

CASE STUDY:

Forms of Intellectual Property Rights in India

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Preface

Intellectual property rights (IPR) have become important in the face of changing trade environment which is characterized by global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development (R&D), production and marketing and need for highly skilled human resources. Regardless of what product an enterprise makes or what service it provides, it is likely that it is regularly using and creating a great deal of intellectual property. There is an emergent need for enterprises and professionals to systematically consider the steps required for protecting, managing and enforcing intellectual property rights, so as to get the best possible commercial results from its ownership. This case provides an insight into the laws related to intellectual property and the administration of these laws.

Dr. Nalla Bala Kalyan
Mrs. Toopalli Sirisha

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It is with pleasure that I articulate my sincere thanks to Management of Sri Venkateswara Colleges, Tirupati for giving me wonderful opportunity to serve your reputed Institution

I should render my deep sense of gratitude to Principals, HODs, Friends and Students of Sri Venkateswara Colleges for their encouragement.

I would like to thank to my colleague Mrs.Toopalli Sirisha for her cooperation to carry out my project.

I am greatly indebted to my dear parents Sri N. Chenga Reddy, Rtd Teacher and Smt N. Nirmala for their constant motivation, inspiration, love and affection. I am very thankful to my dear brothers, Dr. N. Nanda Kumar and Dr. N. Naveen Kumar for their constant help and co-operation in moulding my education career

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Dr. NALLA BALA KALYAN

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With enormous pleasure I would like to thank the Management of Sri Venkateswara Colleges, Tirupati, for giving me amazing opportunity to serve your esteemed Institution, I would like to pay my regards to principals, HODs, Friends and Students of Sri Venkateswara Colleges for their incessant support, and encouragement.

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Nobody has been more important to me in the pursuit of this project than the members of my family. I would like to thank my parents, whose love and guidance are with me in whatever I pursue. They are the ultimate role models. Most importantly, I wish to thank my loving and supportive Husband, DR. Nagalla Muni Lokesh MD (AY), and my wonderful son, N. Muni Hema Ragava, who provide unending inspiration .Finally I wish to present my special thanks to my brothers Dr. Toopalli Damodar and Toopalli Nanda Kishore that their advices for my book proved to be a landmark effort towards the success.

Mrs. TOOPALLI SIRISHA

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1. Introduction

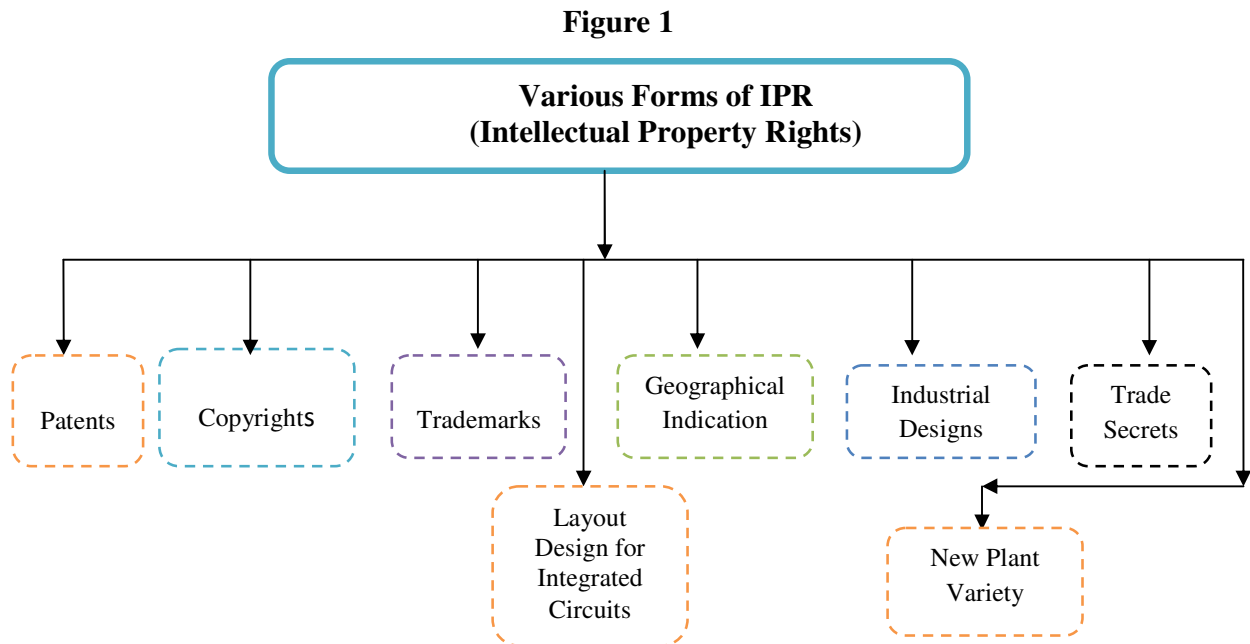
Intellectual Property Rights are the rights given to person over the creations of their minds and provide the creator an exclusive right over the use of his/ her creation for a certain period of time. Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary and artistic fields. Intellectual Property Rights (IPR) in India was imported from the West. The Indian Trade and Merchandise Marks Act 1884, was the first Indian Law regarding IPR. The first Indian patent law was enacted in 1856 followed by a series of Act being passed. They are Indian Patents and Designs Act in 1911 and Indian Copyright Act in 1914.

The convention establishing World Intellectual Property Organization (WIPO) has given a wider definition of IPRS. According to this definition the IPRS includes the rights relating to

1. Literary, artistic and scientific work:
2. Performances of performing artists, phonograms and broadcasts.
3. Inventions in all fields of human Endeavour.
4. Scientific discovered.
5. Industrial designs.
6. Trademarks, service marks and commercial names and designations.

