

(Types of Patent, Tangible And Intangible Property, Novelty, Non-Obviousness, Utility, Anticipation, Prior Art, Global Perspective Of Patent System, Role Of International Organization, Indian Patent Act 1970, Patentability, Patent Infringement, Commercialization, Patent Licensing), Applications of IPR.

Overall, participants are strongly encouraged to consider and tackle IPR issues as soon as possible during the preparation of their project and to negotiate any relevant questions with the other participants before starting the project. Indeed, IPR issues can affect both the way a project is conducted, and the exploitation of results after the end of a project.

Moreover, certain provisions foresee a default regime if no alternative agreement has been reached. This guide should be considered in conjunction with the applicable legislation, in particular the "Rules for Participation" ("RFP") and the "Grant Agreement" ("GA"). These official documents prevail over any statement contained in this guide. It is clear that any other legislation that applies must also be respected, for example the provisions of the State aid framework.

Moreover, Frontier research actions (conducted under the European Research Council – ERC) do not rely on the Grant Agreement but on separate "ERC Grant Agreements", referred to as ERC-GA in this guide. Similarly, Marie Curie actions, do not rely on the Grant Agreement but on separate Marie Curie Grant Agreements. 1 Decision No 1982/2006/EC of the European Parliament Development of Intellectual Property Law in India Intellectual Property Right (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 Acts being passed. They are Indian Patents and Designs Act in 1911 and Indian Copyright Act in 1914. Indian Trade and Merchandise Marks Act and Indian Copyright Act have been replaced by Trade and Merchandise Marks Act 1958 and Copyright Act 1957. In 1948, the Indian Government appointed the first committee to review the prevailing Patents and Designs legislation.

In 1957, Government appointed Justice Rajagobala Ayyangar Committee (RAC) to revise the Patent Law. Rajagobala Ayyangar Committee submitted its report on 1959, the report tried to balance the constitutional guarantee of economic and social justice enshrined in the preamble of the constitution.

This report provided the process for Patenting of drugs. This report outlined the policy behind the Indian Patent system. The theory upon which the patent system is based on, i.e., an opportunity of acquiring exclusive rights in an invention, stimulates technical process in four ways. Encourages research and invention. Induces an inventor to disclose his discoveries.

IPR – Intellectual Property Rights

Intellectual property is a property that arises from the human intellect. It is a product of human creation.

Intellectual property comprises two distinct forms

1. Literary and Artistic works
2. Industrial property

Importance Of Ipr

IP can be used to establish the goodwill and brand value in the market.

Inventor, creator or author of an IP can mention about the IP in his/her resumes and thus show their competence.

Basic Principle

Contract between creator and sovereign state

- Protection for revelation Balance between rights of creator and public interest
- Rights and limitations and excipient.

Evaluation of an International Intellectual Property Regime

The foundation of International Intellectual Property Protection was created in the 19th century at various Congresses in Vienna and the rest of Europe. The protection of Industrial Property was created in Paris Convention in the year 1883. Patents, Trade Marks and Industrial designs were the three main properties that were granted protection in this convention.

In 1998, India became a member of the Paris Convention. In 1886, International Copyright Act was passed (resulting in the framing of the Berne Convention for the protection of literary and artistic works). The Paris Convention marked the beginning of the International Trade Marks Protection laws and introduced the concept of a well known mark.

The Principle of National Treatment

Each members shall accord to the nationals of other members treatment no less favourable than it accord to its own national.

WIPO

WIPO – World Intellectual Property Organization.

WIPO was established by the WIPO convention in 1967. The WIPO is a specialized agency the United Nations.

It promotes the protection of IP throughout the world. Its headquarters are in Geneva, Switzerland. WIPO the World Intellectual Property Organization (WIPO) was incepted in 1967 at Stockholm to protect the IPR throughout the world. Later it becomes one of the agency of United Nation in 1974. WIPO frame works as well as regulate various policies concerned to IPR across the globe.



