

Intellectual Property Law In India

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ARTICLE DETAILS

Article History

Published Online: 28 February 2018

Keywords

Intellectual property, Patents,
Copyrights, Trademark, Industrial
Design

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ABSTRACT

Intellectual property is a category of property that includes intangible creations of the human intellect, and primarily encompasses copyrights, patents, and trademarks. It also includes other types of rights, such as trade secrets, publicity rights, moral rights, and rights against unfair competition. Artistic works like music and literature, as well as some discoveries, inventions, words, phrases, symbols, and designs, can all be protected as intellectual property. This research paper aims to discuss Categories of Intellectual property, brief history of IP, patent, trade mark, copyright, Industrial Design, Geographical Indication, World Intellectual Property Organization etc. The current article highlights the Intellectual Property Law In India.

INTRODUCTION

With the advent of the knowledge and information technology era, intellectual capital has gained substantial importance. Consequently, Intellectual Property and rights attached thereto have become precious commodities and are being fiercely protected. In recent years, especially during the last decade, the world has witnessed an increasing number of cross-border transactions. Companies are carrying on business in several countries and selling their goods and services to entities in multiple locations across the world. Since intellectual property rights are country-specific, it is imperative, in a global economy, to ascertain and analyze the nature of protection afforded to IPRs in each jurisdiction. This paper analyzes and deals with the IP law regime in India and the protections provided there under[1].

There are well-established statutory, administrative, and judicial frameworks for safeguarding IPRs in India. It becomes pertinent to mention here that India has complied with its obligations under the Agreement on Trade Related Intellectual Property Rights by enacting the necessary statutes and amending the existing statutes. Well-known international trademarks have been afforded protection in India in the past by the Indian courts despite the fact that these trade marks were not registered in India. Computer databases and software programs have been protected under the copyright laws in India and pursuant to this; software companies have successfully curtailed piracy through judicial intervention. Although trade secrets and know-how are not protected by any specific statutory law in India, they are protected under the common law. The courts, under the doctrine of breach of confidentiality, have granted protection to trade secrets.

RESEARCH METHODOLOGY

The study based on secondary information/data. Different journals, newspapers, books and relevant websites have been consulted in order to make the study an effective one.

CATEGORIES

Intellectual property is divided into two categories:[2]

Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications.

Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

OBJECTIVES OF INTELLECTUAL PROPERTY LAW

1. **Financial incentive:** this right allows providing a financial incentive to the creator of intellectual property.
2. **Economic growth:** Intellectual property law is necessary in maintaining economic growth as it gives statutory expression to the economic rights, and contributes towards economic and social development by encouraging fair trading[4].

BRIEF HISTORY

The laws and administrative procedures relating to IPR have their roots in Europe. The trend of granting patents started in the fourteenth century. In comparison to other European countries, in some matters England was technologically advanced and used to attract artisans from elsewhere, on special terms. The first known copyrights appeared in Italy. Venice can be considered the cradle of IP system as most legal thinking in this area was done here; laws and systems were made here for the first time in the world, and other countries followed in due course. Patent act in India is more than 150 years old. The inaugural one is the 1856 Act, which is based on the British patent system and it has provided the patent term of 14 years followed by numerous acts and amendments[5].

TYPES OF INTELLECTUAL PROPERTIES

6.1 Copyright

Copyright protection in India is available for any literary, dramatic, musical, sound recording and artistic work. The Copyright Act 1957 provides for registration of such works. Although an author's copyright in a work is recognised even without registration, it is advisable to get the same registered since it furnishes prima facie evidence of copyright in a court of law.

Infringement of copyright entitles the owner to remedies of injunction, damages and accounts.

Copyright in a literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author subsists for fifty years from the lifetime of the author. An Amendment Bill is on the anvil to extend the term in favour of performers¹ (at present twenty five years) to fifty years (in order to bring it in accord with the TRIPS Agreement). The amendment also aims to bring original works relating to satellite broadcasting, computer software and digital technology under copyright protection. With the issuance of the International Copyright Order, 1999, the provisions of Copyright Act have been extended to nationals of all World Trade Organization (WTO) Member countries[6].