In India, The Trade Related Aspects of Intellectual Property Rights (“TRIPS”) came into force on 1st January 1995 after its ratification with the agreement of establishing World Trade Organization. The enforcement of TRIPS was started with the provisions for protection of and enforcement of intellectual property rights with minimum standards with the assurance of promotion of IPR with the view of removing obstacles from the international trade. There are several forms of the Intellectual Property recognized by the legislators and are enacted upon. The Intellectual Property Rights are defined as “a set of exclusive rights protecting the innovative activity behind new products, new procedures or new designs, and the commercial activity that exclusively identifies products and services supplied in the market”. Intellectual Property Rights bring progress by supporting creativity in the human nature. The creators or owners of the Intellectual Property Rights are awarded with benefits when commercially exploited. Intellectual Property Rights are governed with the provisions of related legislations and are classified as Trade Mark, Patent, Copyright, Industrial Design, and Geographical Indications, Lay out designs of integrated circuits, Trade Secret according to TRIPs agreement. Intellectual Property Rights are divided into two categories i.e. industrial property and copyrights. The industrial property includes inventions, industrial designs, trademarks, and geographical indications;

whereas the copyrights comprise rights related to the literary, artistic, musical works etc. Intellectual Property Rights can be subdivided into the following major categories as shown in figure 1



1. Patents

Patent is a statutory right granted to the patentee by the Government for a period of 20 years upon complete disclosure of the invention. It is a monopoly right, granted for protecting inventions and processes. There are product patents as well as process patents granted. Even though the right holder does not get right by default to manufacture the patented invention, the holder of the patent has right to prevent others from exploiting the same without the owner's permission. The statutory requirement for an invention to be patentable invention is related either to a product or process that is novel, having inventive step and is capable of industrial application. In India, patents are protected under the Patents Act 1970.

2. Copyrights

Copyrights are the rights awarded to protect authorship of original and creative work like literary, musical and dramatic in nature. The rights awarded are exclusive rights and are symbolized as “©”. In

India, Copyrights are protected by the Indian Copyrights Act, 1957 and various amendments made thereafter.

3. Trademarks

A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services or to authorize another to use it as return for payment. It helps consumers identify and purchase a product or service because of its nature and quality, indicated by its unique trademark.

Categories of Trademarks

The protection awarded is dependent on the character of the mark itself. There are four categories of trademarks.

1. Coined marks denote no relationship between the mark and the goods or services (e.g., Bata, Kodak) and afford the possibility of expansion to a wide range of products.
2. An arbitrary mark is one that has another meaning in our language (e.g., Apple) and is applied to a product or service.
3. A suggestive mark is used to suggest certain features, qualities, ingredients, or characteristics of a product or service (i.e., Halo shampoo). It differs from an arbitrary mark as it tends to suggest some describable attribute of the product or services.
4. A descriptive mark must have become distinctive over a significant period of time and gained consumer recognition before it can be registered. The mark then is considered to have secondary meaning, that is, it is descriptive of particular product or service (e.g., Rubberier has applied to roofing materials that contain rubber.)

4. Geographical indications

Geographical Indications of Goods Act, 1999 came into effect in September 2003. Geographical Indications (GI) are the names associated with goods that identify such goods as agricultural goods or manufacturing goods as originating, or manufactured in the territory of a region

or locality in that territory where a given quality, reputation or other characteristic of such goods are essentially attributable to its geographical origin. It is worth mentioning that a GI cannot be created, it can only be recognized. The product derives its qualities and reputation from that place. It confirms the value of products which already exist. The place of origin may be a village or town or region or country. GI is an exclusive right given to a particular community. Hence, the benefits of its registration are shared by all members of the community.

5. Trade secrets

Trade secrets are confidential business information that provides an enterprise a competitive edge over its competitors. Trade secrets are manufacturing / industrial or commercial secrets that include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes. Trade secrets are protected without registration. Though a trade secret can be protected for an unlimited period of time, it is necessary that a substantial element of secrecy must exist. Keeping in view the vast availability of traditional knowledge in the country, protection of trade secrets will be very crucial in reaping the benefits from such type of knowledge. In a way, trade secret or traditional knowledge are also interlinked / associated with the geographical indications.

6. Industrial Designs

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act serves its purpose well in the rapid changes in technology and international development. India has also achieved a matured state in the field of industrial designs and in view of globalization of the country, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration.

7. Integrated Circuits

Integrated circuit means a product having transistors and other circuitry elements which are inseparably formed on a semiconductor material or an insulating material and designed to perform an electronic circuitry function. Integrated circuits are also, thus, an element of IPR and are protected under Semiconductor Integrated Circuits Layout Design (SICLD) Act 2000. The main focus of SICLD Act is to provide for routes and mechanism for protection of IPR in Chip Layout Designs created and matters related to it. The SICLD Act empowers the registered proprietor of the layout design an inherent right to use the layout design, commercially exploit it and obtain relief in respect of any infringement. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

8. New Plant Variety

The plant Variety Protection and Farmers Rights Act 2001 was enacted to reward them for their contribution and stimulate the growth of the seed industry in the country. The Act has come into force on 30-10-2005 through Protection of Plant Varieties and Farmers Rights Authority'. Initially 12 crop species have been identified for registration, i.e. Rice, Wheat, Maize, Pearl Millet, Green Gram, Black Gram, Lentil, etc. India has opted for Sui generic system instead of patents for protecting new plant variety. Registration and other matters relating to protection of new plant variety are looked after by Department of Agriculture and Cooperation.

