



CONTOURS AND NUANCES OF INTELLECTUAL PROPERTY RIGHTS, COPY RIGHTS AND PATENTS: A FEW EXPLORATIONS

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ABSTRACT

The cardinal concepts such as 'intellectual property rights,' 'copy rights' 'trademarks' and 'patents' is generally connected with a special kind of property known as 'intellectual property' (IP). 'Intellectual property' is a special wealth and power acquired by human beings out of an infinite and perpetual capacity of hard work. The term, 'intellectual property' first came into being in the 19th century, but only became commonly used towards the end of the 20th century. The World Intellectual Property Organization (WIPO) was founded in 1967 as a specialized agency of the United Nations with its headquarters in Geneva, Switzerland. WIPO is mandated with ensuring that an international system of IP is established to safeguard and protect creativity in a balanced and appropriate manner. In June 2000, the Policy Advisory Commission (PAC) of the World Intellectual Property Organization (WIPO), namely WIPO-PAC, met in Geneva to define and refine policy related to intellectual property. The idea of intellectual property came into being as early as 1883. Concern had been raised a few years earlier, when a group of creators would not participate in the International Exhibition of Inventions in Vienna for fear of their ideas being stolen. The 1883 Paris Convention for the Protection of Industrial Property marked the first major treaty to be signed regarding intellectual property protection. This accord pertained particularly to protection of IP between countries. These industrial property rights patents, trademarks and industrial designs. The treaty paved the way for organizations such as WIPO. The changing face of the world today has precipitated a growing need to address the subject. Intellectual Property falls broadly into two categories: industrial property and copyright. Industrial property includes laws relating to patented inventions, trademarks and

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designs. Literary and artistic works fall under copyright law. These works may include poetry, drama, dance, novels, music, films, paintings, photographs, and other fine art and designs. Artists and their performances are included in copyright issues, whether this pertains to stage, screen, recordings, broadcasts or media programs.

INTRODUCTION

There are few kinds of property which can be divided into two categories: ‘movable property’ such as car, pen, furniture, dress etc. which can be movable from one place to another place and ‘immovable property’ such as land, building etc. which cannot be movable from one place to another place. ‘Intellectual property’ is a category of that comprises intangible creations of the human intellect. It encompasses two types of rights: a) Industrial Property Rights such as trademarks, patents, designations of origin, industrial designs and models etc and; b) Copyright related to literary works, inventions etc. It was not till the 19th C. that the term, ‘Intellectual Property’ began and in the recent time, it has become the watchword in the major part of the world. The main aim of ‘Intellectual Property Law’ is to stimulate, encourage and protect the creation of a large variety of property and goods.

The nature of intellectual property is quite specific. ‘Intellectual property’ is a creation of human mind that is human intellect. It is intangible property. Its exclusive rights given by statutes. It attended with limitations and exceptions. It is time-bound. It is territorial. Intellectual property is a property that arises from the human intellect. It is a product of human creation. Intellectual property comprises two distinct forms: a) literary and artistic works; b) industrial property. Literary and artistic works consists of books, paintings, musical compositions, plays, movies, radio/tv programs, performances, and other artistic works. They are protected by “copyright. Industrial property is protected by patented objects, trademarks, industrial designs, trade secrets, layout designs etc. Industrial property consists of physical matter that is the product of an idea or concept. The notion of who controls knowledge, or the property of the mind, has manifested in the concept of intellectual property. This has become increasingly challenging in the information age and the era of the worldwide web, as the proliferation of knowledge abounds. Determining the source of knowledge and ownership can be problematic. WIPO has drawn a picture of the 21st century as a time of knowledge-based economies, with intellectual property a crucial aspect of this. The aim of WIPO is to ensure that creative potential is encouraged, while at the same time protecting the ownership of such knowledge. The attention given to IP has raised awareness of the significance of intellectual property ownership of individual creators. The intellectual ideas, innovations and creations of the mind are acknowledged and protected by legal organizations. The recognition of these talents, and the ideas and artistic works emanating from these intellectual creations, is essential to a just society. Given that a financial component is also generally part of the creation, due credit, acknowledgment and

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NATIONAL CONFERENCES (NCNA - 2019 & IPRP - 2019) 14 FEB 2019

SPECIAL ISSUE –FEB 2019 www.punerresearch.com/times (MS) INDIA
(IMPACT FACTOR 3.18) INDEXED, PEER-REVIEWED / REFEREED INTERNATIONAL JOURNAL



protection of the creator is essential. IP policies and laws are constantly revisited to ensure due protection and credit. The extremely fast pace with which the technological environment is advancing has necessitated keeping abreast with what these changes mean to IP rights and regulations.

