



**FACULTY OF AGRICULTURE SCIENCES AND
ALLIED INDUSTRIES**

(Intellectual Property Rights)

For

B.Sc. Ag (Third Year)



**RAMA
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Chapter-1

INTELLECTUAL PROPERTY RIGHTS

Intellectual property (IP) is a term referring to creation of the intellect (the term used in studies of the human mind) for which a monopoly (from greek word monos means single polein to sell) is assigned to designated owners by law. Some common types of intellectual property rights (IPR), in some foreign countries intellectual property rights is referred to as *industrial property*, copyright, patent and trademarks, trade secrets all these cover music, literature and other artistic works, discoveries and inventions and words, phrases, symbols and designs. Intellectual Property Rights are themselves a form of property called intangible property.

Although many of the legal principles governing IP and IPR have evolved over centuries, it was not until the 19th century that the term *intellectual property* began to be used and not until the late 20th century that it became commonplace in the majority of the world.

IP is divided into two categories for ease of understanding:

1. Industrial Property
2. Copyright

Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; 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. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

Intellectual property shall include the right relating to:

- i. Literary, artistic and scientific works;
- ii. Performance of performing artists;
- iii. Inventions in all fields of human endeavour;
- iv. Scientific discoveries;
- v. Industrial designs;
- vi. Trademarks, service marks and etc;
- vii. Protection against unfair competition.

What is a property?

Property designates those things that are commonly recognized as being the possessions of An individual or a group. A right of ownership is associated with property that establishes the good as being "one's own thing" in relation to other individuals or groups, assuring the owner the right to dispense with the property in a manner he or she deems fit, whether to use or not use, exclude others from using, or to transfer ownership.

Properties are of two types - tangible property and intangible property i.e. one that is physically present and the other which is not in any physical form. Building, land, house, cash, jewellery are few examples of tangible properties which can be seen and felt physically.

On the other hand there is a kind of valuable property that cannot be felt physically as it does not have a physical form. Intellectual property is one of the forms of intangible property which commands a material value which can also be higher than the value of a tangible asset or property

Rights protected under Intellectual Property

The different types of Intellectual Property Rights are:

- i. Patents

- ii. Copyrights
- iii. Trademarks
- iv. Industrial designs
- v. Protection of Integrated Circuits layout design
- vi. Geographical indications of goods
- vii. Biological diversity
- viii. Plant varieties and farmers rights
- ix. Undisclosed information

a. Intellectual Property

- 1. Inventions
- 2. Trademarks
- 3. Industrial design
- 4. Geographical indications

b. Copyright

- 1. Writings
- 2. Paintings
- 3. Musical works
- 4. Dramatics works
- 5. Audiovisual works
- 6. Sound recordings
- 7. Photographic works
- 8. Broadcast
- 9. Sculpture

10. Drawings

11. Architectural works etc.

The term intellectual property is usually thought of as comprising four separate legal fields:

1. Trademarks

2. Copyrights

3. Patents

4. Trade secrets

1. Trademarks and Service Marks: A trademark or service mark is a word, name, symbol, or device used to indicate the source, quality and ownership of a product or service. A trademark is used in the marketing is recognizable sign, design or expression which identifies products or service of a particular source from those of others. 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 also being.

General Logos:

The Trademark Registration Logo





In addition to words, trademarks can also consist of slogans, design, or sounds. Trademark provides guarantee of quality and consistency of the product or service they identify. Companies expend a great deal of time, effort and money/ in establishing consumer recognition of and confidence in their marks.



Federal Registration of trademarks:

Interstate use of trademarks is governed by federal law, namely, the United States Trademark Act (also called the Lanham Act), found at 15 U.S.C 1051 et seq. In the United States, trademarks are generally protected from their date of first public use. Registration of a mark is not required to secure protection for a mark, although it offers numerous advantages, such as allowing the registrant to bring an action in federal court for infringement of the mark.

Applications for federal registration of trademarks are made with the PTO. Registration is a fairly lengthy process, generally taking anywhere from twelve to twenty-four months or even longer. The filing fee is \$335 per mark (Present \$225 per class) per class of goods or services covered by the mark.

A trademark registration is valid for 10 years and may be renewed for additional ten year periods thereafter as long as the mark is in used in interstate commerce. To maintain a mark the registrant is required to file an affidavit with the PTO between the fifth and sixth year after registration and every ten years to verify the mark is in continued use. Marks not in use are then available to others.

A properly selected, registered and protected mark can be of great value to a company or individual desiring to establish and expand market share and better way to maintain a strong position in the marketplace.