1.2 Why IPR for MSMEs

MSMEs which use of IPR have become a precious commodity in today's world. It seems pertinent to briefly reflect on a debate: Does IPR enhance the competitiveness of MSMEs? One view is that IPR enables MSMEs to become more competitive through technological gains. But it seems that this argument glosses over the problems, complexities, and uncertainties inherent in innovations and also ignores the fact that most innovations either not exploited or more often than not fail. If innovation is to play a part in enhancing the competitiveness of MSMEs, it seems to follow that IPR must also have a role to facilitate innovations. MSMEs in India also make efforts to glean the benefits from IPR system. However, most of the Indian MSMEs have not yet been able to effectively use IPR as a business tool to increase their competitiveness in the national and global markets. The protection of IPR helps increase the competitiveness of MSMEs in a variety of ways. It helps in:

- Preventing competitors from copying or closely imitating a company's products or services;
- Avoiding wasteful investment in research and development (R&D) and marketing;
- Creating a corporate identity through a trademark and branding strategy;
- Negotiating licensing, franchising or other IP-based contractual agreements;
- Increasing the marketing value of the company;
- Acquiring venture capital and enhancing access to finance;
- Obtaining access to new markets.

Research evidence credits the existence of IPR laws with significant contributions toward economic growth. The role of MSME sector in India's growth is also not hidden. It helps in contributing to high and inclusive growth with better job opportunities, increased productivity, better skills and education.

Intellectual Property Rights (IPRs) are being increasingly used the world over as a business tool to achieve economic gains in the era of technological competitiveness. With the opening up of our economy, MSMEs too have become vulnerable to competition from the overseas giants. MSMEs in India consider IPRs to be an esoteric concept and are still unaware of the fact that their ability to convert knowledge into wealth through the process of innovation will determine their future. The issues of generation, valuation, protection and exploitation of intellectual property are going to become critically important for MSMEs all around the world. It is with this view, to address the need of development of skills and competence to manage IPRs, and leverage its influence amongst MSMEs in India; is proposed to the set up a Centre for IPRs at inset. The Centre will endeavour to narrow the knowledge gap that exists between the, MSMEs of developed and developing countries.

1.3 How IP Helps Micro, Small & Medium Enterprises

In India, Intellectual property plays an important role in MSMEs development and protection. They should identify various prospects viz. how best to use an IP structure for their own payback and profits? IP may support MSMEs in every part of business development and competitive strategy which ranges from product development to product design, product marketing to service and from raising financial resources to export or mounting business abroad through IP assignments i.e. franchising and licensing. MSMEs can identify various potential such as improvement in the market values and competitiveness of MSMEs by generating an income for MSMEs through IP assignments of IP

protected products. IP helps in enhancing the value or worth of the company in the eyes of investors and financial institutions. At the time of sale or merger and acquisitions of assets IP play an important role in increasing the MSMEs value to certain level which cannot be achieved without considering IP assets? A successful IP management enables companies to recover their IP system properly and in a profitable way. In a very initial stage acquiring IP may sometimes crucial and costly but if started in a systematic way profits a lot for a company. It involves company's ability to commercialize their inventions, market their brands and license their know how to other companies.

1.4 Importance of Intellectual Property Rights

Following are the importance of IPR:

1. **Providing Guarantees Regarding the Quality and Safety of Products:** Many counterfeit products place our children's and citizens' safety or health at risk, for instance where vehicle spare parts or drugs are concerned. Enforcing IP rights in respect of such products guarantees at least that the products' origin is known and that the products are genuine, whereas counterfeit products often do not comply with the applicable safety standards. This is especially true for trademarks, but patent licensing contracts for instance, may also include quality insurance clauses.
2. **Enabling Indirect Exploitation:** Where a company has protected its products (or processes etc.) by IP right, it can derive revenues not only from their direct exploitation (by that company), but also from their indirect exploitation by third parties, under licensing contracts. These additional indirect revenues sometimes exceed the profits resulting from the direct exploitation, especially as they do not require additional internal manufacturing capacities. Such an approach may therefore be particularly relevant for SMEs. It is also important for universities and public research centers, which usually do not have any direct exploitation activities.
3. **Cost –Free Mechanisms:** while certain procedures required for the registration of IP rights are considered to be expensive, I particular by SMEs, it should be noted that certain IP rights can be enjoyed without paying any official fees. This is in particular the case for copyright and unregistered designs.
4. **Dissemination of Technical Information:** even where a company (or university, etc.) does not intend to protect its own inventions, its staff (researchers, etc.) can still make use of patent information. Patents are the most prolific and up-to-date source of technological information, and

contain detailed technical information which often cannot be found anywhere else: it is estimated that up to 80% of current technical knowledge can only be found in patent documents. Moreover, this information is rapidly available, as most patent applications are published 18 months after the first filing.

5. **Facilitating Technology Transfer:** patents often constitute a convenient means to not only protect but also describe in a very accurate way technologies which are the subject of technology transfer and similar agreements (licensing, assignment, etc.). This “technology packaging: / trade facilitation function justifies that patents have sometimes been considered as the “currency” of the knowledge-based economy. (To some extent, the same reasoning also applies to IP rights other than patents.)
6. **“Open Source” Relies on IPR”:** Open source mechanisms are becoming popular in certain sector such as software. While the common perception is that such mechanisms are characterized by the absence of any IP protection, it is worth noting that a typical GPL (General Public) license actually relies on IP conditions are complied with (e.g. freedoms received by the licensee must be passed on to subsequent users, even where the software modified).
7. **Enhance Profitability:** Any industry or business, whether traditional or modern, regardless of what product or service it Produces or provides, is likely to regularly use intellectual property to prevent others from encroaching on its due reward or taking advantage of its goodwill in the market place. Every industry or business should systematically take the steps required for identifying, protecting, and managing its intellectual property assets, so as to gain the best possible commercial results from its ownership. If a business or industrial enterprise in intending to use an intellectual property asset belonging to someone else, it should consider buying it or acquiring the rights to use it by taking a license in order to avoid disputes and consequent expensive litigation. A business or industry could encounter legal problems for inadvertently violating the intellectual property rights of others out of sheer ignorance of the intellectual property system. Hence, a basic understanding of the intellectual property system has become a prerequisite for success in the marketplace.
8. **To Face Competition:** Understanding the importance of the various components of the intellectual property system and using it effectively as an integral part of its business strategy is crucial to success in the market place. Businesses need the intellectual property system to protect manufacturing secrets or other useful information and remain ahead of the competition. Businesses

need to fully exploit their intellectual property assets to maintain consistent quality and market products and services to consumers so as to develop long-term customer loyalty.

