

Insight into IPR Laws in India in the Light of New IPR Policy 2016

Abstract

In highly competitive global market, intellectual property rights play a major role in economic growth of any country. With due diligence and positive efforts by the government strong economy can be build up for a country. India being one of the fastest growing economies in the world has taken certain steps in strengthening IPR regime in the country. In this paper we discuss about the benefits of IP protection and its Impact on economic growth. This paper will give the bird view of existing IPR laws in India and changes brought after 2016 policy of IPR. It also highlights the unaddressed or less addressed field of intellectual property.

Keywords: Intellectual Property Rights, Indian Economy, IPR Policy 2016, IPR Laws.

Introduction

Growth of a country in to depends upon its economic structure. A financial condition of any country is one of the deciding factors in assigning status of a country as under-developed, developed or developing. Economists as per classical definition bifurcated the economy is to three main sectors on the basis of activities involved in production of goods and services, they are named as 'primary', 'secondary' and 'tertiary'. Primary sector deals with raw materials and agriculture, secondary sector is dedicated to final industrial goods, like Textiles, oil refining, food processing, etc and tertiary sector is concerned with different form of services to the customers like, banking, tourism etc. Intellectual property plays significant role in all sectors related of manufacturing and production of goods and services. That is the reason different nations have formed their own set of rules to regulate and protect their IPRs in domestic and global market. But while trading in international market lot of confusion arises due to disparity in IPR laws of various countries.

To reduce this mystification majority of nations come together to bring uniformity and harmonisation in the field of IPRs in international market through TRIPS¹ agreement. This is the first international agreement completely dedicated to intellectual property rights. It has laid down certain minimum standards for all nations for protection and promotion of IPR.

For general understanding intellectual property (IP) is intangible form of property resulted from human intellect and mental labour. This concept of property is quiet similar to real property concept with only difference that here labour is in form of intellect instead of any physical hard work. And value of this intellectual property is way higher than physical property.

In this fast changing world IP is one of the most essential commercial asset that any business house can possess. Even for the beginners, new entrepreneur in the Market acquaintance with essence of IP is the key to success. Origination of idea is first step for any business and later on success or failure of business depends on how strongly that idea is build-up. Origination of idea and later whole things are build around that idea only. Success or failure of business depends on how strongly that idea is build-up. In terms of IP that idea can be protected as trade secret, patent, copyright, industrial design etc. and that is the reason they are highly valuable asset.

World has understood the magnitude of IP in economy and kind of changes it can really Offer to the humankind. An efficient and justifiable Intellectual property rights can work as a catalyst in any economy. Developed nations already realised the importance of IPR in any economy or we can say IPR has played significant role in making them developed. As per report released by U.S. Commerce Department in 2016, 38.2% of



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U.S GDP is supported by IP intensive industries (approximately 6 trillion US dollars).² Similarly in European Union, 45% of the total economic activity (GDP) is attributed to IPR-intensive industries, worth EUR 6.6 trillion.³

By giving protection to IP, the government is in point of fact promoting R&D and it will lead to more creation and innovation for the larger benefit of the human race. Legal frame work to protect all kind of human intellect actually works as a motivating force for coming up with new inventions. Reason behind this is that, the creator is no longer under the fear of losing his life and time for creating something new and he is not worried about the reward for his hard work. By IP protection government is assuring the incentive to inventor for his mental labour⁴. Not only research and development there are various other monetary benefits ancillary to IP protection. Like:

1. Market exclusivity: first and most important for any business to start and sustain in the market. IP protection provides exclusive right for limited period to sell goods in market by excluding others. Though in general it is considered as negative right, but it is kind of incentive to inventor for his innovation and allurements too for coming up with new invention.
2. Uniqueness and Brand Value: IP protection provides unique identification to product in form of Trademark, design. Due to such assigned uniqueness customers are able to distinguish between the two or more similar products. Good will is attached with the name of company on which people have trust. This help in constant growth of a business. We can say that every brand has its own market.
3. Differentiation of products helps in capturing bigger market. Utility of any product is different in different market. IP protection helps in exploring larger market.
4. IP protection helps in enhancing product line by additional research.
5. Competitive Advantage: IP protection gives the edge over the competitors in market. That automatically increases the market share of the product.
6. Minimizes the risk: biggest risk of coming in market with new invention is loss of information in market. IP protection minimizes the risk by the virtue of legal protection of the products.
7. Value and trust of people is associated with the name of a company and that increases its market value. It gives him more opportunity to earn money out of his business by licensing, through royalties etc.

