

Intellectual Property Rights

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Intellectual Property can be defined as '*creations of the human mind*'. It is concerned with creating or producing something, which is new and useful, for the better utilization of global resources. This property can be sold, purchased, hired or licensed and as such the rights in property created from the intellectual efforts of an individual need to be protected. Intellectual Property Rights (IPRs) are legal rights governing such creations. Books, Paintings, artistic works, inventions, designs or trademarks can be cited as examples of Intellectual Property. The basic philosophy of the IPRs is to protect the distinctive creations like trade mark, designs etc.

Types of IPRs

TRIPS agreement provides norms and standards in respect of several areas of Intellectual Property including:

1) Patents, 2) Trade Marks, 3) Undisclosed Information, 4) Copy Rights 5) Industrial Designs, 6) Layout Designs of Integrated Circuit, 7) Geographical Indicators & Contractual Licenses, 8) Plant Varieties

1. Patent

Patent is the device that gives legal right over a process or product. It is an authorization given by the State for disclosing an invention by which exclusive rights are conferred on the patentee for a limited period. The holder of the patent (patentee) can prevent others from unauthorized manufacture, sale or use of such inventions.

Under TRIPS, there are three criteria which are being followed universally by the developed and developing nations in their patent laws i.e. novelty, non-obviousness and utility

Novelty means something new, which has not been known before.

Non-obviousness (inventive step) indicates that it must not be evident to a person of ordinary skill.

Utility means that it should be useful for the society.

2. Trade Marks

Trade Marks are the distinctive signs in the form of a word, device or a label, which are used to distinguish goods or services of one undertaking from those of others. Then may includes letters, numerals, picture, symbol, name of company, colours, sounds, smells or combination of any of these. Article 15.1 of the TRIPS defines a trademark as: "Any sign or combination of signs, capable of distinguishing goods and services of one undertaking from those of others".

3. Undisclosed Information

Undisclosed information includes Trade Secrets and Test Data. Trade secrets are defined under Article 39.2 of TRIPS as Information that "a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within circles that normally deal with the kind of information in question; b) has commercial value because it is secret; c) has been subject to reasonable steps under circumstances by the person lawfully in control of the information to be kept secret". Protection of such confidential information is being considered pan of the subject as of unfair competition. Trade secrets are not just protected against unlawful disclosure but against an acquisition and use by third parties in contrary to honest commercial practices. Misappropriation of business secrets of the competitor by unfair means is an example of such unfair competition. While it has been linked to IRPs since long, TRIPS extended this concept further and added

trade secrets and confidential information related to test data.

4. Copy Right

Copyright means protection of the rights of original expressions/ marks of including literary and artistic works. Traditionally copyright law included books, music, paintings or films, it now covers computer software & data compilation within its scope. Besides, some related rights are also included as they follow similar principles of protection. These rights protect persons other than creators such as performers, broadcasting organizations etc.

5. Industrial Designs

A design is an idea or conception as to features of shape, configuration, pattern or ornament applied to an article. Industrial designs can be aesthetic as well as functional. Aesthetic designs are basically ornamental and increase aesthetic appeal of product. But purely non functional artistic designs which can not be applied to utilitarian objects are excluded. A Drawing, photograph, data or a 3 dimensional shape are few examples of industrial designs. Industrial designs are usually applied on packaging, watches, textiles, handicrafts etc. They are protected under copyright law. Functional Designs which are dictated solely by function that the article is to perform are also excluded.

6. Layout Design of Integrated Circuits

Contrary to Industrial Design, layout designs of integrated circuits are highly functional and help to increase the functions of integrated circuits of semi conductor chips. They also help to reduce their dimensions. A number of industrial products use these chips such as computers, refrigerators, washing machines etc. Layout designs are protected under sui-generis laws. They do not fall within the preview of industrial property or copyright laws.

7. Geographical Indicators

Geographical Indicators are defined under TRIPS agreement in Article 220) as — “indicators which identify a good as originating in the territory of a member or

a region or locality in that territory where a given quality, reputation of other characteristic of the good is essentially attributable to its geographical origin”. These indications or marks are distinctive signs identifying products located in a specified area. TRIPS provides for two levels of protection for geographical indications i.e. protection against use which would mislead the public and those which constitute an act of unfair competition.

8. Plant Varieties

Plants are a product of nature to generate new varieties a large number of techniques are used since ages. Some new methods of plant breeding have also come up recently. IP in plants is now being protected systematically in two ways. 1) Patents 2) Plant Variety Protection or Plant Breeders' Rights (PBRs)

India is one of the largest market for the developed nations and the multinational companies. Most of the developing nations including India were forced to negotiate on TRIPS against their wishes which may create socio-economic and political problems for them in the near future. The TRIPS agreement, no doubt, will bring standards of protection in developing countries close to those exist in developed countries but presently, the nations are facing a number of problems. Developed Countries have already built in procedures to records, information about various products, processes, innovations, inventions, designs, trademarks, copyrights etc and have huge investments in their R & D.

No doubt, the India has amended laws relating to Patents, Trademarks, Copyrights and made new enactment on UI of goods, Integrated Circuits Layout and Plant Varieties & Farmers Rights, but with divergent geographical features, it will take some time to check unlawful importation of infringing goods and check the implementation of these laws in true spirit. In India, we have yet to exploit a number of opportunities.

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