Types of Intellectual Property

Lesson 2

KEY CONCEPTS

■ Intellectual Property ■ Trade and Merchandise Marks Act 1958 ■ Trademarks ■ Copyright ■ Patent ■ Design ■ Utility models ■ Trade Secrets ■ Trade-Related Aspects of Intellectual Property Rights (TRIPS) ■ World Intellectual Property Organization (WIPO) ■ Commercial Courts ■ IP Cells ■ Technology and Innovation Support Centers (TISCs) ■ Patents Facilitation Centre

Learning Objectives

To understand:

- The domains of intellectual property which is an integral party of economy.
- The forms of the protection, emerging particularly stimulated by the exciting developments in scientific and technological activities with respect to intellectual property.
- The important definitions and concepts.
- To provide an in-depth understanding to the students about the various forms of the intellectual property, its relevance and business impact in the changing global business environment.
- To acclimatize students with the leading International Instruments concerning Intellectual Property Rights.

Lesson Outline

- Introduction
- Intellectual Property vis-à-vis Business: a Rationale of Relativity
- Development of Intellectual Property Regime In India – Overview
- Copyrights
- Trademarks
- Patents
- Designs
- Utility Models
- Trade Secrets
- Geographical Indications
- Bio-diversity and IPR
- Case Law/Case Studies
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (Including Websites/ Video Links)

INTRODUCTION

Intellectual property (IP) refers to the creations of the human mind like inventions, literary and artistic works, and symbols, names, images and designs used in commerce. Intellectual property is divided into two categories:

a) Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and

b) Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

The most noticeable difference between intellectual property and other forms of property, however, is that intellectual property is intangible, that is, it cannot be defined or identified by its own physical parameters. It must be expressed in some discernible way to be protectable. Generally, it encompasses four separate and distinct types of intangible property namely — patents, trademarks, copyrights, and trade secrets, which collectively are referred to as "intellectual property." However, the scope and definition of intellectual property is constantly evolving with the inclusion of newer forms under the gambit of intellectual property. In recent times, geographical indications, protection of plant varieties, protection for semi-conductors and integrated circuits, and undisclosed information have been brought under the umbrella of intellectual property.

INTELLECTUAL PROPERTY VIS-À-VIS BUSINESS: A RATIONALE OF RELATIVITY

In today's world, the abundant supply of goods and services on the markets has made life very challenging for any business, big or small. In its on-going quest to remain ahead of competitors in this environment, every business strives to create new and improved products (goods and services) that will deliver greater value to users and customers than the products offered by competitors. To differentiate their products - a prerequisite for success in today's markets - businesses rely on innovations that reduce production costs and/or improve product quality. In a crowded marketplace, businesses have to make an on-going effort to communicate the specific value offered by their product through effective marketing that relies on well thought-out branding strategies. In the current knowledge-driven, private sector oriented economic development paradigm, the different types of intangible assets of a business are often more important and valuable than its tangible assets. A key subset of intangible assets is protected by what are labelled collectively as intellectual property rights (IPRs). These include trade secrets protection, copyright, design and trademark rights, and patents, as well as other types of rights. IPRs create tradable assets out of products of human intellect, and provide a large array of IPR tools on which businesses can rely to help drive their success through innovative business models. All businesses, especially those which are already successful, nowadays have to rely on the effective use of one or more types of intellectual property (IP) to gain and maintain a substantial competitive edge in the marketplace. Business leaders and managers, therefore, require a much better understanding of the tools of the IP system to protect and exploit the IP assets they own, or wish to use, for their business models and competitive strategies in domestic and international markets.

DEVELOPMENT OF INTELLECTUAL PROPERTY REGIME IN INDIA - OVERVIEW

India remains one of the world's most growing economies in past 20 years and the ballgame of entrepreneurship and industries is a key element for contribution outstanding growth of Indian economy. On one hand, where businesses and their successful run is vital to the growth of economy; on the same hand, a structured set of IP protection helps in the advancement and development of businesses under a hassle free environment. Henceforth, aligning the International practices, India too is having a systemized legal system to take care of IP protection. Historically the first system of protection of intellectual property came in the form of (Venetian Ordinance) in 1485. This was followed by Statute of Monopolies in England in 1623, which extended patent

rights for technology inventions. In the United States, patent laws were introduced in 1760. Most European countries developed their Patent Laws between 1880 to 1889. In India Patent Act was introduced in the year 1856 which remained in force for over 50 years, which was subsequently modified and amended and was called "The Indian Patents and Designs Act, 1911". After Independence a comprehensive bill on patent rights was enacted in the year 1970 and was called "The Patents Act, 1970".

Specific statutes protected only certain type of Intellectual output; till recently only four forms were protected. The protection was in the form of grant of copyrights, patents, designs and trademarks. In India, copyrights were regulated under the Copyright Act, 1957; patents under Patents Act, 1970; trademarks under Trade and Merchandise Marks Act 1958; and designs under Designs Act, 1911. With the establishment of WTO and India being signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), several new legislations were passed for the protection of intellectual property rights to meet the international obligations. These included: Trade Marks, called the Trade Mark Act, 1999; Designs Act, 1911 was replaced by the Designs Act, 2000; the Copyright Act, 1957 amended a number of times, the latest is called Copyright (Amendment) Act, 2012; and the latest amendments made to the Patents Act, 1970 in 2005. Besides, new legislations on geographical indications and plant varieties were also enacted. These are called Geographical Indications of Goods (Registration and Protection) Act, 1999, and Protection of Plant Varieties and Farmers' Rights Act, 2001 respectively.

Over the past two decades around, intellectual property rights have grown to a stature from where it plays a major role in the development of global economy. In 1990s, many countries unilaterally strengthened their laws and regulations in this area, and many others were poised to do likewise. At the multilateral level, the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization elevates the protection and enforcement of IPRs to the level of solemn international commitment. It is strongly felt that under the global competitive environment, stronger IPR protection increases incentives for innovation and raises returns to international technology transfer.

India's engagement on Intellectual Property Rights (IPR) endures, primarily through the Trade Policy Forum's Working Group on Intellectual Property. In 2016, India released its comprehensive National IP Policy, with its primary focus being on awareness and building administrative capacity. The portfolio of Copyright and Semi- Conductors shifted to the Department of Industrial Policy and Promotion, Ministry of Commerce. The Cell of IP Promotion and Management (CIPAM) was set up and is tasked with implementing the IP Policy and interagency coordination. In 2016, the state of Telangana set up India's first IP Crime Unit, to combat the menace of internet piracy.

Administrative and Judicial Setup for Intellectual Property Rights in India

Judicial

a) Commercial Courts

b) Copyright Board

c) Alternative Dispute Resolution (ADR)

Enforcement

a) Police

b) Custom

Centre and State

a) IP Cells

b) Technology and Innovation Support Centers (TISCs)

c) Patents Facilitation Centre

IP Offices

a) Patents – Delhi, Kolkata, Chennai, Mumbai

b) Trademarks - Delhi, Kolkata, Chennai, Mumbai and Ahmedabad

c) Copyrights – Delhi

d) Designs – Kolkata

e) Geographical Indication – Chennai

f) Semiconductor Integrated Circuits Layout Design Registry (SICLDRS) – Delhi.

COPYRIGHTS

Copyrights protect original works of authorship, such as literary works, music, dramatic works, pantomimes and choreographic works, sculptural, pictorial, and graphic works, sound recordings, artistic works, architectural works, and computer software. With copyright protection, the holder has the exclusive rights to modify, distribute, perform, create, display, and copy the work.

Section 14 of the Act defines the term Copyright as to mean the exclusive right to do or authorise the doing of the following acts in respect of a work or any substantial part thereof, namely -

In the case of literary, dramatic or musical work (except computer programme):

(i) reproducing the work in any material form which includes storing of it in any medium by electronic means;

(ii) issuing copies of the work to the public which are not already in circulation;

(iii) performing the work in public or communicating it to the public;

(iv) making any cinematograph film or sound recording in respect of the work

(v) making any translation or adaptation of the work.

Further any of the above mentioned acts in relation to work can be done in the case of translation or adaptation of the work.

In the case of a computer programme:

(i) to do any of the acts specified in respect of a literary, dramatic or musical work; and

(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.

In the case of an artistic work:

(i) reproducing the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;

(ii) communicating the work to the public;

(iii) issuing copies of work to the public which are not already in existence;

(iv) including work in any cinematograph film;

(v) making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.

In the case of cinematograph film and sound recording:

(i) making a copy of the film including a photograph of any image or making any other sound recording embodying it;

(ii) selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions; and

(iii) communicating the film/sound recording to the public.

In the case of a sound recording:

(i) To make any other sound recording embodying it;

(ii) To sell or give on hire, or offer for sale or hire, any copy of the sound recording;

(iii) To communicate the sound recording to the public.

The main objective of the Act is to give protection to the owner of the copyright from the dishonest manufacturers, who try to confuse public and make them believe that the infringed products are the products of the owner. Further, it wants to discourage the dishonest manufacturers from enchasing the goodwill of the owner of the copyright, who has established itself in the market with its own efforts. [*Hawkins Cookers Ltd. v. Magicook Appliances Co., 00(2002) DLT698*].

Unlike the case with patents, copyright protects the expressions and not the ideas. There is no copyright in an idea. In *M/s Mishra Bandhu Karyalaya & Others v. Shivaratanlal Koshal AIR 1970 MP 261*, it has been held that the laws of copyright do not protect ideas, but they deal with the particular expression of ideas.

In order to qualify under copyright laws, the work must be fixed in a tangible medium of expression, such as words on a piece of paper or music notes written on a sheet. A copyright exists from the moment the work gets created, so registration is required to provide proper protection to one's work and also to prevent the chances of its misuse and unauthorized use.

