

INDEX

S.NO.	TITLE OF THE PAPER	AUTHOR (S)	Page no.
1	Intellectual Property Rights And Social Media: An Overview"	Dr. R. Uma Devi. Asst. Prof., Of Commerce, Dr. S. R. K. Govt. Arts College, Yanam	1 -11
2	Intellectual Property Crime In India	Dr. .J. Vijaya Kumar, Sri. M. Srinivasa Rao P.R. Government College (A) Kakinada	12-14
3	Human Rights And Environmental Sustainability	Dr. Lalita Kumari, Asst., Prof Malwa College, Samrala (Ludhiana) Punjab	15-19
4	Intellectual Property Rights In Indian Context - A Critical Review	- Dr.K.Chandrasekhararao., Dy. Commissioner, Dept Of State Tax, - Dr.U.Atchi Babu, Acharya Nagarjuna University, Guntur	20-24
5	Role Of Intellectual Property Rights In Enhancing Global Competitiveness Of The Tourism & Hospitality Industry	Dr.ANAND BETHAPUDI , Asso., Prof & Hod (Management), NITHM, Hyderabad.	25-29
6	Leveraging IPR Ecosystem For Startups And Academia: A Case Study Of Andhra Pradesh "	Dr.M.Neeraja, Professor In Management Studies & Hr Officer, Chadalawada Ramanamma Eng.,Ing College , Tirupathi	30--36
7	Current Trends Of Intellectual Property Law In India	Dr. M. Aravind, Professor & Head Department Of Buz., Admn, Narasaraopeta Institute Of Technology, Narasaraopet Dr. Palutla Naga Mani** ** Principal, Hindu College Of Management, Guntur-522002, Andhra Pradesh, India.	37-48
8	Issues Of Financing And Risk Mitigation Of Ppp Projects: Some Policy Implications	*Dr. R. Sreenivasa Rao, C.R. Reddy College **Andey Venkata Ramana, Yn College Narsapur, W. G. Dist	49-53

31	Playgiarism Or Play Czarism	Dr. T.K.V. Srinivasarao, Head, Dept Of English, P.R. Govt College (A) Kakinada	156-158
32	Intellectual Property Rights In India	*Dr. J. Vijayajayanthi Kumari, Principal, Goenka College (W) Tadepalligudem. **Ch. Uma Devi, L/ In Commerce, PR. Govt College (A) Kakinada	159-161
33	Intellectual Property Rights In India	*Dr. J Pandu Ranga Rao, Head Dept Of Commerce P.R. Govt College (A) Kakinada Sri. U.V.M.R. Kanth Research Scholar, Adikavi Nannaya University, Rajamahendravaram.	162-164
34	IPR And Its Protection Under International Conventions And Domestic Legislations	*Dr. Kankipati.Vijaya Bhaskara Rao, L / In Lecturer, D.N.R.College Of Law, Bhimavaram, W. G. Dist.	165-167
35	Intellectual Property Rights – A Boon To The Inventors	¹ mrs.O.V.A.M.Sridevi, Research Scholar, Acharya Nagarjuna University, Guntur & ² mrs.M.V.Prasanthi, Asst. Prof Swarnandra College, Narsapur	168-176
36	Intellectual Property Rights Laws In India - An Overview	* Dr. D.Ch.Apparao, **Dr. Ch.Brahmaiah, ***M.A.Gaffar, ****Ch.Kondalarao, Vsr Govt. Degree & P.G. College, Movva,	177-182
37	Role Of Intellectual Property Rights: Challenges & Issues In India	*Priyabrata Dashl, Asst Prof **Barsha Rani Panigrahi, Asst Prof Vignan Institute Of Technology And Management, Berhampur, Odisha, India	183-189
38	Intellectual Property Rights: Indian Scenario	* K.N.B.Kumari, L/ In Commerce P.R.Govt.Degree College(A), ** Sri. Y. Rajesh Kumar, Asst Govt Pleader, Apat, Hyderabad.	190-197

