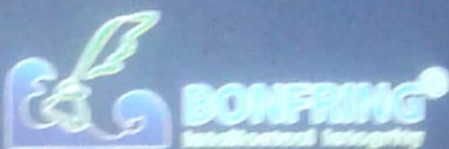


# Insight of IPR: Concepts and Issues



Dr.R. Radhika  
Dr.S. Sundari Bai  
Dr. Mallika Baskar

All rights reserved. Authorized reprint of the edition published by Bonfring. No part of this book may be reproduced in any form without the written permission of the publisher.

*Limits of Liability/Disclaimer of Warranty:* The authors are solely responsible for the contents of the paper in this volume. The publishers or editors do not take any responsibility for the same in any manner. Errors, if any, are purely unintentional and readers are required to communicate such errors to the editors or publishers to avoid discrepancies in future. No warranty may be created or extended by sales or promotional materials. The advice and strategies contained herein may not be suitable for every situation. This work is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If professional assistance is required, the services of a competent professional person should be sought. Further, reader should be aware that internet website listed in this work may have changed or disappeared between when this was written and when it is read.

Bonfring also publishes its books in a variety of electronic formats. Some content that appears in print may not be available in electronic books.



ISBN 978-93-86176-42-4

Editors

Dr.R. Radhika

Dr.S. Sundari Bai

Dr. Mallika Baskar

Bonfring

309, 2<sup>nd</sup> Floor, 5<sup>th</sup> Street Extension, Gandhipuram,

Coimbatore-641 012.

Tamilnadu, India.

E-mail: [info@bonfring.org](mailto:info@bonfring.org)

Website: [www.bonfring.org](http://www.bonfring.org)

Phone: 0422 4213231

# Foreword



भारत सरकार  
Government of India  
सूक्ष्म, लघु एवं मध्यम उद्यम मंत्रालय  
Ministry of Micro, Small & Medium Enterprises  
एमएसएमई - विकास संस्थान  
**MSME - DEVELOPMENT INSTITUTE**  
65/1, जी एम रोड, गुंदी, चेन्नई - 600 032  
65/1, GST Road, Guindy, Chennai - 600 032



Message from

**S.PANIKKASSERY**  
Director,  
MSME Development Institute,  
Govt of India, Chennai.



*In the present era of innovations in industry and academics, several intellectual properties are being generated. Even the creators of these Intellectual Properties are unaware of it. Proper awareness on various components of Intellectual Properties and methods of protecting them like any other tangible property will help the industrial/academic community.*

*I am glad to note that Sri G V G Visalakshi College for Women, Udumalpet, is bringing out a Compilation titled "Insight of IPR Concepts and Issues" which contains papers from experts, academicians and eminent scholars.*

*I hope that this compilation of papers will help the academic and industrial researcher to understand the concepts of IPR in the right perspective.*

  
**S.PANIKKASSERY**  
Director

# Preface

---



Intellectual Property (IP) refers to creation from the mind of any person (inventor) such as inventions, innovations, literary work, artistic works, designs, symbols, names, logos, images. IP plays an important role in providing a competitive edge to any organization. The tangible assets like inventions, designs, software, brand name and other creative and innovative ideas are more valuable than physical assets. It is necessary to protect these creations in order to enable organizations to earn recognition or financial benefits. In this scenario, Governments of various countries protect the innovative ideas of the inventors through Intellectual Property Rights (IPR). Recently, IPR has become a central issue in the developed and developing countries.

Indians are actively engaged in various research and development activities of diversified nature. Many of these research and development leads to different forms of IPR, which are likely to be commercially exploited unless protected by IPR. In this scenario, I come to understand that the Post Graduate & Research Department of Economics, Department of Economics with Logistics and Freight Management and Women Studies Centre of Sri G.V.G Visalakshi College for Women, Udumalpet, Tamilnadu is planning to release a book entitled "Insight of IPR: concepts and Issues", which is very timely and useful to all communities and especially to Faculty members, Researchers, SME's, Entrepreneurs and Student Communities.

I congratulate and wish Sri G.V.G Visalakshi College for Women all success for their activities.

*M. Kantha Babu*

**Dr.M. Kantha Babu**

# Principal's Message

---



It's my privilege to thank MSME for considering the proposal by providing resources of the Post Graduate & Research Department of Economics magnanimously and joining hands with the department for the conduct of one day national level colloquium on "Building awareness on Intellectual Property Rights". The wheels started rolling months ago when the proposal was submitted to MSME and right from the day one onwards the efforts of the faculty is highly appreciable at each stage in the execution of the program. I congratulate the HOD of economics, organizing secretary and other faculty members of the department for their meticulous efforts in planning the colloquium resulting in the conglomeration of varied dimensions of IPRs. This edited book is the outcome of colloquium which is most vibrant, hot topic, significant in today's business environment; would serve as a reference guide to the potential entrepreneurs. I would like to thank the editors who have laboured to bring out it as a book in a printed form and to contributors for their valuable contribution.

**Dr.K. Punithavalli**

# Director's Message

---



The title of the colloquium is a breakthrough in the academic journey of the scholars and entrepreneurs. My heartiest facilitation to the MSME Department for having accepted our proposal and has rendered a bountiful support financially and has volunteered to share their expertise to our students. In this knowledge era, dissemination of information is very important and we are thankful to MSME Department for such an ascent.

I would like to extend my felicitations to our generous and philanthropic management for their continual and untiring support in all our academic ventures. Blessed with a visionary zeal to forge forward, our secretary untiringly renders her wholehearted support in running such a programme.

My earnest felicitation to the principal who steer the ship, with a mind and heart to explore new avenues and new horizons of thought. May her continue in such a mission, successfully.

The Department of Economics and Department of Economics with Logistics and Freight Management needs high Commendation. They are there, to avail innovative and progressive plans chalked out by UGC, MSME and Niddhi Aayog and so on. My hearty appreciation and congratulation to the Department members, who have persevered to turn the attention of MSME to a rural college like ours in Udumalpet.

In the sea of mediocrity, these pockets of excellence keep the academic tenor vibrant. This colloquium assures the emerging entrepreneurs and scholars that these are the sign ports and that they have something to carry with them and project themselves as successful entrepreneurs. My hearty felicitation to the organisers.

**Dr.J. Manjula Jayaraman**

# Acknowledgement

---

A knowledge-based product requires protection so that the investment made by the organizations in R&D may be justified. India acknowledged in principle the case for strict IPR protection, but in India, this could be done only in phases suited by its own ground reality. As globalization deepens further, it's also increasingly encompasses the sharing utilization and enjoyment of IP products like Innovations, Inventions, designs, books etc. India is fast developing into a technology producing country especially in the field of biotechnology, information technology and pharmaceuticals sector. Therefore, development of stringent and staunch IPR system is an urgent requirement but it has not found a considerable amount of empirical and theoretical value in relation to the IPR concepts and issues. Hence, the present volume: "Insight of IPR: Concepts and Issues" is a modest attempt in this direction. This volume is an outcome of the research papers submitted to the National level colloquium sponsored by MSME. The theme of the conference was "Insight of IPR: Concepts and Issues" held at Sri G.V.G. Visalakshi College for Women (Autonomous), Udumalpet on 17.12.2015.

We are grateful to our distinguished Managing Trustee and Secretary Smt. Sumathi Krishna Prasad for providing us the financial support.

Out thanks to Dr.J. Manjula, Director for a constant academic support and encouragement.

Our Principal, Dr.K. Punithavalli is gratefully acknowledged for dedicated and deterministic approach in enabling a conducive work atmosphere not only for the conduct of the colloquium but also for bringing out the proceedings in the form of publication.

We owe our deep sense of gratitude to Mr.S. Panikkassery, Director of MSME, Chennai and Mr.R. Chandraprabhu, Assistant Director, Economic Investigator, MSME, Chennai for conducting the national level colloquium effectively under the theme "Insight of IPR: Concepts and Issues" and extending their full co-operation and financial assistance. This edited book is the outcome of their full-fledged support.

We are extremely proud to have the outcome of the colloquium as an edited book. It was possible only with contributions of contributors. We would like to extend our acknowledgement to the lucid contributors of all authors for their valuable views on the Concepts and Issues of IPR. We are indebted to the eminent professor Dr.M. Kantha Babu, who designed the Wrapper, the originality and creativity of the wrapper design is a illustrative example of how the features of Intellectual Property Rights need to be secured and protected. This creativity has immense value and it proves to be the exemplary that no one can copy the Patent Right, Trademark, Designs which are requisites of Intellectual Property Rights. We are happy to thank our eminent Professor Dr.T. Alagumani ever engaged author in the field of Intellectual Property Rights working in the Department of Trade and IPR, Tamilnadu Agricultural University who rendered her moral support in reviewing the articles even inspite of her busy schedule.

In the end we would like to thank for the qualitative harmonious support of the faculty members Department of Economics and Economics with Logistics and Freight Management and the Women Studies Centre for their whole hearted supports and their kind cooperation.



# Introduction

---

In the present era of growing innovations & inventions in the field of production with dynamic changes in the pattern, trademarks, quality, design and Branding has necessitated the emergence of the concepts and Issues in IPR. The challenges faced by the new innovators is mainly to reserve their trade secrets. Trade secrets which have commercial value must be protected. Copy right is a legal protection which encompasses the view "All rights reserved". Geographical Indication is a sign which enables customers to identify the product's special characteristics and place of origin. The rights of the patent owner are preserved by his "Compulsory licenses". Designs must be protected for the owner so as to enable him to prevent the manufacture sale or importation of articles embodying a design which is a copy of the Protected Design.

The principal objective in protecting intellectual property rights is to encourage the creative activity of the Creators. IPR signifies the advanced knowledge in the form of new ideas technology process and products having economic and commercial potentials. A modern and well enforced driving force could be a driving force and one of the strong imperatives in the process of Economic Reform.

In the edifice of this background, the publication of this edited book "Insight of IPR: Concepts and Issues" contains 32 papers. Out of these, 3 papers are contributed by eminent resource persons and the remaining articles have been selected at a national level colloquium titled "Building awareness on Intellectual Property Rights" organized by the PG & Research Department of Economics and Economics with Logistics and Freight Management and Women Studies Centre in Sri GVG Visalakshi College for Women (Autonomous) Udumalpet on 17/12/2015. Thematically these papers are arranged in two sections. The FIRST SECTION deals with the papers related to the various issues of IPR and the SECOND SECTION includes the Concerns and Issues in IPR. Intellectual Property Rights (IPRs) are rights awarded to Individuals or Organizations the creative and incentive works. So the section I deals with the concepts which include copy right and related rights, trademarks, geographical indications, industrial design, Patents, layout designs of integrated circuits and trade secrets. From the contributors some of the views were covered are technology which

has become increasingly important dominant factor in international competitiveness. Investment in technology, infrastructure and human resource development are taken into consideration. In order to build a strong and competitive economy, necessary. Much awareness building is necessary for the socio-economic impact of strong IPR protection. Section-II covers a close look about some of the important provisions in TRIPs and TRIMs agreements under the WTO framework from Perspective of developing countries. International bargaining in the form of trade negotiations has therefore become extremely problematic to the developing nations. How the amended act has made significant changes in the areas of patentable inventions, terms of patents and compulsory licensing are covered? How guarding the creativity by Intellectual Property Rights has been included in the laws governing through various instruments such as Patents, Trademarks, Copyright, Designs, Geographical Indication and sui generis system? Many contributors have come up with view that Intellectual property right is not only for wealth creation but also for providing employment. India is capable of becoming a conspicuous leader of the knowledge-based society. Furthermore, India would become a very attractive destination for R&D by private concerns, as a result of which quality drugs would become available to the public. India's patent law is one of the best in developing countries. Therefore, the new IPR regime needs to be viewed as an opportunity rather than a threat. Production, protection, commercialization and incorporation of Intellectual Property Rights in development of strategies can help India play in world markets on one hand and overcome the deprivation of hunger within the country.

S. No	Title / Author(s)	Page No
<b>Section I: Conceptual Framework of IPR</b>		
1	TRIPs, WTO and IPR <i>R. Pazhanichamy</i>	01-03
2	Patent System in India: An Overview <i>K. Anandan</i>	04-06
3	IPR: A Tool to Make "Make in India" Globally <i>M. Mehar Banu and M.A. Mohamed Irfanulla</i>	07-11
4	Management of Intellectual Property Rights in India <i>Dr.A. Sangamithra</i>	12-17
5	An Overview on Intellectual Property Rights in India <i>Dr.R. Shantha and K. Renuka</i>	18-23
6	Tools for Intellectual Property Rights <i>S. Priya</i>	24-28
7	Intellectual Property Rights Concepts and Types <i>G. Shanmuga Priyaa</i>	29-32
8	Basics of Intellectual Property Right <i>R. Bharathi</i>	33-36
9	Basics of Intellectual Property Rights <i>Sree Bhagya Lakshmi and Dhivya Keerthiga</i>	37-41
10	Study on Intellectual Property Rights <i>A. Vasanthi</i>	42-45
11	Intellectual Property Rights in India <i>S. Bhavani Priyadarshini</i>	46-49
12	Patenting of Inventions <i>Dr.T. Alagumani</i>	50-53
13	Intellectual Property Rights <i>N. Manimehalai</i>	54-57
14	India's Influence on Intellectual Property Rights and its Challenges <i>Dr.R. Radhika and R. Anbuselvi</i>	58-62

## Section II: Issues in IPR

- |    |   |         |
|----|---|---------|
| 15 | Intellectual Property Rights: A Proactive Tool for Sustainable Development<br><i>Dr.K. Punithavalli</i>   | 63-65   |
| 16 | Patenting in Biology<br><i>Dr.K. Shobana and Dr.S. Uma Maheswari</i>  | 66-70   |
| 17 | Ethical Reasons for Intellectual Property Rights Reforms<br><i>P. Arunkumar</i>   | 71-74   |
| 18 | Innovation and Intellectual Property Rights in India<br><i>C. Athena</i>  | 75-78   |
| 19 | Patent System in Intellectual Property Rights<br><i>S. Punithavathi</i>   | 79-82   |
| 20 | Significance of Intellectual Property Rights for Biotechnology<br><i>S. Kalaichelvi</i>   | 83-90   |
| 21 | The Government of India's Role in Promoting Innovation through Policy Initiatives for Entrepreneurship Development<br><i>Dr.G. Jayanthi and M. Arthiama</i>     | 91-97   |
| 22 | Impact of Intellectual Property Rights in Accounts Management<br><i>S. Shankarii and Priya Srivastava</i>   | 98-103  |
| 23 | G.D. Naidu: A Motivational Force of Innovation & IPR<br><i>Dr.A. Mohanasundaram</i>   | 104-105 |
| 24 | Intellectual Property Rights and Indian Agriculture<br><i>P. Rathinam</i>   | 106-110 |
| 25 | Perspectives of Rural Entrepreneurship in India<br><i>P. Anusha Prabha and V.J. Surya Subam</i>   | 111-114 |
| 26 | Intellectual Property Rights Awareness among Small and Medium Enterprises in India<br><i>T. Mahadevaswamy</i>   | 115-120 |
| 27 | Innovative Initiatives to Promote Women Entrepreneurship through Women Entrepreneurs Association of Tamil Nadu [WEAT]<br><i>R. Jaishankar and V. Stefy Viji</i> | 121-129 |

28	Building Awareness on Intellectual Property Rights <i>C. Arjunan and G. Smitha</i>	130-134
29	Case Study: Protection of Geographical Indication in India-Case Study on 'Darjeeling Tea' <i>Dr.D. Manimozhi and Dr.S. Sripriya</i>	135-141
30	The Economic Cost of IPR Infringement in Spirits and Wine <i>Dr.M. Radha, R. Rajini and Dr. Mallika Baskar</i>	142-149
31	GI Protection for Indian Handicrafts-Roadmap for Socio-Economic Development <i>Dr.P. Geetha, Dr.G. Yamuna and Dr.K. Kaliammal</i>	150-155
32	Geographical Indications: Which way Should India Go <i>Dr.S. Sundari Bai and J. Geetha Mani</i>	156-158

# TRIPs, WTO and IPR

R. Pazhanichamy, Ph.D Research Scholar, Department of Economics, Bharathiar University, Coimbatore.

## I. INTRODUCTION

THE post liberalization period during 1995 Intellectual Property Rights (IPRs) have been subjected to the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs) which is overseen by the World Trade Organization (WTO). Although this does not determine national legislation for patents, copyrights, trademarks and other forms of IPRs. The domestic law must establish the property rights laid out in the agreement's 73 articles. Additionally, the robust dispute settlement mechanism (DSM) which is a central aspect of the WTO encompasses International disputes about IPRs. There is little settled or uncontested about the TRIPs agreement and the global governance of intellectual property rights (IPRs). This suggests that the provision of training and technical assistance to build capacity itself is part of the reproduction of the dominant (TRIPs constituted) view of IPRs and is therefore a political project rather than merely technical provision.

The trips agreement presents WTO members with a single framework for dealing with the diverse aspects of intellectual property; it consolidates WIPO's fragmented set of sectoral treaties under a single multilateral agreement, and sets Minimum standards for the national legislation of all WTO members. National legislatures are required to ensure IPRs method for this protection is only stipulated as regards its consequences, not its form. TRIPs are explicitly concerned with ends not means. However, national legislation enacting a country's TRIPs undertaking is subject to the WTO's DSM, and therefore Governments can appeal when the national laws of a particular country are seen to impede the rights of other nationals. This has meant that many developing countries have effectively enacted legislation that is broadly similar to that in Developed countries for reasons of diplomatic safety.

## II. SCOPE OF IPR

The scope of IPR is modified to some extent by the agreement, the main area of discontinuity with prior practice is in the national protection of IPR. By bringing Intellectual property under the purview of the WTO, the agreement stipulates that 'procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade' (GATT, 1994: A1C, 19). The protection of IPRs must not be used to disrupt trade flows. If only nationals are protected this acts as a barrier to non-nationals who would receive no protection for the IPR element of goods or services they wish to export to that jurisdiction.

The inclusion of the TRIPs into the Uruguay Round final settlement was the culmination of a general strategy on the part of the USA and EU to force developing countries to adopt multilateral agreements in sectors which they had hitherto resisted (Steinberg, 2002). By withdrawing from their previous commitments under GATT 1947, and therefore terminating their obligations under that agreement, the USA and EU forced the developing countries to accede to a much wider agreement under the WTO if the latter wished to regain the trade arrangements with which they had started the Uruguay Round. For the developed countries TRIPs compliance has

involved some legislative reorientation and occasionally new laws. For developing countries, often with little or no tradition of IPRs, compliance is considerably more difficult and expensive to achieve. In recognition of these difficulties developing countries have been offered extensive technical support under article 67 of the agreement. For developing countries' governments this capacity building for IPRs can have clear benefits, enabling newly conversant legislators, negotiators and specialists to take advantage of the flexibilities within TRIPs.

### III. PROBLEMS WITH 'ENCOURAGING' THE TRIPs MIND-SET

#### *Capacity-building Programmes*

Capacity-building programmes aim to help countries reorient national legal regimes in line with TRIPs when they have no tradition and expertise in the field of IPRs, or if their legislative experience is different from the TRIPs model.

The American Chamber of Commerce, trade associations and American embassies, a network that gathers and reports on the minutiae of [countries'] social and legal practices when it comes to US intellectual property' (Drahos & Braithwaite, 2002: 101).

*Priority Watch List* countries can be subjected to considerable bilateral pressure (threats of withdrawal of certain GSP 'privileges' and enactment of WTO-DSM cases against them); *Watch List* countries are essentially 'on notice' and are regarded as trying to achieve in good faith, if having not actually achieved, the policy and enforcement outcomes desired by the USTR.

The USTR's assessment there is little else on which to base an evaluation of various capacity-building and technical-assistance programmes as there is an almost complete lack of evaluation studies. Hence, implicitly the USTR's judgement has become the standard against which the effectiveness of programmes is measured.

### IV. THE EXTENT OF ASSISTANCE PROGRAMMES FOR CAPACITY BUILDING

A number of agencies have been active in helping developing countries construct the capacity to fulfill their TRIPs-related obligations. Geneva WIPO runs the 'Co-operation for Development Programme' providing support and training, and in Munich the European Patent Office (EPO) offers various programmes and regional bilateral initiatives.

Swedish Patent and Trademark Office's extensive support for the Latvian government's activities regarding IPRs. Other organisations, ranging from multilateral agencies like the WTO and the United Nations Conference on Trade and Development (UNCTAD) to NGOs, also provide various forms of support.

The WIPO 'Co-operation for Development Programme' has two elements: documentation collection; and assistance. The Collection of Laws section has centralised the archiving of legislation received by WIPO. Texts are available electronically to all members to aid the drafting of their own legislation. The assistance programme is conducted by express agreement with the WTO and aids developing countries draft TRIPs-compliant legislation. Draft laws and other legal instruments circulate between a government's legislative team and WIPO a number of times before a final draft are settled on. This may also include visits by WIPO officials

or invitations to key legislators and/or civil servants to Geneva for consultations. (For instance, during 2000 and 2001 WIPO sent a number of expert missions to India to aid the modernization of India's patent office.) Once the law has been enacted, WIPO offers national workshops, judicial symposia and training for enforcement officers. As WIPO materials note: 'To the extent possible the advice given takes into account the specific needs of the country concerned, in harmony with its legal, economic and political system'.

## V. CONCLUSION

The TRIPs agreement and the political economy of its negotiation, alongside the international (industry-based) lobbying groups involved in establishing and expanding the (specific) agenda of IPR governance, all fit with the notion of 'thick interconnectedness'.

The *globalised* interconnectivity of the political economy of the knowledge commoditization becomes more pronounced by the day. However, there remains only a 'thin community' as regards the norms of IPRs on which the TRIPs agreement relies. Furthermore, the social values of this (global) community are largely ignored.

The current settlement for IPRs may work well for the developed countries, but for developing countries the central bargain at the centre of IPRs makes little sense. The private rights of IPR 'owners' in the richer states are being purchased at too great a social cost in the developing world. Before TRIPs this was essentially recognized in the *de facto* acceptance of widespread 'piracy' outside the developed countries.

## REFERENCES

- [1] I.M. Azmi, "TRIPs compliance in Malaysia: the legislative response", *Journal of World Intellectual Property*, Vol. 6, No. 5, pp. 745-761, 2003.
- [2] I.M. Azmi and R. Alavi, "TRIPs, patents, technology transfer, foreign direct investment and the pharmaceutical industry in Malaysia", *The Journal of World Intellectual Property*, Vol. 4, No. 6, Pp. 947-976, 2001.
- [3] B.L. Goldstein, S.J. Anderson and J. Waterman, "Foreign contributions to China's WTO capacity building," *China Business Review*, Vol. 29, No. 1, pp. 8-15, 2002.
- [4] R. Higgott and M. Ougaard, "Introduction: Beyond system and society-towards a global polity," *Towards a global polity*. London: Routledge. Pp. 1-19, 2002.
- [5] K. Kalan, "Property rights, individual rights and the viability of patent law systems," *University of Colorado Law Review*, Vol. 71, No. 5, pp. 1439-1478, 2000.
- [6] World Bank Global Economic Prospects and the Developing Countries (Washington, DC: International Bank for Reconstruction and Development, 2002.
- [7] World Intellectual Property Organisation (WIPO) (no date) Assistance in the field of intellectual property legislation, at [http://www.wipo.int/cfdiplaw/en/assistance\\_ip.htm](http://www.wipo.int/cfdiplaw/en/assistance_ip.htm), accessed, 2002.



# Patent System in India: An Overview

K. Anandan, Ph.D Research Scholar, Economics, Gobi Arts & Science College, Gobichettipalayam.  
E-mail:anandank107@gmail.com

## I. INTRODUCTION

**P**ATENT rights play an important role in global economy. Patents give legal rights to patent owners for their inventions for tenure of twenty years. Patents are technical as well as legal i.e. "Technolegal". IPR is established for protecting intellectual properties developed by human mind. Patent filing is gaining momentum all over the world. In fact, patent system is an age old concept for protecting the rights of inventors by a national agency for a specified period. Patent system was developed for the purpose of recognition of the innovator and to reward him for his valuable contribution of innovative ideas, by means of a formal system, to encourage technical developments and fair practices in a competitive age. In this paper helps to understand the patenting system in India and its issues.

India's first patent law dates back to 1856. A relatively modern patent law, the Patents and Designs Act, was enacted in 1911, which established the Patent Office. At the time of independence in 1947 this act was in force. The government of Independent India started efforts for establishing a new patent system in 1948. Amendments were made to the 1911 Act, the most important of which was in 1950 introducing compulsory licensing provisions and in 1953, for introducing provisions of compulsory licensing for food and pharmaceutical patents. Patent system buttressed with other suitable measures propels the growth of economy.

## II. INTELLECTUAL PROPERTY

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

Intellectual Property is essentially required to:

1. Protect intellectual assets
2. Secure monetary benefits for the inventor
3. Establishing rights
4. Creation of national wealth

## III. TYPES OF IPR

Patents: Deal with novel inventions

Trademarks: Deal with signs used for goods or services

Geographical Indicators: Deal with origin of goods and services for promoting

Commerce Industrial Designs: Aesthetic creations

Copyright: Deal with creativity of authorship, writings of an author

Trade Secret: Deal with protection to undisclosed information.

Integrated circuits: Deal with typographic designs

#### **IV. PATENT MEANING**

Patents give legal recognition to the owners of new inventions, providing them with the authority to prevent others benefiting from their intellectual and financial investment.

##### *Types of Patents*

It is a written document, which is a protection given by government to a patentee or inventor for his invention for a limited term. Thus a patent exclude others from making, selling, using without prior permission from patentee.

1. Utility Patents
2. Design Patents
3. Plant patents

##### *Patent System in India*

**Applicant:** An application for a patent can be filed by the true and first inventor. It can also be filed by the assignee or legal representative of the inventor or assignee, proof of assignment has to be submitted along with the application.

**Form of Application:** Every application shall be accompanied by a provisional or complete specification. Provisional applications are generally filed at a stage where some experimentation is required to perfect the invention. Filing of a provisional specification allows the applicant to get an early application date. Provisional specification shall contain title, written description, drawings, and sample or model.

##### *Filing Procedures of Patent*

**Priority Date:** Priority date is the date of first filing allotted by the patent office to an application. If a Provisional application is followed by a complete application, the priority date shall be date of filing of the provisional application.

**Place of Filing:** A Patent application can be filed in four patent offices in India. Patent Offices are located at Kolkata, New Delhi, Chennai and Mumbai.

##### *Documents to be Submitted at the Time of Filing*

The following documents have to be submitted at the time of filing a patent application:

- a. Form 1: Application for the grant of patent.
- b. Form 2: Provisional or Complete Specification.
- c. Form 3: Statement and undertaking by the applicant.
- d. Form 5: Declaration as to inventor ship
- e. Form 26: Authorization of patent agent or any other person

#### **V. CONCLUSION**

India's perspective in WTO regime is to harmonize with national interest and international obligation. But no compromise should be at the cost of public interest. Areas like pharmaceuticals, agro-chemical products should be taken into consideration while changing Indian law as regards to patent. On the international front India should raise its stand to endeavor to curb the exploitative aspects in international patent regime. The geographical indications should also be effectively

implemented and efforts should be made at international level to stop abuse of geographical indications.

### REFERENCES

- [1] A.M. Khadatare, S. Itkar and Dr.B.S. Kuchekar, "Intellectual Property Rights and Indian Patent Act 1970", Forensic Pharmacy VII Nirali Prakashan, pp. 16.1-16.6, 2001.
- [2] Shiv Sahai Singh, "The Law of Intellectual Property Rights", Deep and Deep Publication Pvt. Ltd. pp. 37-48, 2005.
- [3] N.K. Jain, "The Patent and Design Act," A Text Book of Forensic Pharmacy ed. Vallabh Prakashan, pp. 302-312, 2004.

# IPR: A Tool to Make "Make in India" Globally

M. Mehar Banu, Assistant Professor, Department of Economics, Udumalpet.

M.A. Mohamed Irfanulla, IV-Electronics & Instrumentation, Jeppiaar Engineering College, Chennai.

## I. INTRODUCTION

TOWARDS the end of 19th century, new inventive ways of manufacture helped trigger large-scale industrialization accompanied by rapid growth of cities, expansion of railway networks, the investment of capital and a growing transoceanic trade. New ideals of industrialism, the emergence of stronger centralized governments, and nationalism led many countries to establish their modern Intellectual Property laws. At this point of time, the International Intellectual Property system also started to take shape with the setting up of the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the Protection of Literary and Artistic Works in 1886. The premise underlying Intellectual Property throughout its history has been that the recognition and rewards associated with ownership of inventions and creative works stimulate further inventive and creative activity that, in turn, stimulates economic growth.

## II. THE CONCEPT OF INTELLECTUAL PROPERTY

### *Intellectual Property*

Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products.

### *Intellectual Property Rights*

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time. Intellectual property rights (IPR) are associated with greater trade and foreign direct investment flows, which in turn translate into faster rates of economic growth. Intellectually or artistically gifted people have the right to prevent the unauthorized use or sale of their creations, just the same as owners of physical property, such as cars, buildings, and stores. Beyond making it possible for innovators and artists to be compensated fairly and for countries to attract foreign investment and technology, intellectual property protection is critical to consumers. Most advances in transportation, communications, agriculture, and health care would not exist without strong IP support. Increased recognition and support of intellectual property also has much to do with the rapidly rising standards of living in countries like China and India.

## III. CATEGORIES OF INTELLECTUAL PROPERTY

One can broadly classify the various forms of IPRs into two categories:

1. IPRs that stimulate inventive and creative activities (patents, utility models, industrial designs, copyright, plant breeders' rights and layout designs for integrated circuits) and

2. IPRs that offer information to consumers (trademarks and geographical indications).

IP is divided into two categories for ease of understanding:

1. Industrial Property (functional commercial innovations)
2. Artistic and Literary Property (cultural creations)

## *Industrial Property*

### *A. Patents*

A patent is an exclusive right awarded to an inventor to prevent others from making, selling, distributing, importing or using their invention, without license or authorization, for a fixed period of time (TRIPS stipulates 20 years minimum from filing date).

### *B. Industrial Designs*

Industrial designs protect the aesthetic aspects (shape, texture, pattern, colour) of an object, rather than the technical features. "TRIPS" requires that an original design be eligible for protection from unauthorized use by others for a minimum of 10 years.

### *C. Trademarks*

Trademarks provide exclusive rights to use distinctive signs, such as symbols, colours, letters, shapes or names to identify the producer of a product, and protect its associated reputation. In order to be eligible for protection a mark must be distinctive of the proprietor so as to identify the proprietor's goods or services. The main purpose of a trademark is to prevent customers from being misled or deceived. The period of protection varies, but a trademark can be renewed indefinitely.

### *D. Geographical Indications*

Geographical Indications (GIs) identify the specific geographical origin of a product, and the associated qualities, reputation or other characteristics. They usually consist of the name of the place of origin.

### *E. Trade Secrets*

Trade secrets consist of commercially valuable information about production methods, business plans, clientele, etc. They are protected as long as they remain secret by laws which prevent acquisition by commercially unfair means and unauthorized disclosure.

## *Artistic and Literary Property*

### *Copyright*

Copyright grants exclusive rights to the creators of original literary, scientific and artistic works. Copyright only prevents copying, not independent derivation. Copyright protection begins, without formalities, with the creation of the work, and lasts (as a general rule) for the life of the creator plus 50 years (70 years in the US and EU). It prevents unauthorized reproduction, public performance, recording, broadcasting, translation, or adaptation, and allows the collection of royalties for

authorized use. Computer programs are protected by copyrights, as software source and code have been defined as a literary expression.

#### *Intellectual Property Include the Rights Relating to*

1. Literary, artistic and scientific works.
2. Performance of performing artists.
3. Inventions in all fields of human endeavor.
4. Scientific discoveries.
5. Industrial designs.
6. Trademarks, service marks and etc.
7. Protection against unfair competition.

#### **IV. MEASURES TO CREATE A STRONG AND VIBRANT IPR REGIME IN INDIA**

**Modernization of administration:** Creation of a highly transparent, e-enabled, efficient and accessible IP ecosystem in India that provides legal certainty to the industry.

**Human Resources:** An additional 1033 plan posts have been created, including 666 posts for Patents & Designs and 367 posts for Trademarks and GI at various levels. Already, recruitment is underway. Patent and Trademarks examiners are also being taken on contract to deal with the backlog.

**Ease of Access:** The IP system embarked on its e-journey by introducing the complete electronic processing of Patents and Trademarks applications through specialized modules. To cater to the immense flow of the papers filed, a single central server at IPO Delhi is in place. Since India has a unique intellectual property office wherein there are 4 patent offices and 5 trademark offices, there is need for strong intra-office connectivity. The system is unique in itself since there is automatic generation of application numbers as also automatic allotment of the request for examination which is sequential and thus transparent and user-friendly.

- a) **Online e-filing Facilities:** Comprehensive online e-filing facilities for patent and trademark application were introduced during 2013-15 which provided the stakeholder with major advantages. First, an applicant can file an application virtually 24x7 and secondly, applications can be filed from the comfort of their workplace/homes.
- b) **Comprehensive payment gateway:** The IPO allowed the e-filers the facility of using debit cards, credit cards and internet banking. This year, e-filers were given the facility of using debit cards, credit cards and internet banking of over 70 banks for making payment of fees for all forms.
- c) **10% rebate on online filing:** To encourage online filing of the applications, a 10% rebate on online filing of applications and documents has been introduced; online filing has jumped from under 30% to over 80% in just a year.

**Transparency and dissemination of information:** The official website provides vast information relating to patents, trademarks, designs and geographical indications. The real time status of IP applications with entire file wrappers and e-registers is now open to the public, providing a strong tool to the public that can now be an integral

part of the IP system. An innovative tool, showing the stock and flow of patents and trademarks applications at every stage of its processing, has ushered in transparency.

**Fee Concession for MSME:** MSMEs account for 45% of total industrial production and the total contribution of MSMEs to India's GDP is 38%. To encourage them to innovate and seek protection for their inventions, a 50 % fee reduction has been provided for MSMEs.

**Madrid Protocol:** The operational strategy of the Madrid protocol for international protection of trademarks provides the user the facility of protecting his trademark in 90 countries by filing a single application in one language with one set of fees filed at the Trademarks Registry. Till June 2015, 13,666 international applications designating India have been received at the Trademarks Registry, India.

**International Search Authority and International Preliminary Examining Authority:** India has been recognized by the World Intellectual Property Organization as the 17<sup>th</sup> International Search Authority and International Preliminary Examining Authority in the world. It began its operations in 2014 and till date, 758 international applications have been received and 575 reports issued. India prides itself on providing quality reports at the lowest cost among the international players like USPTO, EPO, JPO etc. At present it has been recognized as ISA/ IPEA for nationals of Republic of Iran.

**IPR Awareness Programs:** Awareness creation is one of the major planks of the modernization scheme of IP system, as this will educate the stakeholders about the benefits of registration of their rights as also educate the general public, particularly the business community, on perils of infringement of IPRs held by others/ dealing in pirated and counterfeit products. These programs are also expected to sensitize the enforcement agencies such as state police forces, and the judiciary.

- a. **IP Training, Awareness and Outreach Activities:** Awareness/ sensitization programs on IPR are organized by IPO as well as with industry associations, Chambers of commerce, academic institutions etc.
- b. National and international symposia/ seminar/workshops on IP are organized for potential IP users.
- c. **e-learning resources:** To educate the public via the internet media, a portal on the website of office of the CGPDTM has presentations uploaded on various aspects of IPR.
- d. **Kids Nook:** A corner to educate and inculcate the culture of respecting and protecting IPR's among the next generation has been undertaken via uploaded comics which are based on basics of IPRs.

## **V. DRIVING INDIA'S INNOVATION-AWARENESS OF IPR OVER MAKE IN INDIA**

Today, India's innovation success is completely dependent on the new-age startups. The first age entrepreneurs and large corporate are bullish on these startups and are giving them the obliged thrust and framework to innovate from India and take it to the world. The entrepreneurs have also understood the long haul advantages and are building their organization's IP portfolio, with a competitive edge for a longer timeline. This will help them to secure funding from business capitalists and large Indian enterprises.

India should make innovation as a key component in its regulatory framework. Whenever a regulation is being passed by ministries or regulators, the impact on innovation should be taken into account. And, this will provide the required fillips to India's innovation revolution. India is awesome at invention; however, need to step up to innovate. Great inventions happen from unforeseen spots. Not being patented, they do not get the desired acknowledgment. India's intent is evident from the initiatives towards ensuring innovations by altering its enactment, setting up an innovation-focused ecosystem, bringing together with private players and so forth. Government institutions like STPI, Deit Y; Academic institutions like IITs, Delhi University, IIMs; Associations like IESA, Nasscom and Corporations like Cyber media Research—everyone is making an effort to accelerate the nation's entrepreneur revolution, hence transforming our 'Make in India' vision into a conceivable reality.

## **VI. CONCLUSION**

India has the capability to push its manufacturing contribution to GDP to 25% by 2025. Government has to act as the central pivot of aligning industries, private companies, public sectors and all stakeholders in realizing this vision. Government has to put policies in place be it sector reforms, labour reforms or the elimination of business barriers. The Government of India has taken a number of steps to further encourage investment and improve business climate. "Make in India" mission is one such long term initiative which will help to realize the dream of transforming India into a "manufacturing hub". Honorable Prime Minister's call for "zero defect and zero effect" manufacturing resonates well with our industry as we grow and produce for the world. India's expanding economy offers equal investment opportunities to domestic entrepreneurs and international players. It is our responsibility to leverage emerging opportunities and work towards shaping this "manufacturing vision". Indian Manufacturing is slowly but surely sweeping back in the national economic space. The onus lies on us to make India the next Silicon Valley and each Indian ought to make the most of their commitment for this development. Yes, this should be a national development for making 'Make in India' a success. Let us join hands to contribute to our nation's growth.

## **REFERENCES**

- [1] Instructions for Technology Transfer and Intellectual Property Rights, Department of Science and Technology, 2000.
- [2] Research and Development in Industry: An Overview; Department of Scientific and Industrial Research, Government of India, 2002.
- [3] Manufacturing policy of India [http://dipp.nic.in/english/policies/national\\_manufacturing\\_policy\\_25october2011.pdf](http://dipp.nic.in/english/policies/national_manufacturing_policy_25october2011.pdf).
- [4] 12th five year plan [http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp\\_vol2.pdf](http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol2.pdf).
- [5] <http://www.doingbusiness.org/data/exploreeconomies/india/>
- [6] Make in India - <http://www.makeinindia.com/>
- [7] [www.wipo.int](http://www.wipo.int), <http://www.tifac.org.in/do/pfc/pfc.htm>
- [8] IPR Bulletin, Technology Information, Forecasting and Assessment Council, Vol. 5, No. 8, 1999.
- [9] IPR Bulletin, Technology Information, Forecasting and Assessment Council Vol. 9, No. 10, 2003.



# Management of Intellectual Property Rights in India

Dr.A. Sangamithra, Associate Professor, Department of Economics, Bharathiar University, Coimbatore.