Copyright in India is governed by Copyright Act, 1957. This Act has been amended several times to keep pace with the changing times. As per this Act, copyright grants author's lifetime coverage plus 60 years after death under certain classes whereas in other classes it is 60 years in toto. Copyright and related rights on cultural goods, products and services, arise from individual or collective creativity. All original intellectual creations expressed in a reproducible form will be connected as" works eligible for copyright protections". Copyright laws distinguish between different classes of works such as literary, artistic, dramatic, musical works; and sound recordings; and cinematograph films. The work is protected irrespective of the quality thereof and also when it may have very little in common with accepted forms of literature or art.

Copyright protection also includes novel rights which involve the right to claim authorship of a work, and the right to oppose changes to it that could harm the creator's reputation (Moral Right). The creator or the owner of the copyright in a work can enforce his right administratively and in the courts by inspection of premises for evidence of production or possession of illegally made "pirated" goods related to protected works. The owner may obtain court orders to stop such activities, as well as seek damages for loss of financial rewards and recognition.

A vital field which gets copyright protection is the computer industry. The Copyright Act, 1957, was amended in 1984 and computer programming was included with the definition of "literary work.' The new definition of" computer programme" introduced in 1994, means a set of instructions expressed in works, codes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.

Copyright Protection Enforcement

Civil remedies for infringement of copyright.—

(1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for believing that copyright subsisted in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

(2) Where, in the case of a literary, dramatic, musical or artistic work, or, subject to the provisions of sub-section (3) of section 13, a cinematograph film or sound recording, a name purporting to be that of the author, or the publisher, as the case may be, of that work, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceeding in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.

(3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

Protection of separate rights.—

Subject to the provisions of this Act, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right, been titled to the remedies provided by this Act and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit, action or proceeding. *(For details refer lesson on Copyright)*

The greatest fear and challenges to the copyright industry is the piracy of works whether, books, musical works, films, television programmes or computer software or computer database. The special nature of infringement of copyrights in computer programmes has again been taken note of by the Copyright (Amendment) Act, 1994 by inserting a new section 63B. The new section provides that any person who knowingly makes use on a computer of an infringed copy of a computer programme will be punishable with imprisonment for a term of not less than seven days, which may extend to three years and with a fine of not less than ₹ 50,000/- and which may extend to ₹2,00,000/-. Proviso to section 63B, however, provides that where computer programme has not been used for gain or in the course of trade or business, the court may at its discretion and for reasons mentioned in the judgment not impose any sentence of imprisonment and impose only fine up to ₹ 50,000/-.

The Copyright (Amendment) Act, 1999 makes it free for purchaser of a gadget/equipment to sell it onwards if the item being transacted is not the main item covered under the Copyright Act. This means computer software which is built in the integral part of a gadget/equipment can be freely transacted without permission of copyright owner. This amendment also ensures fair dealing of 'broadcasting' gaining popularity with the growth of the Internet. With this amendment India has updated the Act to meet the concerns of the copyright industries mainly consisting of Book Industry, Music Industry, Film and Television Industry, Computer Industry and Database Industry.

The Copyright Act, 1957 amended in 2012 with the object of making certain changes for clarity, to remove operational difficulties and also to address certain newer issues that have emerged in the context of digital technologies and the Internet. Moreover, the main object to amendments the Act is that in the knowledge society in which we live today, it is imperative to encourage creativity for promotion of culture of enterprise and innovation so that creative people realize their potential and it is necessary to keep pace with the challenges for a fast growing knowledge and modern society.

TRADEMARKS

A trademark is a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors. In order to qualify for protection, the mark must be distinctive. For example, the Nike "swoosh" design identifies athletic footwear made by Nike.

Although rights in trademarks are acquired by use, registration with the Trademark Office under the Trademark Act, 1999 allows you to more easily enforce those rights. Before registering your trademark, conduct a search of federal and state databases to make sure a similar trademark doesn't already exist. This trademark search can help you reduce the amount of time and money you could spend on using a mark that is already registered and trademarked.

The Trade Marks Act 1999 ("TM Act") provides, inter alia, for registration of marks, filing of multi class applications, the renewable term of registration of a trademark as ten years as well as recognition of the concept of well-known marks, etc. It is pertinent to note that the letter "R" in a circle i.e. ® with a trademark can only be used after the registration of the trademark under the TM Act.

Trademarks mean any words, symbols, logos, slogans, product packaging or design that identify the goods or services from a particular source. As per the definition provided under Section 2 (zb) of the TM Act, "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colors.

The definition of the trademark provided under the TM Act is wide enough to include non-conventional marks like color marks, sound marks, etc. As per the definition provided under Section 2 (m) of the TM Act, "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colors or any combination thereof.

Accordingly, any mark used business entity in the trade or business in any form, for distinguishing itself from other, can qualify as trademark. It is quite significant to note that the Indian judiciary has been proactive in the protection of trademarks, and it has extended the protection under the trademarks law to Domain Names as demonstrated in landmark cases of *Tata Sons Ltd. vs. Manu Kosuri & Ors. [90 (2001) DLT 659]* and *Yahoo Inc. vs. 1999 PTC 201]*.

Points to consider while adopting a Trademark

Any business entity needs to be cautious in selecting its trade name, brands, logos, packaging for products, domain names and any other mark which it proposes to use. One must do a proper due diligence before adopting a trademark. The trademarks can be broadly classified into following five categories:

- Generic
- Descriptive
- Suggestive
- Arbitrary
- Invented/Coined.

Explanation:-

1. Generic marks means using the name of the product for the product, like "Salt" for salt.
2. Descriptive marks means the mark describing the characteristic of the products, like using the mark "Fair" for the fairness creams.
3. Suggestive marks means the mark suggesting the characteristic of the products, like "Habitat" for home furnishings products.
4. Arbitrary marks means mark which exist in popular vocabulary, but have no logical relationship to the goods or services for which they are used, like "Blackberry" for phones.
5. The invented/ coined marks means coining a new word which has no dictionary meaning, like "Adidas".

The strongest marks, are thus the easiest to protect, are invented or arbitrary marks. The weaker marks are descriptive or suggestive marks which are very hard to protect. The weakest marks are generic marks which can never function as trademarks.

India follows the NICE Classification of Goods and Services for the purpose of registration of trademarks. The NICE Classification groups goods and services into 45 classes (classes 1-34 include goods and classes 35-45 include services). The NICE Classification is recognized in majority of the countries and makes applying for trademarks internationally a streamlined process. Every business entity, seeking to register trademark for a good or service, has to choose from the appropriate class, out of the 45 classes.

While adopting any mark, the business entity should also keep in mind and ensure that the mark is not being used by any other person in India or abroad, especially if the mark is well-known. It is important to note that India recognizes the concept of the "Well-known Trademark" and the principle of "Trans-border Reputation".

Examples of well-known trademarks are Google, Tata, Yahoo, Pepsi, Reliance, etc. Further, under the principle of "Trans-border Reputation", India has afforded protection to trademarks like Apple, Gillette, Whirlpool, Volvo, which despite having no physical presence in India, are protected on the basis of their trans-border reputation in India.

Enforcement of trademarks rights

Trademarks can be protected under the statutory law, i.e., under the Trade Marks Act and the common law. If a person is using a similar mark for similar or related goods or services or is using a well-known mark, the rightful owner of trademark can file a suit against that person for violation of the IP rights irrespective of the fact that the trademark is registered or not.

Registration of a trademark is not a pre-requisite in order to sustain a civil or criminal action against violation of trademarks in India. The prior adoption and use of the trademark is of utmost importance under trademark laws.

The relief which a Court may usually grant in a suit for infringement or passing off includes permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction and cost of the legal proceedings. It is pertinent to note that infringement of a trademark is also a cognizable offence and criminal proceedings can also be initiated against the infringers.

PATENTS

A patent grants proprietary rights on an invention, allowing the patent holder to exclude others from making, selling, or using the invention. Inventions allow many businesses to be successful because they develop new or better processes or products that offer competitive advantage on the marketplace. One could get a patent by filing a patent application with the Patent Office in India.

Patent, in general parlance means, a monopoly given to the inventor on his invention to commercial use and exploit that invention in the market, to the exclusion of other, for a certain period. As per Section 2(1) (j) of the Patents Act, 1970, "invention" includes any new and useful;

- art, process, method or manner of manufacture;
- machine, apparatus or other article;
- substance produced by manufacture, and includes any new and useful improvement of any of them, and an alleged invention.

The definition of the word "Invention" in the Patents Act, 1970 includes the new product as well as new process. Therefore, a patent can be applied for the "Product" as well as "Process" which is new, involving inventive step and capable of industrial application can be patented in India.

The invention will not be considered new if it has been disclosed to the public in India or anywhere else in the world by a written or oral description or by use or in any other way before the filing date of the patent application. The information appearing in magazines, technical journals, books etc, will also constitute the prior knowledge. If the invention is already a part of the state of the art, a patent cannot be granted. Examples of such disclosure are displaying of products in exhibitions, trade fairs, etc. explaining its working, and similar disclosures in an article or a publication.

It is important to note that any invention which falls into the following categories is not patentable:

(a) frivolous,

(b) obvious,

(c) contrary to well established natural laws,

(d) contrary to law,

(e) morality,

(f) injurious to public health,

(g) a mere discovery of a scientific principle,

(h) the formulation of an abstract theory,

(i) a mere discovery of any new property or new use for a known substance or process, machine or apparatus,

(j) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance,

(k) a mere arrangement or rearrangement or duplication of known devices,

(l) a method of agriculture or horticulture, and

(m) inventions relating to atomic energy or the inventions which are known or used by any other person, or used or sold to any person in India or outside India.