The World Intellectual Property Organization (WIPO) is the United Nations specialized agency that coordinates international treaties regarding intellectual property rights. Its 184 member states comprise over 90% of the countries of the world, who participate in WIPO to negotiate treaties and set policy on intellectual property matters such as patents, copyrights and trademarks.

WIPO was established in 1967 by the WIPO Convention, which states that WIPO's objective was "to promote the protection of intellectual property throughout the world...". Headquartered in Geneva, Switzerland, WIPO currently administers 24 treaties and facilitates the negotiation of several proposed treaties covering copyrights, patents and trademarks.

The five strategic goals laid out by WIPO in its 2005-2006 program and budget are

- ❖ To promote an extensive intellectual property culture
- ❖ To integrate intellectual property into national development policies and programs.
- ❖ To develop international intellectual property laws and standards (partially defined as promoting laws forbidding the circumvention of technological restrictions)
- ❖ To deliver quality services in global intellectual property protection system

WIPO is unique among UN organization in that its activities are largely self-funded. Approximately 90% of WIPO's 2006-2007 budget of CHF 531 million (USD 440 million) comes from the fees it earns for international trademark registrations and patent applications. The remaining 10% of WIPO's budget is earned from fees for its arbitration and mediation services, publications, and from small contributions from member states.

Objective of Wipo

The economic, social and sustainable culture development with preservation of bio diversities, traditional knowledge through a balance and effective international IP system is main objective of WIPO.

Role and Responsibilities

It is responsible to harmonize differences amongst various countries.

WIPO "internet treaties" before the 1990s WIPO played a minimal role in setting rules in the area of information and communications technologies (ICTs). This has much to do with the evolving role of intellectual property rights in general. In the past, intellectual property rules did not apply to personal communication technologies, since they mainly concerned large publishing houses or major companies. But with the development of personal communication technologies, particularly computers and the internet, intellectual property rules have become one of the most important determinants in setting ICT policy and regulation. Because digital technology inherently requires making copies of data, copyright rules are automatically triggered in the digital environment. And because the internet provides a new forum for infringement of copyright and trademark, intellectual property rules have been catapulted into prominence. Patents and trade secrets are increasingly used in technical standards, so such rules are similarly growing in importance in setting ICT policy.

World Trade Organization [1995]

The WTO is run by its member governments. All major decisions are made by the membership as a whole, either by ministers (who meet at least once every two years) or by their ambassadors or delegates (who meet regularly in Geneva). Decisions are normally taken by consensus.

In this respect, the WTO is different from some other international organizations such as the World Bank and International Monetary Fund. In the WTO, power is not delegated to a board of directors or the organization's head. When WTO rules impose disciplines on countries' policies, that is the outcome of negotiations among WTO members.



Structure of Wto Agreements

Umbrella agreement of WTO includes agreements pertaining to:

- Goods
- Services
- Intellectual property

Basic principles concerning these three areas are as follows:

- General Agreement on Tariffs and Trade (GATT): Goods

- General Agreement on Trade in Services (GATS]; services
- TradeRelated Intellectual PropertyRights (TRIPS): Intellectual Property GATT and GATS are supported by additional details pertaining to other goods agreements and annexes, and service annexes, respectively.

Further, market access commitments related to schedules of commitments of various countries are also a part of WTO structure. For settling trade disputes, dispute settlement is included and transparency of various members is ensured through trade policy reviews.

As mentioned above, these agreements and annexes deal with a number of specific issues, for goods, i.e. under (GATT) the additional details include

- ❖ Agriculture
- ❖ Health regulations of farm products (Sanitary and Phyto sanitary measures)
- ❖ Textiles and clothing
- ❖ Product standards (Technical barriers to trade)
- ❖ Investment measures (Trade-related investment measures)
- ❖ Anti-dumping measures
- ❖ Customs valuation methods Reshipment inspection
- ❖ Rules of origin
- ❖ Import licensing
- ❖ Subsidies and counter-measures
- ❖ Safeguards