All in all, not only R&D whole set of monetary benefits are packed with IP protection. But when we come to developing nations role of IP does not find much mention. One reason can be the lack of R&D activities and unawareness in masses. Developing nations are much dependant on developed nations for new technologies and inventions. Though TRIPS agreement is meant to help in dissemination of knowledge among nations but it comes with some cost. It is indispensable for developing countries to

build their own strong IP system to promote R&D for better economic stability. In the month of February this year, the US Chamber of Commerce's Global Innovation Policy Centre (GIPC) released its 7th annual International IP Index, which assesses IP climate in 50 world economies. India had progressed from 44th rank to 36th rank marked his second consecutive development in IP global ranking. As an outcome of positive IP reforms there is substantial growth in scores of Latin America, Mexico, and Argentina region, marking their global competitiveness spirit.⁵ India being the member of WTO bonded with TRIPS agreement also and committed to bring domestic laws as per guidelines laid down by TRIPS agreement. This paper will highlights the major legislations made in the field of IPR in India so far and effects of new IPR policy 2016.

Prime Legislations made by Indian Government to adapt TRIPs standards are:

1. The Patent Act 1970.
2. Protection of Traditional Knowledge under Patent amendment Act 2002.
3. The Copyright Act 1957
4. The Geographical Indications of Goods (Registration and Protection Act) 1999.
5. The Design Act 1999.
6. Trademarks Act 1999
7. The Semiconductor Integrated Circuit Layout Design Act, 2000.
8. The Protection of Plant Varieties and Farmers' Rights Act 2001.

Patent laws in India

Starting with the oldest IP legislation in India i.e., "The Patent Act 1970", so far this Act has undergone various amendments from time to time like in 1999, 2002, 2005, 2016, 2018 in order to meet the needs and challenges raised with the time.

Patent is exclusive protection given to innovators for use of their inventions. Invention can be in form of new product or process or new way of addressing problem. Patent right is given at the cost of sharing your invention with general masses and exclusivity lasts for period of 20 years only as per present laws. Product or process to qualify as patent must possess three merits: first one is novelty second is inventiveness and third is industrial helpfulness. All three attributes must be clearly present in patentable product or process.

1. Talking about 'novelty' means not known before. It must have involved out of the ordinary mental effort to reach to the final product or process. To be called as 'novel' invention must be something beyond the knowledge of general public anywhere in the world. Like we can see outrage in India on granting patent to 'turmeric' and 'basmati rice' in U.S. as use of turmeric for medicinal purposes is well established in daily life of Indian from ages and basmati rice is primarily grown in Indian subcontinent. So even though these goods were not protected as any IP in India, it still cannot justify the claim by U.S. companies of getting them patented. Novelty always remains the essence of patent

2. Inventiveness / inventive step⁶ are other criteria essential for the product/process to qualify for patent protection. Simple alteration in existing products or re- arrangement already existing goods cannot be termed as inventive step. For example automobiles already exist in market, using its engines on different structural frames cannot be termed as invention. On the other hand coming up with auto-pilot automobiles is inventive step.
3. An invention does not make any sense to society when it is of no use to it. So even though product is new and non obvious cannot be granted patent if it doesn't qualify the test of industrial applicability. It is for the larger benefit of society only patent is given, if invention cannot bring in to play in society there is no point of giving any incentive to inventor.

Trademark Protection

For general understanding trademark can be defined as a sign or design or expression which helps in recognizing the product or source of product or service. In India trademarks are protected by 'The Trademarks Act 1999' made after systematic study of international standards already prevailing in market. This Act defines Trademark⁷ as a device, brand, heading, label ticket name, packaging, sign, word, letter, number, drawing, picture, emblem, colour or combination of colours, shape of goods, signature or a combination there of, anything that represents the product in the market to the customers. It helps to distinguish one company goods from other similar products in market. To qualify as 'trademark' or 'brand' or 'logo' call it by any name, mark should be distinctive in nature. It must have some uniqueness so that consumer can easily differentiate the products. In the same way special unique marks can be used as 'service marks' like trademarks with only difference that it refers to source of service provider than manufacturer of goods.

