

ON
THE INTELLECTUAL
PROPERTY
RIGHTS

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What is 'intellectual property'?

Intellectual property comprises two main branches :

- (1) Industrial property, chiefly in inventions, trademarks, industrial designs, and appellations of origin; and
- (2) Copyright, chiefly in literary, musical, artistic, photographic and audio visual works.

In general, the most important feature of property is that the proprietor or owner may use his property as he wishes and that nobody else can lawfully use his property without his authorisation.

Generally speaking, there are three kinds of property :

- (1) Property consisting of movable things,
- (2) Immovable property, and
- (3) Intellectual Property.

The objects of intellectual property are the creations of the human mind, the human intellect. This is why this kind of property is called "intellectual" property. Intellectual property relates to pieces of information which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The property is not in those copies but in the information reflected in those copies. Similar to property in movable things and immovable property, intellectual property, too, is characterised by certain limitations, for example, limited

duration in the case of copyright and patents.

The convention Establishing the World Intellectual Property Organisation (WIPO) concluded in Stockholm on July, 14, 1967, provides that "intellectual property" shall include rights relating to:

- (1) Literacy, artistic and scientific works;
 - (2) Performances of performing artists, phonograms, and broadcasts;
 - (3) Inventions in all fields of human endeavour;
 - (4) Scientific discoveries;
 - (5) Industrial designs;
 - (6) Trademarks, service marks, and commercial names and designations;
 - (7) Protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific literary or artistic fields.
- [Article 2 (viii)]*

The objects mentioned under (1) belong to the copyright branch of intellectual property. The objects mentioned in (2) are usually called the 'neighboring rights', that is, rights neighboring on copyright. The objects mentioned under (3), (5) and (6) constitute the industrial property branch of intellectual property. The object mentioned under (7) may also be considered as belonging to that branch. The object mentioned

under (4), Scientific discoveries, belongs to neither of the two branches of intellectual property. Scientific discoveries should not have been mentioned among the various forms of intellectual property since no national law or international treaty gives any property right in scientific discoveries. Scientific discoveries and inventions are not the same. A scientific discovery is "The recognition of phenomena, properties or laws of the material universe not hitherto recognised and capable of verification."

What is 'Patent'?

A patent is a document, issued by a government office, which describes the invention and creates a legal situation in which the patented invention can normally only be exploited (made, used, sold, imported) with the authorization of the patentee. This protection of the invention is limited in time (say, 5 years or 20 years, etc.).

A patent is "a statutory privilege granted by the government to inventors, and to other persons deriving their rights from the inventor, for a fixed period of years, to exclude other persons from manufacturing, using or selling a patented product or from utilising a patented method or process.

What are the two different types of patents?

It is customary to distinguish between inventions that consist of products and inventions that consist of

processes. An invention that consists of a new alloy is an example of a product invention. An invention that consists of a new method or process of making a known or new alloy is a process invention. The corresponding patents are usually referred to as a "product patent for invention", and a "process patent for invention", respectively.

Anyone who wishes to exploit the invention must obtain the authorization of the person who received the patent-called "the patentee" or "the owner of the patent" to exploit the invention.

If anyone exploits the patented invention without such authorization, he commits an illegal act. What is involved is that the patentee is protected against exploitation of the invention which he has not authorized. Such protection is limited in time.

What is meant by inventions, trademarks and industrial designs?

No international treaty defines these concepts, and the laws of various countries differ from each other on several important points. It is not possible to give generally accepted definitions of the various forms of industrial property. Certain more common characteristics of these concepts can, however, be indicated.

What is 'Invention'?

An invention is a novel idea which permits in practice the solution of a specific problem in the field

of technology. Invention is a new solution to specific technical problem. Under most legislations concerning inventions, the idea, to be protected by law (patentable) must be *new* in the sense that there is no indication that it has already been published or publicly used; it must be *non-obvious* in the sense that it would not have occurred to any specialist in the particular industrial field, had such a specialist been asked to find a solution to the particular problem; and it must be *immediately applicable* in industry in the sense that it can be industrially manufactured or used.

These three requirements are often called the requirements or conditions of patentability.

What is 'Trademarks'?

A trademark is a symbol which is intended to indicate who is responsible for the goods placed before the public. The public uses these trademarks to choose whose goods they will purchase. A trademark is a sign which serves to distinguish the goods (as does the "service mark" with regard to services) of an industrial or a commercial enterprise or a group of such enterprises. The sign may consist of one or more distinctive words, letters, numbers, drawings or pictures, emblems, monograms or signatures, colors or combinations of colors, and under some legislations it may also consist of the form or other special presentation of containers or packages for the product (provided they are not solely

dictated by their function). Trademarks should be not only different, but also "distinctive".

What is 'Industrial Designs'?

An industrial design is the ornamental aspect of a useful article. This ornamental aspect may be constituted by elements which are three-dimensional (the shape of the article) or two-dimensional (lines, designs, colors) but must not be solely dictated by the function for which the useful article is intended.

