

## IPRs – PROBLEMS AND PROSPECTS

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### Introduction

Intellectual property rights are the rights given to persons over the creations of their minds and give the creator an exclusive right over the use of his/her creation for a certain period of time.

### Development of Intellectual Property Law in India

Intellectual Property Right (IPR) in India was imported from the west. The Indian Trade and Merchandise Marks Act 1884, was the first Indian Law regarding IPR. The first Indian Patent Law was enacted in 1856 followed by a series of Acts being passed. They are Indian Patents and Designs Act in 1911 and Indian Copyright Act in 1914. Indian Trade and Merchandise Marks Act and Indian Copyright Act have been replaced by Trade and Merchandise Marks Act 1958 and Copyright Act 1957 respectively.

In 1948, the Indian Government appointed the first committee to review the prevailing Patents and Designs legislation. In 1957, Government appointed Justice Rajagobala Ayyangar Committee (RAC) to revise the Patent Law. Rajagobala Ayyangar Committee submitted its report on 1959, the report tried to balance the constitutional guarantee of economic and social justice enshrined in the preamble of the constitution. This report provided the process for Patenting of drugs. This report outlined the policy behind the Indian Patent system.

The theory upon which the patent system is based on, i.e., an opportunity of acquiring exclusive rights in an invention, stimulates technical process in four ways.

1. Encourages research and invention.
2. Induces an inventor to disclose his discoveries.
3. Offers award for the expenses of developing inventions.
4. Provides an inducement to invest capital in new lines of production which might not appear profitable.

Based on the Rajagobala Ayyangar Committee report, a Bill was introduced in the year 1965 and the bill was passed in the Lok Sabha but it lapsed in the Rajya Sabha and once again lapsed in Lok Sabha in the year 1966 due to dissolution of Lok Sabha. But it was reintroduced in 1967 and passed in 1970; the draft rules were incorporated in Patent Act and passed in the year 1971.

The following steps are being suggested with particular reference to the situation in India regarding IPR in the national policy making.

- Constitute an integrated single window National IPR commission to deal with IPR policy issues;
- Integrate national technology planning with IPR and trends in international technology trade;
- Implement a formal national IPR literacy mission;
- Set-up IPR training institutes to prepare technically qualified attorneys;
- Introduce an enabling national taxation policy to encourage innovation, building of IPR portfolio and its utilization in technology transfer and trade;
- Urgently modernize the IPR administrative structures in the country;
- Improve infrastructure for access and effective use of IPR information. There is an urgent need to harmonize the patent classification system to ease and optimize processes in patent searching;
- Re-structure the judiciary and enforcement machinery for professional and speedy response to IPR issues;
- Training of corporate and institutional managers on effective management of IPR;



- Standardize models for valuation and audit of IPR;
- Evolve national taxation policies of development, use and transactions linked to IPR.

### **Evaluation of an International Intellectual Property Regime**

The foundation of International Intellectual Property Protection was created in the 19<sup>th</sup> century at various Congresses in Vienna and the rest of Europe. The protection of Industrial Property was created in Paris Convention in the year 1883. Patents, Trade Marks and Industrial designs were the three main properties that were granted protection in this convention. In 1998, India became a member of the Paris Convention.

In 1886, International Copyright Act was passed (resulting in the framing of the Berne Convention for the protection of literary and artistic works). The Paris Convention marked the beginning of the International Trade Marks Protection laws and introduced the concept of a well known mark. Special unions and arrangements have been created for the countries who are members of the Paris Convention. Madrid agreement is one special arrangement that was created to standardize the trademarks. Madrid agreement embodies the fundamental principles outlined in the Paris Convention.

The General Agreement on Tariffs and Trade (GATT) was negotiated during the UN Conference on Trade and Employment and was the outcome of the failure of negotiating governments to create the International Trade Organization (ITO). GATT was formed in 1949 and lasted until 1993, when it was replaced by the World Trade Organization in 1995.

In 1960 the World Intellectual Property Organization was created. It governs the Paris and Berne Convention. In 1967 World Intellectual Property Organization (WIPO) was established by these conventions. In 1977 World Trade Organization (WTO) was created and become an important international organization for the development and understanding of IPR; successor to the General Agreement on Tariffs and Trade.

The creation of the United Nations Conference on Trade and Development was based on the concerns of developing countries over the international market, multi-national corporations, and great disparity between developed nations and developing nations. The United Nations Conference on Trade and Development was established in 1964 in order to provide a forum where the developing countries could discuss the problems relating to their economic development. The organization's goals are to maximize the trade, investment and development opportunities of developing countries and assist them in their efforts to integrate into the world economy on an equitable basis.

