

Intellectual Property Rights

By Rajiv Tuli, FCA, LLB , New Delhi



INTRODUCTION

The term “Intellectual Property Rights (IPR)” includes variety of intangible / specific legal rights which the authors, inventors and other IP holders may hold and exercise in relation to their intellectual creations. The idea behind the conferment of these rights is the commercial exploitation of products of the mind or the intellect by or for the benefits of their creator /inventor to exclusion of all others for a certain period.

The intellectual property plays a momentous role in furtherance of economic interests of its holder and to a large extent of the country as well. In this era of economic revolution and globalization when new type of inventions and discoveries are being made every day, it has become crucial for the persons creating / inventing / developing such thing to safeguard their legal and commercial interest arising / accruing through such creation of mind. There are number of studies revealing the instances of rapid increase in the piracy of Intellectual Properties. Thus appropriate measures must be taken to prevent any untoward piracy of the prized intellectual property of the creator. In short, the need for taking suitable measures to protect the intangible property is indispensable today. At global level, the term Intellectual Property Rights covers various rights, such as the Trademark, Patent, Copy Right, Design, Geographical Indication, Plant Varieties, Trade

Secret, Semi-Conductor, etc. India being a signatory to the prominent international conventions, such as Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, World Intellectual Property Organization (WIPO), on reorganization, enforcement and protection of such intangible rights from time to time keeps on amending and updating its national legal provisions. At present, the IPRs which can be registered, enforced as well as protected, under the following heads –

1. The Trade Mark Act, 1999; A trade mark (popularly known as brand name) is a visual symbol which may be a

combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

2. The Patent Act, 1970; A Patent is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent.

3. The Copyright Act, 1957; Copyright is an exclusive right to copy or reproduce a work, is conferred on a person, by operation of law.

4. The Designs Act, 2000; Design means “features of shape, configuration, pattern or ornament or composition of lines or color or combination thereof applied to any article whether two dimensional or three dimensional or both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trade mark, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957.

5. The Geographical Indications of Goods (Registration & Protection) Act, 1999. The term Geographical Indications refers to the specific link between the goods and place of production evolved, i.e. identification of a product that may be associated with these provisions afford similar / equivalent protection term, civil / criminal remedies and variety of other benefits matching to international levels and have a complete set of rules and regulations governing formalities and procedure of registration, fee etc.

PROFESSIONAL & IPR : Intellectual Property has grown into one of the world’s biggest and fastest-growing fields of law thereby necessitating the demand for Professionals well

The author may be reached at contact@legale-services.com

versed in this area to deal with (IPRs) across the national and international borders.

Eligibility: Contrary to popular belief, a graduate in any discipline is eligible to write the trademarks law exam conducted by the registrar of trademarks and be registered as a trademarks agent. However, Lawyers and Company Secretaries can be agent without giving exam. On the other hand to qualify as a patent agent, a degree in science, engineering or technology, from any university in India, is a prerequisite. All advocates having a science degree can file patent applications for their clients and they do not have to register themselves as patent agent with the patent office. Today there are various certificates & Diploma Courses available in the market, aspirants can have the same for specialization.

Opportunity: There's an ocean of opportunities in IPR and related fields. As companies move from bricks-nmortar to the knowledge economy, there will be a premium on IPR professionals, such as trademark agent, patent analysts, patent agents, IP consultants, valuation experts, portfolio managers etc.

After gaining through knowledge of various dimensions and technicalities associated with Intellectual property, aspirants can opt for lucrative career avenues in various global and national organizations. These organizations are constantly on the lookout of suitable and competent professionals to handle their Intellectual property issues.

- ❖ An IP professional is a person who is able to recognize intellectual property, and is able to classify an identified intellectual property into its various forms.
- ❖ Secondly, once an intellectual property is identified, the IP professional, is able to provide cost effective solutions to fortify the intellectual property to the fullest extent possible.
- ❖ Once intellectual property rights are obtained the IP professional, typically an IP manager, optimally manages these rights by timely renewals, periodic

audits, being alert about breaches, extending the rights to other countries and products or services.

- ❖ In the event of a breach of these rights which may be in the form of infringement, piracy, counterfeiting, passing off or violation of the terms of an agreement, again an IP professional, typically an IP litigator - is able to advise the intellectual property right holder on the best possible solution not only to seal the breach but also to prevent its recurrence in the future.
- ❖ Another class of IP professionals can be involved in IP transfers. These professionals help in negotiating and preparing the documents needed for the assignment or license of IP rights from one person to another often from one country to another. The IP professionals are also responsible for supervising due diligence of the IPRs being transferred.
- ❖ For identifying new technology and progress of an organization, again an IP professional such as a Patent Analyst or an IP researcher is able to conduct searches in these areas, map the search results and provide danger free unhindered routes for future growth. Therefore, IP professionals assume several roles in the furtherance of the commercial and technological progress of an organization.
- ❖ Last but not least, an IP Professional particularly Chartered Accountant can focus on Valuation of Intellectual Property (IP) and Audit of IP. Valuation and Audit of IP plays crucial role on various purposes such as sale & negotiations, taxation, raising funds & securing finance, profit sharing-when there are multiple owners, assessing damages claims in dispute.

