



## I P BULLETIN

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### INTELLECTUAL PROPERTY RIGHTS (IPR): DRIVING INNOVATION, GROWTH, AND LEGAL PROTECTION IN THE GLOBAL LANDSCAPE

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#### ABSTRACT

*Through this article, I have tried to explain about the changing scenario of the world regarding intellectual property rights. How ideas are growing, how people are changing their mindset in all the fields what so ever we see around us. A person can't live a normal life without thinking something big. With that very big thinking come great ideas and innovations and motivation to think more and more. And create that thing which can help him to grow. And here arise something which is dangerous. Copying, duplication, Multiple ways are there in which people copy each other let the real person behind that idea be in vain, his ideas, his knowledge, his hard work, his creativity all wasted in a matter of time. In the recent times, we have seen penalty of cases where copyright infringement can be seen in all the field what so ever we know. Intellectual Property Rights are such right which protects the real person behind the curtain, does not let the creative thing die inside the person, and let him to continue his work and do something more great and nourish the society, economy of the country. Intellectual property refers to the legal rights that result from intellectual activity in the industrial, scientific, literary and artistic fields. These are the rights that are given to the owners of the ideas carved out of nature for him, by applying his skill and labour. Intellectual property is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. IPRs play a very important role in the development of individual and the society. IPR protect and encourages the creators for innovation and economic gain. It also leads to a healthy competition among creators and users, which ultimately leads to the progress of the society. The transfers of*

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*technology are important for developmental research. It is helpful in the solution to global challenges in the field of alternate energy resources, new products to the consumers and pharmaceutical development. The agriculture and biotechnology is the part and parcel of IPRs. The industries are interwoven with intellectual properties. It is necessary to stimulate economic growth and encourage fair trading, leads to employment, trade and commerce for economic and social development. The Union Cabinet has approved the National Intellectual Property Rights (IPR) Policy on 12th May, 2016 that shall lay the future roadmap for IPRs in India. The Policy recognises the abundance of creative and innovative energies that flows in India, and the need to tap into and channelize these energies towards a better and brighter future for all.*

**Keywords:** IPR Policy, Biotechnology, Infringement, Industrial Property, Innovation.

## **Introduction**

In the vast growing today's world, ideas can be copied anywhere, anytime, so there is a need to protect the ideas as far as we can. This is done in order to protect the individual interest of the artist or the make(s) of that piece of work. In this world where we are connected from each other with a single click; there are high chances that the things, ideas, etc. can be copied at a single click. In the past few years a massive growth has been seen in the newly creative ideas and over the years it has also been seen that how those are misused. The real person behind that curtain did not get the chance to show up their talent. Some or the other way the work done by the real owner gets destroyed. So there is a chance that the real work isn't paid off. And thus the term Intellectual Property Rights came into existence (IPR). The domain of IPR is very vast. IPR plays a pivotal role in fostering innovation, creativity, and economic development. By granting exclusive rights to creators and inventors, IPR incentivizes them to invest time, effort, and resources into research and development. This, in turn, leads to the generation of new ideas, products, and technologies, benefiting society as a whole. Moreover, IPR facilitates the transfer of knowledge and encourages collaboration through licensing and technology transfer agreements.

The digital age has presented unique challenges to the enforcement of IPR. With the widespread accessibility of digital content and ease of replication, protecting intellectual property has become increasingly complex. Online piracy, counterfeiting, and unauthorized distribution pose significant threats to creators and rights holders. Policymakers and stakeholders must adapt and develop robust mechanisms to address these challenges effectively.

## Types of Intellectual property

Intellectual property can be divided into two major types:

1. Industrial Property which includes patents, trademark, designs, logo etc. and,
2. Copyright which includes the hard work of the artist, musical artist, author etc.