The application for the grant of patent can be made by either the inventor or by the assignee or legal representative of the inventor. In India, the term of the patent is for 20 years. The patent is renewed every year from the date of patent.

Enforcement of Patent Rights

It is pertinent to note that the patent infringement proceedings can only be initiated after grant of patent in India but may include a claim retrospectively from the date of publication of the application for grant of the patent. Infringement of a patent consists of the unauthorized making, importing, using, offering for sale or selling any patented invention within the India. Under the (Indian) Patents Act, 1970 only a civil action can be initiated in a Court of Law. Like trademarks, the relief which a court may usually grant in a suit for infringement of patent includes permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction and cost of the legal proceedings.

DESIGNS

In view of considerable progress made in the field of science and technology, a need was felt to provide more efficient legal system for the protection of industrial designs in order to ensure effective protection to registered designs, and to encourage design activity to promote the design element in an article of production. In this backdrop, The Designs Act of 1911 has been replaced by the Designs Act, 2000. The Designs Act, 2000 has been enacted essentially to balance these interests and to ensure that the law does not unnecessarily extend protection beyond what is necessary to create the required incentive for design activity while removing impediments to the free use of available designs.

The new Act complies with the requirements of TRIPS and hence is directly relevant for international trade.

According to section 2 (d) of the Designs Act, 2000-

“Design” means features of shape, pattern, configuration, ornaments or composition of colors or lines which is applied in three dimensional or two dimensional or in both the forms using any of the process whether manual, chemical,

mechanical, separate or combined which in the finished article appeal to or judged wholly by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device.

Industrial Design law deals with the aesthetics or the original design of an industrial product. An industrial product usually contains elements of both art and craft, that is to say artistic as well as functional elements.

The design law excludes from its purview the functioning features of an article and grants protection only to those which have an aesthetic appeal. For example, the design of a teacup must have a hollow receptacle for holding tea and a handle to hold the cup. These are functional features that cannot be registered. But a fancy shape or ornamentation on it would be registrable. Similarly, a table, for example, would have a flat surface on which other objects can be placed. This is its functional element. But its shape, colour or the way it is supported by legs or otherwise, are all elements of design or artistic elements and therefore, registrable if unique and novel.

Today, industrial design has become an integral part of consumer culture where rival articles compete for consumer's attention. It has become important, therefore, to grant adequate protection to an original industrial design. It is not always easy to separate aesthetics of a finished article from its function. Law, however, requires that it is only the aesthetics or the design element which can be registered and protected. For example, while designing furniture whether for export or otherwise, when one copies designs from a catalogue, one has to ascertain that somebody else does not have a design right in that particular design.

Particularly, while exporting furniture, it is necessary to be sure that the design of the furniture is not registered either as a patent or design in the country of export. Otherwise, the exporter may get involved in unnecessary litigation and may face claims for damages. Conversely, if furniture of ethnic design is being exported, and the design is an original design complying with the requirements of the definition of 'design' under the Designs Act, it would be worthwhile having it registered in the country to which the product is being exported so that others may not imitate it and deprive the inventor of that design of the commercial benefits of his design.

The salient features of the Design Act, 2000 are as under:

(a) Enlarging the scope of definition of the terms "article", "design" and introduction of definition of "original".

(b) Amplifying the scope of "prior publication".

(c) Introduction of provision for delegation of powers of the Controller to other officers and stipulating statutory duties of examiners.

(d) Provision of identification of non-registrable designs.

(e) Provision for substitution of applicant before registration of a design.

(f) Substitution of Indian classification by internationally followed system of classification.

(g) Provision for inclusion of a register to be maintained on computer as a Register of Designs.

(h) Provision for restoration of lapsed designs.

(i) Provisions for appeal against orders of the Controller before the High Court instead of Central Government.

(j) Revoking of period of secrecy of two years of a registered design.

(k) Providing for compulsory registration of any document for transfer of right in the registered design.

(l) Introduction of additional grounds in cancellation proceedings and provision for initiating the cancellation proceedings before the Controller in place of High Court.

(m) Enhancement of quantum of penalty imposed for infringement of a registered design.

(n) Provision for grounds of cancellation to be taken as defense in the infringement proceedings to be in any court not below the Court of District Judge.

(o) Enhancing initial period of registration from 5 to 10 years, to be followed by a further extension of five years.

(p) Provision for allowance of priority to other convention countries and countries belonging to the group of countries or inter-governmental organizations apart from United Kingdom and other Commonwealth Countries.

(q) Provision for avoidance of certain restrictive conditions for the control of anticompetitive practices in contractual licenses.

UTILITY MODELS

A utility model is an exclusive right granted for an invention, which allows the right holder to prevent others from commercially using the protected invention, without his authorization for a limited period of time. In its basic definition, which may vary from one country (where such protection is available) to another, a utility model is similar to a patent. In fact, utility models are sometimes referred to as "petty patents" or "innovation patents."

Example of registered utility models

a) Oil Filtering Tool: JP,3157659

b) Weeding out implement: JP, 3145798, U

c) Heating Element: JP,3165912, U

d) Incense Burner Box: JP, 3165903,U

Only a small but significant number of countries and regions provide the option of utility model protection. At present, India does not have legislation on Utility models.

The main differences between utility models and patents are the following:

The requirements for acquiring a utility model are less stringent than for patents. While the requirement of "novelty" is always to be met, that of "inventive step" or "non-obviousness" may be much lower or absent altogether. In practice, protection for utility models is often sought for innovations of a rather incremental character which may not meet the patentability criteria.

The term of protection for utility models is shorter than for patents and varies from country to country (usually between 7 and 10 years without the possibility of extension or renewal).

In most countries where utility model protection is available, patent offices do not examine applications as to substance prior to registration. This means that the registration process is often significantly simpler and faster, taking on an average six months.

Utility models are much cheaper to obtain and to maintain. In some countries, utility model protection can only be obtained for certain fields of technology, and only for products but not for processes.

Utility models are considered suitable particularly for SMEs that make "minor" improvements to, and adaptations of, existing products. Utility models are primarily used for mechanical innovations.

The "Innovation patent," launched in Australia some time back was introduced as a result of extensive research into the needs of small and medium-sized enterprises, with the aim of providing a "low-cost entry point into the intellectual property system."

TRADE SECRETS

It may be confidential business information that provides competitive edge to an enterprise. Usually these are manufacturing or industrial secrets and commercial secrets. These include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes. Contrary to patents, trade secrets are protected without registration.

Trade secret may be in the form of a :-

a) formula

b) practice

c) process

d) design

e) instrument

f) pattern

g) commercial methods

h) compilation of information not generally known.

A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist so that, except by the use of improper means, there would be difficulty in acquiring the information. Considering the vast availability of traditional knowledge in the country, the protection under this will be very crucial in reaping benefits from such type of knowledge.

GEOGRAPHICAL INDICATIONS

Geographical Indication (GI) is a tag or sign used on products for indicating their specific place of origin. It specifies the characteristics, qualities and reputation assumed to be in the product because of its linkage to a particular geographical location. Any sign can be used as a GI only when it has the ability of identifying a product to be originating from a particular place. It can be used for following mentioned things –

a) Agricultural products e.g. Alphonso Mango, Nagpur oranges

b) Food stuffs e.g. Roquefort cheese is the unique blue cheese from France

c) Wine and spirits e.g. Tequilla made from blue agave plant growing in the city of Tequila, Mexico

d) Handicrafts e.g. Mahdubani Paintings, Kanchipuram Sarees

e) Industrial products e.g. Darjeeling tea.

Until recently, Geographical indications were not registrable in India and in the absence of statutory protection, Indian geographical indications had been misused by persons outside India to indicate goods not originating from the named locality in India. Patenting turmeric, neem and basmati are the instances which drew a lot of attention towards this aspect of the Intellectual property. Mention should be made that under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), there is no obligation for other countries to extend reciprocal protection unless a geographical indication is protected in the country of its origin. India did not have such a specific law governing geographical indications of goods which could adequately protect the interest of producers of such goods.

To cover up such situations it became necessary to have a comprehensive legislation for registration and for providing adequate protection to geographical indications and accordingly the Parliament has passed a legislation, namely, the Geographical indication of Goods (Registration and Protection) Act, 1999. The legislation is administered through the Geographical Indication Registry under the overall charge of the Controller General of Patents, Designs and Trade Marks.

The salient features of this legislation are as under:

(a) Provision of definition of several important terms like “geographical indication”, “goods”, “producers”, “packages”, “registered proprietor”, “authorized user” etc.

(b) Provision for the maintenance of a Register of Geographical Indications in two parts-Part A and Part B and use of computers etc. for maintenance of such Register. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users.

(c) Registration of geographical indications of goods in specified classes.

(d) Prohibition of registration of certain geographical indications.

(e) Provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of geographical indication applications.

(f) Compulsory advertisement of all accepted geographical indication applications and for inviting objections.

(g) Registration of authorized users of registered geographical indications and providing provisions for taking infringement action either by a registered proprietor or an authorized user.

(h) Provisions for higher level of protection for notified goods.

(i) Prohibition of assignment etc. of a geographical indication as it is public property.

(j) Prohibition of registration of geographical indication as a trademark.

(k) Appeal against Registrar's decision would be to the High Court established under the Trade Mark legislation.

(l) Provision relating to offences and penalties.

(m) Provision detailing the effects of registration and the rights conferred by registration.

(n) Provision for reciprocity powers of the registrar, maintenance of Index, protection of homonymous geographical indications etc.

