

## PROTECTING INTELLECTUAL PROPERTY IN CURRENT SCENARIO

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### ABSTRACT

Intellectual Property Law basically deals with various legal legislations issued for the protection of the rights of the creators and owners of the inventions like writings, music releases, art and designs and many other similar works which are known as the intellectual property. Under intellectual property law, owners are provided with the exclusive rights for their variety of intangible assets, such as musical releases, literary, and artistic works; new discoveries and inventions; and words, phrases, symbols, and designs. The most common types of intellectual property rights include copyright, trademarks, patents, industrial design rights, trade dress, and in some jurisdictions trade secrets.

**KEYWORDS:** Intellectual Property, Trademarks, Patents, Copyright

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### INTRODUCTION

Intellectual property is a right of an owner or an inventor on some material object. This right is given to the owner of the property or the inventor of the property for the creation of intellect and for this reason it is called as intellectual property. Its literary meaning is property but it is very much different from the actual property or a formal property, inspite of this it is directly or indirectly related to that property. As defined in Oxford Concise Dictionary, this word 'intellect' has its basis in the Latin word 'intellectus' which is understood as perception skill related to the knowledge and reasoning. It is the indicator of one's level of understanding about the persons or events or things, or concepts; either individually or collectively. It is the place where ideas are born, instead of the idea itself. It is the test center where the understandable and new ideas take birth in the brain and are brought forward in the form of concepts to the general public.

It should be kept in mind that if something is possessed by a person which is totally exclusive and no one other can have at the same time, then that particular thing becomes his property. In the same manner, what is new or exclusive is thought of by the intellect becomes the property of the intellect. Thus, this is the actual meaning of the term 'intellectual property'. As we all know that our intellect is the pool of new ideas and the intellectual property is the ownership over those new ideas.

The significance of the ideas can be seen in the fact that everything in this world is the contribution of ideas. Thus, everything in this world owes its genesis to the practical shape given

to the ideas. Behind every object there is an idea to which it owes its existence. Hence, everything whether it's nature is material or abstract, owes its presence to the ideas and indirectly to the faculty of ideas, which is intellect. In very simple words intellectual property includes every property, which possesses a proprietary right over a thing.

Intellectual Property Law basically deals with various legal legislations issued for the protection of the rights of the creators and owners of the inventions like writings, music releases, art and designs and many other similar works which are known as the intellectual property. Under intellectual property law, owners are provided with the exclusive rights for their variety of intangible assets, such as musical releases, literary, and artistic works; new discoveries and inventions; and words, phrases, symbols, and designs. The most common types of intellectual property rights include copyright, trademarks, patents, industrial design rights, trade dress, and in some jurisdictions trade secrets. The Government of India has enacted the following types of intellectual property laws.

- Copyright Act, 1957 (1999)
- The Patents Act, 1970 (1999, 2002, 2005)
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Designs Act, 2000
- The Semiconductor Integrated Circuits Layout-Design Act, 2000
- Protection of Plant Varieties and Farmers' Rights Act, 2001

## REVIEW OF LITERATURE

As per Halsbury's Laws (England), intellectual property is a property which belongs to a person and other people can only possess it through the process of bargain and sale. It comprises of licenses to use a patent, goodwill, book debts, trademarks, options to purchase, and all other rights under a contract. Salmond, in his study found out that every type of property can be either incorporeal or corporeal. In the words of John Locke, everything on the earth including earth itself, is common for all people, yet every person has two things in his property i.e, the name of the person himself and what he has developed out of its functions for him by the efforts of his hard work and skill. Further, Locke has concluded the importance of labor in his theory of property. In addition to this the Marxist theory suggested that the labor or efforts of the person is his real property and hence whatever is obtained is a result of application of one's labor. Further, looking into the same point of view it can be highlighted that one's labor is one's property and the same is the output of his labor. Sherman and Bently elaborated in their study that in spite of a near relationship between the tangible objects and intangible property in which they are embodied, intellectual property rights are totally distinct and different from the property rights in tangible products.