### **1. Industrial Property:**

1. Inventions (Patents) - Patent is a term that is used to protect the exclusive right of ownership of the new invention created by the inventor with a very new ideas and skills he/she has. These can also be sold to another person in exchange for the consideration. Patent also means exclusive monopoly rights over a product for a limited period of time. In India, Patents is guided by The Patents Act, 1970 and is protected by law of IPR. This is done because, there must not be any misuse of the work done/invented.
2. Trademark- Recognising a thing by a unique things present on that thing is called trademark. Some of them are: font (through which the specific thing is written), pictorial representation etc. For example: Parle-G Biscuits can be clearly recognized by that small girl on the packet of the biscuit, similarly Patanjali Products can be identified by the word 'PATANJALI' written over their products.
3. Industrial design – Industrial design refers to the design of something that is the origin of human creativity, skill, labour, and hard work. Or in layman language it can also be said as an ornamental aspect of an article. An industrial design may consist of 3-d features such as: shape of an article or 2-d features such as: colour, lines or shapes. In some countries, industrial designs are protected under patent law as “design patents”.
4. Geographical Indication- A geographical indication is given to that very product which has gained his name/fame from the place it has originated, the use of geographical indication may act as a certification that the product possesses certain qualities which is made by different traditional methods, and enjoy a certain reputation. Ex- A potato variety 'La Bonnette' which is grown on a mere 50 sq. meter sandy soil, with natural fertilizers in a province of France. Now the farmers who grow those potatoes are known by their land and area. This is because the potato grows only on that soil, so GI tag is used to protect the potato from any duplication, and the potatoes are well known from that area.
5. Trade Secrets: Trade secrets encompass confidential and proprietary business information that provides a competitive advantage. Unlike other forms of intellectual property, trade secrets are not registered but are kept secret through reasonable efforts.

Examples of trade secrets include manufacturing processes, formulas, customer lists, marketing strategies, and technical know-how. Trade secret protection relies on maintaining confidentiality, and unauthorized acquisition or use of trade secrets is considered an unlawful practice.

## **2. Copyright:**

Copyright basically means that you have the full right over the product, thing, or the ideas or anything. Nobody without your permission can reproduce, sell, or do anything without your permission. Copyright plays a crucial role in fostering creativity and encouraging the production of new works by providing legal protection and economic incentive to the creator of the work.

The evolution of copyright can be traced in three steps:

1. Primary Stage- Copyright basically came in India with the emergence of British East India Company in 1874. They firstly introduced the Indians with the term 'Copyright'. According to their laws they stated that "lifetime of the author plus seven years after his/her death, and in no circumstances the term can't be extended more than 42 years."
2. Secondary Stage- Later in 1914, with the help of UK Copyright Act of 1911, the British formulated Copyright Act of 1914. However the two acts are formed on similar lines, but there was a major difference that in the Copyright Act of 1914 there was provision for laying criminal sanctions against the wrongdoer of the act.
3. Tertiary stage – In this stage, with India gaining independence, the Copyright Legislation of 1957 was formed, which gained its importance from the Berne Convention. But with the passage of time the real senescence of the act remained the same. Moreover, only changes were done in the charges levied as penalty on the person who didn't followed the law.

Following are the Intellectual Properties Protected under Copyrights:

1. Literally Works- All kinds of work done under the umbrella of literature come under the heading of Literally Works. For Ex- novels, articles, research work, poems, essay, etc. comes under the head of Literally Works. And such works are protected by the laws of copyright.
2. Musical Works- Sometimes the people who are connected with the music and their creations get their work copyright so that their work doesn't get copied, reproduced without their prior permission. Examples of such works are the graphical notations and the lines used in the music industry.

3. **Dramatic Works-** In the dramatic industry new ideas comes up every second in the minds of producers. Hence they transform those immediately to the script. So the things like script, costume designs, the way of dialogue delivery, and various other things are also protected by the way of copyright.
4. **Artistic works:** Paintings, sculptures, drawings, engravings, architectural designs are covered under this category.
5. **Cinematography:** Films, that is, audio-visual representations come under this category, regardless of duration of quality. Nowadays the young generation people are much interested in making videos of different types. So that part is also covered in the subheading of copyright.

Intellectual Property Rights have benefited millions of people throughout the globe. Now the people are know that their hard work is also protected. No one can copy, duplicate, and reproduce it without the permission of the sole owner. IPR is territorial in nature which means it can be limited to one country or a part of the country. This creates a problematic situation in the global era of today. Therefore not only in the source country but IPR needs to be protected in the other countries as well. Ex- MNC works globally, so if they do something new there are high chance of duplication, so in the global era where thing can be copied a single click or in a matter of time, it is necessary for them to protected beyond their territorial area also.

