

Lecture- 39



The Indian perspective: an overview of intellectual property-related legislation

The recognition and protection of these rights is of recent origin. Patents, designs and trademarks are considered as industrial property. As per International Convention for the protection of industrial (Paris Convention) the protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations or origin and the repression of unfair competition when copyrights, Geographical indicators, layout Designs and confidential information were included to industrial property, they all become intellectual property.

Intellectual Property Rights in India

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With the trade related Aspects of Intellectual Property Rights (TRIPS) Agreement of World Trade Organisation (WTO), the intellectual property rights attained the authority to enforce the law internationally. According to TRIPS, the intellectual property rights are:

- 1) Copyright and Related Rights
 - a. Rights of artists, painters, musicians sculptors, photographers, and authors for copyright in their works;
 - b. Rights of computer programmes whether in source or object code for a copyright in their programmes and compilation data;
 - c. Rights of performers producers of phonogram's and broadcasting organizations in respect of fixation on their programmes for copyright in their work.
- 2) Right of traders in their trade marks.
- 3) Right of manufacturers & producers on geographical indication in relation to such products and produce.
- 4) Right of designers for their distinctive design striking to the eye.
- 5) Patents:
 - a. Right of the inventor for patent is his invention.
 - b. Rights of plant breeders and farmers.
 - c. Rights of biological diversity.
- 6) Right of computer technologist for their layout design of integrated circuits.
- 7) Right of businessmen for protection of their undisclosed information on technology and management.

Copyright & Related Rights:

The subject-matter of copyright is the literary, dramatic and musical or artistic work, a

cinematograph film and a sound recording. Literary work includes computer programmes, tables and compilations including computer databases.

The object of this right is not the material thing produced, but the form impressed upon it by the maker. The picture, in the abstract sense of the artistic form made by visible by that paint and canvas, belongs to him who made it.

Trade Mark:

Trademark is anything which identifies the origin of the goods or services. It can be a name, symbol, logo, colour, sound etc. Trademark symbolizes the value or goodwill associated with the goods and its specific source. It distinguishes one firm from others. Benefits of trademarks are several-fold:

It helps consumers to identify products with desirable attributes quickly. It encourages firms to improve quality of their product. In absence of any identification mark, it would be difficult to distinguish the duplicates from high quality products. This will lower the incentive of the firm to make high quality products as the returns would be same as that of inferior products. Trademark protection gives a “monopoly power” over the distinctive trademark in the sense that others are debarred from using the same or a confusingly similar trademark. However this kind of monopoly power does not involve any welfare loss as its aim is not to prevent similar products but only to prevent use of similar or deceptive marks with the aim of confusing the consumer. As a result, trademarks have mostly a positive incentive effect. It may seem that overall the economics of trademark protection and the intellectual property law of those marks are non-conflicting. There are, however, some grey areas:

Issue of umbrella branding (brand extension) whereby a company uses a trademark made famous by sale of one product to enter into another market. For example Reliance entering retail marketing, entertainment industry, restaurants etc. Such brand extension strategies raise legitimate competition policy issues as a firm is essentially using an advantage acquired in other market to sell its products. Consumers are likely to try the products associated with a well-known brand name rather than an unknown brand with same quality making it difficult for a new company to enter the market.

Compulsory licensing of trademarks - Competition policies forcing companies to license their trademark may result in shoddy work at premium price associated with the brand. This will also ruin the reputation associated with the brand. This would affect the firm ‘s incentive to provide consumers with high quality goods.

Patents:

The subject-matter of a patent-right is an invention. He whose skill or labour produces the idea of a new process, instrument or manufacture has that idea as his own in law. He alone is entitled to use it and to draw from it the profit inherent in it.

Geographical Indications:

A geographical indication is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g. a town, region, or country). India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods

(Registration and Protection) Act, 1999 has come into force with effect from 15 September 2003. GIs have been defined under Article 22(1) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement as: "Indications which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or characteristic of the good is essentially attributable to its geographic origin."

