

## A REVIEW ON INTELLECTUAL PROPERTY IN INDIA

**B. R. Maurya\***

\*Department of Law,  
Teerthanker Mahaveer University, Moradabad, Uttar Pradesh, India  
Email id: brmourya.mourya321@gmail.com  
**DOI: 10.5958/2249-877X.2021.00121.1**

---

### ABSTRACT

*Intellectual property rights (IPR) are intangible in nature and provide an inventor or creator with exclusive rights to their valued innovation or work. IPR is a focus point in global trade practices and lifestyle throughout the globe in the current globalisation situation. These rights encourage innovation by providing recognition and financial rewards to creators or inventors, while a lack of IPR knowledge and poor execution may stymie the nation's economic, technological, and social progress. As a result, every country must prioritize the spread of IPR information and its proper application. The current article discusses different IPR terminology such as patents, trademarks, industrial designs, geographic indications, copyright, and so on, as well as its associated laws, regulations, and importance and function in the Indian context. In addition, the status of India's involvement in IPR-related activities across the globe was briefly addressed.*

**KEYWORDS:** *Intellectual Property Rights, WIPO, Patents, Trademarks, Industrial Designs, Geographic Indications.*

---

### 1. INTRODUCTION

In the wake of globalization, it is critical to stay ahead of the curve in terms of innovation and creativity in order to compete in the technological and commerce markets. India is well-known for its intellectual prowess(1) in software engineering, missile technology, lunar or Jupiter missions, and other technical disciplines. In terms of registered patents, industrial designs, trademarks, and other IPR assets, India, on the other hand, lags behind(2). According to a recent study by the US Chamber of Commerce, India ranked 29th out of 30 nations in the global IP index. It is a highly concerning situation for policymakers as well as the country as a whole(3).

Any society's growth is inextricably linked to intellectual property rights and the policies that govern them. Inventions died; there was a high danger of infringement, economic loss, and the end of an intellectual age in the nation due to a lack of IPR knowledge(4). As a result, there is an urgent need for IPR information to be disseminated in order to promote local innovations and technological advances(5). Various intellectual property rights are highlighted in the preceding part of this article(6). In the context of India, with their associated laws, regulations, and needs, as well as their function in society.

#### ***1.1 Intellectual Property Rights and their Classification:***

The phrase "intellectual property"(7) refers to the use of the human brain for innovation and creativity. To develop or produce anything new, many efforts in terms of people, time, energy, expertise, money, and so on are needed. The final idea that led to the innovation or creation is

an intangible property of the individual who put out the effort to make it happen. As a result, legal rights or monopoly rights are granted to the inventor or innovator by law in order for them to reap the economic advantages of their innovation or production. Similar to physical property, intellectual property rights (IPR) (8) are territorial rights that allow an owner to sell, acquire, or lease his Intellectual Property (IP). To receive benefits, one must register IPR with a legal body in a presentable or tangible form. Each kind of IPR grants a unique set of rights to the innovator or creator in order to maintain and reap economic advantages, which in turn encourages talent and social advancements.

Intellectual property rights are classified(9) as follows based on the type of invention and creation of the human mind and their applications: i) patents, ii) trademarks, iii) industrial designs, iv) layout design of semiconductor integrated circuit, v) geographic indications of source, vi) copyright and related rights (literary and artistic works, musical work, artistic works, photographic work, motion pictures, computer programmers and performing arts and broadcasting work).

### *1.2 WIPO:*

The Globe Intellectual Property Organization (WIPO)(10) was founded in Stockholm in 1967 to defend intellectual property rights throughout the world. 8, 16 Later, in 1974, it becomes a United Nations agency. WIPO creates frameworks and regulates different IPR regulations throughout the world. WIPO's primary goal is to promote economic, social, and cultural growth while preserving biodiversity and traditional knowledge via a balanced and effective international IP system. In addition, it is responsible for harmonising disparities across countries, particularly between rich and developing countries, by modifying international regulations so that each of them has an equal chance in the growing globe.

