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**IPR: A Heuristic Approach Of Learning & Development**

Sheetal Kandpal

*“Millions of people toil in the shadow of the law we make, and much of their livelihood is made possible by the existence of intellectual property rights”- Alex Kozinski,*

## **INTRODUCTION:**

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These words are very useful when we talk about Intellectual Property Rights that is (I.P.R). Intellectual Property Rights (I.P.R) the modern concept of intellectual property originated in England in 17<sup>th</sup> and 18<sup>th</sup> centuries. Before talking Intellectual Property Rights first let’s have a basic knowledge of what Intellectual Property is? Intellectual Property (I.P) is an outcome of human intellect. Intellectual property is the creative work of the human intellect and the right to intellectual property is an invisible/intangible right to product of man’s brain, such as a new invented product, i.e. property of the mind. An intellectual property is at times referred as ‘knowledge goods’. It has been said that a theft can steal anything which is tangible in nature but no one can steal the knowledge of a person which he has got through his hard work, dedication and passion. Intellectual property means a variety of information which can be merged in tangible objects at the same time in an unlimited number of copies at different positions wherever in the world. The properties which are in the form of copy right, patent, trade mark, geographical indication etc. all are protected by I.P.R. and there are several rights which the actual owner can possess in the world of I.P.R.

## **HISTORICAL BACKGROUND**

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The concept of IP introduced way back to 500 BC. Greek state of Sybaris gave permission to their citizens for obtaining a patent for “any new filtering in luxury.” Since then, filtering have been made and laws regarding copyrights and trademarks have become more difficult. However, the object of the laws has always remained the same. The laws are created to encourage people’s creativity and make it possible for inventors to avail the benefits of their original ideas. IP is protected through the obtaining of copyrights, patent and trademarks. The first statue involving any these ideas was not there until medieval times in Europe, when the statute of monopolies was initiated in 1623. During this time, different organisations controlled every single significant industry. Each guild held a significant amount of power, as the government supplied them to dictate which products and raw materials could be imported and how the items could be produced and sold. So they had full control over inventions, even if they were not the actual owner.

The resolution of imposing business models made it workable for designers to hold the privileges of their manifestations, and mafia's were no more allowed. Then, in 1710, another legislation was introduced, the statute of Anne, came into being. As per this statute it provided 14 years of protection for an inventor further allowed inventors to renew their protection for another 14 years. It is important to mark that this statute focused on copyrights for authors so they could have power over the recreation and distribution of their work. It ensured innovators and their creative works too.

Twelve colonies established their own systems for protecting its citizens's IP except Delaware (state). It before long became apparent that having singular frameworks for each state was not the best thought.

#### *Statute Incorporated Under IPR*

1. *Trade Marks Act, 1999*
2. *The Patents Act, 1970 (Amended in 2005)*
3. *The Copyright Act, 1957*
4. *The Designs Act, 2000*
5. *The Geographical Indications of Goods (Registration and Protection) Act, 1999*
6. *The Semiconductor Integrated Circuits Layout Design Act, 2000*
7. *The Protection of Plant Varieties and Farmers' Right Act, 2001*

#### **TRADE MARKS ACT, 1999.**

The growth of the law of trade marks can be traced back to the onset of the industrial revolution which enabled large scale production and distribution of goods. With the rise of serious market economy, manufacturers started to recognize their products by specific symbols, marks or devices in order to recognize their merchandise from comparative products made. In addition, manufactures also started advertising their goods by using their trade marks on them. According to section 2(1)(zb) of Trade Marks Act, 1999 trade marks includes any word, name, symbol, configuration, device, shape of goods, packaging, combination of colors or any combination thereof which one adopts and uses to identify and distinguish his goods from others. A trade mark normally performs functions like- (i) it identifies the goods of the one trader and distinguish them from goods sold by others. (ii) it signifies that all products bearing a specific exchange mark originate from a single source. (iii) it signifies that all goods bearing a particular trade mark are of



an equal level of quality and last but not the least (iv) it acts as a prime instrument in advertising and selling the goods. The validity of the trade mark registration in India is for 10 years from the date of the filing of the application.

### **THE PATENTS ACT, 1970 (AMENDED IN 2005).**

Patent right has considered a monopoly right conferred by Patent Office on an inventor to exploit. The word “patent” referred to a right granted to anyone who invents or discovers a new and useful process, product, article or machine of manufacture, or composition of matter, or on the other hand any new and helpful improvement of any of those. According to The Patents Act, 1970 section 2(1)(m), “patent” means a patent for any invention granted under this Act. "Invention" signifies another product or process including an innovative advance and fit for modern application. It is not compulsory that the product developed should be a totally new product. on the off chance that a product is considerably improved by a creative advance, it would be named to be an invention. The expression of each patent in India is a long time from the date of documenting the patent application, independent of whether it is recorded with temporary or complete specification. However, if there should be an occurrence of uses recorded under the Patent Cooperative Treaty (PCT), the term of twenty years starts from the priority date.