### **Important Conventions governing IPR**

In the recent years intellectual rights are framing an important part in today's world. Nowadays IP rights are performing a major role in Public international law. Following are the conventions that form the substantive part of IPR in PIL. These are the following:

#### **1. The Paris Convention of 1883**

This convention was an eye-opening convention for all the countries around the globe and trailblazer in the field of international protection of IPR. This convention was signed by the 177 countries around the globe. It was signed on 20 March 1883, at Paris, France. The Convention has the following silent features:

- a. **Doctrine of National Treatment-** Each and every country who signed the convention will have to protect the intellectual property right of their citizens as well as the citizens of other countries, who signed the convention in the same manner in which the country protect their citizen IP rights. (article 2 and 3)
- b. **Union priority right:** If a person files an IPR application in a country after filing it in some other country, the effective date of filing it will be the date of application

- in first country; for both countries. Provided that the gap should be within 1 year for utility models and within 6 months for trademarks and industrial designs (article 4).
- c. Temporary protection: Items (eligible for IPR protection) displayed at recognized international exhibitions should be granted temporary IPR protection in respective territories (article 11).
  - d. Mutual Independence- Countries that are party to the convention are mutually independent when it comes to IPR registration in their respective jurisdictions. Countries need not follow IP laws of any other country while processing requests of foreign origin (articles 4 & 6).
2. **Berne Convention (1886)** - Berne Convention was a landmark convention on IPR which was done to protect the Artistic Works created by the peoples around the globe. The Convention also has 177 members in and it got its approval on 9 September 1886 at Berne, Switzerland. In this convention the countries were taught how actually to protect the individual interest of the creator of the work across the globe. It established that a copyright is in place as soon as a creator finishes her work.
  3. **TRIPS**- Trade Related Aspects of International Law Agreement (TRIPS) which came into existence on 1st January, 1995 addresses the difficulty faced by the Paris and Berne Conventions. In some way or the other this agreement gave the member of WTO (World Trade Organisation) to follow up the standard of protection provided by BERNE and PARIS Convention.
  4. **Madrid Convention**- In the growing today's world when each and every thing can be done by the way of internet, The Madrid Convention allowed the users for a single and inexpensive way of international trademark registration. This process eliminated the need of filing, prosecuting, or maintaining separate registration in several countries.

With the passage of time, many things have changed. Now the people need not to worry about their ideas, creative work. They are very much protected by the way of copyright.

Time change and the way of earning also changed. Now the Intellectual Property can be commercialized. These are majorly the new forms of earning. In the recent times commercialization in IP sector has made profitable many people. Some of the major practice which is followed are Licensing and Technology transfer, Patent pooling.

1. Licensing and Technology transfer- Technology transfer or T2 helps negotiate the use sharing and assigning of IP; so that companies and individuals can use government

technology or joint project between the government and the private sector can take place. T2 can make it easy to licence a patent or share confidential information, so both the parties can help each other solve problems or create a new products.

For ex- A person named 'A' invented a formula through which automobiles can run without fuel. Now at a glance he can't apply that to any vehicle because of lack of money with him. So, by the way of technology transfer 'A' will contact the company who is interested in such works, and sells him the formula. Now each and every time when the company sold the product made with A's idea, 'A' will earn money out of it. Licensing provides a great opportunity for the inventor as well as the exploiter; the inventor can earn royalties while the exploiter can generate handsome revenue by using the technology. With the passage of time each and every thing develops its own advantages and disadvantages. Some of them are enumerated below:

#### Advantages:

1. License as a contract: License bestows contractual obligation on the parties. Henceforth, there is no need for formal registration process unlike registration requirement in some forms of intellectual property.
2. Research and development: One of the greatest advantages of IP licensing is that it saves huge amount of money which otherwise would be invested in the process of research and development.
3. Commercialisation of technology: Bringing all the works on the same platform by the way of technology transfer and licencing brings grater revenue to the owner of the business and the real person who helped to do so, i.e. - the real work is paid off.

