs, inventions, designs, trademarks, etc. Lands, houses, etc. immovable properties and vehicles, watches, etc. immovable properties can be sold, mortgaged, leased, etc. from one person to another.

Intellectual property first were known collectively as 'industrial property'. The Paris Convention for the Protection of Industrial Property, 1883 used the term 'industrial property' instead of 'intellectual property'.

### ADVANTAGES OF INTELLECTUAL PROPERTY

1. **Economic Prosperity** : Intellectual property increases the prosperity of the owner, society and the State, and in certain occasions to entire world. For example, Bill Gate established 'Microsoft', and improved computer technology. He brought revolutionary changes in computers. Due to his technical knowledge, he has become the richest person in the world. It helped U.S.A. to stand in the ahead of computer field. At the 'same time, computers spread throughout the world.

2. **Knowledge** : The source of intellectual property itself is the basis of knowledge. It spreads from the creator to the entire world. Xerox invented xerox process. Very soon, it spread entire globe, all of us are experiencing the advantage of it. TVs., information technology, mobiles, internet-banking, etc. increase the knowledge of the world people. Every field of human life is affected by the science and technology particularly from the beginning of nineteenth century

3. **Social Changes** : The intellectual properties change the social life. It brings the modern techniques into the common man life. Cell Phone : Dr Martin Cooper, a former general manager for the systems division at Motorola, is considered the inventor of the first portable handset and the first person to make a call on a portable cell phone in April 1973. Later revolutionary changes have been in the cell phones in their shape, cost, attractive features.

4. Provides exclusive rights to the creators or inventors.

5. Encourages individuals to distribute and share information and data instead of keeping it confidential.

6. Provides legal defense and offers the creators the incentive of their work.

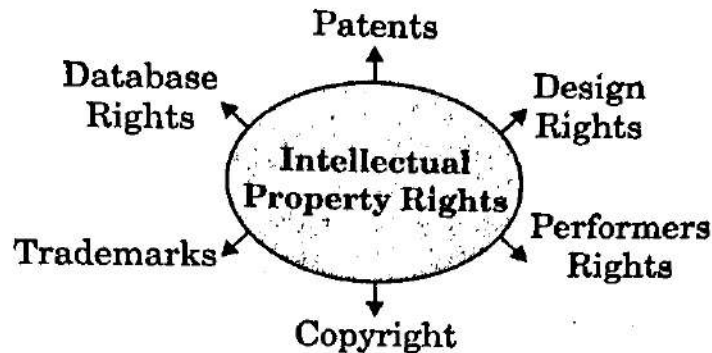
7. Helps in social and financial development.



## TYPES OF INTELLECTUAL PROPERTY

Important rights and areas can be classified as follows :

1. Copyright
2. Rights in Performance
3. The Law of Confidence
4. Patents
5. Designs
6. Trade Marks.



## INTELLECTUAL PROPERTY RIGHTS IN INDIA

To protect the intellectual property rights in the Indian territory, India has defined the formation of constitutional, administrative and jurisdictive outline whether they imply the copyright, patent, trademark, industrial designs, or any other parts of the intellectual property rights.

Back in the year 1999, the government passed an important legislation based on international practices to safeguard the intellectual property rights. Let us have a glimpse of the same :

- The **Patents (Amendment) Act, 1999**, facilitates the establishment of the mail box system for filing patents. It offers exclusive marketing rights for a time period of five years.
- The **Trade Marks Bill, 1999**, replaced the Trade and Merchandise Marks Act, 1958.
- The **Copyright (Amendment) Act, 1999**, was signed by the President of India.
- The *sui generis* legislation was approved and named as the Geographical Indications of Goods (Registration and Protection) Bill, 1999.
- The **Industrial Designs Bill, 1999**, replaced the Designs Act, 1911.
- The **Patents (Second Amendment) Bill, 1999**, for further amending the Patents Act of 1970 in compliance with the TRIPS.