## NEED AND IMPORTANCE OF STUDY

Every human effort and endeavor which promotes the economic, cultural, scientific and social development in the society should be encouraged and their creators should be rewarded suitably by providing legal protection to their intellectual creation. So, the IPRs are the legal rights, which govern the use of innovations created by the human minds. Thus, the intellectual property law governs the innovations, their use and the exploitation of intellectual labor through the various acts formulated specifically for this purpose. It prevents third parties from reaping what they have not sown and becoming unjustly enriched. This is a special branch of legal laws that protects some of the biggest manifestations of human endeavors.

## OBJECTIVE OF THE STUDY

The objective of the study is to analyze the role of intellectual property law in protecting the intellectual property and also to study the various reasons due to which the need of intellectual property law is felt.

As it is well known that IPR is a primary right over a particular idea, it moves along with the idea and thus protects an object/thing which is the result of this idea. So, if an idea which is the main component of an IPR finds an application in a product or an object, then that object or product will also be protected by that IPR. Hence, if an IPR is bestowed in a physical object, it is so bestowed only because of the particular idea, which it covers as its main component and is applied in that object.

The Convention on World Intellectual Property Organization (WIPO) comprised of the following laws/rights in IPRs:

- Trademarks, service marks and commercial names and designation
- Industrial designs
- Performance of artists, phonograms, and broadcasts
- Literary, artistic and scientific works
- Inventions in all fields of human endeavour.
- Scientific discoveries
- Protection against unfair competitions

**According to TRIPS the Intellectual Property Rights are as under:**

- Copyright and related rights
- Right of traders in their trademarks
- Right of manufacturers and producers on geographical indication in relation to such products and produce.
- Right of designers for their distinctive design striking to the eye.

- Patents
- Right of computer technologists for their layout design or integrated circuits.
- Right if businessmen for protection of their undisclosed information on technology and management

#### Reasons for the Protection of Intellectual Property Rights through Intellectual Property Law:

1. **Political Factor:** It is to be kept in mind that on the political side, various countries of the world in spite of the fact that if they have a democratic set up or not, are following the principles of the welfare state. In this political role, the Government is very active to regulate human activities in almost every walk of life for the purpose of ensuring the welfare of all. The best possible way through which the welfare of the society can be ensured is implementation of legislations on the issues of vital importance. Thus, where it is noticed that a particular activity is regulated and there appears to be an apprehension of imbalance being created in the society i.e. putting the major section of the society at the receiving end and favoring a particular section, the Government comes into action and makes law on that point. These laws were made when property was seen to be lowering the status of becoming a privilege of the very few and depriving the major section of the society. Due to the growing importance of these laws in the modern world, these laws are recently being enacted specially in case of intellectual property.
2. **Commercial Factor:** The commercial and industrial growth of the nations is taking place at a tremendous rate with the increase in the world population. In this scenario every country is trying to control the unfair and fraudulent trade practices in its market. This situation becomes more worse if the business organizations are involved in the industrial activities across its national boundaries. The legal laws at national and international level are more importantly required for the protection of trade secrets and original designs. The most common example at national level for this are the use of Copyright and Patent Laws which highlight the consciousness of the creators towards their creation. The agreement of Paris Convention, Berne Convention etc. are very fine expression of these laws, which finally converted into an international legal instrument, which govern the laws of all the member states. The World Intellectual Property Organization Agreement on Trade Related aspects of Intellectual Property Rights is also an example for this.
3. **Technological and Scientific Development:** Every Country is striving to achieve new heights in the field of science and technology. This is also accompanied with keenness on the part of these nations to make the application of use these advances in technology for the improvement in quality of life of their people. At the same time these nations are worried that other nations should not reap any benefit from this enhanced knowledge and improved technology without paying any cost. This is because countries have spent huge amount of money for achieving great heights in the field of science and technology and for this reason they want to assure that the idea and use of this technology should be totally under their control and ownership. Further they also want to use this technology,

for the welfare of their own people, and if according to them any part of knowledge and technology can harmlessly be allowed to be used by some other country, then it is not donated, rather it is sold out on very strict terms and conditions to the buyer nation who even on the payment of high price for such knowledge and technology is not at all allowed to license or forward it on to any other nation as only the parent nation will have the exclusive right and authority to take the decision for selling that know how. IPR law provides all such protections to the creators and to the parent nations.