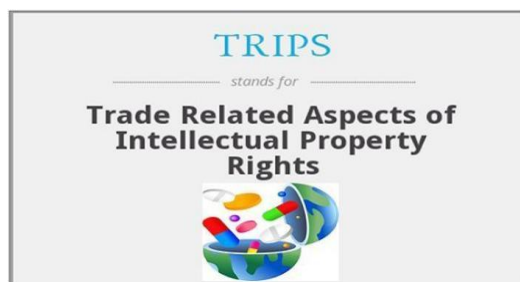
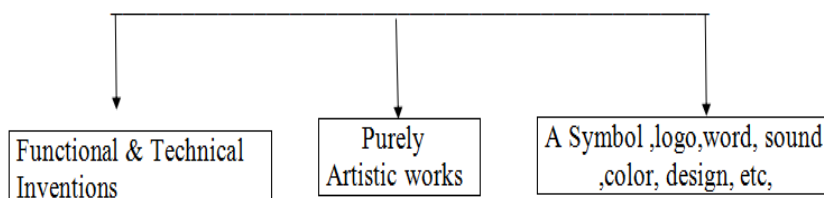
In case of services, GATS annexes include

- ❖ Movement of Natural Persons
- ❖ Air Transport
- ❖ Financial Services
- ❖ Shipping
- ❖ Telecommunications

Trade Related Aspects of Intellectual Property Rights (Trips)

The TRIPS Agreement is to date the most comprehensive multilateral agreement on intellectual property. It contains specific provisions in the following areas of intellectual property: copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks; geographical indications; industrial designs; patents, including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information, including trade secrets and test data.

MAJOR TYPES OF IP



Intellectual Property Law In India

There are many big and small intellectual property law firms worldwide, like in India, USA, UK, Chicago etc. providing qualitative help to inventors and creators of product.

In India intellectual property rights are safely protected and controlled by well established statutory and judicial framework. Apart from that, there are many attorneys and law firm of intellectual property in India in various state.

Major Intellectual Property

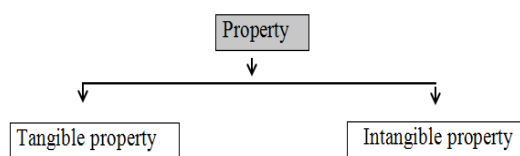
- Patent
- Copyright
- Trademark
- Industrial design
- Trade secret
- Geographical indication
- Licensing
- Franchising

Kinds of Property

Movable property Eg: Car, Pen, Furniture, dress

Immovable property Eg: Land, building

Intellectual property Eg: Literary works, inventions



- The tangible property includes physical objects such as land, household goods, car etc.
- The intangible property includes a list of products of human intellect such as patents, copyrights, trademarks, and industrial designs.

PATENT

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something or offers a new technical solution to a problem.

The LIMITED MONOPOLY RIGHT granted by the state enables an inventor to prohibit another person from manufacturing, using or selling the patented product or from using the patented process, without permission.

An invention in general means a new discovery relating to a product or process, even to an exciting module or idea.

An invention according to Indian Patent Acts,

- ◆ A new product or process
- ◆ Involving an inventive step ; and
- ◆ Capable of industrial application.

**THE ROLE OF PATENT**

- ❖ Innovation
- ❖ Anticipating the changes that is coming
- ❖ Kodak
- ❖ Polaroid
- ❖ Heir

As on date, India is fully in compliance with its international obligations under the TRIPs agreement.

- The Patents Act 1970 has undergone three amendments – 1999, 2002 & 2005.
- The third Amendment in 2005 has major implications on the following :
 1. Introducing of product protection for food, pharmaceutical and chemical inventions.
 2. Examination the “ mail box “application, from January 01,

Conditions of Patentability

- New (novel)
- Useful
- Not obvious
- Pertains to patentable subject matters

Grant of Patent

- Patent are granted by national patent office after publication and substantial examination of the applications.
- In India provisions exist for pre-grant and post grant opposition by others.
- They are valid within the territorial limits of the country
- Foreigners can also apply for patents.