Similarly, there are various categories in which trademarks have been divided in order to certain the area or subject they intend to represent. Like 'word marks', 'device marks', 'service marks', 'collective marks', 'certification marks', 'well known marks', 'unconventional marks'. The main purpose of giving this kind of protection is to protect the name, goodwill and reputation of a company which it has build up with hard work. This Act provides provisions for registration of trademarks and remedies in case of its infringement. It is not always necessary for trademark to be registered to be called as trademark. This status of 'trademark' can be simply achieved by presence and acceptance in market. But registration of trademarks comes up with benefits of proofing in itself at the time of fraudulent use. Moreover it adds to the value of a company.

Copyright Laws

Any kind of new original creation in the field of art in form of literature, drama, music, cinema, artistic work etc will be protected by copyright. Copyright gives exclusive right to original inventor to use his creation in public domain. It protects copyright holder against duplication and reusing his work

without his authorization. Main purpose of copyright protection is to protect and recognize the considerable mental effort one has put in achieving the original product, because once it reaches to market it can easily be copied. Copyright protects the expressions of creator in tangible form, but ideas or formulas or some theories which are not in expressed form cannot be protected by copyright. Any form of common property, methods, principles, standards, concepts containing no original authorship cannot be protected under copyright.

Two types of interests of author is protected by copyright, first one is 'economic interest' which allows copyright holder to reap the economic benefits flowing from use of his work by others. Secondly copyright protects the moral interest of author, like he can use his creation in his own way sell it or keep it for himself. His name will be always credited with his creation.

In India copyrights are protected by 'The Copyright Act, 1957'. As per this Act copyright protection is granted to original creator for the period of whole life of creator plus 60 years after his death.

Geographical Indications Law

A geographical indication (GI) can be defined as sign/mark used on products to specifically define their place of origin and special qualities accredited to it due to belonging to that particular region. In simple words we can say like GI status tells about the originating place of products. Reason being that GI status is only given to products on the basis of certain special peculiar qualities, characteristics or reputation of products related to their place of origin only, for example in India we have Darjeeling tea, Kashmiri Pshmina shawl, Madhubani paintings, Kancheepuram silk and most recently Banglar rasogolla and Mamallapuram Stone Sculptures had gained GI status. As we can see from these examples each product On its own tells about its place of origin, there is an immaculate link between place of origin and products. GI status is used for agricultural products, foodstuff, handicrafts, drinks and industrial products.

As per Geographical Indications Law, GI status does not eliminate manufacturing of products by any person using same techniques. GI status just gives right to use it when the products is being grown at that place and meet the established standards set out in code of practice for the products. Protection for a geographical indication can be gained by obtaining right over the sign that represents the indication.

Talking about the purpose and benefits of providing GI status to any product, it is very simple and clear that it gives more extended market to native product which ultimately gives boom to the local market of that place. Not only commercial promotion but also it helps in preservation of indigenous goods. It also helps in encouragement of rural industries.

In India for getting GI status product must be able to justify itself under the definition of section 2(1)e⁸ of Geographical Indications of Goods (registration and protection) Act 1999. At the same time it has to be in consonance with section 9⁹ of the Act which says that indications which may likely to cause confusions or deception to masses, the use of

which is contrary to any law in force, which hurts religious feelings of any cult or contains disgraceful or obscene matter cannot be registered under the Act.

Plant Variety Protection

The Protection of Plant Variety and Farmers Right Act, 2001 (PPVFR) is an Act designed by the Indian Parliament to give protection to plant varieties and rights to plant breeders and farmers. Main aim of this Act is to promote and motivate farmers for innovation and cultivation of new varieties of plants.

According to CIA Factbook sector wise Indian GDP composition in 2017 are as follows: Agriculture (15.4%), Industry (23%) and Services (61.5%). With production of agriculture activity of \$375.61 billion, India is 2nd largest producer of agricultural products. India accounts for 7.39 percent of total global agricultural output. India is way behind china which has \$991 bn GDP in agriculture sector. GDP of Industry sector is \$560.97 billion and world rank is 6. In Services sector, India's world ranking is 8 and GDP is \$1500 billion.¹⁰ So in that sense agricultural production in one of the major sector of Indian economy in which R&D can play very crucial role to bring change in growth of overall GDP. This Act gives dual rights first one to the variety and the other to the breeder. Once the plant variety is registered rights granted there after are heritable and assignable. It means breeder authorization will be needed for the use of registered plant variety for production, offering for, marketing, exporting, importing, stocking for any other purposes.