### **THE COPYRIGHT ACT 1957.**

Copyright comprises a basic component in the advancement process of a country. The advancement of the public social legacy relies legitimately upon the degree of security stood to literary, dramatic, musical and artistic works, cinematograph films and sound recordings. The concept of “copyright” and “neighboring rights” or “related rights” have assumed significance in the context of cotemporary scientific, economic, social, political and legal environment not only in India but also in the entire world. The copyright law today, not just secures the privileges of the copyright owner and neighboring rights yet in addition manages the subject of public interest and attempts to strike a balance between the two in this advanced environment. The primary object of copyright is not to reward the labour of authors, but to promote the progress of science and useful arts further encourages others to build freely upon the thoughts and information passed on by a work. This implies that the first makers of product and anybody they offer approval to are the main ones with the exclusive right to recreate the work. According to section 13 of the Copyright Act, 1957, copyright consists in the following works: (a) original literary, dramatic, musical and artistic works; (b) cinematograph films; and (c) sound recordings. In original literary, dramatic,

musical and artistic works, the duration of copyright is the lifetime of the author or artist, and 60 years from the year following the death of the author.

### **THE DESIGN ACT, 2000**

The protection of industrial design is important as it encourages the creative in the industrial and manufacturing sectors and helps in the economic development of a nation. A modern plan increases the value of a product by making it attractive. According to section 2(d) of the Design Act, 2000 the word “design” means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article whether in two volume or three volume or in the two structures, by any industrial process or means, regardless of whether manual, mechanical or chemical, independent or joined, which in the finished article appeal to and are judged exclusively by the eye. The expression of each patent in India is a long time from the date of filing the patent application, regardless of whether it is documented with temporary or complete specification. Nevertheless, in case of applications filed under the Patent Cooperative Treaty (PCT), the term of twenty years starts from the priority date.

### **THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999.**

Geographical indication indicates that particular goods originate from a country, region or locality and has some special characteristics, qualities or reputation which are attributable to its place of origin. These uncommon characteristics, qualities or reputation may be due to various factors, e.g. raw material, soil, regional climate, temperature etc. The concept of “geographical indication” as being used currently, includes the concepts “indication of source” and “appellation of origin” which were in use earlier. “indication of source” refers to an indication of the origin of the product from a place or country, such as “made in Germany” or “product of Japan” etc. such indications do not reflect the quality of the product, rather it merely shows its origin with the object that a product with some unique characteristic should not be falsely represented as originating from some other place. Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement uses the term ‘geographical indication’. Which distinguish a goods as starting in the region of a nation, or a district or region in that territory.

### **THE SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT DESIGN ACT, 2000.**

Integrated circuits plays an important role for the development of technology especially for electronics and information technology. Integrated circuits are used in a large range of products

including mobile phone, television, radio, watch, data processing equipments etc. The layout-designs of integrated circuits are creation of human mind. Therefore in order to reward and encourage an adequate level of investment of human, financial and technological resources, and also to fulfill her obligations under TRIPs agreement, India has enacted the Semiconductor Integrated Circuits Layout-Design Act, 2000. The term “semiconductor integrated circuit” means a product having transistors or other circuitry element which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function. The term “layout-design” means a layout of transistors, and other circuitry elements and includes lead wires connecting such element and expressed in any manner in a semiconductor integrated circuit. The protection of 10 years period is provided to layout design.

### **THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHT ACT, 2001.**

The enactment of the protection of the Plant Varieties and Farmer's Rights Act, 2001 was an outcome of the India's obligations which arose from article 27(3)(b) of the TRIPs agreement which force members to preserve plant varieties either by patents or by an effective sui generis system or by any combination. India decided to protect plant varieties by a sui generis law with the help of this act. Variety means a plant grouping within a single botanical taxon of the lowest rank which is distinctive, stable and can be defined by the characteristics resulting from a given genotype of the plant grouping. It does not include micro-organism. The time of insurance for field crops is 15 years and for trees and plants is 18 years and for notified varieties it is a long time from the date of informing under section 5 of Seeds Act, 1966. Farmers can guarantee for pay if the enlisted variety neglects to give expected performance under given conditions.