## I. INTRODUCTION

**T**HE knowledge economy places tag of urgency on understanding and managing knowledge based assets such as innovations and know-how. The time for grasping knowledge has become an important parameter for determining the success of an institution, enterprise, government and industry;

Intellectual property rights (IPR) have become important in the face of changing trade environment which is characterized by the following features namely global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development (R&D), production and marketing and need for highly skilled human resources. Geographical barriers to trade among nations are collapsing due to globalization, a system of multilateral trade and a new emerging economic order. It is therefore quite obvious that the complexities of global trade would be on the increase as more and more variables are introduced leading to uncertainties. Many products and technologies are simultaneously marketed and utilized in many countries. With the opening up of trade in goods and services intellectual property rights (IPR) have become more susceptible to infringement leading to inadequate return to the creators of knowledge.

The knowledge revolution will demand a special pedestal for intellectual property and treatment in the overall decision-making process. It is also important to realize that each product is amalgamation of many different areas of science and technologies.

In order to maintain a continuous stream of new ideas and experimentations, public private partnership in R&D would need to be nurtured to arrive at a win-win situation. Therefore all publicly funded institutions and agencies will have to come to terms with the new ground realities and take positive steps to direct research suitably to generate more intellectual property rights, protect and manage them efficiently.

## II. INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual property rights as a collective term includes the following independent IP Rights which can be collectively used for protecting different aspects of an inventive work for multiple protection:

1. Patents.
2. Copyrights.
3. Trademarks.
4. Registered (industrial) design.
5. Protection of IC layout design.
6. Geographical indications, and
7. Protection of undisclosed information.

### III. NATURE OF INTELLECTUAL PROPERTY RIGHTS

IPR are largely territorial rights except copyright, which is global in nature in the sense that it is immediately available in all the members of the Berne Convention. These rights are awarded by the State and are monopoly rights implying that no one can use these rights without the consent of the right holder. It is important to know that these rights have to be renewed from time to time for keeping them in force except in case of copyright and trade secrets. IPR have fixed term except trademark and geographical indications, which can have indefinite life provided these are renewed after a stipulated time specified in the law by paying official fees. Trade secrets also have an infinite life but they don't have to be renewed. IPR can be assigned, gifted, sold and licensed like any other property. Unlike other moveable and immoveable properties, these rights can be simultaneously held in many countries at the same time. IPR can be held only by legal entities i.e., who have the right to sell and purchase property. In other words an institution, which is not autonomous may not in a position to own an intellectual property. These rights especially, patents, copyrights, industrial designs, IC layout design and trade secrets are associated with something new or original and therefore, what is known in public domain cannot be protected through the rights mentioned above. Improvements and modifications made over known things can be protected. It would however, be possible to utilize geographical indications for protecting some agriculture and traditional products.

### IV. PATENTS

A patent is an exclusive right granted by a country to the owner of an invention to make, use, manufacture and market the invention, provided the invention satisfies certain conditions stipulated in the law. Exclusive right implies that no one else can make, use, manufacture or market the invention without the consent of the patent holder. This right is available for a limited period of time. In spite of the ownership of the rights, the use or exploitation of the rights by the owner of the patent may not be possible due to other laws of the country which has awarded the patent. These laws may relate to health, safety, food, security etc. Further, existing patents in similar area may also come in the way. A patent in the law is a property right and hence, can be gifted, inherited, assigned, sold or licensed. As the right is conferred by the State, it can be revoked by the State under very special circumstances even if the patent has been sold or licensed or manufactured or marketed in the meantime. The patent right is territorial in nature and inventors/their assignees will have to file separate patent applications in countries of their interest, along with necessary fees, for obtaining patents in those countries. A new chemical process or a drug molecule or an electronic circuit or a new surgical instrument or a vaccine is a patentable subject matter provided all the stipulations of the law are satisfied.

#### *The Indian Patent Act*

The first Indian patent laws were first promulgated in 1856. These were modified from time to time. New patent laws were made after the independence in the form of the Indian Patent Act 1970. The Act has now been radically amended to become fully compliant with the provisions of TRIPS. The most recent amendment were made in 2005 which were preceded by the amendments in 2000 and 2003. While the process of bringing out amendments was going on, India became a member of the Paris

Convention, Patent Cooperation Treaty and Budapest Treaty. The salient and important features of the amended Act are explained here.

## V. INVENTION

A clear definition has now been provided for an invention, which makes it at par with definitions followed by most countries. Invention means a new product or process involving an inventive step and capable of industrial application. New invention means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification i.e., the subject matter has not fallen in public domain or it does not form part of the state of the art. Inventive step means a feature of an invention that involves technical advance as compared to existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art." capable of industrial application means that the invention is capable of being made or used in an industry".

## VI. NOVELTY

An invention will be considered novel if it does not form a part of the global state of the art. Information appearing in magazines, technical journals, books, newspapers etc. constitutes the state of the art. Oral description of the invention in a seminar/conference can also spoil novelty. Novelty is assessed in a global context. An invention will cease to be novel if it has been disclosed in the public through any type of publications anywhere in the world before filing a patent application in respect of the invention. Therefore it is advisable to file a patent application before publishing a paper if there is a slight chance that the invention may be patentable. Prior use of the invention in the country of interest before the filing date can also destroy the novelty. Novelty is determined through extensive literature and patent searches. It should be realized that patent search is essential and critical for ascertaining novelty as most of the information reported in patent documents does not get published anywhere else. For an invention to be novel, it need not be a major breakthrough. No invention is small or big. Modifications to the existing state of the art, process or product or both, can also be candidates for patents provided these were not earlier known. In a chemical process, for example, use of new reactants, use of a catalyst, new process conditions can lead to a patentable invention.

## VII. INVENTIVENESS (NON-OBVIOUSNESS)

A patent application involves an inventive step if the proposed invention is not obvious to a person skilled in the art i.e., skilled in the subject matter of the patent application. The prior art should not point towards the invention implying that the practitioner of the subject matter could not have thought about the invention prior to filing of the patent application. Inventiveness cannot be decided on the material contained in unpublished patents. The complexity or the simplicity of an inventive step does not have any bearing on the grant of a patent. In other words a very simple invention can qualify for a patent. If there is an inventive step between the proposed patent and the prior art at that point of time, then an invention has taken place. A mere 'scintilla' of invention is sufficient to found a valid patent. It may be often difficult to establish the inventiveness, especially in the area of upcoming knowledge.

areas. The reason is that it would depend a great deal on the interpretative skills of the inventor and these skills will really be a function of knowledge in the subject area.

### **VIII. DEVELOPMENT OF TRIPS COMPLIED REGIME IN INDIA**

The establishment of WTO as a result of institutionalization of international framework of trade calls for harmonization of several aspects of Indian Law relating to Intellectual Property Rights. The TRIPS agreement set minimum standards for protection for IPR rights and also set a time frame within which countries were required to make changes in their laws to comply with the required degree of protection. In view of this, India has taken action to modify and amend the various IP Acts in the last few years.

### **IX. TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS) AGREEMENT**

With the establishment of the world trade Organization (WTO), the importance and role of the intellectual property protection has been Crystallized in the Trade-Related Intellectual Property Systems (TRIPS).

The general goals of the TRIPS Agreement are contained in the Preamble to the Agreement, which reproduces the basic Uruguay Round negotiating objectives established in the TRIPS area by the 1986 Punta del Este Declaration.

These objectives include the reduction of distortions and impediments to international trade, promotion of effective and adequate protection of intellectual property rights, and ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

It addresses applicability of general GATT principles as well as the provisions in international agreements on IP (Part I). It establishes standards for availability, scope, use (Part II), enforcement (Part III), acquisition and maintenance (Part IV) of Intellectual Property Rights. Furthermore, it addresses related dispute prevention and settlement mechanisms (Part V). Formal provisions are addressed in Part VI and VII of the Agreement, which cover transitional and institutional arrangements, respectively.

#### *Copyrights and Related Rights*

Copyright is a legal term describing rights given to creators for their literary and artistic works.

Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work & creator is the owner of the work.

Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties. These economic rights have a time limit, (other than photographs) is for life of author plus sixty years after creator's death.

#### *Geographical Indications (GI)*

GI are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. They may also highlight specific

qualities of a product, which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and traditions.

A geographical indication points to a specific place or region of production.

It is important that the product derives its qualities and reputation from that place. Place of origin may be a village or town, a region or a country.

### *Industrial Designs*

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design.

The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries.

The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments.

### *Trade Secrets*

It may be confidential business information that provides an enterprise with a competitive edge may be considered a trade secret. Usually these are manufacturing or industrial secrets and commercial secrets.

A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information.

### *Layout Design for Integrated Circuits*

The aim of the Semiconductor Integrated Circuits Layout-Design Act 2000 is to provide protection of Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout Designs and for matters connected therewith or incidental thereto.

The SICLD Act empowers the registered proprietor of the layout-design an inherent right to use the layout-design, commercially exploit it and obtain relief in respect of any infringement.

### *Protection of New Plant Variety*

The objective of this act is to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity by rewarding them for their contribution and to stimulate investment for R & D for the development new plant varieties to facilitate the growth of the seed industry.

## **X. CONCLUSION: THE SCIENCE AND TECHNOLOGY POLICY 2003**

The Science and Technology Policy released in 2003 are upbeat on intellectual property rights and related issues. It focuses a great deal on the transformation of new ideas into commercial successes, which is considered vitally important to the nation's ability to achieve high economic growth and global competitiveness. Accordingly, special emphasis will be given not only to R&D and the technological factors of innovations but also to the other equally important social, institutional and market

Value addition and creation of wealth through reassessment, redistribution and repositioning of our intellectual, capital and material resource will be achieved through effective use of science and technology. The Policy states that IPR has to be viewed not as a self contained and distinct domain, but rather as an effective policy instrument that would be relevant to wide ranging socioeconomic, technological and political concepts. The generation and protection of competitive intellectual property from Indian R&D programmes will be encouraged and promoted. The process of globalisation is leading to situations where collective knowledge of societies normally used for common good is converted to a proprietary knowledge for the commercial profit of a few.

#### REFERENCES

1. J. C. Campbell, "An Introduction Policy Studies Journal", doi: 10.1017/S1537781415000316, Vol. 13, No. 3 pp. 471-1985.
2. IPR Centre, A. Council and N. Delhi, "Management of Intellectual Property Rights in India", *Journal of Natural Science Biology and Medicine*, doi:10.4103/0976-9668.82307, Vol. 2, pp. 1-29. 2005.
3. MUNDI Ch, "Law in India", 2013.
4. Foreign & Commonwealth Office. "Intellectual Property Rights in India", Retrieved from <https://www.gov.uk/government/publications/intellectual-property-rights-in-india>, 2013.
5. IPR Centre, B. U. and D. I. P. R. U. K., (n.d.). Handbook on Intellectual Property Rights in India.
6. IPR Centre, (n.d.). Intellectual Property Rights in India.
7. IPR Centre, (n.d.). Intellectual Property Rights in India.
8. IPR Centre, (n.d.). Intellectual Property Rights in India.
9. IPR Centre, (n.d.). Intellectual Property Rights in India.
10. IPR Centre, (n.d.). Intellectual Property Rights in India.
11. IPR Centre, (n.d.). Intellectual Property Rights in India.
12. IPR Centre, (n.d.). Intellectual Property Rights in India.
13. IPR Centre, (n.d.). Intellectual Property Rights in India.
14. IPR Centre, (n.d.). Intellectual Property Rights in India.
15. IPR Centre, (n.d.). Intellectual Property Rights in India.
16. IPR Centre, (n.d.). Intellectual Property Rights in India.
17. IPR Centre, (n.d.). Intellectual Property Rights in India.
18. IPR Centre, (n.d.). Intellectual Property Rights in India.
19. IPR Centre, (n.d.). Intellectual Property Rights in India.
20. IPR Centre, (n.d.). Intellectual Property Rights in India.
21. IPR Centre, (n.d.). Intellectual Property Rights in India.
22. IPR Centre, (n.d.). Intellectual Property Rights in India.
23. IPR Centre, (n.d.). Intellectual Property Rights in India.
24. IPR Centre, (n.d.). Intellectual Property Rights in India.
25. IPR Centre, (n.d.). Intellectual Property Rights in India.
26. IPR Centre, (n.d.). Intellectual Property Rights in India.
27. IPR Centre, (n.d.). Intellectual Property Rights in India.
28. IPR Centre, (n.d.). Intellectual Property Rights in India.
29. IPR Centre, (n.d.). Intellectual Property Rights in India.
30. IPR Centre, (n.d.). Intellectual Property Rights in India.
31. IPR Centre, (n.d.). Intellectual Property Rights in India.
32. IPR Centre, (n.d.). Intellectual Property Rights in India.
33. IPR Centre, (n.d.). Intellectual Property Rights in India.
34. IPR Centre, (n.d.). Intellectual Property Rights in India.
35. IPR Centre, (n.d.). Intellectual Property Rights in India.
36. IPR Centre, (n.d.). Intellectual Property Rights in India.
37. IPR Centre, (n.d.). Intellectual Property Rights in India.
38. IPR Centre, (n.d.). Intellectual Property Rights in India.
39. IPR Centre, (n.d.). Intellectual Property Rights in India.
40. IPR Centre, (n.d.). Intellectual Property Rights in India.
41. IPR Centre, (n.d.). Intellectual Property Rights in India.
42. IPR Centre, (n.d.). Intellectual Property Rights in India.
43. IPR Centre, (n.d.). Intellectual Property Rights in India.
44. IPR Centre, (n.d.). Intellectual Property Rights in India.
45. IPR Centre, (n.d.). Intellectual Property Rights in India.
46. IPR Centre, (n.d.). Intellectual Property Rights in India.
47. IPR Centre, (n.d.). Intellectual Property Rights in India.
48. IPR Centre, (n.d.). Intellectual Property Rights in India.
49. IPR Centre, (n.d.). Intellectual Property Rights in India.
50. IPR Centre, (n.d.). Intellectual Property Rights in India.
51. IPR Centre, (n.d.). Intellectual Property Rights in India.
52. IPR Centre, (n.d.). Intellectual Property Rights in India.
53. IPR Centre, (n.d.). Intellectual Property Rights in India.
54. IPR Centre, (n.d.). Intellectual Property Rights in India.
55. IPR Centre, (n.d.). Intellectual Property Rights in India.
56. IPR Centre, (n.d.). Intellectual Property Rights in India.
57. IPR Centre, (n.d.). Intellectual Property Rights in India.
58. IPR Centre, (n.d.). Intellectual Property Rights in India.
59. IPR Centre, (n.d.). Intellectual Property Rights in India.
60. IPR Centre, (n.d.). Intellectual Property Rights in India.
61. IPR Centre, (n.d.). Intellectual Property Rights in India.
62. IPR Centre, (n.d.). Intellectual Property Rights in India.
63. IPR Centre, (n.d.). Intellectual Property Rights in India.
64. IPR Centre, (n.d.). Intellectual Property Rights in India.
65. IPR Centre, (n.d.). Intellectual Property Rights in India.
66. IPR Centre, (n.d.). Intellectual Property Rights in India.
67. IPR Centre, (n.d.). Intellectual Property Rights in India.
68. IPR Centre, (n.d.). Intellectual Property Rights in India.
69. IPR Centre, (n.d.). Intellectual Property Rights in India.
70. IPR Centre, (n.d.). Intellectual Property Rights in India.
71. IPR Centre, (n.d.). Intellectual Property Rights in India.
72. IPR Centre, (n.d.). Intellectual Property Rights in India.
73. IPR Centre, (n.d.). Intellectual Property Rights in India.
74. IPR Centre, (n.d.). Intellectual Property Rights in India.
75. IPR Centre, (n.d.). Intellectual Property Rights in India.
76. IPR Centre, (n.d.). Intellectual Property Rights in India.
77. IPR Centre, (n.d.). Intellectual Property Rights in India.
78. IPR Centre, (n.d.). Intellectual Property Rights in India.
79. IPR Centre, (n.d.). Intellectual Property Rights in India.
80. IPR Centre, (n.d.). Intellectual Property Rights in India.
81. IPR Centre, (n.d.). Intellectual Property Rights in India.
82. IPR Centre, (n.d.). Intellectual Property Rights in India.
83. IPR Centre, (n.d.). Intellectual Property Rights in India.
84. IPR Centre, (n.d.). Intellectual Property Rights in India.
85. IPR Centre, (n.d.). Intellectual Property Rights in India.
86. IPR Centre, (n.d.). Intellectual Property Rights in India.
87. IPR Centre, (n.d.). Intellectual Property Rights in India.
88. IPR Centre, (n.d.). Intellectual Property Rights in India.
89. IPR Centre, (n.d.). Intellectual Property Rights in India.
90. IPR Centre, (n.d.). Intellectual Property Rights in India.
91. IPR Centre, (n.d.). Intellectual Property Rights in India.
92. IPR Centre, (n.d.). Intellectual Property Rights in India.
93. IPR Centre, (n.d.). Intellectual Property Rights in India.
94. IPR Centre, (n.d.). Intellectual Property Rights in India.
95. IPR Centre, (n.d.). Intellectual Property Rights in India.
96. IPR Centre, (n.d.). Intellectual Property Rights in India.
97. IPR Centre, (n.d.). Intellectual Property Rights in India.
98. IPR Centre, (n.d.). Intellectual Property Rights in India.
99. IPR Centre, (n.d.). Intellectual Property Rights in India.
100. IPR Centre, (n.d.). Intellectual Property Rights in India.

# An Overview on Intellectual Property Rights in India

Dr.R. Shantha, Head, Department of Economics, PSGRKC.

K. Renuka, Associate Professor, Department of Economics, PSGRKC, Coimbatore.

## I. INTRODUCTION

THE intellectual property field during the past decade has seen tremendous changes with profound implications for developing countries. These changes relate on the one hand to international policy shifts and on the other hand to the emergence of new technologies. India being a developing nation, has taken giant leaps in competing towards Trade Related Intellectual Property Rights (TRIPS) agreement and in compliance of US and European Intellectual Property Right (IPR) structure. Intellectual property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. Some trends are emerging, however, and being ratified by new international agreements with minimum standards of protection. They pose new challenges not only for the legal regimes of most developing countries, but also for institutions and practices that have played a prominent role in the international diffusion of knowledge. Against this background the study aims to review the importance of Intellectual property Right in India. India is a developing country where new technologies remain one of the main sources of this country's economic growth. Because intellectual property is relied upon, in one form or another, by almost every segment of the economy, protecting intellectual property assets abroad is crucial to maintaining our position as an innovative leader. With the globalization of the world economy, developing countries are finding that maintaining competitiveness is a critical factor in development. Intellectual property rights (IPR) have become important in the face of changing trade environment which is characterized by the following features namely global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development (R&D), production and marketing and need for highly skilled human resources. India being a developing nation, has taken giant leaps in competing towards Trade Related Intellectual Property Rights (TRIPS) agreement and in compliance of US and European Intellectual Property Right (IPR) structure. The 21st century can be referred to as the century of technology, knowledge and in fact the regime of intellect. The country's ability to translate knowledge into innovation to gain wealth will determine its future. Thus, the innovation is supposed to be the key to create knowledge into wealth. With the opening up of trade in goods and services intellectual property rights (IPR) have become more susceptible to infringement leading to inadequate return to the creators of knowledge.

The importance of intellectual property in India is well established at all levels statutory, administrative and judicial. India ratified the agreement establishing the World Trade Organization (WTO). This Agreement, inter-alia, contains an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1st January 1995. It lays down minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view

to reducing distortions and impediments to international trade. The obligations under the TRIPS Agreement relate to provision of minimum standard of protection within the member countries legal systems and practices. The Agreement provides for norms and standards in respect of following areas of intellectual property:

1. Patents.
2. Trade Marks.
3. Copyrights.
4. Geographical Indications.
5. Industrial Designs.
6. Patents.

The basic obligation in the area of patents is that, invention in all branches of technology whether products or processes shall be patentable if they meet the three tests of being new involving an inventive step and being capable of industrial application. In addition to the general security exemption which applied to the entire TRIPS Agreement, specific exclusions are permissible from the scope of patentability of inventions, the prevention of whose commercial exploitation is necessary to protect public order or morality, human, animal, plant life or health or to avoid serious prejudice to the environment. Further, members may also exclude from patentability of diagnostic, therapeutic and surgical methods of the treatment of human and animals and plants and animal other than micro-organisms and essentially biological processes for the production of plants and animals.

The TRIPS Agreement provides for a minimum term of protection of 20 years counted from the date of filing. India had already implemented its obligations under Articles 70.8 and 70.9 of TRIP Agreement.

### *Trade Marks*

Trademarks have been defined as any sign, or any combination of signs capable of distinguishing the goods or services of one undertaking from those of other undertakings. Such distinguishing marks constitute protectable subject matter under the provisions of the TRIPS Agreement. The Agreement provides that initial registration and each renewal of registration shall be for a term of not less than 7 years and the registration shall be renewable indefinitely. Compulsory licensing of trade marks is not permitted. Keeping in view the changes in trade and commercial practices, globalization of trade, need for simplification and harmonization of trade marks registration systems etc., a comprehensive review of the Trade and Merchandise Marks Act, 1958 was made and a Bill to repeal and replace the 1958 Act has since been passed by Parliament and notified in the Gazette on 30.12.1999. This Act not only makes Trade Marks Law, TRIPS compatible but also harmonizes it with International systems and practices.

### *Copyrights*

India's copyright law, laid down in the Indian Copyright Act, 1957 as amended by Copyright (Amendment) Act, 1999, fully reflects the Berne Convention on Copyrights, to which India is a party. Additionally, India is party to the Geneva Convention for the Protection of rights of Producers of Phonograms and to the Universal Copyright Convention. India is also an active member of the World Intellectual Property



Organization (WIPO), Geneva and UNESCO. The copyright law has been amended periodically to keep pace with changing requirements. The recent amendment to the copyright law, which came into force in May 1995, has ushered in comprehensive changes and brought the copyright law in line with the developments in satellite broadcasting, computer software and digital technology. The amended law has made provisions for the first time, to protect performer's rights as envisaged in the Rome Convention.

Several measures have been adopted to strengthen and streamline the enforcement of copyrights. These include the setting up of a Copyright Enforcement Advisory Council, training programs for enforcement officers and setting up special policy cells to deal with cases relating to infringement of copyrights.

1. Rules and Acts related to Copyrights.
2. The Copyright (Amendment) Act, 2012.
3. Copyright, Act 1957.
4. Copyright Rules, 1958.
5. Copyright Handbook.
6. International Copyright Order, 1999.
7. Copyright Piracy in India.
8. Amendments in the Act.

### *Geographical Indications*

The agreement contains a general obligation that parties shall provide the legal means for interested parties to prevent the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good. There is no obligation under the Agreement to protect geographical indications which are not protected in their country of origin or which have fallen into disuse in that country. A new law for the protection of geographical indications, viz. the Geographical Indications of Goods (Registration and the Protection) Act, 1999 has also been passed by the Parliament and notified on 30.12.1999 and the rules made there under notified on 8-3-2002.

### *Industrial Designs*

Industrial designs refer to creative activity which result in the ornamental or formal appearance of a product and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial

scenario and made to conform to international trends in design administration. This replacement Act is also aimed to enact a more detailed classification of design to conform to the international system and to take care of the proliferation of design related activities in various fields.

Obligations envisaged in respect of industrial designs are that independently created designs that are new or original shall be protected. Individual governments have been given the option to exclude from protection, designs dictated by technical or functional considerations, as against aesthetic consideration which constitutes the coverage of industrial designs. The right accruing to the right holder is the right to prevent third parties not having his consent from making, selling or importing articles being or embodying a design, which is a copy or substantially a copy of the protected design when such acts are undertaken for commercial purposes. The duration of protection is to be not less than 10 years.

IPR plays a key role in almost every sector and has become a crucial factor for investment decisions by many companies. All the above Acts and regulations are at par with international standards. India is now TRIPS-compliant. This is an international agreement administered by the World Trade Organization (WTO), which sets down minimum standards for many forms of intellectual property (IP) regulations as applied to the nationals of other WTO Members. The very well-balanced IPR regime in India acts as an incentive for foreign players to protect their Intellectual Property in India. This can be established by the very fact that approximately 80% of patent filings in India are from the MNCs. While the IPR regime in India consists of robust IP laws, it lacks effective enforcement, for which "least priority given to adjudication of IP matters" is often quoted as a reason. The key challenge is to sensitize the enforcement officials and the Judiciary to take up IP matters, at par with other economic offences, by bringing them under their policy radar. Further, it is imperative that there be established a 'Think Tank' or a group, which can bring the varied sets of stakeholders on to a common platform, leading to extensive/exhaustive and an all-inclusive debate/discussion, facilitating well-informed policy decisions in accordance with India's socio-economic-political needs. The challenges also lie in having an IP fund, which can be utilized for further developing the IP culture in the country. There is also the need to have a National IP Policy for India, which will help in working towards realizing the vision of India in the realm of IP. This will facilitate the creation of a strong socio-economic foundation and deep international trust

## II. INTELLECTUAL PROPERTY-COMPONENTS

Intellectual Property essentially includes the products or creations of mind. Traditionally intellectual property was divided into two groups:

- *Industrial Property*: Industrial property includes Inventions (Process, Products and Apparatus); Industrial Designs (Shapes and Ornamentation) and Marks and Trade Names to distinguish goods.
- *Copyrights*: Copyrights broadly include Literary Work, Musical Works, including any accompanying Words; Dramatic Works, including any accompanying Music; Pantomimes and Choreographic Works; Pictorial, Graphic and Sculptural Works; Motion Picture and other Audiovisual Works; Sound Recordings and Architectural Works.

The convention establishing the World Intellectual Property Organization (WIPO) concluded in Stockholm on July 14, 1967 (Article 2 (viii)) provides that "Intellectual Property" shall include rights relating to:

1. Literary, Artistic and Scientific Works,
2. Performances of performing artists, Phonograms and Broadcasts,
3. Inventions in all fields of human endeavor,
4. Scientific discoveries,
5. Industrial Designs,
6. Trademarks, Service Marks and Commercial Names and Designations,
7. Protection against unfair competition and all other rights resulting Intellectual activity in the industrial, scientific, literary or artistic fields.

### III. NATURE OF IPR

IPRs are the territorial rights which have a fixed term and can be renewed after a stipulated time as specified in the law by way of making payment toward official fees. Exceptionally, trade secrets have an infinite life but they don't have to be renewed. Apart from this, trade secrets have another nature of being assigned, gifted, sold and licensed like any other tangible property. Unlike other moveable and immoveable properties, these rights can be separately held in many countries at the same time. IPRs can be held only by legal entities i.e., who have the right to sell and purchase property. In the other way, any non-autonomous institution doesn't have rights to own intellectual property. These rights are protected by their respective sections and rules.

### IV. SIGNIFICANCE OF TRIPS AGREEMENT

The Trade Related Intellectual Property Rights System (TRIPS) agreement is the most important development in international intellectual property law because it was made as an annex to the WTO agreement bringing intellectual property under the rubric of the trade for the first time. TRIPS has subsumed, the International Intellectual Property Regime created in the 1880's based on the judicial enforcement of IPR's and border control of trade infringements. This development was regarded necessary because of the perceived toothlessness of the Paris and Berne conventions and the inability of WIPO to modify the Paris Convention. The preamble to TRIPS heralded the demise of WIPO as the leading intellectual property agency by stating the desire of WTO members "to reduce distortions and impediments to international trade and taking into account the need to promote effective and adequate protection of intellectual property rights and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade" (Sachin, 2005).

### V. INTELLECTUAL PROPERTY TRENDS IN INDIA

During 2009-10, 34,287 patent applications were filed, 6069 examined and 6168 patents granted. The number of applications filed by the Indian applicants was 7044. Out of the applications filed by the Indian applicants, Maharashtra accounted for the maximum number followed by Delhi, Tamil Nadu, Karnataka, Andhra Pradesh, West Bengal etc. During 2009-10, 6092 design applications were filed, 6266 examined and 6025 registered. The number of applications filed by the Indian applicants was 4269. The number of registered designs in force at the end of 2009-10 was 39008. During

2009-10, 1,41,943 trademark applications were filed, 25875 examined and 67,490 registered. The number of applications filed by the Indian applicants was 1,34,403. The total number of registered trademarks as of 31st March, 2010 is 8,22,825. During 2009-10, 40 Geographical indications applications were filed and 14 were registered. A total of 120 Geographical Indications have been registered till 31st March, 2010. During 2009-10, 142 applications were received for access of bio-resources for research/commercial use, transfer of research results, intellectual property rights and third party transfer. Totally, 13 agreements have been signed. So far, 11 patents have been granted on the applications cleared by NBA. The NBA has also received a royalty amount of Rs.37.89 lakhs from the applicants who have exported bio-resources. In 2010-11, a total of 642 applications representing 28 crops were received by the Authority for seeking plant variety protection under the Act. The applications belong to new (395), extant (216), farmers' varieties (30) and essentially derived variety (1) categories.

## VI. CONCLUSION

Intellectual property is a key factor in promoting economic development. At the microeconomic level patent, copyright and similar forms of intellectual property protection provide a means by which innovators and investor scan recover the investment of time and to bring the new products in the market. At macroeconomic level intellectual property promotes economic development by encouraging domestic innovation and foreign direct investment. In today's world, people are still unaware about IPR and their advantages in taking rights for their intellectual property. In such cases, the government should promote the awareness of IPR in remote areas. An effective intellectual property rights system lies at the core of the countries development strategies. Although India has compiled with the obligations of TRIPS by amending the IP laws, certain issues are still needed to be taken care of. There is a need for a constant thinking over the core issue of IP protection, in order to respond to situations arising out of global competition.

## REFERENCES

- [1] M. Sachin, "Intellectual Property Rights: Indian Scenario", Journal of Business Administration Online, spring, Vol. 4 No. 1, pp. 1-8, 2005.
- [2] IPR Bulletin, "Technology Information, Forecasting and Assessment Council", Vol. 9, No. 10, 2003.
- [3] [www.ipindia.nic.in](http://www.ipindia.nic.in) - Intellectual Property Office, India.
- [4] [www.patentoffice.nic.in](http://www.patentoffice.nic.in) - Patent office, India.
- [5] <http://copyright.gov.in/> - Copyright Office, India.
- [6] [www.nipo.in](http://www.nipo.in) - The Indian IPR Foundation.
- [7] [www.wipo.int](http://www.wipo.int) - World Intellectual Property Organization.
- [8] <http://www.wto.org> - World Trade Organization.

# Tools for Intellectual Property Rights

S. Priya, M.Phil Scholar, PG & Research Department of Commerce with CA, Hindustan College of Arts and Science.

## I. INTRODUCTION

**I**NTELLECTUAL property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to present the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to gather commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is a qualification for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR Policies, Management Style, Strategies, Patent, Trademark, Copy right, Industrial designs, Trade secrets and so on depending on its area of specialty.

Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields. These rights Safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and no exhausted consumption.

## II. TYPES/TOOLS OF IPRs

- Patents.
- Trademarks.
- Copyrights and related rights.
- Geographical Indications.
- Industrial Designs.
- Trade Secrets.
- Layout Design for Integrated Circuits.
- Protection of New Plant Variety.

### *Patent*

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention. The protection is granted for a limited period, i.e. 20 years. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on jointly agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patented product/process, the protection

ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others. All patent owners are grateful, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but valuable information and inspiration for future generations of researchers and inventors.

### *Trademarks*

A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to approve another to use it in return for payment. It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. Registration of trademark is prima facie proof of its ownership giving statutory right to the proprietor. Trademark rights may be held in infinity. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

### *Copyrights and Related Rights*

Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work & creator is the owner of the work. Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties. These economic rights have a time limit, (other than photographs) is for life of author plus sixty years after creator's death.

### *Geographical Indications (GI)*

Geographical indications are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. They may also highlight specific qualities of a product, which are due to human factors that can be found in the place of origin of the products, such as specific manufacturing skills and customs. A geographical indication points to a specific place or region of production that determines the characteristic qualities of the product that originates

therein. It is important that the product derives its qualities and reputation from that place. Place of origin may be a village or town, a region or a country. It is an exclusive right given to a particular community hence the benefits of its registration is shared by the all members community. Recently the GIs of goods like Chanderi Sarees, Kullu Shawls, and Coimbatore Wet Grinders etc., have been registered. Keeping in view the large diversity of traditional products. Spread all over the country, the registration under GI will be very important in future growth of the tribes/communities/skilled artisans associated in developing such products.

### *Industrial Designs*

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration. This replacement Act is also aimed to enact a more detailed classification of design to conform to the international system and to take care of the proliferation of design related activities in various fields.

### *Trade Secrets*

Trade secrets may be confidential business information that provides an enterprise a competitive edge may be considered a trade secret. Usually these are manufacturing or industrial secrets and commercial secrets. These include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes. Contrary to patents, trade secrets are protected without registration. A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. Considering the vast availability of traditional knowledge in the country the protection under this will be very crucial in reaping benefits from such type of knowledge. The Trades secret, traditional knowledge are also interlinked/associated with the geographical indications.

### *Layout Design for Integrated Circuits*

Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function. The aim of the Semiconductor Integrated Circuits Layout-

Design Act 2000 is to provide protection of Intellectual Property Right in the area of Semiconductor Integrated Circuit Layout Designs and for matters connected there with or incidental thereto. The main focus of SICLD Act is to provide for routes and mechanism for protection of IPR in Chip Layout Designs created and matters related to it. The SICLD Act empowers the registered proprietor of the layout-design an inherent right to use the layout-design, commercially exploit it and obtain relief in respect of any infringement. The initial term of registration is for 10 years; thereafter it may be renewed from time to time. Department of Information Technology, Ministry of Communications and Information Technology is the administrative ministry looking after its registration and other matters.

### *Protection of New Plant Variety*

The objective of protection of plant variety cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro biodiversity by gratifying them for their contribution and to encourage investment for R & D for the development new plant varieties to facilitate the growth of the seed industry. The Plant Variety Protection and Farmers Rights act 2001 was enacted in India to protect the New Plant Variety; the act has come into force on 30.10.2005 through Authority. Initially 12 crop species have been identified for regt. i.e. Rice, Wheat, Maize, Sorghum, Pearl millet, Chickpea, Green gram, Black gram, Lentil, Kidney bean etc. India has opted for sui- generic system instead of patents for protecting new plant variety. Department Agriculture and Cooperation is the administrative ministry looking after its registration and other matters.

### **III. CONCLUSION**

It is obvious that management of IP and IPR is a multidimensional task and calls for many different actions and strategies which need to be aligned with national laws and international treaties and practices. It is no longer driven purely by a national perspective. IP and its associated rights are seriously influenced by the market needs, market response, cost involved in translating IP into commercial undertaking and so on. In other words, trade and commerce considerations are important in the management of IPR. Different forms of IPR demand different treatment, handling, Planning, and strategies and engagement of persons with different domain knowledge such as science, engineering, medicines, law, finance, marketing, and economics. Each industry should evolve its own IP policies, management style, strategies, etc. depending on its area of specialty. Pharmaceutical industry currently has an evolving IP strategy. Since there exists the increased possibility that some IPR are invalid, antitrust law, therefore, needs to step in to ensure that invalid rights are not being unlawfully asserted to establish and maintain illegitimate, albeit limited, monopolies within the pharmaceutical industry. Still many things remain to be resolved in this context.

### **REFERENCES**

- [1] General Principles Governing the Patent System in' India and further details can be viewed at DIP&P website at <http://ipindia.nic.in/ipr/patent/patents.htm>.
- [2] Principles governing the Trademarks System in India and further details can be viewed at DIP&P website at [http://ipindia.nic.in/tmr\\_new/default.htm](http://ipindia.nic.in/tmr_new/default.htm).



- [3] General Principles Governing the Copyrights and related rights System in India and further details can be viewed at website of Copyright Office website at <http://copyright.gov.in/>.
- [4] General Principles Governing the Geographical Indication System in India and further details can be viewed at website of Geographical Indication Registry, website at <http://ipindia.nic.in/>.
- [5] General Principles Governing the Industrial Design System in India and further details can be viewed at DIP&P website link at <http://ipindia.nic.in/ipr/design/designs>.
- [6] General Principles governing the Layout Design for Integrated Circuits System in India and further details can be viewed at DIT website link at <http://mit.gov.in/default.aspx?id=322>.
- [7] General Principles Governing the Protection of New Plant Variety System in India and further details can be viewed at Protection of Plant Varieties and Farmers' Rights Authority, India (PPV&FR) website link at <http://www.plantauthority.gov.in/>.

# Intellectual Property Rights Concepts and Types

G. Shanmuga Priyaa, Ph.D Research Scholar, Department of Economics, Bharathiar University, Coimbatore.

## I. INTRODUCTION

**I**NTELLECTUAL property rights (IPR) have been defined as Ideas, Inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the Inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and Industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of specialty. Pharmaceutical industry currently has an evolving IPR strategy requiring a better focus and approach in the coming era.

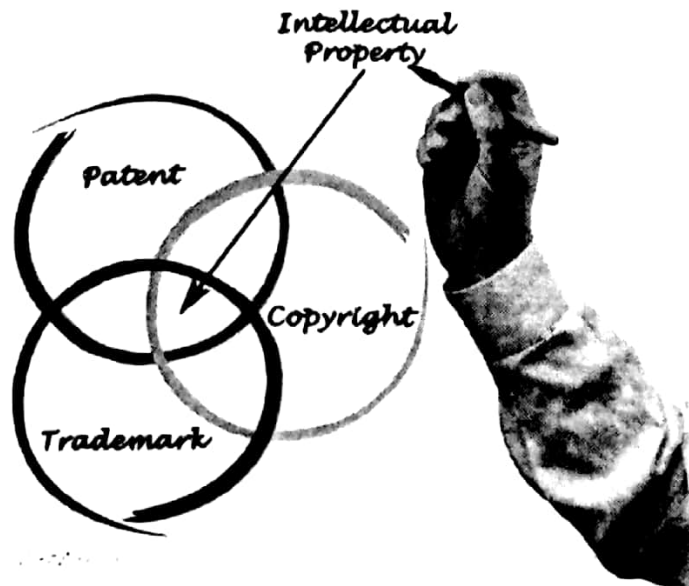
Intellectual Property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property. The term intellectual property reflects the idea that this subject matter is the product of the mind or the intellect, and that Intellectual Property rights may be protected at law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest.

## II. WHAT IS INTELLECTUAL PROPERTY RIGHTS?

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time. Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

## III. HISTORY OF IPR IN INDIA

George Alfred De Penning is supposed to have made the first application for a patent in India in the year 1856. On February 28, 1856, the Government of India promulgated legislation to grant what was then termed as "exclusive privileges for the encouragement of inventions of new manufactures" i.e the Patents Act. On March 3, 1856, a civil engineer, George Alfred De Penning of 7, Grant's Lane, Calcutta petitioned the Government of India for grant of exclusive privileges for his invention - "An Efficient Punkah Pulling Machine". On September 2, De Penning, submitted the Specifications for his invention along with drawings to illustrate its working. These were accepted and the invention was granted the first ever Intellectual Property protection in India.



#### **IV. PATENT**

A patent is an exclusive right granted for an invention—a product or process that provides a new way of doing something, or that offers a new technical solution to a problem. A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years.

##### ***Requirement for Patents***

While applying for a patent certain documents have to be submitted as essential requirements which are enlisted as below

1. Problem of invention.
2. Current report of the problem to be addressed.
3. Solution to the problem.
4. Extent of novelty.
5. Uses or application.
6. Inventor details
7. Resources of funds

##### ***Types of Patents***

1. Utility patents
2. Design patents
3. Plant patents

##### ***Utility Patents***

It can be granted to anyone who invents or discovers any new and useful process, machine, manufacture or composition of matter, or any new and useful improvement thereof. Utility period is of 20 years. "Process" refers to industrial and manufacturing (production) method. "Manufacture" refers to articles manufactured. "Composition of matter" refers to chemical compositions and may include mixtures of ingredients as well as new chemical compounds.

