
Understanding of Intellectual Property Rights: Context of India

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Abstract

Intellectual property refers to those which consist of any of the individual's own creation in different sectors like artistic, scientific, technical creations and so on. To protect this sole creation of that particular creator the legal rights are given to them to protect their creations for a particular period of time. The creator or the inventor can utilise these exclusive legal rights in that said period. Intellectual property rights are very old concept as the inventors or the creators always possess some legal rights to protect their creativity. One of the earliest property rights can be illustrated here is in the 500 B.C.E, the Sybaris in Greece granted monopoly rights to the chefs for the duration of one year to protect their culinary inventions. Specifically In India there are mainly seven types of intellectual property rights provided by the government. These are copyright, trademarks, patents, geographical indications, designs, semiconductor integrated circuit layouts and plant varieties. To protect the IPRs one has to understand the necessity of the registration. By registering the inventions exclusivities provided through IP laws and IP systems. Though it is not mandatory to register an IP still it is important because if the IPs are not protected the inventors also fails to prove their ownership of the IP in a court of law and court can't help or do anything as the IPs are unprotected.

KEYWORDS: IPRs, Copyright, Trademark, patents, geographical indications, semiconductor integrated circuit layouts, Plant varieties.

INTRODUCTION

Intellectual property refers to those which consist of any of the individual's own creation in different sectors like artistic, scientific, technical creations and so on. To protect this sole creation of that particular creator the legal rights are given to them to protect their creations for a particular period of time. The creator or the inventor can utilise these exclusive legal rights in that said period. Generally, this legal right or the property rights are divided into two main areas. The two main areas are: i. Copyrights and ii. Industrial property rights. Copyrights are those rights which are given to the creators or the investors or the authors to protect their creation or inventions or literature, painting, sculptures and same like that after fifty years of the death of the creator or the inventors. The copyrights also protect the creations of the artists and the broadcasting organizations. On the other hand, the industrial property rights are those rights which are used to protect any special particular signs. This industrial property rights again divided into two broad heads. The first one is used to protect any particular special signs or any geographical trademarks to indicate any geographical areas or its characteristics. Another heads within the industrial property rights helps to protect the ingestions of the technologies of the inventors which generally include the industrial designs, trade secrets etc. In this

case the term of the property rights are given to the inventors for twenty years in the case of patent. The Intellectual property rights helps to maintain a sound liaison between the creators or the inventors and the public interest of the mass of the society.

CATEGORIES OF INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights are categorise under three heads - Patent which is provided or granted for inventions which provides a new way of a technical solution of a problem. Copyrights are granted to the artists to protect their art works which is already mentioned earlier. The last one is trademark which is granted to protect the mark which is capable enough to distinguish between goods and services from which an individual can easily understand the shape, colour and combination of goods and services.

BACKGROUND OF THE INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights are very old concept as the inventors or the creators always possess some legal rights to protect their creativity. One of the earliest property rights can be illustrated here is in the 500 B.C.E the Sybaris in Greece granted monopoly rights to the chefs for the duration of one year to protect their culinary inventions. Therefore it can be stated that the concept of intellectual property rights are found from medieval Europe. The concept of patent was founded in 1331. On 16th July 1331 King Edward III of England first provided a letter's patent to a Flemish woollen clothes weaver to protect his work and also gave the permission to teach the woollen weaving to those who wish to learn from him. King John III created history in this regard. The history of copyright is quite similar as patent came into force. The copyrights given to the creators not only protect the work of the creators or the inventors but also it helps to raise the revenues of the government by controlling the publications. The landmark history of copyrights can be illustrated in this work of Statute of Anne in 1710. In this the copyright was provided for the limited duration of twenty eight years. Later, the similar laws were enacted in United States and France in the year 1790 and 1793 respectively. The history of trademark traced since 13th century in England. It was provided to the bakers of the England by the king Henry III. The modern trademark act concept found in France in 1857 followed by merchandise Act of 1862 in England.

LITERATURE REVIEW

Lalit Jajpura (2015) in his paper "An Introduction to Intellectual Property Rights and their Importance in Indian Context" stated that the intellectual property rights are

the exclusive rights of the inventor or the creator. According to the author, in the present scenario of globalisation IPR is very crucial for the global trade practices. This right helps to give the recognition as well as the economic benefit to the creator or the inventor of the invention. On the other hand the lack of knowledge about the IPR leads to the economic and technical hindrances in the country. In his paper he highlighted on the different sectors like trademark, copyright, geographical indication marks in Indian context.

