

Patent and Rights of Intellectual Property

Intellectual property rights mean providing the Rights of property generated through mind through patents, copyrights and trademarks.

Holders have monopoly on property for a specified time period. United Nation's World Intellectual Property Organization (WIPO) established on 14th July 1967 give importance to intellectual property rights.

4 types of Intellectual Property –

1) Patents – It is used for protecting new inventions, ideas, or process. A patent is approved for 20 years from the date of patent registered and the holders needs to pay periodic government renewal fees.

Patents Act, 1970

- To get a patent, Technical information about the invention must be disclosed to the public in a patent application.
- Before Independence, in 1911, Indian Patents and Design Act, 1911 was enacted.
- The Patent Act, 1970 governs the patents in India which came into force in 1972.
- The office of Controller General of Patent, Designs and Trademarks is body responsible for Indian patent Act in Mumbai.
- HQ – Calcutta –
- Branches – Delhi, Chennai, Mumbai
- Amendments – 1999, 2002, 2005, 2006, 2012, 2013, 2014.

Salient feature of Amendment 2015 –

- Extension of Product patent to –
 - Drugs
 - Foods
 - Chemicals
 - Microorganism
- Time period – 20 years

2) Copyrights – It covers rights for Books, Paintings, Sculptures, Cinema, Music, Computer Program, Database, Advertisement, Maps and Technical Diagrams.

a) Economic rights – If a person is using the copyrighted thing of other person. He/She have to pay an amount to copyright holder.

b) Ethical Rights – Non-economic interest of the holder are protected.

3) Trademarks – It protects the symbols, colors, phrases, sounds, design etc. that can differentiate one product from other.

Eg:- Airtel Tone.

4) Trade Secrets – Strategies, systems, formulas or any other confidential information that can provide a competitive edge over other organizations.

Eg:- Colgate (Bigger mouth)

5) Industrial Design – Process of design applied to physical products that are to be manufactured by man production. (Strategic, problem solving process that drives Innovation)

Difference between R and TM

R – Registered Trademark

TM – Unregistered Trademark

6) Geographical Indicator –

- The products getting GI tags are having a specific Geographical Area which are having a specific quality because of that Geographical Area.
- It can be given to various Agriculture products, food products, Handcrafts etc.

Eg:- Ladoos of Tirupati
Kesar of Kashmir
Kadaknath of Jhabua

[According to Geographical Indicator Act, 1999 which came into force in 2003]

TRIPS – (Trade Related Aspects of Intellectual Property Rights)

It is an International legal agreement between all the member nations of World Trade Organization (WTO), which established minimum standards for the regulation by National governments of different forms of Intellectual Property as applied to different forms of Nationals of other WTO member Nations.

- Agreement between WTO and WIPO (1996)
- Notification of laws and rules
- It came into force in 1995 as a part of agreement established the WTO.
- It establishes minimum standards for availability, scope, use of seven forms of Intellectual property i.e. Trademarks, Copyrights, GI, Patents, Industrial design, Layout designs for circuits and Trade secrets.
- It applies basic International trade principle regarding intellectual property to member states.
- TRIPS agreement lays down the permissible exceptions and limitations for balancing the interest of IP with interest of public health and economic development.
- It frames IP system in terms of innovation, technology transfer and public welfare.
- TRIPS council is responsible for administrating and monitoring the operation of TRIPS agreement.
- TRIPS was negotiated during Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1986-1994.

- It is also known as “Berne & Paris – Plus” Agreement.

Significance of TRIPS –

TRIPS Agreement makes protection of IP rights across nations, because If enforcement of IP rights varies across nations, it can lead to tension in international economic relations.

TRIMS – (Trade Related Investment Measures)

Agreement of WTO

- Rules application to the domestic regulations a country applies to foreign investors as a part of Industrial Policy. (To improve Balance of trade between developed, developing & under developing nation through FDI)
- Concluded in 1994, came into force in 1995.
- It restricts preference of Domestic firms and thereby enables international firms to operate more easily within foreign markets. (Policies like local content requirement and Trade balancing rules used to promote interests of domestic industries are now banned).

Article 4 – Developing country members

A developing country member shall be free to deviate temporarily.

WIPO (World Intellectual Property Organization)

Establishment – 26 April 1967 (World’s Patent day) Intellectual property

HQ – Geneva

Intergovernmental organization

India Joined WIPO in 1975

Includes 26 international treaty.

Functions –

- Makes rules and law for protection of IPR.
- Gives advice to member nation for better services.
- Provides technical and legal assistance to its member nation.
- Helps in making agreement in commercial field.

Loopholes in Indian Intellectual Property Rights system –

- 1) There is a lack of Information about the IP rights among farmers and villages in the country which leads to a scenic situation between corporate and farmers.
- 2) It is a tedious task to get a patent in India because the office of patent had UN information about Research in world.

- 3) The world of Artificial Intelligence can lead the machine to get patent on the machine name.
- 4) The failure to focus towards the Research is the main problem.

Government measures in field of IP rights protection

- 1) Patents Act, 1970 and Amendment 2005
- 2) Trademark Act, 1999
- 3) Copyright Act, 1957
- 4) Geographical Indicator Act, 1999
- 5) Design Act, 2000
- 6) Policy on National IP Rights, 2016

Questions –

- 1) Explain the working of India in Field of IPR. (11 marks)
- 2) What are the different types of Intellectual property? (5 marks)

India's Position on IP Rights –

- World Intellectual Property Index 2020 – (40/53)
2019 – (36/50)
- Philippines and Ukraine are ahead of India.
- Although slow, but India is heading towards growth fastly in respect to any other country in world.

India and IPR –

- 1) Paris Convention (1883) – Industrial Property
- 2) Berne Convention (1886) – Literary & Artistic work
- 3) Madrid Convention (1891) – International Registration of marks/Logo
- 4) Budapest Convention (1977) – Deposit of micro-organisms for the purpose of patent procedure
- 5) Nairobi Convention (1983) – Olympic symbol
- 6) Washington DC (1989) – Integrated circuits

National IPR Policy – (May 2016)

By department of Industrial policy and promotion under ministry of commerce and industry.