### *Design Patents*

It can be granted to anyone who invents a new, original ornamental design for an article of manufacture. A design patent protects the ornamental design (i.e. appearance) of the article. A design patent has duration of 14 years from the date of filing.

### *Plant Patents*

Plant patent can be granted to anyone who invents or discovers and reproduces a new variety of plant. A plant patent has a term of 20 years from the date of filing.

## **V. WHY ARE PATENTS NECESSARY?**

Patents provide incentives to individuals by recognizing their creativity and offering the possibility of material reward for their marketable inventions. These incentives encourage innovation, which in turn enhances the quality of human life.

## **VI. TRADEMARK**

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Its origin dates back to ancient times when craftsmen reproduced their signatures, or "marks", on their artistic works or products of a functional or practical nature. Over the years, these marks have evolved into today's system of trademark registration and protection. The system helps consumers to identify and purchase a product or service based on whether it's specific characteristics and quality—as indicated by its unique trademark—meet their needs.

### *What do Trademarks do?*

Trademark protection ensures that the owners of marks have the exclusive right to use them to identify goods or services, or to authorize others to use them in return for payment. The period of protection varies, but a trademark can be renewed indefinitely upon payment of the corresponding fees. Trademark protection is legally enforced by courts that, in most systems, have the authority to stop trademark infringement. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding their owners with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.

## **VII. COPYRIGHTS**

Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work & creator is the owner of the work. Creators often sell the rights to their works to individuals or companies best able to market the

works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties. These economic rights have a time limit, (other than photographs) is for life of author plus sixty years after creator's death.

### **VIII. WHAT DO COPYRIGHTS DO?**

The best way to understand when or why a business might need to take the steps needed to formally register a logo or a trade name they are using in the marketplace as their trademark is take a look at the history and common law that gave rise the trademark registration process.

#### *Unfair Competition*

Certain State statutes and court decisions are grouped together under the title of Unfair Competition. The unfair competition area of law is made up of legal rulings that are employed by State courts to promote and maintain ethical business transactions. Trademark law was first derived from State generated common law which was enacted to prohibit companies from competing unfairly or engaging in any practice that would hinder rather than promote an efficiently operating business marketplace.

#### *Federal Trademark Law*

Unlike the federal laws protecting those seeking copyrights and patents which arose under the Articles of the U.S. Constitution, the law regulating trademarks is derived from Congress's right to regulate interstate commerce. The Lanham Act was enacted to protect consumers purchasing goods or services within interstate commerce from practices that met the definition of unfair competition in business such as trademark dilution, false advertising and trademark infringement. It is the Lanham Act that established the federal trademark registry and the federal remedy for infringement of a federally registered mark. It is the federal trademark registry that is identified by the small "R" in a circle symbol.

### **IX. CONCLUSION**

The Intellectual Property Rights (IPR) will have wide range of socio, economic, technological and political impacts. Rapid technology obsolescence and fierce competitions lead one to protect the innovations using the tools of IPR such as patents, trademarks, service marks, industrial design registration, copy rights and trade secrets. The legal framework for IPR is in a stage of dynamic adjustments and changes to accommodate the challenges and new situations that result from convergence of technology.

### **REFERENCES**

- [1] [www.ipindia.nic.in](http://www.ipindia.nic.in) - Intellectual Property Office, India.
- [2] Shapiro, Robert and Pham, Nam. "Economic Effects of Intellectual Property-Intensive Manufacturing in the United States", 2007.
- [3] [www.patentoffice.nic.in](http://www.patentoffice.nic.in) - Patent office, India.
- [4] <http://copyright.gov.in/> - Copyright Office, India.
- [5] Lai and Edwin, "The Economics of Intellectual Property Protection In the Global Economy", Princeton University, 2001.

# Basics of Intellectual Property Right

R. Bharathi, M.Phil Scholar, Department of Commerce with CA, Hindusthan College of Arts and Science, Coimbatore.

## I. INTRODUCTION

**I**NTELLECTUAL property (IP) is a term referring to creations of the intellect for which a monopoly is assigned to designated owners by law. Some common types of intellectual property rights (IPR) are copyright, patents, and industrial design and the rights that protect trademarks, trade dress, and in some jurisdictions trade secrets; all these cover music, literature, and other artistic works; discoveries and inventions; and words, phrases, symbols, and designs. The intellectual property system is considered to benefit society as a whole, signal a delicate balance to ensure that the needs of both the creator and the user are satisfied. Intellectual property rights usually allow the rights holder to apply rights over the use of his or her work for a limited period of time.

Intellectual property is a creation of the intellect that is owned by an individual or an organization which can then choose to share it liberally or to manage its use in certain ways. Intellectual property is found more or less everywhere - in creative works like books, films, records, music, art and software, and in everyday objects like cars, computers, drugs and varieties of plants, all of which have been developed thanks to advances in science and technology. The distinctive features that help us choose the products we buy, like brand names and designs, can fall within the scope of intellectual property. Even the place of beginning of a product can have rights attached to it, as is the case with Champagne and Gorgonzola. Much of what we see and use on the Internet, be it a web page or a domain name, also includes or represents several form of intellectual property.

## II. THE EVOLUTION OF INTELLECTUAL PROPERTY

Renaissance northern Italy is idea to be the cradle of the IP system -so the concept is not a new one. A Venetian law of 1474 made the first logical attempt to protect inventions by a form of patent, which granted an exclusive right to an individual. In the same century, the invention of movable type and the printing press by Johannes Gutenberg around 1440 contributed to the birth of the first copyright system in the world. Towards the end of the 19th century, inventive new ways of manufacture helped trigger large-scale industrialization accompanied by such phenomena as Rapid City growth, increasing railway networks, the investment of capital, and growing transoceanic trade. New ethics of industrialism, the emergence of stronger centralized governments, and stronger nationalism led many countries to establish their first modern IP laws.

## III. BENEFITS OF INTELLECTUAL PROPERTY RIGHTS

Through a system of intellectual property rights, it is possible not only to ensure that an innovation or creation is attributed to its creator or producer, but also to secure "ownership" of it and benefit commercially as a result. By protecting intellectual property, society acknowledges the benefits it contributes and provides an incentive for people to invest time and resources to foster innovation and expand

knowledge. In return for granting such rights, the intellectual property system contributes to society by:

- Enriching the team of public knowledge and culture;
- Maintaining fair competition and encouraging the production of a broad variety of quality goods and services;
- Underpinning economic growth and employment;
- Sustaining innovation and creation; and
- Promoting technological and cultural advances and expression.

Where appropriate or adequate intellectual property rights are not accessible, or are difficult to implement, innovators and innovative enterprises may need to rely to a greater extent on other means to protect themselves from unfair competition, such as through trade secrets, contractual agreements, or technical means of preventing copying. Such means can be less effective in promoting the goals set out above.

Intellectual property rights are granted under the national laws of each country or region. In adding up, various international agreements on intellectual property rights synchronize laws and procedures, or allow intellectual property rights to be registered at the same time in several countries. Different types of intellectual property-literary and artistic creations, inventions, brand names, and designs, to name a few are protected in different ways:

- Creations in the fields of literature and arts, such as books, paintings, music, films and records as well as software, are generally protected through copyright or so-called related rights;
- Technological inventions are typically protected by patents;
- Unique features-such as words, symbols, smells, sounds, colours and shapes - that distinguish one product or service from another, can be protected by trademark rights;
- The specific external appearance given to objects, such as furniture, car body parts, tableware or jewelers, may enjoy design protection;
- Geographical indications and trade secrets are also considered to be types of intellectual property and most countries provide some form of legal protection for them;
- Rules to prevent unfair competition in the commercial world also help protect trade secrets and other types of intellectual property;
- Plant varieties are protected mainly by a specific IP protection regime called plant variety rights, and may also be protected by patents or by a combination of the two systems; and
- Specific legal protection is provided in some countries for integrated circuits and databases.

#### **IV. ADMINISTRATION OF INTELLECTUAL PROPERTY RIGHTS**

- The administration of copyright and associated rights falls under the responsibility of the Ministry of Arts and Culture. In the field of copyright there is also the Mauritius Society of Authors (MASA), which is a legislative body established under the Copyright Act, and which looks after the interests of its members, that is copyright owners or exclusive licensees.

- In the field of Trademarks and Patents, the Ministry of Industry and International Trade is presently looking into the administration of those intellectual property rights. However, with the new legislation some substantial changes will be brought about with the establishment of a new institutional framework, namely the Industrial Property Office, which will be administered by a Controller. However, it can be assumed that within a short term the different institutions established by the Industrial Property legislation will be administered and will function under the Ministry of International Trade.
- The Controller will have the function to grant patent, register any mark, industrial design, geographical indication or lay-out design as the case may be. The decisions of the Controller can be challenged by way of appeal to the Industrial Property Tribunal. Also, the Tribunal is empowered to give rulings on the interpretation of any provisions of any of the industrial property enactments.
- The law further provides for an appeal to the Supreme Court, if a person is dissatisfied with the ruling of the Tribunal, but such appeal shall be on points of law only, and by a procedure known as case stated. It is to be noted that one cannot bypass the Tribunal and appeal directly to the Supreme Court.

#### **V. ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

- As regards the enforcement of intellectual property rights, to the extent that these are private rights, the prime responsibility rests on the owner of the right to seek enforcement of his/her rights through the mechanism set down in the legislation. In addition, the help of public authorities, like the Police, may be sought, and depending on the legislation applicable any breach of an intellectual property right may lead to criminal prosecutions.
- Depending on the situation of the case, civil remedies (such as injunction - to prevent certain acts or damages - to compensate certain loss) or criminal sanctions (which normally will take a longer time and the proceeding will ultimately be taken over by public authorities) may be resorted to. In case of extreme urgency, ex-parte application before the judge in chambers may be resorted to, to prevent irreparable or consequential damages.
- It is to be noted that under the new enactments, the Controller may upon his own initiative inspect any potential offence under any of the industrial property laws. In that respect, the Controller has extensive powers of investigation including powers to request information and detention of documents or material. In the conduct of any enquiry the Commissioner of Police shall provide such assistance as necessary to the Controller.

#### **VI. CONCLUSION**

The difficulties inflicted on the developing countries by monopolist rights are the result of a complex web of interacting factors. Nevertheless the principal components might be identified as the lack of economic security and the forced dependence of the lesser industrialised nations on the most industrialised nations. It is interesting to note that trade with lesser industrialised nations produced record profits for multinational biotechnology corporations while increasing rural poverty and fuelling further social dislocation in the lesser developed countries.



## REFERENCES

- [1] <http://indiaibusiness.nic.in>.
- [2] [https://en.wikipedia.org/wiki/Intellectual\\_property](https://en.wikipedia.org/wiki/Intellectual_property).
- [3] [http://www.wipo.int/edocs/pubdocs/en/intproperty/888/wipo\\_pub\\_888\\_1.pdf](http://www.wipo.int/edocs/pubdocs/en/intproperty/888/wipo_pub_888_1.pdf).
- [4] Mannan, (2003), Adam Intellectual Property (LW 556)Dissertation Convenor: Mr Alan Story23n February.

# Basics of Intellectual Property Rights

Sree Bhagya Lakshmi, Ph.D Scholar, Department of Economics, Avinashilingam Institute for Home Science and Higher Education for Women, Coimbatore.

Dhivya Keerthiga, Avinashilingam Institute for Home Science and Higher Education for Women, Coimbatore.

## I. INTRODUCTION

**W**ITH the advent of the new knowledge economy, the old and some of the existing management constructs and approaches would have to change. The knowledge economy places a tag of urgency on understanding and managing knowledge based assets such as innovations and know-how. The time for grasping knowledge has become an important parameter for determining the success of an institution, enterprise, government and industry; the shorter the time better are the chances of success. Intellectual property rights (IPR) have become important in the face of changing trade environment which is characterized by the following features namely global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development (R&D), production and marketing and need for highly skilled human resources.

With the advent of the new knowledge economy, the old and some of the existing management constructs and approaches would have to change. The knowledge economy places a tag of urgency on understanding and managing knowledge based assets such as innovations and know-how. The time for grasping knowledge has become an important parameter for determining the success of an institution, enterprise, government and industry; the shorter the time better are the chances of success.

Intellectual property rights (IPR) have become important in the face of changing trade environment which is characterized by the following features namely global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development (R&D), production and marketing and need for highly skilled human resources.

Geographical barriers to trade among nations are collapsing due to globalisation, a system of multilateral trade and a new emerging economic order. It is therefore quite obvious that the complexities of global trade would be on the increase as more and more variables are introduced leading to uncertainties. Many products and technologies are simultaneously marketed and utilized in many countries. With the opening up of trade in goods and services intellectual property rights (IPR) have become more susceptible to infringement leading to inadequate return to the creators of knowledge. Developers of such products and technologies would like to ensure R&D costs and other costs associated with introduction of new products in the market are recovered and enough profits are generated for investing in R&D to keep up the R&D efforts. One expects that a large number of IP rights would be generated and protected all over the world including India in all areas of science and technology, software and business methods.

## II. INTELLECTUAL PROPERTY RIGHTS (IPR)

Intellectual property rights as a collective term includes the following independent IP rights which can be collectively used for protecting different aspects of an inventive work for multiple protection:

1. Patents.
2. Copyrights.
3. Trademarks.
4. Registered (industrial) design.
5. Protection of IC layout design.
6. Geographical indications, and
7. Protection of undisclosed information.

### *Patents*

A patent is an exclusive right granted by a country to the owner of an invention to make, use, manufacture and market the invention, provided the invention satisfies certain conditions stipulated in the law. Exclusive right implies that no one else can make, use, manufacture or market the invention without the consent of the patent holder. This right is available for a limited period of time. In spite of the ownership of the rights, the use or exploitation of the rights by the owner of the patent may not be possible due to other laws of the country which has awarded the patent. These laws may relate to health, safety, food, security etc. Further, existing patents in similar area may also come in the way. A patent in the law is a property right and hence, can be gifted, inherited, assigned, sold or licensed. As the right is conferred by the State, it can be revoked by the State under very special circumstances even if the patent has been sold or licensed or manufactured or marketed in the meantime. The patent right is territorial in nature and inventors/their assignees will have to file separate patent applications in countries of their interest, along with necessary fees, for obtaining patents in those countries.

### *Copyrights*

Copyright is a right, which is available for creating an original literary or dramatic or musical or artistic work. Cinematographic films including sound track and video films and recordings on discs, tapes, perforated roll or other devices are covered by copyrights. Computer programs and software are covered under literary works and are protected in India under copyrights. The Copyright Act, 1957 as amended in 1983, 1984, 1992, 1994 and 1999 governs the copyright protection in India. The total term of protection for literary work is the author's life plus sixty years. For cinematographic films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies the term is 60 years from the beginning of the calendar year following the year in which the work was published. For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made.

Copyright gives protection for the expression of an idea and not for the idea itself. For example, many authors write textbooks on physics covering various aspects like mechanics, heat, optics etc. Even though these topics are covered in several books by different authors, each author will have a copyright on the book written by him / her.

provided the book is not a copy of some other book published earlier. India is a member of the Berne Convention, an international treaty on copyright. Under this Convention, registration of copyright is not an essential requirement for protecting the right. It would, therefore, mean that the copyright on a work created in India would be automatically and simultaneously protected through copyright in all the member countries of the Berne Convention. The moment an original work is created, the creator starts enjoying the copyright. However, an undisputable record of the date on which a work was created must be kept. When a work is published with the authority of the copyright owner, a notice of copyright may be placed on publicly distributed copies. The use of copyright notice is optional for the protection of literary and artistic works. It is, however, a good idea to incorporate a copyright notice. As violation of copyright is a cognizable offence, the matter can be reported to a police station. It is advised that registration of copyright in India would help in establishing the ownership of the work. The registration can be done at the Office of the Registrar of Copyrights in New Delhi. It is also to be noted that the work is open for public inspection once the copyright is registered.

### *Trademarks*

A trademark is a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise. Trademarks may be one or combination of words, letters, and numerals. They may also consist of drawings, symbols, three dimensional signs such as shape and packaging of goods, or colours used as distinguishing feature. Collective marks are owned by an association whose members use them to identify themselves with a level of quality. Certification marks are given for compliance with defined standards. (Example ISO 9000.). A trademark provides to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize others to use it in return for some consideration (payment). Well-known trademark in relation to any goods or services, means a mark which has become popular substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

Enactment of the Indian Trademarks Act 1999 is a big step forward from the Trade and Merchandise Marks Act 1958 and the Trademark Act 1940. The newly enacted Act has some features not present in the 1958 Act and these are:-

1. Registration of service marks, collective marks and certification trademarks.
2. Increasing the period of registration and renewal from 7 years to 10 years.
3. Allowing filing of single application for registration in more than one class.
4. Enhanced punishment for offences related to trademarks.
5. Exhaustive definitions for terms frequently used.
6. Simplified procedure for registration of registered users and enlarged scope of permitted use.
7. Constitution of an Appellate Board for speedy disposal of appeals and rectification applications which at present lie before High Court.

### *Protection of Geographical Indications*

It is an Indication which identify a good as originating in the territory of a member or a region or a locality in that territory, where a given quality reputation or other characteristics of the good is attributable to its geographical origin. The concept of identifying GI and protecting them is a new concept in India, perhaps in most developing countries, and has come to knowledge in these countries after they signed the TRIPS Agreement. It may be noted that properly protected GI will give protection in domestic and international market. Stipulations of TRIPS would be applicable to all the member countries. According to TRIPS, GI which is not or cease to be protected in its country of origin or which has fallen into disuse in that country cannot be protected. Homonymous GI for wines will get independent protection. Each state shall determine conditions under which homonymous indications will be differentiated from each other. Principles of national treatment and fair competition are applicable.

TRIPS provide for seizure of goods bearing false indications of GI. TRIPS provide for refusal or invalidation of registration of a trademark containing a GI with respect to goods not originating in the territory indicated. The Geographical Indication of Goods (Registration and Protection) Act came into being in 2000. (The Act is not implemented at the time of writing the article as the rules have not been notified.) The term GI has been defined as "Geographical Indications", 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 characteristics 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.

### **III. PROTECTION OF INTEGRATED CIRCUIT LAYOUT DESIGN (IC)**

It provides protection for semiconductor IC layout designs. India has in acted Semiconductor Integrated Circuits Layout Design Act, 2000 to give protection to IC layout design. Layout design includes a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor IC. Semiconductor IC is a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function. The term of the registration is 10 years from the date of filing. An IC layout design cannot be registered if it is:

1. Not original.
2. Commercially exploited anywhere in India or in a convention country.
3. Inherently not distinctive.
4. Inherently not capable of being distinguishable from any other registered layout design.

### **IV. CONCLUSION**

When indigenously developed technology and research output in a country is protected it in turn make a stronger economy. All these basic concepts are very much

important aspect to get enriched with the knowledge of research activities and also for becoming a successful entrepreneur. All the concepts discussed above are the most essential aspect in Intellectual Property Rights.

### REFERENCES

- [1] The Patents Act, 1970 as amended by Patents (Amendment) Act 2005, Commercial Law Publisher (India) Private Ltd., 2005.
- [2] The Protection of Plant Varieties and Farmers' Rights Act, 2001 along with Protection of Plant Varieties and Farmers' Rights Rules 2003; Akalank Publications, New Delhi; 2003.
- [3] The Copyright Act 1957 as amended up to 1999 along with Copyright Rules 1958 and International Copyright Order 1999; 2005.
- [4] The Design Act 2000 along with Design Rules 2001; Universal Law Publishing Co. Ltd., New Delhi; 2004.
- [5] The Trademarks Act 1999 along with trade Marks Rules 2002; Commercial Law Publisher (India) Private Ltd., 2004.

# Study on Intellectual Property Rights

A. Vasanthi, Ph.D Research Scholar, Department of Econometrics, Bharathiar University, Coimbatore.

## I. INTRODUCTION

**I**NTELLECTUAL property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property. The term intellectual property reflects the idea that this subject matter is the product of the mind or the intellect, and that Intellectual Property rights may be protected by law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.

## II. INTELLECTUAL PROPERTY

Intellectual property refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories:

1. Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications.
2. Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

## III. INDUSTRIAL DESIGN

An industrial design refers to the ornamental or aesthetic aspects of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features, such as patterns, lines or color. Industrial designs are applied to a wide variety of industrial products and handicrafts: from technical and medical instruments to watches, jewelry and other luxury items; from household wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods. To be protected under most national laws, an industrial design must be new or original and nonfunctional. This means that an industrial design is primarily of an aesthetic nature, and any technical features of the article to which it is applied are not protected by the design registration. However, those features could be protected by a patent. (WIPO)

## IV. COPYRIGHTS AND RELATED RIGHTS

Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs

databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work & creator is the owner of the work.

## **V. INTELLECTUAL PROPERTY RIGHTS (IPR)**

Intellectual property rights as a collective term includes the following independent IP rights which can be collectively used for protecting different aspects of an inventive work for multiple protection:

1. Patents.
2. Copyrights.
3. Trademarks.
4. Registered (industrial) design.
5. Protection of IC layout design.
6. Geographical indications, and
7. Protection of undisclosed information.

## **VI. NATURE OF INTELLECTUAL PROPERTY RIGHTS**

IPR are largely territorial rights except copyright, which is global in nature in the sense that it is immediately available in all the members of the Berne Convention. These rights are awarded by the State and are monopoly rights implying that no one can use these rights without the consent of the right holder. It is important to know that these rights have to be renewed from time to time for keeping them in force except in case of copyright and trade secrets. IPR have fixed term except trademark and geographical indications, which can have indefinite life provided these are renewed after a stipulated time specified in the law by paying official fees.

Trade secrets also have an infinite life but they don't have to be renewed. IPR can be assigned, gifted, sold and licensed like any other property. Unlike other moveable and immoveable properties, these rights can be simultaneously held in many countries at the same time. IPR can be held only by legal entities i.e., who have the right to sell and purchase property. In other words an institution, which is not autonomous may not in a position to own an intellectual property. These rights especially, patents, copyrights, industrial designs, IC layout design and trade secrets are associated with something new or original and therefore, what is known in public domain cannot be protected through the rights mentioned above. Improvements and modifications made over known things can be protected. It would however, be possible to utilize geographical indications for protecting some agriculture and traditional products. (R Saha 2003)

## **VII. THE IMPORTANCE OF PROTECTING INTELLECTUAL PROPERTY**

Most people are not even aware that they own intellectual property. They assume only large corporations with profitable names, logos and brands to protect are the only ones who really possess a need to safeguard intangible assets. But basically anything that is written, visually created, and unique to an individual is intellectual property which means that millions of individual sown more than they believe.



Intellectual property (IP) rights are valuable assets for your business - among the most important it possesses. Your IP rights can:

1. Set your business apart from competitors.
2. Be sold or licensed, providing an important revenue stream.
3. Offer customers something new and different.
4. Form an essential part of your marketing or branding.
5. Be used as security for loans.

#### **VIII. THE DIFFERENT TYPES OF INTELLECTUAL PROPERTY RIGHTS ARE**

1. Patents.
2. Copyrights.
3. Trademarks.
4. Industrial designs.
5. Protection of Integrated Circuits layout design.
6. Geographical indications of goods.
7. Biological diversity.
8. Plant varieties and farmers rights.
9. Undisclosed information.

#### **IX. INTELLECTUAL PROPERTY TRENDS-INDIA**

During 2009-10, 34,287 patent applications were filed, 6069 examined and 610 patents granted. The number of applications filed by the Indian applicants was 704. Out of the applications filed by the Indian applicants, Maharashtra accounted for the maximum number followed by Delhi, Tamil Nadu, Karnataka, Andhra Pradesh, West Bengal etc.

During 2009-10, 6092 design applications were filed, 6266 examined and 6000 registered. The number of applications filed by the Indian applicants was 4267. The number of registered designs in force at the end of 2009-10 was 39008.

During 2009-10, 1,41,943 trademark applications were filed, 25875 examined and 67,490 registered. The number of applications filed by the Indian applicants was 1,34,403. The total number of registered trademarks as of 31st March, 2010 was 8,22,825.

During 2009-10, 40 Geographical indications applications were filed and 14 were registered. A total of 120 Geographical Indications have been registered during 31st March, 2010.

During 2009-10, 142 applications were received for access of bio-resources for Research/commercial use, transfer of research results, intellectual property rights and third party transfer. Totally, 13 agreements have been signed. So far, 11 patents have been granted on the applications cleared by NBA. The NBA has also received a royalty amount of Rs.37.89 lakhs from the applicants who have exported bio-resources.

In 2010-11, a total of 642 applications representing 28 crops were received by the Authority for seeking plant variety protection under the Act. The applications belong to new (395), extant (216), farmers' varieties-(30) and essentially derived variety (7) categories.

## REFERENCES

- [1] The Patents Act, 1970 as amended by Patents (Amendment) Act 2005, Commercial Law Publisher (India) Private Ltd., 2005.
- [2] The Protection of Plant Varieties and Farmers Rights Act, 2001 along with Protection of Plant Varieties and Farmers Rights Rules 2003; Akalank Publications, New Delhi; 2003.
- [3] The Copyright Act 1957 as amended up to 1999 along with Copyright Rules 1958 and International Copyright Order 1999; 2005.
- [4] Intellectual property conventions and Indian law Mahima Puri Anjali Varma July 2005 Indian Council for Research on International Economic Relations.
- [5] The Concept of Intellectual Property The World Intellectual Property Organization (WIPO) History Mission and Activities Structure Administration Membership Constitutional Reform Wider Consultation and Outreach 1974.
- [6] The Design Act 2000 along with Design Rules 2001; Universal Law Publishing Co. Ltd., New Delhi; 2004.
- [7] The Trademarks Act 1999 along with trade Marks Rules 2002; Commercial Law Publisher (India) Private Ltd., 2004.

# Intellectual Property Rights in India

S. Bhavani Priyadarshini, Ph.D. Research Scholar, Department of Econometrics, Bharathiar University, Coimbatore.

## I. INTRODUCTION

**I**NTELLECTUAL property Right (IPR) is a term used for various legal entitlements which attach to certain types of information, ideas, or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter of the Intellectual Property. The term intellectual property reflects the idea that this subject matter is the product of the mind or the intellect, and that Intellectual Property rights may be protected at law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.

Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on the process to manufacture chewing gum.

Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time. Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce.

## II. CATEGORIES OF INTELLECTUAL PROPERTY

One can broadly classify the various forms of IPRs into two categories: IPRs that stimulate inventive and creative activities (patents, utility models, industrial designs, copyright, plant breeders' rights and layout designs for integrated circuits) and IPRs that offer information to consumers (trademarks and geographical indications). IPRs in both categories seek to address certain failures of private markets to provide for an efficient allocation of resources IP is divided into two categories for ease of understanding:

### *Industrial Property and Copyright*

**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. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

### III. INTELLECTUAL PROPERTY SYSTEM IN INDIA

Historically the first system of protection of Intellectual property came in the form of (Venetian Ordinance) in 1485. This was followed by Statute of Monopolies in England in 1623, which extended patent rights for Technology Inventions. In the United States, patent laws were introduced in 1760. Many European countries developed their Patent Laws between 1880 to 1889. In India Patent Act was introduced in the year 1856 which remained in force for over 50 years, which was subsequently modified and amended and was called "The Indian Patents and Designs Act, 1911".

After Independence a comprehensive bill on patent rights was enacted in the year 1970 and was called "The Patents Act, 1970". Specific statutes protected only certain type of Intellectual output; till recently only four forms were protected. The protection was in the form of grant of copyrights, patents, designs and trademarks. In India, copy rights were regulated under the Copyright Act, 1957; patents under Patents Act, 1970; trademarks under Trade and Merchandise Marks Act 1958; and designs under Designs Act, 1911.

With the establishment of WTO and India being signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), several new legislations were passed for the protection of intellectual property rights to meet the international obligations. These included: Trade Marks, called the Trade Mark Act, 1999; Designs Act, 1911 was replaced by the Designs Act, 2000; the Copyright Act, 1957 amended a number of times, the latest is called Copyright (Amendment) Act, 2012; and the latest amendments made to the Patents Act, 1970 in 2005. Besides, new legislations on geographical indications and plant varieties were also enacted. These are called Geographical Indications of Goods (Registration and Protection) Act, 1999, and Protection of Plant Varieties and Farmers' Rights Act, 2001 respectively. Over the past fifteen years, intellectual property rights have grown to a stature from where it plays a major role in the development of global economy. In 1990s, many countries unilaterally strengthened their laws and regulations in this area, and many others were poised to do likewise.

At the multilateral level, the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization elevates the protection and enforcement of IPRs to the level of solemn international commitment. It is strongly felt that under the global competitive environment, stronger IPR protection increases incentives for innovation and raises returns to international technology transfer.

### IV. DEVELOPMENT OF TRIPS COMPLIED REGIME IN INDIA

The establishment of WTO as a result of institutionalization of international framework of trade calls for harmonization of several aspects of Indian Law relating to Intellectual Property Rights. The TRIPS agreement set minimum standards for protection for IPR rights and also set a time frame within which countries were required to make changes in their laws to comply with the required degree of protection. In view of this, India has taken action to modify and amend the various IP Acts in the last few years.

## *Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement*

With the establishment of the world trade Organization (WTO), the importance of the role of the intellectual property protection has been Crystallized in the Trade-Related Intellectual Property Systems (TRIPS) Agreement. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty in 1994. The general goals of the TRIPS Agreement are contained in the Preamble to the Agreement, which reproduces the basic Uruguay Round negotiating objectives established in the TRIPS area by the 1986 Punta del Este Declaration and the 1986-2 Mid-Term Review. These objectives include the reduction of distortions and impediments to international trade, promotion of effective and adequate protection of intellectual property rights, and ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

The TRIPS Agreement encompasses, in principle, all forms of intellectual property and aims at harmonizing and strengthening standards of protection and providing for effective enforcement at both national and international levels. It addresses applicability of general GATT principles as well as the provisions in international agreements on IP (Part I). It establishes standards for availability, scope, use (Part II), enforcement (Part III), acquisition and maintenance (Part IV) of Intellectual Property Rights. Furthermore, it addresses related dispute prevention and settlement mechanisms (Part V). Formal provisions are addressed in Part VI and VII of the Agreement, which cover transitional and institutional arrangements, respectively. The obligations under TRIPS apply equally to all member states. However developing countries were allowed extra time to implement the applicable changes to their national laws, in two tiers of transition according to their level of development. The transition period for developing countries expired in 2005. For least developed countries, the transition period has been extended to 2016, and could be extended beyond that. The TRIPS Agreement, which came into effect on 1 January 1995, is date the most comprehensive multilateral agreement on intellectual property.

The areas of intellectual property that it covers are:

1. Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organisations);
2. Trademarks including service marks;
3. Geographical indications including appellations of origin;
4. Industrial designs;
5. Patents including protection of new varieties of plants;
6. The lay-out designs (topographies) of integrated circuits;
7. The undisclosed information including trade secrets and test data.

### *Scheme for "Building Awareness on Intellectual Property Rights(IPR)" for Micro Small and Medium Enterprises (MSMEs) under National Manufacturing Competitiveness Programme (NMCP)*

The objective of the scheme is to enhance awareness of MSME about Intellectual Property Rights (IPRs) to take measure for the protecting their ideas and business strategies. Effective utilization of IPR tools by MSMEs would also assist their technology up gradation and enhancing competitiveness.

These initiatives are proposed to be developed through Public-Private Partnership (PPP) mode to encourage economically sustainable models for overall development of MSMEs. Under this programme financial assistance will be provided for taking up the identified initiatives. Eligible applicants/beneficiaries will have to contribute minimum 10% of the GOI financial support for availing assistance under the scheme.

#### REFERENCES

- [1] J.C. Campbell, "An Introduction Policy Studies Journal", doi:10.1017/S1537781415000316, Vol. 13, No. 3, pp. 471, 1985.
- [2] P.F. Centre, A. Council, and N. Delhi, "Management of Intellectual Property Rights in India," Journal of Natural Science Biology and Medicine, doi:10.4103/0976-9668.82307, Vol. 2, pp. 1-29, 2005.
- [3] M.U.N.I. Ch, Law in India, 2013.
- [4] Foreign & Commonwealth Office, "Intellectual Property Rights in India", Retrieved from <https://www.gov.uk/government/publications/intellectual-property-rights-in-india>, 2013.
- [5] B.C. Hons, B. Ll, and D.I.F.R. Uk, (n.d.). Handbook on Intellectual Property Rights in India.
- [6] P. Intellectual, (n.d.). Intellectual Property Rights in India.
- [7] S. Material, and P. Programme, (n.d.). Professional Programme Intel In Tell Tel I Ectual Property Rights- Rights - Law and Practice.
- [8] F.I. Patent, "Intellectual Property Rights", (IPR ), pp. 1-16, 2002.
- [9] M. Puri, and A. Varma, "Intellectual property conventions and Indian law," Indian Council for Research on International Economic Relations, Retrieved from <http://icrier.org/pdf/wp.pdf>, No. 166, pp. 1-50, 2005.

# Patenting of Inventions

Dr.T. Alagumani, Ph.D., Professor and Head, Department of Trade and Intellectual Property, Centre for Agricultural and Rural Development Studies, Tamilnadu Agricultural University, Coimbatore.

## I. INTELLECTUAL PROPERTY

**D**EFINITION of World Intellectual Property Organisation (WIPO): Intellectual Property refers to creations of the mind, inventions, literary and artistic works, symbols, names, images and Intellectual property rights is a collective term includes the following independent IP rights 1. Patents 2. Copyrights 3. Trademarks 4. Registered (industrial) design 5. Protection of IC layout design, 6. Geographical indications and 7. Protection of undisclosed information.

## II. PATENTS

A patent is an exclusive right granted by a country to the owner of an invention to make, use, manufacture and market the invention, provided the invention satisfies certain conditions, stipulated in the law. Exclusive right implies that no one else can make, use, manufacture or market the invention without the consent of the patent holder. This right is available for a limited period. A patent in the law is a property right and hence, can be gifted, inherited, assigned, sold or licensed. The patent right is territorial in nature and inventors/their assignees will have to file separate patent applications in countries of their interest, along with necessary fees, for obtaining patents in those countries. As the right is conferred by the State, it can be revoked by the State under very special circumstances even if the patent has been sold or licensed or manufactured or Patentability: An invention can be patented if it is a new product or process, involving an inventive step and capable of being made or used in an industry. It means the invention to be patentable should be technical in nature and should meet the three criteria.

- i. Novelty: the matter disclosed in the specification is not published in India or elsewhere before the date of filing of the patent application in India.
- ii. Inventory step: the invention is not obvious to a person skilled in the art in the light of the prior publication/knowledge/document.
- iii. Industrially applicable: invention should possess utility, so that it can be made or used in an industry.

### *Inventions Not Patentable Under Section 3*

- An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- An invention the primary or intended use or commercial exploitation of which could be contrary public order or morality or which causes serious prejudice to human, animal or plant life or health or to the environment;
- The mere discovery of a scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substances occurring in nature;
- Any process for the medicinal, surgical, curative, prophylactic, diagnostic therapeutic or other treatment of human beings or any process for a similar

- treatment of animals to render them free of disease or to increase their economic value or that of their products.
- Plants and animals in whole or any part thereof other than micro organisms but including ' seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
  - An invention which in effect, is traditional knowledge or which is an aggregation or duplication of known properties or traditionally known component or components.

### **Legislation**

The Patent System in India is governed by the Patents Act, 1970 (No. 39 of 1970) as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003, as amended by the Patents (Amendment) Rules 2006 effective from 05-05-2006.

Administration: The Patent Office, under the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, performs the statutory duties in connection with the grant of patents for new inventions and registration of industrial designs. Patent Offices are located at Kolkata, Mumbai, Chennai and Delhi to deal with the applications for patents originating within their respective territorial jurisdictions.

### **Application for a Patent**

A patent application can be filed either by true and first inventor or his assignee, either alone or jointly with any other person. However, legal representative of any deceased person can also make an application for patent.

Provisional Specification: It is permissible to file an application for a patent accompanied by a "Provisional Specification" describing the invention to secure priority date of the invention, and thereby, enable the inventor to work out the practical details of the invention and to file complete specification within 12 months from the date of filing of provisional specification.

### **Complete Specification**

It should contain the following:

1. Title of invention.
2. Field of invention.
3. Background of invention with regard to the drawback associated with known art.
4. Object of invention.
5. Statement of invention.
6. A summary of invention.
7. A brief description of the accompanying drawing.
8. Detailed description of the invention with reference to drawing/examples.
9. Claim(s).
10. Abstract.

The specification must start with a short title, which describes the general nature of invention. The title should not contain anyone's name, a fancy name and trade name or personal name or any abbreviation etc.



*Appropriate Office for Filing an Application:* Application is required to be filed according to the territorial limits where the applicant normally resides. The four patent offices are located at Kolkata, Mumbai, Delhi & Chennai.

### *Documents Required for Filing an Application*

1. Application form in duplicate (Form I).
2. Provisional or complete specification in duplicate. If the provisional specification is filed, it must be followed by the complete specification within 12 months. (Form 2).
3. Drawing in duplicate (if necessary).
4. Abstract of the invention in duplicate.
5. Information & undertaking listing the number, filing date & current status of each foreign patent application in duplicate (Form 3).
6. Priority document (if priority date is claimed) in convention application, when directed by the Controller.
7. Declaration of inventor-ship where provisional specification is followed by complete specification or in case of convention/PCT national phase application (Form S).
8. Power of attorney (if filed through Patent Agent).
9. Fee (to be paid in cash/by cheque/by demand draft)

(Note: The cheque or demand draft should be payable to the "Controller of Patents" drawn on any schedule bank at a place where the appropriate office is situated)

### **III. PUBLICATION & EXAMINATION OF PATENT APPLICATIONS**

*Publication:* All the applications for patent are published in the Patent Office Journal just after 18 months from the date of filing of the application or the date of priority whichever is earlier. The publication includes the particulars of the date of the application, application number, name and address of the applicant along with the abstract. The applications for patent are not open for public inspection before publication.

*Request for Publication:* The applicant may also file a request for early publication in Form-9 with a prescribed fee. The application is published ordinarily within one month from the date of the request on Form-9. The applicant shall have provisional Rights from the date of publication.

*Request for examination:* No application for patent will be examined if no request is made by the applicant or by any other interested person in Form-18 with prescribed fee within a period of 48 months from the date of priority of the application or from the date of filing of the application, whichever is earlier. If the request is not made application will be treated as withdrawn and, thereafter, application cannot be revived.

*Examination:* Application for patent will be taken up for examination according to the serial number of the requests received on Form 18. A First Examination Report (FER) stating the objections/requirements is communicated to the applicant or his agent according to the address for service ordinarily within six months from the date of request for examination or date of publication whichever is later. Application or

complete specification should be amended in order to meet the objections/ requirements within a period of 12 months from the date of First Examination Report (FER).

No further extension of time is available in this regard. If all the objections are not complied with within the period of 12 months, the application shall be deemed to have been abandoned

#### **IV. WITHDRAWAL OF PATENT APPLICATION**

The application for patent can be withdrawn at least 3(Three) months before the first publication which will be 18(Eighteen) months from the date of filing or date of priority whichever is earlier. The application can also be withdrawn at any time before the grant of the patent. The application withdrawn after the date of publication cannot be refilled as it is already laid open for public inspection. However, application withdrawn before the publication can be refilled provided it is not opened to public otherwise.