BIO-DIVERSITY AND IPR

In simple terms, the diversity among various life forms within the Biosphere refers to biodiversity. Biodiversity is the foundation of life on Earth. It is crucial for the functioning of ecosystems which provide us with products and services without which we cannot live. By changing biodiversity, we strongly affect human well-being and the well-being of every other living creature. Biodiversity is normally classified under 3 major categories:

a) ecosystem diversity, representing the principal bio geographic regions and habitats;

b) Species diversity, representing variability at the level of families, genera and species; and

c) Genetic diversity, representing the large amount of variability occurring within a species.

Diverse activities and actions have been taken by several stakeholders at local, state, national and international level to conserve/protect the valuable resource such as biodiversity to draw the benefits accrued in it for the society.

It is a well-established fact that developing countries are rich in the world's flora and fauna and 80 percent of the earth's terrestrial biodiversity is confined to these countries, which is the "raw material" for biotechnology, i.e., genes, folk varieties, land races to develop new varieties by biotechnology. Until the advent of molecular biology and genetic engineering, the success of plant breeding depended on access to genetic variability within a species. Genetic engineering has, however, rendered the transfer of genes across sexual barriers possible and has thus enhanced the economic value of biodiversity.

The developed countries are not rich in biogenetic resources but are better equipped in research and development. They use the biogenetic resources accessed from the developing countries. As a result, there is a beginning in the unprotected flow of genetic information from the developing countries to the capital-rich west, and a protected flow in the reverse direction mainly through patents and Plant Breeders' Rights (PBR). It has

both visible and invisible impacts. Genetic erosion is one of the most important invisible impacts that is in the long run manifested visibly with the loss of biodiversity.

The Convention on Biological Diversity (CBD) 1992: Opened for signature at the Earth Summit in Rio de Janeiro in 1992, and entering into force in December 1993, the Convention on Biological Diversity is an international treaty for the conservation of biodiversity, the sustainable use of the components of biodiversity and the equitable sharing of the benefits derived from the use of genetic resources. The interface between biodiversity and intellectual property is shaped at the international level by several treaties and process, including at the WIPO, and the TRIPS Council of the WTO. With 193 Parties, the Convention has near universal participation among countries. The Convention seeks to address all threats to biodiversity and ecosystem services, including threats from climate change, through scientific assessments, the development of tools, incentives and processes, the transfer of technologies and good practices and the full and active involvement of relevant stakeholders including indigenous and local communities, youth, NGOs, women and the business community. The Cartagena Protocol on Bio Safety is a subsidiary agreement to the Convention. It seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology.

The treaty defines biodiversity as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems."

The Convention reaffirms the principle of state sovereignty, which grants states sovereign rights to exploit their resources pursuant to their own environmental policies together with the responsibility to ensure that activities within their own jurisdiction or control do not cause damage to the environment of other states. The Biodiversity Convention also provides a general legal framework regulating access to biological resources and the sharing of benefits arising from their use. India is a party to the Convention on Biological Diversity (1992).

The Convention on Biological Diversity establishes important principles regarding the protection of biodiversity while recognizing the vast commercial value of the planet's store of germplasm. However, the expansion of international trade agreements establishing a global regime of intellectual property rights creates incentives that may destroy biodiversity, while undercutting social and economic development opportunities as well as cultural diversity. The member countries were pressurized to change their IPR laws to confirm to the TRIPS agreement.

India also followed the suit by placing in place legal frameworks for the management of biodiversity and Intellectual property laws. Following India's ratification of the Convention on Biological Diversity (CBD) at international level, the Biological Diversity Act, 2002 was adopted. The Biological Diversity Act aims at conservation of biological resources and associated knowledge as well as facilitating access to them in a sustainable manner and through a just process.

CBD and TRIPs

While the TRIPS and the CBD both attempt to legislate some form of intellectual property and technology transfer, the Agreement appear to provide contradictory prescriptions for the control over genetic control over generic resources and biodiversity. The two Agreements embody and promote conflicting objectives, systems of right and obligations. The core issues is that, in the area of patentable subject matter, benefit sharing, protection of local knowledge, requirements of prior informed consent and role of state.

Major tension between the CBD and the TRIPS is related to the case of National Sovereignty and the Rights of IPR Holders. Through the CBD, countries have the right to regulate access of foreigners to biological resources and knowledge and to determine benefit sharing arrangements. The TRIPS enable persons or institutions to patent a country's biological resources in countries outside country of origin of the resources or knowledge. In this manner TRIPS facilitates the conditions for misappropriation of ownership or rights over living organisms, knowledge and processes on the use of biodiversity. The sovereignty of developing countries over their resources and over their right to exploit or use their resources as well as to determine access and benefit sharing arrangements are compromised. The patent confers exclusive rights on its owner to prevent third parties for making, using offering for sale, selling or importing the patent product and to prevent third parties from using

the patent process. This makes it an offence for others to do so, except with the owner's permission, which is usually given only on license or payment royalty.

In brief, it could be rightly argues that the IPRs have the effect of preventing the free exchange of knowledge, of products of the knowledge and their use or production. This system of exclusive and private right is at odds with the traditional social and economic system in which local communities make use of and develop and nurture biodiversity.

Seeds and knowledge on crop varieties and medicinal plants are usually freely exchanged within the community. Knowledge is not confined or exclusive to individuals but shared and held collectively, and passed on and added to from generation to generation and also from locality to locality.

In the benefit sharing arrangements, a key aspect of the CBD is the one, which recognizes the sovereign rights of the states over their biodiversity and knowledge, and thus gives the State the right to regulate access and this in turn, enables the state to enforce its rights on arrangements for sharing benefits. Access where granted, shall be on mutually agreed terms (Art 15.4) and shall be subject to prior informed consent (Art 15.6). Most importantly, each country shall take legislative, administrative or policy measures with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the contracting party providing such resources. Such sharing shall be upon mutually agreed terms.

The TRIPS is a devise with international intellectual property regime that maximizes the potential for both traditional knowledge and modern scientific innovations to contribute to economic progress. To achieve this goal, we can:-

(i) Establish the concept of community property rights with respect to Traditional Knowledge recognition;

(ii) Recognize communities' rights over their resources and TK;

(iii) Recognizes safeguards and protect the TK, innovations, practices and technologies of indigenous and local people and communities;

(iv) Mandate legal protection for TK;

(v) Recognize the sovereign rights of states over their biodiversity and genetic resources;

(vi) Mandate the principles of prior informed consent and benefit sharing when other countries access the biogenetic resources and local communities.

Such an amendment will restrict the inherent tension between the CBD and the TRIPS. It may also address the conflict between the private rights of IPR holders and the community rights of TK holders.

CASE LAWS/ CASE STUDIES

Sony Corporation vs. K. Selvamurthy, Com. O.S. No. 8464/2018 order dated 18.06.2021

Facts:

This is a plaintiff's suit for an order of permanent injunction restraining the defendant, their officers, Com. O.S. No. 8464/2018 partner, employees, servants, agents, representatives, dealers, successor in title, sister concern, associates, subsidiaries, franchisees, licensees, or any one acting for and on behalf of defendant from using the mark SONY or any other domine name deceptively similar to the plaintiff's well known SONY trade mark as a trade mark, trade name or part of trade name, domine name in relation to its goods, service or in any manner whatsoever. Further, pray for an order directing the defendant to render to plaintiff's an account of profits made by the defendant by selling the impugned goods or services under SONY mark and a decree be passed in favour of plaintiff for the amount thus found due. The plaintiff also sought for damages to the tune of Rs.10,00,000/- and also direction to the defendant to voluntarily withdraw/cancel any trade mark or copyright application filed for any mark similar to the well known trade mark SONY of plaintiff's and to refrain from seeking registration of any mark similar to the well known trade mark SONY of plaintiff's. Further, plaintiff

pray for an order against the defendant seeking to deliver to the plaintiff for destruction all packaging material, advertising and promotional material and other literature, signage, signboards, etc., bearing the mark SONY or any other mark deceptively similar or Com. O.S. No. 8464/2018 identical to the plaintiff's trademark SONY. Further pray for an order against the defendant take steps if any to block online websites that solicits the business of the defendant or incorporate the impugned trademark of the defendant with costs and such other reliefs as this court deems fit to grant in the circumstances of the case.

According to plaintiff in one of the decision rendered on 26.2.1999 the court observed that the opponent's SONY brand is very well known and well accepted in the market. Given these similarities, it is further observed that, we believe that less informed people may confuse the marks, and as the Sony mark is generally well accepted and sought after, the applicant may obtain advantages from that confusion at the expenses of the name that the opponent has in the market. It is plaintiff's further case that its corporation devotes considerable resources towards advertising and promoting the trademark/trade name SONY internationally as well as in India, including in print, television and digital advertisements, billboards, events, and online and social media drives, such as Facebook and Twitter.

The defendant is an Indian National engaged in the business of transport services and car rental services under the name and style of M/s. Sony Tours and Travels at Ulsoor, Bengaluru. The defendant specifically contended that SONY is the nick name of his wife Smt. Kavitha and the name sony as origin in india and sony in tamil and telugu languages means beauty and it is the name of a female/girl, as per the vedic astrology the person with the name sony means a person dedicated to her job and people with the said name like to proceed in an organized way to their objectives and they have faith in spirituality.

The name of his business concerns i.e. Sony Tours and Travels does not cause any manner of confusion or likelihood of confusion the business and services of defendant is entirely defendant from that of the plaintiff's business corporation. The plaintiff who are basically into electronic goods etc., and their trade mark is Sony is also easily distinguishable even though he is in this business since 25 years the plaintiff has filed this suit at present making false allegations.

Issues:

Whether the plaintiff Sony corporation establishes that the use of the mark by the defendant as Sony Tours and Travels in its travel business would take unfair advantage of or is detrimental to the distinctive character or repute of its registered trade mark "Sony" and thereby a registered mark is infringed by the defendant?

