

Intellectual Property Rights¹

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ABSTRACT

Intellectual Property is a set of intangible assets, it refers to a brand, design or an invention which is owned and legally protected by a company. It includes: Copyright, Patents, Designs and Trademarks. Intellectual Property Rights are equal to other property rights. An Intellectual property rights play an important role in different sectors and become a platform for basis for crucial investments decisions. IPR is very old concept. According to previous history of IPR it is suspected that IPR actually first started in North Italy during the period of Renaissance era. In the year of 1474, Venice provides a law that is related to the regulating patents protection that granted an exclusive right for the owner.

INTRODUCTION

IPR litigation in India is very wide because there is large number of courts, varying degree of experience of the judicial officers that is related to IPR matters. The suit for infringement is filed in states of Delhi and second is on Mumbai, especially in the High Courts of these cities. There is large number or volume, of cases which are also capable to indicating to the fact that Delhi is the capital of our country India and Mumbai is the country's economic capital maximum GDP is supported by this states. Therefore, large volumes of commercial disputes are natural. The speedy growth of cases dealing with Intellectual Property Rights laws such as – including patents, trademarks, copyrights and design laws – there has been a total number of 700 plus cases filed in Delhi at the Delhi High Court and the Bombay High Court. The Indian Legislature established commercial courts in India by passing a new Act in the year 2015, which came into force in the year 2016, with the objective of streamlining and expediting commercial lawsuits, including the Intellectual Property disputes. This new Act enactment has given a separate cure to commercial sector relating cases, which includes cases relating to the intellectual property.

HISTORY OF INTELLECTUAL PROPERTY RIGHTS

IPR is very old concept. According to previous history of IPR it is suspected that IPR actually first started in North Italy during the period of Renaissance era. In the year of 1474, Venice provides a law that is related to the regulating patents protection that granted an exclusive right for the owner. After then, in the late 19th century, there are number of countries felt the necessary of laying down all the laws that is related for regulating the IPR. Globally, two conventions constituting the grounds for IPR system worldwide that had been signed such as Paris Convention for the Protection of Industrial Property, in the year (1883). A Trademark is basically a unique symbol or a mark to represent one's products or business as a whole. Trademarks are for life long, forever until the end. It is used in representing a variety of sets of a company including its device, label, name and signature. ⁱⁱ

DEVELOPMENT OF INTELLECTUAL PROPERTY LAW IN INDIA

The theory under which the patent system is based up on, that is an option of acquiring high class rights in an invention, stimulates technical process in four ways.

1. The first one is to Encourages research and the invention.
2. The second one is Induces an inventor to disclose his discoveries.

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3. The third one is offers that are award for the expenses of developing inventions.

SOME IMPORTANT TERMS THOSE ARE RELATED TO INTELLECTUAL PROPERTY RIGHTS:

Patent

Patent is refer to absolute type of right that is granted by law to an inventor or an agent to prevent others from commercially profit from his/her patented invention without any kind of permission, for a limited period of time which is exchange for detailed public confession of patented invention.

Copyright

Copyright is form of IPR which is concerned with protecting or saving the works of human intellect. The province or the zone of copyright is the literary and artistic works, and may be writings, musicals and works like fine arts, such as paintings and sculptures, and technology which is based on the works such as programs that are related to computer and second part is electronic databases.

Industrial Property

Industrial property can usefully be divided into two parts:

1. The first Part can be characterized as the protection of distinctive signs, such as the particular trademarks which differentiate the types of goods or services of one agreement from those of other agreements and geographical demonstration which identify a good or best as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin.
The protection of such unique signs aims to restorative and ensures fair competition and second is to protect consumers, by enabling them to make informed choices between various goods and services. The protection may last sine die, provided the sign in question pursue to be exclusive.
2. The second part of industrial property is protected first and foremost to stimulate the innovation, design and the creation of technology. Under this category fall inventions are protected by patents, industrial designs and trade secrets. The main purpose of this is to provide protection for the results of investment in the developments of new modern technology, therefore giving the incentive and means to finance research and the development activities.

Fundamental Objectives

And in last the fundamental social objectives of intellectual property protection are as demarcates above, it should also be noted that the complete rights given which are generally subject to a number of limitations and exceptions, aimed at adjust the balance that has to be found between the authorized interests of right holders and of users.

The functioning of intellectual property sovereignty should also ease the transfer of technology in the form of foreign direct investment and the second term is joint ventures and licensing.

SUMMARY OF THE PROBLEM

Registration of trademark: It is one of the most basic and important things for a company to register itself for the protection of the company's brand name. ⁱⁱⁱ **Types of Trademark**

1. A name (signature of a person)
2. Image or letters.
3. Sound marks.
4. An invented word or a very unique alphanumeric digit.

Examples of Trademark

- (a) Chanel is an example of Name trademark.
- (b) Coca Cola and Pepsi are two trademarks from the same industry but are distinguished by the indication of quality.
- (c) McDonalds is an example of symbol trademark. The Golden Arch symbol.

Problem of Law

1. How can one protect their trademark?
2. How can one register its company for trademark?

3. What kinds of trademark can be registered?

ANALYSIS

Who can apply for trademark: Any person who runs a business, even a sole-proprietor or someone who owns a company can apply. The application is filed within a few days itself and later you can use the symbol "TM". The time required for the registry to be done is ranging from 18 to 24 months.

You can also use the symbol "R" after your trademark is registered and is functioning. It is renewed after every 10 years from the date of filing.

DOCUMENTS REQUIRED FOR FILING TRADEMARK IN INDIA

1. Trademark or a logo copy.
2. The details of the applicant like name, address, nationality and the state of incorporation.
3. Power of Attorney to be signed by the applicant.
4. The goods and services should be mentioned as in what is to be mentioned.

