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AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS AND ITS IMPORTANCE

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ABSTRACT: The Intellectual Property Rights are those which gives exclusive rights to the inventor or creator for his valuable creation. They are intangible in nature and in the present context of globalization, they are the focal point in the global trade practices. IPR came into existence to serve the basic goal and to protect the interest of individuals. There are several types of Intellectual Property protection like Patents, Copyrights, Trademarks etc. IPR is pre requisite for better identification, planning, commercialization, rendering and there by ensure protection of invention or creativity.

Keywords: Intellectual Property, Patent, Copyright, Trade Marks, Industrial Designs

1.0 Introduction:

The world is driven by modern technology, where new creations and inventions enable any nation to compete with other nations in technology and trade. In the Indian context it can be said that Intellectual Property Rights have a decisive role to play in the overall economic development and trade practices. India ranked 40th in 2020, scoring 38.4 out of 100 on a set of 50 intellectual property related indicators released annually by the United States Chamber of Commerce, Global Innovation Policy Centre.(GIPC) The index evaluates IPR in 53 global economies from patent and copyright policies to commercialization of Intellectual Property assets and ratification of international treaties.

Intellectual Property Rights development in other sense is the development of the society, and the policy framework has to be in consonance in creating awareness. Lack of IPR awareness has resulted in the death of inventions, high risk of infringements, economic loss and decline of intellectual era in the country. There is a need for dissemination of Intellectual Property Rights information, so as to boost indigenous inventions and developments in the field of research and technology.

2.0 WIPO:

The World Intellectual Property Organization(WIPO) was incepted in 1967 at Stockholm to protect the IPR throughout the world. Later it becomes one of the agency of United Nation in 1974. WIPO frameworks as well as regulate various policies concerned to IPR across the globe. The economic, social and sustainable cultural development with preservation of biodiversities, traditional knowledge through a balance and effective international IP system is main objective of WIPO. Besides this, it is responsible to harmonize differences amongst various countries especially between the developed and developing nations by amending international regulation so that each of them get a equal opportunity in emerging world., Intellectual Property Rights, Meaning and Classification

Intellectual refers to a person's ability to think in a logical way and to understand things. IPR are the rights given to the persons over their creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. It is an intangible property of the person, who took pains and hardship for invention or creation. Therefore as per law, legal rights or monopoly rights are given to creator or innovator to enjoy the economic benefits of his/her invention.

Intellectual Property is protected in law, for example patents, copyrights and trademarks which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interest of the innovators and the wider public interest, the Intellectual Property system aims to foster an environment in which creativity and innovation can flourish.

3.0 Types of Intellectual Property

3.1.1. COPYRIGHT

Copyright is a legal term used to describe the rights that creators have over their literary and artistic work. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings. Copyrights laws in India are governed by Copyright Act 1957, which has been amended six times, with the last amendment in 2012. It is a comprehensive statute providing for copyright, moral rights (known as authors rights) and neighbouring rights (rights of the broadcasting organizations, performers etc). The Act provides for exhaustive economic rights in various works that are transferable and enforceable by the authors and legal representatives even when the Copyright in the work has been assigned.

Copyrights can be enforced in Civil and Criminal Courts, civil remedies for the copyright owner include injunction, damages and rendition of accounts. Infringement of copyright is also an offence under the act and may incur imprisonment of up to three years and a fine up to 20 Lac rupees. The Copyright Act provides an enhanced penalty on second and subsequent conviction. The Copyright provides for protection of moral rights of the authors in their work and of performers in their performances. Moral rights of an author consists of the following:

- The right to claim authority of the work (paternity right)
- The right to claim damages in respect of any

distribution, mutilation, modification or other acts in relation to the work if such distortion would be pre-judicial to his/her honor or reputation.

- Moral rights of a performer are the rights to claim to be identified as the performer of his/her performance, except where omission is dictated by the manner of the use of the performance.
- The right to restrain or claim damages in respect of any distortion, mutilation, modification of his/her performance that would be pre-judicial to his/her reputation. Removal of a portion of performance for the purpose of editing is not deemed to be pre-judicial to the performer's reputation.