#### *1.1.1 Patent*

Patent(11) is an intellectual property right granted to invent or by concerned government office for his novel technical invention. The term invention means solution of any problem in terms of development of a product or a process. Among the different types of IPR, patents are considered the most valuable and rightly so. The patentability of any invention needs to fulfil following criteria:

- *Usefulness:* Invention must have industrial applicability or applied for practical purpose.
- *Novelty:* invention must be new technology which has not been published or available in prior art of the country or elsewhere in the world before the date of patent filing.
- *Non obviousness:* Invention which can be done by any ordinary skilled person is obvious and cannot be patentable. Hence invention must not be obvious for patentability.

#### *i. Industrial Design:*

Industrial design (12) is the creative process of giving mass-produced goods or articles a decorative or aesthetic look. Two-dimensional or three-dimensional shapes may be used to convey the design. The United Kingdom's Design Act of 1949 defines design as a characteristic of form, arrangement, pattern, or decoration(13). Industrial design encompasses the form, surface, pattern, lines, color, and other appearance-related characteristics of industrial goods such as watches, automobiles, mobile phones, laptop computers, various household appliances, buildings, textile patterns, and handicraft products(14). Apart from technical excellence and

other factors, the aesthetic worth of a thing, or how it appeals, is the most important consideration in marketing(15).

An industrial design must be fresh or unique, and non-functional, in order to be protected under most national laws(16). As a result, industrial design is primarily concerned with aesthetic characteristics, and the design registration does not protect any technological features or aspects of the object to which it is applied. Although, if the technological elements are unique, they may be protected by a patent (17). In addition to this, design that is literary or creative in nature, such as a cartoon, label, pamphlet, map, dressmaking pattern, and so on, is covered by copyrights rather than industrial design.

Industrial design rights can last anywhere from 10 to 25 years depending on the country. Industrial designs in India are protected for ten years under the Design Act of 2000. This period may be extended for an additional five years(18).By fostering more visually appealing goods for society, industrial design promotes innovation and skill development among individuals and the manufacturing industry. The form and shape of a product not only creates an attractive look, but it is also indirectly linked with ergonomics and plays a significant part in the comfort of consumers in the case of machines, furniture, automobiles, and so on.

*ii. Trademark:*

In the ancient world, trademarks(19) were already in use. Around 3000 years ago, Indian craftsmen used to carve their mark on their jewellery or creative creations. The trademark has become a significant element in the contemporary world of international commerce as a result of industrialization. A trade mark is a unique symbol or emblem that indicates that a certain item is manufactured or supplied by a specific person, industry, or business(20). Service marks, like trademarks, help to differentiate service providers from their rivals. A business may have numerous kinds of trademarks for its varied goods, but trade names are used to differentiate itself from other companies or enterprises(21).

Trademarks or trade names assist businesses in gaining consumer awareness, reputation, and trust. In most instances, customers depend on trademarks since inspecting a product or service rapidly to establish its quality is difficult. A certain section of consumers is extremely concerned about the brand and will pay a premium for the brand's prestige, even if the quality is equal, in order to stand out from the crowd(22).

To identify one company or service from another, a trademark/service mark consists of words (name, surname, geographical name, slogan, etc.), letters and numbers, drawing, logo, symbol, phrase, picture, design, or a combination of these components. Aside from these, there are a few more 'non-traditional' trademarks(23):

The fragrance of fresh cut grass for tennis balls, the odor of beer for dart flights, and the scent of flowers for tyres have all been registered in the United Kingdom. In the United States, a fresh floral smell evocative of Plumeria flowers was trademarked for sewing thread and embroidery yarn. Sound Markings or Audible Signs: Sound Marks are distinct sound marks in the form of a musical note that may be recorded. In 1950, the musical notes were successfully registered as a trademark for NBC's radio broadcasting services. MGM has a registered sound trademark for the lion's roar. In the ancient world, trademarks were already in use(24). Around 3000 years ago, Indian craftsmen used to carve their mark on their jewellery or creative creations. The trademark has become a significant element in the contemporary world of international commerce as a result of industrialization. A trade mark is a unique symbol or emblem that

indicates that a certain item is manufactured or supplied by a specific person, industry, or business. Service marks, like trademarks, help to differentiate service providers from their rivals. A business may have numerous kinds of trademarks for its varied goods, but trade names are used to differentiate itself from other companies or enterprises.

