

## Implementation of Intellectual Property Rights in India: Issues and Challenges

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### Introduction

Intellectual property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property, IPR are like any other property right. They allow creators, or owners, of patents, Designs, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.

Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on the process to manufacture chewing gum.

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time. Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

### OBJECTIVES:

- To discuss the importance of IPR
- To know the actions required for implementation of IPR in India
- To understand the problems in quality management in IPR
- To suggest corrective measures to strengthen the IPR in India

## History of IPR in India

The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

George Alfred DePenning is supposed to have made the first application for a patent in India in the year 1856. On February 28, 1856, the Government of India promulgated legislation to grant what was then termed as "exclusive privileges for the encouragement of inventions of new manufactures" i.e the Patents Act. On March 3, 1856, a civil engineer, George Alfred DePenning of 7, Grant's Lane, Calcutta petitioned the Government of India for grant of exclusive privileges for his invention - "An Efficient Punkah Pulling Machine". In 1914, the then Indian legislature enacted a new Copyright Act which merely extended most portions of the United Kingdom Copyright Act of 1911 to India. It did, however, make a few minor modifications. The 1914 Act was continued with minor adaptations and modifications till the 1957 Act was brought into force on 24th January, 1958. Chapter XVI i.e. Sections 82 to 94 of the Patents act, 1970 deals with 'Working of Patents, Compulsory Licenses and Revocation'. Chapter XVII also deals with use of inventions for the purpose of government and acquisition of inventions by Central Government. Chapter XIII i.e. Rules 96 to 102 of Patents Rules, 2003 deals with 'compulsory licence and revocation of patent'. Sec.84 of Patents Act, 1970 deals with general Compulsory Licences to be issued by the Controller on application. Any time after three years from date of sealing of a patent, while settling the terms and conditions of compulsory licences, the Controller should endeavour to secure –

1. That the royalty and other remuneration, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable, having regard to the nature of the invention, the expenditure incurred by the patentee in making the invention or in developing it and obtaining a patent and keeping it in force and other relevant factors
2. That the patented invention is worked to the fullest extent by the person to whom the licence is granted and with reasonable profit to him
3. That the patented articles are made available to the public at reasonably affordable prices
4. That the licence granted is a non-exclusive licence

5. That the right of the licensee is non-assignable
6. That the licence is for the balance term of the patent unless a shorter term is consistent with public interest
7. That the licence is granted with a predominant purpose of supply in the Indian market and that the licensee may also export the patented product if required
8. That in the case of semi-conductor technology, the licence granted is to work the invention for public non-commercial use
9. That in case the licence is granted to remedy a practice determined after judicial or administrative process to be anti-competitive, the licensee shall be permitted to export the patented product, if need be.

### **Intellectual Property Rights - Systems in India:**

India has been a member of the World Trade Organisation (WTO) since 1995. This requires member nations to establish intellectual property (IP) laws whose effect is in line with minimum standards. Consequently, there should be few major variances between India's laws and developed countries. Copyright India is a signatory to the Berne Convention on copyright. Though, it is good to register copyright of creative work as doing so may help to prove ownership if there are criminal proceedings against infringer. In most cases though, registration is not needed to maintain a copyright violation claim in India. Registration is made, in person or via a representative, with the Copyright Office. Internet piracy of films, music, books and software is an issue in India. Patents India's Patents Act of 1970 and 2003 Patent Rules set out the law concerning patents.

The regulatory authority for patents is the Patent Registrar within the department of the Controller General of Patents, Designs and Trade Marks, which is part of India's Ministry of Commerce and Industry. Patents are valid for 20 years from the date of filing an application, subject to an annual renewal fee. India's patent law operates under the 'first to file' principle - that is, if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent. The laws governing designs are the Designs Act 2000 and the Designs Rules 2001. Designs are lawful for a maximum of ten years, renewable for a further five years. Trade marks India's trade mark laws consist of the 1999 Trade Marks Act and the Trade Marks Rules of 2002, which became effective in 2003. The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion.

Trade names also constitute a form of trade mark in India, with protection, irrespective of existing trade names, for those wishing to trade under their own surname. Because of the common practice of 'cybersquatting' - the registration in bad faith of marks by third parties registering domain names for certain well known marks in order to sell them to the original rights owners. Registration takes up to two years. A trade mark in India is valid for ten years and can be renewed thereafter indefinitely for further ten-year periods. Registering and enforcing intellectual property rights in India.

### **Legislative Climate in India**

India has adequate copyright laws, and India acceded to the WIPO Internet Treaties, namely the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). However, enforcement is weak, and piracy of copyrighted materials is widespread. The U.S. government has advocated for the creation of anti-camcording legislation, which would have a significant impact on stopping digital piracy in India. This legislation would also improve India's ease of doing business rankings, as well as send a signal to investors and entrepreneurs that the government values transparency, predictability, and the rule of law. Indian government interlocutors said that an anti-camcording bill is currently being circulated for inter-ministerial discussions and could be introduced in the next session of Parliament. In the interim, the Government has taken on a new initiative, where ".in" domains that primarily carry infringing content may be blocked or taken down if the domain owners do not follow proper procedure or haven't provided completed or correct information.