### **EMERGING CONCEPT UNDER IPR**

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The Union Ministry of Finance has amended Intellectual Property rules to repeal the force vested with Customs specialists to hold onto imported items dependent on complaining of patent infringement. On June 22, the Ministry made two changes to the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The Intellectual Property Rights (with respect to imported goods) Enforcement Amendment Rules, 2018, removes all reference to the Patents Act, 1970. In the past, cell phone organizations have confronted issues as a result of the prior rules. For example, in 2007, Madurai-based Ramkumar, who held a patent for a double SIM, looked for

capture of items imported by Samsung and Spice Mobile, which influenced a few importers. "Recently", the changed law will allow the Customs specialists to drop his patent from its records dependent on the request by the Intellectual Property Appellate Board (IPAB),"

Present patent laws manage Artificial Intelligence (AI) programming innovations as consistent calculations executed on the computer. While patent qualification of calculations is substantial, there is minimal about how to manage creations that are heuristic in nature. According to report by India's largest software exporter, Tata Consultancy Services in association with coalition of Indian industry. Patent law express that somebody, ordinarily a characteristic individual (in lawful terms this refers to an individual person, instead of one related with a private or public body) who merely applies the rationale to make something useful can't be an inventor. However, it said that machines are progressively inferring answers for issues freely or related to a characteristic individual, which has brought into question the meaning of a 'characteristic person'. AI is growing new teachings and instruments for future IP ecosystems. There are three levels at which IP the board should be tended to, the investigation recommended. At the information level – as to high-caliber and exact information, at the IP framework level - empowering the IP frameworks and mechanism with AI-based solutions and at individual level - enabling individuals to understand the advantage of AI in the IP space.

The curious case of AI 'DABUS' was already decided by the European patent officer in 2019. The central matter is the dismissal of the European licenses, whose developments were made by a man-made artificial intelligence (AI) and whose name DABUS was enlisted as inventor. The EPO's incredibly observed decision and dismissed the AI 'DABUS' as inventor and the two relating patent applications on the grounds that an AI has no personal rights.

### **NOVARTIS VS. UNION OF INDIA [CIVIL APPEAL No. 2706-2716 OF 2013]**

It is the case where the rejection of a Patent for a Drug that was not 'inventive' or had any superior efficacy.' The Company Novartis filed a registration of Patent application for one of its drugs called as "Gleevec" by covering the drug under the word invention mentioned and provided under Section 3 of the Patent Act, 1970[1]. The Supreme Court (SC) of India disapproved the application of Novartis after a period of 7 years-long battle. The Supreme Court observed that:

There was no invention of any new drug, a simple disclosure of a previously existing drug won't add up to an innovation under the Patent Act, 1970.

Supreme Court of India upheld the view that under the Patent Act, 1970, for the award of drug Patents in India, aside from demonstrating the conventional trial of creative advance, novelty, and application, there is another trial of improved remedial adequacy for claims that spread some stable changes to previously existing medications which the Novartis' drug likewise didn't qualify.

This case became one of the Landmark Judgments on IPR Law in India because the Supreme Court (SC) looked beyond the procedures and into the fact that the attempt of all such organizations to 'evergreen' their individual Patents and make them unreachable at some apparent rates.

## **EVOLUTION OF IPR**

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The international agreement gave assurance to innovators so that their progressions were protected, whether or not they were used in different countries. Then, in 1886, the Berne Convention was started to give worldwide assurance of all types of writing, including songs, drawings, dramas, models and paintings. In 1891, Trade Marks increased more extensive security with the foundation of the Madrid Agreement. Eventually, the workplaces that were made by the Paris and Berne Conventions consolidated to make the United International Bureaux for the Protection of Intellectual Property, which in the long run became the current-day World Intellectual Property Organization, an office of the United Nations. To encourage the usage of the TRIPS Agreement, the Council for TRIPS finished up with WIPO a concurrence on participation among WIPO and the WTO, which came into power on as expressly set out in the Preamble to the TRIPS Agreement, the WTO wants a commonly steady relationship with WIPO. The Agreement gives collaboration in three fundamental regions, to be specific notice of, admission to and interpretation of public laws and guidelines, execution of strategies for the assurance of public representation. The National Intellectual Property Rights (IPR) Policy 2016 was enacted in May 2016 as a dream report to direct future advancement of IPRs in the country. Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce, Government of India, has been designated as the nodal office to arrange, control and supervise the usage and future. The 'Cell for IPR Promotion and Management (CIPAM)', arrangement under the aegis of DIPP, is to be the single perspective for execution of the targets of the National IPR Policy.

## CONCLUSION

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The development in IPR can be seen through various laws which have been enacted time to time. IPR is not related to a particular country or state but to the world at large. Still some laws in IPR in question when it comes to Artificial Intelligence (AI) to whom patent should be granted, inventor or Robot? On the other side lot many reforms have been done and it has become more effective in today's time. The actual owner has been given recognition through their creative work and it plays a very important role at international level. This has been reflected in its improved positioning in Global Innovation Index over the years. Government's push to reinforce National IPR strategy, IP appellate tribunal, e-governance and responsibility to maintain the TRIPS understanding of WTO in letter and soul will help in improving to protect innovation framework can assist all nations to realize innovation's potential as force for monetary growth of events and social and social prosperity.