



INTELLECTUAL PROPERTY ASSETS- AN ESSENCE TO CREATIVITY

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ABSTRACT

In this article I have discussed about importance of intellectual property through various aspects. Just after that I have discussed about various IP assets deeply and their importance in human's life for enforcement of their rights. This article identifies and presents various enactments, procedures, rules and policies which are effective in promoting and assisting in the growth, accumulation, management, and application of intellectual property as an economic asset concerning inventors and the general publics. This article gives a glance of Intellectual Property Assets framework by World Intellectual Property Organization.

Keywords: Intellectual Property, Economic Asset, WIPO.

INTRODUCTION

Intellectual property rights (IPR) are the rights granted to individuals for their mental creations, such as innovations, literary and artistic works, and commercial marks, brands, and pictures. They are generated to grant the inventor exclusive rights to utilize his or her creation for a set duration of time limit. These rights are precisely stated in Article 27 of the Universal Declaration of Human Rights, which states that the right is to enjoy from the protection of moral and material interests of human resulting in authorship of scientific, literary, or creative works and is fully guaranteed. Various IP laws have emerged with the time to secure the creativity and innovations of people by enforcing their rights. Intellectual property rights (IPR) laws were enacted to preserve, secure, and promote the intrinsic worth of such intangible properties. Intellectual property rights (IPR) laws were enacted to preserve, secure, and promote the intrinsic worth of such intangible properties.

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What is Intellectual Property?

Intellectual property is nothing but an umbrella term for all the intangible assets that are those assets which cannot be seen and felt physically. It is the output of human conduct of ideas, inventions, creative expressions, and intellect which is protected by law from unauthorized use of others. Intellectual property creates a limited monopoly and gives ownership right in the protected property. It is present in the form of copyright, patents, trademarks, industrial designs, geographical indications tags, and trade secrets etc. types of incorporeal property. These are the means for development, ownership, commercialization, and management to get return from the investment made.² The significance of intellectual property was originally recognised in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1905). (1886). The World Intellectual Property Organization is in charge of both the accords (WIPO).³

World Intellectual Property Day is observed every year on 26th April across the globe which focusses on motivation to the young mind by implying innovation, creativity and energy to their inventions and bring positive change and transition to a sustainable future.⁴

Importance of Intellectual property in modern era

There is a very high risk of infringement of any innovation by copying ideas and content of the inventor and without knowledge of him. With the increase of IP infringement there was a need of IP laws. An IP asset is said to be just like a physical property of a person which offers them commercial benefits. Therefore, Organizations are dependent wholly on proper patent, trademark, and copyright protection law, while purchasers purchasing goods would require IP to verify that they obtain protected and guaranteed goods.⁵

Intellectual Property Assets provides following benefits: -

1. For protection of unique innovative ideas and creativity-

Competitors try to copy the innovative and unique ideas or the creation of a person who created it. Therefore IP Assets are important to safeguard the rights of the creator from getting infringed illegally. Before IP laws were implemented, there was little to no worth of innovative ideas but after the successful implementation of the same, wide recognition has been provided to the potential ideas by transforming them into commercially viable

² World Intellectual property Organization, <https://www.wipo.int/about-ip/en/> (Last Visited Jun 29, 2022)

³ Drishti IAS, <https://www.drishtiias.com/to-the-points/paper3/intellectual-property-rights> (Last Visited Jun 28,2022)

⁴ GK Today, <https://www.gktoday.in/topics/world-intellectual-property-day/> (Last Visited Jun 20, 2022)

⁵ Mondaq, <https://www.mondaq.com/india/trademark/1107184/importance-of-ipr-in-today39s-world> (Last Visited Jun 20, 2022)

products and services, also it's the responsibility of the proprietor to get protected by the IP laws.

2. Helps in increasing the market value of the company-

Companies should get themselves registered and protected by IP laws as soon as they commence their businesses, this helps them in not only protecting the business from rival companies but also enhances the goodwill and creditworthiness of the company. early licensing and sale, or commercialization of secured IP for goods or services can generate a consistent flow of money as due to the registration and licensing of IP, helps to increase revenue, profits, and market share

For example – amazon recently came up with a new idea of using a modular drone for online deliveries, in addition to this they acquired the patent for the same, implementing such new concepts by firms can result in big earnings and goodwill.

3. Enhances the export business-

Intellectual property increases the opportunities for business in export market without having much risk of infringement and helps in expansion of the business.