When world trade began to expand dramatically in the 1960s, national governments began to realize the need for a global set of standards and rules to harmonize national and regional regulations, which until then governed. The United Nations Commission on International Trade Law (UNCITRAL) was established by the United Nations General Assembly in 1966 to promote the progressive harmonization and unification of international trade law.

The importance of intellectual property in India is well established at all levels- statutory, administrative and judicial. India ratified the agreement establishing the World Trade Organization (WTO). This Agreement, inter-alia, contains an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1<sup>st</sup> January 1995. It lays down the minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view to reducing distortions and impediments to international trade. The obligations under the TRIPS Agreement relate to provision of minimum standards of protection within the member countries legal systems and practices. The IPR scene in India has undergone a dramatic change since 1995 with the creation of various tools of Intellectual Property.

IPR is already a part of the strategic options in the knowledge industry. In order to ensure sustained



growth, enhanced profits and market leadership, many corporations have designed their project management system for

- Optimized use of inter/intra knowledge base
- Strategic management of IPR
- External channels for knowledge and inventions as inputs
- Internal expertise to manage research and collaborations
- Clarity on knowledge ownership issues through mutually beneficial licenses
- Pooling of IPR as in the case of several companies who have formed patent pools of their DVD patents for mutual benefits

The emerging scene in the future will seek positive linkages between enhancing competition in society on one hand and establishing legal ownership of innovations on the other.

Strongly inter-knitted societal, moral and ethical issues are already influencing approaches to international trade involving technology management, ownership of knowledge and business processes.

### **New Dimensions and Issues for Resolution**

As technology explores newer dimensions and uncharted paths in the coming decades, IPR will assume conducive forms to encourage innovation and knowledge sharing in a fiercely competitive network. The interlaced issues in IPR such as

- Domain names and trademarks: Copyright in cyberspace.
- Rights on traditional knowledge, prior art, material transfer agreement and bio-prospecting.
- Softwares and patents.
- Biotechnological inventions and moral issues and patents.
- Compulsory licensing options, border measures and parallel imports and exhaustion of IPR.
- Government control on export of technology.

### **Importance of IPR in Developing Countries**

There has been at times considerable debate on the impact on developing countries of tightening Intellectual Property Rights. The potential significance of IPR in developing countries is according to the relative intensity of their technological activity. Developing countries went along with the TRIPS agreement for a variety of reasons, ranging from the hope of additional access to agricultural and apparel markets in rich nations, to an expectation that stronger IPR would encourage additional technology transfer and innovation. However, the promising long term benefits are uncertain and costly to achieve in many nations, especially in the poorest countries. There are reasons to believe that the enforcement of IPRs has a positive impact on growth prospects. On the domestic level, growth is spurred by higher level of innovations although this result tends to be fairly insignificant until countries move into the middle income bracket. It also notes that the growth effects of IPRs are at different times and in different regions of the world, countries have realized high rates of growth under varying degrees of IPR protection. There are certainly short term costs for poor countries from stronger IPRs, like higher prices for technology and protected products.

### **Impact of stronger IPR in developing countries**

Society reaps the following four benefits from granting such monopoly rights to innovations:

- The stimulation of innovations by private agents, the primary social benefits of IPR.
- The use of new knowledge in productive activity.
- The greater dissemination of new knowledge to other agents.
- The stimulation of innovations by other enterprises.

The TRIPS Agreement provides for norms and standards in respect of following areas of



intellectual property:

- Patents
- Copyrights and related rights
- Trade Marks
- Geographical Indications
- Industrial Designs
- Layout Designs of Integrated Circuits
- Protection of Undisclosed Information (Trade Secrets)
- Plant varieties

Intellectual property rights are customarily divided into two main areas:

### **1. Copyright and rights related to copyright**

The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author.

Also protected through copyright and related (sometimes referred to as “neighboring”) rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations. The main social purpose of protection of copyright and related rights is to encourage and reward creative work.

### **2. Industrial Property**

Industrial property is divided into two main areas.

One area can be characterized as the protection of distinctive signs, in particular trademarks (which distinguish the goods or services of one undertaking from those of other undertakings) and geographical indications (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin).

The protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services. The protection may last indefinitely, provided the sign in question continues to be distinctive.

Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category the inventions are protected in the aspects like patents, industrial designs and trade secrets.

The social purpose is to provide protection for the results of investment in the development of new technology, thus giving the incentives and means to finance research and development activities. A functioning intellectual property regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing. The protection is usually given for a finite term (typically 20 years in the case of patents).