**Copyright**

Copyright is the set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work. Copyright lasts for a certain time period after which the work is said to enter the public domain. Copyright gives protection for the expression of an idea and not for the idea itself.

Classes of works for which copyright protection is available Indian Copyright Act affords separate and exclusive copyright protection to the following 7 clauses of work :

1. Original Literary Work
2. Original Dramatic Work
3. Original Musical Work
4. Original Artistic Work
5. Cinematograph Films
6. Sound Recording
7. Computer Programme.

**Assignment of copyright**

Sec. 18 of the Copyright Act, 1957 deals with assignment of copyright. The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. The mode of assignment should be in the following manner :

- Assignment should be given in writing and signed by the assignor or by his duly authorized agent.
- The assignment should identify the work and specify the rights assigned and the duration and territorial extent of such assignment.
- The assignment should also specify the amount of royalty payable.

**Terms of copyright**

Sections 22 to 29 of the Copyright Act, 1957 deals with the terms of copyright. Copyright generally lasts for a period of sixty years :

- (a) In the case of literary, dramatic, musical or artistic works, the sixty year period is counted from the year following the death of the author.
- (b) In the case of cinematograph films, sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and public undertakings and works of international organisations, the 60-year period is counted from the date of publication.
- (c) In case of Broadcast reproduction right - 25 years from the beginning of the calendar year next following the year in which the broadcast is made.



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- (d) In case of Performers right - 25 years from the beginning of the calendar year next following the year in which the performance is made

### **Copyright Infringements**

Some of the commonly known acts involving infringement of copyright :

- (a) Making infringing copies for sale or hire or selling or letting them for hire;
- (b) Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- (c) Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright;
- (d) Public exhibition of infringing copies by way of trade; and
- (e) Importation of infringing copies into India.

### **PATENT**

Patent is a grant for an invention by the Government to the inventor in exchange for full disclosure of the invention. A patent is an exclusive right granted by law to applicants / assignees to make use of and exploit their inventions for a limited period of time (generally 20 years from filing). The patent holder has the legal right to exclude others from commercially exploiting his invention for the duration of this period. In return for exclusive rights, the applicant is obliged to disclose the invention to the public in a manner that enables others, skilled in the art, to replicate the invention. The patent system is designed to balance the interests of applicants / assignees (exclusive rights) and the interests of society (disclosure of invention).

#### **Patent System in India**

The Patent System in India is governed by the Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003, as amended by the Patents (Amendment) Rules 2006 effective from 05-05-2006.

#### **Term and Date of Patent**

Term of every patent will be 20 years from the date of filing of patent application, irrespective of whether it is filed with provisional or complete specification. Date of patent is the date on which the application for patent is filed. The term of patent in case of International applications filed under the Patent Cooperation Treaty designating India, will be 20 years from the International filing date accorded under the Patent Cooperation Treaty. A patent will have cease to effect on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period.



### Rights of the Patentee (Sec. 48 of the Patents Act, 1970)

Where a patent covers a product, the grant of patent gives the patentee the exclusive right to prevent others from performing, without authorisation, the act of making, using, offering for sale, selling or importing that product for the above purpose. Where a patent covers a process, the patentee has the exclusive right to exclude others from performing, without his authorisation, the act of using that process, using and offering for sale, selling or importing for those purposes, the product obtained directly by that process in India. Where a patent is granted to two or more persons, each of those persons will be entitled to an equal undivided share in the patent unless there is an agreement to the contrary.

### TRADEMARK

A trade mark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

(a) The selected mark should be capable of being represented graphically (that is in the paper form).

(b) It should be capable of distinguishing the goods or services of one undertaking from those of others.

(c) It should be used or proposed to be used mark in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services and some person have the right to use the mark with or without identity of that person.

#### Types of Trademarks

1. **Service marks** : These are the marks used to protect the service industry. All the trademarks of the service industry come under this mark. It includes hotels, restaurants, beauty and health care, software and hardware assembly and maintenance, courier and transport etc.