## 2. DISCUSSION

Trademarks or trade names assist businesses in gaining consumer awareness, reputation, and trust. In most instances, customers depend on trademarks since inspecting a product or service rapidly to establish its quality is difficult. A certain section of consumers is extremely concerned about the brand and will pay a premium for the brand's prestige, even if the quality is equal, in order to stand out from the crowd.

To identify one company or service from another, a trademark/service mark consists of words (name, surname, geographical name, slogan, etc. ), letters and numbers, drawing, logo, symbol, phrase, picture, design, or a combination of these components. Aside from these, there are a few more 'non-traditional' trademarks:

The fragrance of fresh cut grass for tennis balls, the odor of beer for dart flights, and the scent of flowers for tyres have all been registered in the United Kingdom. In the United States, a fresh floral smell evocative of Plumeria flowers was trademarked for sewing thread and embroidery yarn. Sound Markings or Audible Signs: Sound Marks are distinct sound marks in the form of a musical note that may be recorded. In 1950, the musical notes were successfully registered as a trademark for NBC's radio broadcasting services. MGM has a registered sound trademark for the lion's roar. Important Criteria of Trademark Registration. As per UK Trademarks Act, 1994, the three main requirements for registering trade mark areas follows:

- The trademark should be assignor anything that can convey information.
- The sign should be capable of distinguishing products or services of one undertaking from that of another. This is clearly a requirement of distinctiveness of trademarks.
- The trade mark is capable of graphical representation to provide precise identification in the trade mark registry.

### *Broadly Followed Rules of Trademark Registration*

- The word "apple" or an apple device cannot be registered for apple as in this case it is not distinguishable. But it is registered being highly distinctive in case of computers.
- Similarly Camel trade mark is registered for cigarettes. The generic term like "furniture" cannot be registered as trade mark for chair, table, or similar products.
- In case of use of letters or numerals, in certain countries registration is allowed only when at least few numbers of letters and/ or numerals are combined or in case of letters the combination of word is pronounceable.
- Similarly, common surnames are not registered in some countries as they are not distinctive in nature.
- Beside these, deceptive sign or trade mark which is misleading or violates the public order or morality is not qualified for registration.
- The signs which are reserved for state, public institution, organization or international body

cannot be registered as trademark.

### *Indian Trademarks Act*

Any unique mark capable of distinguishing products and services of one enterprise from those of another and capable of being graphically depicted may be trademarks, according to the Indian trademarks legislation(25). There is no need to restrict the validity of trademarks since they do not provide exclusive rights that may be utilized. However, without a temporal restriction, trademark validity would result in an excessive quantity of registered trademarks with no use. 11 The original period of trademark registration in India is ten years, after which it must be renewed on a regular basis.

### *2.1 Geographical Indications*

Using geographical or locality origin to identify goods for commercial reasons is not uncommon. WIPO coined the term Geographical Indication (GI)(26) to encompass all existing means of protecting such names and symbols, regardless of whether they indicate that a product's qualities are due to its geographical origin (such as appellations of origin) or simply indicate that a product's qualities are due to its geographical origin (such as indication of source).

Champagne, Havana, Darjeeling tea, Arabian horses, Alphanso mango, Nagpur orange, Basmati, and other well-known names for products of exceptional quality and recognized as GI include Champagne, Havana, Darjeeling tea, Arabian horses, Alphanso mango, Nagpur orange, Basmati, and other well-known names for products of exceptional quality and recognized as GI include Champagne, Havana, Darjeeling tea, Dar.

Creators of that ability from a certain region or location with the best atmosphere A tribe or region passes the ability down down the generations with considerable care and compromise. Dhaka muslin, Venetian glass, China silk, Mysore silk, Chanderi sari, Kanchipuram silk saree, Kullu shawls, Solapur chaddar, Solapur Terry Towel, Kashmiri handicrafts, and other well-known examples of Geographical indicators for state-of-the-art workmanship include

### **3. CONCLUSION**

Intellectual property rights are critical for progressive social development in a knowledge-based economy. IPR is a fundamental need for participating in local and worldwide competitive commerce, since it is difficult to create a creative environment without disseminating and implementing IPR information. It is critical for policymakers to include intellectual property rights into the fundamental educational system and to encourage inventors and creators to register their inventions. In terms of accessible raw materials, low-cost labor, and inventive and creative committed people, India has it all. Without a doubt, India and other developing nations will explore Intellectual Property Rights in order to increase their proportional part of global commerce.