#### Disadvantages:

1. Risk of third-party intervention: As far as the drawbacks of licensing are concerned, the licensor may lose his control over his technology by way of unwanted third-party intervention, who may exploit his technology through piracy.
2. Licensed IP turning obsolete: Another drawback of licensing is associated with the risk of licensed intellectual property turning redundant. In simpler terms, the licensed technology loses its significance as other technology develops, thereby rendering the licensed IP redundant.

### **Issue of ownership over intellectual property?**

Now, the answer to this question is based on the premise that whether the license rendered is exclusive in nature. The authority over intellectual property shall vest with licensee. In cases where licensee has a right to deal with the technology, with an exception of licensor, the authority shall vest with both of them. However, if Intellectual Property rights over the technology has been granted to others in addition to licensee, then the authority shall extend to those few as well (e.g.: sub-licensing).

**Patent Pooling-** Patent pooling involves a collaboration approach where multiple patent owner pool their patents together to create a portfolio of complementary or related technology. This facilitates cross licencing between the participating entities, enabling them to collectively licence their patents to other and share the licencing revenue. In a layman's language we can say that, Patent Pooling is a means by which the national and international companies use the ideas of different which include some expenses related to R&D. The latest emerging companies like the companies of radios, semiconductors, airplanes, audio and video etc. uses patent pooling to reduce their cost which is going to be incurred on the research and development field.

Human capital development is vital for individuals, organizations, and societies as a whole. By investing in people knowledge, skills, and well-being, countries can enhance their competitiveness, drive innovation, reduce poverty, and promote sustainable development.

But in recent years, it has been seen that by some way or the other something is going wrong with the system of Intellectual Property Rights. Even after somebody has claimed the copyright of something, there is no action being taken. This gives more freedom to the people to misuse someone's hard earned work. But the Government with the help of different organisation has now established a system in which all the things are done in a smooth way. And the creator has now no more to be worried.

In the recent era, we saw the emergence of many of the redressal units which help the real person beside the hard work to be cared off. Some of the major things are:

1. **Tribunals-** Around the world, almost all the countries have now framed a tribunal with the experts who look around to the laws related to Intellectual property and provides an expert solution for it. They contains members who are well specialised and provide a better resolution than the regular courts. Sometimes, Tribunals may have dispute over



all the Intellectual Property Rights such as patents infringement, copyrights violations, and all the other matters related to the Intellectual Property.

2. Special Courts- In addition to the tribunals, we have special courts which monitor all the cases related to the Intellectual Property Disputes. The judges in this court have specialised knowledge in the IP Laws, ensuring efficient and effective functioning of the law at an international level and national level. These courts are present in both National Level and International Level.
3. Mediation-Mediation is a method by which some other person, who has a complete knowledge of the subject matter, comes and solves the problem. He is often called a mediator. This is a very flexible process in which the resolution is done outside at some place. Mediation provides a better resolution in comparison of the court procedures. Resolution taken here are too fast which help in speedy recovery of the individual interest too.
4. Alternative Dispute Resolution (ADR) - In this process a wide range of option is provided to the people apart from the traditional method. The new methods such as arbitration and negotiation provide a quick and safer as well as affordable solution to the peoples. Arbitration is a formal process by which the arbitrator hears the argument of both the parties and provides a fair judgement. This method of resolution provides a quick and cost effective solution to the peoples.

These redressal mechanisms complement the regular court and offer effective means of resolving Intellectual Property Disputes. The choice of the mechanism depends on the nature and complexity of the case, preferences of the parties involved, and the legal frame work or jurisdiction. Also it is important to the peoples to be aware of these options and seek legal advice at time to time whenever intellectual property disputes arises. Peoples must be aware of the remedies available to them if they get into such a problem. Time to time there are various seminars conducted to train the peoples about their rights and responsibility towards the advantages of their IP rights.

So the reimbursement of Intellectual Property Rights has started very early. But with the beginning of revolution, there comes various types of problem with it. Some or the other has done something wrong to infringement the rights of the other person or companies. History has been a best example for this.

Let's discuss some of the major case laws in the field of Intellectual Property Rights and see how others rights have been infringed.