For example - McDonald's and Burger King Use to only had franchises in the United States, but today they have franchisees all over the world; they grew their businesses by adopting franchising.

4. To raise capital for the business-

Intellectual property assets can be monetized and commercialized through sale, licence, or use as collateral for debt financing also. Furthermore, intellectual property can be leveraged as an advantage when requesting from public or government funding, grants, subsidies, or loans.

For example, the National IPR Policy allows enterprises to use their intellectual property assets as collateral when seeking finance. As a result of protected intellectual property which can assist a company in raising capital.⁶

⁶ I Blog Pleaders, <https://blog.ipleaders.in/benefits-intellectual-property-rights-modern-era> (Last Visited, Jun 26, 2022)

What are IP ASSETS?

IP Assets are the group of protected and exclusive rights given to the innovators including- patents, trademarks, copyright, geographical indication tags, trade secrets, industrial designs. Which was systematically and strategically selected for their commercial value. Intellectual property has economic worth because of its ability to increase the value and financial return of technology, products, and services.

By using the word asset businesses treat Intellectual Property as their own assets of the company. IP gives legal right which increases the economic value of the product. Human resources have limited commercial importance in the absence of intellectual property since it is interpreted as a non- proprietary unit, because human talent cannot be owned. Intellectual property asset is broadly regarded as a valuable income - generating asset, the worth of which can be expanded through effective strategic management policies. Therefore, use IP Assets has been increased since time and region.⁷

According to WIPO's World Intellectual Property Indicators Report (WIPI), patent and industrial design filing activities started to recover back in 2020, reflecting the adaptability of ideas and inventions even at the mid of a severe worldwide medical and health situation. According to the WIPI, trademark filings increased by 13.7%, patents by 1.6%, and designs by 2%.

WIPO Director General Daren Tang also mentioned that - “WIPO’s World Intellectual Property Indicators Report shows that despite having the deepest economic contraction in decades, intellectual property filings – which is a strong indicator of innovation - showed remarkable resilience during the pandemic period, This shows how enterprises across the globe have emerged with new products and services in the market, as reflected by the double-digit growth in trademarks filing activity in 2020 despite the massive kind of economic shock, enterprises are seeking for the opportunities to reach customers in new ways, open new markets and bring their ideas to the world using IP.”

⁷ Dr Monzur Ahmed, Scholar at Experimentarium, Denmark, Scientific American, Molinos Nuevos (Museo Hidraulica), Murcia, Spain; WIPO

Let's now talk about IP Assets one by one:

Patents

A patent is an exclusive right given to an inventor for his innovation of product and service, which generates any solution to a problem or a new process of doing something. To obtain a patent, all the important information about the product and invention must be revealed to the public in a patent official application.

A patent owner, after mutually agreeing to the terms may grant permission or license to any other parties to use the invention. The owner can sell his right over the invention to any other person, who will become the owner of the patent after getting ownership. The protection ends as soon as patent expires, and the invention enters public realm. After expiration of patent right duration, it can be utilized by anyone, and anyone can take an undue advantage of the same without infringing the patent.

Well, who can or cannot utilize the patent right is decided by the owner for the period until which it is protected, therefore, without the consent of the patent owner no one can commercially sell, import, distribute the invention. Patent protection is approved for a specified period, usually 20 years from the date of the application filed. Patents are primarily territorial rights which are exclusively applicable in the country or region where a patent has been filed and granted, in compliance with the local law.

Patent rights are enforced by the holder of the patent in court of law which has the authority to stop any further infringement. Moreover, the patent owner has the primary responsibilities of tracking, monitoring, detecting, and prosecuting patent infringers. Patent helps in providing incentives and protection to individuals and recognition of creativity.

Patent information - patent information is something which contains significant information about the issued patent such as bibliographic information of the inventor and patent applicant or holder, a detailed description about the claimed invention and relevant technological achievements, and a list of claims outlining the scope of patent protection sought by the applicant.

The reason behind revealing very extensive information by the patent holder about his innovation is that the patent system requires to balance patent holder's exclusive right and his responsibility towards share the information to the public

This disclosure may also help for the development of technology continuously. This material information acts as a foundation for other inventions to develop a technical solution further. Otherwise, the people would have no method of learning about new

and emerging technological breakthroughs.⁸

The duration of security through a patent in India is Twenty years from date of registration and is regulated by the Patents Act of 1970. The Indian Intellectual Property Office is said to be the major patent office in India (IPO).