INTELLECTUAL PROPERTY RIGHTS LAWS IN INDIA - AN OVERVIEW

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INTRODUCTION

Intellectual property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property. Intellectual property, very broadly, means the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

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. Intellectual Property (IP) is the fuel that powers the engine of prosperity, fostering invention and innovation. The increasing significance of intangible assets in the global economy is forcing business organizations to actively manage their IP as a key driver for building and sustaining their competitive advantage and achieving superior performance. IPRs play a crucial role as the legal vehicle through which either the transfer of knowledge or the contractual relationship is affected. In India several new legislations for the protection of intellectual property rights (IPRs) have been passed to meet the international obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

INTELLECTUAL PROPERTY

Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. The domain of intellectual property is vast. IP refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

INTELLECTUAL PROPERTY RIGHTS:

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.

The different types of Intellectual Property Rights are: Patents, Copyrights; Trademarks; Industrial designs; Protection of Integrated Circuits layout design; Geographical indications of goods; Biological diversity; Plant varieties and farmers rights; Undisclosed information;

PATENT

Patent is a grant for an invention by the Government to the inventor in exchange for full disclosure of the invention. A patent is an exclusive right granted by law to applicants / assignees to make use of and exploit their inventions for a limited period of time (generally 20 years from filing). The patent holder has the legal right to exclude others from commercially exploiting his invention for the duration of this period.

COPYRIGHTS

Copyright is the set of exclusive rights granted to the author or creator of an original work, including the right to copy, distribute and adapt the work. Copyright gives protection for the expression of an idea and not for the idea itself. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

TRADEMARK

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

INDUSTRIAL DESIGNS

A Design refers to the features of shape, configuration, pattern, ornamentation or composition of lines or colours applied to any article, whether in two or three dimensional (or both) forms. This may be applied by any industrial process or means (manual, mechanical or chemical) separately or by a combined process, which in the finished article appeals to and judged solely by the eye. An industrial design registration protects the ornamental or aesthetic aspect of an article. Designs may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

INTEGRATED CIRCUITS, LAYOUT DESIGN

Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

The layout-design of a semiconductor integrated circuit means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in semiconductor integrated circuits.

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.

BIOLOGICAL DIVERSITY:

“Biological Diversity means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of eco-systems.”

PLANT VARIETIES AND FARMERS RIGHTS

A plant variety represents a more precisely defined group of plants, selected from within a species, with a common set of characteristics. The Protection of Plant Varieties and Farmers' Right Act, 2001 has been enacted to provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants. According to the Act, the term 'variety' means "a plant grouping except micro organism within a single botanical taxon of the lowest known rank.

UNDISCLOSED INFORMATION

Knowhow is another important form of intellectual property generated by R&D institutions that do not have the benefit of patent or copyright protection. Such know-how is kept undisclosed as trade secrets. A Trade Secret or undisclosed information is any information that has been intentionally treated as secret and is capable of commercial application with an economic interest. It protects information that confers a competitive advantage to those who possess such information, provided such information is not readily available with or discernible by the competitors.

HISTORY OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

George Alfred DePenning is supposed to have made the first application for a patent in India in the year 1856. On February 28, 1856, the Government of India promulgated legislation to grant what was then termed as "exclusive privileges for the encouragement of inventions of new manufactures" i.e the Patents Act. On March 3, 1856, a civil engineer, George Alfred DePenning of 7, Grant's Lane, Calcutta petitioned the Government of India for grant of exclusive privileges for his invention - "An Efficient Punkah Pulling Machine". On September 2, DePenning, submitted the Specifications for his invention along with drawings to illustrate its working. These were accepted and the invention was granted the first ever Intellectual Property protection in India.

- Categories of Intellectual Property
- IPRs can be classified into two categories:

- IPRs that stimulate inventive and creative activities (patents, utility models, industrial designs, copyright, plant breeders' rights and layout designs for integrated circuits) and
- IPRs that offer information to consumers (trademarks and geographical indications).