2. **Copyrights:** Copyright is a form of protection provided by U.S. law (17 U.S.C 101 et seq) to the authors of "original works of authorship" fixed in any tangible medium of expression. The manner and medium of fixation are virtually unlimited. Creative expression may be captured in words, numbers, notes, sounds, pictures, or any other graphic or symbolic media. The subject matter of copyright is extremely broad, including literary, dramatic, musical, artistic,

audiovisual, and architectural works. Copyright protection is available to both published and unpublished works.

Copyright protection is available for more than merely serious works of fiction or art. Marketing materials, advertising copy and cartoons are also protectable. Copyright is available for original working protectable by copyright, such as titles, names, short phrases, or lists of ingredients. Similarly, ideas methods and processes are not protectable by copyright, although the expression of those ideas is.

Copyright protection exists automatically from the time a work is created in fixed form. The owner of a copyright has the right to reproduce the work, prepare derivative works based on the original work (such as a sequel to the original), distribute copies of the work, and to perform and display the work. Violations of such rights are protectable by infringement actions. Nevertheless, some uses of copyrighted works are considered “fair use” and do not constitute infringement, such as use of an insignificant portion of a work for noncommercial purposes or parody of a copyrighted work.

Definition:

General Definition of copyright “Copyright owner”, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

Federal Registration of Copyrights: The works are protected under federal copyright law from the time of their creation in a fixed form. Registration, however, is inexpensive, requiring only a \$30 (present \$85) filing fee, and the process is expeditious. In most cases, the Copyright Office processes applications within four to five months.

Copyrighted works are automatically protected from the moment of their creation for a term generally enduring for the author’s life plus an additional seventy years after the author’s death. The policy underlying the long period of copyright protection is that it may take several year for a painting, book, or opera

to achieve its true value, and thus, authors should receive a length of protection that will enable the work to appreciate to its greatest extent.

3. Patents: A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions. Under certain circumstances, patent term extensions or adjustments may be available. The right conferred by the patent grant is, in the language of the statute and of the grant itself, “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or Importing the invention into the United States. What is granted is not the right to make, use, offer, for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

There are three types of patents:

Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;

Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and

Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

Federal Registration of Copyrights: Patents are governed exclusively by federal law (35 U.S.C.100 et seq). To obtain a patent, an inventor must file an application with the PTO (the same agency that issues trademark registration) that fully describes the invention. Patent prosecution is expensive, time consuming and complex. Costs can run into the thousands of dollars, and it generally takes over two year for the PTO to issue a patent.

Patent protection exists for twenty years from the date of filing of an application for utility and patents and fourteen years from the date of grant for design patents. After this period of time, the invention fall into the public domain and may be used by any person without permission.

The inventor is granted an exclusive but limited period of time within which to exploit the invention. After the patent expires, any member of the public is free to use, manufacture, or sell the invention. Thus, patent law strikes a balance between the need to protect inventors and the need to allow public access to important discoveries.

4. Trade Secrets: A trade secret consists of any valuable business information. The business secrets are not to be known by the competitor. There is no limit to the type of information that can be protected as trade secrets; **For Example:** *Recipes, Marketing plans, financial projections, and methods of conducting business can all constitute trade secrets.* There is no requirement that a trade secret be unique or complex; thus, even something as simple and nontechnical as a list of customers can qualify as a trade secret as long as it affords its owner a competitive advantage and is not common knowledge.

If trade secrets were not protectable, companies would have no incentive to invest time, money and effort in research and development that ultimately benefits the public. Trade secret law thus promotes the development of new methods and processes for doing business in the marketplace.

Protection of Trade Secrets: Although trademarks, copyrights and patents are all subject to extensive statutory scheme for their protection, application and registration, there is no federal law relating to trade secrets and no formalities are required to obtain rights to trade secrets. Trade secrets are protectable under various state statutes and cases and by contractual agreements between parties. **For Example:** *Employers often require employees to sign confidentiality agreements in which employees agree not to disclose proprietary information owned by the employer.*

If properly protected, trade secrets may last forever. On the other hand, if companies fail to take reasonable measures to maintain the secrecy of the information, trade secret protection may be lost. Thus, disclosure of the information should be limited to those with a “need to know” it so as to perform their duties, confidential information should be kept in secure or restricted areas, and employees with access to proprietary information should sign nondisclosure agreements. If such measures are taken, a trade secret can be protected in perpetuity.

Another method by which companies protect valuable information is by requiring employee to sign agreements promising not to compete with the employer after leaving the job. Such covenants are strictly scrutinized by courts, but generally, if they are reasonable in regard to time, scope and subject matter, they are enforceable.

5.Geographical Indications Of Goods: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?

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

Examples of Indian Geographical Indications –

- Solapur Chaddar
- Solapur Terry Towel
- Basmati Rice
- Darjeeling Tea
- Kanchipuram Silk Saree
- Alphanso Mango
- Nagpur Orange

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.