*Grant of Patent:* When all the requirements of the FER are met the patent is granted and entry is made in the register of patents and it is notified in the Patent Office, Journal, thereafter opening the application, specification and other related documents for public inspection on payment of prescribed fee.

*Term and Date of Patent:* Term of every patent will be 20 years from the date of filing of patent application, irrespective of whether it is filled with provisional or complete specification. Date of patent is the date on which the application for patent is filed.

*Renewal Fee:* To keep the patent in force, Renewal fee is to be paid every year. The first renewal fee is payable for the third year and must be paid before the expiration of the second year from the date of patent.

#### **Commercializing IPR Enabled Technologies**

The IPR enabled technologies will be transferred for commercial purposes with suitable understanding/agreement or contracts with the concerned parties. Specific terms of licensing can be negotiable.

#### **REFERENCES**

##### *Text Books*

- [1] P. Ganguli, Intellectual Property Rights: Unleashing Knowledge Economy, McGraw Hill, New Delhi, 2008.
- [2] Complete Reference of Intellectual Property Rights Law (2007), Snow White Publication, Pvt. Ltd., Mumbai.

##### *E-References*

- [1] [www.ipindia.nic.in](http://www.ipindia.nic.in)
- [2] [www.wto.org](http://www.wto.org)
- [3] [www.wipo.int](http://www.wipo.int)
- [4] [www.archive.india.gov.in](http://www.archive.india.gov.in)

# Intellectual Property Rights

N. Manimehalai, M.A., M.Phil., PGDCA., Assistant Professor, Department of Economics, L.R.G. Government Arts College for Women, Tiruppur.

## I. MEANING OF INTELLECTUAL PROPERTY

**I**NTELLECTUAL property (IP) refers to creations of the mind, such as inventions, literary and artistic works; designs; and symbols, names and images used in commerce.

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

Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, and in some jurisdictions trade secrets. There are also more specialized or derived varieties of sui generis exclusive rights, such as circuit design rights (called mask work rights in the US) and supplementary protection certificates for pharmaceutical products (after expiry of a patent protecting them) and database rights (in European law).

### *Patents*

A patent is a form of right granted by the government to an inventor, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process and generally has to fulfill three main requirements: it has to be new, not obvious and there needs to be an industrial applicability.

### *Copyright*

A copyright gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works". Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.

### *Industrial Design Rights*

An industrial design right (sometimes called "design right") protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value. An industrial design can be a two or three-dimensional pattern used to produce a product, industrial commodity or handicraft.

### *Plant Varieties*

Plant breeders' rights or plant variety rights are the rights to commercially use a new variety of a plant.

### *Trademarks*

A trademark is a recognizable sign, design or expression which distinguishes products or services of a particular trader from the similar products or services of other traders.

### *Trade Dress*

Trade dress is a legal term of art that generally refers to characteristics of the visual appearance of a product or its packaging (or even the design of a building) that signify the source of the product to consumers.

### *Trade Secrets*

A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers.

## **II. OBJECTIVES OF INTELLECTUAL PROPERTY LAW**

The stated objective of most intellectual property law (with the exception of trademarks) is to "Promote progress." By exchanging limited exclusive rights for disclosure of inventions and creative works, society and the patentee/copyright owner mutually benefit, and an incentive is created for inventors and authors to create and disclose their work. Some commentators have noted that the objective of intellectual property legislators and those who support its implementation appears to be "absolute protection". "If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions". This absolute protection or full value view treats intellectual property as another type of "real" property, typically adopting its law and rhetoric. Other recent developments in intellectual property law, such as the America Invents Act, stress international harmonization.

### *Financial Incentive*

These exclusive rights allow owners of intellectual property to benefit from the property they have created, providing a financial incentive for the creation of an investment in intellectual property, and, in case of patents, pay associated research and development costs. Some commentators, such as David Levine and Michele Boldrin, dispute this justification.

In 2013 the United States Patent & Trademark Office approximated that the worth of intellectual property to the U.S. economy is more than US\$5 trillion and creates employment for an estimated 18 million American people. The value of intellectual property is considered similarly high in other developed nations, such as those in the European Union. In the UK, IP has become a recognised asset class for use in pension-led funding and other types of business finance. However, in 2013, the UK Intellectual Property Office stated: "There are millions of intangible business assets whose value is either not being leveraged at all, or only being leveraged inadvertently".

## *Economic Growth*

The WIPO treaty and several related international agreements underline that the protection of intellectual property rights is essential to maintaining economic growth. The WIPO Intellectual Property Handbook gives two reasons for intellectual property laws:

One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

The Anti-Counterfeiting Trade Agreement (ACTA) states that "effective enforcement of intellectual property rights is critical to sustaining economic growth across all industries and globally".

Economists estimate that two-thirds of the value of large businesses in the United States can be traced to intangible assets. "IP-intensive industries" are estimated to generate 72 percent more value added (price minus material cost) per employee than "non-IP-intensive industries".

A joint research project of the WIPO and the United Nations University measuring the impact of IP systems on six Asian countries found "a positive correlation between the strengthening of the IP system and subsequent economic growth".

Economists have also shown that IP can be a disincentive to innovation when that innovation is drastic. IP makes excludable non-rival intellectual products that were previously non-excludable. This creates economic inefficiency as long as the monopoly is held. A disincentive to direct resources toward innovation can occur when monopoly profits are less than the overall welfare improvement to society. This situation can be seen as a market failure, and an issue of appropriability.

## *Morality*

According to Article 27 of the Universal Declaration of Human Rights, "everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author". Although the relationship between intellectual property and human rights is a complex one, here are moral arguments for intellectual property.

Various moral justifications for private property can be used to argue in favor of the morality of intellectual property, such as:

1. **Natural Rights/Justice Argument:** this argument is based on Locke's idea that a person has a natural right over the labour and/or products which is produced by his/her body. Appropriating these products is viewed as unjust. Although Locke had never explicitly stated that natural right applied to products of the mind, it is possible to apply his argument to intellectual property rights, in which it would be unjust for people to misuse another's ideas. Locke's argument for intellectual property is based upon the idea that laborers have the right to control that which they create. They argue that we own our bodies

which are the laborers, this right of ownership extends to what we create. Thus, intellectual property ensures this right when it comes to production.

2. **Utilitarian-Pragmatic Argument:** according to this rationale, a society that protects private property is more effective and prosperous than societies that do not. Innovation and invention in 19th century America has been attributed to the development of the patent system. By providing innovators with "durable and tangible return on their investment of time, labor, and other resources", intellectual property rights seek to maximize social utility. The presumption is that they promote public welfare by encouraging the "creation, production, and distribution of intellectual works". Utilitarians argue that without intellectual property there would be a lack of incentive to produce new ideas. Systems of protection such as Intellectual property optimize social utility.
3. **"Personality" Argument:** this argument is based on a quote from Hegel: "Every man has the right to turn his will upon a thing or make the thing an object of his will, that is to say, to set aside the mere thing and recreate it as his own". European intellectual property law is shaped by this notion that ideas are an "extension of oneself and of one's personality". Personality theorists argue that by being a creator of something one is inherently at risk and vulnerable for having their ideas and designs stolen and/or altered. Intellectual property protects these moral claims that have to do with personality.

#### *Industrial Property can Usefully be Divided into Two Main Areas*

- One area can be characterized as the protection of distinctive signs, in particular trademarks and geographical indications. The protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services. The protection may last indefinitely, provided the sign in question continues to be distinctive.
- Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), industrial designs and trade secrets. The social purpose is to provide protection for the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities.

A functioning intellectual property regime should also facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing.

The protection is usually given for a finite term (typically 20 years in the case of patents).

While the basic social objectives of intellectual property protection are as outlined above, it should also be noted that the exclusive rights given are generally subject to a number of limitations and exceptions, aimed at fine-tuning the balance that has to be found between the legitimate interests of right holders and of users.

# India's Influence on Intellectual Property Rights and its Challenges

Dr.R. Radhika, Associate Professor and Head, Post Graduate Research and Department of Economics, Sri G.V.G Visalakshi College for Women, Udumalpet.

R. Anbuselvi, Assistant Professor, Department of Management, Sri G.V.G Visalakshi College for Women, Udumalpet.

## I. INTRODUCTION

INTELLECTUAL property rights are provided as a protection and incentive to the creators, whose creativity could otherwise be freely used by others. The society expects the creators to make their work available in the market where this work can be bought and sold. But while the society wishes to encourage creativity, it does not want to help the grooming of harmful market power. And for this reason, certain limits are built in the rights granted to the creator, in terms of time and 'space, by the state. Rights are granted for fixed period of time and protect only the fixation of creativity in material form.

In today's intellectual era, India has shown a considerable growth in its research and development. The presence of well established state of the art labs of Indian as well as multinational companies in the country has clearly proved the Indian IP status in the world. The rise in Indian economy is a clear impact of Intellectual Property (IP) influence in the country. By setting up new technology, incubation centers in various parts of the country and providing - financial aids to the technologist, the Research & Development (R&D) status of the country has been boosted up.

India being a developing nation, has taken giant leaps in competing towards Trade Related Intellectual Property Rights (TRIPS) agreement and in compliance of US and European Intellectual Property Right (IPR) structure. The 21st century can be referred to as the century of technology, knowledge and in fact the regime of intellect. The country's ability to translate knowledge into innovation to gain wealth will determine its future. Thus, the innovation is supposed to be the key to create knowledge into wealth. Therefore, issues of generation, evaluation, protection and exploitation of IP would become critically important all over the world<sup>1</sup>. Through this article, emphasis has been given on the IPRs impact in creating a strong backbone of the country.

## II. NATURE OF IPR

IPRS are the territorial rights, which have a fixed term and can be renewed after a stipulated time as specified in the law by way of making payment toward official fees. Exceptionally, trade secrets have an infinite life but they don't have to be renewed. Apart from this, trade secrets have another nature of being assigned, gifted, sold and licensed like any other tangible property. Unlike other moveable and immoveable properties, these rights can be separately held in many countries at the same time. IPR can be held only by legal entities i.e., who have the right to sell and purchase property. The respective sections and rules protect these rights.

Intellectual property is a strategic asset for industry and public health. The growths of new global public-private partnerships, such as the malaria vaccine initiative, have

shown that the management of an intellectual property system is essential for development of and subsequent access to, medicines. Work, including that done by WHO Commission on Intellectual Property and innovation shows that the creative management of intellectual property is required to help product development and dissemination.

### III. INTELLECTUAL PROPERTY-COMPONENTS

Intellectual Property essentially includes the products or creations of mind. Traditionally intellectual property was divided into two groups:

#### *Industrial Property*

Industrial property includes Inventions (Process, Products and Apparatus); Industrial Designs (Shapes and Ornamentation) and Marks and Trade Names to distinguish goods.

#### *Copyrights*

Copyrights broadly include Literary Work, Musical Works, including any accompanying Words; Dramatic Works, including any accompanying Music; Pantomimes and Choreographic Works; Pictorial, Graphic and Sculptural Works; Motion Picture and other Audiovisual Works; Sound Recordings and Architectural Works. The convention establishing the World Intellectual Property Organization (WIPO) concluded in Stockholm on July 14, 1967 (Article 2 (viii)) provides that Intellectual Property" shall include rights relating to:

1. Literary, Artistic and Scientific Works,
2. Performances of performing artists, Phonograms and Broadcasts,
3. Inventions in all fields of human endeavor,
4. Scientific discoveries,
5. Industrial Designs,
6. Trademarks, Service Marks and Commercial Names and Designations,
7. Protection against unfair competition and all other rights resulting Intellectual activity in the industrial, scientific, literary or artistic fields.

### IV. IDENTIFICATION OF REFORMS TOWARDS IP-BASED ON ECONOMIC DEVELOPMENT

#### *Patent Regime before TRIPS*

The positive effect of patents was not observed on research activities. Though the companies like Ciba-Geigy (Novartis), Hoechst (Avenis) and Boots has set up facilities in India the Indian Private sector did not pursue new drug R & D. The Major research on drug development was started by Central Drug Research Institute; a public sector organizations by developing moderate infrastructure. To provide incentives to Indian companies to undertake new drug R&D result in a shrinkage of market opportunities of the Indian companies because they will no longer be able to/reverse engineer and produce the new drugs invented abroad and protected by patent.

#### *Patent Regime after TRIPS*

Abolition of Product Patent Protection in 1972 operated as a pull mechanism and provided the Indian companies the space of operations and the opportunity to



develop and innovate. Indian private sector has started investing in R & D for new drugs.

## V. IPR SCENARIO: FROM INDIAN PERSPECTIVE

When IPR was in its preliminary stage, lot of problems arose relating to its implementation, policies, Act/Rules, financial and governmental support. Earlier, companies and inventors were also not aware of IPR, therefore risk of infringement was at an alarming level without a healthy system, and companies were not interested to go for R&D process in India. This resulted in the death of inventions, high risk of infringement, economic loss and decline of an intellectual era in the country.

Keeping in view all the above problems, India has taken strong steps in strengthening IPR in the country. For example, the first Indian Patent Law came in 1856. Further, the same was modified from time to time by Indian patent system.

New patent law was made after independence in the form of the Indian Patent Act 1970. Later, it was amended in compliance with the TRIPS provision. Recently, in 2005, amendments were made in IPR. While the process of bringing out amendments was going on, India became a member of the Paris Convention, Patent Cooperation Treaty, Budapest Treaty and finally signed the TRIPS agreement to comply with the International and Indian standards. Recently, India signed the "Madrid Protocol" which further enhances the applicability of Trademarks in 89 countries. Further, interest of Small and Medium Enterprises (SMEs), Indian industries, technologist, scientist and inventors are gaining in this field. More number of research-oriented persons is filing their inventions on a large scale. More number of foreign companies is now establishing their in-house R&D centres in India, which is a clear sign of IPR influence in the country.

For example, the country's first Compulsory License (CL) against the Bayer cancer drug "NEXAVAR" highlights the Indian IPR regime on the international window. This CL gives a ray of hope to Indian Pharmacy INC which is not capable of producing life saving drugs and now can manufacture such drugs at a very low cost. Such nature of CL boosts up the health industry of the country. Due to this, high end drugs can be manufactured and supplied to the patients at a very nominal rate which is a sign of a disease free society. According to a recent survey, it was estimated that the number of Trademark and Patent filings have increased 20 times as that of previous years.

Keeping in view the above achievements, our IPR system is still in enact stage. The continuous efforts of Indian Government gives pace to the intellectual regime but more efforts are to be taken in overcoming challenges, which restrict IPR to reach the international standards.

## VI. CHALLENGES IN IPR: FROM INDIAN PERSPECTIVE

Challenges beyond 2008 are two main challenges that will be addressed in the years ahead:

The first challenge is the *commercialization of IP*. This involves marketing of granted IPs, finding Prospective customers, and negotiating licensing conditions. Commercialization not only unlocks the value of the IP Portfolio, but equally Provides Publicity and thus acts as a deterrent to deliberate or inadvertent misuse of our IP by

others. There is very little prior experience within the Company in this specialized activity. Effort is currently on to benchmark with international best Practices and to take Professional help from agencies (government and private) that provide IP licensing and commercialization services. Currently, one patent and twelve copyrights have been identified for commercialization as pilot cases. Seven companies worldwide have shown interest in the Patent on our online Property Prediction in a hot strip mill. Seventy-Eight companies have so far shown interest in our copyrights on e-learning packages.

The second challenge that will be addressed is dealing with *IP sharing in the case of collaboration with big manufacturing partners*. For example, Tata Steel's indigenous, new technologies are growing from small scale to large pilot scale and commercial scale, it has become necessary to partner with suppliers and other industries. Maintaining claim on one's own IP and yet sharing the developmental knowledge with others is a fine balance that needs as much understanding of technology as of legal negotiation skills. Again, effort is benchmark against international best practices on this front. The vision of the future in IP is to continue to grow the IP portfolio of Tata Steel and to continuously unlock the value through licensing and commercialization.

## **VII. GROWTH OF IPR'S IN INDIA: SLOW BUT STEADY**

To handle the increasing number of prosecution and litigation matters, there is an urgent need of qualified and competent patent examiners, lawyers, judges, and court staff. We must make the necessary changes in the curriculum of business schools, law schools, and other schools to have graduates specializing in patent law. The matters pertaining to the patent of telephone (Graham Bell) or electric bulb (Edison) finally settled in the American Supreme Court. Similarly, Henry Ford had to fight a long legal battle against Selden to manufacture the mass-produced car, which revolutionized the automobile industry.

Today, IPR plays an important role in every sector and has become an important aspect of research for Pharmacy and research oriented industries. The continuous efforts of the government in policy establishment, IT protection, infrastructure, IPR search portals and manpower made this Industry a step ahead. In consideration of all the achievements, our industry is still facing troublesome challenges not only at domestic level but also at international level. Firstly, in India IPR lacks its roots in remote areas, such areas are considered the hot bed of inventions. Many people are still unaware about IPR and their advantages in taking rights for their intellectual property. In such cases, the government should promote the awareness of IPR in such remote areas. Large numbers of awareness camps and educational hubs have to be organized for the skilled impart of knowledge among the inventors. Secondly, a legal issue plays an important role in IPR situation in the country. Today various trademark and patent infringement matters are gaining their significance in the legal story of the country. In such increase of IPR matter, a skilled team of law persons (Judges, advocates) and IPR professionals are required.

When Indian Patent system did not comply with TRIPS, there was a risk of a healthy Patent protection provision in India. However, today the condition has totally changed. India is now a member of TRIPS agreement and our patent system is fully compliant with the TRIPS. Even though, Indian Patent Act contains all the TRIPS

flexibilities, the relevant provisions require fine-tuning, especially of those related to the patent protection, compulsory license and government use.

### VIII. CONCLUSION

Past decade attempts concluding crucial amendments to the Patent Act of 1970 and have built up a firm base for a fully functional patent system. IPR influence in the current regime is much affected by its awareness and intellect nature. In the current scenario, various important steps have been taken in reaching IPR to a new height and compliance with USPTO, EPO and other countries IPR regime and it was believed that more steps have to be taken. Further, people are still unaware about IPR and their advantages in taking rights for their intellectual property. In such cases, the government should promote the awareness of IPR in remote areas.

IPR will play a very important role in the competitive world and it would be in the interest of everyone that there is a legal framework which is sensitive to the social, cultural, and political needs of the country but still provides enough incentives for innovators and the process of innovation. Open source system for collating and utilizing innovations is in the nascent stage and is yet to generate enough evidence for its candidature as an effective tool for generation and sharing of IPR. Perhaps patent pooling in the specific areas regulated by standards may be a better candidate to be pursued provided a proper legal framework is worked out.

### REFERENCES

- [1] R. Saha, "Challenges faced by the Indian IPR System", Scientist/Advisor, Department of Science & Technology, Government of India.
- [2] B.K. Bhuyan, "Strengthening IP and Open Source Systems of Technological Innovations: The Tata Experience", Senior Manager Patent, Tata Steel, b.bhuyan@tatasteel.com.
- [3] S. Sivaram and Anil K Gupta "Emerging IPR Consciousness in India: Strengthening IP and Open Source Systems of Technological Innovations", Indian Institute of Management, Ahmedabad.
- [4] J. Watal, "The TRIPS agreement and developing countries--strong, weak or balanced protection", *J World Intellect Prop*, Pp.282-307, 2004.
- [5] M.J. Ferrantino, "The effect of intellectual property rights on international trade and investment", *Weltwirtschaftliches Arch*, Vol.129, Pp.300-31, 1993;.
- [6] Sachin Mangal, "Intellectual Property Rights: Indian Scenario", *Journal of business administration*, spring, Vol. 4 No.1, 2005.
- [7] Aayush Sharma and Priyanka Rastogi, "India: India, IPR and Its Influence", 11 September 2013.

# Intellectual Property Rights: A Proactive Tool for Sustainable Development

Dr.K. Punithavalli, M.Com., M.Phil., Ph.D., Principal, Sri G.V.G Visalakshi College for Women, Udumalpet.

## I. INTRODUCTION

SEVERAL trends in the business world—emergence of new technologies, globalization of technology and skill, and the rapid development of emerging economies—have jointly elevated the importance of IPR protection, both politically and commercially. Prior to the advent of accelerated globalization and the information revolution in the 1990s, the protection of IPR remained mainly a domestic, rather than a global, issue. The movement of capital and technology has, ironically, made IPR both more valuable and vulnerable at the same time. IPR-related disputes dominate not only trade among nations, but business within nations.

In this knowledge era the competition is to establish the knowledge, ensure the legal protection for the knowledge and to market it. When the consumers are exposed to lot of risk due to the competition in the business world, the community at large suffers. World Health Organization (WHO) estimates that 10 percent of all pharmaceuticals sold worldwide are counterfeit. In some developing countries, fake medicine accounts for as high as 60 percent of the drugs sold. This kind of findings warns business firms to pay more attention to their IPs and protect themselves from the zuido business. The genuine firms need to withstand only with their intellectual properties in the market.

Intellectual property refers to the creations of the mind. This creation of the mind at the beginning is in the form of intangibles. Then it emerges either as a new product or a new process providing new way of doing something and offers a new technical solution. Sometimes the intellectual property emerges as a distinctive sign which enables us to identify the goods provided by a specific enterprise that is trademarks. Some occasions it is in the form of new industrial designs and some cases it is geographical indication which gives specific identity to the product. Another form of the creativity is the copyright which include creative works like novels, poems, plays, films, musical works, computer software and artistic works. When this IPs evolved are the kingpins for the business they need to be protected with the law of the land. IPRS thus is a reward to the creativity of the human endeavour which fuels the progress of humankind. All the intellectual properties are innovative, developed through a creative process and intangible assets of a business. Totally, Intellectual Property Right refers to creations of the intellect for which a monopoly is assigned to designated owners by law.

### *The WIPO Intellectual Property Handbook Gives Two Reasons for Intellectual Property Laws*

One is to give statutory expression to the moral and economic rights of creators in their creations and the rights of the public in access to those creations. The second is to promote, as a deliberate act of Government policy, creativity and the dissemination

and application of its results and to encourage fair trading which would contribute to economic and social development.

When a material property is acquired by any one, it is to be properly documented to ensure the ownership of the property and when proper documentation is done, naturally the legal process restricts the other persons from claiming the asset or in using the asset. The same way when the intellectual property is developed, it is to be registered and the right obtained there from is protected by law. These laws and protections are designed to help the creator feel secure over the rights to the property and provide exclusive benefit to the creator, while hopefully encouraging new inventions and technologies.

The number of patents granted in a country is an indicator of the technological strength of the country. As per the data given by US Patents and Trademarks office in the year 2014, US holds 28,74103 patents where as India holds 14450 only. Even in terms of applications made to WIPO, US holds the highest share and it is followed by China, but in the low and middle income countries India tops the list, Figures released by World Intellectual Property Organization (WIPO) show that out of 2.6 million patent applications filed in 2013, China accounted for almost one-third, amounting to 825,136, The US has filed 571,612 patent applications, and Japan applied for about 328,436 patents. India only 43,031 and approximately 18 percent of which is held by NRIs.

Officials opine this is an indicator of lack of awareness amongst the domestic industry as well as individuals about benefits from intellectual property and how to enforce the same for wealth creation. "Intellectual property rights (IPRs) are now not only being used as a tool to protect creativity and generate revenue but also to build strategic alliances for socio-economic and technological growth," according to the Controller General of Patents, Designs & Trade marks.

Ignorance of law is no defense and same cannot be pleaded in case of IP rights as they provide time bound protection hence it is imperative that IP rights must be secured at the first instance. The Make in India initiative of the Indian government is for promoting entrepreneurs in India and this is the right time for Government of India to initiate measures to promote the literacy in the field of IPRs for the common people. Therefore it is right time, to create awareness about IPRs and a special effort in this direction is much needed.

India being the land of Great Saints has the inherent capacity to provide deep knowledge in every walk of life and was the knowledge provider to the entire world. India is the knowledge economy in the past, present and in future. In this knowledge era only when, the innovations and creations of the intellectuals is crystallised, it is possible to augment the biggest asset of the economy the intellectual capital, and then Demography would yield a good amount of dividend, the acquisition of Intellectual Property Rights. Hence at this moment, building the intellectual capital is the only solution that will enhance the growth our economy and ensures a sustainable growth at the global level. Knowledge has become a more important factor of production than other factors. This is evidenced by the fact that knowledge-based industries in India contribute more than 50 percent of GDP. If Indian firms are little more cautious and attentive we would be the number one economy of the world.

With the support of institutes like MSME, colloquiums and seminars can be organised and they would go a long way to create awareness on IPRs and alertness among the entrepreneurs and thereby sustainability of the business can be facilitated. So it is only the Innovators are required to achieve success but not Imitators.

## REFERENCES

- [1] WIPO, "What is Intellectual Property?" <http://www.wipo.int/about-ip/en/>
- [2] WTO, "Intellectual property: protection and enforcement," [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm7\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm)
- [3] Yongmin Chen and Thitima Puttitanun, "Intellectual property rights and Innovation in developing countries", *Journal of Development Economics*, Vol. 78, 2005.
- [4] Theo S. Eicher and Monique Newiak, "Intellectual Property Rights as Development Determinants", *Canadian Journal of Economics*, Vol. 46, 2013.
- [5] David S. Abrams, "Did TRIPS Spur Innovation?, An Analysis of Patent Duration and Incentives to Innovate," *University of Pennsylvania Law Review*, Vol. 157, 2009.
- [6] William Lesser, "The Effects of TRIPS-Mandated Intellectual Property Rights on Economic Activities in Developing Counties", Paper presented at the AAEA preconference session, "Policy Issues in the Changing Structure of the Food System", 2000.
- [7] Walter G. Park and Douglas C. Lippoldt, "Technology Transfer and the Economic Implications of the Strengthening of Intellectual Property Rights in Developing Countries", *OECD Trade Policy Working Papers*, Vol. 62, 2008.
- [8] Andréanne Léger, "Intellectual Property Rights and Innovation in Developing Countries: Evidence from Panel Data", Contributed paper prepared for presentation at the International Association of Agricultural Economists Conference, 2006.
- [9] Andréanne Léger, "Intellectual Property Rights and Innovation Around the World: Evidence from Panel Data", *German Institute of Economic Research Discussion Papers*, 696, 2007.
- [10] Theodore A. Khoury and Mike W. Peng, "Does institutional reform of intellectual property rights lead to more inbound FDI? Evidence from Latin America and the Caribbean", *Journal of World Business*, Vol. 461, 2010.
- [11] John Hudson and Alexandru Minea, "Innovation, Intellectual Property Rights, and Economic Development: A Unified Empirical Investigation", *World Development*, Vol. 46, 2013.
- [12] Byungchae Jin, Francisco García, and Robert Salomon, "Do ho".

# Patenting in Biology

Dr.K. Shobana, Department of Zoology, Sri GVG Visalakshi College for Women, Udumalpet.

Dr.S. Uma Maheswari, Department of Zoology, Sri GVG Visalakshi College for Women, Udumalpet.

## I. INTRODUCTION

**P**ATENT becomes a turning point in the commercialization of molecular biology and a harbinger of the social and ethical issues associated with biotechnology today. This paper aims to provide a comprehensive background and overview of key issues related to application of intellectual property rights over biological resources, including biotechnology and the use and protection of traditional knowledge of indigenous and local communities. It explores the linkages among biological diversity, biotechnology developments and intellectual property with specific view on the relationship between access to biological and genetic resources. There is a growing interest on the potential commercial uses of biodiversity, which is driving many of the policy and legislative developments in this area, such as the sharing of benefits, the role of traditional knowledge holders.

The point of a patent is to encourage innovation by giving inventors a limited period of exclusive control over the fruits of their labour. While a patent is active, nobody else is allowed to copy an invention without a license. Patents as a way of awarding monopolies to subjects; they were privileges bestowed by the crown that granted economic advantages to their subjects of choice. The modern notion of patents falls under the category of "intellectual property," a conception of property that is immaterial and yet, holds the same recognition and privileges under the law as physical property. Contemporary legal systems that emerged after the advent of liberalism protect the right of the individual to the use and control of property. As "property" in the eyes of the present day legal system, patents have become, not privileges, but rights under the law. Patent protection became a way of protecting an individual's right to profit from his invention for a limited period of time in exchange for the production and release of potentially useful information. This information was intended to encourage business in a liberal economy.

## II. BIOLOGICAL PATENT

The scope and reach of biological patents vary among jurisdictions, and may include biological technology and products, genetically modified organisms and genetic material. A *biological patent* is a patent on an invention in the field of biology that by law allows the patent holder to exclude others from making, using, selling, or importing the protected invention for a limited period of time.

The applicability of patents to substances and processes wholly or partially natural in origin is a subject of debate.

## III. BIOTECHNOLOGY INTELLECTUAL PROPERTY

Today's biotechnology intellectual property (IP) strategists find themselves in an unenviable position. Modern biological research brings about an avalanche not only of scientific data, but also of unprecedented ethical, policy, and philosophical questions. New laws will undoubtedly result, including new or modified IP laws. IP, and

especially patents, are typically crucial to the viability of biotechnology companies. Thus, critical IP strategy necessarily stands on the quicksand of biotechnology IP law.

#### **IV. SEQUENCE PATENTS**

DNA sequence patenting has been at the core of a vigorous debate for the past decade. Issues such as whether DNA should be patentable subject matter and the detrimental effect DNA patents might have on biomedical research have been strongly disputed (Heller *et al*, 1998). The controversy seems to be subsiding now in light of established legal precedent and guidelines applicable to DNA patents adopted by the United States Patent and Trademark Office.

Examples of such features include in the case of polypeptides catalytic activities, structural domains, secondary or tertiary structure, interaction with binding partners, effect of mutations, or in the case of genes, promoters, introns, alternative splicing sites, expression patterns, known alleles, homologous or analogous genes, etc.. Disclosure of such features, which may be in hypothetical examples, allows some room for argument during prosecution that generic claims are supported by a written description. Even so, written description of generic sequence claims is all too likely a costly topic in litigation. Consequently, the written description requirement severely limits sequence claims.

#### **V. COMMERCIALIZATION AND LICENSING**

Commercialization and licensing strategies of biotechnologies might necessitate considerable rethinking in light of a current controversy that surrounds patent licensing to academic institutions. It has now become clear that research in public universities can infringe patent rights. Some companies are actively pursuing licenses from public institutions (Davies, 2003). In addition, the time is certainly right for companies with patents that might be infringed by basic research to decide their own policies and best interests regarding licensing their patents to academic institutions.

#### **VI. BIOINFORMATICS: SOFTWARE PROTECTION**

Bioinformatics is the intersection of life sciences and information technology. Current research in genomics, proteomics, clinical, high-throughput assays, etc. generates terabytes of data. Bioinformatics products are necessary to mine the data, and include software and hardware, data acquisition, data storage, data display, data analysis, pattern recognition, molecular modeling, or predictive tools. To be sure, the bioinformatics industry is currently suffering with the rest of the economy. However, bioinformatics products will certainly continue to be on demand for many years to come. While investments are certainly necessary to produce such tools, intellectual property protection of such investments is fairly elusive. Given the large number of different bioinformatics applications, a universally applicable blueprint of IP development does not exist.

Perhaps the only generalization applicable to most bioinformatics tools is that some original software is involved. Therefore, lessons learned from intellectual property protection and commercialization of software should apply to software-containing bioinformatics tools. Thus, copyright protection is available but it is quite thin because it only protects unauthorized copying, modification, distribution, not



independent development of software with identical capabilities. Nevertheless, even for bioinformatics tools made up exclusively of software, bioinformatics companies should also seek some patent protection.

Patents may confer bioinformatics applications what copyright cannot: protection for the concepts or algorithms underlying software applications. Obtaining good patent protection in this field, however, is quite challenging.

Other challenges to obtaining strong patent protection in bioinformatics come from the broad range of applications, the novelty of the field, and its cross-technical nature. Due to the broad range of bioinformatics products, bioinformatics patents are hardly "typical" (Wilson, 2002). The emerging bioinformatics field develops quickly, and therefore much of today's technology will soon be obsolete.

## VII. PLANT BREEDERS' RIGHTS

Plant breeders' rights (PBR), also known as plant variety rights (PVR), are rights granted to the breeder of a new variety of plant that give the breeder exclusive control over the propagating material (including seed, cuttings, divisions, tissue culture) and harvested material (cut flowers, fruit, foliage) of a new variety for a number of years. With these rights, the breeder can choose to become the exclusive marketer of the variety, or to license the variety to others. In order to qualify for these exclusive rights, a variety must be new, distinct, uniform and stable. A variety is new if it has not been commercialized for more than one year in the country of protection. A variety is distinct if it differs from all other known varieties by one or more important botanical characteristics, such as height, maturity, color, etc. A variety is uniform if the plant characteristics are consistent from plant to plant within the variety. A variety is stable if the plant characteristics are genetically fixed and therefore remain the same from generation to generation, or after a cycle of reproduction in the case of hybrid varieties.

## VIII. PHARMACEUTICAL COMPANIES

One common misunderstanding is that pharmaceutical companies patent the plants they collect. While obtaining a patent on a naturally occurring organism as previously known or used is not possible, patents may be taken out on specific chemicals isolated or developed from plants. Often these patents are obtained with a stated and researched use of those chemicals. Generally the existence, structure and synthesis of those compounds is not a part of the indigenous medical knowledge that led researchers to analyze the plant in the first place. As a result, even if the indigenous medical knowledge is taken as prior art, that knowledge does not by itself make the active chemical compound "obvious," which is the standard applied under patent law.

A pharmaceutical patent or drug patent is a patent for an invention in the chemical or pharmaceuticals industry. A chemical patent or a pharmaceutical patent is therefore *not* a *sui generis* right, i.e. a special legal type of patent.

In the pharmaceutical industry, the patent protection of drugs and medicines is accorded a particular importance, because drugs and medicines can easily be copied or imitated (by analyzing a pharmaceutical substance) and because of the significant

research and development spending and the high risks associated with the development of a new drug. Chemical patents are different from other sources of technical information because of the generic, Markush structures contained within them. Eugene Markush won a claim in the US in 1925 to allow such structures to be used in patent claims. These generic structures are used to make the patent claim as broad as possible.

Karin Timmermans (2003) Traditional medicines play an important role in the provision of health care in many developing countries. Their use is also significant in developed countries, increasing their commercial value. Several 'high-profile' cases of patenting of traditional medicines, without consent from or compensation to their holders, have further focussed attention on their importance. Traditional medicine usually involves biological resources and the knowledge of local and indigenous peoples and/or healers regarding their medicinal use; thus, it is interlinked with biodiversity conservation and indigenous peoples' rights over their knowledge and resources.

## **IX. BIO PROSPECTING AND BIO PIRACY**

Bio prospecting is the process of discovery and commercialization of new products based on biological resources. Despite indigenous knowledge being intuitively helpful, bio prospecting has only recently begun to incorporate such knowledge in focusing screening efforts for bioactive compounds. Bio prospecting may involve bio piracy, the exploitative appropriation of indigenous forms of knowledge by commercial actors, and also includes the search for previously unknown compounds in organisms that have never been used in traditional medicine before. Bio piracy describes a practice in which indigenous knowledge of nature, originating with indigenous peoples, is used by others for profit, without permission from and with little or no compensation or recognition to the indigenous people themselves. For example, when bio prospectors draw on indigenous knowledge of medicinal plants which is later patented by medical companies without recognizing the fact that the knowledge is not new, or invented by the patenter, and depriving the indigenous community to the rights to commercial exploitation of the technology that they themselves had developed.

## **X. FAMOUS CASES**

**The Rosy Periwinkle:** The rosy periwinkle, while native to Madagascar, had been widely introduced into other tropical countries around the world well before the discovery of vincristine. This meant that researchers could obtain local knowledge from one country and plant samples from another. Effectiveness in the treatment of diabetes, Hodgkin's Disease and leukemia were discovered instead. Different countries are reported as having acquired different beliefs about the medical properties of the plant.

**A Neem Tree:** In 1994, the U.S. Department of Agriculture and WR Grace received a European patent on methods of controlling fungal infections in plants using a composition that included extracts from the neem tree (*Azadirachta indica*), which grows throughout India and Nepal (Cormac Sherida, 2005). In 2000 the patent was successfully opposed by several groups from EU and India on the basis that the

fungicidal activity of neem extract had long been known in Indian traditional medicine.

### **XI. THE ENOLA BEAN**

The Enola bean is a variety of Mexican yellow bean, was patented in 1999. The patent-holder subsequently sued a large number of importers of Mexican yellow beans with the following result: export sales immediately dropped over 90% among importers that had been selling these beans for years, causing economic damage to more than 22,000 farmers in northern Mexico who depended on sales of this bean. A lawsuit was filed on behalf of the farmers, and on April 14, 2005 the US-PTO ruled in favor of the farmers.

### **XII. BASMATI RICE**

In 2000, the US corporation Rice Tec attempted to patent certain hybrids of basmati rice and semi dwarf long-grain rice. The Indian government intervened and several claims of the patent were invalidated.

### **REFERENCES**

- [1] Cormac Sherida, "Nature Biotechnology", Vol. 23, No. 5, Pp. 511-12, 2005.
- [2] M.A. Heller and R.S. Eisenberg, "Can patents deter innovation? The anti commons in biomedical research", Science, Vol. 280, No. 5364, Pp. 698-701, 1998.
- [3] K. Davies, "Playing by Aussie Rules", Bio-IT World August, 2003.
- [4] T. Karin, "Intellectual property rights and traditional medicine: policy dilemmas at the interface", Social Science & Medicine, Vol. 57, No. 4, Pp. 745-756, 2003.
- [5] A. Wilson, 2002, "Patents in the Bioinformatics Field: Releasing the Gene Genie", Bio-Science Law Review, Vol. 5, Pp. 9-12.

# Ethical Reasons for Intellectual Property Rights Reforms

P. Arunkumar, Ph.D Research Scholar, Department of Economics, Bharathiar University, Coimbatore.

## I. INTRODUCTION

THE intellectual property rights regime usually defends and one of its two routes. Either they argue that creators and inventors have a natural right to IPR protection or they argue that, on balance, IPR systems contribute positively to human well-being, and specifically, to the development and availability of life-saving medicines. Both arguments are moral arguments, one referring to rights, the other to human flourishing and happiness. In this report, we first examine these two justifications of the IPR regime. Is there a natural right to intellectual property? Or should IPR systems be judged on their contribution to social utility? We then compare several scenarios of IPR systems to establish whether any is morally superior to others. In the last part, we focus on the duties of states and pharmaceutical companies to promote any potentially superior alternative.

Human beings are social creatures. They devise rules from sophisticated etiquette to international trade regimes to facilitate co-existence. One such set of rules is the intellectual property rights (IPR) system, which grants state protection to creations of the mind so that the originator can recoup any investment by charging monopoly prices for a limited period of time. The purpose of such rules is to preserve incentives for future innovations. Access to medicines forms an indispensable part of the right to health. Nearly 2 billion people lack access to essential medicines. Improving access to medicines could save 10 million lives a year, 4 million in Africa and South East Asia.

Trade-Related Aspects of Intellectual Property Rights Agreement and Free Trade Agreements have had an adverse impact on prices and availability of medicines, making it difficult for countries to comply with their obligations to respect, protect, and fulfil the right to health.

## II. INTELLECTUAL PROPERTY AND NATURAL RIGHTS

### *Two Types of Social Rules*

Social rules may be understood in two main ways: they may reflect ultimate moral requirements, whether set down by God or our innate moral sense, or dictated by reason; or they may be understood as serving a social purpose within human society.

