

Intellectual Property Rights: An Introduction

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Intellectual property refers to the creations of intellect or mind which include creations of mind such as literary and artistic works, inventions as well as symbols, names, images, and designs used in commerce, including copyrights, trademarks, patents, and related rights. The intellectual property rights provide the holder an exclusive right to the inventor for a limited period of time. Intellectual property rights are a bundle of exclusive rights granted to creations of the mind, both artistic and commercial. The artistic work is covered by copyright laws. The copyright laws protect creative works such as books, movies, music, paintings, photographs, and software and gives the holder exclusive right to control reproduction or adaptation of such works. The second category is known as "industrial properties", as they are typically created and used for industrial or commercial purposes. A patent may be granted for a new, useful, and non-obvious invention, and gives the patent holder a right to prevent others from practising the invention without a license from the inventor for a certain period of time. A trademark is a distinctive sign which is used to identify a product from among other products in the market. An industrial design right protects the form of appearance, style or design of an industrial object from infringement. A trade secret is an item of non-public information concerning the commercial practices or proprietary knowledge of a business and disclosure of trade secrets may sometimes be illegal.

Through establishment of World Trade Organization (WTO), India became signatory to Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1st January, 1995. TRIPS lays down minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights in order to minimize impediments to international trade. The agreement covers for

norms and standards in respect to intellectual property including Copyrights and related rights, Trade Marks, Geographical Indications, Industrial Designs, Designs of Integrated Circuits, Trade Secrets, Patents and Plant varieties.

IPR is a broad term for covering Patents for inventions, Copyrights for material, Trademarks for brand identity and Trade secrets. In general, these properties are termed as “Intellectual Property”. Intellectual property is an asset that can be bought or sold, licensed and exchanged. But ofcourse unlike other properties, intellectual property is intangible; rather it cannot be identified by its specific parameters.

Patents

A patent is a set of exclusive rights granted by a sovereign state 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. A government authority or license conferring a right or title for a set period, especially the sole right to exclude others from making, using, or selling an invention. This is a territorial right which requires registration for a limited time. Patent is a contract between an inventor as an individual and the society as a whole. The inventor has exclusive right to prevent anybody making use of and/or selling a patented invention. Ofcourse, this is only for a specific duration till the inventor discloses the details of invention to the public. Patents are granted under national laws and these rights are enforceable by civil laws rather than criminal proceedings. Any finding which has novelty, inventiveness (Non-obviousness) and usefulness is patentable. A novel invention is one which has not been disclosed, in prior art where prior art means everything that has been published, presented or otherwise disclosed to the public on the date of patent. A patent application involves an inventive step if the proposed invention is not obvious to a person skilled in the art i.e skilled in the subject matter of the patent application. The invention should have utility and any invention without any utility cannot be granted a patent. Under the Patents Act, 1970 any art, process, method or manner of manufacture; machine, apparatus or other article, substances produced by manufacture which include any new and useful improvements of any of them. However, inventions claiming substance intended for use, or capable of being used, as food or as medicine or drug or relating to substances prepared or produced by chemical processes (including alloys, optical glass, semiconductors and inter-metallic compounds) are not patentable.

Types of inventions which are not patentable in India

An invention may satisfy the conditions of novelty, inventiveness and usefulness but it may not qualify for a patent under the following situations:

- a) An invention which is frivolous or which claims anything obviously contrary to well established natural laws e.g. difference of perpetual motion machines.
- b) An invention the primary or intended use of which would be contrary to law or morality or injurious to public health e.g. a process for the preparation of a beverage which involves use of a carcinogenic substance, although the beverage may have higher nourishment value.
- c) The mere discovery of a scientific principle or formation of an abstract theory e.g. Raman Effect.
- d) The mere discovery of any new property or new use of known substance or the mere use of known process, machine or apparatus unless such a known process results in a new product or employs at least one new reactant.
- e) A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof, or a process for producing such substance.
- f) The mere arrangement of rearrangement or duplication of features of known devices each functioning independently of one another in a known way.
- g) A method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient.
- h) A method of agriculture or horticulture.
- i) Any process for medical, surgical, curative, prophylactic or other treatment of human beings, or any process for a similar treatment of animals or plants.
- j) Inventions relating to atomic energy.

Patents are of different types namely Utility patents, Design patents and Plant patents. Utility patents may be available for inventions which are novel, useful, and non-obvious and can be obtained for the utilitarian or functional aspects of an invention. Utility patents have a term of 20 years from the date of filling the patent application with the patent and trademark office, although term extensions are available in certain specific situations. During the term of a utility patent, maintenance fees must be paid in order to sustain the patent. Design patent can be granted to any one who in-

vents a new, original ornamental design for an article of manufacture. A design patent protects the ornamental design (i.e. appearance) of the article. A design patent has duration of 14 years from the date of filing. Design patents are not subject to maintenance fee payments. Plant patent can be granted to anyone who invents or discovers and reproduces a new variety of plant. A plant patent may be issued for the invention or discovery of a distinct and new variety of plant, which may be asexually reproduced. To qualify for this type of patent, the discovery or invention must be novel, distinct, and non-obvious. A plant patent has a term of 20 years from the date of filing.

In Indian system, a patent has a term of five years from the date of selling of the patent or seven years from the date of the patent (i.e. the date of filing the complete specification) whichever period is shorter, for an invention claiming the method or process of manufacture of a substance, where the substance is intended or capable of being used as a drug, medicine or food. The term is 20 years from the date of patent in respect of any other patentable invention.

Copy Rights

A copyright is a very particular and exclusive right even for reproduction of an original work. This is for aesthetic material, literacy, music, film, sound recording, broad casting, software and multimedia. This offers automatic right for safeguarding any original creation, which is not in need of registration but with limited time. Protection to copy right does not give any procedure, principle, concept or method or operation, irrespective of the format in which it is explained. In other words protection of copyright is limited to an inventor's particular expression of an idea concepts or process in a tangible medium. The copyright is sanctioned to prevent others from copying the work, publishing and selling copies commercially, renting or lending the work in a free market or doing or demonstrating the work in public. The types of copyright works include original literary, dramatic, artistic or musical works, sound recordings, films or broadcasts and typographical arrangement of published editions. Copyright grants certain rights that are exclusive to its owner. Based on these rights, the copyright owner can copy the work, issue copies of the work to the public, rent or lend the work to the public, perform, show or play the work in public and communicate the work to the public. This includes broadcasting of a work and also electronic transmission and making an adaptation of the work or do any of the above in relation to an adaptation.