



A STUDY ON INTELLECTUAL PROPERTY RIGHTS

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Abstract

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. 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. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is a recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of specialty. Pharmaceutical industry currently has an evolving IPR strategy requiring a better focus and approach in the coming era.

Introduction

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. These Intellectual property rights (IPR) are territorial rights that can be registered with a legal authority in some presentable or tangible form which can be sold or bought or licensed, similar to physical property. Intellectual Property (IP) law relates to the establishment and protection of intellectual creations such as inventions, designs, brands, artwork and music.

Intellectual Property

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.



Types of intellectual property

Do you know what the difference is between a patent and an industrial design, how to protect your photo with a copyright, or why you would want to obtain a protected designation of origin? Discover everything you ever wanted to know about IP rights.

Patents

A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document.

Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

Trademarks

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or "mark" on their products.

Industrial designs

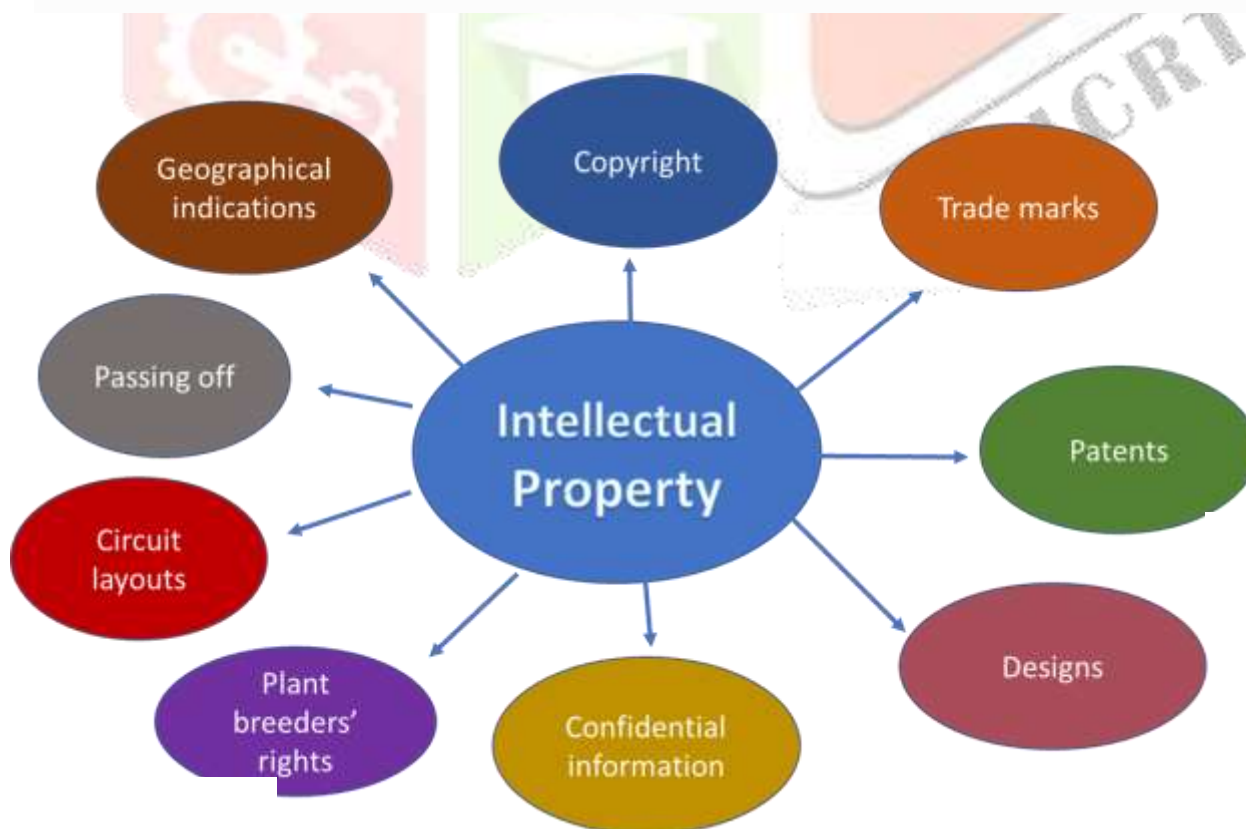
An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

Geographical indications

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

Trade secrets

Trade secrets are IP rights on confidential information which may be sold or licensed. The unauthorized acquisition, use or disclosure of such secret information in a manner contrary to honest commercial practices by others is regarded as an unfair practice and a violation of the trade secret protection.



The benefits of Intellectual Property Rights

Intellectual property

Intellectual property (IP) refers to creations of the mind, such as:

- inventions
- literary and artistic works
- designs
- symbols
- names and images used in commerce

To do business it is important to know how to use, guard and enforce the rights over the intellectual property that an individual or his business owns.

Protecting intellectual property

IP in India is a term that refers to brand, invention, design, and any other kind of creation over which the person or the business is having legal rights. Almost all businesses own some form of intellectual property that can be considered as a business asset.

When something new and innovative is created, the inventor has the right to protect it. Inventors can register their creations as intellectual properties by filing for an IP that enables them to avail sole monopoly over their creations.

Traditionally, IP is categorized as industrial property and copyright, wherein the former is used in the context of patents, industrial designs and trademarks, and the latter is used in the context of protecting literary creations, artistic works, musical works etc.