What is 'Trade names'?

Trade names are generally names, terms or designations which serve to identify and distinguish an enterprise and its business activities from those of other enterprises. A trade name identifies the entire enterprise, without necessarily any reference to the goods or services it puts on the market, and symbolizes the reputation and goodwill of the business as a whole.

What is WIPO? Its Functions?

The World Intellectual Property Organisation (WIPO) is an intergovernmental organisation with headquarters in Geneva. It is one of the sixteen "specialised agencies" of the United Nations system of organisations.

WIPO was established by a Convention signed at Stockholm on July 14, 1967, and entitled "Convention Establishing the WIPO".

The origins of what is now WIPO go back to 1883 when the Paris Convention for the Protection of Industrial Property was adopted and to 1886 when the Berne Convention for the Protection of Literary and Artistic Works was adopted.

Paris Convention (of March 20, 1883)

Multilateral economic treaty for the protection of industrial property, dealing with patents, trade marks, and designs. On January 21, 1992, 103 States were party to the Paris convention. The convention, concluded in 1883, was revised at Brussels in 1900, at Washington in 1911, at the Hague in 1925, at London in 1934, at Lisbon in 1958, and at Stockholm in 1967, and it was amended in 1979.

India was not a party to the Paris Convention.

Berne Convention (of September 9, 1886)

For the protection of copyright. The main beneficiaries are authors, publishers, news papers, periodicals, composers of music, painters, photographers, sculptors, film producers and creators of T.V. programmes. In brief, for the protection of Literary and Artistic Works.

India is a party to this convention. The convention, concluded in 1886, was revised at Paris in 1896, at Berlin in 1908, at Rome, Rome in 1928, at Brussels in 1948, at Stockholm in 1967, and at Paris in 1971, and was amended in 1979. On January 2, 1992, ninety

States were party to this Convention.

WIPO became a specialized agency in the United Nations system of organizations in December 1974.

It is claimed that it maintains services for facilitating the obtaining of protection of inventions, marks and industrial designs for which protection in several countries is desired and promotes other administrative cooperation among member States.

The Universal Copyright Convention is administered by United Nations Educational, Scientific and Cultural Organization (UNESCO) and the administration of the Rome Convention on neighboring rights is ensured by WIPO in cooperation with UNESCO and the International Labour Office (ILO).

At the present time, WIPO administers the following Unions or treaties (listed in the chronological order of their creation): in the field of industrial property, the Paris Union (for the protection of industrial property), the Madrid Agreement (for the repression of false or deceptive indications of source on goods), the Madrid union (for the international registration of marks), the Hague Union (for the international deposit of industrial designs), the Nice union (for the international classification of goods and services for the purpose of the registration of marks), the Lisbon Union (for the protection of appellations of origin and their international registration), the Locarno Union (for the establishment of an international classification for

industrial designs), the PCT (Patent Cooperation Treaty) Union (for cooperation in the filing, searching and examination of international applications for the protection of inventions where such protection is sought in several countries, the IPC (International Patent Classification) Union (for the establishment of worldwide uniformity of patent classification), the Vienna Union (for the establishment of an international classification of the figurative elements of marks), the Budapest Union (for the international recognition of the deposit of micro-organism for the purposes of patent procedure), the Nairobi Treaty (on the protection of the Olympic Symbol), and, in the field of copyright or neighboring rights, the Berne Union (for the protection of literary and artistic works), the Rome Convention (for the protection of performers, producers of phonograms and broadcasting organizations), the Geneva Convention (for the the protection of producers of phonograms against unauthorized duplication of their phonograms), and the Brussels Convention (relating to the distribution of programme-carrying signals transmitted by satellite). Also, WIPO administers the Film Register Treaty (for the international registration of audiovisual works). Furthermore, WIPO provides administrative and financial services for the International Union for the Protection of New Varieties of Plants (UPOV).

Two treaties, both adopted in 1989 under the aegis of WIPO, will, once they come into effect, also be

administered by WIPO. They are the Washington Treaty (on intellectual property in respect of integrated circuits) and the Madrid Protocol (for the further development of the international registration of marks).

What are the Treaties facilitating Industrial Property Protection?

(i) in the field of patents

- ‘PCT’ Patent cooperation Treaty, of June 19, 1970.
- Budapest Treaty, of April 28, 1977, on the International Recognition of the Deposit of Micro-organisms for the purposes of Patent Procedure.

(ii) in the field of trademarks

- Madrid Agreement, of April 14, 1891, concerning the International Registration of Marks.
- Protocol Relating to the Madrid Agreement, concerning the International Registration of Marks, adopted at Madrid on June 27, 1989.

(iii) in the field of appellations of origin

- Lisbon Agreement, of October 31, 1958, for the Protection of Appellations of Origin and their International Registration.

(iv) in the field of industrial designs

- Hague Agreement, of November 6, 1925, concerning the International Deposit of Industrial Designs.

