Intellectual Property Law in India - A Review

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ABSTRACT

Intellectual Property Rights are patents, copyrights, trademarks, geographical indicators, protection of undisclosed information, layout designs of integrated circuits, industrial designs and traditional knowledge that are recognized by the Trade Related Intellectual Property Rights agreement (TRIPS) and governed by the WTO (World Trading Organization). Intellectual Property Right (IPR) in India was imported from the west. As technology explores newer dimensions and uncharted paths in the coming decades, IPR will assume conducive forms to encourage innovation and knowledge sharing in a Fiercely competitive network. The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author. Industrial property is divided into two main areas. One area can be characterized as the protection of distinctive signs, in particular trademarks (which distinguish the goods or services of one undertaking from those of other undertakings) and geographical indications (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin).

Keywords: Intellectual Property Rights, copyrights, geographical indicators, World Trading Organization

I. INTRODUCTION

Intellectual Property Rights are patents, copyrights, trademarks, geographical indicators, protection of undisclosed information, layout designs of integrated circuits, industrial designs and traditional knowledge that are recognized by the Trade Related Intellectual Property Rights agreement (TRIPS) and governed by the WTO (World Trading Organization). Intellectual property rights are the rights given to persons over the creations of their minds and give the creator an exclusive right over the use of his/her creation for a certain period of time. The theory upon which the patent system is based on, i.e., an opportunity of acquiring exclusive rights in an invention, stimulates technical process. The foundation of International Intellectual Property Protection was created in the 19th century at various Congresses in Vienna and the rest of Europe.
II. DEVELOPMENT OF INTELLECTUAL PROPERTY LAW IN INDIA

- Intellectual Property Right (IPR) in India was imported from the west.
- The Indian Trade and Merchandise Marks Act 1884, was the first Indian Law regarding IPR.
- The first Indian Patent Law was enacted in 1856 followed by a series of Acts being passed.
- They are Indian Patents and Designs Act in 1911 and Indian Copyright Act in 1914.
- Indian Trade and Merchandise Marks Act and Indian Copyright Act have been replaced by Trade and Merchandise Marks Act 1958 and Copyright Act 1957 respectively.
- In 1948, the Indian Government appointed the first committee to review the prevailing Patents and Designs legislation.
- In 1957, Government appointed Justice Rajagobala Ayyangar Committee (RAC) to revise the Patent Law.
- Rajagobala Ayyangar Committee submitted its report on 1959, the report tried to balance the constitutional guarantee of economic and social justice enshrined in the preamble of the constitution. This report provided the process for Patenting of drugs.

This report outlined the policy behind the Indian Patent system

- The theory upon which the patent system is based on, i.e., an opportunity of acquiring exclusive rights in an invention, stimulates technical process in four ways.
  1. Encourages research and invention.
  2. Induces an inventor to disclose his discoveries.
  3. Offers award for the expenses of developing inventions.
    a. Provides an inducement to invest capital in new lines of production which might not appear profitable.

- Based on the Rajagobala Ayyangar Committee report, a Bill was introduced in the year 1965 and the bill was passed in the Lok Sabha but it lapsed in the Rajya Sabha and once again lapsed in Lok Sabha in the year 1966 due to dissolution of Lok Sabha.
- Again it was reintroduced in 1967 and passed in 1970; the draft rules were incorporated in Patent Act and passed in the year 1971.

The following steps are being suggested with particular reference to the situation in India regarding IPR in the national policy making

- Constitute an integrated single window National IPR commission to deal with IPR policy issues.
- Integrate national technology planning with IPR and trends in international technology trade.
- Implement a formal national IPR literacy mission.
- Set-up IPR training institutes to prepare technically qualified attorneys.
- Introduce an enabling national taxation policy to encourage innovation, building of IPR portfolio and its utilization in technology transfer and trade.
- Urgently modernize the IPR administrative structures in the country.
- Improve infrastructure for access and effective use of IPR information. There is an urgent need to harmonize the patent classification system to ease and optimize processes in patent searching.
- Re-structure the judiciary and enforcement machinery for professional and speedy response to IPR issues.
- Training of corporate and institutional managers on effective management of IPR.
- Standardize models for valuation and audit of IPR.
- Evolve national taxation policies of development, use and transactions linked to IPR.
Evaluation of an international intellectual Property regime