9. **Collateral to Obtain Financing:** As intangible assets. IP rights often play an instrumental role for SMEs (including start-ups and spin –offs) trying to convince third parties to provide financing to them (equity investment, loan granting, etc.).

1.5 Overview of Laws Related to Intellectual Property Rights in India

The Rules and Laws governing Intellectual Property Rights in India are as follows:

- The Copyright Act, 1957, the Copyright Rules, 1958 and International Copyright Order, 1999
- 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 and the Semiconductors Integrated Circuits Layout-Design Rules, 2001
- The Protection of Plant varieties and Farmers' Rights Act, 2001 and 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

2. National IPR Policy 2016

The Government of India approved the National Intellectual Rights Policy on 12th May 2016. This policy was framed taking into consideration the inputs of all stakeholders: the IPR Think Tank of experts on the topic, 31 government Departments and a total of 300 organizations and individuals. This policy will boost innovation in the country while protecting the public interest, by bringing all

IPRs on single platform, and setting in place an institutional mechanism for implementation, monitoring and review of the seven objectives of the policy.

The complete policy can be accessed here.

Objectives Strengths of the Indian IPR Regime

1. The IPR framework in India is stable and well established from a legal, judicial and administrative point of view and is fully compliant with the Agreement on Trade – Related Aspects of Intellectual Property Rights.
2. India is committed to wide range of international treaties and conventions relating to intellectual property rights.
 - Wide range of awareness programmes are being conducted by the Government During the last few years, Indian IP offices have undergone major improvements in terms of up gradation of IP Legislation infrastructure facilities, human resources, the processing of IP applications, computerization, databases, quality services to stakeholders, transparency in functioning and free access to IP – data through a dynamic website.
 - State of the art, integrated and IT – enabled office buildings have been created during the few years in New Delhi, Kolkata, Chennai and Mumbai and Ahmadabad, housing central wings for Patents and Designs and Trademarks and Geographical Indications. The Patent Office is headquartered at Kolkata with branches at New Delhi, Chennai and Mumbai. The Trade Mark Registry, headquartered at Mumbai has branches in Ahmadabad, Chennai, New Delhi and Kolkata. The Design Office is located in Kolkata and the GI Registry is at Chennai. Separate facilities house the ISA/IPEA in New Delhi and additionally, there is an Intellectual Property Office Archives is at Ahmadabad.
 - Simplified procedure for filing, E – filing facilities and incentives for SMEs are some of the other initiatives in the area of intellectual property rights in India.

2.1 Types of IPR in India

Patent: Definition and significance:

1. A patent is granted for an invention which is “a new product or process, that meets conditions non- obviousness and industrial use. Inventive step is the feature (s) of the invention that involves technical advance as compared to existing knowledge and that makes the invention not obvious to

a person skilled in the art. Industrial use means that the invention is capable of being made or used in an industry.

Ministry administering the IPR:

- Department of Industrial Policy and Promotion,
- Ministry of commerce & Industry

Concerned IP Act:

- The Patents Act, 1970 (as amended in 2005)

2.2 Intellectual Property Administration in India

1. India has taken strong steps in strengthening the patent system in the country. The Government aims at establishing a patent regime that is conducive to technological advances and is in line with its global commitments.
2. Patent application filing at Indian Patent Office has been increasing consistently over the years which demonstrate the confidence of the global industry in the Indian patent ecosystem.
3. Filing and processing of patent applications viz., examination, grant and post grant proceedings are carried out at all the four Patent Office Locations independently through a virtual network system which links all four Patent Offices: however, there is only one virtual Patent Office for the purpose of grant of patents. A Patent is granted for a uniform period of 20 years from the filing date of the patent application for inventions in all fields of technology and it is a territorial right.
4. The Indian Patent Office has been recognized as an International Searching Authority and an International preliminary Examining Authority (ISA/IPEA) by World Intellectual Property Organization in October, 2007 under the Patent Cooperation Treaty, and has operationalised the status since 15th October, 2013, thus joining an elite group of 17 countries.

2.3 It Enabled Processing and Computerized Work-Flow:

Every document received in the office is scanned and digitized before taking any action on the document and is made available through the official website to the public. The entire processing of patent applications is electronic and information relating to processing is made available on the website in real time, thereby providing valuable information to the applicants.

2.4 Instant Electronic Communication With Applicants:

Consequent to filling of a document, instant e mail is sent to the applicant at the mail IDs and numbers registered with the office. Such messages are QR coded to preserve their authenticity.

2.5 Dynamic Information:

- Dynamic utilities are available on the website which provide useful real-time information such as issue of examination reports in a given month, disposal of applications, information about lapsed and ceased patents etc.
- The entire records in all matters, which are not prohibited from publication by the statute, are made available to the public on the website. All the documents are digitized as soon as they are received in the Office to enable computerized processing of applications and are made available to the public in real time through the official website.
- The Patent Office has a strong pool of experts for processing of patent applications. At present it has strength of 192 Examiners and 89 Supervising Officer. Among them, 42 have Doctorate degree, 75 are Post Graduates in different branches of science, 25 have Degree in Engineering / Technology.

