Research Paper Library Science

Safeguard to Research & Inventions under IPR laws

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ABSTRACT

Appreciates, supports and analyses of the Intellectual Property laws for the safeguard of the inventions and new scientific research. Identifies relevant steps taken under the statute for the protection and betterment of intangible property. Makes some convincing and practical suggestions.

KEYWORDS Invention, Intellectual Property, Novelty, Patent, Trade Mark, Copy Right, Design, Geographical Indication.

Introduction

Intellectual property is a combination of human intellect, skill and labor. Intellectual property laws are the intangible laws having tangible expression, which are to provide the safeguards to the new inventions and to encourage the scientific research, New Technology and Industrial progress. It shares many of the characteristic associated with real property. Intellectual property owner has right to prevent the unauthorized use of or sale of property. Intellectual property rights are the statutory right granted by the state for the benefit of whole society for a limited period after that it become public.

There are two fold rationales for the protection of Intellectual Property Right. These are as follows:-

1. To recognize individual creativity.
2. Use for larger benefits.

Emerging Importance of Intellectual property right is growing awareness, Eclipse of national boundaries, Harmonization of Law and the idea of next economy. The Intellectual Property Laws are mainly concern with the following:-

1. Patent Laws: - Patent is an exclusive right granted for invention. It is granted to a person who has invented a new and useful article or an improvement to existing article or a new process of making an article for a limited period of time. It is proprietary right in the eyes of law. It is prohibitory right. Patent laws are enshrined under the Patent Act, 1970 and section 2 sub clause (m) of the said act deals with the meaning of Patent as which is granted under the act.

2. Trade Mark Laws: - Trade Mark is a visual form of a word, a device or a label applied to an article of manufacture or commerce. The safeguard to the Trade Mark is given under The Trade Mark Act, 1999. Section 2 (zb) provide the meaning of trade mark as 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.

3. Copy Right Laws: - Copy rights are bundle of rights. These laws are codified under The Copyright Act, 1957. These are the rights in certain creative work such as text, artistic works, music, computer programs, sound recording and films. These right are granted to the exclusively to the copy right owner to reproduce the material, and for some material, the right to perform or show to the public.

The copy right vests in original work in whatever forms it may be & in India it is not mandatory but useful in courts where civil and or criminal proceeding can be taken to protect it.

4. Design Laws: - Design is an idea as to features of shape, configuration, pattern or ornament applied to the article. Design laws are to protect the Design. Section 2 (5) of The Design Act, 1911, provide the meaning of design as only the feature of shape, configuration, pattern or ornament applied to any article 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; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark.

5. Geographical Indication Laws: - Geographical Indication is related with Geographical territory or indication. Geographical Indication Laws are related with the better protection of the geographical indications relating to the goods. The laws enacted under the "Geographical Indication Of Goods (Registration And Protection) Act, 1999. Section 2 (e) provides the meaning of the Geographical Indication as an indication which identifies such goods as agriculture goods, natural goods, or manufactured goods as originating, or manufacturing in the territory of the country or a region or locality in the territory.

6. Trade Secret: - Trade secrets are information that companies keep secret to give them an advantage over their competitors. The formula for Coca-Cola is the most famous trade secret. Trade secrets are not protected by intellectual property law the same way that trademarks or patents are. Protection for trade secrets is done by non-disclosure, the information must be kept confidential. Companies often use non-disclosure agreements (NDA) to keep their trade secrets safe.[1]

Intellectual property laws are the bunch of laws which safeguard the new idea and research. The fundamental principal of the Patent law is that a Patent is granted only for an invention which must be new and useful. In other words the invention which is to be patented must have utility and novelty. Moreover it is essential for the validity of a patent that it must be the inventor's own discovery as oppose to mere verification of what was already known before the patent was granted.[2]