While the basic social objectives of intellectual property protection are as outlined above, it should also be noted that the exclusive rights given are generally subject to a number of limitations and exceptions, aimed at fine-tuning the balance that has to be found between the legitimate interests of right holders.

### **Transition Period**

India, as a developing country, had a transition period of five years (with effect from 01 January, 1995) till January 01, 2000 to apply the provisions of the Agreement. An additional transition period of five years, i.e., till January 01, 2005, is also available for extending product patent protection to areas of technology not protected so far. This would be mainly in the areas of pharmaceuticals and agricultural chemicals.

#### **a. Patents**

Patent is an intellectual property right relating to inventions and it is the grant of exclusive rights, for a limited period, provided by the Government to the patentee, in exchange of full disclosure of





his invention and excluding others, from making, using, selling, importing the patented product or processes producing that product for any purposes. The purpose of this system is to encourage inventions by highlighting their promotion and utilization so as to contribute to the development of industries, which in turn, contributes to the promotion of technological innovations and to the transfer and dissemination of technology. Under the system, Patents ensure property rights for the invention for which patent have been granted, which may be extremely valuable to an individual or a company. Patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced. The trends of patents during the last 25 years in India have their roots in the formulation and implementation of the Indian Patent Act 1970, which became effective from April 20, 1972. There was a strategic shift from the liberal features of the Indian Patents and Designs Act 1922 to the new regime which introduced restrictive changes related to patenting of inventions especially in the areas of chemicals, pharmaceuticals, agrochemicals and foods. The granting of patents for inventions claiming substances intended for use or capable of being used as, food, medicine or drug or all substances resulting from chemical processes was withdrawn. The conditions for compulsory licensing were also made fairly liberal including the introduction of the concept of "license of right" for patents related to drugs, pharmaceuticals and foods.

#### **b. Copyright**

The copy right ensures that computer programs will be protected as literary works under the Berne Convention and outlines how databases should be protected. It also expands international copyright rules to cover rental rights. Authors of computer programs and procedures of sound recordings must have the right to prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copyright, affecting copyright-owners potential earnings from their films. The performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances for not less than 50 years. Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

India's copyright law, laid down in the Indian Copyright Act, 1957 as amended by Copyright (Amendment) Act, 1999, fully reflects the Berne Convention on Copyrights, to which India is a party. Additionally, India is party to the Geneva Convention for the Protection of rights of Producers of Phonograms and to the Universal Copyright Convention. India is also an active member of the World Intellectual Property Organization (WIPO), Geneva and UNESCO.

The copyright law has been amended periodically to keep pace with changing requirements. The recent amendment to the copyright law, which came into force in May 1995, has ushered in comprehensive changes and brought the copyright law in line with the developments in satellite broadcasting, computer software and digital technology. The amended law has made provisions for the first time, to protect performer's rights as envisaged in the Rome Convention.

Several measures have been adopted to strengthen and streamline the enforcement of copyrights. These include the setting up of a Copyright Enforcement Advisory Council, training programs for enforcement officers and setting up of special policy cells to deal with cases relating to infringement of copyrights.

#### **c. Trademark**

Trade marks have been defined as any sign, or any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings. Such distinguishing marks constitute protectable subject matter. The Agreement provides that initial registration and each renewal of registration shall be for a term of not less than 7 years and the registration shall be renewable indefinitely. Compulsory licensing of trade marks is not permitted.

Keeping in view the changes in trade and commercial practices, globalization of trade, need for simplification and harmonization of trade marks registration systems etc., a comprehensive review of the Trade and Merchandise Marks Act, 1958 was made and a Bill to repeal and



replace the 1958 Act has since been passed by Parliament and notified in the Gazette on December 30, 1999. This Act not only makes Trade Marks Law, TRIPS compatible but also harmonizes it with international systems and practices. Work is underway to bring the law into force.

#### **d. Geographical Indications**

Geographical indications of goods are defined as that aspect of industrial property, which adverts to the geographical indication referring to a country or to a place, situated there is as being the country or place or origin of that product. The given product should have a specific geographical origin and posse's qualities or a reputation due to that place of origin. A place name is sometimes used to identify a product. This geographical indication not only refers to where the product was made, but more importantly, it identifies the product's special characteristics which are the result of the products origin. Using the place name when the product was made elsewhere or when it doesn't have the usual characteristics can mislead consumers, and it can lead to unfair competition. Some exceptions are allowed, for example if the name is already protected as a trademark or if it has become a generic term.

#### **e. Industrial Design**

An industrial design is that aspect of a useful article, which is ornamental or aesthetic. It may consist of three-dimensional features such as the shape or surface of the article, or two-dimensional features such as patterns, lines or color.