Patentable Subject Matter

- ❖ Relates to a process or product or both.
- ❖ Involves an inventive step
- ❖ Be capable of industrial application.
- ❖ A machine.

Life and Duration of Patent

1. Term of the patent is 20 years from the date of filling for all types of invention. Priority date- first to file.
2. The date of patent is the date of filling the application for the patent.
3. The term of the patent is counted from this date.

Fees for Filing Patent

- The government fee for filing a patent application in India is Rs.750/- for individuals and Rs.3,000/- for legal entities.
- No fee for first and second year.
- Renewal fee, on yearly basis, is required to be paid for third to 20 th for keeping the patent in force.
- Patent lapses if renewal w fee is not paid within the prescribed period.

Is A Patent Granted in One Country Enforceable in Other Countries

No, there is nothing like a global patent or a world patent. Patent rights are essentially territorial in nature.

Granting a patent in one country of the Union does not force other countries to grant the patent for same invention.

The refusal of the patent in one country does not mean that it will be terminated in all the countries.

Patent Holders in India

The list of top 10 patents holders in India comprises only pharmaceutical and bio-tech companies. In India, 184 patents are held by the council of scientific and industrial research, followed by ‘Ranbaxy’. While the top 10 patents holders across the world are IT companies, in India, no IT firm has patents.

Procedure for Grant of A Patent

- Filling a patent application along with the required documents,
- Publication of the patent application (18 months publication)
- Filling a request for examination

- Filling a pre- grant opposition by an interested person
- Examination of the patent application based on the turn of the request for examination
- Filling reply to comply with the requirements of the objections raised by the patent office,
- Attending hearing ,if any
- Acceptance or rejection of the patent application
- Publication grant of the patent application
- Filling a post-grant opposition by an interested person,
- Grant of patent.

Opposition of A Patent

- Invention not described clearly and sufficiently
- Undertaking under se.8, about filing
- Convention application not filed in 12 months
- No disclosure about source or geographical origin
- Anticipation – traditional knowledge

PCT

PCT – Patent Cooperation treaty

PCT is an International treaty which provides facility, to an applicant of the member country, to file a single patent application and designate the countries in which the applicant wants to protect the invention. This is known as international phase of the patent application filed under PCT.

Inventions - Not Patentable

These are the outcomes of mental process only and do not involve industrial process or product. For example; Computer program claimed by itself or as a record on a carrier.

A substance obtained by mere admixture resulting only in the aggregation of the properties of the components there of or a process for producing such substance.

(e.g) Paracetamol (antipyretic)+ibuprofen (analgesic) = a drug (antipyretic & analgesic)

A soft drink that is only a mixture of sugar and some colorants in water but, a mixture resulting in synergistic properties of mixture of ingredients may be patentable (e.g) soap, detergent, lubricant.

Copy Right

Copy rights is a right which grants protection to the unique expression of ideas. The term copy right law means that the work originated with the author

There is no requirement for novelty or uniqueness as in patent law. Copy right law protects the expression of an idea not the idea itself India has a very strong and comprehensive copy right law based Indian copy right act. 1957 which was amended in 1981, 1984, 1992, 1994 and 1999.

The amendment in 1994 where a response to technological changes in the means communications like broadcasting and telecasting and the emergence of new technology like computer software.



Scope of Copy Right

- ❖ Original literary, dramatic, musical and artistic works, idea expressed in material form
- ❖ No copy right in ideas or facts
- ❖ Cinematography films
- ❖ Sound recordings

Protection for Copy Right

- ❖ Production given by law for a term of year to the composer, author etc.to make of copies their work.
- ❖ Work include literary, artistic, musical, films, sound recordings broadcast
- ❖ Commercial and moral rights

Rights

- ❖ MORAL RIGHTS
- ❖ ECONOMIC RIGHTS

Duration of Copy Right

- ❖ Literary, dramatic, musical and artistic work published during life time of author; life + 60 years
- ❖ All other works; 60 years from date publication (for example; works of government and organization.
- ❖ Authors life time + 50 years from the end of the calendar year in which the author dies,
- ❖ 50 years for films and sound recordings
- ❖ 25 years for typographical arrangements of a published edition,
- ❖ Copy right protection always expires on December 31 of the last calendar year of protection.

