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RESEARCH ARTICLE

TRENDS IN INTELLECTUAL PROPERTY RIGHT.

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Abstract

Intellectual Property Rights (IPR), the right to protect the property that is created by our mind. It has been defined as ideas (creative), inventions, creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images, words and phrases etc. used in commerce. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. The intellectual property protection includes patents, copyrights, trademarks, geographical indications, trade secret, industrial design, semiconductor integrated circuits & layout design, tradition knowledge and plant breeders' right. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Patent is recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. The Non-Conventional or Non-Traditional trademarks are relatively new in the era of Intellectual Property. The Non-Conventional trademark is a new type of trademark that forms such as scent, sound, taste, touch, color and olfactory marks grew in importance. This paper begins with a brief introduction to the field of Intellectual Property Rights and Laws and Non-Conventional trademarks.

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Introduction:-

Patents:-

Patents are one of the oldest forms of intellectual property protection and, as with all forms of protection for intellectual property. The aim of a patent system is to encourage economic and technological development by rewarding intellectual creativity.

A patent is a statutory privilege granted by the government to an inventor, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process.

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A patent is territorial in nature and inventors or their assignees will have to file separate patent applications in countries of their interest, along with necessary fees, for obtaining patents in those countries. The term of a patent is at least 20 years in most of the countries of TRIPS*. The term of the patent is counted from the date of filing application. Hence, date of filing is an important date and, therefore, the application should be filed without any loss in time.

Law Governing Patents in India is The Patent Act, 1970 and The Patent Rules, 2003. For USA, its Patent Law: 25 United States Code and Patent Rules: 37 Code of Federal Regulations. The European Patent Convention (EPC 1973) is for Europe.

* Trade-Related Aspects of Intellectual Property Rights.

Trademarks:-

A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. Trademarks may be one or a combination of words, letters, and numerals. They can also 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 colors used as distinguishing features. A trademark may comprise a name, word, phrase, logo, symbol, design, image, or a combination of one or more of these elements.

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 in return for payment. It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.

Registration of trademark is prima facie proof of its ownership giving statutory right to the proprietor. Trademark rights may be held in perpetuity. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

Law Governing Trademark in India is The Trademarks Act, 1999 and The Trademarks Rule, 2002. For USA, its Lanham Act (15 U.S.C. §§ 1051-1127) and 37CFR Part 2: Rule of Practice in Trademark Cases.

Copyright:-

Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Cinematographic films, including sound track and video films and recordings on disks, tapes, perforated roll or other devices, are covered by copyrights. Computer programs and software are covered under literary works and are protected in India under copyrights. The copyright Act, 1957, as amended in 1983, 1984, 1992, 1994 and 1999, and The Copyright Rules, 1958 governs the copyright protection in India. For USA, its Copyright Law of the United States of America and Related Laws: 17 U.S.C.

Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties. The total term of protection for literary work is the author's life plus 60 years. For cinematographic films, photographs, records, posthumous publications, anonymous publications, pseudonymous publications, works of government and international agencies, the term is 60 years from the beginning of the calendar year following the year in which the work was published. For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made.

Geographical Indications:-

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

Protection of geographical indication (GI) is given to names associated for a long time with products originating from a specific geographical location and reputed for their special characteristics, such as Darjeeling tea, Chanderi sari. Recently Pashmina shawls were granted GI because Pashmina refers to a type of fine cashmere wool and the textiles made from it. The most famous examples of geographical indications are champagne, cognac, and scotch. Some agreements utilize the terms appellations of origin and indication of source instead of geographical indications. An appellation of origin is a geographical indication that declares the quality of the goods for which it is used to be derived essentially or exclusively from the area of production. However, indication of source simply states that a country, a region, and a specific place of origin of a product or service. For example, "Made in India" is an Indication of source.

Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations.

India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002.

Trade Secret:-

Trade secret is the confidential business information that provides an enterprise a competitive edge. Usually these are manufacturing or industrial secrets and commercial secrets. These include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes. Broadly speaking, the term would encompass information, including a formula, pattern, compilation, program, device, method, technique or process that provides the owner with an advantage over his business competitors who do not know or use it, and is significant importance to the business of the company holding the information.

A trade secret is a valuable piece of information with the essential requirement that the information be treated as such that is, as a secret. The value of a trade secret resides in the fact that competitors or other interested parties do not have access to it. Trade secret is basically a do-it-yourself form of protection. You do not register with the government to secure your trade secrets.

A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. There is no term of protection. In fact, the term can be as long as you can keep it secret.

Industrial Design:-

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 will serve its purpose well in the rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration.

This replacement Act is also aimed to enact a more detailed classification of design to conform to the international system and to take care of the proliferation of design related activities in various fields.

An industrial design right protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and

color in three-dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft.

The term of protection for industrial design is 15 years. US design patents last 14 years from the date of grant and cover the ornamental aspects of utilitarian objects.

Law Governing Industrial Design in India is The Design Act, 2000 and The Design Rules, 2001. For USA, its Patent Law: 35 U.S.C. and Patent Rules: 37 Code of Federal Regulations.