Inventions

Dictionary meaning of Invention is a contrivance or device which did not before exit. It is "the Discovery or creation of new material (either a new manufacture product or a new composition or matter), a new process, a new use of existing material, or any improvement of any of these. While section 2 (j) of the act provides that "invention" means a new product or process involving an inventive step and capable of industrial application moreover Section 2(l) of the Patent Act provides that "new invention" means any invention or technology which has not been anticipated by publication in any docu-

ment or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e., the subject matter has not fallen in public domain or that it does not form part of the state of the art. The Hon'ble Supreme court of India in the case of M/s Bishwanath Parsad Radhey Shayam Vs. M/s Hindustan Metal Industries. [3] held that "Invention" means any manner of new manufacture and includes an improvement and an allied invention. But the courts have always taken the view that a patentable invention, apart from being new manufacture must also be useful. While dealing with the "invention" in M/s. Standi pack Pvt. Ltd. Vs. M/s. Oswal Trading Co. Ltd.[4] , it was held that mere discovery of 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 result in a new product or employ at least one new reactant.

What are not inventions?[5]

Chapter II of The patent Act deals with the inventions which are not Patentable. The list as enshrined under the said act is as follows:-

(a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
(b) an invention the primary or intended use or commercial exploitation of which could be contrary public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
(c) the mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;
(d) the mere discovery of a 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.
(e) 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;
(f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
(h) a method of agriculture or horticulture;
(i) any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products.
(j) plants and animals in whole or any part thereof other than micro organisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
(k) a mathematical or business method or a computer programme *per se* or algorithms;
(l) a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
(m)a mere scheme or rule or method of performing mental act or method of playing game;
(n) a presentation of information;
(o) topography of integrated circuits;
(p) an invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components.

Further the no Patent shall be granted in respect of an inventions relating to atomic energy (u/s 4) and Further in case of inventions claiming substances intended for use, or capable of being used, as food or as medicine or drug or relating to substances prepared or produced by chemical processes, no patent shall be granted in respect of the claim for substance themselves, but claim for the method or processes of manufacture shall be patentable.

Registration of Patents[5]

The statute provides the protection to the new research and inventions as section 7 states that "one application for one invention only". After the submission of the application for the patent registration the same shall be referred to the Controller to the examiner for making a report with in 18 months from the date of such reference on the matters of

- Requirements of the Patent act.
- Lawful ground of the objection.

The models or samples shall be furnished only when required by the controller, except as permitted by the controller and shall be enclosed in convenient containers which shall be clearly and securely labelled or marked to identify the application to which it belongs.

When the report of examiner is adverse to the applicant is received by the controller, the controller shall communicate the gist of the objection to the applicant and shall give him an opportunity of being heard.

STAGES FROM FILING TO GRANT OF PATENT

1. Filing of application provisional/ complete
   IF Provisional Submission is filed then complete submission is filled with in 12 month.
2. Publication of Application.
   Promptly after 18 months of filing of application.
3. Request For Examination
   With in 48 months from FD
4. Examination – Issue of First Examination Report
   3rd Party Representation
   Means the objections be heard and complied with in a period of 12 months.
5. Grant Of Patent.
   Opposition to the registration be heard and filed with in 12 months.
6. Decision Of Controller
   Controller has jurisdiction to decide the objection.
7. Appeal
8. Appellate Board

Terms of Patent

According to section 53 of the Patent Act, the term of every patent granted, after the commencement of the Patents (Amendment) Act, 2002, and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, under this Act, shall be twenty years from the date of filing of the application for the patent.

IPR enforcement in India[6]

The remedies available against the infringement of the Intellectual Property Right are as follows:-

1. Civil Remedies :- In case of infringement of Intellectual Property Right the civil suit can be filed for

1. To claim compensation as the property right holder against the infringer.
2. To restrict the future use/ infringement.
3. Appropriate disposal of infringing material and all tools/ plates / dyes used for manufacturing the same.

Remedies can be sought from Civil Litigation[7]

- Injunctions.