(V) on Protection of New Varieties of Plants

- International Convention for the Protection of New Varieties of Plants, of December 2, 1961.

What is meant by "exclusive rights of exploitation"?

The rights, the protection, are not described in the document called a "patent." Those rights, that protection, are described in the patent law of the country in which the patent for invention was granted. The "exclusive rights of exploitation" generally consist of

- (a) in the case of product patents for invention, the right to make, use, sell and import the product that includes the invention, and
- (b) in the case of process patents for invention, the right to use the process that includes the invention as well as the right to make, use, sell and import products which were made by the process that includes the invention.

(The inventor has the right to be named as such in the patent).

It was estimated that the number of patents and other titles protecting inventions granted worldwide in

1990 was about 570,000. Furthermore, it was estimated that at the end of 1990 and 4.6 million patents and other titles protecting inventions were in force in the world.

What is the Dunkel Draft?

It comprises the proposals made by GATT Director General Arthur Dunkel on issues in the Uruguay Round of multilateral trade negotiations.

TRIPs?

Agreement on Trade Related Intellectual Property Rights.

GATT?

General Agreement on Tariffs and Trade.

TRIMs?

Trade Related Investment Measures.

GATS?

General Agreement on Trade in Services.

What are the main features of the Indian Patents Act, 1970?

The main features of the 1970 Act are:

- Product patents for all inventions except food, medicines, drugs, and substances produced by chemical process: in these fields only process patents are available.

- Atomic energy, agriculture and horticulture are totally excluded from patentability, i.e. you cannot obtain any sort of patent whatsoever in these fields.
- 'Working' of patents is mandatory. This means that whether you are a foreigner or an Indian holding a patent in this country, India insists on that patent being 'worked'— that is *its product being manufactured in India*.
- There is no discrimination between Indian and foreign nationals.
- National interests are placed above the interests of patent holders.
- 'Compulsory licensing' is a feature of the Indian Act that ensures the working of a patent. If a patent holder ignores this provision, any other party can be licensed to manufacture the product in question.
- Automatic 'Licence of Right' is another feature of the Indian Act that protects the public interest in the fields of food, drugs and medicines. If the patent holders ignore public concern about availability and reasonable prices of their products, or do not manufacture the product, anyone else can manufacture the same product after three years.
- All patents in India expire after 14 years, except those relating to food, medicines, drugs and

substances produced by chemical process. In these fields, the patents have a term of seven years from the date of application or five years from the date of cealing of the patent, whichever is earlier.

Apart from the Patents Act of 1970, other Indian laws protecting intellectual property are :

The Indian Trade & Merchandise Marks Act, 1958
The Designs Act, 1911
The Copyright Act, 1957

Why is the 'Mancha' opposed to Amendments to the Indian Patents Act that would follow our acceptance of certain proposals at GATT, or as demanded by the United States (failing which India faces 'retaliatory' action against her exports to the USA under the special 301 section of the US Omnibus Trade and Competitiveness Act)?

Because these Amendments would have, as pointed out by the Indian School of Social Sciences, Bombay, several implications. For instance, such amendments would not only recognise the product patent of the foreign company manufacturing the drug, they would also recognise the company's right *not* to manufacture the drug in India despite having taken out a patent on it here.

Instead, the company would enjoy a monopoly in importing the drug, at a price it can manipulate. Thus, we could witness a situation where Indian companies

have the know-how, the means, the capacity to produce the drug by a different and original process at the much lower price, but are forbidden from doing so by their own courts at a time when millions of Indians could be dying of dreadful maladies.

Similarly, the introduction of patents in agriculture (at present a non-patentable area in India) would have grave results for millions of farmers and eventually drastically affect seed and food prices. Our farmers would be forbidden from raising their seeds and plants which work would be monopolised by American farmers, and our farmers will be compelled to purchase seeds and plants from American farmers at a price dictated by them. Our own seeds and plants, taken over by them as monopolists and sold back to us at their dictated prices! Indian farmers were never denied their traditional right to conserve seed. This right was never denied to them at any point in history, even under the most tyrannical regimes.

Again, if foreigners were allowed to monopolise the importing of the vital goods into this country, without having to manufacture those goods in India, while Indian themselves were not allowed to manufacture the same goods or import them independently, hundreds and hundreds of existing industries would be destroyed, throwing millions out of employment. If our industries are pre-empted from utilising relevant technologies for a period of 20 years, would they be able to survive at all?

If our mathematicians are told that they cannot work on certain equations since those have been patented by multinationals, what would be the fate of our science and technology, research and development? Our research institutes would be forbidden from conducting their regular research activities.

Patents will be used to privatise knowledge and resources that would otherwise be available to the public or to the scientific community.

Patenting would be extended to plants, animals and other life forms, parts of human beings, seeds, mathematical equations, etc. we would be victims of Plant Breeders' Rights. The United states would like to destroy the agriculture of the Third World countries which would then become markets for American agricultural produce.