Held:

Court held that-

"The nature of business of defendant is entirely different from that of the goods manufactured by the plaintiff SONY corporation. The trade mark of plaintiff corporation is "Sony". Whereas the defendant is using the name as "Sony Tours and Travels". The learned counsel for plaintiff submits that they have objections only with regard to the word "Sony" mentioned in the front of Tours and Travels. Admittedly, plaintiff is not running any tours and travels business. The description of business as transport, packaging and storage of goods, travel arrangement are all nothing but service details associated with manufacture of goods owned by plaintiff company.

According to plaintiff its corporation is having business in electronics and media in as many as 193 countries. It is not the case of plaintiff's corporation that any of its agents are running Sony corporation shop / branch in the same premises of defendant. Under such circumstances it is impossible to imagine that an ordinary man would link the electronic goods of the plaintiff to the travel business of the defendant. By issuing the notice in the year 2002 the plaintiff corporation has set the law into motion and repeated issuance of notice all along for a period of 16 years will not stop the time which begins to run in the year 2002 itself. The silence on part of plaintiff all along for 16 years establishes that no such irreparable injury Com. O.S. No. 8464/2018 has been caused to plaintiff corporation from the defendant usage of the said name Sony Tours and Travels. That apart as I have already stated the defendant herein is running a small business in a compact place. The use of Sony tours and travels by the defendant in respect of its travel business would not be detrimental to the reputation of the trade mark of the plaintiff herein in any manner.

The plaintiff sony corporation admittedly filed this suit after lapse of 16 years from the date of issuance of notice which was issued in the year 2002. The plaintiff's corporation has not at all explained this delay. For all these 18 to 20 years admittedly defendant kept on doing its travel business in the same place i.e., Bengaluru. The nature and style of the business of the plaintiff and defendant are altogether different. Admittedly, as per plaint averments and also plaint cause title, the defendant is running its Tours and Travel Com. O.S. No. 8464/2018 business in a compact shop.

He is neither having any franchisee nor any sister concern companies. Under such circumstances, the prayer sought by the plaintiff corporation referred supra appears vague and baseless. There is absolutely no material placed before this court by plaintiff Sony Corporation to establish infringement of trademark by the defendant. In the two photographs produced by the plaintiff itself, which contains hoardings, the name Sony has been painted in two different styles and colour. By looking at the same, no average man of ordinary prudence can even think of connecting the same with the plaintiff's manufacturing business. It is difficult to imagine that an average man of ordinary prudence would associates the goods of the plaintiff's Sony Corporation to that of the business of defendant.

The suit filed by the plaintiff for the relief of permanent injunction and other consequential reliefs is dismissed with cost of Rs. 25,000/-."

Raj Kumar Prasad & anr vs. Abbott Healthcare Pvt Ltd [DEL] FAO(OS) 281/2014 [Decided on 10/09/2014]

Facts:

It is the case of Abbott that the predecessor-in-interest of the registered trademark 'ANAFORTAN' used the same extensively and widely for the medicines manufactured and sold in the market and since September, 2010 Abbott had been doing so. Thus, Abbott had established a good will and reputation in the mark 'ANAFORTAN'. As per Abbott it had sold pharmaceutical products under said trademark in sum of Rs.7.84 crores between September to December, 2010 and 23.047 crores between January and December, 2011. The grievance was that Raj Kumar Prasad, carrying on business as a sole proprietor of Birani Pharmaceuticals, was selling pharmaceutical products containing Camylofin Dihydrochloride under the brand name 'AMAFORTEN'. Concerning the second defendant Alicon Pharmaceuticals Pvt. Ltd. the grievance was that it was manufacturing the medicinal preparations for Raj Kumar Prasad, to be sold under the mark 'AMAFORTEN'. It is the case of Abbott that Raj Kumar Prasad surreptitiously obtained, vide registration No. 1830060 under class 5, the registration of the mark 'AMAFORTEN' for which Abbott intends to file rectification proceedings.

Held:

The view taken by the learned Single Judge is based upon a reading of Section 124 of the Trademarks Act, 1999. The learned Single Judge has held that a registered proprietor of a trademark is entitled to sue a registered proprietor of a trademark if the latter is identical with or nearly resembles the other. Holding that the suit would be maintainable, the learned Single Judge has held that the trademark used by the defendants 'AMAFORTEN' is ex-facie phonetically band visually deceptively similar to that of Abbott 'ANAFORTAN'.

The learned Single Judge has noted that through its predecessors Abbott had been using the trademark 'ANAFORTAN' extensively since the year 1988 and thus has injuncted the defendants from selling its product under the trademark 'AMAFORTEN' or any other mark deceptively similar to that of Abbott.

Ex-facie there is visual and phonetic deceptive similarity in the trademark 'AMAFORTEN' in comparison with the trademark 'ANAFORTAN'. It has to be kept in mind that the competing goods are pharmaceutical preparations, the class of the goods is the same; the consumer is the same and the trade channel is the same. Concededly through its predecessors-in-interest Abbott has inherited the good will and reputation in its trademark 'ANAFORTAN' and would be entitled to protect the same. Whereas through its predecessors- in- interest Abbott is in the market since the year 1988 defendant entered the market somewhere in the year 2012 when the suit was filed. We note that the defendant has consciously not disclosed in the written statement the day it started selling the goods in the market. From the documents filed by the defendants we find that it applied to the Registrar of Trademarks

for registration of the trademark 'AMAFORTEN' on June 17, 2009 and was granted registration on July 12, 2011. Tested on the legal principles laid down by the Supreme Court in the case of Wander Ltd. & Anr. Vs. Antox India P. Ltd reported as 1990 (Supp.) SCC 727, we find no infirmity in the view taken by the learned Single Judge and thus would dismiss the appeal.

Vringo Infrastructure Inc. & Anr. vs. Indiamart Intermesh Ltd. & Ors. I.A. No.2112/2014 in C.S. (OS) No.314 of 2014 dated 5 August, 2014

Facts:

The case are that the present suit for injunction has been filed by Vringo Infrastructure Incorporation, plaintiff, a wholly owned subsidiary of Vringo Incorporation, plaintiff No.2. The plaintiff is alleged to have been founded in 2012 and is engaged in innovation and development of telecommunication technologies and intellectual property. It is alleged that plaintiff's research and development efforts have resulted in filing over 25 patent applications in 2013 apart from the fact that the plaintiffs' intellectual property portfolio consists of patents and patent applications covering technologies pertaining to internet search and search advertising, handsets and telecommunications infrastructure and wireless communications. It is alleged that these patents and the patent applications have either been developed internally by the plaintiff or have been acquired from third parties.

The plaintiff is stated to have been founded in 2006 and till the recent sale of its mobile partnerships and application business in February, 2014, developed and distributed mobile application products and services through partnerships with handset manufactures and mobile network operators. The plaintiff offers its social and video ringtone mobile applications globally through mobile application stores.

In the instant case, the plaintiffs are alleging infringement of patent No.IN 200572 (hereinafter referred as IN '572) which is titled as 'a method and a device for making a handover decision in a mobile communication system'. It is alleged that the aforesaid invention is a method and device for making a handover decision in a mobile communication system comprising of at least one microcell (A, B, C) the coverage area of which is at least one mainly located within the coverage area of another cell (M) as shown herein below in the picture.

The method comprises of measuring at a mobile station, a radio signal transmitted by a base station of a microcell and reporting the measurement results at substantially regular intervals and commanding the mobile stations defined as slow moving mobile stations to switch to the base station of a suitable microcell. The application of this device has been explained with the help of following pictorial positions of a base tower in the context of a mobile handset.

The plaintiff has alleged that defendant ZTE Telecom Indian Private Limited is a private limited company incorporated under the laws of India and is wholly owned subsidiary of defendant. The defendant, ZTE Corporation, is a company incorporated under the laws of the People's Republic of China. It has been alleged that defendant Chinese company, is involved in the manufacturing and selling of telecommunications equipment and devices such as mobile handsets, dongles, tablets, infrastructure equipment and devices, etc. It is alleged that the defendants are infringing the suit patent of the plaintiffs by manufacturing, importing, selling, offering for sale infrastructure equipment including Base Station Controller examples of which are Base Station Controllers bearing Nos. ZTE ZXG10 iBSC and ZTE ZXG10- BSCV2. It is alleged that these infringing products are being installed and serviced by the defendants.

It is the case of the plaintiffs that the suit patent which was originally belonging to Nokia Corporation was assigned to them by a Confidential Patent Purchase Agreement dated 9.8.2012. The necessary documents showing the purchase/assignment of the aforesaid patent in favour of plaintiff were stated to have been placed on record, which are duly registered in countries where the deal was assigned and in some other countries. It is alleged that the plaintiffs have placed on record not only the documents in the form of leaflet, literature, brochure of defendant but also affidavit of a so-called expert person, who has examined the product of the defendants in the light of the patent of the plaintiffs and sworn that the two technologies are the same. It is alleged that analysis of this material will show that there is no marked difference between the technology by the defendant No.4 and the technology which is being used by the plaintiffs.

Issue:

1. Whether the plaintiffs are suffering irreparable loss on account of unhindered infringing material being brought, installed, sold, manufactured by defendant?
2. Should the injunction be granted in favour of plaintiffs due to alleged infringement?

Held:

Court stated that-

"This comparison prima facie, at this stage, cannot be done by the court as it essentially involves scientific evidence which needs great deal of specialized knowledge in telecommunications and experience as to how the cell phone technology functions. This can be opined by an expert, who has experience in the field of telecommunication and help the court in understanding the patent, its technology viz-a-viz the technology which has been adopted by the defendants. Therefore, the plaintiffs have to prima facie prove that the infringer is using the same technology which is patented by them and not the respondents. This onus is very heavy on the plaintiff to be discharged in the first instance. The plaintiffs must establish such acts as will prima facie satisfy the court that there are strong and prima facie reasons for acting on the supposition that the patent is valid.