THE PROCEDURE FOR REGISTERING TRADEMARK IN INDIA

Steps required are as follows:

1. Trademark search: It is required as for you logo or your name doesn't match any other company's logo or name. After the completion of the two types of trademark search that are offline and online, at the end the results should be unique.
2. Create trademark application: After the registration process you can start using the TM tag next to your company's name.
3. Trademark Registration: It takes generally 18-24 months for the complete registration process to occur.

THE NEED TO CONSIDER REGISTERING TRADEMARK FOR YOUR BUSINESS:

1. It guarantees the identity of the origin of goods and services.
2. It would be an asset for your business and contributes to the goodwill generated.
3. It serves as a badge for loyalty for the customers and makes it trustworthy.
4. Even the biggest of companies register for trademarks, it helps in protecting the values of the company as a whole.
5. Exclusive Rights of the mark: Registering your brand is exclusivity. You will be the only one in the country.

CASE LAW

1. *Dau Dayal V. State of Uttar Pradesh*, AIR 1959 SC 433^{iv}

The delay which is incidental to civil proceedings and the great injustice which might result if the rights of manufactures are not promptly protected, the law also offers them the right to take the incident before the criminal courts, and prosecute the offenders, so as to enable them to effectively and speedily vindicate their rights".

2. *Asia net Star Communications Pvt. Ltd V. Registrar of Trademarks and other*, W.P. (C) 11284/2019^v
The Trademarks Registry that deal with different forms such as renewal request/s and post registration request/s, there is huge inefficiency in the processing of the trademark applications. 1. *Prem N. Mayor and Ors. V. Registrar of Trademarks*, AIR 1969 Cal 80^{vi}
3. *SNJ Distillers Private Limited rep. V. Deputy Registrar of Trademarks*, W.P. No. 11126 of 2016^{vii}
"The writ petition is dismissed as in fructuous".

THE LANDMARK JUDGEMENTS OF INTELLECTUAL PROPERTY RIGHT LAW RELATED TO THE TRADEMARK, COPYRIGHT AND THE PATENT LAW^{viii}

1. *Bajaj Auto Limited vs. TVS Motor Company Limited* 2008(36) PTC 417(Mad.)
In the immediate case, there was a patent disagreement existing for two years among two different countries which are indulged in a dispute for using twin spark plug engine technology. Observing at the petitions

relating to Intellectual Property Rights cases in Indian courts, J. Ashok Kumar Ganguly directed all the courts in India for efficient disposal of cases which involve trademarks, patent and copyrights and J. Markandey Katju is speaking for himself. The Supreme Court also directed that the final decision should be given within four months from the date after the suit was filed. The Supreme Court also directed to all the courts and trials in the country to promptly and devotedly carry out the above-mentioned guidelines.

2. Bayer Corporation and ors. V. Union of India and ors. 162(2009) DLT 371 This interesting case, deals with Bayer Corporation attempts to link the case of patent contravention to allowing marketing agreement of a drug made by Cipla. In USA this concept of Drug-Patent Linkage is present. The esteemed High Court of Delhi marked that there is no Drug Patent Linkage mechanism in India and only the Supervisor of Patents has the authority to regulate patent standards. It was also held that market consent of a drug does not lead to patent contravention and the authority does not lie with Drug authorities.
3. The Coca-Cola Company vs. Bisleri International Pvt. Ltd Manu/DE/2698/2009
The High Court of Delhi recommends that if there is a danger of contravention then this court would have the authority. It was also suggested that the goods exported from the country should be considered as a sale within the country and the same amount should be infringement of trade mark. This case deals with Bisleri Ltd. which has sold the trademark MAAZA including its design right, Intellectual Property Right (IPR) and goodwill for India over a master contract. Basically, they applied for registration of TM MAAZA in Turkey and started to explore fruit drinks with the same name. The court decided that the purpose to use the trade mark besides direct or indirect use of trade mark was satisfactory to give authority to the court to decide on the issue. The court lastly approved an intervening injunction against the defendant (Bisleri).
4. Novartis V. Union of India Civil Appeal No. 2706-2716 of 2013
Novartis filed an application in the instant case for patenting an anti-leukemia drug that is Glivic. And same was prohibited by the Assistant Controller of Patents and Designs. First he filed a case before the appellate board and when he didn't get any relief then he appealed to the Supreme Court directly through the SLP. As per the Supreme Court, Novartis failed to meet the requirement of novelty. For filing to be eligible for the test of invention as provided for under in section 2(1)(j) and section 2(1)(ja) of the Patent Act, 1970 as an outcome of the several publication and the disclosures which had already made about the beta crystalline form of the compound that is used in the drug, Imatinib Mesylate. In addition the court further decided to interpret efficacy as laid down in section 3(d) of the Act on the lines of the therapeutic efficiency and not just physical efficacy. The physical efficiency of imatinib mesylate in beta crystalline form is improved in contrast to other forms. As there was no proper substantive and conclusive material as well as appropriate evidence to prove that beta crystalline form of imatinib mesylate which will create a higher or superior therapeutic efficacy as a result Novartis failed to meet the requirements which were under Section 3(d) of the Act. The Supreme Court finally went with the therapeutic efficacy clarification over the physical efficacy which was owing to the fact that the compound was of medical value.
5. Snehlata C. Gupta Vs Union of India & Ors. (W.P. (C) No 3517 of 2007) Delhi High Court
This case basically deals with the Patent Act which became considerable and finally granted. The Delhi High Court decided that the proper date on which the Controller granted an order to the effect according to the file, noted that the language, "A patent shall be granted as expeditiously as possible"

CONCLUSION

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