Some important aspects under the act are mentioned below

Any person may file an application for a patent:

- a) By any person claiming to be the real as well as first assignee in terms of the right to file such an application.
- b) By the legal representative of any deceased person who, immediately prior to his death had the right to file such an application.

Necessary contents of specification

Every specification, whether provisional or complete, must describe the invention and must begin with a title that clearly defines the subject-matter related to the invention,

If the controller asks for an application to be accompanied by a sample of an invention demonstrating about it, then such model or sample as he may require shall be furnished before the application is filed. The application is discovered for a patent to be granted, but such model or sample shall not be used to be part of the specification.⁹

Copyright

According to world Intellectual property Organization a copyright is the legal right granted to a creator of any artistic or literary works. Books, music, paintings, sculpture, and films are all examples of works that can be protected by copyright law, it also includes computer programme, databases, advertisements, maps, and technical drawings, literary works such as novels, poems, plays, reference works, newspaper articles; musical compositions, and choreography; artistic works such as paintings, drawings, photography, and sculpture; architecture, advertisement, maps, etc.

Copyright laws applies only to expressions, and not to process, operational methods or mathematical concepts. Copyright may or may not be accessible for several objects such as titles, slogans, or logos, depending on whether they contain sufficient authorship.

Some countries used to have legislation that required the copyright owner to follow specific

⁸ WIPO, <https://www.wipo.int/patents/en/> (Last Visited, jun15, 2022)

⁹ The Patents Ac, 1970

procedures to get copyright protection. One of those formalities was to include an indicator through which copyright is to be declared, such as the sign or the mark. Since very few nations now apply for copyright formalities, the usage of such marks is no more a legal obligation. However, many copyright holders continue to add the mark as a high visibility approach to indicate that the work is copyright protected and that full rights are preserved, as opposed to a less restrictive license.

In India, the term of protection for original literary, theatrical, musical, and creative works is until author's lifetime plus 60 years, which begins with the year of author's death and is controlled according to the Copyright Act, 1957. In the same way, for the purpose of publication in a newspapers or magazine, dramatic, or artistic works are created by the author under a service or apprenticeship contract, for the purpose of publishing in a newspaper, magazine, or similar periodical.

Owner of the copyright in the work insofar as it relates to the works of publication in any newspaper, magazine, or similar publication, or to the reproduction of the work for the purposes of the author shall be done through initial owner of the work in all other respects, except for the purpose of its publication.

The copyright holder of the previous works or the potential owner of the copyright in the future work may lend the copyright to any individual, totally or partially, generally or subject to restrictions, and for the entire life of the copyright or any part thereof: Provided, however, that the assignment of copyright in any subsequent work shall take effect only once the work is completed.

Unless the assignment clearly refers to such means or method of exploitation of the works, no such assignment shall be implemented to any means or method of exploitation of the work that simply didn't exist or wasn't even in economic use at the time the assignment was made. The creator of a literary or artistic work included within the cinematograph must not assign or waive of the right to obtain royalties to get equal share with the assignee of copyright for the use of such work in any manner other than disclosure to the people of the work together with the film, save to the legal heirs of the creators or to a copyright society for accumulation of cinematograph film in a cinema hall and circulation, of any alternative agreement shall be null and unlawful.¹⁰

There are two types of rights under copyright:

Economic rights – this right is allowed to the owner of the copyright to get rewarded for his work

¹⁰ WIPO, <https://www.wipo.int/copyright/en/> (Last Visited Jun 22, 2022)

of art and creativity.

Moral rights, are the rights which protects the non-commercial and social interests of the author.

There is a right given to every copyright holder that he has the economic right to authorize or prohibit certain uses of their work or, in some cases, to get compensated for the use of his any of the work.

Most countries, such as the Berne Convention, provide automatic copyright protection to the owners of the works, without the need for registration or other formalities.

Nevertheless, often these economies have a system already in place to allow for the discretionary registration of creations. Such voluntary enrolment system can assist in the resolution of property or emergence of disputes, and the facilitation of monetary operations, profits, sales and the appointment or transfer of protections.¹¹

Trademark

It is a kind of service mark that distinguishes one company's goods or services from that of other companies. Intellectual property laws safeguard trademarks.

