



## **SIGNIFICANCE OF INTELLECTUAL PROPERTY RIGHTS**

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### **ABSTRACT**

*God gifted a wonderful thing called Brain to Man and Mother Nature endowed him with the abundant physical and biological resources on the earth. Man started creating his own world by application of his brain or mind and by utilization of these natural resources. Man has also been bestowed with imagination and creativity. With his imagination and creativity, he has been producing various articles or products for his needs, comfort and convenience. In the earlier era, the creations and inventions by him fell in a public domain. These were the common properties. Anybody could use and copy these creations and inventions without any restriction, reservation or payment. However, with the passage of time, the importance and value of these creations was realized. The commercial aspect started playing a significant role in these creations. By end of Twentieth Century, the things created and invented by the human mind were recognized as an intellectual property of the owner. The owner's right over these properties was accepted and is known as an Intellectual Property Right (commonly called I.P.R.). A new set of laws called Intellectual Property Right Laws, were enacted to protect these property rights. These I.P.R. laws provided a protection to the owners under different categories and names like Patents, Industrial designs, Copyrights, Trade- Marks etc.*

### **INTRODUCTION**

Intellectual property (IP) is a category of property that includes intangible creations of the human intellect. Intellectual property encompasses two types of rights; industrial property rights (trademarks, patents, designations of origin, industrial designs and models) and copyright. It was not until the 19th century that the term "intellectual property" began to be



used, and not until the late 20th century that it became commonplace in the majority of the world. The main purpose of intellectual property law is to encourage the creation of a large variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create – usually for a limited period of time. This gives economic incentive for their creation, because it allows people to profit from the information and intellectual goods they create. These economic incentives are expected to stimulate innovation and contribute to the technological progress of countries, which depends on the extent of protection granted to innovators. The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is "indivisible" – an unlimited number of people can "consume" an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation – a landowner can surround their land with a robust fence and hire armed guards to protect it, but a producer of information or an intellectual good can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of intellectual goods but not so strong that they prevent the goods' wide use is the primary focus of modern intellectual property law

### **What Is Intellectual Property**

Intellectual property is a general term for the set of intangible assets owned and legally protected by a company from outside use or implementation without consent. Stemming from its ability to provide a firm with competitive advantages, defining IP as an asset aims to provide it the same protective rights as physical property. Obtaining such protective rights is critical as it prevents replication by potential competitors—a serious threat in a web-based environment or the mobile technology sector.

An organization that owns IP can realize value from it in several ways, namely through utilizing it internally—for its own processes or provision of goods and services to customers—or sharing it externally. The latter can be achieved through legal mechanisms such as royalty rights.

There is an extensive international system for defining, protecting, and enforcing intellectual property rights, comprising both multilateral treaty schemes and international organizations. Examples of such treaties and bodies include the Trade-Related Aspects of Intellectual Property Rights (TRIPs), World Intellectual Property Organization (WIPO), World Customs Organization (WCO), United Nations Commission on International Trade Law (UNCITRAL), World Trade Organization (WTO), and European Union (EU). Nonetheless, there are variations in the respect for and enforcement of rights at a local level.



### Objectives

- To know the reasons infringement of the intellectual property rights.
- To know why to care about IPR?
- What the protection measures and provisional measures?
- Case related to Intellectual Property Right Infringement.

### Review of literature

Economic Effect of Intellectual Property Right Infringement There is a great effect of Intellectual Property Right Infringement .U.S companies suffer losses in recent years because their Intellectual Property Rights (trademarks, copyrights and patents) are not properly protected abroad. International Trade Commission data is collected from 244 US firms and the data is used to study economic effect of foreign infringement of US intellectual property rights in five sectors of industry. The profit and losses of US suppliers is much as compared to total profits, this implies that the losses are greater than the profits earned by suppliers who are infringing on rights, but that the losses may be least than the benefits to infringers and consumers.

From Research it is pointed out that research results suggest that Lessing profits lost to infringers by one percent would require significant increases in identification and enforcement costs.

### Research Methodology

#### Secondary data

SOURCES OF SECONDARY DATA- Data is collected from the journals, Newspapers, Internet

#### Intellectual property rights

Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, geographical indications ,and in some jurisdictions trade secrets. There are also more specialized or derived varieties of *sui generis* exclusive rights, such as circuit design rights and supplementary protection certificates for pharmaceutical products and database rights. The term "industrial property" is sometimes used to refer to a large subset of intellectual property rights including patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications.



### ➤ **Patents**

A patent is a form of right granted by the government to an inventor or their successor-in-title, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process and generally has to fulfill three main requirements: it has to be new, not obvious and there needs to be an industrial applicability. To enrich the body of knowledge and stimulate innovation, it is an obligation for patent owners to disclose valuable information about their inventions to the public.

### ➤ **Copyright**

A copyright gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works". Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.

### ➤ **Industrial design rights**

An industrial design right protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft. Generally speaking, it is what makes a product look appealing, and as such, it increases the commercial value of goods.

### ➤ **Plant varieties**

Plant breeders' rights or plant variety rights are the rights to commercially use a new variety of a plant. The variety must amongst others be novel and distinct and for registration the evaluation of propagating material of the variety is considered.