John Rawls says, a person's "inviolability founded on justice which even the welfare of society as a whole cannot override." The inviolability of these rights applies across the globe and across time, and they are often referred to as natural rights. The right not to be killed, suitably circumscribed (to allow for self defence, for instance), is considered such a right.

Social rules are taken to be open to thoughtful revision in order to preserve or enhance their usefulness under changing conditions. Rules expressing natural-law requirements are considered outside the power of societies to change. With regard to some social rules, their categorization into one of these two categories is contested.

The social rule against torture is based on expediency and may therefore be revised or abolished in changed circumstances, whereas others present this rule as founded on a natural right. The social rules that create and define property rights are subject to similar contention.

John Locke, regard legal property rights as implementing preexisting natural rights to acquire things and to dispose of them as one pleases.

### *Are Intellectual Property Rights Natural Rights?*

Some hold that IPRs should be shaped with an eye to the common good, striking the optimal balance between encouraging innovations and ensuring easy access to them. Others believe that innovators have a natural right to control the use of their innovation. This dispute was in evidence in the 1990s when affluent states successfully pressured less developed states to accept TRIPS, which required them to legislate for very extensive IPRs.

US-style IPRs would benefit poor countries by making them more innovative. Others argued that poor countries were morally required to adopt extensive IPRs in order to suppress the natural-law crimes of "theft," "piracy," and "counterfeiting" that was being committed by copycat manufacturers within their jurisdictions. Which position is more defensible? Should IPRs be designed with social utility in mind or help realize creators' natural rights? One can offer three arguments against the latter, natural-law understanding of IPRs.

IPRs can be shaped in myriad ways, each specifying differently their mode of acquisition, scope, or duration.

EPO granted the patent on grounds of social utility rather than potential natural rights of creators.

German Green Party together with a large group of organisations is currently lobbying the European Parliament to prohibit patents on higher life forms in Europe.

According to Aquinas, "it is lawful for man to possess property".

Because every man is more careful to procure what is for himself alone than that which is common to many or to all: since each one would shirk the labor and leave to another that which concerns the community.

Human affairs are conducted in more orderly fashion if each man is charged with taking care of some particular thing himself, whereas there would be confusion if everyone had to look after any one thing indeterminately.

It is to be observed that quarrels arise more frequently where there is no division of the things possessed.

### **III. THE SOCIAL UTILITY OF INTELLECTUAL PROPERTY RIGHTS**

IPRs must be assessed by reference to the common good of humankind. The effects of IPR depend on what the world is like: on present facts about resources and scarcity as well as on the present international economic order and distribution of wealth. Changes in the world may affect whether current IPR rules are justified—for example, the rule that gives monopoly pricing powers for 20 years to the creator of a life-saving AIDS medication.

### *IPR Protection*

In the context of IPRs, it is sometimes pointed out what the world would look like without rewarding pharmaceutical innovations through patents.

Little innovative pharmaceutical research would exist, at least as far as private companies were concerned. Their successful research efforts would almost invariably result in economic losses as soon as competitors, unrestrained by the IPR system, copied their inventions and offered the product at low prices.

It is argued that it is better to have medicines for the affluent now, which will trickle down to the less affluent after the expiration of the monopoly period, than to have none at all.

### *The Pre-TRIPS Regime*

Anand Grover clearly stated that "TRIPS and FTAs have had an adverse impact on prices and availability of [generic] medicines".

### *IPR Reform*

The problems of access to life-saving medicines are not new. In our first report, we summarized proposals for intellectual property rights reform, aimed at resolving the accessibility problem (i.e. medicines are priced beyond the reach of the poor) and/or the availability problem (i.e. medicines are not being developed for the needs of the poor).

We infer that three proposed solutions (in bold) address both the accessibility and the availability problem, namely publicly funded research, Advance Market Commitments (AMCs) and the Health Impact Fund. All three are dependent on individual donations, taxpayers' contributions or funding from non-governmental organizations (NGOs). Publicly funded research suffers from the typical drawback of push mechanisms, namely that it expends funds on unsuccessful research attempts. The other two proposals do not suffer from this drawback, as they are both pull mechanisms. However, the focus of Advance Market Commitments is very restricted and to date only one type of treatment (vaccine) for one disease (pneumococcal disease) has been covered by an AMC. By contrast, the Health Impact Fund is a pull mechanism, which is much broader in scope and open to all types of treatments for all diseases. Its current disadvantage is that it still needs to find a solid funding base. When assessing the social utility of the current IPR system, it is important to consider all alternatives, not just the most radical (abolition), those referring to the status quo (TRIPS) and those referring to the past (pre-TRIPS). Of the three workable reform plans, only one—the Health Impact Fund—is broad enough to provide a real reform alternative.

## **IV. CONCLUSION**

The human right to health has been enshrined in the Universal Declaration of Human Rights for over sixty years. The sheer scale of the challenge of securing it for all is no excuse for paralysis. That one cannot resolve all problems at once (e.g. access to doctors and affordable drug prices) does not mean that one can rest and ponder. In this report, we have shown that intellectual property right systems have to be designed with overall human well-being and flourishing in mind. They are not

mandated to secure natural rights of inventors to have their mind creations protected. In fact, there are no such natural, universally valid rights to IPRs. Any benefits to inventors need to be weighed up against benefits to humankind.

The Pre-TRIPS regime had certain advantages over the TRIPS regime. It allowed the production and distribution of cheap copies of patented drugs by generic manufacturers, mostly from India, South Africa and Brazil. As a result, some poor patients had access to life-saving drugs that are no longer available to them today. Yet, the Pre-TRIPS regime did not provide the pharmaceutical industry with incentives to consider neglected diseases, diseases occurring mostly in developing countries. The Health Impact Fund leaves intact strong incentives for the pharmaceutical industry around the globe, thereby preserving the TRIPS advantages, whilst mitigating its main challenge, namely to block access to lifesaving medicines to the poor. In registering a patented medicine with the Fund, a firm would agree to sell it globally at cost.

## REFERENCES

- [1] The Universal Declaration of Human Rights, 1948.
- [2] K. Leisinger, "Corporate Responsibilities for Access to Medicines", 2009.
- [3] *Journal of Business Ethics*, Vol. 85, Pp. 3-23.
- [4] [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En), accessed, 2009.
- [5] Personal communication Miltos Ladikas, figures from Action Contré La Faim (ACF), Paris on, 2009.
- [6] Committee on Economic, Social and Cultural Rights, 2000.

# Innovation and Intellectual Property Rights in India

C. Athena, Assistant Professor, Dept of Economics, PSGRKC.

## I. INTRODUCTION

INDIA is a country with over 1.2 billion people, 379 million (31%) of which are between the ages of 18 and 35 (Census of India, 2011). And, many of these young people are in search of jobs, despite being educated. For example, only one in every four urban males under 29 years is employed even though they hold at least a certificate or diploma (National Sample Survey Office, 2013). The aim of the government has been to create employment opportunities for youth while focusing on rapid economic growth. Entrepreneurship development is one of the mechanisms adopted by the Government of India towards the creation of job opportunities. The government's assumption is that support for innovation will enhance entrepreneurship development, which will in turn accelerate economic growth.

The people of India, especially the young, crave employment. There is a limitation to employment opportunities offered by the various sectors of economy, but the government does provide employment guarantee programs. However, these programs are targeted at providing basic needs and tend to provide labour-intensive jobs that have no link with innovation. There is a realization that, "to sustain rapid growth and alleviate poverty, India needs to aggressively harness its innovative potential, relying on innovation-led, rapid, and inclusive growth to achieve economic and social transformation" (Dutz, 2007). The innovative potential of the young Indian population, if supported through an effective innovation ecosystem, holds potential for developing entrepreneurship and providing the growth and job opportunities that India needs.

The current national innovation system in India is a vast and complex system comprised of knowledge producers such as science and technology institutions, academia, and innovating individuals and knowledge users (e.g., industry-production/services in the public and private sectors). Various governments in India have given priority to science, technology, and innovation, and therefore India has evolved a large publicly funded R&D structure. There are various councils and research structures under various ministries, which cater to different research areas and which are distributed around the country. Examples include:

- Council of Scientific and Industrial Research (CSIR): Established in 1941; 39 laboratories.
- Indian Council of Agricultural Research (ICAR): Established in 1929; 99 institutes and 17 research centres.
- Indian Council of Medical Research (ICMR): Established in 1911; 30 laboratories.
- Defence Research & Development Organisation (DRDO): established in 1958; 48 laboratories.

All of these institutions were working mostly in a standalone mode prior to linearization of the economy in the 1990s. Since then, strong efforts have been made to harness the innovative capabilities of these structures by connecting them to one



another and to industry and society, forming an innovation ecosystem. In today's intellectual era, India has shown a considerable growth in its research and development. By setting up new technology, incubation centers in various parts of the country and providing financial aids to the technologist, the Research & Development (R&D) status of the country has been boosted up.

India being a developing nation, has taken giant leaps in competing towards Trade Related Intellectual Property Rights (TRIPS) agreement and in compliance of US and European Intellectual Property Right (IPR) structure. The 21st century can be referred to as the century of technology, knowledge and in fact the regime of intellect. The country's ability to translate knowledge into innovation to gain wealth will determine its future. Thus, the innovation is supposed to be the key to create knowledge into wealth. Therefore, issues of generation, evaluation, protection and exploitation of IP would become critically important all over the world.

## II. NATURE OF IPR

IPRS are the territorial rights which have a fixed term and can be renewed after a stipulated time as specified in the law by way of making payment toward official fees. Exceptionally, trade secrets have an infinite life but they don't have to be renewed. Apart from this, trade secrets have another nature of being assigned, gifted, sold and licensed like any other tangible property. Unlike other moveable and immoveable properties, these rights can be separately held in many countries at the same time. IPR can be held only by legal entities i.e., who have the right to sell and purchase property. In the other way, any non autonomous institution doesn't have rights to own intellectual property. These rights are protected by their respective sections and rules.

## III. IPR SCENARIO: FROM INDIAN PERSPECTIVE

Earlier when IPR was in its preliminary stage, lot of problems arose relating to its implementation, policies, Act/Rules, financial and governmental support. Earlier, companies and inventors were also not aware of IPR, therefore risk of infringement was at an alarming level without a healthy system, companies were not interested to go for R&D process in India. This resulted in the death of inventions, high risk of infringement, economic loss and decline of an intellectual era in the country. Keeping in view all the above problems, India has taken strong steps in strengthening IPR in the country. For example, the first Indian Patent Law came in 1856. Further, the same was modified from time to time by Indian patent system.

New patent law was made after independence in the form of the Indian Patent Act 1970. Later, it was amended in compliance with the TRIPS provision. Recently in 2005, amendments were made in IPR. While the process of bringing out amendments was going on, India became a member of the Paris Convention, Patent Cooperation Treaty, Budapest Treaty and finally signed the TRIPS agreement to comply with the International and Indian standards. Recently, India signed the "Madrid Protocol" which further enhances the applicability of Trademarks in 89 countries. Further, interest of Small and Medium Enterprises (SMEs), Indian industries, technologist, scientist and inventors are gaining in this field. More number of research oriented persons are filing their inventions on a large scale. More number of foreign companies

are now establishing their in-house R&D centres in India, which is a clear sign of IPR influence in the country.

Apart from this, the country's first Compulsory License (CL) against the Bayer cancer drug "NEXAVAR" highlights the Indian IPR regime on the international window. This CL gives a ray of hope to Indian Pharma INC which is not capable of producing life saving drugs and now can manufacture such drugs at a very low cost. Such nature of CL boosts up the health industry of the country. Due to this, high end drugs can be manufactured and supplied to the patients at a very nominal rate which is a sign of a disease free society. According to a recent survey, it was estimated that the number of Trademark and Patent filings have increased 20 times as that of previous years. Keeping in view the above achievements, our IPR system is still in enact stage. The continuous efforts of Indian Government gives pace to the intellectual regime but more efforts are to be taken in overcoming challenges which restrict IPR to reach the international standards.

#### **IV. CHALLENGES IN IPR: FROM INDIAN PERSPECTIVE**

Today, IPR plays an important role in every sector and has become an important aspect of research for Pharma and research oriented industries. The continuous efforts of the government in policy establishment, IT protection, infrastructure, IPR search portals and manpower made this Industry a step ahead. In consideration of all the achievements, our industry is still facing troublesome challenges not only at domestic level but also at international level. Firstly, in India IPR lacks its roots in remote areas, such areas are considered to be the hot bed of inventions. Many people are still unaware about IPR and their advantages in taking rights for their intellectual property. In such cases, the government should promote the awareness of IPR in such remote areas. Large numbers of awareness camps and educational hubs have to be organized for the skilled impart of knowledge among the inventors. Secondly, a legal issue plays an important role in IPR situation in the country. Today various trademark and patent infringement matters are gaining their significance in the legal story of the country. In such increase of IPR matter, a skilled team of law persons (Judges, advocates) and IPR professionals are required. Apart from the above issues, TRIPS flexibility is yet another object to be discussed here.

Earlier, when Indian Patent system was not in compliance with TRIPS, there was a risk of a healthy Patent protection provision in India. But today the condition has totally changed. India is now a member of TRIPS agreement and our patent system is fully compliant with the TRIPS. Even though Indian Patent Act contains all the TRIPS flexibilities, the relevant provisions require fine tuning, especially of those related to the patent protection, compulsory license and government use.

#### **V. CONCLUSION**

Past decade attempts concluding crucial amendments to the Patent Act of 1970 and have built up a firm base for a fully functional patent system. IPR influence in the current regime is much affected by its awareness and intellect nature. In the current scenario, various important steps have been taken in reaching IPR to a new height and compliance with USPTO, EPO and other countries IPR regime and it was believed that more steps have to be taken. Further, people are still unaware about IPR and their

advantages in taking rights for their intellectual property. In such cases, the government should promote the awareness of IPR in remote areas.

#### REFERENCES

- [1] [http://www.ccs.in/ccsindia/policy/rule/articles/IPR\\_India.PDF](http://www.ccs.in/ccsindia/policy/rule/articles/IPR_India.PDF)
- [2] <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3312695>
- [3] Aayush Sharma and Priyanka Rastogi, 'India: India, IPR And Its Influence', September 2013.
- [4] Christopher M. Kalanje, 'Role of Intellectual Property in Innovation and New Product Development', [www.wipo.int](http://www.wipo.int)

# Patent System in Intellectual Property Rights

S. Punithavathi, M.Phil. Scholar, Department of Commerce with CA, Hindusthan College of Arts and Science.

## I. INTRODUCTION

INTELLECTUAL property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of speciality.

Intellectual Property (IP) systems have existed for decades, in some instances even centuries, with the underlying purpose of promoting social welfare through the stimulation of innovation, research and creativity. It is, therefore, striking that one of the most distinctive features of IP regimes, compared to other policy areas, has been their relative isolation from more general public interest debates. It is only in the last decade that IPRS have emerged in discussions and debates on topics as diverse as public health, food security, education, trade, industrial policy, traditional knowledge, biodiversity, biotechnology, the Inter-net, the entertainment and media industries, and on the role of IP in a knowledge-based economy.

The development agenda deliberations initiated by a group of developing countries at the WIPO General Assembly in September 2004 seek the integration of development into the work of the organisation. Its original objective was to ensure that IP policy-making better takes into account development concerns, such as the need to promote access to technical knowledge, encourage technology transfer, maintain public interest flexibilities, and prevent anticompetitive practices. IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

## II. INTELLECTUAL PROPERTY RIGHTS

"Intellectual Property shall include the rights relating to:

- Literary, artistic and scientific works.
- Performances of performing artists, phonograms, and broadcasts.
- Inventions in all fields of human Endeavour.
- Scientific discoveries.
- Industrial designs.

- Trademarks, service marks and commercial names and designations.
- Protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific literary or artistic fields.

### III. MAJOR INTELLECTUAL PROPERTY

- Copyright and Related Rights
- Industrial Property
- Patents
- Industrial Designs
- Trademarks
- Geographical Indications

#### *Copy Rights*

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, Paintings, sculpture and films, to computer Programs, databases, advertisements, maps and technical drawings.

#### *Trade Mark*

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when craftsmen used to put their signature or "mark" on their Products.

#### *Associated Trademark*

A well-known trademark in relation to any goods or services means a mark which has become known to the substantial segment of the public that uses such goods or receives such services. Associated Trademarks are, in commercial terms, marks that resemble each other and are owned by the same owner, but are applied to the same type of goods or services.

#### *Industrial Designs*

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

#### *Geographical Indications*

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.

#### *Patents*

Among these mechanisms, intellectual Property rights (IPRs) and patents are of Particular significance. A patent is a legal device which is generally defined as a right to exclude. It ensures inventors the right to a temporary monopoly on a technical invention. It is a property title that is valid in time and geographic space. In exchange for patent rights the inventor must publicly divulge the technical details on the invention. This is the typical response of the patent system to the knowledge tradeoff.

The public availability of the technical description is an essential element: it is the basis of the balance between the inventor's interests and those of society. The patent is thus a mechanism facilitating access to knowledge (before its creation in the 16th century, inventors were hostile to the idea of revealing new knowledge). A patent is an exclusive right granted for an invention. Generally speaking, a patent provides the patent owner with the right to decide how - or whether - the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document.

A patent is an exclusive right granted by a country to the owner of an invention to make, use, manufacture and market the invention, provided the invention satisfies certain conditions/stipulated in the law. Exclusive right implies that no one else can make, use, manufacture or market the invention without the consent of the patent holder. This right is available for a limited period of time. In spite of the ownership of the rights, the use or exploitation of the rights by the owner of the patent may not be possible due to other laws of the country which has awarded the patent. These laws may relate to health, safety, food, security etc.

### *Advantages*

A patent gives the legal right to stop others using your invention. Its existence may be enough to deter competitors for a period of 20 years in which an inventor can develop a market to the product or process. Attractive to investors as it limits competition.

### *Disadvantages*

Takes time and money to establish a patent. All patents have to be 'researched' to ensure there are no existing patents of a similar nature-involves legal fees Not possible to guarantee that a patent(once granted) is valid, it can be legally challenged and revoked with no refunds. It is still up to the inventor to protect a patent if they can identify an infringement the patent office don't take sides. Granting a patent is no indication that the invention has any merit or commercial value. Some products and process can be varied slightly to get around the exact ' wording of Patents.

### *The Indian Patent Act*

The Indian patent law we first promulgated in 1856. These were modified from time to time. New patent laws were made after the independence in the form of the Indian Patent Act, 1970. The Act has now been radically amended to become fully compliant with the provisions of TRIPS. The most recent amendment were made in 2005 which were preceded by the amendments in 2000 and 2003. While the process of bringing out amendments was going on, India became a member of the Paris Convention, Patent Cooperation Treaty and Budapest Treaty.

## **IV. CONCLUSION**

Intellectual property rights can be used effectively to facilitate successful innovation. Innovative technologies stand a better chance of successfully reaching the marketplace if IP is used strategically. Gauging the importance of IP in innovation by merely focusing on patents as input and/or output of innovation, does not do justice to the significant role that can be played by the other tools of IP. A broader approach

to the contribution of IP in innovation is therefore needed. IP also plays an important role in safely navigating the "valley of death." It provides access to financing and technical facilities. In addition, IP provides a strong negotiation position when it comes to entering into and maintaining business partnerships.

# Significance of Intellectual Property Rights for Biotechnology

S. Kalalchelvi, Associate Professor, Department of Zoology, Sri GVG Visalakshmi College for Women, Udumalpet.

## I. INTRODUCTION

**I**NTELLECTUAL Property is the term used to describe the branch of law which protects the application of thoughts, ideas and information which are of commercial value. It thus covers the law relating to patents, copyrights, trademarks, trade secrets and other similar rights (Cornish, 1989).

The development of the genetic resources of biodiversity is known as biotechnology. Broadly defined, biotechnology includes any technique that uses living organisms or parts of organisms to make or modify products, to improve plants or animals, or to develop microorganisms for specific uses (Congress of the United States, Office of Technology Assessment, 1990). Mankind has used forms of biotechnology since the dawn of civilization. However, it has been the recent development of new biological techniques (e.g., recombinant DNA, cell fusion, and monoclonal antibody technology) which has raised fundamental social and moral questions and created problems in intellectual property rights.

Intellectual property protection for biotechnology is currently in a state of flux. Whilst it used to be the case that living organisms were largely excluded from protection, attitudes are now changing and increasingly biotechnology is receiving some form of protection. These changes have largely taken place in the USA and other industrialized countries, but as other countries wish to compete in the new biotechnological markets, they are likely to change their national laws in order to protect and encourage investment in biotechnology.

There is at the moment no clear international consensus on how biotechnology should be treated. Although bodies such as the World Intellectual Property Organization (WIPO, the United Nations permanent body primarily responsible for international cooperation in intellectual property), and the Organization for Economic Cooperation and Development (OECD) have conducted separate studies and produced various reports, these have only sought to make governments more aware of the potential problems and to offer some suggested solutions. In view of the highly controversial nature of providing intellectual property protection for biotechnology, it is likely that in the short term developments will be at a national and regional level.

## II. INTELLECTUAL PROPERTY PROTECTION CURRENTLY AVAILABLE

There are currently two main systems of protection for biotechnology: rights in plant varieties, and patents. Both systems provide exclusive, time-limited rights of exploitation and are described in more detail below.

Keeping biotechnology 'secret' can also be a valuable form of protection. National treatment of trade secrets is diverse, and all attempts to harmonize trade secret laws in Europe, for example, have failed. Most jurisdictions do provide some form of protection against those who steal or use others' trade secrets unfairly. However, the



problem with this form of protection is that the secret generally becomes public once the biotechnology is used commercially and thus the protection is lost.

It is conceivable that the law of copyright could afford some protection for biotechnology. Lines of genetic code are analogous to some extent with computer program code, which has now been incorporated into the copyright systems of most industrialized countries. However, this route to protection is fraught with practical and conceptual difficulties and is generally thought to be unsuitable. There is as yet no recorded case of biotechnologists claiming copyright in their inventions.

Trademarks are also unlikely to be of much use in protecting biotechnology, though they may of course prove important later in regard to marketing products, processes or services. An attempt to register the name of a plant or an animal as a trade mark is unlikely to be successful as public policy would prevent it (in England, registrations for names of varieties of roses have been removed from the Trade Mark Register for lack of distinctiveness and because of the likelihood of confusion).

### III. RIGHTS IN PLANT VARIETIES

Prior to the mid-1960s only a few countries (e.g., Germany, USA) gave any intellectual property protection to plant varieties. Because of pressure from their plant breeding industries, 10 western European countries entered into a diplomatic process in the early-1960s which eventually culminated in the formation of an International Union for the Protection of New Varieties of plants (UPOV) and the signing of a Convention (the UPOV Convention 1961). Since that time a number of other countries have become parties to the UPOV Convention (the full list of 19 parties appears in. Amendments were made to the UPOV Convention in 1978, principally to facilitate the entry of the USA.

The UPOV Convention requires that each member country must adopt national legislation to give at least 24 genera or species protection, in accordance with the provisions of the convention, within eight years of signing. A plant variety is protectable ("a protectable variety") under the UPOV system if it is distinct, uniform, stable (DUS) and satisfies a novelty requirement. Novelty and distinctiveness equate broadly to novelty under patent law, but are more leniently applied in comparison to the patent rule. Satisfaction of the DUS criteria is conducted by the national authority responsible, usually by growing the variety over at least two seasons. There is also an important requirement that the variety be maintained throughout the duration of protection. A country may apply the system to all genera or species, but there is no obligation to do so and thus the system has been extended only gradually. In addition, the UPOV Convention allows national legislation to discriminate against foreigners (including nationals of a UPOV Convention country) under the principle of reciprocity. Thus amongst the UPOV members there is still some disparity in protection.

Duration of protection depends on national legislation and on the plant species to which the variety belongs, but is generally for 20-30 years. Grant of plant variety rights confers certain exclusive rights on the holder, including the exclusive right to sell the reproductive material (e.g. seed, cuttings, whole plants) of the protected variety. However the rights do not extend to consumption material (e.g. fruit, wheat

seed grown for milling flour). Essentially the exclusive rights define what others may or may not do in relation to the protected varieties.

Plant breeders were for some time dissatisfied with the protection provided by the UPOV system. This eventually resulted in a major diplomatic conference in March 1991, at which the UPOV Convention was substantially revised. The new 1991 text will provide far greater protection than is afforded at present, most notably by requiring that all member countries apply the convention to all genera and species, by extending the exclusive rights to include harvested material (e.g., fruit, wheat grown for milling into flour) and, most controversially, by allowing enforcement against farm-saved seed (where a farmer produces further seed of the protected variety from the previous year's crop). However, until the national governments ratify the new convention the system will continue to be based on the 1978 text. There will be considerable national opposition to the strengthening of plant variety rights and thus these changes may take years before they are implemented and may even be superseded by greater availability of patent protection in the meantime.

#### IV. PATENTS FOR BIOTECHNOLOGY

A patent is a grant of exclusive rights for a limited time in respect of a new and useful invention. The exact requirements for grant of a patent, the scope of protection it provides and its duration differs depending on national legislation. However, generally the invention must be of patentable subject matter, novel (new), non-obvious (inventive), of industrial application and sufficiently disclosed. A patent will provide a wide range of legal rights, including the right to possess, use, transfer by sale or gift, and to exclude others from similar rights. Duration will be for around 20 years (although for only 17 years in the USA). These rights are generally restricted to the territorial jurisdiction of the country granting the patent and thus an inventor wishing to protect his/her invention in a number of countries will need to seek separate patents in each of those countries. Whilst the majority of countries provide some form of patent protection, only a few provide patent protection for biotechnology (these include: Australia, Bulgaria, Canada, Czechoslovakia, Hungary, Romania, Japan, the Soviet Union and the parties to the European Patent Convention). The reasons for this may differ, but generally it has been because biotechnology has been thought inappropriate for patent protection, either because the system was originally designed for mechanical inventions, or for technical or practical reasons, or for one or more ethical, religious or social concerns. In all the National Patent Offices where patents are granted for biotechnology there is a considerable backlog of pending applications. Even in those countries where patent protection is provided, the type and extent of that protection is different in nearly every national system.

It has largely been the USA which has broken new ground in providing the possibility of patent protection for "anything under the sun that is made by man". Patents have been granted for plants since 1930 in the USA, under The Plant Patent Act. However, prior to 1980, the US Patent Office would not grant utility patents (separate from The Plant Patent Act) living matter because it deemed products of nature not to be within the terms of the utility patent statute. That was until the landmark decision of the US Supreme Court in *Diamond v Chakrabarty* (from which the above quote is taken), which held that a particular genetically engineered

bacterium was statutory subject matter for a utility patent. This decision has been the basis upon which patents have been granted for higher life forms. Subsequently it has been held that a utility patent may be granted for plants and a patent has been granted for an animal. Polyploid oysters, not naturally occurring, were held to be patentable subject matter and US Patent No.3,736,866, was issued in respect of a "transgenic nonhuman mammal all of whose germ cells and somatic cells contain a recombinant activated oncogene sequence introduced into the said mammal, or an ancestor of said animal, at an embryonic stage" - popularly known as the 'onco-mouse'.

Elsewhere, the treatment of applications for patents for living matter is far from certain. Whilst patents are granted in many countries for plants and microorganisms, it has been the issue of patents for animals which has been most controversial. Whilst it is not possible to summarize succinctly the position in the rest of the world, it is possible to describe the present approach of those countries which are party to the European Patent Convention (the EPC, see The EPC is a regional arrangement entered into by 14 European countries for the purpose of making multiple applications for any of the member countries a great deal easier and to introduce a common system for patent protection. An application under the EPC is for a European patent, or Euro patent, for short. If a Euro patent is granted by the European Patent Office (EPO) it has the same effect, and is subject to the same conditions, as a national patent in each of the member countries designated in the application. In other words, through a single application a bundle of national patents can be obtained.

The EPC provides that "plant or animal varieties or essentially biological processes for the production of plants or animals" are excluded from patent protection (although the exclusion is expressly stated not to apply to microbiological processes and products). These exclusions would appear to place unequivocal prohibition on Euro patents for macro biotechnology. However, the EPO has been taking an increasingly narrow view of these exclusions, and has held that they do not exclude all plants and animals per se, but only claims for varieties of plants or animals and that a process is not "essentially biological" if there has been substantial interference by man. It is also important to note that there is currently before the European Parliament of the European Community (EC) a proposal for a Council Directive for harmonization of the legal protection provided for biotechnology in the EC. This does not propose to amend the EPC, but the present draft proposal would make even more opportunities available for patenting biotechnology and thus make the EC more attractive in terms of investment in biotechnology research.

## V. INTERNATIONAL TREATIES

There are three international intellectual property treaties which are of particular importance for the protection of biotechnology: the Paris Convention for the Protection of Industrial Property (the Paris Convention); the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (the Deposit Treaty) and the Patent Cooperation Treaty (PCT).

The Paris Convention was originally signed in 1883 by just 11 countries, but now the majority of countries who have any form of intellectual property law are parties to it. The keystone to the convention is the principle of national treatment: an applicant from one convention country shall have the same rights in a second convention

country as a national of that second country. The convention covers patents and defines them so broadly that it permits application to any of the forms of industrial patents granted under the laws of the convention countries. The most important practical result of the convention is that it is possible to claim priority from an application made in a convention country for all subsequent convention countries within 12 months of the original filing.

The Deposit Treaty, as the full title suggests, is concerned with the deposit of examples of microorganisms for the purposes of patent applications. Applications for patents for biotechnology often face considerable difficulties in describing the nature of the invention sufficiently. The Deposit Treaty is a vehicle for solving these problems, primarily through the setting up of a series of International Depository Authorities (IDA) and through the recognition by all member countries of a deposit in a single IDA.

The PCT simplifies the process of filing patent applications simultaneously in a number of countries. Under the PCT a single application may be filed in one of the official receiving offices, designating any number of PCT member countries, which can eventually result in a national patent being granted in each of the designated states (and/or a Euro patent). A prior-art search is performed by the receiving office and a report sent to the applicant. The application and report are published and the application will then move on either to an international preliminary examination followed by national examination, or alternatively straight to the national examination stage. Unfortunately, the eventual outcome is not a 'world patent' and there is no harmonization patent law under the PCT apart from the procedural aspects.

## **VI. CASE STUDY: THE IGUANA MANAGEMENT PROGRAMME**

The Green Iguana of Latin America is a highly priced source of meat and eggs. Green Iguanas are arboreal herbivores which can grow up to 2m in length and can weigh as much as 6kg (about 82% of the lizard is edible). They need about half as much food as a chicken or rabbit to produce the same amount of meat. The species is now widely threatened because of excess hunting and habitat destruction.

Research into the reproductive behavior of the Green Iguana was begun in 1983 and resulted in development of new management techniques for ranching. A 'genetic brood stock' of adult iguanas which are larger, faster growing and more productive has been developed. The research has largely been the work of the Pro Iguana Verde Foundation (formed by Dagmar Werner in 1985). The Foundation's programme for training and advice on Iguana ranching is called the Iguana Management Programme (IMP). The IMP is based in Costa Rica but it is intended to implement it throughout Latin America and possibly elsewhere.

The primary purpose of the IMP is to conserve living natural resources; its basic premise is that if farmers can raise iguanas as a food crop, the status of the wild species will be improved and forest clearance might be reduced. Farmers adopting iguana ranching would have to protect or re-establish areas of forest to provide food for stock. Research indicates that meat production per hectare by iguanas is approximately three times higher than by cattle. Income can be derived from selling iguanas and their products (meat, eggs, leather) and products from the forest.

The new technology and expertise which have been incorporated into an iguana ranching model are being applied for an industrial purpose (i.e. agriculture) and are of commercial value; they thus fall within the area of intellectual property law as applied to biotechnology. The biotechnological components of the ranching model are the genetic brood stock (the Fundacion has 'bioengineered' an improved stock of Green Iguanas) and the husbandry procedures (egg laying and incubation, nutrition, disease control, release and harvesting). These are forms of 'original or traditional biotechnology', as opposed to 'new biotechnology' which is largely laboratory-based and dependent upon human manipulation of genetic material.

Intellectual property rights provide the means for compensating the Fundacion for its efforts. The technologies involved in the IMP are vulnerable to piracy. Much of the work of the Fundacion is contained in the genetic make-up of the Genetic Brood Stock. Once these Iguanas are transferred or sold the Fundacion loses its direct control over the animals. In addition, the success of the Iguana ranching model is dependent on the expertise to use the technologies efficiently; this is information which took years to develop but which can be pirated very easily once a license is purchased. The Fundacion needs to be able to disseminate its innovations and expertise in the security of knowing that it cannot be re-sold by pirates and that there will be no reduction of the licensing potential. Only internationally recognized intellectual property law can provide these types of protection.

Because of the uncertainties of the world's intellectual laws with regard to biotechnology the availability of protection for the most important components of the IMP is questionable. At present there is widespread discrimination against the application of intellectual property rights to natural genetic materials and in favor of human-modified genetic materials. This provides no incentives for exploitation of useful genetic materials in the natural environment, even though in developing countries natural resources are obvious subjects for investment. However, one important way to limit conversion of natural resources is to ensure that fair value is paid for current uses of the existing resource base. Intellectual property rights could be a means of influencing developing countries to maintain and develop diverse resources in return for the value that these resources render to the world community.

## VII. REGULATED TRADING IN WILDLIFE PRODUCTS

Regulated trading in wildlife products has the capacity of returning benefits to the users of natural habitats. It could do this if the trade were regulated in such a way as to support prices, much as is done at present with respect to agricultural commodities, where price supports provide incentives for maintaining land in its current state, as opposed to converting it to other purposes.

At present, there is no regulated trading mechanism of exactly this nature. There are, however, a number of existing international agreements which do seek to regulate trade in wildlife products. Early examples are the Western Hemisphere Convention and the 1950 Paris International Convention for Protection of Birds. These simply outlined in broad terms an obligation to control trade in wildlife products but created little structure within which these controls could be implemented. Both conventions consequently became 'sleeping treaties'. Undoubtedly the most important and effective convention which places some control on the economic

exploitation of wildlife products and thereby protects biological diversity is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

### VIII. THE EVOLUTION OF CITES

CITES is the most widely accepted of international treaties on the conservation of natural resources. The number of Parties has been steadily increasing from the initial signing of the convention in 1973 to a total of 113 in 1992. The convention attempts to prevent commercial trade in species of wildlife which are in danger of extinction and to control the trade in species which might become so if their trade was allowed to continue unchecked. It does this by means of two lists of species: Appendix I contain those species banned from international commercial trade and Appendix II, those for which trade may take place provided that export permits have been issued. Importing countries are obliged to ensure that all imports of Appendix II specimens are accompanied by correct export permits.

One of the main obligations of Parties is to submit to the Convention Secretariat annual reports of all of their trade in species included in the Appendices. The number of annual reports submitted is also shown in. These data are then compiled on a computer database and in this way it is possible to determine the global levels of trade in each species. At a fine level of resolution, the trade emanating from each range state can then be compared with what is known about the wild population in that country to enable an estimation of whether it is sustainable or whether it might be detrimental to its survival. At a coarser scale, the data can show long-term trends in trade levels or trade routes, which can be used to help in understanding and therefore controlling the trade.

The convention covers not only live animals and plants but also products and derivatives of the species listed. These range from whole skins and manufactured leather products, through ivory carvings, tortoiseshell jewelry, meat, seeds, and feathers to medicinal products extracted from plants such as ginseng. This causes problems for the implementation of the Convention because it is necessary for enforcement of officers to determine not only what species the product is derived from but also whether the species is included in the Appendices. In order to minimize the problems of identification.

### IX. CONCLUSION

This is the right time for us to access the intellectual property right in biological and biotechnological research.

### REFERENCES

- [1] D. Gervais, "The TRIPS Agreement: Drafting History and Analysis", London: Sweet and Maxwell, 1998.
- [2] J.C. Ginarte and W.G. Park, "Determinants of Patent Rights: A Cross-National Study", Research Policy, Vol. 26, Pp. 283-301, 1997.
- [3] P.W. Grubb, "Patents for Chemicals, Pharmaceuticals and Biotechnology", Oxford: Clarendon Press, 1999.
- [4] W. Jaffe and J. Van Wijk, "The impact of plant breeders' rights in developing countries", Univ. Amsterdam, Inter-Am. Inst. For Cooperation on Agriculture, Oct, 1995.

- [5] W. Lesser, "An Economic Approach to Identifying an 'Effective Sui Generis System' for Plant Variety Protection under TRIPS", *Agribusiness*, Vol. 16, No. 1, Pp. 96-114, 2000.
- [6] E. Mansfield, "Intellectual Property Protection, Direct Investment, and Technology Transfer: Germany, Japan, and the United States". World Bank, International Finance Corporation.
- [7] K.E. Maskus and M. Penunbarti, "How Trade-Related are Intellectual Property Rights?", *J. International Economics*, Vol. 39, Pp. 227-48, 1995.
- [8] J. Nogues, "Patents and Pharmaceutical Drugs: Understanding the Pressures on Developing Countries", Washington, D.C., World Bank, WPS 502, 1990.
- [9] R.M. Sherwood, "Intellectual Property Systems and Investment Stimulation: The Rating of Systems In Eighteen Developing Countries", *IDEA: The J. Law and Technology*, Vol. 37, Pp. 261-371, 1997.

# The Government of India's Role in Promoting Innovation through Policy Initiatives for Entrepreneurship Development

Dr.G. Jayanthi, Head, Department of BBA CA, SNR Sons College.

M. Arthiluma, II BBA CA, SNR Sons College.

## I. INTRODUCTION

INSPIRE of having a large publicly funded science and technology infrastructure and a sizeable education base, India has not been able to realize its innovative potential due to a fragmented innovation ecosystem. The government of India has taken many initiatives towards strengthening the innovation ecosystem, the most important of which are: i) the establishment of the National Innovation Council, whose mandate is to coordinate various innovation-related activities, and ii) the new Science, Technology and Innovation Policy 2013, which is intended to promote entrepreneurship and science-led solutions for sustainable and inclusive growth. With a focus on this new policy initiative, this article describes the current innovation ecosystem and the challenges it faces, and it discusses the efforts made by the government towards the promotion of innovation for entrepreneurship development and sustainable growth. With the implementation of this new policy the early indications are that India is poised to take a big leap towards innovation-led growth.

India is a country with over 1.2 billion people, 379 million (31%) of which are between the ages of 18 and 35 (Census of India, 2011). And, many of these young people are in search of jobs, despite being educated. For example, only one in every four urban males under 29 years is employed even though they hold at least a certificate or diploma (National Sample Survey Office, 2013). The aim of the Government has been to create employment opportunities for youth while focusing on rapid economic growth. Entrepreneurship development is one of the mechanisms adopted by the Government of India towards the creation of job opportunities. The government's assumption is that support for innovation will enhance entrepreneurship development, which will in turn accelerate economic growth.

In March 2010, Mrs. Pratibha Patil, 12th President of India, announced the government's vision by declaring the current decade as the "Decade of Innovation" (National Innovation Council, 2010). Several challenges to the desired creation of an ecosystem for innovation and entrepreneurship development are a cause for concern. However, there have been notable efforts taken by the government by announcing conducive policies and also efforts by various government departments towards fulfilling the above vision.

This article provides the necessary background to place the current innovation ecosystem within the Indian context, highlights some of the related challenges facing India today, and describes efforts made by the government towards the promotion of innovation for entrepreneurship development.