Industrial design is applied to a wide variety of products of industry or handicraft; from watches, jewellery, fashion and other luxury items to industrial and medical implements; from house ware, furniture and electrical appliances to vehicles and architectural structures, from practical goods and textile designs to leisure items, such as toys and pet accessories. A new designs law repealing and replacing the Designs Act, 1911 has been passed by Parliament in the Budget Session, 2000. This Act has been brought into force from May 11, 2001.

#### **f. Layout Designs of Integrated Circuits**

A "layout-design (topography)" is defined as the three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture. The obligation to protect layout-designs applies to such layout-designs that are original in the sense that they are the result of their creators own intellectual effort and are not commonplace among creators of layout-designs and manufacturers of integrated circuits at the time of their creation. The exclusive rights include the right of reproduction and the right of importation, sale and other distribution for commercial purposes.

#### **g. Protection of undisclosed information**

The protection must apply to information that is secret, which has commercial value because it is a secret and that has been subject to reasonable steps to keep it a secret. That does not require undisclosed information to be treated as a form of property, but it does require that a person lawfully in control of such information must have the possibility of preventing it from being disclosed to, acquired by, or used by others without his/her consent in a manner contrary to honest commercial practices. "Manner contrary to honest commercial practices" includes breach of contract, breach of confidence and inducement to breach, as well as the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

#### **h. Plant Varieties**

The protection of new plant varieties is another aspect of intellectual property rights, and as such seeks to acknowledge the achievements of breeders of new plant varieties by giving them, for a limited period, an exclusive right. To obtain such protection, the new varieties must satisfy specific criteria. Variety is defined as a plant grouping within a single botanical taxon of the lowest known rank. Provided that the herb should be new or novel, distinct, uniform, stable and



have a satisfactory denomination.

The organization overseeing the protection of new plant varieties is referred to as UPOV (The International Union for the Protection of New Varieties of Plants).

### Conclusion

IPR are considered to achieve economic, social and technological advancement that protects the ideas and stimulates innovation, design and helps to the creation of technology. The various types of IPR were designed to provide the formal basis of ownership of developed knowledge with benefit sharing between partners in innovation to create a niche of themselves. It also leads to wealth creation. The function of IPR regime is also to facilitate the transfer of technology in the form of joint ventures and licensing. The social purpose of IPR is to provide protection for the results of investment in the development of new technology, thus giving the incentive and means of finance for further research and development of knowledge base; while basic social objective of IPR protection is that the exclusive rights given to the inventor, aimed at fine tuning the balance that has to be formed between the legitimate interests of rights holders.

### References

1. www.wipo.int
2. Ganguli P. Indian Path towards TRIPS compliance. World Patent Information, 2003; 25: 143.
3. www.iprlawindia.org
4. [http://en.wikipedia.org/wiki/General\\_Agreement\\_on\\_Tariffs\\_and\\_Trade](http://en.wikipedia.org/wiki/General_Agreement_on_Tariffs_and_Trade)
5. [http://en.wikipedia.org/wiki/United\\_Nations\\_Conference\\_on\\_Trade\\_and\\_Development](http://en.wikipedia.org/wiki/United_Nations_Conference_on_Trade_and_Development)
6. [http://en.wikipedia.org/wiki/United\\_Nations\\_Commission\\_on\\_International\\_Trade\\_Law](http://en.wikipedia.org/wiki/United_Nations_Commission_on_International_Trade_Law)
7. Ganguli P. Intellectual Property Rights in transition. World Patent Information, 1998; 20: 171.
8. Ganguli P. Intellectual Property Rights – unleashing the knowledge economy, New Delhi, India. Tata McGraw Hill; 2001. ISBN 0-07- 463860.
9. Ganguli P. Intellectual Property Rights. Imperatives for the knowledge industry. World Patent Information, 2000; 22: 167.
10. Ganguli P. Patents and Patent information in 1979 and 2004: a perspective from India. World Patent Information, 2004; 26: 61.
11. Lall S. Indicators of the relative importance of IPRs in developing countries., Research Policy, 2003; 32: 1657.
12. www.wto.int
13. www.TRIPS.org
14. Narayananan P. In: Patent Law, 2<sup>nd</sup> ed, Eastern Law House, 1997.
15. The Patents Act 1970, Universal Law Publishing Co. Pvt. Ltd, 2005. p. 6-31, 42-45.
16. Ramakrishna T. In: Basic Principles and Acquisition of IPR. CIPRA, NLSIU, Bangalore, 2005.