#### Major Case Laws:

##### 1. Novartis V/s Union of India

Facts: Novartis is the largest pharmaceutical company in the field of medicines and drugs. The company filed a patent for anti-cancer drug (GLIVEC 400 mg). This drug is used for the treatment of CHRONIC MYELOID LEUKAEMIA & GASTROINTESTINAL STROMALTUMOURS. This drug is invented from beta-cistriline in the form of Imatinib Mesylate.

The Indian Patents office rejected the application for the patent stating the reason that the drug is not BEING NOVEL under section 3(d) of the Patents Act, 1951. The return application also stated that the drug did not make any change in the therapeutic efficacy over its pre-existing form that is Zimmermann Patent.

Novartis then filed two writ petitions in Madras High Court, one against the order passed by the Patent Office and the second writ petition was filed for Sec. 3 (d) of the patents act which violated Article 14 of the Indian Constitution.

Madras high court transferred the case to IPAB. IPAB dismissed the appeal by stating patentability of the drug GLIVEC which was violating the Section 3(d) of the Patent Act, 1950. Afterwards, NOVARTIS filed a special leave petition in 2009.

Held: Supreme Court rejected the appeal and decided to rule efficacy as the therapeutic t because the subject matter of the Patent is compound of the medicinal value. The key observation is the judgement given by honourable court is to prevent the evergreening of the patented product and this gives immense help to those individuals who can't bear the cost of the lifesaving drugs produced by the pharmaceutical company. The court made it clear that through the case that the Patent Act should contain a clear indication that the food and medicines and other curative devices were to be made available to public at the cheapest price with giving reasonable compensation to the Patentee.

##### 2. Natco V/s Bayer

This was the first landmark case of compulsory licensing in India, obtained in the pharmaceutical field. In this case NATCO, a generic drug manufacturing company

requested BAYER for giving it a voluntary licencing for drug “SORAFENAT” branding as “NEXAVAR 200mg”.

The request was denied. Therefore NATCO filed an application before the controller of patents for grant of compulsory licencing. After hearing claims from both the parties, NATCO finally receives the licence from the Drug Controller General of India for manufacturing the drug. The controller of the patents analyzes 3 requisite for granting compulsory licencing:

- a. Cost of NEXAVAR 200 mg was Rs. 280000 per patient per month which was provided by NATCO at Rs. 8800 per person per month.
- b. The second observation was made that there was a requirement of 23000 medicines bottle and only 200 were supplied every month.
- c. The controller also pointed that the invention was not worth in India.

Copyright are the basic element that helps the creator to get motivated ahead, and showcase his talent again to the society and to motivate others also that the work which he/she will so will not be duplicated, misused, etc. His work will be protected and if anyone does so then, many laws are there now and the wrongdoer will be punished. In recent years, we have seen that in India many chairs related to Intellectual Property Rights have been given to various institutions to realm to the success of IPR. Also people are now aware of the fact that how they can use the copyright, what the ways to do so are. Also by the virtue of Government of India the filing of patent/copyright or anything related to IPR has been made very easy and the process has been completely free. Anyone can access that from anywhere, anytime without any restriction. The process of filing of IPR has been made very simple.

Firstly, the person who need to get the right need to file an application online and,

Secondly, the person needs to wait for 45 days for his application to be accepted or rejected by the Patent Office where he filed the application.

If His application is considered to be of his own then he will be given the patent/copyright or what so ever he demands and if there is duplication he will not be given the Patent or the Copyright over that very product or the things which he has made or created. These rights can be obtained by anyone whether it is institution or a firm or a private individual.

Copyrights can be infringed anytime, anywhere. Be it the place of online sites or even we are working in offline stores or making a video. These all thing comes under the venue of copyright and violation of Intellectual Property Rights.

## **Conclusion**

In a conclusion I must say that Protection of Intellectual Property has now become mandatory and each and every person must abide by the laws of Intellectual Properties. This will help the world to grow new talents and creative minds even from a small town. In some way or the other this protection will help to change the society and boost the economy of the countries. By the way of Protection artist's hard-work will be saved and will motivate him to work more and more because there is someone standing before to safeguard, if their IPR are infringed.

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