2. **Collective marks** : these marks are used by companies who produce the products collectively and can apply for the trademark in a group.

3. **Certification Mark** : These marks are for the standards. These marks confirm that the product has gone through the certain standard test and helps in assuring the customers. For e.g. : Electrical goods.

4. **Well known marks** : These are the marks which are extremely popular and are protected more. Therefore, people cannot imitate these popular marks.



## **Functions of Trademark**

Trademark performs four functions :

- (a) It identifies the goods / or services and its origin;
- (b) It guarantees its unchanged quality;
- (c) It advertises the goods/services;
- (d) It creates an image for the goods/services.

## **Trade Marks law of India**

The Trade Marks Act, 1999 and the Trade Marks Rules, 2002 govern the law relating to Trade Marks in India.

The Trade Marks Act, 1999 (TMA) protects the trademarks and their infringement can be challenged by a passing off or/and infringement action. The Act protects a trade mark for goods or services, on the basis of either use or registration or on basis of both elements.

## **Registration of Trademark**

Registration of the trademark is done through a valid process. Firstly, the applicant has to apply for the trademark in the written by giving all the information like address, identification proof, citizenship proof etc. If the authorities are satisfied, then he/she has to provide the drawings in the written and clear format and then to provide at least five specimens of the drawings. If the application found complete after all the examinations then trademark will be issued.

## **DESIGN**

A Design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article, whether in two or three dimensional (or both) forms. This may be applied by any industrial process or means (manual, mechanical or chemical) separately or by a combined process, which in the finished article appeals to and judged solely by the eye. Design does not include any mode or principle of construction or anything which is mere mechanical device. It also does not include any trade mark or any artistic work. An industrial design registration protects the ornamental or aesthetic aspect of an article.

## **Essential requirements for registration of Design**

A design should :

- Be new or original.
- Not be disclosed to the public anywhere by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration.
- Be significantly distinguishable from known Designs or combination of known designs.
- Not comprise or contain scandalous or obscene matter.



- Not be a mere mechanical contrivance.
- Be applied to an article and should appeal to the eye.
- Not be contrary to public order or morality.

#### **Who can apply for registration?**

Any person or the legal representative or the assignee can apply separately or jointly for the registration of a design. The term "person" includes firm, partnership and a body corporate. An application may also be filed through an agent in which case a power of attorney is required to be filed. An Application for registration of design may be prepared either by the applicant or with the professional help of attorneys.

### **GEOGRAPHICAL INDICATIONS**

Geographical Indications of Goods are defined as that aspect of industrial property which refers to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product.

#### **What is a Geographical Indication?**

- (a) It is an indication.
- (b) It originates from a definite geographical territory.
- (c) It is used to identify agricultural, natural or manufactured goods.
- (d) The manufactured goods should be produced or processed or prepared in that territory.
- (e) It should have a special quality or reputation or other characteristics.

#### **Laws relating to Geographical Indication of Goods**

Geographical Indications of Goods (Registration and Protection) Act, 1999 and The Geographical Indications of Goods (Registration and Protection) Rules, 2002 deal with registration and better protection of geographical indications relating to goods. The primary purpose of this Act is to provide legal protection to Indian Geographical Indications which in turn boost exports. Registration of Geographical indication promotes economic prosperity of producers of goods produced in a geographical territory.

### **THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)**

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994. The TRIPS agreement introduced intellectual



property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date.

The following Intellectual Property Rights are covered under the TRIPS :

- (1) Copyright;
- (2) Geographical indications;
- (3) Industrial designs;
- (4) integrated circuit layout-designs;
- (5) Patents;
- (6) New plant varieties;
- (7) Trademarks;
- (8) Undisclosed or confidential information.