3.1.2. Copyright Owner

As a general rule, the author of a work is the first owner of copyright in a work. For an original literary, musical, dramatic and artistic work it is the person who created or composed such work and for a sound recording cinematograph film, it is the producer of such work. In case of photography it is the photographer and for computer generated work, the author (first owner of the copyright) is the person who causes the work to be created.

3.1.3. Patent

Patent is an intellectual property right granted to inventor by concerned government office for his novel technical invention. The term invention means solution of any problem in terms of development of product or a process. Among the different types of IPR, patents are considered the most valuable and rightly so. The patentability of any invention needs to fulfill following criteria:

- Usefulness: invention must have industrial applicability or applied for practical purpose.
- Novelty: invention must be new technology which has not been published or available elsewhere in the world before the date of patent filing.
- Non obviousness: Invention which can be done by any ordinary skilled person is obvious and cannot be patentable. Hence invention must

not be obvious for patentability. As per Section 3 of the Patent Act, 1970 the following are not patentable:

- Frivolous invention
- Invention against the natural laws
- Inventions which are not fair to health of human, animal, plant life, environment as well as contrary to public order or morality.
- Discovery of any living thing; discovery of any non living substances occurring in nature; formulation of any abstract theory; discovery of any scientific principle.
- Substance or chemical obtained by mere admixture resulting in the aggregation of the properties; mere arrangement or re arrangement of known devices.
- Invention relating to atomic energy and related to security of India.

In patenting process at one hand inventor is granted exclusive rights which give recognition as well as financial benefits but at the other hand inventor has to disclose all the relevant information in descriptive way to the patent office at the time of filing patent application. The information available in patent document can be seen by anybody and no doubt it gives direction to other researchers to innovate further in the relevant field. In India, office of Controller General of Patents Designs and Trademarks govern the patent registration process. This office comes under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.

4.0. Trademark

A trademark popularly known as brand name in layman's language is a visual symbol which may be a word to indicate the source of the goods, a signature, name, device, label, numerals or combination of colors used, or services, or other articles of commerce to distinguish it from other similar goods or services originated from another. A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it or to authorize another to use the same in return of

payment. Trademark promote initiative and enterprise worldwide by rewarding the owners of trademark with recognition and financial benefit.

Important Criteria of Trademark Registration

As per UK Trademarks Act, 1994, the three main requirements for registering a trademark are as follows:

- The trademark should be a sign or anything that can convey information.
- The sign should be capable of distinguishing products or services of one undertaking from that of another. This is clearly a requirement of distinctiveness of trademarks.
- The trademark is capable of graphical representation to provide precise identification in the trademark registry.

4.1.1. Rules of Trademark Registration

- The word "apple" or an apple device cannot be registered for apple as in this case it is not distinguishable. But it is registered being highly distinctive in case of computers.
- Similarly Camel trademark is registered for cigarettes. The generic term like "furniture" cannot be registered as trademark for chair, table, or similar type of items.
- In case of use of letters or numerals, in certain countries registration is allowed only when at least few numbers of letters and/or numerals are combined or in case of letters the combination of word is pronounceable.
- Similarly, common surnames are not registered in some countries as they are not distinctive in nature.
- Beside these, deceptive sign or trademark which is misleading or violates the public order or morality is not qualified for registration.
- The signs which are reserved for state, public institution, organization or international body cannot be registered as trademark.

4.1.2. Indian Trademarks Act

The Indian trademarks act specifies that any mark which is distinctive i.e. capable of distinguishing goods and services of one

undertaking from another and capable of being represented graphically can be trademarks. Since trademarks do not grant exclusive right that could be exploited, there is no need to limit their validity. But without time limit, trademark validity would lead to unnecessary number of registered trademarks without any applicability. In India, the initial term of trademark registration is for 10 years and thereafter it has to be renewed from time to time. The applicant can apply for trademark registration at Trade Mark Registry Office, Mumbai (head office), Delhi, Kolkata, Ahmadabad and Chennai.