Therefore, this one sentence in his affidavit that his opinion does not purport to be opinion on the Indian patent law completely, robs his opinion of any value which is sought to be attached to the same by the plaintiffs that their technology which is patented in the form of IN '572 is being infringed by the defendants. Moreover, the affidavit filed by the plaintiffs is in the nature of self favouring admission which is not relevant under Section 21 of the Evidence Act. The said Section makes self harming admissions relevant except in three contingencies which are mentioned in the proviso. Obviously, the case of the plaintiffs does not fall in any of these contingencies.

On the contrary, he only has a degree in business administration and his holding of different assignments and posts only shows that though he was employed by various telecommunications or computer companies, but the nature of work was essentially of a 'generalist', as a management consultant so as to boost the sales of a particular technology or a product rather than that of an expert in telecommunication. He has also not shown any special technical knowledge about the telecommunication or the technology in question and by simply stating that he has written books or research papers would not be good enough to term him an expert in the light of the fact that the opinion of an expert under Section 45 of the Evidence Act, 1872, is relevant.

A perusal of Rule 103 of the Patents Rules, 2003 would show that before a person is qualified to be claimed as a scientific advisor, he must fall in all the three categories which are as under:

a) He holds a degree in science, engineering or technology or equivalent;

b) He has at least fifteen years practical or research experience; and

c) He holds or has held a responsible post in a scientific or technical department of the Central or State Government or in any organization.

The plaintiffs have not been able to make out a prima facie case, which is the first requirement before an injunction is granted in favour of the plaintiffs.

The court relied on decision in *Franz Xaver Huemer* vs. *New Yash Engineers; AIR 1997 Delhi 79* has observed that a foreigner, who has registered patents in India and who has not kept them in use in India, thereby seriously affecting market and economy in India, cannot, in equity, seek temporary injunction against others from registering the use of patented device.

Court also stated that a party cannot be permitted to raise an argument which is not even pleaded. Rejoinder is an opportunity given to the plaintiffs for explanation, refutation, implication and not to set up a new case. In any case, even if these averments of the plaintiffs are taken on their face value, it becomes a debatable issue which needs to be adjudicated by the court but prima facie the balance of convenience does not turn out to be in favour of the plaintiffs or rather it turns out to be in favour of the defendants as any restraint on the defendants from manufacturing, selling or distributing the product which they are doing and which according to the plaintiffs is infringement of their patent, would cause harm to them.

If there is no complaint made by the licensee to the original patentee and similarly, no action was brought by the original patentee before assignment to the plaintiffs, it becomes an important fact which cannot be ignored. This becomes a triable issue as to whether the technology of the plaintiffs is being infringed or not by defendant and at this point of time, the court cannot assume that the technology of the plaintiffs is being infringed. Therefore, this also tilts the balance of convenience in favour of the defendants rather than the plaintiffs. On this score also, I must go in favour of the defendants and not in favour of the plaintiffs.

The third condition which must be satisfied before the plaintiffs are granted an injunction against the defendants is that it must establish that non-grant of ad interim injunction to the plaintiffs would result in irreparable loss to the plaintiffs. An irreparable loss is a loss which cannot be compensated in terms of money. Conversely meaning a loss which can be calculable in terms of money or for which money can be adequately compensated, can never be said to be an irreparable loss.

Court stated that the injunction which has been granted in favour of the plaintiffs vide order dated 3.2.2014 ought not to be continued in the instant case on account of the following reasons :-

(i) That the plaintiffs have not been able to establish a prima facie case about the patent of the plaintiffs being violated by defendant Nos. 3 and 4 from the evidence which has been produced. Therefore, without permitting the parties to adduce evidence, this issue cannot be decided.

(ii) That the balance of convenience is not in favour of the plaintiffs because the assignor/original patentee, namely, Nokia Telecommunication as well as the licensee to whom the patented technology has been given to be commercially exploited by the plaintiffs, have not chosen to complain about the use of the technology by defendant Nos. 3 and 4, either prior to the assignment or even after the grant of license.

(iii) That the plaintiffs will not suffer an irreparable loss in case injunction granted stands vacated because the interest of the plaintiffs can be sufficiently protected by the directions passed by the Division Bench in F.A.O. No.573/2013 between the same parties. The conditions specified in the said order at serial No. (iii) to (vii) shall be mutatis mutandis applicable to the facts of the present case as well."

'Tirupati laddu' GI Status Controversy

The famed temple offering known as the "Tirupati laddu" was the subject of an application to the Geographical Indication Registry by the Tirumala Tirupati Devasthanams (hereafter TTD), the temple trust that oversees the richest temple in the world. They asserted that due to the rising demand for "Tirupati laddus," hawkers began making and offering laddus for sale at their own locations under the brand name. Since this practise has been flourishing for a long time, attempts by the TTD's Security and Vigilance division to put an end to it have failed. The TDD defended its request for GI status by arguing that granting the "Tirupati laddu" GI designation will assist reduce the issue since violators will be subject to penalty and punishment under the GI rules. Finally, the laddus were granted the status of GI.

The granting of GI status to the 'laddu' has drawn controversy and received harsh criticism. Many people have questioned the need to appropriate such religious symbols and have been unable to understand TDD's motivation. They contend that if the goal was just to protect the public from being duped by those selling fake laddus, this could have been accomplished by simply making it known that the authentic laddus can only be found inside the temple grounds and nowhere else. Grant of GI seemed to be totally unwarranted.

GIs serve as an appellation or indicator of the geographical origin of the product and are intended to benefit a community of regional producers. This would entail that anyone from Tirupati should be permitted to utilise GI on "Tirupati Laddu" as long as their laddu geographically originates in Tirupati and has the same delicacy and qualities distinctive from the laddu made by the temple trust. This is due to the fact that GIs, as opposed to trademarks and patents, are a communal right. No one person or trust may exercise monopoly power and assert ownership. The submission of applications by a single company is expressly prohibited. Since the TDD is a single entity and does not fairly represent or protect the interests of all laddus producers in Tirupati, this is one of the most important arguments against granting laddus the status of GI.

Additionally, a GI tag's main goal is to advance the economic well-being of local producers of goods. Contrary to this, one of the richest religious organisations in the world has been granted monopolistic rights to the word "Tirupati laddu" as a result of the GI registration of "Tirupati Laddus." While it is crucial to maintain product quality, it would not be appropriate to grant a single entity the rights to a name that has already been used by numerous independent producers over a long period of time. In reality, the GI application may be contested and declared invalid if a product name has devolved into a generic and is widely utilised outside of the country of origin.

A GI grants a region the sole right to use a name for a product with specified properties that are related to its unique location. In light of this, it is said that the "Tirupati laddu" is not deserving of GI classification because it, too, is produced from common ingredients like flour, sugar, butter, cardamom, and dry fruits. As a result, it doesn't have any distinguishing qualities that make it stand out from other laddus. It also doesn't have any special qualities related to Tirupati or the TDD that aren't present in other laddus that are made elsewhere.

It's interesting to note that Section 9(d) of the Act forbids the registration of a geographical indicator if doing so would harm any class of Indian residents' religious sensitivities. As a result, it is paradoxical to deny a request from a religious organisation on the pretext that doing so offends religious emotions. The public has vehemently opposed the famed "Tirupati Laddu" receiving GI status for the reasons indicated above and TDD economic motives were also suspected.

Since then, they have questioned the justification for the "Tirupati laddus'" GI designation. This prompted an examination of TTD's application by the Controller General of Patents, Designs, and Trademarks. As a result, even though the application was submitted in March 2008 and the GI status is generally obtained within three to six months, in the instance of the "Tirupati laddu," the GI tag was not issued until September 2009.

In a debate on GIs in Parliament, Minister of State for Commerce Jairam Ramesh acknowledged before the Rajya Sabha that GI applications for items like "Tirupati laddus" and Krishna-Godavari gas, among others, were filed due to a lack of understanding of GIs.

It is obvious that the GI Registry disregarded his observation and continued to attach the GI tag to the "Tirupati Laddu." A scientist from Kerela challenged the granting of GI status to the "Tirupati laddu" through a writ case in the Supreme Court in October 2009, despite numerous requests that the GI Registry review suo motu its decision to do so. In addition to claims that the GI Act has been violated, he also raises concerns about "the prejudice caused to Article 25 of the Constitution" and the "potential devastation to the country."

In case of R. S. Praveen Raj vs Tirumala Tirupati Devasthanams, regarding GI tag granted to tirupati laddus , petitioners request to have the Geographical Indications (GI) designation against "Tirupati Laddu" removed was denied by the Geographical Indications (GI) Registry in Chennai. R. S. Praveen Raj, the applicant for rectification, was unable to demonstrate his locus standi or his interest in the registered good. The applicant did not challenge the correction application, according to the court. The tribunal has the right to impose costs in these conditions. Raj was given a month from the order's date to pay Rs 10,000 towards costs. Raj told Business Line that the case was submitted in the public interest and expressed disappointment that the tribunal did not take this into account.

Dassault Systems Solid Works Corp. vs. Spartan Engineering Ind. [CS](COMM) 34/2021 & I.A. 1042/2021

Facts:

The plaintiffs essentially seek injunction against the defendants directly or indirectly using, copying or otherwise dealing with pirated/unlicensed copies of the "SOLIDWORKS" software programme, in which the plaintiffs claim copyright, or its versions or any other software programmes developed by the plaintiffs which may infringe the copyright of Plaintiff's sister concern of M/s Dassault Systemes France and claims to have been established by the aforesaid French company to manage all its affairs with respect to the "SOLIDWORKS" software in India. Plaintiff is stated to be carrying on business in India through Plaintiff.

