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RESEARCH ARTICLE

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A STUDY ON INTELLECTUAL PROPERTY RIGHTS

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Manuscript Info

Abstract

Intellectual Property Rights (IPR) is set of rights associated with creations of the human mind. An output of the human mind may be attributed with intellectual property rights. These are like any other property, and the law allows the owner to use the same to economically profit from the intellectual work. Broadly IPR covers laws related to copyrights, patents and trademarks. While laws for these are different in different countries, they follow the international legal instruments. The establishment of the World Intellectual Property Organization (WIPO) has established the significance of IPR for the economic growth of nations in the knowledge economy.

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Introduction:-

Intellectual property rights given to person over the creation of their minds. They usually give the creation on exclusive right over the use of his/her creation for a certain period of time. IP is a category of property that includes intangible creation of the human intellect. There are many types of intellectual property and some countries recognize more than others. The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual good to achieve this law gives people and business property rights to the information and intellectual goods to create usually for limited period of time. The intangible nature of IP prevents difficulties when compared with traditional property like land or goods. Intellectual property "Indivisible" and unlimited number of people can "consume" an intellectual good without it depleted additionally; investment in intellectual goods suffers from appropriation or depreciation. Intellectual property protection is provided for inventions, literacy and artistic work symbols and images created by the mind. The most well known types are copy rights, patents, trademarks, trade secrets. Learn how you can protect intellectual property by using patents, trademarks, copy rights and trade secrets. This paper is an attempt to focus on various types intellectual property rights.

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Deontological justifications for intellectual property come from apriorireasons like rights or duties which can be established in many forms. There is the ontological basis for rights which answers questions like whether rights exist and if so, where they come from. One of the preeminent figures in this discourse has been John Locke, an English philosopher whose argument for individual property as “natural rights” remains relevant even today when applied to intellectual property. Locke’s major assumptions in his claim were:

1. God has given the world to people in common.
2. Every person owns his/her own personality.
3. A person’s labour belongs to him/her.
4. When a person mixes his labour with something in the commons he makes it his/her property.
5. The right of property is contingent upon its being good for commoners.

What is Copyright?

The questions raised in the exercise in the previous section are all a reflection of the various facets of Copyright. Before we proceed any further, however, we must understand what we mean by the term ‘copyright’ and consequently, by ‘copyright law’.

Copyright is the subject matter for national legislations. Subject matter of protection, term of protection, whether registration is mandatory or not, the rights associated with copyright and term of copyright are some of the main subjects addressed by these legislations. The key international instrument governing copyright issues is the Berne Convention for the Protection of Literary and Artistic Works, 1886. Additionally, some other important instruments include the WIPO Copyright Treaty, 1996 and the Performers and Phonograms Treaty, 1996.

Understanding Copyright And Its Components

Nature of the Right

One of the fundamental principles of copyright law was that of territoriality, that is, the copyright granted by law is only recognized and enforceable in the territory of the state that has granted the said right. The exception to this situation is one in which the state in question has entered into any international agreement to the contrary, which is the case with most nations of the world today. That said, however, there are many aspects of copyright laws that remain territorial in nature. The most important of these include the term of copyright and situations that qualify as fair use/fair dealing; which we will discuss in the subsequent sections.

Transfer of the Right

Aspects of copyright are transferrable from one person to another. This transfer may be as a result of assignment as well. This is typically the case in today’s world, where an author transfers the copyright to the publisher in return for a lump-sum payment, and the royalties accruing from copyright are payable to the publishers. Similarly, a music composer transfers royalties to the record companies, film makers to producers and so on.

What are Patents?

Patents are a set of exclusive rights granted by a sovereign state to an inventor. These rights are granted for a limited period of time, usually about twenty years. The granting of these rights is in return for public disclosure of the invention.

Criteria for Patentability

Patents protect inventions. These inventions could be either products or processes. All inventions are required to meet the criteria for patentability. These criteria are the presence of a patentable subject matter, novelty, non-obviousness and utility/industrial application. The criterion of an inventive step is particularly important. Mere discoveries are not patentable, and neither are algorithms.

What is a Trademark?

A trademark is a recognizable symbol, sign, expression, design or the like which is used to identify and differentiate one product or service emanating from a particular source against one emanating from another source. The association of a trademark with an entity may take many forms, and could be visible on packaging, labels, advertisements, all company merchandise, etc.

The holder of a trademark has the benefit of rights associated with trademarks and these rights can be enforced when an action for trademark infringement is brought. It must be noted that for this, the trademark has to be registered. In cases of unregistered trademarks, remedy may have to be sort elsewhere. In this case, it could be under the common law wrong of “passing off”. The rationale of trademark law is also one of consumer protection, since it prevents the public from being misled about the origin or quality of a product or service.

Other Ip:

Trade Dress

When we talk about trade dress, we refer to the visual appearance of a product. This could be its packaging. In the case of architecture, it could be the design of a building. The principle is akin to that of trademarks, in that the source or origin of the product has to be communicated to the consumers.