INTELLECTUAL PROPERTY TRENDS – INDIA

During 2009-10, 34,287 patent applications were filed, 6069 examined and 6168 patents granted. The number of applications filed by the Indian applicants was 7044. Out of the applications filed by the Indian applicants, Maharashtra accounted for the maximum number followed by Delhi, Tamil Nadu, Karnataka, Andhra Pradesh, West Bengal etc.

During 2009-10, 6092 design applications were filed, 6266 examined and 6025 registered. The number of applications filed by the Indian applicants was 4267. During 2009-10, 1,41,943 trademark applications were filed, 25875 examined and 67,490 registered. The total number of registered trademarks as of 31st March, 2010 is 8,22,825.

During 2009-10, 40 Geographical indications applications were filed and 14 were registered. A total of 120 Geographical Indications have been registered till 31st March, 2010. During 2009-10, 142 applications were received for access of bio-resources for research/commercial use, transfer of research results, intellectual property rights and third party transfer. Totally, 13 agreements have been signed. So far, 11 patents have been granted on the applications cleared by NBA.

In 2010-11, a total of 642 applications representing 28 crops were received by the Authority for seeking plant variety protection under the Act.

Initiatives of Government of India towards protection of IPR

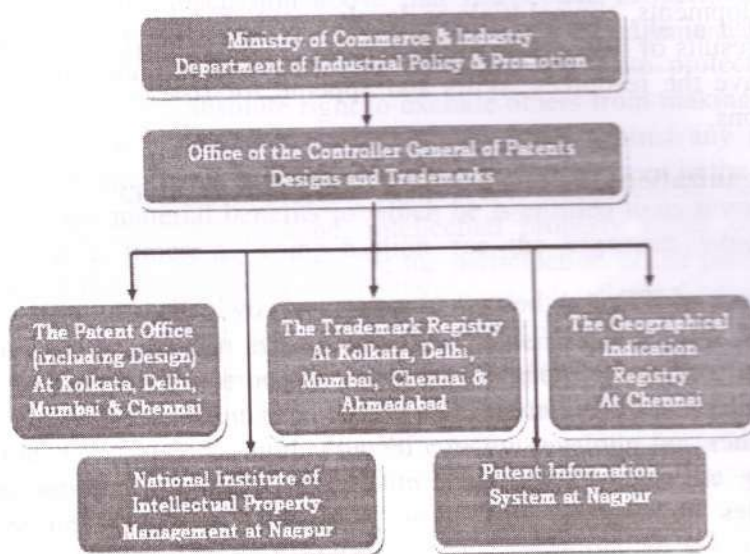
The Government has brought out A Handbook of Copyright Law to create awareness of copyright laws amongst the stakeholders, enforcement agencies, professional users like the scientific and academic communities and the public. National Police Academy, Hyderabad and National Academy of Customs, Excise and Narcotics conducted several training programs on copyright laws for the police and customs officers.

The Department of Education, Ministry of Human Resource Development, Government of India has initiated several measures in the past for strengthening the enforcement of copyrights that include constitution of a Copyright Enforcement Advisory Council (CEAC), creation of separate cells in state police headquarters, encouraging setting up of collective administration societies and organization of seminars and workshops to create greater awareness of copyright laws among the enforcement personnel and the general public.

Special cells for copyright enforcement have so far been set up in 23 States and Union Territories, i.e. Andhra Pradesh, Assam, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Orissa, Pondicherry, Punjab, Sikkim, Tamil Nadu, Tripura and West Bengal.

The Government also initiates a number of seminars/workshops on copyright issues. The participants in these seminars include enforcement personnel as well as representatives of industry organizations.

Organizational details of Intellectual Property Office are given below:



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, The Copyright (Amendment) Bill, 2012, 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 effected. 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

Conclusion:

The importance of IPR 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. 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. 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.

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6th & 7th March 2019



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Govt. Degree & PG.college, Howva has participated & presented a paper INTELLECTUAL

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