- **Interlocutory/Temporary/ Ad-intrim Injunction :-** injunction generally means prohibiting an action by a party to a law suit until the disposal of the suit. It is discretionary relief and based on three basic points i.e., Prima facie case in favour of plaintiff, Balance of convenience and irreparable loss.

- **Mareva Injunction :-** It is to protect the interest of the plaintiff during the pendency of the suit and is granted to restrain the defendant from disposing of their assets with in jurisdiction until the trial ends or Judgment in the action for infringement is passed.

- **Anton Piller Orders :-** In appropriate cases, the court has inherent jurisdiction on an application by the plaintiff made Ex parte and in camera to require the defendant to permit the plaintiff to enter his premises and take inspection of relevant documents and articles and take copies thereof or remove them for safe custody. These are known as Anton Piller Orders. The necessity for such an order arises when there is grave danger of relevant documents and infringing articles being removed or destroyed, so that the ends of justice will be defeated.

- **John Doe Orders :-** These are the orders issued by the court to search and seize against unnamed/ unknown defendants; which virtually translate into untrammeled power in the hands of the plaintiffs; aided by the court appointed local commissioners, to raid any premises where infringement activities may be carried out.

- **Permanent/Perpetual Injunction:-** These are guided as per the provision of Specific Relief Act as enshrined under section 37 and 38. Permanent/Perpetual Injunction is final order of the court that a person or entity refrain from certain activity permanently or take action in perpetuity.

- Civil raids & Seizures
- Damages OR Accounts of Profits
- Discovery of infringing material / documents
- Preservation of assets
- Delivery-Up and Destruction.

Benefits of Civil Remedies
- The main advantage is the Damages relief in civil cases
- Civil remedies are less hassle for the plaintiff
- Jurisdictional i.e. trial place advantage
- Interlocutory Injunctions
- Possibility of settlement

2. Criminal remedies.
The Intellectual Property Rights in India are protected under Trademarks Act, 1999, Patents Act,1970 (as amended), Copyright Act, 1957 (as amended), Designs Act,2000 and Geographical Indications Act, 1999.

Criminal Provisions- For Trademark and Copy Rights violations
1. Falsification of Trademarks / Infringement of copyright is a cognizable offence
2. A complaint may be filed before a Magistrate; OR
3. Police can register an FIR and prosecute directly; (After Registrar's approval)
4. Registration of TM or Copy right is not a requirement.

Criminal Relief - TM / Copy Right Violations
- Imprisonment- 6 months to 3 years
- Fine- Rs 50,000 to 2 lakhs
- Enhanced penalty on subsequent convictions.
- Seizure, forfeiture and destruction of infringing goods/ material for placing before the Magistrate.

Effectiveness of Criminal Litigation
1. Deterrence effect on the violator
2. Fear of arrest and imprisonment
3. Comparatively quick and effective
4. Put social stigma over the offender

3. Administrative remedies.[8]
Administrative remedies consist of moving the Registrar of copyrights to ban the import of infringing copies into India when the infringement is by way of such importation and the delivery of the confiscated infringing copies to the owner of the copyright and seeking the delivery. Or to move to the controller for objection on the registration of the Patent.

All these remedies can be claimed simultaneously. In case of Patent & Design the registration is compulsory needed for claim.

Conclusion
Protection of IPR is crucial for the protection of hardship which is unique and for the economic benefits. The World Trade Organization's agreement on Trade-Related Aspects of Intellectual Property Rights set global minimum standards for the protection of intellectual property. It substantially increases and expands the intellectual property rights. Intellectual Property is protected by different laws by having different treatment.

Each industry has its own IP policy to protect its trade secret or any research or invention. Still some technical measures are not codified for the protection point of view which need to be done soon. Commission on Intellectual Property and innovation set up by the Wealth Health Organization shows that the creative management of the Intellectual Property is needed for product Development.

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