## II. THE INDIAN CONTEXT

The roots of India's current economic systems extend back to the time of colonial rule and its autocratic and fragmented structure. The country was made to forcefully serve as a market to its colonial bosses and their industrial products. Independence in 1947 brought many changes, but the country did not have to start "from scratch". The foundations of the today's legal, financial, educational, bureaucratic governance systems were inherited from the colonial period. Even the roots of publicly funded research structures, which have grown large today, date back to the colonial days. India today is a vast democratic country with a population of over 1.2 billion people with diverse ethnicities, religions, and languages. Nearly 70% of Indians live in rural areas (Census of India, 2011), and over past 20 to 30 years there has been a continuous flow of people from villages towards cities, mainly in search of work (Vinayakam & Sekar, 2013). The Indian economy is mostly based on agriculture, which depends on the unpredictable South-West monsoon. Given the large population, it is a considerable task for the government ensures adequate and affordable supplies of food, drinking water, clothing, housing, education, and healthcare.

The of India, especially the young, crave for employment. There is a limitation to employment opportunities offered by the various sectors of economy, but the government does provide employment guarantee programs. However, these programs are targeted at providing basic needs and tend to provide labour-intensive jobs that have no link with innovation. There is a realization that, "to sustain rapid growth and alleviate poverty, India needs to aggressively harness its innovative potential, relying on innovation-led, rapid, and inclusive growth to achieve economic and social transformation" (Dutz, 2007). The innovative potential of the young Indian population, if supported through an effective innovation ecosystem. holds potential for developing entrepreneurship and providing the growth and job opportunities that India needs.

## III. INDIA'S NATIONAL INNOVATION SYSTEM

The current national innovation system in India is a vast and complex system comprised of knowledge producers such as science and technology institutions, academia, and innovating individuals and knowledge users (e.g., industry-production/services in the public and private sectors). Various governments in India have given priority to science, technology, and innovation, and therefore India has evolved a large publicly funded R&D structure. There are various councils and research structures under various ministries, which cater to different research areas and which are distributed around the country. Examples include:

- Council of Scientific and Industrial Research (CSIR): established in 1941; 39 laboratories.
- Indian Council of Agricultural Research (ICAR): established in 1929; 99 institutes and 17 research centres.
- Indian Council of Medical Research (ICMR): established in 1911; 30 laboratories.
- Defence Research & Development Organisation (DRDO): established in 1958; 48 laboratories.

There are many other publicly funded institutions that perform research and technology development for industries related to steel, oil and natural gas, renewable energy, coal, textiles, railways, road transport, electronics and communication, environment and forests, irrigation, and so on. There are also more than 1200 privately or state-funded Scientific and Industrial Research Organizations (SIROs).

In academia, there are 280 universities in the public sector, including institutions of high education such as Indian Institutes of Technology (IITs) and the Indian Institute of Science (IISc), in addition to more than 150 self-financing and deemed universities. There are also more than 2500 in-house R&D centres created by corporations, and there are non-government organizations (NGOs) that use and apply the available knowledge for the benefit of the society. Furthermore, there are financial institutions such as the Industrial Development Bank of India (IDBI) and the Small Industries Development Bank of India (SIDBI), which lend support for innovation and also for commercialization of innovative technologies besides entrepreneurship. Also, various fiscal incentives are offered by the Department of Scientific and Industrial Research towards the R&D activities performed by institutions, academia, and industry for supporting, nurturing and leading their innovations towards fruition.

All these institutions were working mostly in a standalone mode prior to linearization of the economy in the 1990s. Since then, strong efforts have been made to harness the innovative capabilities of these structures by connecting them to one another and to industry and society, forming an innovation ecosystem.

#### IV. INDIA'S INNOVATION ECOSYSTEM

Broadly speaking, an innovation ecosystem is a combination of two distinct but largely separated economies: i) the knowledge economy (comprised of knowledge producers), which is driven by fundamental research, and ii) the commercial economy (comprised of knowledge users), which is driven by the marketplace (Jackson, 2013). In India, the innovation ecosystem includes the entire national innovation system described in the previous section, plus individual innovators and entrepreneurs; mentors; government policies; angel, venture capital, institutional, and industrial funding mechanisms, intellectual property rights mechanisms; technology transfer mechanisms; market inputs; and incentives, awards, and other innovation-recognition mechanisms, among others. Ideally, these various structures and mechanisms facilitate the smooth translation of innovations through the various segments of a complex innovation chain that takes ideas from "mind to market". Thus, the functional goal of the innovation ecosystem is to enable technology development and innovation. But, how well is India's innovation ecosystem performing today? According to the Global Innovation Index (WIPO, 2014), India ranks 76th among the 143 countries surveyed, having fallen 10 positions since the last report and having fallen relative to other BRIC economies. A smaller slide of one position down the rankings of the Global Competitive Index leaves India in 60th position among 148 countries (Schwab, 2013). As per OECD (2007) sources:

*"India's GERD [gross domestic expenditure on R&D] was 0.76% in 2007, essentially unchanged since 2000... India's innovation system is dominated by universities and PRIs [public research institutions]... Government R&D expenditures accounted for 0.47% of GDP [gross domestic product]; Some 73% of public research is funded by*

*block grants which are allocated on the basis of national research priorities... 95% of business research and development activities are funded by firms themselves, public financial support is negligible."*

## V. CURRENT CHALLENGES

The key challenges faced by India's innovation ecosystem and entrepreneurship in general are listed and described as;

- Fragmented policy and policy implementation
- Inadequate funding of R&D
- Difficult and lengthy funding procedures
- Angel, venture capital, and seed funding
- Weak linkages between stakeholders
- Non-conducive education system
- Poor infrastructure facilities in villages
- Risk aversion among entrepreneurs
- Inadequate protection of intellectual property rights

## VI. NEW POLICY INITIATIVES

As mentioned earlier, the Government of India declared 2010-2020 as the "Decade of Innovation", for which "the roadmap would be prepared by the newly established National Innovation Council (NInC; [innovationcouncil.gov.in](http://innovationcouncil.gov.in)). The National Innovation Council is "the 'first step in creating a crosscutting system which will provide mutually reinforcing policies, recommendations and methodologies to implement and boost innovation performance in the country" (National Innovation Council, 2010). The key initiatives of this policy are explored in light of the challenges identified in the previous section:

- *Funding:* The policy announces an increase in the gross expenditure in research and development (GERD) from less than 1% to 2% of the gross domestic product over the next five years. It also states that a National Science, Technology and Innovation Foundation will be established "as a public-private partnership (PPP) initiative for investing critical levels of resources in innovative and ambitious projects" (Ministry of Science and Technology, 2013), thus attracting private sector investments in R&D.
- *Strengthening the linkages between stakeholders:* The policy calls for "special and innovative mechanisms for fostering academia-research-industry partnerships" and facilitating the "mobility of experts from academia to industry and vice versa" (Ministry of Science and Technology, 2013). This initiative should help address the challenge related to linkages and should facilitate understanding within such partnerships.
- *Promotion of science:* The policy promotes the spread of scientific interest and understanding across all sections of society. The policy will "further enable school science education reforms by improving teaching methods, science curricula, motivating science teachers and schemes for early attraction of talent to science" (Ministry of Science and Technology, 2013). In these ways, the policy addresses the need for educational reforms.

- *Risk taking ability:* The policy accepts risk as an integral part of a vibrant innovation system. The policy emphasizes risk sharing by the government, which is slated to "significantly increase private sector investment in R&D and technology development" and "new financing mechanisms would be created for investing in enterprises without fear of failure" (Ministry of Science and Technology, 2013).
- *Intellectual property:* The policy will seek to "establish a new regulatory framework for data access and sharing [and for the] creation and sharing of intellectual property. The new policy framework will enable strategic partnerships and alliances with other nations through both bilateral and multilateral cooperation in science, technology and innovation. Science diplomacy, technology synergy and technology acquisition models will be judiciously deployed based upon strategic relationships" (Ministry of Science and Technology, 2013). Thus, this initiative is very important for international collaborations.
- *Addressing the innovation value chain:* The policy also enables a holistic approach to the complex value chain of innovation by providing science and technology interventions at all levels of research, technology and manufacturing, and services in the areas of socioeconomic importance.
- *Participation in global R&D infrastructure:* The policy proposes the creation of "high- cost global infrastructure in some fields through international consortia models. Indian participation in such international projects will be encouraged and facilitated to gain access to facilities for advanced research in cutting edge areas of science.

The Science, Technology and Innovation Policy 2013 thus tries to join the fragmented pieces of the Indian innovation ecosystem and bring it into the sharper focus. It addresses the need to enhance scientific understanding and skills among the young and aspires to position India among the top five global scientific powers by 2020. It also links the contributions of science, research, and innovation with an inclusive growth agenda with the aim of forming a robust and focused national innovation system. Importantly the policy supports entrepreneurship driven by science, technology, and innovation with viable and highly scalable business models. A key mechanism is investment in young innovators and entrepreneurs through education, training, and mentoring. This positive signs indicate that the government has fulfilled its role on the policy front. Now, it will be up to all the departments of the government to build innovative delivery mechanisms to take the fruits of this policy to the people of the country.

## VII. OTHER GOVERNMENT INITIATIVES

In this section, other government initiatives beyond the scope of the Science, Technology and Innovation Policy 2013 are described. India follows five-year plans for planning and implementation, and the 12th Five Year Plan (2012-2017) includes a lead paper on "Technology and Innovation" (Planning Commission, 2011), which says that: "Strengthening the innovation ecosystem requires a platform for information sharing and dissemination to ensure.' (1) improved access to knowledge and (2) support in the form of resources, linkages, mentoring and outreach. Greater knowledge of innovations can stimulate their adoptions on a longer scale. This decentralized, open and

*networked model would enable information sharing on innovations and collaboration among stakeholders."*

## **VIII. INDIA INCLUSIVE INNOVATION FUND**

The India Inclusive Innovation Fund is designed to "combine innovation and dynamism of enterprises to solve the problems of the bottom of the pyramid in India" (National Innovation Council, 2014). The initial investment of INR 500 crores (approximately \$83 million USD) is slated to expand 10 times. The government will contribute 20% of the fund, and the rest will come from financial institutions, insurance companies, multilateral/bilateral development agencies, and Indian and global corporations. The life of the fund is nine years, and it will focus on healthcare, food and nutrition, agriculture, education energy, financial inclusion, and environment technology, among other areas.

### *Initiatives from the Ministry of Science and Technology*

The following initiatives have been undertaken by the Ministry of Science and Technology:

- Biotechnology Industry Research Assistance Council.
- India Innovation Growth Program.
- National Innovation Foundation.
- Promoting Innovation in Individuals, Start-ups and MSMEs (PRISM).
- Council of Scientific and Industrial Research Innovation Complexes.
- Patent Assistance Programs operated by the Technology Information, Forecasting and Assessment Council and the National Research Development Corporation.
- Technology Business Incubators operated by the Department of Science and Technology.
- Small Business innovation Research Initiative.
- Technology Development and Demonstration Program.

## **IX. CONCLUSION**

India has a large, demographically diverse population, with many young people seeking employment. The country is on a path to growth, but the rate of growth has been slow. The government has realized the roots of the basic problems and made appropriate reforms, mainly in the areas of administration, economy, and labour, as it tries to free itself from negative aspects of its colonial legacy. There has been a substantial thrust toward science, technology, and innovation in past 20 years, and many initiatives have been undertaken in that direction.

However, the investments in science, technology, and innovation are not yet translating into the desired reality. Realizing that the innovation-led entrepreneurship development holds promise for growth, the government has taken major policy initiatives with a strong innovation agenda. There are formidable challenges in realizing the goal, but as this article has shown, the *Science, Technology and Innovation Policy 2013* is a big step in the right direction, because it addresses most of the key challenges in developing an effective innovation ecosystem. The main initiatives are provision of funds and removing the sluggishness in the ecosystem for innovations by

improving linkages and making it vibrant in a comprehensive way. The policy is in place; now, its success depends on its implementation. Some time is needed before conclusions can be drawn about the policy's ultimate effects on the growth path. However, the new direction reflects strong growth aspirations and resonates with the zeal and zest of the youth who wish to journey on the risky path of innovation-based entrepreneurship.

#### REFERENCES

- [1] Census of India, Population Enumeration Data. Government of India: Office of the Registrar General & Census Commissioner, 2011.
- [2] M.A. Dutz, Unleashing India's Innovation: Towards Sustainable and Inclusive Growth. Washington, DC: The World Bank, 2007.
- [3] Ministry of Science and Technology, Science, Technology and Innovation Policy 2013. Delhi: Government of India, 2013.
- [4] Planning Commission, Twelfth Five Year Plan: Technology and Innovation. Government of India: Planning Commission, 2011.
- [5] Planning Commission, Creating a Vibrant Entrepreneurial Ecosystem in India: Report of the Committee on Angel Investment & Early Stage Venture Capital. Government of India: Planning Commission, 2012.
- [6] <http://planningcommission.nic.in/>

# Impact of Intellectual Property Rights in Accounts Management

S. Shankarii, Ph.D, Assistant Professor, Hindusthan Institute of Technology.  
Priya Srivastava, M.Phil, Department of Commerce, Hindusthan College of Arts and Science.

## I. INTRODUCTION

THERE has been a growing interest to the contribution of Intellectual Property Rights (IPR) to global trade and investment. Since early a recent spate of initial public offerings, high-profile mergers and acquisitions, and litigation has thrust intellectual property (IP) into an increasingly critical position in global economics. However, many organizations often fail to understand the value of and the risks to their IP, even when that IP accounts for a high percentage of the company's value. With limited resources and bottom-line pressures from stakeholders, companies need a high rate of return on their intellectual property (IP) investments and appropriate protection for it. Not taking action could pose a serious threat to the success of the organization.

This paper explores the disclosure of Accounting in recognition of Intellectual Property as an Asset according to New International Accounting Standard. We then by enclose the legal Accounting Disclosures in which Intellectual property rights are acknowledged, concluding that these disclosures are not necessary aligned. The effects and implications of development of global regime for Accounting for Intangibles may eventually harmonies the accounting treatment for Intellectual Property but do not resolve the contentious issue of inconsistencies in the recognition of Intellectual Property rights under different frameworks and implication of decision making.

Intellectual property is a general term for the set of intangible assets owned and legally protected by a company from outside use or implementation without consent. Stemming from its ability to provide a firm with competitive advantages, defining IP as an asset aims to provide it the same protective rights as physical property. Obtaining such protective rights is critical as it prevents replication by potential competitors-a serious threat in a web-based environment or the mobile technology sector, for example. There is an extensive international system for defining, protecting, and enforcing intellectual property rights, comprising both multilateral treaty schemes and international organizations. Examples of such treaties and bodies include the Trade-Related Aspects of Intellectual Property Rights (TRIPS), World Intellectual Property Organization (WIPO), World Customs Organization (WCO), United Nations Commission on International Trade Law (UNCITRAL), World Trade Organization (WTO), and European Union (EU). Nonetheless, there are variations in the respect for and enforcement of rights at a local level.

This paper demonstrates that the gap exists between the economic framework of accounting, which attempts to recognize intangibles as assets, and legal frameworks that recognize intellectual property rights (IPR). This lack of consensus creates significant challenges for companies operating in a global environment.

Accounting, as with the legal environment, has entered into the global arena through the introduction of an international suite of accounting standards for financial reporting in domestic regimes. Whilst legal regimes seek to define IP as an intangible with particular qualitative characteristics such as inventiveness and novelty, accounting regimes seek to measure and quantify according to the economic benefit that the intangible will accrue to an entity and subsequently capital providers.

## II. SIGNIFICANCE OF INTELLECTUAL PROPERTY

3 broad classes of assets: current; property, plant & equipment; intangible

1. Intangible assets identifiable non-monetary assets without physical substance
2. Intangible assets include all types of formal intellectual property rights
3. As well as brand recognition, knowhow, proprietary databases, Intangible assets that are NOT accounted for separately on the balance sheet can be reflected as residual "Goodwill"
4. Innovation has accelerated & has become an increasingly important driver of performance of leading businesses and of economy-wide growth
5. Innovation based largely on knowledge, on intangible assets, including intellectual property has accelerated in patent filings & trademarks registrations.

In most 'western' industrialized nations, the accounting rules or standards have traditionally emerged from a national process of standard setting. In 2001, the internationalization process was revitalized by the new International Accounting Standards Board (IASB) resulting in the promulgation of a suite of international accounting standards for financial reporting.

The associated accounting rules and definitions are a political, institutional and social practice that are contested and not necessarily aligned with discourses embedded in other frameworks. Substantively creative or innovative knowledge derived from human endeavor is an intangible that may attract certain legal rights according to rules which govern those rights. In the attempt to measure and value intangibles, accounting frameworks have their own discourse of recognition and measurement and attach different meanings.

## III. WHY VALUE INTELLECTUAL PROPERTY?

Changes in the global economic environment have influenced the development of business models where IP is a central element establishing value and potential growth. In addition to these systemic changes, U.S. and international accounting practices place pressure on firms to recognize and value all identifiable intangible assets of a firm as part of a transaction (in a merger or acquisition, for example). As a result of these trends, proper valuation of IP, followed by measures to protect that value, have become a key element of the success and viability of a modern firm. Federal Reserve Chairman Ben Bernanke recently validated this notion during the "New Building Blocks for Jobs and Economic Growth" conference, where he discussed the importance of intangible capital and that its accumulation has accounted for more than half of the increase in U.S. output-per-hour during the past several decades.



#### IV. VALUING INTELLECTUAL PROPERTY-METHODOLOGY

There are three methods of valuing intellectual property: cost-based, market-based, and income-based valuations.

1. *Cost-based valuation* takes into consideration both how much it cost to create the asset historically and how much it would cost to recreate it given current rates.
2. *Market-based valuation* looks at comparable market transactions, whether sale or purchase, of similar assets to arrive at conclusions of value.
3. *Income-based valuation* looks at the stream of income attributable to the intellectual property based on the historical earnings and expected future earnings.

These methods can be applied concurrently in a combined approach to arrive at a final valuation. There are several important factors to establish and take into consideration when performing an IP valuation. These include:

- Clear identification of the IP.
- Unambiguous title to the asset.
- Qualitative and quantitative characteristics of the IP.
- Earnings capacity and profitability relating to the IP.
- Market share supported by, or as a result of the IP.
- Legal rights and restrictions, competition, barriers to entry, and risks associated with the IP.
- Product life cycles and positioning.
- Historical growth and prospects for the future.

#### *Context of Accounting*

Financial accounting information is usually presented in the form of financial statements consisting of a statement presenting a calculation of the profit or loss over a specified period of time and a statement of financial position presenting the assets and liabilities of an organization at a specified date. In addition a statement reporting the cash flows for a specified period may be included. Other accounting information of both a non-financial and financial nature is disclosed in notes or appendices to the financial statements. The financial statement information relies on monetary figures to represent a transaction or flow of resources. In other words, it is an abstraction for 'real world' events. Reliance of users on the information provided for decision making results in the highly regulated environment for financial reporting. To ensure consistency of financial reporting, this regulation of accounting is most commonly found in accounting standards. In Australia, as in most jurisdictions, it is a mandatory requirement under company law for Preparer's of financial reports to follow accounting standards promulgated by the national standard-setting authority. These standards basically prescribe the rules and procedures for the recognition, measurement and disclosure of financial and non-financial information in published financial reports. Recognition involves a system of criteria which define the elements of reports and include the answer to questions such as when does a transaction result in reporting of revenue; -expenses; assets or liabilities. Measurement criteria govern how the elements are to be represented monetarily. Disclosure requirements mandate

where this information is presented in the financial reports, or alternately disclosed in notes. These criteria are interdependent and intertwined. Measurement involves recognition and disclosure depends on measurement characteristics. In this way, accounting makes visible certain social phenomenon and transactions, however in doing so, it obscures others. Although the conventional view of accounting as a communication device is reinforced and legitimated in the regulatory environment in which financial accounting is located, there is a body of literature that focuses on the notion that accounting mediates social relationships and is said to be a social and institutional practice. From this perspective, accounting gives meaning to social elements and social transactions, so that the definition and understanding of an asset or profit is peculiar to accounting and reinforced through regulation. Therefore, the social and institutional context of accounting and standard setting is important to consider.

## V. THE INTERNATIONALIZATION OF ACCOUNTING STANDARDS

To recognize that accounting is a social and institutional practice it means recognizing diversity in social, cultural, political and economic contexts. This Diversity is seen between the various forms of organization which give account as well as the cultural milieu in which accounting takes place. In most western economies, the standard setting procedure for accounting has traditionally existed at a national level. In the last decade the accounting profession has witnessed a shift to global or international accounting standards presenting challenges for the recognition and measurement of intangibles, in particular, intellectual property.

### *An International Standard for Intangible Assets IAS 38*

In accounting, expenditure on items of an intellectual property nature can be recognized as an asset if certain criteria are met. Assets are defined as either tangible, having physical substance, or intangible. Intangible assets are further classified as identifiable or non-identifiable. Whilst intangible assets are dealt with in a number of accounting standards, for example the definition and measurement of "goodwill" is regulated by a standard dealing with business combinations (IFRS 3), IP generally falls within the ambit of the international accounting standard devoted entirely to intangible assets, IAS 38 Intangible Assets. It is from within this standard that we examine accounting for IP. IAS 38 Intangible Assets has created significant changes in the way companies account for their intangibles. By their very nature intangibles are both difficult to define and measure. As companies increasingly have their value based on intangible assets, the issues surrounding definition and measurement have become increasingly important.

Therefore, the release of the IAS 38 in March 2004, which applies to the accounting for intangible assets for annual periods commencing on or after 31st March 2004, was regarded as a watershed. "An asset is a resource that is controlled by the entity as a result of past events (for example, purchase or self-creation) and from which future economic benefits (inflows of cash or other assets) are expected." An intangible asset is a non-monetary asset without physical substance. Examples of possible intangible assets include patents, copyright, goodwill, brand names and research and development.

The critical attributes of an intangible asset according to this definition are:

- Identifiability.
- Control (power to obtain benefits from the asset).
- Future economic benefits (revenues or reduction in costs).
- The ability to measure reliably AS 38 distinguishes between internally generated intangibles and those which are Purchased. Therefore, except in the special case of development costs, IP is recognised as an intangible asset only when it is the result of a commercial transaction. Whilst development expenditure is not generally separately identified as an IPR, there is scope in legal regimes for the protection of certain information.
- In Particular, the TRIPS Agreement (Art. 39.3) protects undisclosed test data relating to Pharmaceutical and agricultural chemical products in the development phase. In contrast to the general characteristics of creativity and innovation the rationale is based on the notion of "unfair commercial use".

## VI. CHALLENGES

Not so long ago, protecting and managing intellectual property was a fairly quiet field of endeavor not given to making headlines or causing ripples on the stock market. However in the space of a few years, IP issues have come to feature regularly as major news items and have taken their place as a key element in corporate strategy, affecting company ratings.

The market value of a firm and its accounting book value are rarely consistent. The primary reason for this inconsistency is said to be the market's assessment of the value of intangible items.

## VII. WHAT SHOULD BE VALUED AND WHEN

In addition to annual testing, many asset classes have guidance requiring impairment testing to be performed when a triggering event-defined as an event or change in circumstance indicating that the carrying amount of an asset may not be recoverable-occurs. A disaster such as the Japan earthquake can impair assets. In some cases, buildings or other assets have been severely damaged or destroyed. In other cases, a company's operations or financial performance may be significantly affected by the loss of an essential supplier or customer. Assets potentially affected and in need of review include goodwill, intangibles, other long-lived assets, investments, inventories, and receivables. Due to the complexities involved in an IP valuation, it is important to engage a qualified, independent valuation specialist. Auditors are unable to perform these services for their audit clients as it constitutes a conflict of interest under the Sarbanes- Oxley Act of 2002.

## VIII. CONCLUSION

Accounting is a key management tool for Intangible Assets including IP increasingly important for businesses & economies to account for IP in meaningful way. But current accounting rules stress objective verifiability of valuations, reject valuations based on assumptions about future. Not all IP can be accounted for what management purposes conflict between verifiability & relevance of IP valuation for

accounting purposes need to supplement accounts with non-financial, qualitative information on innovation activities & results. Several sets of rules on IP valuation for accounting are:

- International rules non-binding.
- Interpretation.
- Application of international rules varies across countries creates costs.
- Risks for international business.
- The need for more harmonization in interpretation & application of international rules.

# G.D. Naidu: A Motivational Force of Innovation & IPR

Dr.A. Mohanasundaram, Associate Prof and Dean, Department of Commerce, SNMV College of Arts & Science, Coimbatore.

## I. INTRODUCTION

**M**ANY successful stories in the world to lead our life with victory.

Studying past history of successful personalities and grasping the required things will help us to decide things. In this way we tried to highlight some important events of an Indian, Tamizian not only that who born in Coimbatore district Mr.G. Duraiswamy Naidu who is popular in the name GD Naidu.

Life history will be a motivational source and force for the present younger generation.

Life History will be more useful and beneficial to the youngsters who really interested to invent some new things and made their lives more meaningful.

It enhances the Confident level of the readers. Please go through the following pages.

### *Objectives of the Study*

1. To avoid inferiority complex among the young minds.
2. To enhance the confident level towards Entrepreneurship among the youth.
3. To seed the ideas of innovation in the younger minds.
4. To bring the habit of studying history (or) at least stories of successful personalities.

## II. REASON FOR CHOOSING GD NAIDU

Mr. GD Naidu was born in Coimbatore who had studied up to fourth standard only. His father is a farmer. It may be surprised to note that he was appreciated by Sir CV Raman, a Noble prize winner. He had touch with some important personalities namely, Kamaraj, Mahatma Gandhi, Pandit Jawaharlal Nehru, Subash Chandra Bose, etc. He visited London, Germany and had conference with engineers there, he met Adolf Hitler in the year 1936. Above all without possessing any degree he had served as a Principal for some years at Arthur Hope Polytechnic College, Coimbatore.

## III. CHRONOLOGICAL GROWTH OF GD NAIDU

1. He has begun his transport business in the year 1920 at his 27 year of age.
2. In 1932 he went to Europe to spend his summer. He had opportunities to see the scientific Research centres at Germany. He was really happy in seeing those things there. As a result, he invented Electric Razor blade at Germany. Even today these blades are quite popular.
3. In the year 1935, he personally filmed the funeral of King George at London.
4. In 1936, he met Adolf Hitler at Germany.
5. In 1937 GD Naidu developed India,s first indigenous motor in 1937 at his factory NEW (National Electric Works, Peelamedu, Coimbatore)
6. In 1941, he announced that he had the ability to manufacture five valve Radio sets in India at a mere cost of Rs. 70/ a set.

7. In 1945 GD Naidu was the Principal of Arthur Hope Polytechnic College, Coimbatore.
8. He provided employment in the engineering and manufacturing sectors to many individuals in the 1950's and 1960's.
9. In 1952 he rolled out two seater petrol engine car costing a mere Rs. 2,000/. The British Government refused to grant license to produce this kind of cars.
10. In 1967 GD Naidu Industrial Exhibition was established.

#### Appreciation for IPR

We must be proud of having this great scientist of Tamilnadu. He was appreciated by Sir CV Raman as "A great Educator, an entrepreneur in many fields of engineering and industry, a warm hearted man filled with love for his fellows and a desire to help them in their troubles. Mr. Naidu is truly a man in million. Perhaps this is an understatement".

#### IV. GD NAIDU AND COIMBATORE CITY

The name GD Naidu is never taken out from the growth history of Coimbatore city. We never forget his contribution to the present level Coimbatore. One cannot imagine the city Coimbatore without Siruvani water, without Textile mills and without Engineering Industries. In all these three areas his contributions are significant. He worked together with RK Shanmugam Chettiar, (the first Finance Minister of India) to bring Siruvani water to the Coimbatore city from Western Ghats. He introduced some new varieties of cotton by adopting hybrid cultivation method in agriculture. He developed India's first indigenous motor along with D. Balasundaram. It was the motor's success that resulted in the founding of Textool by Balasundaram and later on, Lakshmi Machine Works (LMW). These two industries generated more employment opportunities once. Not only that many people migrated from nearby districts and states.

Mr. GD Naidu survived and served the people of Coimbatore even after his death through his son GD Gopal and grand children GD Rajkumar and Shanthini. They are running some institutions by naming the great man GD Naidu.

#### V. CONCLUSION

Today the Scientific and Technological advancements gave us a lot of opportunities to think better and perform things faster, just by clicking the computer mouse button we could found many ideas to strengthen our R & D.

At the same time we never forget our fore fathers contributions and their ideas. Inventions are also possible by developing the old systems and models. So we need to learn not to avoid successful stories of eminent personalities and their contributions. New things never come just by sitting and working out in one day or one night. It is the need of this hour of every Indian to raise hands to touch the peak of Noble. After 1930 and Sir CV Raman No Noble laurels reported from India in the field of Science and Technology. Innovation, Inventions would possible through hard works which make our India stronger.

# Intellectual Property Rights and Indian Agriculture

P. Rathinam, Assistant Professor, Department of Economics, L.R.G. Govt. Arts College for Women, Tiruppur.

## I. INTRODUCTION

**A**GRICULTURE including plant breeding and agricultural methods does not have any form of IPR protection unlike industry and commerce. Effective implementation of IPR related legislations is to have significant impact on the course of agricultural R&D in the country. Therefore it is considered important to identify and develop various national policy options for addressing the emerging areas of IPR in agriculture, including the access to various protected technologies to the Indian farmers, entrepreneurs and users. IPRs refer to the legal ownership by a person or business of an invention/discovery attached to particular product or process which protects the owner against unauthorized copying or imitation. There are seven types of IPR viz., Patents, Trademarks, Copyright, Geographical Indications, Industrial designs, Integrated circuits and Trade secrets.

A patent is a statutory privilege granted by the government to inventors, and to other persons deriving their rights from the inventor, for a fixed period of years, to exclude other persons from manufacturing, using or selling a patented product or from utilizing a patented method or process. At the expiry of the time for which the privilege is granted, the patented invention is available to the general public.

Patents are granted for novel, non-obvious and useful inventions and generally give the legal right to exclude others from making, using or selling that invention for a limited period, usually, 20 years from the date of application. All patent laws allow some exceptions. For instance, almost all jurisdictions exclude from patenting inventions that are contrary to morality, public order or public health. Again, not all jurisdictions allow the patenting of inventions on living material such as plants and animals or even of biotechnological processes resulting in such products. Similarly, use by others is allowed in limited circumstances, such as for purposes of research, or through compulsory licenses authorized for specific purposes by the government or courts.

Following the Agreement on Trade related aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization (WTO), most countries are committed to the provision of certain minimum standards for the protection of intellectual property. Such intellectual property rights (IPRs) raise key issues for the future development of agriculture and are particularly vital for a developing country like India. These subjects are being extensively debated in India and have contributed to the preparation of legislation on IPRs with respect to plant variety protection, patents and geographical indications.

### *Patent Legislations*

The initial patent legislations were not in favour of providing patent protection for plants, agricultural produce and horticultural methods. Even today, some patent legislation, for instance, the Indian Patents Act, do not recognize plants and agricultural methods as appropriate subject matter for patent protection.

## Plant Breeders' Rights

Plant breeders' rights (PBRs) were developed to reward conventional breeding methods used to develop new plant varieties.

Such sui generis protection is weaker than patent protection in that right holders cannot exclude other breeders from using the protected variety to develop other varieties and cannot prevent farmers from re-using the seed obtained from the new variety. Keeping in view the ongoing uncertainty and ambiguity as to protection of plants under various intellectual property rights (IPR), this paper discusses various aspects of intellectual property (IP) available for agricultural products, particularly plants.

## II. PLANT PROTECTION LEGISLATIONS IN INDIA

According to the Indian Patent Act, 1970 and subsequent amendments, patents could be applied mainly for agricultural tools and machinery or the processes for the development of agricultural chemicals.

Methods in agriculture or horticulture, life forms of other micro organisms like plant varieties, strain/breeds of animals, fish or birds as well as products derived from chemical/biochemical processes, and any process for medicinal, surgical, curative, prophylactic or other treatments of animals or plants to render them free of diseases or to increase their economic value or that of their products as such, patentable subject matter.

Inventions produced by chemical processes including alloys, optical glass, semiconductors and inter-metallic compounds and substances intended for use or capable of being used as drug and food were not patentable till the beginning of 2005. From 2005, inventions related to agrochemicals as products could be patented according to the Patent (Amendments) Act, 2005. Earlier, in India, there was no legislation to protect plant varieties. However, after becoming a signatory to TRIPS Agreement, need for such legislation was felt since Article 27.3(b) of the TRIPS Agreement made it mandatory to provide protection for plant varieties either by patents or by an effective sui generis system or by any combination thereof, the choice having been left to the signatory states.

In India, a sui generis system for protection of plant varieties was developed, integrating the rights of breeders, farmers and village communities. Sui generis enables designing of one's own system of protection for plant varieties as an alternative or addition to a patent system for protecting plants. As a result of this legislation, in India IPR protection came into being for new plant varieties, in the shape of the Protection of Plant Varieties and Farmers' Rights (PPVFR) Act in 2001. This development created favourable legal conditions for international partnerships in biotechnology R&D. Countries such as USA having a strong R&D base in plant genetic engineering have chosen a robust Plant Utility Patent Legislation.

India is certainly not inclined to adopt patent protection regimes for its plant varieties, rather it has shown inclination to adopt a sui generis legislation which is non-patent, ostensibly for reasons that India is predominantly agricultural and has a strong R&D base in conventional plant breeding. While Plant Utility Patents Act



provides for broad patents over plant varieties, traits and genes and even the physical parts of the plants, plant breeder's rights provide IPR only over varieties.

The UPOV affords protection to those plant breeders who produce plant varieties fulfilling the criteria of distinctiveness, uniformity and stability (DUS). However, the current version of the UPOV in 1991 had added additional criteria of 'new' to DUS thus rendering DUS as NDUS.

Attention got focused when the Uruguay Round of the GATT Agreement was reached in 1994 and World Trade Organization was created in 1995. However, the concern for the protection of intellectual property rights was not limited at the WTO only. In fact, Food and Agriculture Organization, Convention on Biological Diversity (CBD) and International Union for the Protection of New Plant Varieties (UPOV) were also seized with the issues of intellectual property protection associated with biological resources. These international concerns paved the way for raising a systematic concern for the protection of intellectual properties in agricultural sector in India.

### **III. RESTRICTIONS WITH RESPECT TO AGRICULTURE RELATED INVENTIONS IN INDIA**

The restrictions on protecting inventions relating to agriculture and all life forms have been a part of the Indian patent system. Section 3(j) of the Act specifies that 'plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals'.

Section 3(j) did not exist till 2002, and was introduced to refuse a case of patenting of a life form, today Sections 3(h), 3(i) and 3(j) together further restrict the scope of patenting in the area of agriculture. Section 3(h) states that 'a method of agriculture or horticulture' is not patentable. Section 3(i) states that 'any process for medical, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings or any process for similar treatment of animals to render them free of disease or to increase their economic value or that of their products' is not patentable. Further, Section 3(j) prohibits patenting of conventional techniques/processes such as plant breeding and tissue culture techniques and the like. The implication is that any new plant variety, arising out of an innovative use of conventional techniques or modern biotechnological methods, is not patentable subject matter. In the present scenario, such a view is short-sighted and presupposes that Indian agricultural scientists are not capable of developing inventions in this field or should not be allowed to protect their inventions.

### **IV. LEGAL FRAMEWORK AFFECTING FARMERS INDIVIDUALLY AND INHIBITING ECONOMIC GROWTH**

The existing Indian legal framework under the PPVFR Act, 2001 allows farmers to save, sow, re-sow, exchange, share or sell farm produce, including seeds of the protected variety. However, the farmer in India is not entitled to sell 'branded' seed of a protected variety.

The legal right to the exclusive ownership, provided by a patent for a finite period of time, ensures that entities who invest heavily in research and development have an opportunity to earn those costs and are provided a return for their investors through subsequent marketing. Patents are the strongest form of IP protection which allows the right holder to exert control over the use of patented material by limiting other's rights to sell, or reuse seed they have grown, or other breeders to use the seed. The patenting of plant varieties is important because the owner of the patented variety can prevent others from using it for breeding purposes which is significantly different from PVP. However, it is more difficult and costly to prove that a developed variety meets the criteria for patentability than obtaining PVP, where the criteria for protection are not stringent. Nevertheless, patents provide broader protection and may include claiming the gene, the vector or carrier for effecting the transformation and a number of potential varieties or crops incorporating the gene which provides umbrella protection.

Patent protection extends these broad yet closely knit rights to its owners without any loose ends. If patent protection for newly developed plants is incorporated in the Indian legal framework, it would provide farmers and breeders their long lost credit and well deserved rights. This would encourage them to develop improved varieties which they could protect by the way of patent and thus proportionally effect the economic growth of the country. If this is implemented, of course with specific exceptions, it would provide an edge to rural agricultural development.

## **V. PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001**

The need for a sui generis system for PVP in India was to enable the nation to protect and preserve its farmers' rights on the one hand and at the same time grant rights to plant breeders on the other hand. Following were some of the declared advantages for developing a sui generis system for PVP in India:

- a) Allowed for superior planting material, leading to increased agricultural production.
- b) Facilitated investment by private sector enterprises in the development of superior plant varieties and also gave an impetus to the building up of infrastructure for the seed industry.
- c) Encouraged competition between the private and the public sector in the field of plant breeding effectively and efficiently in the larger national interest.
- d) It enabled India to meet its national obligations under the international agreement on tariffs and trade (GATT).

India is one of the first countries in the world to have passed a legislation granting rights to both breeders and farmers simultaneously under one Act. It is the only legislation in this area that grants formal rights to farmers in a way that prevents their self-reliance from being jeopardized while at the same time recognizing the efforts of the plant breeders in developing new plant varieties. By giving protection to the farmers' plant variety, the act recognizes the farmer as both a cultivator and a conserver of the agricultural plant variety. The PVP law in India benefits the registered breeder to save, use, sow, re-sow, exchange and share or sell his new variety and the breeder who obtains registration of a new plant variety can stop any person who sells, exports, imports or produces such variety without his permission.

He can also prevent the use, sale, export, import or production of any variety deceptively similar to his registered variety.

The essence of granting legal protection to creators is to (i) reward the creators of new and beneficial plant varieties for use by farmers and consumers in order to encourage commercial plant breeders so that they are willing to invest their resources, labour and time needed in creating new plant varieties or improving existing plant varieties, and (ii) provide access to information of the created products and the methodology of creation for the enhancement of social welfare.

## **VI. CONCLUSION**

Trade secrets and the protection of undisclosed test data are also considered to be part of IPRs now and these are relevant to the agricultural sector also. Farmers' rights and community IPRs are the forms of intellectual property at the stage of initial conceptualisation at the international or national level. India is not a member of the Paris Convention or UPOV but is a member of the WTO and is therefore, obliged to implement the TRIPS Agreement within the time limits set out therein.

There is a need to develop a policy and law to create new tools and instruments which could effectively ensure countries of origin asserting their rights over their genetic resources, guarantee that there is equitable sharing of benefits arising out of the use of these resources, and more importantly, adequately protect the indigenous people performing intellectual efforts. Whereas the Indian legislation should not be contradictory to international treaties, at the same time, it should not ignore Indian citizens like the farmers, and grass root innovators who provide economic growth of the country through agriculture. Farmers should be given their well deserved rights and incentives as well as protection of their developed variety.