### **REFERENCES:**

1. Deep R, Narwal KP. Intellectual Capital and its Association with Financial Performance: A Study of Indian Textile Sector. *Int J Manag Bus Res.* 2014;
2. Singh G, Garg S. Fuzzy Elliptic Curve Cryptography based Cipher Text Policy Attribute based Encryption for Cloud Security. In: *Proceedings of International Conference on Intelligent Engineering and Management, ICIEM 2020.* 2020.

3. Saini S, Singh D. Reckoning with the barriers to Lean implementation in Northern Indian SMEs using the AHP-TOPSIS approach. *J Sci Technol Policy Manag.* 2021;
4. Farooq U, Singla S. Impact of aggregate and fly ash filler types on asphalt and control mix designs. *Int J Sci Technol Res.* 2020;
5. Sheikh RQ, Yadav V, Kumar A. Stabilization of red soil used as a sub-base material. *Int J Sci Technol Res.* 2020;
6. Zargar K, Singla S. Impact of pet plastic waste on mechanical properties of mix concrete design. *Int J Sci Technol Res.* 2020;
7. Alimov A, Officer MS. Intellectual property rights and cross-border mergers and acquisitions. *J Corp Financ.* 2017;
8. Handa S, Bhatt K. Intellectual Property Rights (IPR) in Digital Environment : an Overview in Indian Digital Environment. *Int J Digit Libr Serv.* 2015;
9. Sakao T, Öhrwall Rönnbäck A, Ölundh Sandström G. Uncovering benefits and risks of integrated product service offerings - Using a case of technology encapsulation. *J Syst Sci Syst Eng.* 2013;
10. Singh J. World intellectual property organization. *Indian Journal of Pharmacology.* 2004.
11. Clarke NS. The basics of patent searching. *World Pat Inf.* 2018;
12. Agarwal V. IPR registration in fashion industry of India. *J Intellect Prop Rights.* 2019;
13. Sharma SK, Ghai W. A neural based allocation architecture of mobile computing. *Int J Sci Technol Res.* 2020;
14. Wani AB, Singla S, Sachar A. A case study of integrated land use planning for sustainable infrastructure. *Int J Sci Technol Res.* 2020;
15. Mushtaq Z, Yadav EV, Kumar EA. Effect of carbon fiber in rigid pavement partially replacing cement with marble dust. *Int J Sci Technol Res.* 2020;
16. Mathur G, Ghai W, Singh RK. A totalitarian technique for wormhole detection using big data analytics in iot network. *Int J Sci Technol Res.* 2020;
17. Mir MA, Verma P. Use of polyethylene waste with stone dust in flexible pavement. *Int J Sci Technol Res.* 2019;
18. Singh H, Oberoi A. An efficient romanization of gurmukhi punjabi proper nouns for pattern matching. *Int J Recent Technol Eng.* 2019;
19. Sharma B. Trademark. In: *Pharmaceutical Medicine and Translational Clinical Research.* 2017.
20. Irshad U, Singla S. Impact of road conditions on traffic management-a case study of chenab valley. *Int J Sci Technol Res.* 2019;
21. Sethi V, Tandon MS, Dutta K. A path model of antecedents of green purchase behaviour among Indian consumers. *Int J Public Sect Perform Manag.* 2018;
22. Siddiqi MA, Tandon MS, Ahmed O. Leader member exchange leading service employee desired job outcomes and performance: An Indian evidence. *Int J Serv Oper Manag.* 2019;

23. Sofat Y. Strategy of advertising agencies in india for evaluating advertising effectiveness across experience. Indian Journal of Marketing. 2011.
24. Aulakh SS, Gill JS. Lean manufacturing-A practitioner's perspective. In: 2008 IEEE International Conference on Industrial Engineering and Engineering Management, IEEM 2008. 2008.
25. Ansari MH. Indian Trademark Law and Parallel Imports. SSRN Electron J. 2012;
26. Garcia DL, Silva GF da, Souza ALG de, Bisneto JPM, Silva E de S. Geographical Indication. Int J Innov Educ Res. 2019;