2.6 Design: Definition and significance:

- A design refers only to the features of shape, configuration, pattern, ornamentation, composition of colour or line or a combination thereof, applied to any article, whether two or three dimensional or in both forms by any industrial process or means which, in the finished article, appeal to and are judged solely by the eye.
 - Ministry administering the IPR:
 - Department of Industrial Policy and Promotion
 - Ministry of Commerce & Industry
 - Concerned IP Act: Designs Act 2000

2.7 Trade Marks:

- A Trademark is used or proposed to be used to distinguish the goods or services of one person from those of others in the course of trade. Though the registration of trademark is not compulsory,

registration is a prima facie proof of the title and it gives the registered proprietor an exclusive right to use the trademark and take legal action in case of infringement.

- If a trademark is not registered and if someone not having the right in the trademark uses that trademark, the proprietor of the trademark can take the common law action of passing off.
- The initial registration is valid for a period of 10 years which is renewable for an indefinite period of time. India also acceded to the Madrid Protocol which allows applicants to file in other countries that are members of the Protocol through a simple form and by payment in one currency foreign applicants can also file indicating India as the designated country in forms. This also enables time – bound processing of Trade Marks applications.

Madrid Protocol:

1. Indian office is receiving applications for protection of trademarks under the Madrid Protocol and making all correspondence relating thereto online through the gateway provided by this office, similarly all communications from the International Bureau regarding international applications or registration under the Madrid Protocol are made by Indian office through electronic means only.

Other Information:

- The IPO website contains separate Gateway for E-Filing of trademarks applications and free online public search facilities for search of identical or similar trademarks.
- Trade Mark E – Journal is published every Monday giving the details of accepted application for registration of trademarks & other information.
- Details of all trademarks applications or registered trademarks, status of applications/ registered trademarks. Public notices, copies of important office orders, circulars and other useful information are available on the website of the Office of the Controller General of Patents, Designs and Trade Marks. The complete stock and flow information is also available on the website.
- Public can see on real time basis the details of examination of trademark applications, show cause hearings, publication in the trademark journal, registration of trademarks, disposal of applications by way of abandonment, refusal etc.

Facilities offered by the trade marks registry to applicants/stakeholders:

- Comprehensive e-filing services are available for online filing of all Trade Mark related forms at the office website.
- Entrepreneurs from all over the world can register their trademarks in India.
- The pre-requisites, FAQ, and instructions for e-filing are hosted on the website.
- Under the Madrid Protocol, through a single application, facility of online filing of international applications can be availed.

Trademarks Registration

The Indian law of trademarks is enshrined in the Trade & Merchandise Marks Act, 1958. However, the existing Act has been amended to bring it in conformity with the TRIPS Agreement to which India is a signatory. A new statute the Trade Marks Act, 1999 has been enacted in India. The new Act dramatically changes trademark protection and is a welcome change for those doing business in India. The most significant changes which have been or ought about by the new Act are that “Service Marks” are now registerable, multi-class applications are permissible: the period of registration has been increased from 7 to 10 years: colors and shapes are now registerable: the Appellate Board will now hear appeals from the Registrar’s decisions: previously appeals were heard by the High Court: well-known marks are now recognized and increased fines for counterfeiting and trademark infringement have been provided for. The Trade Marks Registry (TMR) with Head Office at Mumbai and branch office at Ahmadabad, Chennai, Delhi and Kolkata administers the Trade Marks Act, 1999 and maintains the register of trademarks. A total of 1,09,361 trademark have been registered in year April 2006-March 2007 as compared to only 8010 in year April 1999-March 2000. Under the modernization project, the TMR offices have been modernized and backlog of about 4, 50,000 applications pending at various stages has been liquidated. Time taken for processing of trademark applications at varying stages is substantially less compared to statutory upper time limits. TMR is presently issuing first examination report normally within two weeks of filing of the application. The zero pendency achieved up to the examination is being done with 15 days of filing. In respect of clarification cases, disposal is made within 30 days.

Non-Registerable marks: It is not permitted to register a trademark which is confusing with a trademark of another trader who has been using the trademark earlier for the same goods or a trademark or which describes the character or quality of the goods which other traders may reasonably want to use

in the course of their business. The mark should not conflict with a trademark already registered or pending registration in respect of similar goods. Also some marks are prohibited from registration under the directions of the Government. A Public Search service with online payment facility is available at the office of Controller General Patents Designs and Trademarks (CGPD TM)

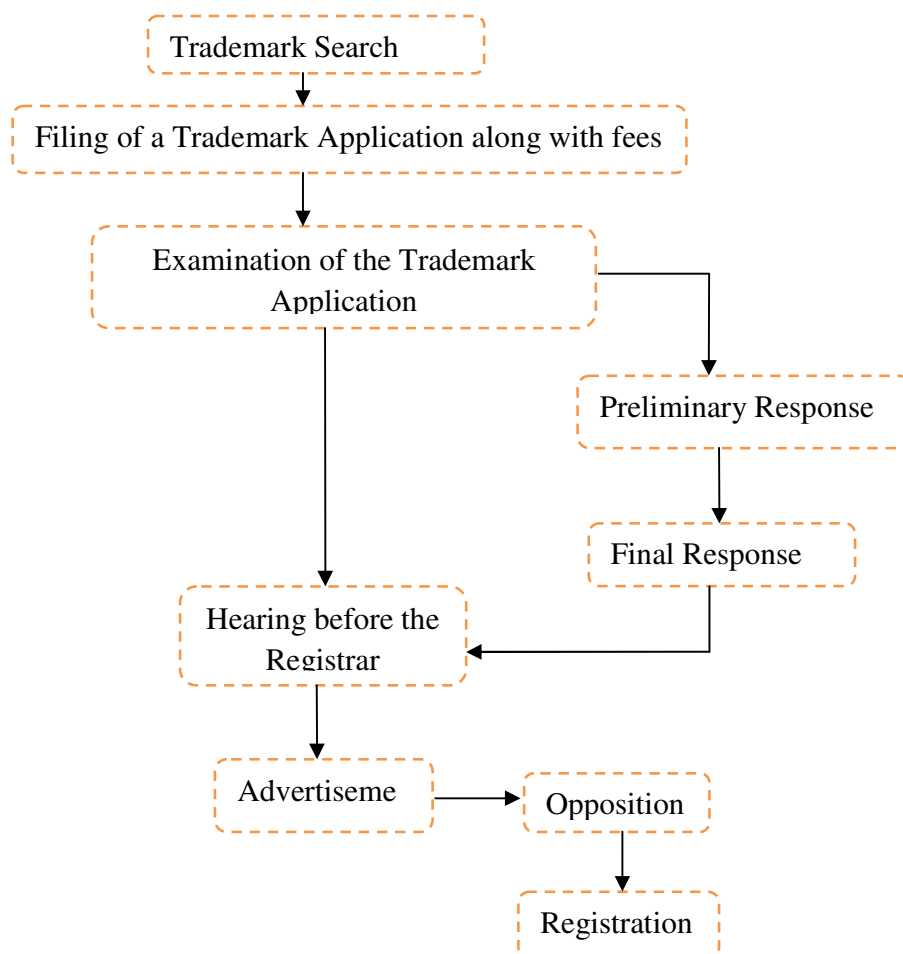
A trademark should be selected with the following precautions-