Semiconductor Integrated Circuits Layout-Design

Understanding in simple terms layout-design of integrated circuit is 3-D disposition of the element and interconnection of an integrated circuit. In the era of technology and luxury such integrated circuits are necessary elements in wide range of electrical products like cars, computers, smart phones, washing machines, watches and almost all needs of our daily lifestyle. The objective of the Semiconductor Integrated Circuits Layout-Design Act 2000 is to prevent unauthorized copying of layout designs and to provide incentives for more research in this field. Usually creation of such layout designs involves enormous amount of funds and mental effort but copying it costs negligible to original investment. So this legislation is a positive step in direction of promotion of more R&D. It provides protection for 10 years to the registered layout design.

Designs

According to the Design Act of 2000, industrial design is a kind of IPR to protect the visual design of objects. The design refers only to the shape, configuration, pattern, ornamentation, composition of colours or line or a combination thereof, applied to the article by industrial process. It has to be only judged by the eye and nothing to do with technical aspect of article. It helps in improving the marketability of goods and also enhances commercial value. To qualify for protection as an industrial design under Indian law, firstly it should be novel and original. Secondly, it should be applicable to functional article and last not least it should be visible on a final article.

Traditional knowledge

When we talk about protection of traditional knowledge of country, it means abundance of scattered and unscripted knowledge within indigenous community/society/ tribes. The practices developed and based on experiences grounded in community and passes on from generation to generation may be in form of rituals, stories, beliefs, songs, proverbs etc take form of traditional knowledge. Antiquity is not the criteria for qualifying as traditional knowledge but secret lies in practical natural form of its existence and time tested. India due to its biological diversity has abundance of traditional knowledge in various sectors like agriculture, health, medicines, lifestyle and many more.

It is protected under Patent Amendment Act 2002, 2005 and National Biological Diversity Act 2002. Section 3(p)¹¹ of The Patent Act puts restriction on use of traditional knowledge for patent. This Act also provides with consequences in cases of non-compliance of its provisions. On the other hand National Biodiversity Authority (NBA) regulates the access by a foreigners/ NRI/ body corporate having foreign participant to the traditional knowledge of our country. So two way protection is given to traditional knowledge first a sort of defensive mechanism is set to ensure that third party do not gain illegitimate IP rights over traditional knowledge. Secondly, in the form of positive protection by acknowledging control of custodian over traditional knowledge and by offering benefit sharing.

Unfortunately this branch of IPR has not gained much popularity and attention by the government. Most of the steps are of recent development after the attempts were made for getting patent over neem and turmeric by foreign nationals.

Trade Secrets

'Trade secrets' is another not so popular form of IP rights in India. There is no formal legislation by the Indian government which recognises and protect trade secrets. Presently in case of infringement of trade secrets one can seek remedy under Contract Act, competition and IP laws, simultaneously protect himself with the help of restrictive covenants and non disclosure agreements.

Trade secrets can be defined as secret information of a company which gives it a competitive edge over the others. To qualify as 'trade secret' information must have some economic value, it must not be generally known and efforts are made by the company or individuals to keep it secret. Coca cola, KFC, Google search algorithm are some of the example of successful trade secrets.

National IPR policy 2016

The National IPR policy was formalized and framed by Department of Industrial Policy & Promotion (DIPP) launched on 13 May, 2016. Complementary to other national initiatives of the Government like 'Start-Up India' and 'Make in India', this policy is framed in the direction of promoting "Creativity and Innovation" in India. This policy aims to harmonize and connect different form of IPRs and to improve cooperation and interaction between different concerned departments of IPRs. The main mission

and vision behind this policy is to stimulate a dynamic, vibrant and balanced Intellectual Property Rights in India.

Main objectives of national IPR policy 2016-

1. To create public awareness about the importance of IPRs and their benefits to different sections of society.
2. To promote R&D in order to generate more of IPRs
3. To build strong and effective IPR laws, so that balance can be achieved between interest of innovators and larger public interests.
4. To modernize and strengthen service- oriented IPR administration, which can help in cost effective and speedy services to customers.
5. Get value for IPRs through commercialization by encouraging entrepreneurship and fundraising.
6. To strengthen the enforcement and adjudicatory mechanism for addressing infringement of IPRs.
7. To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

In the direction of achieving these objectives various positive steps had been taken by Indian government like establishing an IP Promotion & development Council (IPPDC) as nodal organisation for promotion, creation and commercialization of IP assets. Introduction of 'first-time patent' fee waiver and support systems for MSMEs. Starting up of awareness programmes for making people vigilant about their IP rights at school college and university level. The administration of various laws like Copyright Act, 1957 and the semiconductor integrated circuits layout-design Act, 2000 is being brought under the protection of DIPP. Taking measures for ensuring efficient working of copyright and patent offices like providing e- filing facility, digitizing copyright records, online search facility etc. Establishing and energizing IP chairs in educational institution is one more step in direction of achieving goals of new IPR policy of India.