Trade Secrets

When we speak of trade secrets, we speak for instance, of Coca Cola’s secret recipe to manufacture their popular beverage. Trade secrets, therefore, basically refer to information, be it a formula, a program, a method, a pattern, a process or anything of the like. The rationale of keeping the same a ‘secret’ is to have a competitive economic advantage over one’s competitors in one’s trade.

Geographical Indicators

A geographical indication (GI) is a sign that is used on goods and denotes the geographical origin of the said good. The qualities of that product, or the reputation and characteristics that it enjoys are attributable to the place of origin of the product, and are represented by the GI. A GI will, more often than not, include the name of the place of the origin of the goods. Recognition of GIs is a matter of national law. In international law, the Paris Convention for the Protection of Industrial Property, 1883; the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, 1958 most notably deal with GIs.

Traditional Knowledge

Does your family have its own set of rituals and traditions that might be reflected in festivals or weddings? How about the recipe for that perfect pie that might have been passed down in your family from generation to generation, beyond anyone’s memory; or those “home remedies” for the common cold or fever? These might just be one manifestation of what we call “traditional knowledge” (TK). When we speak of TK, we refer to the knowledge, the skills, the know-how, the practices that have been passed down from generation to generation, within a community, having been developed and sustained in that community. This knowledge forms a part of the cultural and spiritual identity of communities and may be a part of scientific, agricultural and medical contexts, among others.

WTO and Emerging IP Norms

The World Trade Organization has played a seminal role in the process of introduction of intellectual property norms and practices into the multilateral trading system. The reason behind this interaction between trade and intellectual property is that with the maturation of the knowledge economy, ideas have become an important constituent of the trading process. Ideas have become the goods of today and are crucial for the initiation of industry, innovation and sometimes entire economies. One need only look towards Silicon Valley to understand how ideas can create and shape economies and why understanding the structures of trading of ideas is so very critical. Further, even the traditional manufacturing process and the products that are a result of it have seen an infusion of innovation and creativity in their design. This issue can be examined from the other side as well- the protection of intellectual property rights have a significant impact on economies and innovation. Regimes of IPR protection therefore assume great importance in the scheme of trade.

Trend of IPRs granted/ registered:

A comparative trend of IPRs granted/registered during the last 5 years is given below. The figures in brackets give the total disposal of applications.

Comparative Trends of IPRs granted/registered (and disposed)

Year	Patents	Designs	Trade Marks	Geographical Indication
2013-14	4,227	7,178	67,876	22
2014-15	5,978	7,147	41,583	20

2015-16	6,326	7,904	65,045	26
2016-17	9,847	8,276	2,50,070	34
2017-18	13,045	10,020	3 00 913	25

Conclusion:-

If IPR laws in India are carefully formulated and implemented, India could be an ideal center for activities of research and development and clinical studies, with patent protection. Both domestic and global contract research organisations are viewing India as the hotbed for clinical research. Proficiency in English and skilled manpower, and availability of huge patient volunteers is going to set the pace for unprecedented opportunities for domestic manufacturers.

India has a vast domestic market as well as a vast reservoir of technical, managerial and entrepreneurial skills. It is in our long-term interest to have an intellectual property protection system that recognizes both, the need for encouraging and rewarding innovation, as well as our key public interest concerns. It must be remembered that as more and more countries adopt international norms and standards for the protection of intellectual property rights, the export of products from India to those countries in violation of intellectual property rights will not be permissible. The reason is that the world today has become a “global village” particularly as a result of the advances in science and technology- through informatics, telecommunications, mass transportation, etc. Globalisation in human activities is a natural consequence. We should be a part of this globalisation and not adopt an isolationist stance. It will be advisable for us to adopt internationally accepted norms and standards for the protection of intellectual property rights while including provisions that are necessary to protect biodiversity. But in participating in a global partnership as comprehensive as covered by the Dunkel Draft, we have to examine the short, intermediate and long term aspects from the viewpoint of different sectors and the advantages and disadvantages in these different time horizons. No one can deny that it is good to be part of the international body, but that has to be for the benefit of the common man and not for the profit-hungry commercial corporations or under pressure from developed countries. No doubt one cannot have everything in one's favour, but overall there must be a clear indication that the losses will not be such as to constitute colonization once again. Globalization must involve a deep consideration of issues relating to social justice and equity. Each country will, no doubt, have to give up some elements of its national sovereignty to function as part of the world community. But the developing world should not be the one that is expected to pay a major price. Science and technology are a shared heritage of all humankind.

Our past in this area is a result of equal participation of all, and our future lies in joint endeavour of diverse people throughout the globe. In the present day situation, the fact remains that creation, mastery and utilization of science and technology are basically what distinguish the Third World from the developed nations. Modern technology breaks all barriers to development and offers the best and perhaps the most affordable hope for transforming underdeveloped nations into vibrant economical developed countries. It is also not surprising to find national development policies revolve around measures for strengthening technical knowledge based indigenously or acquiring it from abroad.

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