1. It should be simple in design consisting of a word, letter, a device or numeral or any combination of these
2. If a word then should be easy to speak, spell and remember,
3. An invented or a coined word is ideal for trademark
4. A word directly describing the quality or character of a product or service should preferably not be adopted,
5. Geographical names should not be selected.

Applying for Registration: Registration of trademark is not compulsory, but without it the owner will not be in a position to take action against infringers and protect his intellectual property. Filing a case against infringement of trademark is much simpler than taking an action against passing off to protect an unregistered trademark. One can apply for the trademark before actually using it however some countries like USA do not allow formal registration until proof of usage is shown. In addition, in case a trademark is not under use for a period of three to five years, the registration could be taken off. The application must be filed in the name of the owner of the trademark: usually an individual, corporation or partnership. Generally, the person who uses or controls the use of the mark, and controls the nature and quality of the goods to which it is affixed, or the services for which it is used, is the owner of the mark.

The procedure of registering a Trademark is as follows:

Figure 2



- **Registering Trademarks Abroad:** Trademark is a territorial right and is hence limited to the territory to which it pertains, thus, a valid registration of a trademark in the home country gives you right only in the home country unless it is a well-known mark. If you want to register a trademark outside India, there are three main ways to do it.
- **National route:** One has to apply to the trademark office of each country in which it is seeking protection by filing the corresponding application in the required language and by paying the required fees. A country may require you to use the local patent agent
- **The International route:** if the home country is a member of the Madrid system and your trademark has been registered or applied for in or with effect in that country, you may use the Madrid system (Administered by WIPO) to register your trade mark in more than 70 countries. India is now a member of the Madrid protocol.

- **Term of Registration:** The term of a trademark registration is for a period of ten years. The renewal is possible for further period of 10 years at a time. Unlike patents, copyrights or industrial design trademark rights can last indefinitely if the owner continues to use the mark. However, if a registered trademark is not renewed, it is liable to be removed from the register.

2.8 Facilities Offered by the Patents Office

- **Filing Applications by Foreign Applicants Claiming Priority:** India, being a member country to Paris the Convention and PCT, provides all the filing facilities as mandated under these arrangements to applicants for filing convention and national phase patent applications.
- **Simplified Procedure for Filing of National Phase Applications:** The procedure for filing a national phase application in India (corresponding to PCT international application) is effortless in that only one form is required to be filed and rest of the contents of the applications are obtained by the Patent Office directly from the servers of International Bureau of the World Intellectual Property Organization.
- **E-Filing Facilities:** For filing an application for patent or any document in the Patent Office, comprehensive, e-filing service is available at the official website with a facility for making e-payment and there is no need to personally visit the office.
- **Incentive for Online Filing:** Indian Patent office offers 10% reduction in fees for online filing of all forms and documents relating to patents, at all stages of processing of an application right from the stage of filing to grant of patent and post-grant processes.
- **Concession for Small Entities:** Applicants belonging to the category of micro, small and medium enterprises (SMEs) are required to pay only 50% of the fee payable by other legal entities namely companies etc. The objective is to encourage the MSMEs to protect their knowledge assets. This facility can be availed equally by foreign applicants.

Facilities Offered by the Designs Wing to

Applicants/Stakeholders:

1. Manual of Designs Practice and Procedure is in place for processing application for registration of designs to ensure uniformity and consistency in examination. The manual is available at the official website.

2. Design applications can be filed by foreign applicants taking priority of their foreign applications.
3. Design registration is granted within 6 months of filing of an application, if all requirements are met.
4. Search facility in the design database is available in the official website.
5. Design E-Journal is published in the official website on every Friday.

Plant Variety Protection: Definition and significance:

- Protection granted for plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

Ministry administering the IPR:

- Department of Agriculture and Cooperation
- Ministry of Agriculture

Concerned IP Act:

- The Protection of Plant Varieties and Farmers' Rights (PPV &FR) Act, 2001

Design: Definition and significance:

- A design refers only to the features of shape, configuration, pattern, ornamentation, composition of colour or line or a combination thereof, applied to any article, whether two or three dimensional or in both forms by any industrial process or means which, in the finished article, appeal to and are judged solely by the eye.

Ministry administering the Design Registration:

- Department of Industrial Policy and Promotion
- Ministry of Commerce & Industry

Concerned IP Act: Designs Act: 2000

Industrial Designs: Every to be registerable must pass the universal test of novelty. A registered design is valid for 10 years and can be further extended by another 5 years. A design cannot be registered if it is not new or original or has been disclosed to the public in India or anywhere in the world by publication.