6.2 Trade Marks

A Trademark generally refers to a "brand" or "logo". Trademark registration can also be obtained for a business name, distinctive catch phrases, taglines or captions. Properly used and promoted, a Trademark may become the most valuable asset of a business. Trademarks such as Coca Cola, HP, Canon, Nike and Adidas serve as an indication of origin of the goods as well as an indication of quality. It is also essential to obtain trademark registration for the business name/trade name under the Trademarks Act. Registration of a company or business name under the Companies Act does not in itself give protection against others who might commence using identical or similar marks.

The law relating to registration of trademarks is governed by the Trade and Merchandise Marks Act, 1958. A distinctive mark can be registered under the said Act. In case of infringement of registered trademarks, the statutory remedies of injunction, damages, accounts and delivery up of infringing labels and marks are available. An action for "passing-off" would lie in relation to an unregistered mark under certain circumstances[7].

In order to simplify the law and meet India's international obligations under the TRIPS, a new law called the Trade Marks Act, 1999 has been passed but has not yet been brought into force. Extensive changes have been introduced by the new Act. The major changes are given below:

- Definition of a 'mark' is extended to include the shape of goods, packaging, and combination of colours.
- Service Marks: These would now be allowed to be registered.
- Well Known 'Mark': An application for registration of a mark may be refused if it is similar or identical to a well known mark.

- Collective marks: The new Act will permit registration of marks in favour of associations of persons as "collective marks". Collective marks are defined as signs which distinguish the geographical origin, material, mode of manufacture, quality or other common characteristics of goods or services used or intended to be used, in commerce, by the members of a co-operative, an association, or other collective group or organisation.
- Duration of registration: The 7 years period available under the existing Act has been increased to 10 years, extendable by further periods of ten years each.
- Multiclass registration applications: Applicants would be able to file a single application for marks capable of registration in number of classes.
- Infringement of a mark: Offences relating to trade mark infringement have been dealt with more severely under the new Act.

6.3 Patents

A patent is a set of exclusive rights granted by a sovereign state or intergovernmental organization to an inventor or assignee for a limited period of time in exchange for detailed public disclosure of an invention. An invention is a solution to a specific technological problem and is a product or a process. Patents are a form of intellectual property. patent may include many claims, each of which defines a specific property right. These claims must meet relevant patentability requirements, such as novelty, usefulness, and non-obviousness. The exclusive right granted to a patentee in most countries is the right to prevent others, or at least to try to prevent others, from commercially making, using, selling, importing, or distributing a patented invention without permission

The subject is covered by the Patents Act, 1970. India recognises product patent protection for a period of 14 years. However, in three areas: food, chemicals and pharmaceuticals, it recognises only a process patent for a period of 7 years. With the signing of the GATT Agreement, the Patents Act, 1970 has been amended by the Patents (Amendment) Act, 1999 to bring it in line with the Trade TRIPS Agreement. The amended law would allow the filing of all product patents with a regulatory authority. It also contains provision for granting Exclusive Marketing Rights (EMRs) for five years or till the patent is granted or rejected whichever is earlier[8].

The second amendment to the 1970 Act was made through the Patents (Amendment) Act, 2002 (Act 38 Of 2002). This Act came into force on 20 th May 2003 with the introduction of the new Patent Rules, 2003 by replacing the earlier Patents Rules, 1972

The third amendment to the Patents Act 1970 was introduced through the Patents (Amendment) Ordinance, 2004 w.e.f. 1 st January, 2005. This Ordinance was later replaced by the Patents (Amendment) Act 2005 (Act 15 Of 2005) on 4 th April, 2005 which was brought into force from 1-1-2005.

6.4 Industrial Design

Industrial design is a process of design applied to products that are to be manufactured through techniques of mass production Its key characteristic is that design is separated from manufacture: the creative act of determining and defining a product's form and features takes place in

advance of the physical act of making a product, which consists purely of repeated, often automated, replication. This distinguishes industrial design from craft-based design, where the form of the product is determined by the product's creator at the time of its creation[9].