Major types of industrial property includes functional & technical inventions, patents, purely artistic works, copyright, a symbol, logo, word, sound, color, design, etc. ‘Trademark’ is a distinguished intellectual industrial property. Industrial designs is related to geographical indications. They are related to layout designs/topographies integrated circuits, trade secrets, protection of new plant varieties. Copyright law protects the expression of an idea and not the idea itself. There is no requirement for novelty or uniqueness as there is in patent law. The term ‘original’ in the copyright law means that the work originated with the author. The things covered by copyright are such as literary creations, films, dramatic works, musical compositions, artistic creations, sound recordings, music. The things which may not be covered by copyright are such as ideas, recipes, names, titles or short phrases, works lacking originality e.g. the phone book, facts, scope of copyright and others. There are two kinds of rights: moral rights to protect personality of author, and economic rights to bring economic benefits. According to the law of copyright ownership of rights of a literary work is associated with an author, drama with a dramatist, music with the composer, artistic work with artist e.g. painter, sculptor, architect, writer; photograph with a photographer, computer programme with person who causes the work to be created; cinematograph film with a producer; sound recording with a producer and so on. Generally duration of copyright of literary, dramatic, musical and artistic works published during life time of author consist of life time plus 60 years.

‘Trademark’ is a name of an enterprise or a mark capable of being represented graphically, distinguishing the goods or services of one person from those of others e. g., lux, godrej, tvs, tata, telco, 555, apple and many more. Trade mark can be sign, words, letters, numbers, drawings, pictures, emblem, colors or combination of colors, shape of goods, graphic representation or packaging or any combination of the above as applied to an article or a product. There is an immense applicability of trademark. A trademark is a sign used on, or in connection with the marketing of goods or services. “Used on” the goods means that it may appear not only on the goods themselves but on the container or wrapper in which the goods are when they are sold registration of trade mark. Trademarks are registered by national trade mark registries and are valid in that country. The registration is made after examination and publication. The period of registration is for 10 years but can be renewed indefinitely. There are a few kinds of trademarks such as marks on goods, service marks, certification trademark, collective marks, well known marks, trade names well-known marks such as coca cola for soft drink, toblerone i. e. triangular-shaped chocolates. There are also trade names such as Godrej- furniture, refrigerators, store-well, compactor etc. Thus trademark is a

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SPECIAL ISSUE -FEB 2019 www.punerresearch.com/times (MS) INDIA

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symbol, logo, word, sound, color, design, or other device that is used to identify a business or a product in commerce. Different symbols are intent to use application filed for product intent to use application filed for services. Registered trademark has a special value. Registration procedure includes the steps such as application for search, application for registration, examination of trademark, advertisement of trademark, filing of opposition, and certificate issued.

Patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. With a patent the limited monopoly right granted by the state enables an inventor to prohibit another person from manufacturing, using or selling the patented product or from using the patented process, without permission. Generally a period of patents is 20 years. Patent laws are updated, together with copyright laws. The latter has specific ramifications for issues of piracy, which has become rampant as a result of the ease with which applications, especially music and film, can be downloaded from the Internet. Copyright and piracy laws are required to safeguard against such eventualities. Enhanced protection is needed with respect to new methods of communication technology that both allow the expansion of knowledge and creativity, and simultaneously place these in danger of copyright infringement.