TRIPS also specify enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights should meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations

#### **WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**

The World Intellectual Property Organization (WIPO) is one of the 17 specialized agencies of the United Nations, located in Geneva, Switzerland. The Organization has External Offices at Rio de Janeiro in Brazil, Tokyo in Japan, Singapore and New York.

The mission of WIPO is to promote innovation and creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property system.

The origin of WIPO goes back to 1883 and 1886 when the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, respectively, were concluded. Both Conventions provided for the establishment of an international bureau. The two bureaus were united in 1893 and, in 1970, were replaced by the World Intellectual Property Organization, by virtue of the WIPO Convention. The WIPO Convention, the constituent instrument of the World Intellectual Property Organization (WIPO), was signed at Stockholm on July 14, 1967, entered into force in 1970 and was amended in 1979.

WIPO is an intergovernmental organization that became in 1974 one of the specialized agencies of the United Nations system of organizations. WIPO currently has 185 Member States, and 68 intergovernmental organizations (IGOs) and 232 International non-governmental organizations (NGOs) and 63 National NGOs that are accredited as observers at WIPO meetings.



The core tasks of WIPO are :

- (a) working with Member States to support a balanced evolution of international IP law.
- (b) administering treaties.
- (c) assisting governments and organizations in developing the policies, structures and skills needed to harness the potential of IP for economic development.
- (d) servicing global registration systems for trademarks, industrial designs and appellations of origin and a global filing system for patents.
- (f) delivering arbitration, mediation and other dispute resolution services.
- (g) promoting respect for IP & providing a forum for informed debate and for the sharing of IP knowledge.
- (h) identifying IP-based solutions that can help confront global challenges and maximize the benefits of the IP system for all.

### **IPR AND ENTREPRENEURSHIP**

Intellectual property is growing out of one's ideas, thoughts and intellectual creation of the mind. Today Government is making efforts to increasing its efforts considering its importance for the economy development. IPR means a number of legal monopolies over creation of the mind, both artistic and commercial, and their use (Raysman, et.al. 1999-2008).

In simple words, IPR are the intellects emerged from the human mind and the legal rights on these human intellects are called as Intellectual Property Rights. These laws are applicable only in the country in which it is imposed. There is nothing like international patent.

World Intellectual property organization was formed in 1967 as a part of United Nations although it has been in use since long from 1888. India also has enacted various laws related to Intellectual property from time to time. In past, only the tangible assets were given importance and there were laws related to the protection of those assets, but now there are seven forms of IPR, viz. patents, trademarks, copyrights, geographical indications, industrial designs, trade secrets, integrated circuits, and new plant variety.

### **GENESIS IPR IN ENTREPRENEURSHIP**

Micro, Small and Medium Enterprises are actually helping in the economic development of the country by providing employment, income generation, exports etc. These industries are important for the country but due to lack of financial resources, skilled manpower etc, and these industries become sick. Therefore, for the survival, such industries should become competitive and should strive for the competitive advantages through innovations. Innovations play an



important role in improving the enterprises and for innovation IPR is must. There are several reasons that why India needs IPR :

1. Indian competitiveness is based more on the cheap labour and raw material but it can be a Knowledge based economy for that there is a need of IPR to convince and protect the originators about their work. This will boost the motivation to bring knowledge to the country.

2. Moreover, India is WTO nation and all WTO nations have agreed for the IPR protection by including Trade Related Intellectual Property Rights (TRIPS). IPR has proved to be helpful and useful in various economies and therefore can also be helpful for the Entrepreneurship' as follows :

- (a) It can prevent the competitors from imitating other's product and services.
- (a) can help in making a corporate image through trademarks.
- (a) can help in preventing the resources invested uselessly in Research and Development.
- (a) IPR helps in increasing the market value of the company.
- (a) Uniqueness and innovations can help in reaping more profits.
- (a) Patents, trademarks, copyrights can help in protecting the entrepreneurs and gaining competitive advantage.
- (a) helps in generating money by issuing license, commercialization and sale of the Intellectual Property.