# Perspectives of Rural Entrepreneurship in India

P. Anusha Prabha, Asst. Professor, Department of BBA, SNR Sons College.

V.J. Surya Subam, Asst. Professor, Department of BBA, SNR Sons College.

## I. INTRODUCTION

INDIAN economy is highly dependent on rural economy as 68.84% of the total population lives in rural areas where agriculture and allied activities are the major sources of income. Rural entrepreneurship is starting of enterprises in rural areas. Entrepreneurship is a wise answer to solve the unemployment, migration and to promote economic and social development in rural areas. The strengthening of rural villages will encourage the preservation of natural resources and improve the rural economy. There exists a wide gap between rural and urban areas in terms of infrastructure, market and financial access etc. To reduce the disparities, revitalizing the rural economy can be achieved by establishing entrepreneurial ventures in rural areas. Rising rural incomes will have a multiplier effect by raising the demand for farm and nonfarm products and services instigating growth of employment opportunities. Government of India has been continuously assigning increasing importance and support for the promotion and growth of rural entrepreneurship. The obstacles for growth of rural entrepreneurship are literacy, risk aversion lack of skilled labor, less technical knowhow, limited access to essential services, lack of communication facilities etc. This paper provides an insight into the present scenario of rural entrepreneurship, advantages, opportunities, challenges faced by the entrepreneur and institutions promoting rural entrepreneurship and their role in developing and fostering rural enterprises

According to census 2011, the total number of villages was 6,38,588 and nearly half of the rural population of India is residing in 115,080 villages with population more than 2,000 but less than 10,000. The growth rate of rural population has declined substantially to just 1.2 per cent during 2001-11 from 1.7 per cent per year during 1991-2001. The slow growth rate in rural population was mainly attributed to decline in rural fertility rates, rural to urban migration and reclassification of villages as urban units (IRD report. 2013).

## II. DISCUSSION

Rural regions face major issues in comparison to other regions (Brown & Schafft, 2011), which are more serious in the peripheral or mountain regions (Lopes-i-Gelats et al., 2009). There exists dissimilarity between jobs and people in rural areas. As per OECD report 2005, rural areas are affected by major challenges like reduced employment opportunities in primary industries and an aging population as a result of migration of young population to urban areas in search of employment opportunities. There exists a wide gap between rural and urban areas in terms of infrastructure, market and financial access etc. The development of rural areas will be the only solution to solve some of the issues discussed above. The strengthening of the rural village's wit encourages the preservation of natural resources and also helps in improving the rural economy. This will reduce the migration of rural people to urban areas and minimize the congestion in cities. The rural regions of developing

economies serve as the strong fold for wealth creation. It is essential to know the problems in rural villages to instigate the development in rural areas. The revitalizing of the rural economy can be achieved by establishing entrepreneurial ventures in rural areas. Entrepreneurial activities will insinuate economic development in rural areas. Rising rural incomes will have a multiplier effect by raising the demand for farm and non-farm products and services instigating growth of employment opportunities. Rural industrialization is viewed as an effective means of accelerating the process of rural development. Moreover, it is found that entrepreneurial actions promote economic and social conditions which benefit the individual as well as the entire village (Duarte & Diniz 2011). Rural entrepreneurship implies entrepreneurship emerging in rural areas or establishing industries in rural areas. According to Pertin (1997), Rural Entrepreneurship is more likely to furnish in those rural areas where the two approaches of rural development, the bottom up and top down, complement each other. A rural entrepreneur is the one, who prefers to stay in the rural area and contribute to the creation of local wealth. However, the economic goals of an entrepreneur and the social goals of rural development are more strongly under linked in urban areas (Pertin and Gannon, 1997). For this reason entrepreneurship in rural areas is usually community based and strong extended family linkages and relatively large impact on rural community. Rural development is a key element of strategies to reduce poverty and create income and employment opportunities. (UNIDO, 2003). The need for rural entrepreneurship is highly envisaged as majority of Indian population lives in rural areas and also there exists great disparities in income of rural and urban people. Key indicators from the 66th round of the NSS' quinquennial survey said the per capita expenditure level of the urban population was on average about 88 per cent higher than that of the rural population, based on the measure of modified mixed reference period (MMRP). Various studies have posited that the rural entrepreneurship plays an important role in provision of employment opportunities which helps in reducing the migration of people towards urban areas in search of livelihood were provision of employment opportunities. A rural entrepreneur tries to utilize the locally available resources in an effective manner. Chakraborty and Barman (2014) conducted a study in the Sonitpur district of Assam and reported that rural entrepreneurs were primarily motivated by the need for self employment, eagerness to make money, need for independence for starting the enterprises. Studies have shown that training on rural entrepreneurship, rural innovation and artisan skills not only improved the productivity and efficiency of local farmers and artisans, but also have significant environmental and social impact by developing eco friendly appropriate solution to local problems.

Institutions and individuals promoting rural development now see entrepreneurship as a strategic development intervention that could accelerate the rural development process (Saxena, 2012). But the growth of rural entrepreneurship is affected by various obstacles and Banerjee (2011) pointed the challenges faced by rural entrepreneurs are Government policies (Licensing, taxes and tariff), Management (in many small firms same individual is responsible for production and management), Finance, Information (Lack of information on prices, technology etc.), Technology, Marketing (Large firms can afford transport, storage facility, advertising and product development efforts which an individual, more often cannot and access to

credit (Mostly forced to rely on personal savings, borrowing from friends, relatives and money lenders). Desai (2007) has highlighted that poor infrastructural facilities in rural segments has been one of the factors holding back rural industrialization in India. According to Sundar and Srinivasa (2009) managerial inadequacies are one of the reasons for the failures in decentralized industrial sector. Larson & Shaw (2001) observed that the challenges of agricultural growth in developing countries include the lack of access to technology and infrastructure (institutional, physical, financial, skilled human resources). So, it could be seen that rural entrepreneurship is hindered by access to finance, technology, information and marketing. The development of rural entrepreneurs is a complex problem which can be tackled by 'the social, political and economic institutions.

A critical prerequisite for nurturing Entrepreneurship is the creation of a favorable business environment. The key parameters of a conducive business environment include the smooth flow of information, ease of starting a business and obtaining various clearances and permits, ease of filing taxes, an efficient legal system, enabling legislations and regulations, absence of corruption and world class infrastructure facilities (National Knowledge Commission, 2008). A government of India has been continuously assigning increasing importance and supports a or the promotion and growth of rural entrepreneurship. The GoI operates various schemes for promoting entrepreneurship through the Ministry of Micro Small and, Medium industries, National Small Industries Corporation Ltd, Small Industries Development Corporation, Khadi and Village Industries Corporation, Financial institutions such as NABARD, SIDBI etc and also with the state governments through District Industries Centre etc and institutions such as Entrepreneurship development institutes etc.

Rural entrepreneurial ventures mostly come under the banner of Ministry of Micro Small and Medium industries. The schemes operated by MSME are Entrepreneurship Development Institution Scheme, Rajiv Gandhi Udyami Mitra Yojana (RGUMY), Performance and Credit Rating Scheme (Implemented through NSIC), Product Development, Design Intervention and Packaging (PRODIP), Khadi Karigar Janashree Bima Yojana for Khadi Artisans and Marketing Assistance Scheme.

National Bank for Agriculture and Rural Development (NABARD) was set up with the mandate to achieve rural prosperity through credit and related activities. Recognizing the importance of the Rural Non-farm Sector (RNFS) in the faster economic development of rural areas, NABARD had taken a number of initiatives, both with refinance support and promotional assistance, for development of this sector. Rural Entrepreneurship Development Programme (REDP) is a major promotional initiative, which aims at developing enterprise and creating employment opportunities in rural areas.

### III. CONCLUSION

To conclude rural entrepreneurship plays an important role for economic development in developing countries such as India where it is still under developed. To bring a change the institutions needs to focus on synergies between Education (including modern vocational education training/skill development), Innovation (converting ideas into wealth and employment) and Entrepreneurship should be encouraged.

## REFERENCES

- [1] D.L. Brown and K.A. Schafft, "Rural people and communist in the 21st century", Resilience and Transformation, Cambridge. Polity Press, Lopes-I-Gelats, 2011.
- [2] G.D. Banerjee, "Rural Entrepreneurship Development Programme in India-An Impact Assessment. National Bank for Agriculture and Rural Development (Occasional Paper 57)", Retrieved [https://www.nabard.org/\\_/Rural%20Entrepreneurship%20Develop.pdf](https://www.nabard.org/_/Rural%20Entrepreneurship%20Develop.pdf), 2011.
- [3] D. Chakraborty and R. Barman, "A Study on Impact of Motivational Factors on the Growth of Rural Entrepreneurs of Assam", IOSR Journal of Business and Management (IOSR-JBM), Vol.16, No.3, Pp.71-80.
- [4] V. Desai, "Small Scale Industries and Entrepreneurship", Mumbai: Himalaya Publishing House, 2007.
- [5] K. Sundar and T. Srinivasan, "Rural Industrialisation: Challenges and Proposition", Journal of Social Science, Vol.20, No.1, Pp.23-29, 2009.

# Intellectual Property Rights Awareness among Small and Medium Enterprises in India

T. Mahadevaswamy, Ph.D Research Scholar, Department of Economics, Bharathiar University, Coimbatore.

## I. INTRODUCTION

INTELLECTUAL property (IP) laws protect scientific and artistic creations. Patent laws in particular give exclusive rights over new (novel), inventive (non-obvious) and useful knowledge. Small and medium enterprises are the backbone of developing economies. SMEs represent over 90% of enterprises in these economies. The driving force behind these SMEs is the large number of innovations which has led to the growth of the national economy through employment creation, productive investments and value-added exports. Since this growth is innovation based therefore intellectual property rights have assumed an unprecedented significance. In the knowledge-based society of our times IPRs have a profound influence on the social, economic and technological progress. New products, brands and creative designs appear almost daily on the market that are the result of continuous innovation and creativity in SMEs. In order to improve the business environment and encourage innovation in this sector it is necessary to provide robust policy framework and formidable legal protection to the IPRs of SMEs especially against unauthorized exploitation. The researcher wants to examine the role supporting institutions create awareness about strategic benefits and enable to protect innovative & creative capacity of SMEs through Intellectual property rights in India.

Intellectual property refers to creations of the mind; inventions; literary and artistic works; and symbols, names and images used in commerce. It is a term referring to creations of the intellect for which a monopoly is assigned to designated owners by law. Some common types of intellectual property rights (IPR) are copyright, patents, and industrial design rights; and the rights that protect trademarks, trade dress and in some jurisdictions trade secrets; all these cover music, literature, and other artistic works; discoveries and inventions; and words, phrases, symbols, and designs.

The phrase "Knowledge-based economy" describes the new economic environment in which the generation and management of knowledge play a predominant part in wealth creation, as compared with the traditional factors of production, namely land, labour and capital. Intellectual property (IP) is a method for legally protecting this knowledge or intellectual activity. The system of Intellectual Property (IP) rights create a mechanism to resolve the "Appropriability" problem, by creating property rights over knowledge.

## II. WHAT ARE INTELLECTUAL PROPERTY RIGHTS?

Intellectual property rights are like any other property rights. They allow creators, or owners of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from



the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.

1. **Patent:** A patent is a form of right granted by the government to an inventor, giving the owner the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process and generally has to fulfil three main requirements: it has to be new, not obvious and there needs to be an industrial applicability.
2. **Copyright:** A copyright gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works". Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.
3. **Industrial design right:** An industrial design right (sometimes called "design right") protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value. An industrial design can be a two or three-dimensional pattern used to produce a product, industrial commodity or handicraft.
4. **Plant varieties:** Plant breeders' rights or plant variety rights are the rights to commercially use a new variety of a plant. The variety must amongst others be novel and distinct and for registration the evaluation of propagating material of the variety is examined.
5. **Trademarks:** A trademark is a recognizable sign, design or expression which distinguishes products or services of a particular trader from the similar products or services of other traders.
6. **Trade dress:** Trade dress is a legal term of art that generally refers to characteristics of the visual appearance of a product or its packaging (or even the design of a building) that signify the source of the product to consumers.
7. **Trade secrets:** A trade secret is a formula, practice, process, design, instrument, pattern, or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers.

### **III. BUILDING AWARENESS ON INTELLECTUAL PROPERTY RIGHTS (IPR)**

Scheme for "Building Awareness on Intellectual Property Rights (IPR)" For Micro, Small and Medium Enterprises (MSMEs) Under National Manufacturing Competitiveness Programme (NMCP)

The objective of the scheme is to enhance awareness of MSME about Intellectual Property Rights (IPRs) to take measure for the protecting their ideas and business strategies. Effective utilisation of IPR tools by MSMEs would also assist them in technology up gradation and enhancing competitiveness.

These initiatives are proposed to be developed through Public-Private Partnership (PPP) mode to encourage economically sustainable models for overall development of MSMEs. Under this programme financial assistance will be provided for taking up the

identified initiatives. Eligible applicants/beneficiaries will have to contribute minimum 10% of the GoI financial support for availing assistance under the scheme.

### *Awareness/Sensitization Programme on IPR*

#### *a) Objectives*

The primary objective of these programmes is to facilitate and support MSMEs, Industry Associations and other concerned stakeholders in raising awareness on IPR related issues in general and more specifically on educating them about the value and protection of IPR and its benefits to the economy. The specific objectives of the programme for MSMEs are:

1. To significantly raise the level of awareness and interest/knowledge about IPR issues.
2. To develop a broad understanding of the need to integrate IP in their innovation strategies business planning.
3. To improve protection of IP achievements through increased registration of rights and increased use of non-registered protection methods.
4. To improve the protection and enforcement IPR from infringements.
5. To enhance capacity to fight counterfeiting.

#### *b) Scope and Coverage*

The Sensitization Programmes will normally be of 1 to 2 days duration with about 30 participants/beneficiaries. The following subject/areas to be covered in this programme:

1. Introduction to IPR tools such as Patents, Trademarks, Industrial Design, Geographical Indication, Copyright, Tradeseecrets, Layout designs for integrated circuits, Plant breeder rights etc.
2. National and International IP laws.
3. Procedure for Registration.
4. Fundamentals of Technology Transfer.
5. Patenting and Patent law.

### **IV. INTELLECTUAL PROPERTY IN INDIA**

The Ministry of Information Technology is responsible for implementation of the Information Technology Act and the Semiconductor IC Layout Designs Act. Implementation of the Biological Diversity Act is the responsibility of the Ministry of Environment and Forests. Besides these administrative Ministries, there are a number of other Ministries and Departments such as Information & Broadcasting, Tribal Affairs, Culture, Ministry of Micro, Small & Medium Industries which are also involved with either enforcement or commercialization of IP.

### **V. INTELLECTUAL PROPERTY OFFERS MANY OPPORTUNITIES FOR SMES**

IP may generate an income for SME through the licensing, sale, or commercialization of the IP-protected products or services that may significantly improve an enterprise's market share or raise its profit margins. IP rights enhance the value or worth of SME in the eyes of investors and financing institutions. The strategic utilization of IP assets can, therefore, substantially enhance the competitiveness of

SMEs. SMEs should make sure that they are ready to face the challenge and take measures to exploit their IP and protect it wherever possible. Investing in equipment, property, product development, marketing and research can strongly enhance company's financial situation by expanding its asset base and increasing future productivity. Acquiring intellectual property may have a positive effect. Markets will value company on the basis of its assets, its current business operations and expectations of future profits. Investment in developing a good IP portfolio is, therefore, much more than a defensive act against potential competitors.

### *Awareness of IPR Benefits to the MSMEs*

Awareness of IPR benefits to the MSMEs is mainly on two fronts. Firstly, how they can protect their creations i.e. to protect their own intellectual property rights and secondly, how they can avoid violating intellectual property rights of others. Furthermore, this increased awareness will encourage MSMEs to make better use of IPR system and make it an integral part of their business strategy. The Ministry intends to help MSMEs to understand IPR from business perspective as well as exposes the IPR needs of the MSMEs to policy makers through awareness and capacity building programmes.

## **VI. INSTITUTIONS WORKING FOR BUILDING AWARENESS AMONG MSMEs IN INDIA**

### *a) National Institute of Intellectual Property Management*

National Institute of Intellectual Property Management (NIIPM) is set up as a national centre of excellence for training, management, research and education in the field of Intellectual Property Rights. The Institute caters to the need of training of Examiners of Patents and Designs, Examiners of Trademarks & Geographical indications, IP Professionals, IP managers in the country, imparting basic education for user community, Government functionaries & stake holders involved in creation, commercialization and management of intellectual property rights. NIIPM and PIS both, functioning under the Ministry of Commerce and Industry are housed in the same building at Nagpur. NIIPM is catering to the needs of the four IPR components namely, Patents, Designs, Trade Marks and Geographical Indications under the administrative control of the Controller General of Patents, Designs, and Trademarks.

### *b) National Intellectual Property Organization*

NIPO is an umbrella initiative destined to put India on the map of intellectual super powers. NIPO's mandate includes developing policy initiatives in the area of IP; harnessing Intellectual Property assets & knowledge to generate economic wealth; help & assist individuals & organizations in capacity building and work as a platform for development, promotion, protection, compliance & enforcement of Intellectual Property & knowledge including through interactions with other organizations in India and abroad which are active in this field can record your website under intangible asset provided you meet all the recognition criteria.

NIPO provides all stakeholders with a strong voice on IP matters affecting their future business through regular publications, meetings and conferences to both educate and engage the public in debate on IP enforcement, trade and exchange, IP

management, litigation, alternative dispute resolution and related issues. NIPO is entitled to receive foreign contributions under the Foreign Contribution Regulation Act and contributions to NIPO are exempted u/s 12A and 80G of the Income Tax Act

### c) National Manufacturing Competitiveness Council (NMCC)

The Government of India has announced in the 2005-06 Budget regarding setting up of the "National Manufacturing Competitiveness Council (NMCC)" which visualized a National Manufacturing Competitiveness Programme (NMCP) to enhance the competitiveness of the SMEs sector. One of the components of the NMCP is "Building Awareness on Intellectual Property Rights (IPR)" for the MSME. Ten facilitation centers have already been established in different parts of the country spreading awareness about IPR regime among the MSMEs. The Government of India provides 90 per cent financial support for awareness and sensitization programmes, pilot studies with associations/clusters" interactive seminars and workshops, short-term and long term training programmes, IP facilitation centers, grant of patents and GIs registration, activities with international agencies and contingencies expenditure

## VII. WORLD INTELLECTUAL PROPERTY ORGANIZATION

WIPO works closely with its Member States and other constituents to ensure the intellectual property system remains a supple and adaptable tool for prosperity and well-being, crafted to help realize the full potential of created works for present and future generations.

### Main Objectives

WIPO's SME initiative aims to:

1. Encourage SMEs to more effectively use IP as part of their business strategy.
2. Promote a greater use of the intellectual property system by SMEs.
3. Strengthen the capacity of national governments to develop strategies, policies and
4. Programs to meet the intellectual property needs of SMEs;
5. Improve the capacity of relevant public, private and civil society institutions, such as Business and industry associations, to provide IP-related services to SMEs.
6. Provide comprehensive web-based information and basic advice on IP issues to SME.

## VIII. CONCLUSION

Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields. These rights Safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and non exhausted consumption. Thousands of small and medium enterprises (SMEs) in India are reported to be losing millions in revenues due to lack of awareness about IPRs. In the developed world, owing to high awareness levels, small entrepreneurs approach venture capital and private equity funds to meet the expenses incurred on cost of protection, enforcement and commercialization of IPRs. In India, the lack of awareness

among small players effectively denies them the fruits of the intellectual property they create. Exporters have to register a trademark of their brand in overseas markets to prevent competitors from copying these and selling counterfeit products. Various chambers of commerce and industry are now coming forward to disseminate awareness among Indian companies about the benefits of creating intellectual property and applying for patents. The IP facilitation centres specifically aim to build greater awareness among SMEs about IPR issues and provide insights to them on the creation, ownership and protection of intellectual property. All states in India now have patent facilitation centres and SMEs should consult them to find out how they can benefit from them.

## REFERENCES

- [1] Annual reports of MSMEs in India.
- [2] Shriya Damani, Special Feature: Globalization of Technology Transfer, Intellectual Property and Technology Transfer: Emerging Concepts and Trends, year.
- [3] Karri Shankara Rao IPR, "Awareness among MSMEs", Pp. 13-21, 2013.
- [4] [www.indiapatents.org.in](http://www.indiapatents.org.in)

# Innovative Initiatives to Promote Women Entrepreneurship through Women Entrepreneurs Association of Tamil Nadu [WEAT]

R. Jalshankar, Asst. Prof., SNR Sons College, Coimbatore.

V. Stefy Vijl, II BBA CA, Department of BBA CA, SNR Sons College, Coimbatore.

## I. INTRODUCTION

**W**OMEN Entrepreneurship Development has been a challenge for many industrial promotional agencies in India. Entrepreneurship Development Programmes have not succeeded in bringing desired results. Efforts to promote entrepreneurship through STEP, EDC etc also yielded with limited results. Similarly teaching entrepreneurship in colleges, conducting awareness programmes has stopped with the awareness alone failed to go beyond taking up entrepreneurial activities. Given this it was attempted to analyse the prospects and problems of women in micro enterprises in Tiruchirapalli district which revealed that women entrepreneurs largely confirmed to micro scale of operation, mostly service and trade, and feminine and traditional nature of activities in which women were found since long. These women were not able to avail any formal credit and largely depended only on informal credit taking away their lion share of profit. Given that majority of the women entrepreneurs in the micro scale were pushed to assume such occupations due to their poor economic background, which do not have any organization or association to support their demands to government or any other bodies to collectively represent their issues, it was recommended strongly to have an association. It is the outcome that study done in 2001 by the author of this paper that the Women Entrepreneurs Association of Tamil Nadu [WEAT] could be initiated with the modest number of just 35 members in the beginning which has risen to 526 numbers at present.

Primary aim of this initiative is to bring likeminded, budding as well as struggling women micro entrepreneurs to come together to represent solidarity to promote entrepreneurship, ultimately taking it as a movement to make interested women to be job providers rather than job seekers. One of the major objectives of the WEAT is to promote grass root women to become entrepreneurs not necessarily self-help group women but women in micro scale or self-employed women and further to help the existing entrepreneurs to expand their scale of operations.

### *Progress of WEAT*

WEAT within its short period of inception, able to attract several women to become members, undergoes training, prepare project, get bank assistance and start their units and run the unit. The specific progress and strategies followed may be outlined as follows.

- 26 women entrepreneurs could start their garment units by availing bank credit
- More than 40 existing women, who were already engaged in certain micro entrepreneurial activities, were able to expand their scale of operation.

- 43 women were able to receive intensive food processing training for five days and able to diversify their products
- 36 women were given computer training able to either work with ITES or initiate ITES
- Another 20 each woman who had undergone the above training will be tied up with bank loan to initiate BPO and Food processing units, which is under processing.
- Another 30 women were given training on Eco green products such as banana fibre products, areca nut leaf plates, fly ash bricks etc are also given and their application to install machine and start the unit is under processing.
- The members of WEAT are taken to give training to College students with attractive honorarium.
- They are taken to interact with college teachers to take the message of their struggle to progress and survive in the field.
- They have also been recommended to be professional trainers to DRDA, Women Development Project, Tsunami affected areas etc.
- Above all, the products of members of WEAT as well as SHG women are exposed to regular exhibition cum sale in the University and College Campuses, every two days in each colleges, in around 10 colleges and University campus ensuring thereby 22 days of regular marketing of their products, which has contributed to expand their business
- All women enterprises have been started in three different places, in which the members sell most of the products produced by the WEAT members Effort to approach the district administration to give space in market areas to display their products, to make them members of various task force committee to represent their issues, exploring various future opportunities for promoting women entrepreneurship etc
- Every 15 days meeting of the entrepreneurs inviting various officials, entrepreneurs, association etc motivating them has been ongoing.
- The strategies followed are tying up with various organization which are working for women entrepreneurship, helping them right from identification up to starting the enterprises, marketing etc and networking with similar organizations which deliver the good without any cost. Above all, the credibility that they have on the University, which is an academic body not NGO and self-less, price less service given by the Centre, the access, the response and facilitation which all go a long way in bringing such a progress or WEAT.

### *Initiatives to Promote Women Entrepreneurship*

There are several interventions by both government and non-government organisations to promote entrepreneurship among women. A unique programme has been conceived by the candidate on the basis of the researches done, and the issues identified particularly lack of formal credit, lack of networking, lack of marketing etc were addressed to certain extent by establishing an Association bringing the women entrepreneurs together in the name of Women Entrepreneurship Association of Tamil Nadu [WEAT]. The following section briefs various initiatives taken with WEAT and its progress.

## II. OBJECTIVES OF WEAT

To help the women in informal sector to become successful women entrepreneurs supporting right from identification of a project, skill training, and tie-up with bank for finance and marketing To empower women to become self-employed so as to become economically independent and decision makers in business.

To bring social empowerment through behavioral change to address the myths and misconceptions associated with their capabilities and

To help the existing micro women entrepreneurs to expand their scale of operation who suffer more than the new entrepreneurs.

## III. BACKGROUND

Women Entrepreneurship has been emerging among women of various classes. Research on Entrepreneurship revealed that it has been the domain of men for a long. A research conducted in Tiruchirappalli district on women entrepreneurs revealed that they are found in micro scale of operation in the trades of tailoring, beauty clinic, fancy stores, petty shops, food based products, readymade garments, etc. They found themselves comfortable with the feminine and service nature and micro scale of activities. Moreover, it was very rare to found women in non-traditional, non-feminine areas! Why the women increasingly confine to such micro scale of operations? Have all been well researched in both national and international levels. It was underlined that the dual responsibility and the associated lack of time to fully devote to business have made the women to confine to part time and temporary nature of entrepreneurial activities. Also these women have lack of support from formal sector such as banks, which made them increasingly rely on moneylenders who charge really exorbitant rate of interest. Moreover, unlike men owned enterprises which have their enterprises registered with DIC or Inspector of Factories, these women owned enterprises which are micro in scale are not registered and hence there is no data base also. Metro Cities like Chennai may afford to have Association and considerable number of women entrepreneurs, which is absent elsewhere.

Understanding the lack of data base on the one hand and the increasingly micro scale, feminine, traditional nature of units on service and trade run by women and their inability to represent their issues particularly credit and marketing needs. It is in this context it was felt that there is a need to organize these women collectively to represent their needs and accordingly it was formed and inaugurated in Tiruchirappalli on June 14'h 2006 with 150 members. It was understood that if the Association functions in only one district it may not be a strength and hence it was planned to extend it to all the seven districts under the jurisdiction of Bharathidasan University, including Tiruchirappalli, Thiruvarur, Thanjavur, Karur, Perambalur, Nagapattinam and Pudukottai. Already on July 8'h Thanjavur Branch has been initiate with around 100 members.

It was also felt that if this association has a networking with other Associations of Men owned enterprises, it would still facilitate these women to reach the objectives and goals easily. Accordingly, the Centre has approached Tiruchirappalli District Small Industries and Tiny Industries Association [TIDTSSIA], which has got sanctioned a project from Department of Science and Technology, Government of India, under the



Science and Technology Entrepreneurship Development [STED], Government of India and so far six projects have been introduced and experts in the field were brought to discuss and motivate these women. Every day new members are getting enrolled. Though initially during June 2006 it was registered with just seven members, now it has touched seven hundred members within six months. Enquiries keep coming from neighbouring like Karur, Coimbatore, Tirunelveli, Dindigul, Erode, Cuddalore districts etc.

#### IV. TRAINING FOR WOMEN ENTREPRENEURSHIP DEVELOPMENT

Realizing that women with tailoring skills are present more, the first project launched with the support of STED was tie-up with Textile Export Association of Karur, Tiruppur etc to get regular stitching order. Since it may not be possible to realize the sufficient turnover with the/traditional machines, it was decided to approach for credit from banks to install power sewing machines, to State Bank of India under Sree Shakshi Scheme on behalf of WEAT through STED. However, the formalities, procedure and initial reluctance to accept the women, delays the process, but it will be through in a week.

Since Women micro enterprises are increasingly found in food-based products, a tie up with food products manufacturers such as Rock fort Masalas, Mammi more, etc has been made. They promised to give regular orders to and from the women who produce various processed food, help in standardization, improving the technical knowhow etc. It is proposed to adopt 'a cluster d development' approach to bring all the producers of food-based products producers under one umbrella.

Another area opened to the members is organic farming, using Bio fertilizer with cynobacteria, which gives better yield also Greens: Vegetables can be produced using the manure even in trays, keeping in terrace. So this cultivation need not be restricted to rural farms but could be done in plastic trays by urban households. Those who have space can undertake as kitchen gardening as this is a very short-term crop which could be taken up with least cost possible and limited space.

In order to help the very low income group, mat production from textile waste has also been opened up, where in the knitting wear wastes from Tiruppur textile units will be supplied by companies in the doorsteps to undertake foot mat production. The feature of this enterprise is that it is very simple, it can be done casually attending to other activities does not require much advertisement except labor. The company gives the waste and gets back the mat. The women are capable they can market on their own. Small carriages, petrol bunks oil mills; etc may take the unknitted cloth directly instead of mat. All depends on how the women perform and capable in direct marketing.

Imitation jewellery project has also been opened up in which the entrepreneurs will supply: he metal, train the women on various design making of jewellery and market it.

Similarly these entrepreneurs have been opened to 'surgical accessories training' which can be taken up with the ordinary sewing machines that the women have already with their possession.

## V. SHG WOMEN PRODUCT MARKETING

Another major activity opened to these members of both SHG and WEAT is regular marketing support to the products manufactured by the women in the University campus, colleges etc. for two days every month. So far three colleges have come forward to provide space to market their products for two days in a month. The turnover happened to be encouraging for these women and the products are also reaching new type of customers. Invariably it is found that the food based products realized large sale compared to other products. There has been a mixed response from boys, girls and co-education colleges. In girls colleges, University campus, there is a good appreciation of SHG products compared to co-educational institutions where in there has been an initial reluctance. It makes the centre and Association to switch over to different Strategies.

It is proposed to approach the district administration, the corporation to the women entrepreneurs and their products by way of giving space in crowded areas say Bus stand, Markets, Uzhavar Sandhai etc. so that these women will have regular marketing.

Similarly, it has been proposed to approach the Government offices. BHEL, Railway workshop, office Banks space to exhibit the Products on the salary days.

Regular orders to caterers for meetings in University, TIDISSIA, Industrial Estate etc., has already been on. As one of has opened shop under the banner of All Women Enterprises the members and she helps in marketing the products of all the women in her shop. The sales performance has been very encouraging. If such shops in some more corners were opened, these women's products would be comfortably marketed.

Another opening to the women has been herbal plant cultivation, herbal based products production and Marketing. With a tie up with a private industry, these members of the Association have been advocated to either go for plant cultivation where in the saplings will be supplied by the Company and on a buy back basis, the produce will be taken back, or undertake a project to produce herbal based Soap, hair oil, etc for which technical knowhow will be taught by the company.

Herbal oil manufactured by women is being accepted by KVIB to market in their stalls. One member could successfully market in the local super Markets, which is fast moving.

This apart, WEAT has been associating with TIDISSIA-STED through Centre for Women Studies, in getting systematic support to initiate enterprise right from identifying the prospective product/service/trade preparation of project Plan, recommendation to bank for finance, getting the Machineries, raw material, marketing the produce etc.

A group of women who have expressed interest to engage in production of sanitary Napkins have been arranged to give two-day training with a promise to get the run material, /which will be cheap and harmless, such as wood pulp instead of cotton.

Similarly Thanjavur branch with more than 100 members has been inaugurated. There has been lot of opportunities have been identified to be prospective for future entrepreneurs. In fact as a maiden attempt a group of the members prepared food for

the meeting and supplied which was appreciated by the women members. In the college in which the inauguration meeting was organized pointed to various openings within the college campus itself including stationers, Canteen, supply of Lunch for the meeting, hostel for women students etc. SBI has agreed to support any project by several such opportunities could be opened to these women and it is only they will power, self-confidence, continuous involvement with commitment, which are very much needed for progress in future. Several strategies are being tried to identify the best strategy, which would make these women sustain in business.

### *Later Developments*

WEAT has been really getting support from various sides, which are briefed below

1. In collaboration with TIDITSSIA, 26 women entrepreneurs have been supported with bank finance to start ready-made garment units with the support of regular orders from Karur Exporters Association
2. Every fortnight a meeting, motivational campaign, training are being organized on need based areas, bringing experts associated with programme implementing departments, banks, Industries, government departments, Educational institutions etc.
3. Products of these women are permitted to be sold in the University Campus regularly on every first Wednesdays and Thursdays regularly and 10 other colleges and accordingly nearly 22 days they are occupied in a month to market their products.
4. In Collaboration with Ministry of Women and Child Development a five-day intensive training was organized on Food processing and 20 women have been identified to submit project for finance from SBI. It was targeted to support 1000 women entrepreneurs by March 2007 by SBI.
5. In Collaboration with District Rural Development Agency, Mahalir-Thittam, several training programmes have been planned using the expertise with the women entrepreneurs of this association.
6. The successful women entrepreneurs have also offered college students' training.
7. These Association members have also been offered part time temporary jobs in the University
8. The membership which was just 37 in the beginning when it was inaugurated in June and increased to more than 700
9. The marketing of the products has been expanded to Engineering colleges, which has improved their business performance.

### *Production Units*

Several members who were engaged as home based activities have now expanded to higher scale, involved in large production appointing workers.

Food and food based products, catering services, ready-made garments, imitation, jewellery etc are the examples. Nearly 25 women have initiated their own garment units taking regular orders from Exporters Association Karur, Erode etc. installing nearly 25 power sewing machines, releasing a turnover of 4000 pieces stitched every day, extending on an average work to 250 women.

Catering services, food based products are recommended to the Hostels in Engineering Colleges, University apart from regular order from staff and students.

Bio-fertiliser training based on coir pith and Cynobacteria was given to the members of: EAT and several of them will be initiating bio-fertiliser unit or apply bio-fertiliser to their arms including vermi compost.

To promote Eco green Products, training on Areca nut leave plant, banana fibre based products, paper bags etc was given an around 20 women are trying to initiate the enterprise.

Food processing training given for five days with the help of Ministry of Women and Child Development has helped 25 women to engage in food and fruit processing activities which are prepared and sold in their stall provided in the colleges and Universities.

Collaborative effort with a NGO working on least chemical input to agriculture, the land available in the University, will be turned into water shed and the cultivation of tree crops, with the help of these members, students in the University Campus and also keep it as a model to the neighbourhood villages.

WEAT is an organ of the University and hence there is credibility among the public and most of the training is being offered identifying the need, market etc with financial support from bank. The women, who are capable of doing and managing many crisis situations, were denied with the opportunities. WEAT is targeting such women who really long for doing and achieving something. It has just born, and it will have its growth in flying colours in future.

Apart from traditional nature of activities in which women have been engaged with since time immemorial, efforts to introduce women in non-traditional activities have also been made. 12-day Computer Basics Training has been given already and the same batch of 36 women have also been extended with 25 day training on experiential English communication skills, which helps them to improve their communication.

Once they complete this process, they will be introduced to the BPO business in IT sector. Already several companies are approaching them to take them either as employees or self-employment.

Women would also be introduced to initiate enterprises on engineering and fabrication for which BHEL will be supporting with regular orders.

The women or general engineering units functioning already will also extend welding training to the women entrepreneurs who will be then absorbed by the industrial units owned.

Advanced computer course training will also be given to the women who are really interested in starting computer based education or other IT based units, mainly on web designing, multi media etc.

After taking the training one women had initiated the bio-compost projects, 25 women installed 250 power sewing machines and run their units, two micro trading centers opened marketing the products of all women entrepreneurs' products.

## New Openings

1. Openings for Welders, Fitters as employees and employers. Underlining that there are five R required for successful entrepreneur namely man, material, machine, market and money, he advocated that the women must possess all these to become successful. Women can also appoint male welders in their units supplementing women welders he added.

He estimated in 10 years there may be a need for 10000 women welders and if proper infrastructure is developed, and encouraged, women can easily get employment.

Second opportunity highlighted was

2. Machine components products may be encouraged in which Women Entrepreneurs Association of Tamil Nadu, TIDISSIA and his association may help in supplying regular orders.

He did emphasized on the success story of Bangladesh, Grameen bank initiated by Mohammed Yunus.

Third opportunity explained was

3. Mineral water company could be started by group of motivated women which has an emerging market and supply to the industrial block of Thuvakudi which has lot of forward and backward linkages, such as production of bottles, machines etc. which could also be taken up by the women Fourth opportunity

4. Power Plant: The heart of the issue is lack of power and if captive power units are established using the renewable energy sources, fossil fuel dependency may be given up. He invited motivated women to supply prosophi called, kaurvel tree which in large demand for his own power plant industry. There is a demand of 200 ton at the rate of Rs. 1500 to 2000 per day, that is Rs. 4 lakhs worth of orders every day and offered to help the SH women and members of entrepreneurs to take up task of continuous supply of kuruvel stems for Rs. 2 crores per month. So training may be given on these areas and women make use of these opportunities he said.

Fifth opportunity, which he talked about, was

5. Catering and canteen services in the industrial estate area: GB industries have canteen services but it requires lot of skilled manpower to supply food to 500 workers within 4 minutes. So he advocated the women to look for other areas within the estate to open catering services in two to three places. The members of WEAT may take this up shortly

The catering services of the members of WEAT will also be encouraged to supply services to seminars and conferences organized in the University. Already few departments give orders only to WEAT members.

The women entrepreneurs also run the canteen of the University from rural areas. A permanent retail outlet is being under construction to have their products sold in the campus permanently.

## VI. CONCLUSION

It is a growing intervention and at the time says. Such intervention by the academic bodies in research needs to be exposed to all who work on this of conference the author may have more to promoting entrepreneurship through action area.

**REFERENCES**

[1] [www.google.com](http://www.google.com).

[2] File://C:/Users/snr11/Desktop/gvg/Women%20Entrepreneurs%20Association%20of%20Tamil%20Nadu%20%5BWPEAT%5D.html

# Building Awareness on Intellectual Property Rights

C. Arjunan, M. Phil (Economics), C.B.M. College.

G. Smitha, M. Phil (Economics), C.B.M. College.

## I. INTRODUCTION

**T**HE phrase 'Knowledge-based economy' describes the new economic environment in which the generation and management of knowledge play a predominant part in wealth creation, as compared with the traditional factors of production, namely land, labour and capital. Intellectual property (IP) is a method for legally protecting this knowledge or intellectual activity. The system of Intellectual Property (IP) rights creates a mechanism to resolve the "Appropriability" problem, by creating property rights over knowledge. At the SMEs level, IP has been a significant source of competitive advantage of business enterprises and a major driver of their competitive strategies.

Looking from the perspective of developing nations like India where SMEs represent over 90% of enterprises, IP protection cannot be overlooked anymore. SMEs are often the driving force behind a large number of innovations and contribute to the growth of the national economy through employment creation, productive investments and value-added exports. However, various ad hoc surveys and studies indicate that, despite the importance of SMEs for the vitality of the economy and the potential offered by the IP system for enhancing the competitiveness of SMEs, most of them do not use or do not get the best out of their use of the IP system. Their innovative and creative capacity is not always fully exploited as many are not aware of the intellectual property system nor the protection it can provide for their inventions, brands, and designs.

To help SMEs more fully utilize their IP assets in their business activities, India will have to establish a comprehensive policy framework to assist entrepreneurs, SME-support institutions in increasing awareness and use of the IP system among SMEs.