The "SOLIDWORKS" software is a computer aided design (CAD) software, aimed at modelling and simulating three dimensional (3D) solid products and is stated to cater to the aerospace, defence, automotive, transportation, consumer products and educational industries amongst others.

The "SOLIDWORKS" software programme is in the nature of a compact CAD and computer aided engineering (CAE) software which facilitates development of products in a 3D environment.

The software programme of the plaintiff, as well as the instruction manuals relating thereto are, in the submission of plaintiffs, "literary work" entitled to copyright protection. It is stated that these software programmes were developed by the employees of the plaintiffs for use by the plaintiffs and that, by application of the "work for hire" doctrine, the copyright therein belongs to the plaintiffs, as the employer of the employees who had developed the software.

Plaintiff is, therefore, according to the plaint, the copyright owner in the software programmes which are "works", within the meaning of the Copyright Act, 1957.

Issue:

Whether the copyright of the software programme belongs to the plaintiffs and is infringed by the defendant?

Held:

Court held that-

"Software infringement is a serious issue, and deserves to be nipped in the bud."

The Court issued an interim order in favour of Dassault preventing Spartan from using, duplicating, or disseminating any of Dassault's illegal, unlicensed, or pirated software projects. Additionally, the decision ordered Spartan to format and delete any data that would facilitate the infringement of Dassault's copyright. In this instance, the plaintiff submitted a tabulated statement that included the Media Access Control (MAC) address, the total number of events of infringement, and the dates of the first and last instances of infringement, as well as an exact copy of the data from its exit lead database to the infringement database portal. A party was charged with breaking both the licence and the end-user licence agreement by utilising the plaintiff's software. The customer licence and online service agreement violated the plaintiff's intellectual property rights in the programme. The court only awarded damages and an injunction to the plaintiff for the copyright infringement. Because of the illegal method he employed to allow the Solidworks programme to operate on the computers of people to whom he had distributed copies of the software illegally, the offender did not face additional damages or increased liabilities.

Mr. Anil Gupta and Anr. vs. Mr. Kunal Dasgupta and Ors. [97(2002) DLT 257] (Trade Secrets)

Facts:

The plaintiff claimed that he came up with the concept for creating a reality television show that would feature the process of matchmaking all the way through actual spouse selection, with genuine everyday people taking part in front of a television audience. The Plaintiff had created a unique idea for a television programme where a woman would have the power to choose her husband from among several potential partners. They even chose the name "Swayamvar" for the idea, knowing full well that many people would connect it with the notion of a woman choosing a husband in a public setting and that it would prompt an instantaneous recall and recognition of the mythical Swayamvar, giving the programme a head start.

The plaintiffs registered the relevant concept note for the copyright after coming up with this idea as a concept note, and the copyright was granted in 1997. When the plaintiffs met defendant no. 1 in 1998, they revealed sensitive information about the idea of a one-page "swayamvar," and the defendant eagerly responded. But later in 2000, the plaintiff was astounded to discover the identical idea published in a newspaper story about the launch of the programme known as "Shubh Avivah's" by defendant no. 2, which according to the plaintiffs, was akin to the idea they had conceived. Therefore, the plaintiffs went to court and requested the necessary injunctions against the defendants, citing the violation of their copy's copyright.

Issues:

1) Can there be a copyright in an idea, subject matter, themes, and plots, which existed in the public domain?

2) Could there be a violation of copyright if the theme is the same as that which existed in the public domain but is presented and treated differently?

Held:

The Court held that the concept developed and evolved by the plaintiff was the result of the work done by the plaintiff upon the material, which may be available in the public domain. However, what made the concept confidential was the fact that the plaintiff had used his brain and thus produced a unique result applying the concept. The Court granted an injunction.

The effort to maintain secrecy may be undertaken through adoption of an appropriate policy, adequate documentation and legal instruments such as non-disclosure agreement. To prevent the misuse of trade secrets, it is generally a prudent business practice to enter into non-disclosure agreements. Trade secrets are considered the owner's property and therefore there is no rule of public interest, which invalidates an agreement that prevents their transfer against the owner's will.

The Indian Contract Act, 1872, provides a framework of rules and regulations governing the formation and performance of a contract in India. It deals with the legality of non-compete covenants and stipulates that an agreement, which restrains anyone from carrying on a lawful profession, trade or business, is void to that extent.

Agreement in restraint of trade is defined as the one in which a party agrees with any other party to restrict his liberty in the present or the future to carry on a specified trade or profession with other persons not parties to the contract without the express permission of the latter party in such a manner as he chooses. Negative covenants operative during the period of contract when the licensee is bound to serve the licensor exclusively are not regarded as restraint of trade and do not fall under Section 27 of the Act.

Section 27 of the Act implies that, to be valid, an agreement in restraint of trade must be reasonable as between the parties and consistent with the interest of the public. Recently, in an appeal *(Homag India Pvt. Ltd. vs. Mr. Ulfath Ali Khan and IMA AG Asia Pacific PTE. Ltd)* preferred against trial judge's order on appellant's application for temporary injunction in a suit filed to restrain the defendants from dealing or transacting in any manner utilizing Homag India's confidential information / trade secret.

Homag India's case was that, Mr. Ulfath Ali Khan had to maintain, as per the signed letter of appointment, confidentiality of the information of plaintiff's business both during the course of employment and also thereafter. He was not expected to take up employment with any competitor of Homag India for a period of one year after termination of his employment or resigning from services. But Mr Ulfath Ali Khan committed breach of the terms of employment by working for IMA AG Asia Pacific, more so when the services of Mr. Khan with the plaintiff was subsisting.

The trial judge dismissed the application for temporary injunction against IMA AG Asia Pacific on the ground that there was no privity of contract between the plaintiff and the second defendant. Karnataka High Court held that the absence of a contract (and its breach) between Homag India and the second defendant IMA AG Asia Pacific does not assume nonexistence of an actionable right. The court relied on the Saltman Case *Saltman Engineering Co Ltd* vs. *Campbell Engineering Co Ltd 1948 (65) RPC 203,* wherein it was held that-

The maintenance of secrecy, according to the circumstances in any given case, either rests on the principles of equity, that is to say the application by the court of the need for conscientiousness in the course of conduct, or by the common law action for breach of confidence, which is in effect a breach of contract.

Thus there are three sets of circumstances out of which proceedings may arise –

- Where an employee comes into possession of secret and confidential information, in the normal course of his work and either carelessly or deliberately passes that information to an unauthorized person.

- Where an unauthorized person (such as a new employee) incites such an employee to provide him with such confidential information; and
- Where, under a license for the use of know-how, a licensee is in breach of a condition, either expressed in any agreement or implied from conduct, to maintain secrecy in respect of such know-how and fails to do so.

The court took into account the materials relied upon by Homag India, in particular the letter of agreement and agreement of contract between the first and the second defendant, to prima facie establish that the second respondent IMA AG Asia Pacific has infringed the legal rights of the appellant Homag India.

Maharashtra Hybrid Seed Co and Anr vs. Union of India and Anr, on 9th January, 2015 (Protection of Plant Varieties and Farmers' Rights)

Issue:

Whether sale or disposal of hybrid seeds will amount to sale or otherwise disposal of the "propagating or harvested material" of the parent lines and consequently destroy their novelty under Section 15(3) (a) of the Act?

Held:

A) Whether Hybrid Seeds Obtained by Crossing Parent Lines be "Propagating or Harvested Material" of the Parental Lines?

Petitioner: The hybrid seeds, obtained by crossing the parental lines, are distinct in traits and characteristics from the parent lines and cannot be considered as propagating or harvested material of the parental line varieties. It was contended that the propagating/harvested material of a variety will mean any part of a plant or seed, which is capable of regeneration into a plant having the same characteristics as that of the original plant. Since regeneration of hybrid seed will result in hybrid plant variety that is distinct from the parent line varieties (and not result in the parent lines), the hybrid seeds obtained by crossing of parent lines cannot be said to be "propagating or harvested material" of the parental lines.

Judgment: The expression "harvested material" has not been defined under the Act, but the expression "propagating material" has been defined under Section 2(r) of the Act and reads as under:- "(r) "propagating material" means any plant or its component or part thereof including an intended seed or seed which is capable of, or suitable for, regeneration into a plant;"

A plain reading of the aforesaid definition indicates that an intended seed or a seed which is capable of, or suitable for, regeneration into a plant will be a propagating material of the plant. In order to fall within the definition of the expression "propagating material" all that is required is that a seed or intended seed should be capable of, or suitable for, regeneration into a plant. The word "regeneration" means to germinate or to grow into a plant.

The expression "harvested material of such variety" includes all material that has been harvested from the plant. Accordingly, "the seeds are harvested from the parent lines; such seeds may not propagate the parental lines, but nonetheless, are harvested materials of those lines". The Court, therefore, dismissed the petitioners' argument viz., a hybrid seed does not fall within the definition of "propagating material" as it is incapable of regenerating any of the parent line varieties.

B) Whether Development and Sale of Hybrid Seeds Amounts to Exploitation of the Parental Lines?

Petitioner: It was submitted that the development and sale of hybrid seeds will not amount to exploitation of the parental lines. It was contended that the words "disposed of" as used in Section 15(3) of the Act, cannot be read in isolation and will not include self-use and ought to be read synonymous to 'sale'. Further, the word "disposal" contemplates transferring of title from one party to another party. In the instant case, the title of parent lines were not parted with or transferred to third parties. Therefore, the sale of hybrid seeds will not amount to disposal of parent lines.