Semiconductor Integrated Circuits & Layout Design:-

The semiconductor Integrated Circuits Layout Design Act, 2000, provides protection for semiconductor IC layout designs. SICLD Act is a sui-generis (one of its kind) specifically meant for protecting IPR relating to Layout-Design (Topographies) of Semiconductor Integrated Circuit.

The subject of Semiconductor Integrated Circuits Layout Design has two parts, namely:

Semiconductor Integrated Circuit:-

Semiconductor 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.

Layout-design:-

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.

Criteria for Registration of a Chip Layout Design are, if it is Original, Distinctive and capable of distinguishing from any other lay-out design.

Note: " Only the Layout-Design " - which essentially is the mask layout- floor planning of the integrated circuits can be registered under the SICLD Act 2000 and not the other information like any idea, procedure, process, system, programme stored in the integrated circuit, method of operation etc.

The term of protection is last for 10 years from the date of filing an application for registration or from the date of first commercial exploitation anywhere in the world, whichever is earlier.

The protection of IC Layout Designs is governed by the Semiconductor Integrated Circuit Layout Design Act, 2000 and the Semiconductor Integrated Circuits Layout Design Rules, 2001 in India. Law Governing Layout Design of Integrated Circuits is 17 U.S.C. § 904 in USA.

Traditional Knowledge:-

Human communities have always generated, refined and passed on knowledge from generation to generation. This is called Traditional Knowledge (TK). Traditional Knowledge is essentially culturally oriented based or culturally based, and it is integral to the cultural identity of the social group in which it operates and is preserved.

Traditional Knowledge is an open-ended that refer to tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks; names and symbols; undisclosed information; and all other tradition-based innovation and creations resulting from intellectual property.

The definition of traditional knowledge used by the World Intellectual Property Organization (WIPO) includes indigenous knowledge relating to categories such as agricultural knowledge, medicinal knowledge, biodiversity related knowledge, and expressions of folklore in the form of music, dance, handicraft, designs, stories, and artwork.

The Turmeric in India is used for healing wounds and infections from ancient times. Use of Aloe Vera in the healing of burns, abrasions and other skin injuries. Use of Neem extracts against pests and fungal diseases attack food crops and skin diseases, malaria and meningitis. Use of Hoodia cactus to prevent off hunger and thirst on long hunting trips. Kava, an important cash crop is a source of ceremonial beverage and grown in Pacific, are some examples of traditional knowledge.

Plant Breeders' Right:-

The protection of a new plant variety is another aspect of intellectual property rights, and as such seeks to acknowledge the achievements of breeders of new plant varieties by giving them, for a limited period, an exclusive right. Protection of new plant varieties are generally through sui generis laws in most countries. In the USA, there is a provision for getting a patent for a new plant variety.

There is an International Convention called *Union Internationale pour la Protection des Obtentions Vegetales* (UPOV) or the International Convention for the Protection of New Varieties of Plants which lays down the criteria for registering new plant varieties.

Protection is available to a new variety of plants to safeguard the interest of plant breeders as an incentive to the development of improved plant varieties for agriculture, horticulture and forestry. Improved varieties are a necessary and very cost-effective element in the improvement of the performance and quality of plants of all types.

The plant varieties can be registered in India under the Protection of Plant Varieties and Farmers' Right Act, 2001. The Indian Act provides for farmers' right meaning thereby that farmers' varieties can be registered even after the variety has been in use for a period specified in the Act.

Law Governing Plant Varieties in the USA is Plant Variety Protection Act (7 U.S.C. 2321-2331, 2351-2357, 2371-2372, 2401-2404, 2421-2427, 2441-2443, 2461-2463, 2481-2486, 2501-2504, 2531-2532, 2541-2545, 2561-2570, 2581-2583) and Law Governing Plant Varieties in Europe is Art. 53(b) EPC.

Registration confers an exclusive right on the breeder (or farmer) or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety. However, researchers are free to use the variety for conducting experiment or research. Any person is also free to use the variety as an initial source of variety for the purpose of creating other varieties.

Registration of a new plant variety is valid for 18 years from the date registration in case of trees and vines, and for 15 years in other cases. Registration of an extant variety is valid for 15 years only.

Non-conventional Trademarks:-

The Non-traditional or non-conventional trademarks are new in the era of Intellectual Property. Any mark that does not come under the traditional categories of trademarks such as letters, words, logos, numerals, pictures and symbols may termed as non-conventional trademark. Therefore, Non-conventional trademarks consist of a mark that originates the forms shape, smells, sounds, tastes and textures.

Trademarks are governed by international treaties like the Madrid Protocol which allow a trademark to be registered in any or all member countries through a single application filed at any of the member countries. However, when it comes to non-conventional trademarks most countries have their own laws regarding what can be allowed and the extent to which the trademark laws can protect non-conventional trademarks.