The entities such as inventions in all fields of technology, whether products or processes, if they meet the criteria of novelty; non-obviousness; industrial application (utility) can be patented. There are two categories for patentable inventions: products and processes grant of patent. Patents are granted by national patent offices after publication and substantial examination of the applications. In India provisions exist for pre-grant and post grant opposition by others. They are valid within the territorial limits of the country. Foreigners can also apply for patents

A few inventions are not patentable. An invention which is frivolous or which claims anything obviously contrary to the well established natural laws e.g. machine giving more than 100% performance, perpetual motion machine, Newton's laws of gravitation. A machine whose primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment: gambling machine, device for house-breaking, biological warfare material or device, terminator gene technology, embryonic stem cell. A mere discovery of a scientific principle or formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature, discovery adds to the human knowledge by disclosing something, not seen before, whereas, invention adds to human knowledge by suggesting an action resulting in a new product or new process e.g. Archimedes principle, super conducting phenomenon as such – not patentable. However, an apparatus /method for technological application may be patentable. The mere discovery of a

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new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus, unless such known process results in a new product or employs at least one new reactant. A substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance, e.g. paracetamol (antipyretic) +brufen (analgesic) = a drug (antipyretic & analgesic). A soft drink that is only a mixture of sugar and some colorants in water but, a mixture resulting in synergistic properties of mixture of ingredients may be patentable e.g soap, detergent, lubricant. Mere arrangement or re-arrangement or duplication of known devices, each functioning independently of one another in a known way. For example, a bucket fitted with torch, an umbrella with fan, a clock and radio in a single cabinet, a flour-mill provided with sieving method of agriculture or horticulture e. g. cultivation of algae, producing new form of a known plant, preparation of an improved soil. However, agricultural equipments are patentable. Plants & animals in whole or any part thereof other than micro-organisms, but including seeds, varieties and species and essentially biological process for production or propagation of plants & animals e.g. clones and new varieties of plants: a process for production of plants or animals if it consists entirely of natural phenomena such as crossing or selection a mathematical method or a business method or algorithms or a computer programme per se. These are the outcomes of mental process only and do not involve industrial process or product. For example, computer programme claimed by itself or as a record on a carrier. The entities such as a literary, dramatic, musical or artistic work or any other aesthetic creation including cinematographic work and television productions are nonpetenable. These subject-matters fall under the copy-right protection. A mere scheme or rule or method of performing mental act or method of playing game is nonpetenable. Scheme for learning a language, method for solving a crossword puzzle, method of learning a language, method of teaching /learning - not patentable. Novel apparatus for playing game or carrying out a scheme is non-patentable. Presentation of information such as any manner or method of expressing information, whether by spoken words, visual display, symbols, diagrams or information recorded on a carrier topography of integrated circuits is non-patentable. An invention which, in effect, is the traditional knowledge or an aggregation or duplication of known properties of traditionally known component or components. Traditional knowledge is already in public domain, and hence, not patentable. However, any value-addition using traditional knowledge leading to a new process or product, possessing novelty, inventive step and industrial geographical indications of goods are patentable.

Geographical indication is an indication which identifies goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin e.g. nagpur

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SPECIAL ISSUE -FEB 2019 www.punerresearch.com/times (MS) INDIA

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orange, paris perfume, banaras silk. Explanation clarifies that gi need not be a geographical name e.g. alphonso, basmati. Goods include goods of handicraft or of industry and also foodstuff. In india, geographical indications have to be registered. Geographical indications registry examines and publishes the application before registration. Registration is valid for 10 years but can be renewed indefinitely gives exclusive right to use the geographical indication on the goods. Some inventions, data, information cannot be protected by any of the available means of intellectual property rights. Such information is held confidential as a trade secret. Trade secret can be an invention, idea, survey method, manufacturing process, experiment results, chemical formula, recipe, financial strategy, client database etc. Generally trade secrets are preferred when invention is not patentable. Patent protection is limited to 20 years, when secret can be kept beyond that period. When cost of patent protection are prohibitive. Using protective techniques like digital data security tools and restricting entry into area where trade secret is worked or held. National legislations provide protection in form of injunction and damages if secret information is illegally acquired or used.

Industrial designs means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye. It includes consumer products, pharmaceutical product, textile & jewellery etc.

There are many complex aspects of intellectual property rights that need to be continuously addressed. Today, workplace situations are at the forefront of the IP debate with regard to ownership. Although there is often discussion about who controls property use within an organization, what is more difficult is determining who owns the intellectual property in the workplace. By and large, the cardinal concepts such as 'intellectual property rights,' 'copy rights' 'trademarks' and 'patents' which generally connected with a special kind of property known as 'intellectual property' have possessed a paramount importance in the *glocal* age.

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