Aim of the Study

To provide overview of existing IP laws and untouched IP areas in India and critical analysis of new IPR policy 2016

Conclusion

The intellectual property regime in India is not a new concept, it started from the era of British rule only, and with development and progress of our country it has also improved on various aspects. As discussed in this paper different laws in force in our country are proof of it. However the intensification of this segment of law is at very slow pace due to neglect of policy makers. The enormous amount of wealth and growth is lying in our country in form of IPRs but due attention was not given to it. New but still weak legislation on traditional knowledge protection is evidence in itself. The Defend Trade Secrets Act 2016 (DTSA) in USA and Directives for protection of trade secrets, 2016 in EU respectively are the laws to provide protection to trade secrets in their country, whereas in India there is no such exclusive protection provided to trade secrets.

Presence of such laws had played key role in success of companies like coca cola, google, etc.

Time and again India has signed various international conventions like Paris Convention Treaty, Berne convention for the protection of literary and artistic works, TRIPS agreement, membership of WIPO dedicated to protection and promotion of IPRs at global level.

The intellectual property right regime of India has been amended number of times since 1995 to make the domestic legislation harmonious with TRIPS. Various existing Acts had been amended to bring domestic legal framework in accordance with WTO's TRIPS agreement, such as the patent Amendment Act 2016, Copyright Amendment Act 2010. New IPR policy of 2016 of India has been framed with high objectives but till now success of this policy is not evident in real market.

Case of delay in addressing Monsanto controversy¹² and controversies related to Neem, Turmeric and Basmati Rice patenting warns us that we have long way to go.

Endnotes

1. *Agreement on Trade Related Aspects of Intellectual Property Rights, came in force on 1 January 1995.*
2. *Intellectual property and U.S. Economy, available at: <https://www.uspto.gov/learning-and-resources/ip-motion/intellectual-property-and-us-economy>.*
3. *Impact of Intellectual Property Rights Intensive Industries in the European Union, available at: <https://euipo.europa.eu/ohimportal/en/web/observatory/ip-contribution>.*
4. *Incentive theory of Motivation, available at: <https://www.psychologynotesHQ.com/incentive-theory-of-motivation/>.*
5. *U.S. Chamber Releases 2019 International IP Index, available at: <https://www.uschamber.com/press-release/us-chamber-releases-2019-international-ip-index>.*
6. *The Patent Act 1970, Section 2(ja) defines "inventive step" as a feature of an invention that comprises technical advance as compared to the existing knowledge or having economic implication or both and that makes the invention non obvious to a person skilled in the art.*
7. *The Trademarks Act 1999, section 2 (zb) "trade mark" means 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 colours; and--*
 - (i) *in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and*
 - (ii) *in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as*

Remarking An Analisation

to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark;

8. Section 2(1)(e) "geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be. Explanation.--For the purposes of this clause, any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be;
9. Section 9: Prohibition of registration of certain geographical indications.
A geographical indication
- the use of which would be likely to deceive or cause confusion; or
 - the use of which would be contrary to any law for the time being in force; or
 - which comprises or contains scandalous or obscene matter; or
 - which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or
 - which would otherwise be disentitled to protection in a court; or
 - which are determined to be generic names or indications of goods and are, therefore, not or

- ceased to be protected in their country of origin, or which have fallen into disuse in that country; or
- (g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be, shall not be registered as a geographical indication.

Explanation 1.--For the purposes of this section, "generic names or indications", in relation to goods, means the name of a goods which, although relates to the place or the region where the goods was originally produced or manufactured, has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods.

Explanation 2.--In determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods.

10. Sector-wise Contribution of GDP of India, available at <http://statisticstimes.com/economy/sectorwise-gdp-contribution-of-india.php> (updated on 8 Feb, 2019).
11. Section 3: The following are not inventions within the meaning of this Act,—
(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.
12. Monsanto Patent Victory seen as a boost for biotech Investment in India, Mayank Bhardwaj , Rajender Jadhav Available at: <https://www.reuters.com/article/uk-india-monsanto/monsanto-patent-victory-seen-as-a-boost-for-biotech-investment-in-india-idUSKCN1P2092>