The Designs Act, 2000 protects certain designs. The features of shape, configuration, pattern, ornament or composition of lines or colours applied to any 'article' whether in two or three dimensional forms (or both), by an industrial process which appeals to the eye can be registered under the said Act. The Designs Act 2000 brought into force in May 2001 entitles an applicant to apply for registration in more than one class. However, registration is granted for only one class. Furthermore detailed classification of designs has been incorporated conforming to the international regime.

Copyright in the design under the 2000 Act would be protected for a period of 10 years from the date of registration.

6.5 Geographical Indication

The Geographical Indication of Goods (Registration and Protection) Act, 1999, was enacted to register and protect geographical indicia of goods that originate from or are manufactured in a particular territory, region or even locality. These goods include agricultural, natural or manufactured goods that are distinct from similar products due to quality, reputation or any other characteristic that is essentially attributable to their geographical origin. Under the Act, such distinctive geographical indicia can be protected by registration. The Act thus facilitates promotion of Indian goods when exported overseas and in turn protects consumers from deception[10].

An application for registration of a geographical indication can be made by any authority, organization or association of persons representing the interest of the producers of the concerned goods. Registration would entitle a registered proprietor, or a duly authorized user, to the exclusive right of usage of that particular geographical indication with respect to the goods for which it is registered and to obtain relief for any infringement thereof. It may be pointed out however, that non-registration does not mean non-protection of a rightful user. Registration affords better protection in an action for infringement.

The validity of bona fide registration of a geographical indication as a trade mark prior to the coming into force of the

Act will not be affected by this enactment and will be treated as valid under the laws relating to trade marks.

WORLD INTELLECTUAL PROPERTY ORGANIZATION

Established in 1970, the World Intellectual Property Organization (WIPO) is an international organization dedicated to helping ensure that the rights of creators and owners of intellectual property are protected worldwide, and that inventors and authors are therefore recognized and rewarded for their ingenuity. This international protection acts as a spur to human creativity, pushing back the limits of science and technology and enriching the world of literature and the arts. By providing a stable environment for marketing products protected by intellectual property, it also oils the wheels of international trade. WIPO works closely with its Member States and other constituents to ensure the intellectual property system remains a supple and adaptable tool for prosperity and well-being, crafted to help realize the full potential of created works for present and future generations.

CONCLUSION

The importance of intellectual property right and their protection is acknowledged the world over as essential to business. In tune with the world scenario, India too has recognized the value of IP, which recognition has been consistently upheld by legislators, courts and the industry. India is now a signatory to various IP treaties and conventions. This has helped India become more attuned to the world's approaches and attitudes towards IP protection. India has already taken steps to comply with its obligations under TRIPS, and the Indian IP law regime is almost at par with the regimes of many developed nations. Historically, the enforcement of IPRs in India was not particularly effective. However, recent judicial rulings and steps taken by various enforcement agencies demonstrate that India is gearing up for effective protection and enforcement of IPRs. The Indian police has established special IP cells where specially trained police officers have been appointed to monitor IP infringement and cyber crimes. Various Indian industries have also become more proactive in protecting their IPRs. For example, the Indian Music Industry, an association of music companies, which headed by a retired senior police official, has taken similar proactive steps to combat music piracy. All in all, India has taken many positive steps toward improving its IPR regime and is expected to do much more in the coming years to streamline itself with the best practices in the field of intellectual property rights.

REFERENCES

- [1] http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Intellectual_Property_Law_in_India.pdf
- [2] http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf
- [3] <https://medium.com/@smithjayden93/intellectual-property-law-objectives-and-rights-45acbf9e9f42>
- [4] <http://www.bankpedia.org/index.php/en/106-english/i/23701-intellectual-property-right>
- [5] <https://www.txpatentattorney.com/blog/the-history-of-intellectual-property/>
- [6] <http://copyright.gov.in/>
- [7] <http://www.lrswami.com/page/what-is-a-trademark>
- [8] <http://moj.gov.jm/sites/default/files/laws/Patent%20Act.pdf>
- [9] <http://www.ipindia.nic.in/writereaddata/images/pdf/act-of-2000.pdf>
- [10] <http://www.legalserviceindia.com/articles/geoind.htm>
- [11] https://en.wikipedia.org/wiki/World_Intellectual_Property_Organization