Types of Copyright

- ❖ Literary work ex; stories, novels, plays, poems, newspaper
- ❖ Dramatic work ex; mimicry, dramatic arrangement.
- ❖ Musical works ex; harmonies, rhythm
- ❖ Artist work ex; drawings, paintings, photography
- ❖ Sound recordings ex; musicians, singer

Intention of Legislature

The statement of objects and reasons of the 2010 copyright amendment bill (which went and to be passed as the copyrights(amendment)act 2012)

Intellectual property organization in the WIPO performer and phonograms treaty (WPPT) the WIPO performance and phonograms treaty 1996

An analogous provision can be found even in the copyright act, 1957 under section, ex; before or after the amendment came into force,

Registration Procedure

Register a copyright by completing a simple application form, along with the appropriate

- ❖ Need not send a copy of your work
- ❖ It may appear with the same title, but if each work has been created independently, each will have its own copy right protection.

Trademark

A symbol, logo, word, sound, color, design, or other device that is used to identify a business or product in commerce. India affords full protection to trademark under the trade mark and merchandise act. the Indian law of trademark is protected by the trade and merchandise marks act , 1958.a new statute I.e. the trademark act 1999 has been enacted in India to bring it in conformity with the Trademark act 1999 to which India is a signatory . Indian trademark act 1999, came into force on September 15,2003.

A name of a an enterprise or a mark capable of being represented graphically, distinguishing the goods or service of one person from those of others e,g; LUX,GODREJ, TVS,TELCO,555,APPLE



TRADE MARK CAN BE

- ❖ Sign, words, letters, numbers,
- ❖ Drawings, picture, emblem,
- ❖ Colors or combination of colors,
- ❖ Graphic representation or packaging or
- ❖ Any combination of the above as applied to an article or product.
- ❖ Can either be registered or not registered
- ❖ Advantages of registered Trademarks service
- ❖ Perform certain function such as indication of quality, identification a trade connection.

Registration of Trademark

Trademarks are registered by national trade mark registries and are valid in that country

Registration is made after examination and publication

Period of registration is for 10 years but can be renewed indefinitely.

Kinds of Trademark

- Mark on goods
- Service marks
- Certification trademark
- Collective marks
- Well known mark
- Trade names

Certification of Trademarks

Certified by the proprietor as having characteristics like geographical origin, ingredients, quality e.g. AGMARK, WOOLMARK CERTIFICATION MARK CANNOT BE USED AS A TRADE MARK.

Certifies that the goods on which it is applied are made of 100% wool. It is registered in 140 countries and licensed to the companies which assure that they will comply with the strict standards set out by wool mark company, the owner of the mark.

Forms of Trademark

- ❖ **Visual:** words, letters, numerals, devices including drawings and symbols or 2-D representatins of object or a combination of two or more of these, color combinations or color per se, 3-D sign as shape of goods or packaging.
- ❖ **Audio:** sounds, musical notes
- ❖ **Olfactory:** smells

Duration & Fees Of Trademark

Trade mark is valid for 10 years from the date of application which may be renewed for further period may be on payment of prescribed fees.

Service make rights are reserved exclusively for owners for 17 year & it can also be renewed.