Judgment: Sale of the harvested material of varieties (like the hybrid seed which will not germinate into either of the parent varieties) amounts to "exploitation of such variety". Further, "...admittedly, the petitioners sell and dispose of hybrid seeds. Since such seeds have been held to be propagating material/harvested material of the parent lines, the parent lines cannot be deemed to be novel under Section 15(3) (a) of the Act.

C) Effect of the Expression "Deemed"

Petitioner: Referring to similar statutes in US and EU, it was argued that the aforesaid statutes provide a legal fiction that the parent lines will be deemed to be or considered to be known if the hybrid was sold or otherwise disposed of. The Act doesn't have a similar provision. Therefore, the parent lines cannot be considered to be known if the hybrid seeds were sold.

Judgment: The word "deemed" in the opening sentence of Section 15(3) of the Act must be read in the context of the legislative intent viz., a plant variety, the propagating material or harvested material of which is sold or otherwise disposed of will be precluded from being claimed as novel if sold/otherwise disposed of prior to the specified period. The argument comparing the Act and the EU & US statutes was thus negated.

D) Application of Mischief Rule

The Court applied the mischief rule of interpretation and held as follows:

"35. In my view, a plain reading of Section 15(3) of the Act would indicate that if the seeds of parent lines have been commercially sold, the breeders cannot claim the parent lines to be novel. As I see it, even if one was to consider that language of Section 15(3) of the Act was ambiguous on the issue, the same would have to be resolved against the petitioners. This is so because it is well settled that in case of ambiguity in the language of a statute, a purposive interpretation that furthers the intention of the Legislature must be adopted. The Legislative intent of the Act is to protect the rights of the farmers' and plant breeders. India had ratified the TRIPS agreement and, therefore, was obliged to protect the intellectual property rights in certain plant varieties. The protection as envisaged under the Act is to provide certain exclusive rights for a specified period of time.....

In other words, the Parliament in its Legislative wisdom considered that providing exclusivity as specified under Section 24(6) of the Act was sufficient protection to the plant breeders. If the provisions of Section 15(3) of the Act are read in a manner as suggested by the petitioners, the effect would be to extend that period of protection many times over. In the first instance, a breeder would get protection in respect of the hybrid variety and assuming that there are two parent lines, the breeder could just before the expiry of the Registration Certificate. In respect of a hybrid variety, register one of the parent variety and thus, extend its period of exclusivity for a further period of 15/18 years because protection of even one parent line would practically ensure exclusive rights in relation to the hybrid variety. In the same manner, before expiry of the registration period of that parent line, the breeder could register the other parent line as a new variety. In this manner a breeder could extend the protection for a period up to maximum 45/54 years instead of 15/18 years as contemplated under the Act. Clearly, this is not the legislative intent of the Parliament."

E) Reliance on Article 6(1) Of International Union for Protection of New Varieties of Plants (UPOV) Convention (1991)

Article 6(1) of the 1991 Act of the UPOV Convention contains words which are similar to Section 15(3) of the Act. The Administrative and Legal Committee of UPOV had earlier concluded in a similar dispute that the novelty of the parent lines was lost by commercial exploitation of its hybrid.

M/s Chembra Peak Estates Limited vs. State of Kerala & Others W P (Civil) No. 3022 of 2008 (I) (Bio-Diversity)

This is a matter in which the Kerala High Court directed the Revenue authorities to seek the opinion of the SBB regarding the ecological balance of the private coffee estate at Muttil in Wayanad before proceeding with the acquisition of the estate for setting up a mega food park. Justice T.R. Ramachandran Nair ordered that this should be completed within two months. The park was being set up by the Kerala Industrial Infrastructure Development Corporation (KINFRA) with funds the Union Government.

There were some very interesting arguments that were raised in the course of this PIL. The government pleader argued that the state government has got power (under Section 37) to declare an area as a 'biodiversity heritage site'. Since they had chosen not to do so, there can be no objection to any land acquisition of the area.

The court nonetheless made mention of Sections 23 and 24 of the BD Act. According to the court, Section 23 makes clear that it is amongst the functions of the SBB to advise the State Government on matters related to biodiversity conservation.

And as per Section 24, an SBB has the power to restrict certain activities in the state that might be going against the objectives of conservation. In the context, the court hinted that if the Government were to consider the inputs of the SBB on concerns of biodiversity conservation, the authorities may be compelled to reconsider the land acquisition of a biodiversity-rich area for commercial activities.

LESSON ROUND-UP

- Intellectual property (IP) refers to the creations of the human mind like inventions, literary and artistic works, and symbols, names, images and designs used in commerce.
- Intellectual property is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.
- The most noticeable difference between intellectual property and other forms of property, however, is that intellectual property is intangible, that is, it cannot be defined or identified by its own physical parameters.
- A key subset of intangible assets is protected by what are labelled collectively as intellectual property rights (IPRs).
- On one hand, where businesses and their successful run is vital to the growth of economy; on the same hand, a structured set of IP protection helps in the advancement and development of businesses under a hassle free environs.
- Before understanding the regulatory regime of Intellectual Property domestically as well as internationally, let us understand the various types of Intellectual Property along with their origin and development.
- Copyrights protect original works of authorship, such as literary works, music, dramatic works, pantomimes and choreographic works, sculptural, pictorial, and graphic works, sound recordings, artistic works, architectural works, and computer software.
- With copyright protection, the holder has the exclusive rights to modify, distribute, perform, create, display, and copy the work.
- A trademark is a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors. In order to qualify for patent protection, the mark must be distinctive. For example, the Nike "swoosh" design identifies athletic footwear made by Nike.

- A patent grants proprietary rights on an invention, allowing the patent holder to exclude others from making, selling, or using the invention. Inventions allow many businesses to be successful because they develop new or better processes or products that offer competitive advantage on the marketplace.
  - o Art, process, method or manner of manufacture;
  - o Machine, apparatus or other article;
  - o Substance produced by manufacture, and includes any new and useful improvement of any of them, and an alleged invention.
- In view of considerable progress made in the field of science and technology, a need was felt to provide more efficient legal system for the protection of industrial designs in order to ensure effective protection to registered designs, and to encourage design activity to promote the design element in an article of production.
- The Designs Act, 2000 has been enacted essentially to balance these interests and to ensure that the law does not unnecessarily extend protection beyond what is necessary to create the required incentive for design activity while removing impediments to the free use of available designs.
- A utility model is an exclusive right granted for an invention, which allows the right holder to prevent others from commercially using the protected invention, without his authorization for a limited period of time. In its basic definition, which may vary from one country (where such protection is available) to another, a utility model is similar to a patent. In fact, utility models are sometimes referred to as "petty patents" or "innovation patents."
- A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist so that, except by the use of improper means, there would be difficulty in acquiring the information. Considering the vast availability of traditional knowledge in the country, the protection under this will be very crucial in reaping benefits from such type of knowledge.
- In order to have a comprehensive legislation for registration and for providing adequate protection to geographical indications and accordingly the Parliament has passed legislation, namely, the Geographical indication of Goods (Registration and Protection) Act, 1999. The legislation is administered through the Geographical Indication Registry under the overall charge of the Controller General of Patents, Designs and Trade Marks.
- The Convention on Biological Diversity establishes important principles regarding the protection of biodiversity while recognizing the vast commercial value of the planet's store of germplasm. However, the expansion of international trade agreements establishing a global regime of intellectual property rights creates incentives that may destroy biodiversity, while undercutting social and economic development opportunities as well as cultural diversity.
- The Biological Diversity Act aims at conservation of biological resources and associated knowledge as well as facilitating access to them in a sustainable manner and through a just process.

GLOSSARY

Intellectual property (IP) - It refers to the creations of the human mind like inventions, literary and artistic works, and symbols, names, images and designs used in commerce. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

Copyright - It includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

Computer programme - It means a set of instructions expressed in works, codes or in any other form, including a machine readable medium, capable of causing a computer to perform a particular task or achieve a particular result.

Trademark - A trademark is a word, phrase, symbol, or design that distinguishes the source of products (trademarks) or services (service marks) of one business from its competitors. In order to qualify for protection, the mark must be distinctive.

Patent - A patent grants proprietary rights on an invention, allowing the patent holder to exclude others from making, selling, or using the invention. Inventions allow many businesses to be successful because they develop new or better processes or products that offer competitive advantage on the marketplace.

Invention - As per the Patents Act, 1970, it includes the new product as well as new process.

Design - It means features of shape, pattern, configuration, ornaments or composition of colors or lines which is applied in three dimensional or two dimensional or in both the forms using any of the process whether manual, chemical, mechanical, separate or combined which in the finished article appeal to or judged wholly by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device.

Utility model - A utility model is an exclusive right granted for an invention, which allows the right holder to prevent others from commercially using the protected invention, without his authorization for a limited period of time.

Trade Secrets - It is confidential business information that provides competitive edge to an enterprise. Usually these are manufacturing or industrial secrets and commercial secrets. These include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes.

Geographical Indication (GI) - It is a tag or sign used on products for indicating their specific place of origin. It specifies the characteristics, qualities and reputation assumed to be in the product because of its linkage to a particular geographical location.

Bio-diversity - the diversity among various life forms within the Biosphere refers to biodiversity. Biodiversity is the foundation of life on Earth. It is crucial for the functioning of ecosystems which provide us with products and services without which we cannot live.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Write a brief note discussing the relativity between Intellectual Property and Business.
2. 'Over the past fifteen years, intellectual property rights have grown to a stature from where it plays a major role in the development of global economy.' In the light of this statement, write down a brief note on the recent development taken place in the regulatory regime of Intellectual Property in India.
3. What are points one should consider while adopting a Trademark?
4. Discuss the process for the enforcement of Patent Rights.
5. Write a short note on with relevant cases and examples.
   - Patent
   - Copyright
   - Geographical Indications
   - Trademark
   - Bio-Diversity.

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