A trademark protection can be obtained through registration by applying to the national or regional trademark office by paying applicable fees.

Talking about international trademark filing, there are two choices given, first to file an application of trademark with the trademark office of respective country where you need to have protection or WIPO'S Madrid system can also be referred. As a rule, trademark registration grants you the exclusive right to use the registered trademark. This means that the mark may be used exclusively by the holder of trademark or licensed to another party for use against payments. Registration creates legal certainty and strengthens the rights of holder in position, for example, in the case of any legal disputes. The duration of a trademark registration can differ depending, but it is generally ten years. It can be extended indefinitely with the payment of additional fees. Trademark rights are kind of private property rights that are enforced by orders of the court.

Any words or combination of various words, numbers, letters, can perfectly form a trademark. A trademark can be a single word or a combination of words, letters, and numbers. However, trademarks also consist of drawings, symbols, three-dimensional figures such as shape of the product and packaging, non-visible signs such as sounds or fragrances, or color shades used as

¹¹ The Copyright Act, 1957

distinguishing features.

The duration of registration for a trademark in India is ten years from the date of application, renewal can be done in every ten years depending upon payment of the required fee, and is principally governed by the Trademarks Act, 1999. The Indian Intellectual Property Office is the official office for trademarks in India (IPO), Trademark act, the Registration of Trademarks shall be placed at the head office of the Trademarks Registry, in which it is managed to enter all registered trademarks with the names, addresses, and descriptions of the owners, as well as notices of infringement, assignment and transmission systems, registered users' names, addresses, and descriptions, conditions, limitations, concerning registered trademarks that may be prescribed.

For the purposes of trademark registration, the Authority shall categorize goods and services in compliance with the international classification of goods and services, any question concerning to the classification of goods or services shall be resolved by the Registrar, whose decision is said to be final.¹²

Application of registration

Any person who claims to be the owner of a trademark used or presented to be used by him and who wishes to enroll it, must apply in writing in the prescribed manner. A single application for registration of a trademark for different classes of goods may be made, as well as the fee payable for each of such class of goods or services should be made accordingly.

The Registrar may reject the application or accept it with or without legislative changes, adjustments, conditions, or constraints as he may see fit. In the case of a user's rejection or conditional acceptance, the Registration needs to record it in writing the reasons for such rejection or conditional approval, as well as the materials he used to arrive at his choice.

Registration: Unless otherwise directed by the Central Government, the Registrar shall register the said trademark [within eighteen months of the filing of the application], and the trademark shall be registered as of the date on which the said application was made, and that date shall, subject to the provisions of section 154, be considered the date of registration.

When a trademark is registered, the Registrar issues the applicant a certificate in the prescribed form of the enrolment, sealed with the Trademarks Registry's seal.¹³

Industrial designs

An industrial design is the ornamental component of an article in a legal context. An industrial

¹² WIPO, <https://www.wipo.int/trademarks/en/> (Last Visited Jun 22, 2022)

¹³ The Trademark Act, 1999

design may include three-dimensional elements, such as in an article's form, or two-dimensional elements, such as patterns, lines, or color. In general, the holder of a registered industrial design or a design patent has the right to refrain and restrict other third parties from creating, making, selling, or importing articles carrying or embodying a design that is a copy of the owner's design, or substantially a copy, of the protected design when such acts are carried out for commercial purposes for profits.

Industrial designs are however used on a wide-ranging handcrafted design of industries, they consist of packages and containers of furniture and household goods, lighting equipment used for jewelry and electronic gadgets to textiles. Graphic symbols and graphical user interfaces (GUI) also used logos may constitute significant for an industrial design.

In most of the country's industrial designs are registered to get safeguarded as a "registered design" under industrial design law, against people who may copy the ideas. Industrial designs are protected under patent law in some countries and named as "design patents." most countries uses industrial design laws which provide time- and scope-limited protection for "unregistered industrial designs" without requiring registration.

Industrial designs may be secured as artistic works under copyright protection, depending on the specific country's law and the type of creation.

In India, the duration of design law protection is ten years from the date of filing of application and can be stretched for another five years more upon payment of an extension fee under the Designs Act, 2000. The Indian Intellectual Property Office (IPO) is India's premier design office. One of the greatest instances of industrial design is the "iPhone."¹⁴

Some important aspects covered under Indian designs act, 2000

Prohibition of certain designs from being registered— A design that is not genuine, new, or original; or has been In front of the public in India or any other nation through publication in a journal is prohibited under the said Act.