Dhaval M Chudasama (2021) in his paper “Importance of Intellectual Property Rights” put light on how development of society depends on the successful running of Intellectual Property Rights in a country. Lack of awareness of IPR of the creator or the inventor may result in the economic as well as the overall loss of the country. In his paper he tries to point out the various intellectual property rights, their rules, regulations, implementations in the context of India.

Sagar Kishore Savale and Varsha Kishore Savale (2019) in their paper “Intellectual Property Rights” discussed about the how this exclusive rights is granted by Government of India to maintain the originality of the inventor of the invention. He also points out in his paper how this right helps the inventor to protect their work from piracy and how Government of India implement such rights to protect the originality of the inventor.

OBJECTIVES OF THE PAPER

- To understand the concept of Intellectual Property Rights.
- To highlight on the basic features of IPRs.
- To highlight on the different types of IPR like Trademark, Patent, Copyright etc.
- To discuss about the Government of India’s implementation on the exclusive rights to maintain and protect the inventions of the inventor.
- To understand the Indian context about the IPR.

RESEARCH METHODOLOGY

In this research paper the data used to complete the research work is secondary data. The data gathered to complete the research paper is implicit in nature. To complete the research work help of different official websites of Government, different author’s article and different journal has been taken to see how this right is implemented in India. The methodology used in this paper is qualitative in nature and it is totally based on the discussion about the intellectual property right to protect the inventions of the inventors. In this paper the whole research is carefully recorded and reported.

DISCUSSION

As it is already discussed in previous section of the paper that the Intellectual Property Rights (IPR) are provided by the Government to the inventor or to the creator to protect his or her invention or creation after his or her death. Now in this section in India how many types of IPR are provided by the government of India to protect the invention, how it is implemented and works, what are the positive sides of the rights will be discussed.

Specifically In India there are mainly seven types of intellectual property rights provided by the government. These are - copyright, trademarks, patents, geographical indications, designs, semiconductor integrated circuit layouts and plant varieties. The idea copyright protects the idea of the inventors. Under Section 13 of the Copyrights Act 1957, copyrights are provided to the inventors to protect his or her original literature, music, dramatic work, sound recording, and cinematography. This right protects the computer programmes too. Under section 17 of the Copyright Act, 1957 stated that clearly the author or the inventor of the original work for which the inventor seeks protection shall be regarded as the first owner of the work and he or she has the sole right to license the copyright of the particular work to the third parties by the written agreement.

If the literature, dramas or the artistic works are published already then the span of copyright protection will be provided to the inventor for sixty years in addition to the life of the inventor. Under section 57 of the same act which states that certain special rights which are better known as moral rights also gave to the inventors or the authors. With the help of the moral rights the authors are eligible to claim authorship of the work as well as it is stated that distortion, modification or manipulation will hamper the honour or reputation of the author which is popularly known as integrity rights of the author.

As we know trademark is one of the branch of intellectual property rights. It includes the name, word or sign of the inventor which helps to differ the authentic invention of goods from the other goods of another enterprise. One can easily recognize the product or goods with the help of the trademarks. The owner can use the trademark to protect his or her product from another competitor. It is use as the tool to increase the finance of the business. Every brand has its own trademarks. It can be a logo or picture or slogan. In India, before 1940, there have been no laws on trademarks. Due to that different types of infringement problems arose which were resolved under section 54 of the Specific Relief Act 1877. The registration was done under the Indian Registration Act, 1908. To cut out such problems in 1940 the Indian Trademark Law was enacted in India which was replaced by Trademark and

Merchandise Act 1958 to provide better protection of trademarks to the enterprises. It was again replaced by the Trademark Act, 1999 by the government of India abide by trade-related aspects of intellectual property rights or TRIPS. The motive of the Trademark Act was to grant protection to the users of trademarks and provides legal remedies as well as punishments and penalties against the offenders in case of infringement by implementing of trademark rights.

Patent is a right which is granted for invention of a product or process. In easier term it can be stated that patent offers new technical solution to a problem. Generally, there have three types of patents. Those are- utility patents, design patent and plant patents. The Patents Act 1970 helps to govern patents till date in India. It came into force in 1972. It has been amended in 1999, 2002, 2005 and 2006 respectively to make the act more effective and fruitful.