Sound Trademarks:-

A sound trademark is a non-conventional trademark where the trademark function of uniquely identifying the commercial origin of products or services is achieved by means of an audio clip. Under most conventions and statutory provisions the definition of trademark either encompasses sound as a trademark, or at the very least, does not exclude such marks. Only a handful of countries have a standard or a set of requirements to be met for sound trademarks. These standards have evolved largely due to the cases prosecuted, and since even in those countries the number of applications prosecuted has been limited, guidelines, if any, are not very well developed.

For sound marks, there have been alternate methods for the graphical representation of sounds. These include – depictions by oscillogram, spectrum, spectrogram, and sonogram.

There are many sound marks registered in different countries around the world. Jingles, such as the Nokia ring tone, “roar of a lion” used by MGM (where a sound sonogram or spectrogram adequately represented the roar as it depicted pitch, progression overtime, and volume), and the chime used by NBC, all have a distinctive character, and assist in the identification of products, thus defining their commercial origin.

Smell Marks (Scent Marks):-

Smell is one of the most potent types of human memory. Businesses are now showing increasing interest in coupling their products with particular types of smells in order to give them a distinctive edge. Smell marks are potentially capable of being registered as they can indicate the commercial origin of goods and services. But in practice, it is very difficult to fulfill the condition of graphical representation of a smell. The number of smell or scent or olfactory trademarks registered is significantly less.

The “graphical representation” of scents thus far has solely been verbal. A verbal description of smell can be subjective and cannot really provide a fail-proof method of identifying and distinguishing one smell or scent from another. Another commonly used form of “graphical representation” of a scent is describing the smell as a chemical formula. However the ECJ stated that a chemical formula does not represent the smell of the chemical itself and that few people would be able to get a sense of the smell based on its chemical formula. Further, a sample of the scent provided as evidence of the scent in question may degenerate over a period of time as the chemical composition may deteriorate.

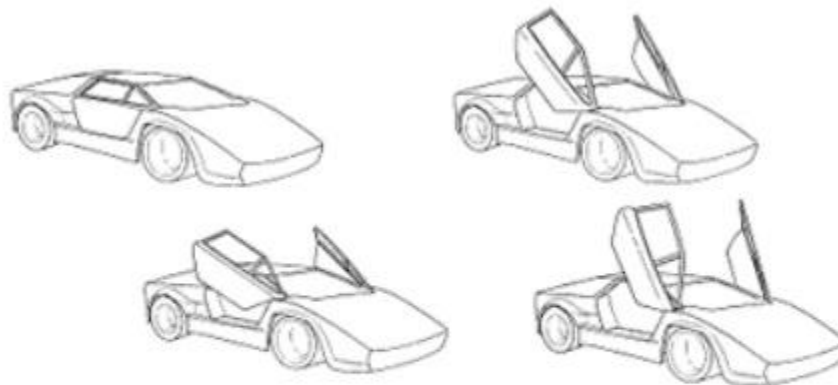
Color Trademarks:-

In the United Kingdom, colors have been granted trademark protection when used in specific, limited contexts such as packaging or marketing. The particular shade of turquoise used on cans of Heinz baked beans can only be used by the H. J. Heinz Company for that product. The UK and the EU have several registrations for colors: the Cadbury's purple for chocolate, BP's green for vehicle service stations and Orange's registration for the color orange for telecommunication services.

Motion Trademarks:-

Moving images in the form of a film clip, video, animation, logos etc can also qualify for trademarks in some countries. Motion trademarks may also be known as animated marks, moving marks, or movement marks. The European Union has also allowed registration of motion trademarks.

The arrangement and opening of the doors of a Lamborghini has a motion trademark (CTM 1400092) which has the description "The trademark refers to a typical and characteristic arrangement of the doors of a vehicle, for opening, the doors are "turned upwardly", namely around a swiveling axis which is essentially arranged horizontal and transverse to the driving direction".



**The arrangement and stages of opening of the doors of a
Lamborghini (CTM 1400092)**

The Microsoft Windows startup animation, which is registered as a Community motion mark



Hologram Trademark:-

Holograms have for long been used for security purposes on credit cards, concert tickets, certain currencies etc. The purpose of use is to prevent counterfeiting and fraudulent replication, as replication of a hologram is considered more difficult. Holographic trademarks have been registered by a few European countries and also in the US. The basic requirements for a trademark registration apply to a hologram too, i.e., the mark should be distinctive enough to be used by a business to uniquely identify itself and its products and services to consumers.

Conclusion:-

IP is an important tool for trade and commerce in enhancing business potential, market size, return on investment, enhancing profits and so on. It plays a key role in all technology transactions, including licensing and assignments. IPR can be used for raising funds from banks and venture capitalist by using them as collaterals. For start-up companies, this may become as effective tool for generating funds. If you have a good IPR portfolio and your resultant product is marketable, you can become a market leader. The protection of non-conventional trademarks is still an under-developed part of intellectual property law. However these trademarks are registerable and enforceable, if they are capable of identifying the manufacturer as a source of the product and also if they distinguish products sold or manufactured by the applicant from similar products of other manufacturers.

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