Date of the registration of application; or cannot be distinguished from known designs or combinations of known designs; or includes scandalous or obscene material, must not be registered.

Publication of registered design particulars — The Controller shall, as quickly as possible after the registration of a design, then should open to the public inspection because the prescribed particulars of the design to be published in the manner prescribed.

¹⁴ WIPO, <https://www.wipo.int/designs/en/> (Last Visited Jun 29, 2022)

Registration certificate — whenever any design is being registered, the Controller issues a certificate of registration to the owner. In the case of the loss of the original certificate, or in any other circumstance in which he considers it necessary, it would be deemed to be necessary for the controller to provide one or more copies of the certificate.¹⁵

Geographical indication

A geographical indication is a kind of sign or marking placed on items that have a specific geographical origin and have attributes, characteristics or repute that is derived from that origin. A mark must indicate an item to be originated from a specific location to operate as a Geographical Indication. Furthermore, the traits, features, characteristics, or reputation etc of the products should be primarily owing to its origin. Since, the attributes vary accordingly to the geographical location of production, there is an obvious connection between the product and its originality of the location of production.

A geographical indication right allows individuals and people who has the right to use the GI Tag to restrict and refrain any third party from using it if their product does not meet the applicable and required standards. Taking an example of Darjeeling tea which is protected through geographical indication; however, producers of Darjeeling tea can restrict and prohibit anyone from using the term "Darjeeling" for their tea that was not grown in their tea gardens or produced in accordance with the standards outlined in the geographical indication code of practice.

A protected geographical indication, on the other hand, does not allow the holder to restrict someone from producing a product using the same processes as those specified in the standards for that indication. It just not allows to use the name.

Geographical indications are commonly used for agricultural products, meals, wines and spirit drinks, hand crafted works, and industrial goods.

A geographical indication can be protected through these ways:

1. Sui generis systems that is special regimes of protection,
2. By using collective methods or certification marks,
3. methods focusing mainly on business practices, commercial operations including administrative product approval systems; and
4. Through unfair competition laws.

In general, geographical indicators are used to protect owner's rights on the sale of the goods they

¹⁵ The Indian Designs Act, 2000

produce internationally and regionally both using number of techniques and approaches, typically combining two and more of the approaches listed above. These techniques were established in conformity with various legal traditions and within the context of specific historical and economic circumstances.

Registrations for geographical indications are not limited to a specified duration of validity in many sui generis laws and legislation. This means that unless the registration is revoked, the security for a registered geographical indicator will remain in effect.

Geographical indicators registered as collective and certification marks are normally protected for ten-year durations that can be renewed.

The right to use a protected geographical indicator belongs to producers or the owner residing in the particular geographical area who claims and does meet the product's unique required production standards.

Geographical indications (GI), like all other intellectual property rights, are enforceable by the administration of national laws, often through any legal proceeding and in a court of law. A competent authority, the public prosecutor, or any interested party, whether a natural person or a legal entity, public or private, has right to take an action.

National legislation provides relief by allowing for civil such as (injunctions limiting or forbidding unlawful activities), actions for damages, compensation, etc.¹⁶

CONCLUSION

Since intellectual property is becoming increasingly important globally, realizing its importance in one's life is the need of hour. Every individual and enterprise should now get themselves and their works registered in IP, which will allow them to generate additional income with profits, while also preventing others from stealing their ideas and innovations. However, the difficulty is that IP networks are still readily available or regional in nature. Another significant difficulty for intellectual property is that rights awarded in one jurisdiction may not be applicable in another. This highlights the importance of all countries to have strong intellectual property rules. The government must develop appropriate intellectual property regulations for both individuals and businesses that are neither too strict nor too lax. India has with time implemented a number of improvements to its intellectual property policy in order to increase efficiency and reduce the time required to grant IP Assets. India has ideally positioned itself to prioritize R&D. This has resulted in an increased rating in the Global

¹⁶ WIPO, https://www.wipo.int/geo_indications/en/ (Last Visited Jun 28, 2022)

Innovation Index over time. An effective and equitable intellectual property system can assist all countries in realizing the potential of intellectual property as a catalyst for economic progress and social and cultural well-being. The government must develop appropriate intellectual property regulations for both individuals and businesses that are neither too strict nor too lax.