Geographical indications of goods are regarded as that aspect of industrial property which refers to country or to any particular place situated as being the country or place of origin of that particular product. The GI of Goods (Registration and Protection) Act provides by the government of India for the registration and protection of geographical indications relating to any particular goods in India. Geographical indications as an element of IPRs governed by Indian Government Under article 1(2) and 10 of the Paris Convention for the protection of industrial property of India. It is also covered under TRIPS agreement under WTO. The GI Act is valid for 10 years. This tag helps to protect products legally. It helps consumers to get quality product and promotes the economic prosperity of the producers of the products. The top 5 states of India holding maximum number of GI tags are Karnataka, Tamil Nadu, UP, Kerala. Presently, 10 new items from various states of India like Gamosa of Assam, Tandurredgrm of Telangana, RaktseyKarpoo Apricot of ladakh, Alibag White onion of Maharashtra and so on adding to the GI collection of India. Government of West Bengal had applied for GI tag in the year 2019 for the Bengal Muslins. Ultimately Bengal Muslin got the GI tag in the year 2023. With that the total number of GI Tags of India raises to 433. To support and accelerate the promotion of awareness regarding GIs the Government of India approving 75 crores expenditure for the terms of 3 years.

In India the Semiconductor Integrated Circuit Layout Design (SICLD) Act 2000 came into force on 4th September, 2000. The designs are registered under the Ministry of Electronics and Information Technology. As per the SICLD Act 2000 any person can register his layout design in writing to the Registrar in the concerned territorial jurisdiction. According to the Act layout-design is to be considered as original if the design is the result of the creator's intellectual efforts and it is not commonly known

to the creators of layout design and at the time of its creation manufactures of semiconductor integrated circuits.

To establish an effective system or the protection of plant varieties and to encourage the farmers and the breeders of India to breed or farm new varieties of plants it is the duty of the government to provide some rights to the farmers and the breeders and make the status of the plant varieties improved. The government of India enacted the Protection of Plant Varieties and Farmers' Rights (PPV & FR) Act, 2001 to protect the interest of the farmers and the breeders of the public sector breeding institution. This legislation helps to recognize the contribution of the farmers and the commercial plant breeders both. Again this plant breeding activity provides to implement TRIPS to support the socio-economic interest of the stakeholders of the public sectors, private sectors and the research institutions as well as the research-constrained farmers. In order to implement the provisions of the Act the Department of Agriculture and Farmers Welfare established the Protection of Plant Varieties and Farmers' Rights Authority on November 11, 2005. They have 15 members along with the chairperson of the committee who immensely helps the farmers and the breeders to enjoy the rights of their provided by the Government of India.

After a lot of discussion about the different types of Intellectual property rights provided by the Government of India now the light put on the protection of the IPRs. While someone talking about the protection of the IPRs one has to understand the necessity of the registration. When an individual or an organization develops a new invention they spend a lot of time, innovation and money behind it. Therefore, this is very obvious they need some exclusive rights to protect such resources. These exclusivities provided through IP laws and IP systems. Though it is not mandatory to register an IP or trademark but there are several dangers of IPRs are not protected. Still now, in India there is no law which can stop someone from duplicating and seeking financial benefits from others innovations if IP is not filed. On the contrary if the IPs are not protected the inventors also fails to prove their ownership of the IP in a court of law and court can't help or do anything as the IPs are unprotected. Protection of IPs helps the inventors to enhance the market value of the inventions, turn their ideas and thoughts into profit making assets. It will also help to market the product and services by creating business image of the inventors which will raise or roll the capital of the business in the market. It is important to keep in mind that 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. The protected IPRs of business can also help in franchising the agreements with other companies in the market or export patented products to other.

LIMITATIONS OF THE PAPER

- Lack of time or shortage of time.
- This study is based on secondary data.
- Unavailability of adequate resources.

CONCLUSION

To conclude the paper it can be stated that the intellectual property rights are the sole rights that provide their original holder the short term privilege for the exclusive income rights to their inventions. Therefore it is used to safeguard the rights of the investors. Without safeguarding the IPR another company or business can use the same for their profit. In this regard it can be concluded that the Intellectual Property Rights have immense importance to protect the authentic work and the inventions. The violation of the right can be resolved by using some of the techniques which will prevent company's IP from the misuse on the other hand.

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