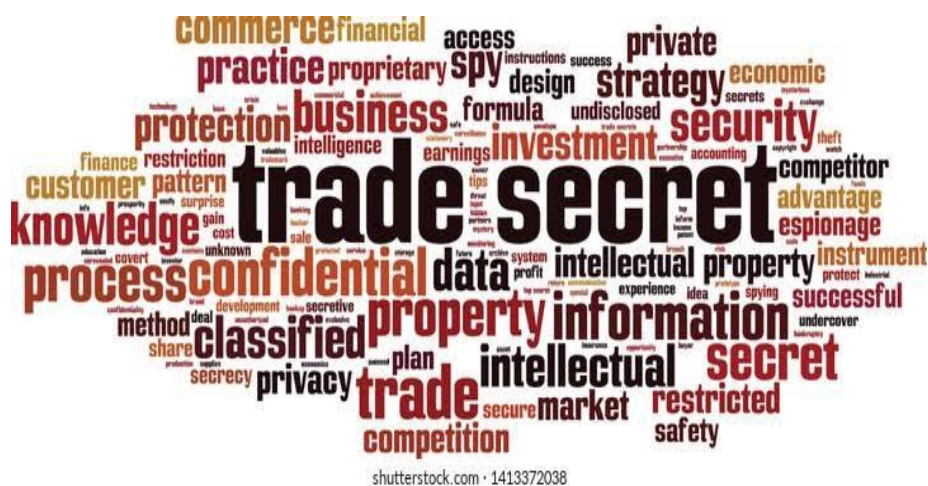
The govt. fees is Rs.2,500 for each class of goods or service.

Tradesecrets

Some invention, data, information cannot be protected by any of the available means of IPRs. Such information is held confidential as a trade secret.

Trade secret can be an invention, idea, survey method, manufacturing process, experiment result, chemical formula, recipe, financial strategy, client database etc.

Unlike other forms of intellectual property, trade secrets are essentially internal instruments, the responsibility for their protection remaining with the owner of the secrets. They are not disclosed to any one include the government and are kept confidential.



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Method of Protecting Trade Secrets

While TRIPS includes provisions for the protections of trade secrets, under the general term “undisclosed information, it is silent on the modalities of achieving this and such protection. has left it to the individual members as to how to provide

Trade Secrets Protection In India

Even though as part of her obligation under WTO, India will accept the provisions under article 39 of TRIPS, which defines the need to protect undisclosed information, there is at the moment no legislation to prevent its violation, outside the normal recourse to breach of contract provisions. With regards to article) of documents submitted to the government are not strictly by secrecy clause and illegal access to such trade secrets are common.

LICENSING

Most of the entrepreneurs may be inclined towards starting a new venture. Business expansion quality enhancement of goods and service.

All of these business objective can be accomplished with the help of licensing of IPRS.

These property rights non-exclusive or exclusive.

The compulsory license system under the TRIPS provides various condition for the grant of it.^[4] It include prior negotiation with the patentee to get a voluntary license on reasonable commercial terms.

Thus, the TRIPS agreement provides for the waiver of the condition in cases of national emergency.

Nationalemergency: Meaning and Definition

The term “national emergency is not defined in the TRIPS agreement. An emergency is a serious, unexpected, and often dangerous situation requiring immediate action.^[5] To the world health organization (WHO), “emergency is a term described a state.

of Instances Compulsory License Under National Emergency

Countries around the world are using the compulsory license provision as provided in the TRIPS. Government use of a patent is the widely used type of compulsory license.

Of national emergency can easily result, where a government finds itself faced with an unanticipated crisis, while its capacity to respond to the crisis in the interest of public protection is limited.

Types of Licensing

Technology licensing agreement

Franchise or trademark licensing agreement

Copyright licensing agreement.

Franchising: An agreement between two entities where the owner of a grants the rights to the other party to use it trade name or trademark also specific business process and techniques for producing and marketing goods service, is termed franchising.

Feature of Franchising

Well established business

Need limited investment

Types of Franchising

Product franchise

Manufacturing franchise

Business format franchise

Advantage of Franchising

Proven market for product or service

Advantage of purchasing

Advantage of training



Disadvantage of Franchising

Lack of independence
 Cost of franchise
 Unfulfilled promise

CONCLUSION

Different forms of IPR demand different treatment, handling, planning, and strategies and engagement of persons with different domain knowledge such as science, engineering, medicines, law, finance, marketing, and economics. Everyone should know about IP policies, management style, strategies, etc. depending on its area of specialty.

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