- The foundation of International Intellectual Property Protection was created in the 19th century at various Congresses in Vienna and the rest of Europe.
- The protection of Industrial Property was created in Paris Convention in the year 1883.
- Patents, Trade Marks and Industrial designs were the three main properties that were granted protection in this convention. In 1998, India became a member of the Paris Convention.
- In 1886, International Copyright Act was passed (resulting in the framing of the Berne Convention for the protection of literary and artistic works).
- The Paris Convention marked the beginning of the International Trade Marks Protection laws and introduced the concept of a well-known mark.
- Special unions and arrangements have been created for the countries who are members of the Paris Convention. Madrid agreement is one special arrangement that was created to standardize the trademarks.
- Madrid agreement embodies the fundamental principles outlined in the Paris Convention.
- The General Agreement on Tariffs and Trade (GATT) was negotiated during the UN Conference on Trade and Employment and was the outcome of the failure of negotiating governments to create the International Trade Organization (ITO). GATT was formed in 1949 and lasted until 1993, when it was replaced by the World Trade Organization in 1995.
- In 1960 the World Intellectual Property Organization was created. It governs the Paris and Berne Convention. In 1967 World Intellectual Property Organization (WIPO) was established by these conventions. In 1977 World Trade Organization (WTO) was created and become an important international organization for the development and understanding of IPR; successor to the General Agreement on Tariffs and Trade.

III. NEW DIMENSION AND ISSUES FOR RESOLUTION

As technology explores newer dimensions and uncharted paths in the coming decades, IPR will assume conducive forms to encourage innovation and knowledge sharing in a Fiercely competitive network.

The interlaced issues in IPR such as

- Domain names and trademarks: Copyright in cyberspace.
- Rights on traditional knowledge, prior art, material transfer agreement and bio-prospecting
- Software’s and patents.
- Biotechnological inventions and moral issues and patents. Compulsory licensing options, border measures and parallel imports and exhaustion of IPR.
- Government control on export of technology.

IV. IMPORTANCE OF IPR IN DEVELOPING COUNTRIES

- There has been at times considerable debate on the impact on developing countries of tightening Intellectual Property Rights.
- The potential significance of IPR in developing countries is according to the relative intensity of their technological activity.
- Developing countries went along with the TRIPS agreement for a variety of reasons, ranging from the hope of additional access to agricultural and apparel markets in rich nations, to an expectation that stronger IPR would encourage additional technology transfer and innovation.
- However, the promising long term benefits are uncertain and costly to achieve in many nations, especially in the poorest countries.
• There are reasons to believe that the enforcement of IPRs has a positive impact on growth prospects.

• On the domestic level, growth is spurred by higher level of innovations although this result tends to be fairly insignificant until countries move into the middle income bracket.

• It also notes that the growth effects of IPRs are at different times and in different regions of the world, countries have realized high rates of growth under varying degrees of IPR protection.

• There are certainly short term costs for poor countries from stronger IPRs, like higher prices for technology and protected products.

V. IMPACT OF STRONGER IPR IN DEVELOPING COUNTRIES

• Society reaps the following four benefits from granting such monopoly rights to innovations.

• The stimulation of innovations by private agents, the primary social benefits of IPR.

• The use of new knowledge in productive activity. The greater dissemination of new knowledge to other agents.

• The stimulation of innovations by other enterprises.

The TRIPS Agreement provides for norms and standards in respect of following areas of intellectual property.

1. Patents.
2. Copyrights and related rights.
3. Trade Marks.
4. Geographical Indications.
5. Industrial Designs.
7. Protection of Undisclosed Information (Trade Secrets).
8. Plant varieties.

**Intellectual property rights are customarily divided into two main areas**

1. Copyright and rights related to copyright

• The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author.

• Also protected through copyright and related (sometimes referred to as “neighbouring”) rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations.

• The main social purpose of protection of copyright and related rights is to encourage and reward creative work.

2. Industrial Property

• Industrial property is divided into two main areas. One area can be characterized as the protection of distinctive signs, in particular trademarks (which distinguish the goods or services of one undertaking from those of other undertakings) and geographical indications (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin).

• The protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services. The protection may last indefinitely, provided the sign in question continues to be distinctive.

• Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category the inventions are protected in the aspects like patents, industrial designs and trade secrets.
• The social purpose is to provide protection for the results of investment in the development of new technology, thus giving the incentives and means to finance research and development activities.
• A functioning intellectual property regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing.
• The protection is usually given for a finite term (typically 20 years in the case of patents)

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