### ➤ **Trademarks**

A trademark is a recognizable sign, design or expression which distinguishes products or services of a particular trader from the similar products or services of other traders.

### ➤ **Trade dress**



Trade dress is a legal term of art that generally refers to characteristics of the visual and aesthetic appearance of a product or its packaging that signify the source of the product to consumers.

➤ **Trade secrets**

A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors and customers. There is no formal government protection granted; each business must take measures to guard its own trade secrets.

## **INTELLECTUAL PROPERTY LAW**

Intellectual Property Law Comprises of the following Laws:-

- The Laws relating to Trade Marks / Brands, Property Marks
- The Laws relating to Copyright Artistic Work, Literary Work, Audio Video Records and Software
- The Laws relating to Industrial Designs
- The Laws relating to Patents
- The Laws relating to Geographical Indications. The geographical Indications of (Registration and Protection) Act, 1999
- The Laws relating to Internet

**INTELLECTUAL PROPERTY RIGHT INFRINGEMENT**-An intellectual property infringement is the infringement or violation of an intellectual property right.

➤ **Copyright infringement-**

Copyright-It is a type of protection which is given to the authors of original works including literary, dramatic, and musical and certain other intellectual works, which may be published and unpublished.

Copyright infringement (or copyright violation) is the use of material unauthorized that is covered by copyright law, that violates one of the copyright owner's exclusive rights, such as the right to perform the copyrighted work. It is also known as copyright violation.

➤ **Patent infringement-**



Patent-It is issued by United States Patent and Trademark Office. A patent is the right to the inventor for an invention.

Patent infringement prohibition act with respect to a patented invention without permission from the patent holder. By means of the licence permission may be granted. It is also known as patent violation.

Trademark – A trademark gives separate identity to the goods and services to make them distinguish from the others. It protects words, names, symbols, sounds. Trademarks can be renewed for forever or as long as they are going to be used. There is no need for registration of a trademark in the U.S.

Trademark infringement is a violation of the exclusive rights attaching to a trademark without the authorization of the trademark owner or any licensees. Infringement may occur when one party, the “infringer”, uses a trademark which is identical to a trademark owned by another party, in relation to products or services which are identical or similar to the products or services which the registration covers. An owner of a trademark may commence legal proceedings against a party which infringes its registration. It is also known as trademark violation.

### Significance of Intellectual Property Rights

Intellectual property rights are accepted all over the world due to some important reasons. They were essentially recognized for the acceptations of these rights are:-

- Provides incentive to the individual for new creations.
- Providing due recognition to the creators and inventors.
- Ensuring the material reward for intellectual property.
- Ensuring the availability of the original products.
- For economic growth and advancement in technology sector protection of Intellectual property protection is important.
- They are benefited for the growth of the business in the field of technology.
- Clear identification of the IP.
- Unambiguous title to the asset.
- Qualitative and quantitative characteristics of the IP.
- Earnings capacity and profitability relating to the IP.
- Market share supported by, or as a result of, the IP.
- Legal rights and restrictions, competition, barriers to entry, and risks associated with the IP.
- Product life cycles and positioning.

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- Historical growth and prospects for the future.

### **Provisional Measures**

1. The judicial authorities shall have the authority to order promptly and effectively provisional measures:
  - a. to prevent an infringement of intellectual property rights from occurring, and in order to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance
  - b. To preserve supportive evidence in regard to the IPR infringement.
2. It is the right provided to the judicial the applicant has to give supportive evidences in order to satisfy themselves, and to order the applicant to provide a security or equivalent assurance which is sufficient to protect the defendant and to prevent abuse.
3. The applicant needs to supply other necessary information for the identification of the goods concerned by the authority.
4. If judicial authorities found that there has no infringement or there is no any threat of infringement of an intellectual property right, the judicial authorities has right that upon request of the defendant the applicant should have to provide compensation for any injury, damages to the defendant.

### **CONCLUSION**

The Intellectual Property Rights (IPR) has social, economic, technological and political impacts. Rapid technology, globalization and fierce competitions leading to protect the innovations from violations by the help of IPR such as patents, trademarks, service marks, industrial design registration, copy rights and trade secrets. But still there is infringement of Intellectual Property Rights. The Government is also taking measures to prevent them. There are laws regarding the prevention of Intellectual Property Rights Infringement. A common man comes across intellectual properties from dawn to dusk. The goods having a very wide spectrum and associated with food, shelter and clothes; the things of necessity, comfort and luxury. From waking up from a Gautier bed, using a comfortable Sleepwell mattress and pillows, having a cup of Taj Mahal Tea, then wearing a Nike track suite and shoes for a morning walk, he deals with these properties. A Modern Bread or Mother Dairy Milk or a cup of Nescafe at the breakfast, going in a Zen car to the office, using a Compaq computer and coming back in a car. In the evening, watching Sony Television and fixing alarm in his/her Swatch watch to wake-up in the morning, he uses the products which are intellectual properties of some one. These properties have been covered under a patent or a copy right or a trade mark. Since a common man's life is very closely linked with articles and products which are protected by law under intellectual rights. The copying, imitation, adaptation, and

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un-authorized reproduction of these things, without the permission of the owner, may amount to a serious offence. Therefore, the knowledge about intellectual property right is must for a common man.

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