2.9 Registration of Designs:

The registration of industrial designs under the Designs Act, 2000 is done by the Designs Wing of the Patent Office located at Kolkata. However, applications can be filed at other offices of the patent

office, namely, at Delhi, Mumbai and Chennai. The thrust of the modernization programme of the Designs Wing includes a transition from the essentially paper-based examination procedures to an IT-based system supported by the computerization of existing records, on line search facilities, setting up of a user-friendly website and creation of a digital library.

Ten Steps for Registration of industrial design given by the Designs Wing are as follows:

Step1. Finding out whether any registration already exists: The Designs office can assist you to search whether the design has been previously registered. If the registration number is known, Form No.6 should be filed along with the prescribed fees of Rs. 500. If the representation of the article or the specimen of the article is filed Form no.7 along with the prescribed fees of Rs.1, 000 is required.

Step2. Preparing a representation of the design

A representation is the exact representation of the article on which the design has been applied. It should be prepared on white A4 size paper of durable quality. Do not prepare it on cardboard or mount it on other paper Indicate details of the design and applicant clearly.

Step3. Identifying the class of design

Designs are required to be categorized in separate classes in order to provide for systematic registration. An internationally accepted classification of Industrial Designs based upon the function of the article is required. The class and sub-class should be mentioned in the application. There are 32 classes and most of the classes are further divided into sub-classes.

Step4. Providing a statement of novelty a statement of novelty should included on the representation of a design as per the Act in order to specify the claim. This will enable speedier examination and provide a more specific protection. The claim will protect the overall visual appearance of the design as described in the representation of drawing.

Step5. Including a disclaimer

If the ornamental pattern on an article is likely to be confused with a trade mark, suggests any mechanical action or contains words, letters, numerals, etc., a disclaimer should be included in the representation

Step6. Claiming a priority date

If you have applied for protection of the design in convention countries or countries which are members of inter-governmental organizations, you can claim registration of the design citing a priority date in

India. This is the date of filing of the application in any of such countries provided the application is made in India within six months.

Step7. Determining the fee to be paid

Applications are to be accompanied by the required fee through cheque or draft payable at Kolkata or in cash (If filed in Design Office, Kolkata). Application for the registration of design is Rs. 1,000 and for renewal it is Rs. 2,000.

Step8. Ensuring all enclosures are attached

File an application only after ensuring that all enclosures and fee in the required numbers are attached. Applications can be filed in either the Design Office in Kolkata or the branch offices of the Patent office in Delhi, Mumbai or Chennai.

Step9. Complying with objections (if any)

If the Design Office additional information or clarification after preliminary examination please ensures that these are provided promptly. This will help the office to take up your application for early examination.

Step10. Providing full details

While filing an application make sure that all contact details and address are clearly and legibly filled in. This will enable the office to keep in touch with you and convey decisions. The duration of the registration of a design is initially ten years from the date of registration, but in cases where claim to priority has been allowed the duration is ten years from the priority date. This initial period of registration may be extended by further period of 5 years on an application made in Form-3 accompanied by a fee of Rs. 2,000/- to the Controller before the expiry of the said initial period of Copyright.

Trade Mark: Definition and Significance:

- A Trade Mark can be a device, brand, heading, label ticket name, Packaging, sign, word, letter, number, drawing, picture, emblem, colour or combination of colours, shape of goods, signature or a combination thereof
- A trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark.
- Ministry administering the IPR:

- Department of Industrial Policy and Promotion
- Ministry of Commerce & Industry
- Concerned IP Act:
- Trade Marks Act 1999 (as amended in 2010)

3. Geographical Indications:

Importance of Registering Geographical Indications

A properly protected GI will give protection to such goods in domestic as well as international market. Geographical indications have proved to be very valuable as they identify the source of the product and are an indicator of quality. Mostly, a geographical indication consists of the name of the place. “Swiss” (Switzerland) for chocolate, “Roquefort” (France) for cheese etc. The use of geographical indications is not limited to agricultural products. They may also highlight peculiar qualities of a product, which are due to human factors, such as specific manufacturing skills and traditions. According to TRIPS, a Geographical Indications which is not or ceases to be protected in its country of origin or which has fallen into disuse in that country cannot be protected. Thus Registration of GI confers legal protection to your goods that are registered under the Act Thereby preventing unauthorized use of a Registered Geographical Indication by others as it facilitate an action for infringement exclusive right to use the geographical indication. It provides legal protection to Indian Geographical Indications, which in turn boost exports. It promotes economic prosperity of producers of goods produced in a geographical territory.

When is a GI not Register able – A GI will not be registered?

When GI has become a generic name, that is, names of those goods which have lost their original and are used as common names.

- If use of GI is likely to deceive public, cause confusions, or is contrary to any law in force
- GIs, which comprises scandalous or obscene matter or hurt any section of the society etc.

Definition and significance: Originating or manufactured in the territory of a country or 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 good are manufactured goods one of the activities of either. The production or of processing of preparation of the goods concerned takes place in such territory, region, or locality as the case may be.

Ministry administering the IPR:

- Department of Industrial Policy and promotion
- Ministry of Commerce & Industry

Concerned IP Act:

- The Geographical Indications of Goods (Registration & Protection) Act, 1999
- The Geographical Indications Registry is a statutory organization set up at Chennai for administration of the GI Act with the objective of providing registration and protection of geographical indications (GI) relating to goods.
- Applications for registration of Geographical Indications can also be filed by foreign entities for registration of their GI in India in accordance with the provisions of TRIPS.
- A Manual of Practice and procedure is in place to ensure uniformity and consistency in practice.

Copyright: Definition and Significance:

- Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction communication the public, adaptation and translation of the work.