4.1.3. Industrial Design

The creative activity of achieving an ornamental or aesthetic appearance of mass produced products or articles is covered under industrial design. The design can be expressed either by two dimensional or by three dimensional forms. The Design Act 1949 of the United Kingdom refers to feature of shape, configuration, pattern or ornament. Broadly, shape, surface, pattern, lines, color, etc appearance related features of industrial products such as watches, vehicles, mobiles, laptops, different home appliances, buildings, textile designs or handicraft products are covered under industrial design. The aesthetic value or how a product appeals is the main concern in selling besides its technical quality and other aspects. To be protected under most national laws, an industrial design must be new or original and nonfunctional.

Hence industrial design is only applied and are not protected by the design registration. Although the technical features, if are novel could be protected by getting the patent. Beside these, design which is literary or artistic in character such as cartoon, label, leaflet, map, dressmaking pattern, etc is protected under copyrights instead of industrial design. The term of industrial design rights vary from country to country from 10 to 25 years. In India as per Design Act, 2000 duration of protection of industrial design is for 10 years. This duration

can be extended further for 5 years. An industrial design encourages creativity and skill development amongst the individual and manufacturing sector by promoting more aesthetically pleasing products for the society. The design and shape of the product not only create aesthetic appearance but in case of machine, furniture, automobile, etc design is also indirectly associated with ergonomics and plays a major role in customers' comfort.

Geographical Indications

Applications of geographical or locality origin to identify goods for trade purpose is not a new phenomenon. Certain agricultural products have especial qualities that are influenced by geographical climate or soil. "The term Geographical Indication (GI) has been chosen by WIPO includes all existing means of protection of such names and symbols, regardless of whether they indicate that qualities of a given product are due to its geographical origin (such as appellations of origin), or they merely indicate place of origin of a product (such as indication of source). The Champagne, Havana, Darjeeling tea, Arabian horses, Alphanso Mango, Nagpur orange, Basmati, etc are some well known examples for names which are associated throughout the world for their product having specific quality and registered as GI.

Similarly in the field of handicrafts, textiles, etc., specific qualities of the products are related with human factors and their skills. The reputation of products is built up and maintained by masters or creators of that skill belonging to a particular region or locality in best suited climate. The skill is passed traditionally from one generation to the next with great cautions and compromises by particular tribe or region. The, Dhaka muslin, Venetian glass, China silk, Mysore silk, Chanderi sari, Kanchipuram silk saree, Kullu shawls, Solapur chaddar, Solapur Terry Towel, Kashmiri handicrafts, etc are well known examples of Geographical indications for state of the art craftsmanship.

In India, registration of such products can be done under Geographical Indication of goods (registration and protection) Act 1999 and Geographical Indication of goods (registration and protection) rules 2001. The GI act is administered by Controller General of Patents, Design and Trade Marks, the registrar of GI. The central government has established “Geographical Indication registry” at Chennai where right holders from all Indian jurisdictions can register their GI. Under these rules protection under GI is granted for 10 years and renewal is possible time to time for further 10 years.

5.0. Conclusions

- Intellectual Property protection is critical to fostering innovation, without protection of ideas, business and individuals would not reap the full benefits of their invention.
- IPR is very important from the artistic point of view as the artists would not be fully compensated for their creations and cultural vitality would suffer as a result.

- It is beyond doubt that the progress of the economy and society largely depends upon IPR protection.

- In an era of progressive globalization, IPR becomes an integral part of globalized competitive trade and the dissemination of IPR knowledge becomes absolutely essential.

- IPR knowledge should be a part of basic educational system and special impetus must be laid on its promotion and registration which encourages the innovators.

- India is blessed with abundant resources, cheap raw material, labor, technical manpower. Efforts must be to explore IPR and its effective implementation.

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