As such, the right to protect IP entails the exclusive rights provided to the innovator or creator. IP rights denotes the legal rights provided to the creator and not the IP itself. It is necessary to understand the meaning of IP rights and be aware of the steps taken to protect them.

The Intellectual Property Rights (IPRs) in India mainly include encompassing trademarks, copyrights, patents, trade secrets and design, etc. Each category of intellectual property covers a different group of properties and work. It is necessary to choose the right category to safeguard the work and the business property.

IPRs in India

Intellectual property rights in India includes the following common types:

- **Copyright** - Grants the protection of written or published works such as books, songs, films, web content, and other artworks
- **Patents** - The patent rights protect an invention, new business product, or the process
- **Design** - Getting a design registration protects the design such as a drawing, colour, pattern, or combination of designs
- **Industrial designs** - An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, line, or colour
- **Geographical indications** - Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods
- **Trademarks** - A trademark protects signs, symbols, logos, words, or sounds that distinguish between the products and services from the competitors
- **Trade secrets** - A trade secret is a company's process or practice that is not public information, which provides an economic benefit or advantage to the company or holder of the trade secret. Trade secrets must be actively protected by the company and are typically the result of research and development.

Important to register intellectual property

While talking about protecting IPRs, it is first necessary to understand the importance of registration. When an individual or an organization develops a new product, which involves a lot of processes, content, resources etc., a lot of time and money is invested. It is natural for the inventor or organization to have the expectation of being able to own exclusive rights over the invention, while excluding others from benefiting from it.

This exclusivity is provided through IP systems and IP laws. Although it is not mandatory to register an IP or trademark, it provides the inventor certain advantages including the prima facie ownership proof that enables the owner to enforce IPR in a court of law, if deemed necessary.

There are several dangers if IPRs are not protected. For instance, not protecting IP can result in getting benefits from the unprotected invention in an unauthorized manner to anyone.

There is no law that can stop one from duplicating and seeking financial benefits from someone else's innovation if IP is not filed. Furthermore, it falls upon the owner to prove the ownership of the IP in a court of law if the IP is unregistered. If a trademark remains unprotected, the court cannot help the inventor, as it is not possible to claim ownership and/ or sue for infringement.

Need to protect IP

It is essential to protect IPRs. Firstly, inventors get exclusive control to use their IP to their benefits – both in terms of usage as well as financial benefits. The inventor can decide the price of the invention, the marketing and distribution channels and countless ways to turn a profit and earn a high return on investment.

Secondly, filing for IP allows the inventor to prohibit others from making financial benefits.

Thirdly, if a competitor violates the IP laws that protect the inventors, the inventor can exercise the right to file a court case against the party attempting to benefit from the invention. If found guilty, the court may award a financial reward to the inventor, to be paid by an individual or entity attempting to gain financial benefits from the invention attributed to the owner of the IP.

As such, IP rights are essential because they provide inventors the incentive to keep innovating and benefitting from their inventions.

Protecting IP is a complicated process that involves IP registration, followed by a long process of verifying the authenticity of the creation.

The process – from registering IP to granting the patent, trademark, copyright or utility design involves a lot of research on the part of the individual or entity granting the IP. The entity granting the IP is required to ensure that the creation is original, authentic and not lifted from another innovation. It involves publishing the new creations in IP journals to fact-check any other individual or entity claiming IP rights against the same or similar creations.

The entire process – from registering to acquiring IP rights – can take anywhere between a few months to many years and includes various rounds of corrections on the part of the inventor.

Benefits of IPR

Intellectual property rights not only protect the ideas or concepts of business but also protect the genuine business assets that are vital to the products and services.

Several advantages to secure intellectual property rights include:

- **Enhances market value** - Intellectual property rights can help you generate business through the licensing, sale and even commercialization of the products and services protected under IPRs. This will ultimately improve the market share and helps in raising profits. Having registered and protected intellectual property rights can also raise the business' value in case of sale, merger or acquisition.
- **Turn ideas and thoughts into profit-making assets** - Ideas have little value on their own but registering ideas under intellectual property rights can help you turn it into commercially successful products and services. Copyrighting or licensing the patents can lead to a steady stream of royalties and additional income.
- **Market your products and services** - Getting intellectual property rights can help your business' image. Intellectual property rights like trademark registration can help you separate your products and services from others.
- **Access or raise Capital** - Through sale, licensing, or by using IPRs as collateral for debt financing, an individual can monetize for debt financing. Intellectual property rights can be used as an advantage while applying for government funding like grants, subsidies, and loans.
- **Enhances export opportunities** - A business that has registered IPRs will be able to use brands and designs to market its products and services to other markets as well. A business can also tap into the franchising agreements with overseas companies or export patented products.

Conclusions

It is obvious that management of IP and IPR is a multidimensional task and calls for many different actions and strategies which need to be aligned with national laws and international treaties and practices. It is no longer driven purely by a national perspective. IP and its associated rights are seriously influenced by the market needs, market response, cost involved in translating IP into commercial venture and so on. In other words, trade and commerce considerations are important in the management of IPR. 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. Each industry should evolve its own IP policies, management style, strategies, etc. depending on its area of specialty. Pharmaceutical industry currently has an evolving IP strategy. Since there exists the increased possibility that some IPR are invalid, antitrust law, therefore, needs to step in to ensure that invalid rights are not being unlawfully asserted to establish and maintain illegitimate, albeit limited, monopolies within the pharmaceutical industry. Still many things remain to be resolved in this context.

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