Pharmaceutical and agro-chemical products can be patented in India. Plant varieties are protected by the Plant Varieties and Farmers' Rights Act. However, the interpretation and application of the patent law lacks clarity, especially regarding several important areas such as compulsory licenses, pre-grant opposition provisions, and the scope of patentable inventions (e.g., whether patents are limited to new chemical entities rather than incremental innovation). Indian law does not protect against the unfair commercial use of test data or other data submitted to the government during the application for market approval of pharmaceutical or agro-chemical products. The Pesticides Management Bill (2008), which would allow data protection of agricultural chemical provisions, was revised and all provisions relating to data protection were removed, this bill is pending in Parliament.

## INDIA AMONG THE WORST ON INTELLECTUAL PROPERTY INDEX

India has been ranked the second worst on intellectual property rights in a ranking of 38 countries that was carried out by the Global Intellectual Property Centre (GIPC). Though the list mostly comprises high-income economies, India was behind countries such as Indonesia, Nigeria, Ukraine and Vietnam. The country's overall score decreased to 7.05 from 7.23 in the previous year after rising by 24% last year. GIPC, which is part of the lobby group US Chamber of Commerce, said the decrease was driven primarily by the introduction of the Global Measure of Physical Counterfeiting, on which India ranked seventh out of the 38 economies mapped.

INDIA	SCORE		OUT OF
	2015	2016	
Patents, related rights, and limitations	1	1	7
Copyrights, related rights, and limitations	1.47	1.47	6
Trademarks, related rights, and limitations	NA	2.75	5
Trade secrets and market access	NA	0.50	2
Enforcement	1.51	1.33	6
Membership and ratification of international treaties	0	0	4

Source: US chamber of commerce

Indian law provides no statutory protection of trade secrets. The Designs Act allows for the registration of industrial designs. The Designs Rules, which detail classification of design, conform to the international system and are intended to take care of the proliferation of design-related activities in various fields. India's Semiconductor Integrated Circuits Layout Designs Act is based on standards developed by WIPO; however, this law remains inactive due to the lack of implementing regulations.

Customs officers have ex-officio authority to seize and destroy counterfeit goods, though rights holders must pay for storage and destruction of counterfeit materials. In the past few years, with regular training customs and police enforcement has marginally increased. The new customs recordation system allows trademark owners to record their brands and trademarks with the ministry and seek affirmative action in case of any counterfeit issue at the ports.

### Major Issues

While the IPR system in India comprises of strong Intellectual Property laws but it has many loopholes as it lacks effective implementation, for which "least priority given to adjudication of IP matters" is often quoted as a reason.

1. Major challenge is to inform the enforcement officials and the Judiciary to take up issues of Intellectual Property rights, at par with other economic offences, by bringing them under their policy locator.

2. Having an Intellectual Property fund, which can be utilized for further developing the IP culture in the country. It is necessary to devise a National IP Policy for India, which will help in working towards realizing the vision of India in the area of Intellectual Property rights. This will enable the establishment of a strong socio-economic foundation and deep international trust.

3. IPR protections is debatable among public policy approaches to issues in developing countries.

4. Intellectual property law has developed legal rules that cautiously balance the above competing interests.

5. Plagiarism is a major issue

6. Digital technologies are major tools for creating and storing information for its speed and easy access. Intellectual property rights apply on the Internet but the main issue is to make them enforceable.

7. The distributed nature of Internet's management makes it possible for any user to widely circulate a work on the electronic network termed as Cyberspace through any number of channels. A user can easily distribute a work to news.

### New Issues

Despite, these positive developments, also saw some new issues in the field of intellectual property came to light in the following sectors: (a) agriculture; (b) software and (c) pharmaceuticals.

- Just days after the National IP Policy, the Ministry of Agriculture released the "Licensing and Formats for GM Technology Agreement Guidelines" (GM Licensing Guidelines). MAFW wrote to DIPP requesting them to revoke Monsanto's patent claiming the patent was against public interest.
- The Ministry of Health and Family Welfare (MoHFW) by way of a notification removed the requirement for companies to inform whether a drug is under patent or not at the time of filing for a manufacturing license. This is a regressive step and against the IP Policy that calls for better center and state coordination. This coupled with liberal price controls for pharmaceuticals and medical devices, creates uncertainty for the sector.
- Monsanto's BG II Patent for their genetically modified cotton was revoked claiming plants or a gene in a plant cannot be patented. This matter is under challenge at the Supreme Court.
- Several pharmaceutical drugs and medical devices come under price control. India is formulating the Patent Drug Pricing Policy and a new Pharma Policy.

- In the first post-trial ruling in a SEP infringement case, the Delhi High Court has ruled in favor of the SEP holder. However, the government is considering setting an Indian FRAND and has several rounds of discussions with domestic companies.
- India announced its Government Procurement Policy, which called for localization requirements. In keeping with this new Policy, MIETY introduced a Government Procurement of Cyber Products Policy, that requires all IP ownership to be transferred to the Indian Company.

India also actively engages at multilateral negotiations and the WTO TRIPS Council. India has strongly supported and sometimes led the charge in calling for open technology transfer, liberal use of compulsory licensing cross sectors, price controls and protection of traditional knowledge. These negotiations will have an impact on innovation, trade, and investment in IP-intensive products and services.

### **Conclusion**

There are several compelling reasons for promote and protect intellectual property. First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology(Motion pictures, Industrial Design) and culture(Music,Novels). Second, the legal protection of new creations encourages the commitment of additional resources for further innovation. Third, creations that are copyrighted material Fourth, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life. An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social and cultural well-being. The intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.

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