Ministry administering the Copy Rights:

- Department of Industrial Policy and Promotion, Ministry of Commerce & Industry

Concerned IP Act:

1. The Copyright Act, 1957 (as amended)

Copyright Registration: Copyright comes into existence as soon as a work is created and no formality is required to be completed for acquiring copyright. However, facilities exist for having the work registered in the Register of Copyrights maintained in the Copyright Office of the Department of Education. The entries made in the Register of Copyrights serve as prima-facie evidence in the court of law.

Copyright Office: The Copyright Office has been set up to provide registration facilities to all types of works and is headed by a Registrar of Copyrights and is located at B.2/W.3, C.R. Barracks, Kasturba Gandhi Marg, New Delhi – 110 003.

Procedure for Registration: Chapter VI of the Copyright Rules, 1956, as amended, sets out the procedure for the registration of a work. The procedure for registration is as follows:

1. Application for registration is to be made on Form IV (Including Statement of Particulars and Statement of Further Particulars) as prescribed in the first schedule to the Rules.
2. Separate applications should be made for registration of each work
3. Each application should be accompanied by the requisite fee prescribed in the second schedule to the Rules.
4. The applications should be signed by the applicant or the advocate in whose favour a Vakalatnama or Power of Attorney has been executed. The Power of Attorney signed by the party and accepted by the advocate should also be enclosed.
5. Each and every column of the Statement of Particulars and Statement of Further Particulars should be replied specifically.
 - Three copies of published work may be sent along with the application. If the work to be registered is unpublished, a copy of the manuscript has to be sent along with the application for affixing the stamp of the Copyright Office in proof of the work having been registered.
 - In case two copies of the manuscript are sent, one copy of the same duly stamped will be returned, while the other will be retained, as far as possible, in the Copyright Office for record and will be kept confidential. It would also be open to the applicant to send only extracts from the unpublished work instead of the whole manuscript and ask for the return of the extracts after being stamped with the seal of the Copyright Office.
 - When a work has been registered as unpublished and subsequently it is published, the applicant may apply for changes in particulars entered in the Register of Copyright in Form V with prescribed fee.

Semiconductor Integrated Circuits Layout-Design:**Definition and significance:**

- The aim of the Semiconductor Integrated Circuits Layout-Design Act 2000 is to provide protection of Intellectual Property Right (IRP) in the area of Semiconductor
- Integrated Circuit Layout Designs and for matters connected therewith or incidental thereto.

Ministry administering the IPR:

- Department of Industrial Policy and Promotion, Ministry of commerce & Industry
- Ministry of Communications and Information Technology

Concerned IP Act:

- Semiconductor Integrated Circuits Layout-Design Act, 2000.

4. Commercialization of Intellectual Property Rights (IPR)

Commercialization of Intellectual Property Rights by Licensing

- Intellectual property may be commercialized by sale or assignment, or by entering into various types of contractual business relationships such as licensing.
- The business vehicle by which this is done may be by way of partnership, joint venture or Spin-off Company.
- IPRs play a crucial role as the legal vehicle through which either the transfer of knowledge or the contractual relationship is affected.
- Alternatively, knowledge may be exploited in-house, in which case the role of IPRs is to block imitating competition.
- Commercialization can be defined as the process of turning an invention or creation into a commercially viable product, service or process.
- Commercialization may require additional R&D, product developments, clinical trials or development of techniques to scale-up production prior to taking the results of research to market.
- This is important because not all inventors or creators wish or have the resources, skills and appetite for risk to commercialize their own inventions or creations.
- Public research organizations (PROs) usually fall into this category.

4.1 Valuation of IPR

- An intellectual property valuation is an essential part of using intellectual assets internally and in making intellectual property transactions.
- It is relevant whenever an organization is “licensing in” technology in order to commence a new research project, or “licensing out” or assigning (selling) the technology to as part of its strategy for commercialization, or using the intellectual property as collateral for a loan, or securitizing the intellectual property, or raising finance on the capital market (e.g. by means of a bond issue), or donating the intellectual property to write-off taxation, or in 120 a worst case scenario, in cases of bankruptcy or infringement litigation accounting for a loss of revenue.

- The “paradox of valuation” is that while most organizations are aware of the potential value of their intangible property they invariably neglect to determine its value with any accuracy.
- Patent protection can only contribute to a successful transaction if the intellectual property is valued with an eye to the market, at a realistic price.
- Both public and private investors in R&D stand to gain from more systematic valuation of intangible capital.

5. Concept of IP Valuation

As a separate asset, IP must be attributed a value. An intellectual property valuation may be made for various purposes, each of which is reflected in the four major concepts of valuation:

- **Replacement cost:** The value of the IP to the owner frequently determines the price in negotiated transactions as indicated by the owner’s view of its replacement cost.
- **Market value:** The basis of market value is the assumption that if comparable property has fetched a certain price, then the subject property will realize a price something near to it.
- **Fair value concept:** This is, in essence, the desire to be equitable to both parties. It recognizes that the transaction is not in the open market and that vendor and purchaser have been brought together in a legally binding manner.

5.1 Methods of Valuation

- **Market-based:** the market-based value uses other recent similar market transactions as a reference to obtain the comparable market value of the intellectual property. The basis of the market value is the assumption that if comparable property has fetched a certain price, then the subject property will realize a price something near to it.
- **Cost-based:** The cost-based methodology attempts to determine the value of the IP by means of determining the actual historical cost of generating the intellectual property or its replacement cost. In the latter case valuation is determined by what it would cost to substitute or “design around” the intellectual property protection.
- **Income-based:** The value of IP, particularly a patent, depends on the predicted future cash flow to be derived through the exploitation of that patent. This, therefore, entails the determination of the cost or value contributed by the intellectual property and is often assessed by determining the volume of the product sold and the margin on that product to obtain the total profit made.

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