4. ***The increase of Business Competition:*** W.R. Cornish concluded in his study that the growing anxiety is now seen among the creators and inventors for the protection of their Nation with IPR. The increase in business competition since 1950 has provided the growing advantages to all those people who are involved in the field of innovation. Following benefits are the result of use of IPRs:
  - IPRs help the people to lead their business with newly generated technical knowledge and implementing effective marketing plans. The new charm for modern culture among the people has further increased the business returns.
  - The increase in number of patents approved and registered trademarks, especially in industrial nations, and the increasing trend of record producing, publishing, broadcasting and film making are some of the most significant measures in the field of IPR.
  - Almost all the inventors, authors, designers, information providers etc. are now becoming aware for the protection of their creations. And with every passing day the awareness among the inventors is increasing and almost all the products which we use in our daily are now being IPR protected and the IPR rights are exercisable at the pleasure of the person or group of persons sitting, may be, at the other end of the world.
5. ***Changes in Structure of World Trade:*** The structure of world trade is changing. In this modern scenario, business in the field of intellectual property has become the most important part of trade among countries. The importance of knowledge and technical commodities has been boosted greatly with the new technologies like semi-conductor chip, software applications and biotechnology.
6. ***Inter-Reliant World Trade:*** The world trade is now more inter-reliant, which has led to the severe requirement for international cooperation. In this scenario not a single country howsoever, developed or big it is can impose its economic will on any other country in the world. Thus, Nations have now recognized the interdependence between them and demanded for the widening of international arrangements/agreements including intellectual property.
7. ***Increasing Unauthorized Copying:*** One of the limitation of the latest reprographic and modern information storage technologies is that these allow unauthorized copying very fast and in a very easy manner thereby, disheartenment of the creator's work. It is oftenly

felt in the developed nations that this type of copying, which takes place in various developing and under developed nations is due to reason that these countries do not have stringent IPR laws.

### **Role of Intellectual Property Law in Protection of Intellectual Property**

The basic objective behind the enactment of intellectual property law is to protect the intellectual property. This law provides the creator of intellectual property an exclusive right for the use and control of his intellectual property for a pre-defined period of time. This protection, which is ensured under the Intellectual Property Law through intellectual property rights motivate creators and inventors with the creative mind to develop and come forward with more intellectual property in the form of industrial designs, literary work, coining of trademarks, inventions, etc. and reveal it to the public for the advantage of the society at large. Basically, the intellectual property rights confer upon the creator the following rights:

- Right to transfer his intellectual interest in his intellectual property in the favor of any other person in consideration of monetary gain.
- It protects the commercial interest of the owners/creators of the intellectual property.
- IP law inspires the inventors, musicians, authors, creators of designs of industrial products etc. to reveal their inventions to the general public and also without any fear of the infringement of their creation by others.
- It protects the economic interest of the nation by protecting the intellectual property right of the creators over their creations through intellectual property law.

Intellectual property law motivates and inspire the creators for the new creations, inventions, new design by protecting their economic interest in their intellectual property, which is very much required for the economic development of every Country.

For the purpose of protecting the interest of public at large, TRIPS agreement was brought into form for making balance in the interests of various participants, like inventors, manufacturers and consumers so as to enhance the “economic and social welfare” of all. In this relation, the Article 7 of the TRIPS agreement provides that, “the enforcement and protection of intellectual property rights should promote technological innovation and transfer and dissemination of the technology for the benefit of manufacturers and consumers of technological knowledge and also to ensure social and economic welfare of the nation by making a balance between rights and obligations.

From the discussion above, it can be concluded that (Bently and Sherman) property rights are created through Intellectual Property Law in a variety of ways and in different array of things i.e. books, computer software, art and designs, movies, television programs and performances, costume designs, medicines, genetically modified animals and plants etc. The Intellectual Property Law also give rights to various insignia which are displayed on goods and services to associate them with particular business organization. In this age we can easily notice that the almost all of the commodities of our daily use like, a book or a pen, a chair or a computer package are having



IPR protections in favor of their creators or a group of creators. IPR today is a necessity for the encouragement of more developments and inventions in future.

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