According to the Act, the term 'geographical indication' (in relation to goods) means "an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a 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".

Registration of Geographical Indication

The registration of a geographical indication is not compulsory; however, it offers better legal protection to facilitate an action for infringement. The registered proprietor and authorized users can initiate infringement actions. The authorized users can exercise the exclusive right to use the geographical indication.

The registration of a geographical indication is valid for a period of 10 years. It can be renewed from time to time for further period of 10 years each. If a registered geographical indication is not renewed it is liable to be removed from the register.

Procedure for Filing application for registration of Geographical Indication

I. Form and signing of application

1. Every application for the registration of a geographical indication should be made in the prescribed form (GI-1A to ID) accompanied by the prescribed fee (Rs.5,000).
2. It should be signed by the applicant or his agent.
3. It must be made in triplicate along with three copies of a Statement of Case accompanied by five additional representations.

II. Fees

1. Fees may be paid in cash or sent by money order or by a bank draft or by a cheque.
2. Bank Drafts or cheques should be crossed and be made payable to the Registrar at the appropriate office of the Geographical Indication Registry.
3. It should be drawn by a scheduled bank at the place where the appropriate office of the Geographical Indications Registry is situated.
4. Where a document is filed without fee or with insufficient fee such document will be deemed to have not been filed.

III. Sizes

1. All applications should be typewritten, lithographed or printed in Hindi or in English.
2. It should be in large and legible characters with deep permanent ink upon strong paper, on one side only.
3. The size should be approximately 33 cms by 20 cms and shall have on the left and part thereof a margin of not less than 4 centimeters.

IV. Signing of documents

1. In case of -
 - i. An association of persons or producers shall be signed by the authorized signatory.
 - ii. A body corporate or any organization or any authority established by or under any law for the time being in force shall be signed by the Chief Executive, or the Managing Director or the secretary or other principal officer.
 - iii. In case of partnership it shall be signed by at least one of the partners.
2. The capacity in which an individual signs a document should be stated below his signature.
3. Signatures should be accompanied by the name of the signatory in English or in Hindi and in capital letters.

V. Principal place of business in India

1. Every application for registration of a G.I should state the principal place of business in India.

2. A body corporate should state the full name and nationality of the Board of Directors.
3. Foreign applicants and persons having principal place of business, in their home country should furnish an address for service in India.
4. In the case of a body corporate or any organization or authority established by or under any law for the time being in force, the country of incorporation or the nature of registration, if any as the case may be should be given.

VI. Convention Application should contain the following

1. A certificate by the Registry or competent authority of the Geographical Indications Office Of the convention country.
2. The particulars of the geographical indication, the country and the date or dates of filing of the first application.
3. The application must be the applicants' first application in a convention country for the same geographical indications and for all or some of the goods.
4. The application must include a statement indicating the filing date of the foreign application, the convention country where it was filed, the serial number, if available.

VII. Statement of user in applications

An application to register a geographical indication should contain a statement of user along with an affidavit.

VIII. Content of Application

Every application should be made in the prescribed forms and shall contain the following :

1. A statement as to how the geographical indication serves to designate the goods as originating from the concerned territory in respect of specific quality, reputation or other characteristics.
2. The three certified copies of class of goods to which the geographical indication relates.
3. The geographical map of the territory.
4. The particulars of the appearance of the geographical indication words or figurative elements or both;

5. A statement containing such particulars of the producers of the concerned goods proposed to be initially resisted. Including a collective reference to all the producers of the goods in respect of which the application is made.

6. The statement contained in the application should also include the following:

An affidavit as to how the applicant claim to represent the interest of the association of persons or producers or any organization or authority established under any law;

The standard benchmark for the use of the geographical indication or the industry standard as regards the production, exploitation, making or manufacture of the goods having specific quality, reputation or other characteristic of such goods that is essentially attributable to its geographical origin with the detailed description of the human creativity involved, if any or other characteristic;

The particulars of the mechanism to ensure that the standards, quality, integrity and consistency or other special characteristic are maintained by the producers, or manufacturers of the goods;

Three certified copies of the map of the territory, region or locality;

The particulars of special human skill involved or the uniqueness of the geographical environment or other inherent characteristics associated with the geographical indication;

The full name and address of the association of persons or organization or authority representing the interest of the producers of the concerned goods;
Particulars of the inspection structure;

In case of a homonymous indication, the material factors differentiating the application from the registered geographical indications and particulars of protective measures adopted.

IX. Acknowledgement of receipt of application:

1. Every application of the registration of a geographical indication in respect of any goods shall,

on receipt be acknowledged by the Registrar.
2. The acknowledgement will be by way of return of one of the additional representations with the official number of the application duly entered thereon