Industrial Designs:

Industrial design means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or both forms, by any industrial process or means whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction and does not include any trademark.

Lay-out Designs of Integrated Circuits:

In the case of layout designs of integrated circuits the property consists in the exclusive right to apply the layout design registered under statute in relation to the class of goods for which it is registered for a prescribed period. The right can also be licensed for use by third party or assign to any person.

Protection of undisclosed Information:

Confidential information and know-how can be protected only so long as the owner is able to keep them secret and takes action against unlawful use of such information by others by an action for breach of confidence or contract.

The law relating to property and intellectual property has similarities regarding the nature the mode of acquisition, the nature of rights conferred, the commercial exploitation of those rights, the enforcement of those rights and the remedies available against infringement of those rights. Property rights include not all a person's right but only his corporeal property rights consisting of material things. But intellectual property is in the nature of intangible incorporeal property. The rights of intellectual property are created by statute. The invention may relate to a new product or an improvement of an existing product or a new process of manufacturing an existing or a new product. The acquisition of the monopoly of intellectual property, the conditions to be satisfied for acquisition, its duration, the licensing of this monopoly rights or their assignment to others are strictly governed by the statutes. The commercial exploitation of intellectual property may be assigned his rights or license them to industrialists for a lump sum payment or on a royalty basis the right of material property is transferred for sufficient consideration. As per the TRIPS Agreement, member countries of WTO may provide for criminal procedures and penalties to be applied in other cases of infringement of IPRs, in particular where they are committed wilfully on a commercial scale. In respect of trademark, the civil remedies available against infringement are an injunction, either damages or an account of profits and the delivery-up of the infringing articles for destruction. Civil and Criminal remedies are available against infringement of intellectual property.

According to the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement of

World Trade Organisation, the Protection of Intellectual Property provided by the following International Conventions shall be given in all Member Countries of WTO, mutatis mutandis.

- I. The Paris Convention for the Protection of Industrial Property, 1967.
- II. The Berne Convention for the Protection of Literary and Artistic Works, 1971 along with Appendix.
- III. The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, 1961, and
- IV. The World Intellectual Property Organization (WIPO) Convention.

Copyright and Related Rights:

- I. The Universal Copyright Convention (with Protocols)
- II. The Geneva Treaty on International Registration of Audio-Visual Works, 1992.
- III. WIPO Copyright Treaty, 1996
- IV. WIPO Performance and Phonograms Treaty, 1996

Trade Marks:

- I. Madrid agreement concerning the International Registration of Marks, 1979.
- II. Protocol Relating to the Madrid Agreement concerning the International Registration of Marks, 1989
- III. Common Regulations under the Madrid Agreement concerning the International Registration of Marks and Protocol relating that Agreement.
- IV. The Nice Agreement concerning the International classification of goods and services for the purposes of registration of marks, 1957
- V. The Vienna Agreement established on International classification of the Figurative elements of Marks, 1973.

Geographical Indications:

- I. Agreement of Madrid for the Repression of False or Deceptive Indications of source on goods, 1967 (The Lisbon Act)
- II. Lisbon Agreement for the protection of Appellations of origin and their International Registration, 1979.

Industrial Designs:

- I. Hague Agreement of International Deposit of Industrial Designs, 1960
- II. Locarno Agreement of Establishing an International Classification of industrial Design, 1968.

Patents:

- I. Patent Cooperation Treaty, 1970
- II. European Patent Convention (with Protocols), 1973
- III. UPOV International Convention for the Protection of New Varieties of Plants, 1991

xxi) Convention on Biological Diversity

India, having ratified the final act of Marrakesh and being the member country of WTO has implemented the TRIPS Agreement. India implemented all the provisions of the TRIPS Agreement along with other conventional agreements by enacting the new law or by amending

the existing law.