## II. OBJECTIVES

The objective is to enhance awareness of Intellectual Property (IP) to take measure for the protecting their ideas and business strategies. Effective utilisation of IPR tools would also assist them in technology up gradation and enhancing competitiveness.

## III. METHODOLOGY

This Report is based on a variety of information and data, including the responses received to a questionnaire that sought specific information about the protection and enforcement of the various IP rights, infringements suffered, measures undertaken against them, and reactions from national authorities to requests for enforcement or assistance.

Intellectual Property(IP) Awareness Programme.

1. 1-2 days Sensitization/Awareness Programmes
2. Organise with different ministries/Departments of Government, Universities, Industry Associations, Provincial Government, etc.

#### **IV. BUILDING AWARENESS ON INTELLECTUAL PROPERTY**

Intellectual property (IP) is a method for legally protecting this knowledge or intellectual activity. The system of Intellectual Property (IP) rights creates a mechanism to resolve the "Appropriability" problem, by creating property rights over knowledge. At the SMEs level, IP has been a significant source of competitive advantage of business enterprises and a major driver of their competitive strategies. Looking from the perspective of developing nations like India where SMEs represent over 90% of enterprises, IP protection cannot be overlooked anymore. SMEs are often the driving force behind a large number of innovations and contribute to the growth of the national economy through employment creation, productive investments and value-added exports. However, various ad hoc surveys and studies indicate that despite the importance of SMEs for the vitality of the economy and the potential offered by the IP system for enhancing the competitiveness of SMEs, most of them do not use or do not get the best out of their use of the IP system. Their innovative and creative capacity is not always fully exploited as many are not aware of the intellectual property system or the protection it can provide for their inventions, brands, and designs. To help SMEs more fully utilize their IP assets in their business activities, India will have to establish a comprehensive policy framework to assist entrepreneurs, SME-support institutions in increasing awareness and use of the IP system among SMEs.

#### **V. INTELLECTUAL PROPERTY RIGHTS & ITS TOOLS**

Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields. These rights are Safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and non exhausted consumption.

##### *Patent*

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent.

##### *Trademark*

A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise. It may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. Registration of trademark is prima facie proof of its ownership giving statutory right to the proprietor.



## *Copyrights and Related Rights*

Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work & creator is the owner of the work.

## *Geographical Indications (GI)*

GI signifies the name or sign used in reference to the products corresponding to the particular geographical area or somewhat related to the origin, like town, region or nation. Thus, GI grants the rights to its holder that acts as the certification mark and shows that the specified product consists of the same qualities and is enjoying a good reputation due to its origin from the specified geographical location.

## *Industrial Design Rights*

Industrial design rights are defined as the part of the intellectual property rights that confers the rights of exclusivity to the visual designs of objects which are generally not popularly utilitarian. It safeguards the appearance, style and design of the industrial object, such as spare parts, textiles and furniture.

## *Trade Secrets*

It may be confidential business information that provides an enterprise a competitive edge may be considered a trade secret. Usually these are manufacturing or industrial secrets and commercial secrets.

These include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes.

## *Layout Design for Integrated Circuits*

Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function. The aim of the Semiconductor Integrated Circuits Layout-Design Act 2000 is to provide protection of Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout Designs and for matters connected therewith or incidental thereto. IPR, IPR Awareness and MSMEs in India

The main focus of Semiconductor Integrated Circuits Layout Design Act 2000 is to provide for routes and mechanism for protection of IPR in Chip Layout Designs created and matters related to it. The SICLD Act empowers the registered proprietor of the layout-design an inherent right to use the layout-design, commercially exploit it and obtain relief in respect of any infringement. The initial term of registration is for 10 years; thereafter it may be renewed from time to time. Department of Information Technology Ministry . of Communications and Information Technology is the administrative ministry looking after its registration and other matters.

## **VI. THE PATENT SYSTEM**

A patent is a contract between the inventor or applicant for the patent and the State, whereby the inventor or applicant gets a monopoly from the State for a certain period in return for disclosing full details of the invention. The patent system thus ensures that information on new inventions is made available for eventual public use so as to encourage technical and economic development and discourage secrecy. If an inventor or company has an invention, which they consider to be novel and inventive, they may apply for a patent. This may be granted only after a detailed examination by a patent office. Once the patent is granted the inventor or applicant has the sole right to make, use or sell the invention for a limited period. This period is usually twenty years.

There can also be confusion about what exactly can be protected by the patent system. Patents can only be applied to inventions. These usually have an industrial dimension. An invention is normally a new product, which involves a new principle of operation or an improvement to an old principle. Alternatively it may refer to a new or improved industrial process. Things, which do not involve manufacture, are not usually considered to be inventions. For example, a new scientific theory or a new surgical procedure would not be considered to be patentable for this reason.

## **VII. TRADEMARK PROTECTION IN INDIA**

To protect a trademark in India, Remedies available for protection of trademark in India including an action against infringement and passing off are as follows:

- Civil action: The competent courts can be moved for grant of relief of injunction against infringement and/or passing off.
- Criminal proceedings: Criminal complaints can also be filed against people who have infringed the mark in addition to a civil action.
- Administrative remedies: Notice of opposition can be filed against trademark applications published in the trademark journal. Proceedings can be initiated for rectification/cancellation of a registered trademark before the register of trademark.
- Border measures: The Indian customs Act 1962 confers power on the Central Government to prohibit importation or exportation of certain goods. In exercise of the powers conferred by that statute section, the Central Government has prohibited the import of those goods that have applied a false trademark or a false trade description.

## **VIII. ENFORCEMENT OF INTELLECTUAL PROPERTY LAWS IN INDIA**

India has a well-established statutory, administrative and judicial framework to safeguard Intellectual Property Rights (IPRs), however, it is still facing problems with the enforcement of IPR. It has always been a concern about slow judicial system involving lengthy and time-consuming procedure of trial in India, however, in recent years, Indian Courts have shown dynamism and zeal for effective protection of Intellectual Property Rights. It has been observed that by adopting right policies and strategies, IPR can be effectively protected with the help of law enforcement authorities.

## **IX. COPYRIGHTS**

Copyright protects original literary and artistic expression that is fixed in a tangible form. It exists automatically when an original work entitled to copyright protection is created. Under basic copyright law, a work is "created" when it is fixed in a tangible medium of expression for the first time. Although displaying a copyright notice on goods is no longer required under U.S. law, providing proper notice on the packaging of the goods themselves is beneficial. It puts the public on notice that the work is protected by a copyright, identifies the copyright owner, and shows the year of first publication. Importantly, a defendant in a copyright infringement suit shown to have access to works published with the proper notice of copyright may be prevented from claiming the status of an "innocent infringer" in an attempt to mitigate actual or statutory damages. Copyright owners can provide notice of their rights by using the © symbol, or word Copyright, accompanied by the year of first publication and the name of the owner

## **X. CONCLUSION**

Thousands of small and medium enterprises (SMEs) in India are reported to be losing millions in revenues due to lack of awareness about IPRs (intellectual property rights). About 40,000 IP applications are filed in India annually and 85 per cent of these are filed by multinational corporations, leaving a sizable number filed by SMEs, but most innovations across the world are done by SMEs. In the developed world, owing to high awareness levels, small entrepreneurs approach venture capital and private equity funds to meet the expenses incurred on cost of protection, enforcement and commercialization of IPRs. In India, the lack of awareness among small players effectively denies them the fruits of the intellectual property they create. Exporters have to register a trademark of their brand in overseas markets to prevent competitors from copying these and selling counterfeit products. Various chambers of commerce and industry are now coming forward to disseminate awareness among Indian companies about the benefits of creating intellectual property and applying for patents. The IP facilitation centres specifically aim to build greater awareness among SMEs about IPR issues and provide insights to them on the creation, ownership and protection of intellectual property. All states in India now have patent facilitation centres and SMEs should consult them to find out how they can benefit from them.

# Case Study: Protection of Geographical Indication in India-Case Study on 'Darjeeling Tea'

Dr.D. Manimozhi, Assistant Professor, Department of Economics, Sri GVG Visalakshi College for Women.  
Dr.S. Sripriya, Assistant Professor, Department of Economics, Sri GVG Visalakshi College for Women.

## I. INTRODUCTION

PROTECTION of Geographical Indication (GI) has, over the years, emerged as one of the most contentious IPR (Intellectual Property Rights) issues in the realm of the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). TRIPS defines GI as any indication that identifies a product as originating from a particular place, where a given quality, reputation or other characteristics of the product are essentially attributable to its geographical origin. Also a geographical indication (GI) gives exclusive right to a region (town, province or country) to use a name for a product with certain characteristics that corresponds to their specific location. The Geographical Indications of Goods (Registration and Protection) Act, 1999 protect the GI's in India. Registration of GI is not compulsory in India<sup>54</sup>. If registered, it will afford better legal protection to facilitate an action for infringement.

## II. NEED FOR LEGAL PROTECTION OF GI

Given its commercial potential, legal protection of GI assumes enormous significance. Without suitable legal protection, the competitors who do not have any legitimate rights on the GI might ride free on its reputation. Such unfair business practices result in loss of revenue for the genuine right-holders of the GI and also misleads consumers. Moreover, such practices may eventually hamper the goodwill and reputation associated with the GI.

## III. INTERNATIONAL PROTECTION FOR GI UNDER TRIPS

At the international level, TRIPS sets out minimum standards of protection that WTO members are bound to comply with in their respective national legislations. However, as far as the scope of protection of GI under TRIPS is concerned, there is a problem of hierarchy. This is because, although TRIPS contains a single, identical definition for all GI, irrespective of product categories, it mandates a two-level system of protection: (i) the basic protection applicable to all GI in general (under Article 22), and (ii) additional protection applicable only to the GI denominating wines and spirits (under Article 23).

This kind of protection is challenging, if Article 22 fails to provide sufficient intellectual property protection for the benefit of the genuine right-holders of a GI. A producer not belonging to the geographical region indicated by a GI may use the indication as long as the product's true origin is indicated on the label, thereby free-riding on its reputation and goodwill.

## IV. HISTORY OF THE TRIPS PROVISIONS ON GI

The Uruguay Round of the GATT negotiations began in 1986, precisely when India's development policy making process was at a watershed. By the time India launched its massive economic reforms package in 1991, marking a paradigm shift in

its policy, the Uruguay Round negotiations were well under way, paving the path towards Marrakesh in 1994 and the establishment of the WTO. India remained a cautious and somewhat passive player during the initial years of the Uruguay Round negotiations, given its long legacy of inward looking development strategy and protectionist trade policy regime.

However, at Doha India wanted to extend protection under 'geographical indication' (GI) beyond wine and spirit, to other products. A number of countries wanted to negotiate extending this higher level of protection to other products as they see a higher level of protection as a way to improve marketing their products by differentiating them more effectively from their competitors and they object to other countries "usurping" their terms. Some others opposed the move, and the debate has included the question of whether the Doha Declaration provides a mandate for negotiations.

Those opposing extension argue that the existing (Article 22) level of protection is adequate<sup>57</sup>. They caution that providing enhanced protection would be a burden and would disrupt existing legitimate marketing practices. India, along with a host of other likeminded countries pressed an 'extension' of the ambit of Article 23 to cover all categories of goods. However, countries such as the United States, Australia, New Zealand, Canada, Argentina, Chile, Guatemala and Uruguay are strongly opposed to any 'extension'. The 'extension' issue formed an integral part of the Doha Work Programme (2001). However, as a result of the wide divergence of views among WTO members, not much progress has been achieved in the negotiations and the same remains as an 'outstanding implementation issue'.

## V. THE INDIAN GI ACT

India has put in place a *sui generis* system of protection for GI with enactment of a law exclusively dealing with protection of GIs. The legislations which deals with protection of GI's in India are 'The Geographical Indications of Goods (Registration & Protection) Act, 1999' (GI Act), and the 'Geographical Indications of Goods (Registration and Protection) Rules, 2002 (GI Rules). India enacted its GI legislations for the country to put in place national intellectual property laws in compliance with India's obligations under TRIPS. Under the purview of the GI Act, which came into force, along with the GI Rules, with effect from 15 September 2003, the central government has established the Geographical Indications Registry with all-India jurisdiction, at Chennai, where right-holders can register their GI.

Unlike TRIPS<sup>58</sup>, in the GI Act does not restrict itself to wines and spirits<sup>59</sup>. Rather, it has been left to the discretion of the central government to decide which products should be accorded higher levels of protection. This approach has deliberately been taken by the drafters of the Indian Act with the aim of providing stringent protection as guaranteed under the TRIPS Agreement to GI of Indian origin. However, other WTO members are not obligated to ensure Article 23-type protection to all Indian GI, thereby leaving room for their misappropriation in the international arena.

The definition of GI included in Section 1(3) (e) of the Indian GI Act<sup>60</sup> clarifies that 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 a GI 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. This provision enables the providing protection to symbols other than geographical names, such as 'Basmati'.

### *Registration*

While registration of GI is not mandatory in India, Section 20 (1) of the GI Act states that no person "shall" be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an "unregistered" GI. The registration of a GI gives its registered owner and its authorized users the right to obtain relief for infringement<sup>61</sup>. The GI Registry with all India jurisdictions is located in Chennai with the Controller-General of Patents, Designs and Trade Marks is the Registrar of GIs, as per Section 3(1) of the GI Act. Section 6(1) further stipulates maintenance of a GI Register<sup>62</sup> which is to be divided into two parts: Part A and Part B. The particulars relating to the registration of the GIs are incorporated in Part A, while the particulars relating to the registration of the authorized users are contained in Part B (Section 7 of the Act).

A GI may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by the Registrar. The Registrar is required to classify the goods, as far as possible, in accordance with the International classification of goods for the purposes of registration of GI (Section 8 of the Act). A single application may be made for registration of a GI for different classes of goods and fee payable is to be in respect of each such class of goods<sup>63</sup>.

In India a GI may initially be registered for a period of ten years, and it can be renewed from time to time for further periods of 10 years<sup>64</sup>. Indian law place certain restrictions in that a registered GI is not a subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement.

### *Rights of Action against Passing-Off*

The GI Act in India specifies that nothing in this Act "shall" be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof. In its simplest form, the principle of passing-off states that no one is entitled to pass-off his/her goods as those of another. The principal purpose of an action against passing off is therefore, to protect the name, reputation and goodwill of traders or producers against any unfair attempt to free ride on them. Though, India, like many other common law countries, does not have a statute specifically dealing with unfair competition, most of such acts of unfair competition can be prevented by way of action against passing-off. Notably, Article 24.3 of TRIPS clearly states that in implementing the TRIPS provisions on GIs, a Member is not required to diminish the protection of GIs that existed in that Member immediately prior to the date of entry. This flexibility has been utilised by India in the GI Act (Section 20(2)) in maintaining the right of action against passing-off, which has been a part of the common law tradition of India, even prior to the advent of the TRIPS Agreement. Any lawsuit relating to infringement of a registered GI or for passing of an unregistered GI has to be instituted in a district court having jurisdiction to try the suit. No suit shall be instituted in any court inferior to a district court [Section 66 of the Geographical Indications of Goods (Registration and Protection) Act, 1999].

## VI. STATUS OF GI REGISTRATIONS IN INDIA

Around 65 GI's of Indian origin have already been registered with the GI Registry. These include GI like Darjeeling (tea), Pochampalli, Ikat (textiles), Chanderi (sarees), Kancheepuram silk (textiles), Kashmir Pashmina (shawls), Kondapalli (toys), and Mysore (agarbattis). GI's registered during 2007-08 include 'Muga Silk' from Assam, 'Madhubani paintings' from Bihar, 'Malabar pepper' and 'Alleppey Green Cardamom' from Kerala, 'Cora Cotton' from Tamil Nadu, 'Allahabad Surkha' from Uttar Pradesh, 'Nakshi Kantha' from West Bengal, 'Monsooned Malabar Coffees' from Karnataka and Kerala. There is many more Indian GI in the pipeline for registration under the GI Act.

## VII. CASE STUDY-DARJEELING TEA

Tea is India's oldest industry in the organized manufacturing sector and has retained its position as the single largest employer in this sector. Around 30 per cent of the world's tea is produced in the country. India is also the world's largest consumer of tea. However, on the export front India is facing huge competition from other key tea producing countries, such as Kenya, Sri Lanka and China.

'Darjeeling' tea is a premium quality tea produced in the hilly regions of the Darjeeling district West Bengal-a state in the eastern province of India. Among the teas grown in India, Darjeeling tea offers distinctive characteristics of quality and flavour, and also a global reputation for more than a century. Broadly speaking there are two factors which have contributed to such an exceptional and distinctive taste, namely geographical origin and processing. The tea gardens are located at elevations of over 2000 meters above sea level.

### *History*

The history of Darjeeling tea dates back to the 1840's, when India was a British colony. Before the arrival of the British, the forests of the region were known as Darjeeling today was inhabited by the Lepcha tribes. In 1828, while visiting this region located in the backdrop of the snow-clad Himalayan range, a young British called Captain Lloyd discovered the possibility of converting the region into a hill station or a sanitarium.

In 1839, Darjeeling was handed over to Dr.A. Campbell, a civil surgeon, who got transferred from Kathmandu to Darjeeling to become the first Superintendent of the Darjeeling district, a position which he held for the next twenty two years<sup>65</sup>. In 1841, Dr. Campbell brought the seeds of China variety of tea from Kumaon hills of North India and planted them near his residence in his Beech wood garden in Darjeeling, 2134 meters above the mean sea level. Seeing the success of Dr. Campbell's experimental tea nursery, the British Government decided to put out tea nurseries in the region in the year 1847. Even after the Indian independence from British rule in 1947, the British ownership continued in many tea gardens of Darjeeling. By the end of the 1970's, most of the tea gardens of Darjeeling were in the hands of Indian owners. The major portion of the annual production of Darjeeling tea is exported, the key buyers being Japan, Russia, the United States, and the United Kingdom and other European Union (EU) countries such as France, Germany and the Netherlands<sup>66</sup>. In order to ensure the supply of genuine Darjeeling tea In February 2000, a compulsory system of certifying the authenticity of exported Darjeeling tea was incorporated into

the Indian Tea Act of 1953. The system makes it compulsory for all the dealers in Darjeeling tea to enter into a license agreement with the Tea Board of India on payment of an annual license fee.

### *Why Protect "Darjeeling Tea" as Geographical Indication*

An adequate legal protection is necessary for the protection of legitimate right holders of Darjeeling tea from the dishonest business practices of various commercial entities. For instance, tea produced in countries like Kenya, Sri Lanka or even Nepal has often been passed off around the world as 'Darjeeling tea'. Appropriate legal protection of this GI can go a long way in preventing such misuse.

Without adequate GI protection both in the domestic and international arena it would be difficult to prevent the misuse of Darjeeling Tea's reputation, wherein tea produced elsewhere would also be sold under the Darjeeling brand, causing damage to consumers and denying the premium price to Darjeeling tea industry. The industry is now waking up to the fact that unless

Darjeeling Tea is properly marketed and branded, the survival of the industry may be at stake and GI protection along with stringent enforcement can go a long way in helping the industry to improve its financial situation.

### *Evolution of Legal Protection*

The first attempt on the part of the Tea Board of India towards protection of the 'Darjeeling' brand was undertaken way back in 1983, when the 'Darjeeling' logo was created. The Tea Board obtained home protection for the Darjeeling logo as a certification trade mark under the Indian Trade and Merchandise Marks Act 1958 (now the Trade Marks Act, 1999). The registration was granted in class 30 in the name of the Tea Board in 1986. In the same year, the logo was registered as a trademark in several other countries [Refer Annexure A] like the UK, the USA, Canada, Japan, Egypt, and under the Madrid Agreement covering Germany,

Austria, Spain, France, Portugal, Italy, Switzerland and former Yugoslavia 67.

In the absence of a separate law dedicated exclusively to GI's in India during that time, the word 'Darjeeling' was also registered under the Trade and Merchandise Marks Act 1958 in class 30 in the name of Tea Board in 1998. When the Geographical Indication Act in India was enacted in September 2003, the Tea Board applied for GI protection of 'Darjeeling' in October 2003. In October 2004, Darjeeling was granted the GI status in India to become the first application to be registered in India as a GI.

### *Enforcement Steps Taken by the Tea Board of India*

In order to prevent the misuse of 'Darjeeling' and the logo, the Tea Board has since 1998 hired the services of Compumark, a World Wide Watch agency. Compumark is required to monitor and report to the Tea Board all cases of unauthorized use and attempted registration<sup>68</sup>. Pursuant to Compumark's appointment, several cases of attempted registrations and unauthorized use of 'Darjeeling' and Darjeeling Logo have been reported. The tea board tried to prevent unauthorized use or attempt or actual registration of Darjeeling word/logo that were brought to its notice. [Refer Annexure B] Some disputes relating to Darjeeling tea have been settled through negotiations undertaken by the tea board of India with the foreign companies<sup>lxix</sup>. For example



Bulgari, Switzerland agreed to withdraw the legend 'Darjeeling Tea fragrance for men' pursuant to legal notice and negotiations by the Tea Board. The Tea Board has fought almost 15 cases in the last four years against infringement and misuse of the word Darjeeling Tea worldwide which includes Russia, USA, Japan, France, Germany, Israel, Norway and Sri Lanka etc.

## VIII. CONCLUSION

While the Tea Board has made strides in its quest for international recognition of Darjeeling tea as a trademark, recognition of Darjeeling Tea as a Geographical Indicator in the international arena is still to be achieved, primarily due to the fact that Article 23 of TRIPS gives good protection to Wines and Spirits, but currently not for other products. The lack of a multilateral system of notification and registration for products like Darjeeling Tea which is available for wines and spirits, is jeopardizing the international protection that would offer adequate protection. It is therefore important for India to seek extension of GI protection to other products by amending Article 23 of the TRIPS.

## REFERENCES

- [1] Dr. Sudhir Raja Ravindran - Solicitor England & Wales, Patent & Trademark Agent & Attorney practising in the field of IP. Bachelor in Mechanical Engineering from the University of Madras, India and Masters in Manufacturing Systems Engineering from the Warwick Manufacturing Group, University of Warwick. A law graduate with Bachelor of Laws from the University of Bangalore, India, Masters in Law, from the School of Law, University of Warwick and Ph.D in Law from NALSAR University. Dr. Ravindran has had specialised Education in IP from World Intellectual Property Organisation (WIPO), Geneva, NALSAR University - India, IIM Lucknow - India & IIM Ahmedabad - India. He is a representative of ICC, Indian the Commission on Intellectual Property of ICC, Paris, France and an Individual Observer of the Intellectual Property Constituency of ICANN.
- [2] Arya Mathew- Attorney, Trademark Agent and IP Consultant with Bachelor of Law from the Kerala Law Academy Law College and Master of Arts in Sociology, from the Madurai Kamaraj University. She is also obtained her Master of Law in Intellectual property laws from the Tamil Nadu Dr. Ambedkar law University securing the 1st Rank and Gold medal. She is committed towards research in the field of intellectual property and has penned articles on subjects relating to intellectual property.
- [3] Altacit Global Strategic Consultants for Corporate, Legal and Intellectual Property (IP) matters. [www.altacit.com](http://www.altacit.com).
- [4] The Geographical Indications of Goods (Registration and Protection) Act, 1999 - Section 22.
- [5] Bulgaria, the EU, Guinea, India, Jamaica, Kenya, Madagascar, Mauritius, Morocco, Pakistan, Romania, Sri Lanka, Switzerland, Thailand, Tunisia and Turkey.
- [6] GI in the WTO & Doha Negotiations by Miguel Rodriguez Mendoza presented in Worldwide SymposiumGI.[www.wipo.int/edocs/mdocs/geoind/en/wipo\\_geo\\_bei\\_07/wipo\\_geo\\_bei\\_07\\_www\\_81777.doc](http://www.wipo.int/edocs/mdocs/geoind/en/wipo_geo_bei_07/wipo_geo_bei_07_www_81777.doc)
- [7] Argentina, Australia, Canada, Chile, Colombia, the Dominican Republic, Ecuador, El.
- [8] Salvador, Guatemala, Honduras, New Zealand, Panama, Paraguay, the Philippines, Chinese Taipei and the United States.
- [9] TRIPS AGREEMENT - Article 23
- [10] The Geographical Indications of Goods (Registration and protection) Act, 1999 - Section 2 (e).
- [11] "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.

- [12] The Geographical Indications of Goods (Registration and Protection) Act, 1999- Section 21 (a).
- [13] Section 6(1) states that: For the purposes of this Act, a record called the Register of geographical indications shall be kept at the Head office of the Geographical Indications Registry, wherein shall be entered all registered geographical indications with the names, addresses and descriptions of the proprietors, the names, addresses and descriptions of authorized users and such other matters relating to registered geographical indications as may be prescribed and such registers may be maintained wholly or partly on computer.
- [14] The Geographical Indications of Goods (Registration and Protection) Act, 1999- Section 11(3).
- [15] The Geographical Indications of Goods (Registration and Protection) Act, 1999- Section 18(1).
- [16] Darjeeling Planters Association (1999), <http://www.teaboard.gov.in>.
- [17] <http://www.american.edu/ted/darjeeling.htm>.
- [18] Darjeeling Tea-Intellectual Property Rights of Darjeeling Tea in the age of globalization and world trade, <http://www.american.edu/ted/darjeeling.htm#Links>.
- [19] <http://www.deljpn.ec.europa.eu/data/current/20040209-gi-das.pdf>.

# The Economic Cost of IPR Infringement in Spirits and Wine

Dr.M. Radha, Associate Professor, Department of Economics, Sri GVG Visalakshi College for Women.

R. Rajini, Associate Professor, Department of Economics, Sri GVG Visalakshi College for Women.

Dr. Mallika Baskar, Professor and Head, Department of Economics with Logistics and Freight Management, Sri GVG Visalakshi College for Women.

## I. INTRODUCTION

A Major problem which has hindered the effective enforcement of Intellectual Property Rights (IPR) in the EU is related to a lack of knowledge in relation to the precise scope, scale and impact of IPR infringements. Many attempts to quantify the scale of counterfeiting and its consequences for businesses, consumers and society as a whole have suffered from the absence of a consensual and consistent methodology for collecting and analysing data on counterfeiting and piracy across various sectors. Different approaches have been used, such as surveys, mystery shopping, monitoring of online activities, making it all the more difficult to aggregate results for the whole economy. The very nature of the phenomenon under investigation makes it extremely challenging to quantify reliably, as obtaining comprehensive data for a hidden and secretive activity is by necessity difficult.

These challenges have in turn hindered the tasks of those involved in enforcing IP rights and in charge of establishing precise priorities, programmes and targets for enforcement, as they limit the possibilities to design more focused policies as well as evidence-based public awareness campaigns. To help overcome these challenges while taking fully into account of methodological constraints, the Observatory developed a specific approach that has so far been applied to the Cosmetics and Personal Care; Clothing, Footwear and Accessories; Sports Goods; Games and Toys; Jewellery and Watches; Handbags and Luggage; and Recorded Music sectors.

In the present report the Observatory focuses its attention on two sectors officially labeled Distilling, rectifying and blending of spirits and Manufacture of wine from grape by Eurostat. The two sectors have been analysed separately and results will be presented for each one, but, due to the similarity of the products covered both are presented in a join report. The products included in each sector, as defined by Eurostat, are:

### *Distilling, Rectifying and Blending of Spirits*

- 1) Manufacture of distilled, potable, alcoholic beverages: whisky, brandy, gin, liqueurs, etc.
- 2) Manufacture of drinks mixed with distilled alcoholic beverages.
- 3) Blending of distilled spirits.

### *Manufacture of Wine from Grape*

- 1) Manufacture of wine.
- 2) Manufacture of sparkling wine.
- 3) Manufacture of wine from concentrated grape must.

- 4) Blending, purification and bottling of wine.
- 5) Manufacture of low or non-alcoholic wine.
- 6) Both sectors exclude activities that consist of merely bottling and labelling.

This study aims to estimate the scale of the two major economic impacts of counterfeiting which cover the direct and indirect costs to industry and the wider costs to government and society.

### 1. *Direct Costs to Industry*

The costs to industry are mainly composed of lost sales due to counterfeiting. Estimation of lost sales is therefore a necessary first step, both because it constitutes a major economic consequence in itself and because it drives other consequences, for example the loss of public fiscal revenue.

The methodology builds on an adaptation of a methodology developed for the European Commission so that it can be used on a sectorial level rather than on a firm level which proved very difficult to apply in practice.

Variations in a sector's sales are analysed using statistical techniques which allow the researcher to relate them to economic and social factors and thereby estimate the amount of sales lost by rights holders due to counterfeiting. Loss of sales also leads to loss of employment in the affected sectors, which can be derived from European statistical data on employment for the sectors in question.

### 2. *Indirect Effects of Counterfeiting*

In addition to the direct loss of sales in the identified sectors, there are also impacts on other sectors of the EU economy. These indirect effects are a result of the fact that the different sectors of the economy buy goods and services from each other for use in their production processes. If one sector's sales are reduced because of counterfeiting, then this sector will also buy fewer goods and services from its suppliers, causing sales declines and corresponding employment effects in other sectors.

### 3. *Impacts on Public Finances*

Since the activity in question is illegal, it is likely that those engaged in manufacture of counterfeit goods do not pay taxes on the resulting revenues and incomes. Therefore, an additional impact of counterfeiting is the resulting losses of tax revenue by government, specifically income taxes and social contributions, corporate taxes, and indirect taxes such as excise duties or VAT.

In order to approximate these costs, several relationships are estimated. The methodology is fully explained in the Appendices and is briefly outlined below.

#### *Step 1: Estimation of Lost Sales due to Counterfeiting*

Predicted sales of relevant sectors are generated and compared with actual sales in each country, as reported in official statistics. The difference can then be partly explained by socio-economic factors such as GDP growth or per capita GDP. In addition, factors related to counterfeiting are considered, such as behaviour of consumers<sup>9</sup>, and the characteristics of a country's markets and its legal and regulatory environments<sup>10</sup>. The difference between forecast and actual sales is analysed in order to extract the effect of counterfeit consumption on legitimate sales.

## *Step 2: Translation of Lost Sales into Lost Jobs and Lost Public Revenue*

Since the legitimate industry sells less than it would have sold in the absence of counterfeiting, it also employs fewer workers. Data from Eurostat on employment in these sectors is used to estimate the employment lost related to the reduction of legitimate business as a result of lost sales due to counterfeiting.

In addition to the direct loss of sales in the sectors being analysed, there are also indirect impacts elsewhere in the economy, as this sector will also buy fewer goods and services from its suppliers, causing sales declines and corresponding employment effects in other sectors.

Furthermore, the reduced economic activity in the private sector has an impact on government revenue, essentially tax revenue such as VAT, household income tax and tax on company profits, but also social security contributions. The products analysed in this report are subject to excise duties in many of the EU countries, so that these lost revenues for governments can be significant and are therefore also calculated. It should be noted that the indirect effect of sales lost due to counterfeiting only includes losses in sectors that provide inputs to the manufacture of legal products in the EU. Possible positive effects of inputs provided for production of illicit goods that could be manufactured inside or outside the EU, are ignored in this study. In other words, the indirect effect calculated is a gross effect that does not take into account the long-term effect of sales displacement from legal to illegal producers. The net employment effect could therefore be smaller than the gross effect calculated here<sup>11</sup>.

Similarly, while illicit activities do not generate the same levels of tax revenue as legal activities, to the extent that sales of counterfeits happen in the legitimate sales channels, some direct and indirect taxes are paid, and so the net reduction in government revenue may be smaller than the gross effect calculated here.

Unfortunately, data currently available do not allow for calculation of these net effects with any degree of accuracy. The next section presents the main findings of the study.

## **II. IMPACT OF COUNTERFEITING IN THE SPIRITS AND WINE SECTORS**

The starting point of this analysis is the estimation of consumption of each product by Member State based on official data from Eurostat on production and intra- and extra-EU trade. Information on wholesale and retail trade of spirits and wine cannot be obtained from official (Eurostat) statistics, as the relevant NACE classes include wholesale and retail trade of all types of beverages, alcoholic as well as non-alcoholic. Therefore, estimation of consumption for the products analysed in this report is at producer prices and thus does not include the value of trade margins paid to distributors and retailers.

### *The Spirits Sector in the EU*

During the period 2008-2013, EU annual production of spirits amounted to €22 billion. The EU exports to third countries were worth €8 billion, and imports from third countries amounted to €1 billion, resulting in a positive trade balance of €7 billion, and leaving nearly €15 billion (at producer prices) for consumption of EU spirits in the internal market.

The United Kingdom is the largest producer of spirits, with production valued at more than €5 billion, followed by France with more than €4 billion. United Kingdom exports represent more than 40% of total EU exports of spirits. France is also a major exporter of spirits, accounting for nearly 30% of total extra-EU exports.

The industry engaged in distilling, rectifying and blending of spirits in the EU is comprised of 5,500 enterprises, most of which are SMEs, with an average of less than 10 workers per firm. The average size of firms in this sector differs between the two big producers: in France there are 860 enterprises with an average of about 10 persons employed, while in the United Kingdom there are 150 enterprises employing an average number of 66 workers. Across the EU, employment in this sector totalled approximately 54 thousand people in 2013.

### *The Wine Sector in the EU*

Production of wine in the EU in the period 2008-2013 totalled €27 billion as an annual average. EU exports to third countries amounted to €7 billion annually, with imports of €2.5 billion, leading to net exports of more than €4 billion. Therefore, total consumption of EU wine at producer prices was approximately €23 billion. The main EU producers of wine are France (€9 billion), Italy (€8 billion) and Spain (€6 billion).

These three countries' production represents 80% of total EU production of wine in 2013.

Exports of French wine outside the EU represent 45% of total EU exports of wine, and exports of Italian wine contribute a further 25% of extra-EU exports. Both countries have similar market shares in intra-EU trade.

The EU wine manufacturing industry contains 10,900 enterprises, of which 3,700 are located in Spain, 1,800 in Italy and less than 1,500 in France. The average employment per enterprise is about 11 in EU as a whole and ranges from 30 in France to 6.5 in Spain, with Italy at 9.3. In terms of total employment, the French wine industry employs more than 44 thousand workers, 36% of total EU employment in this sector; nearly 20% of total EU employment, or 24 thousand workers, are located in Spain and 14% of total employment is in Italy and totals 17 thousand workers. Overall, total employment in the EU in the wine manufacturing industry is more than 120 thousand workers.

### *Direct Impact*

Based on country-level consumption data of spirits and wine, the difference between forecast sales and actual sales has been estimated for each country and product (Appendix A), and analysed using statistical methods (Appendix B), relating the sales shortfall to factors (called *variables* in economic parlance) such as: GDP growth and the exchange rate of the Euro vs other currencies (socioeconomic variables).

The percentage of the population reporting having bought counterfeit products intentionally or as a result of being misled as reflected in the IP Perception study and the World Bank Indexes of Government Effectiveness 12 and Rule of Law 13 (variables related to counterfeiting). The resulting estimates of the lost sales due to counterfeiting in the spirits and wine sectors, for all Member States, are shown in the

two figures below. This is the direct impact of counterfeiting discussed above, although as noted, for these two sectors, due to limited available information, only the impacts on the manufacturing industry are included, as opposed to wider considerations incorporating the wholesale and retail trade sectors.

For each country, the bars indicate the impact of counterfeiting on each of the two sectors, expressed as a percentage of sales revenue at producer prices, while the diamonds indicate the 95% confidence interval of that estimate<sup>14</sup>. The figures represent an annual average for the six years 2008-2013.

The biggest absolute impact of counterfeiting (€263 million) is observed in Spain. The relative effect of lost sales due to counterfeiting in spirits is significantly higher than the EU average (10.4%), while lost wine sales are at the EU average. Italy and Germany present relative lost sales below the EU average in both sectors but are second and third in absolute combined effect, at €162 million and €140 million, respectively. The French spirits sector suffers significant losses, at €100 million, second only to Spain. In the wine sector, France has lower relative effect with a 1.4% lost sales ratio. Considering both sectors jointly, France is fourth in the EU, with combined lost sales valued at €136 million. Finally, in the United Kingdom, relative effects of counterfeiting in lost sales are below the EU average in both sectors and total lost sales are €87 million.

Employment lost as a result of lost sales relates to countries where the products are manufactured, not where they are sold. The table below presents sales and employment lost by legitimate industries due to counterfeiting in the ten countries with the biggest effects. The table shows the losses in million EUR and number of jobs, both in absolute figures and as a percentage of sales and employment in legitimate industries, respectively.

Since the legitimate industry sells less than it would have sold in the absence of counterfeiting, it also employs fewer workers<sup>16</sup>. Data from Eurostat on sectorial employment-to-sales ratios are used to estimate the corresponding employment lost in the legitimate spirits and wine sectors due to counterfeiting, resulting in a total of 4,815 lost jobs across the EU.

	Sales million €	Employment % persons	Sales million €	Employment % persons
SPAIN	263	4.8%	969	3.5%
ITALY	162	2.7%	425	2.0%
GERMANY	140	2.2%	232	2.1%
FRANCE	136	2.9%	545	1.6%
UNITED KINGDOM	87	2.3%	191	1.7%
POLAND	69	2.8%	133	2.5%
ROMANIA	51	11.3%	694	10.1%
GREECE	46	8.1%	241	6.2%
HUNGARY	30	5.4%	298	4.6%
BULGARIA	29	10.7%	562	8.1%

EU28 1,260 3.3% 4,815 3. Bulgaria and France.

Direct employment impacts are calculated at the country level by estimating lost sales by that country's sectors across the entire EU market. For example, the direct sales lost by the French wine industry as a result of counterfeiting are estimated by adding sales lost in France to sales of French wine lost in other EU countries. The latter total is calculated from the differing counterfeiting rates prevalent within each of the Member States.

### Indirect Impact

In addition to the direct loss of sales in the spirits and wine sectors, there are also impacts on other sectors of the EU economy, as a sector suffering lost sales due to counterfeiting will also buy fewer goods and services from its suppliers, causing sales declines and corresponding employment effects in other sectors.

To assess this indirect impact, data from Eurostat<sup>17</sup> are used, showing how much the spirits and wine sectors buy from other sectors in the EU in order to produce what they deliver<sup>18</sup>. Final demand for spirit and wine, as estimated in this report, includes imported goods (about 9% of total consumption) and not only the value of EU production (even though on balance the EU is a net exporter of spirits and wine). Employment and indirect effects arising from these imports occur outside the EU and therefore are not included in the calculations. Consequently, of the total lost sales figure of €1.3 billion, only the value of domestic production (€1.2 billion) is used to calculate indirect impacts<sup>19</sup>.

Thus, beyond the direct effects on the spirits and wine sectors (€1.3 billion in annual sales), an additional €1.7 billion are lost in other sectors of the economy due to counterfeiting. This is the *indirect* effect of counterfeiting<sup>20</sup>

Turning to employment, if losses in the supplier sectors are added to the direct employment loss in the spirits and wine sectors, the total employment loss resulting from counterfeiting is estimated at 23,300, reflecting the fact that the employment multiplier of the food industry is one of the biggest of the economy. The sectors suffering the biggest employment losses are agriculture (8,600 jobs) and food industry (6,100 jobs) but also wholesale trade with 1,200 lost jobs; retail trade, land transport and security and investigation services each suffer between 600-700 lost jobs, and legal and accounting and employment services with 500 lost jobs in each of the two industries.

Total effects (direct plus indirect) are calculated at country level based on ESA 2010 harmonized IOT published by Eurostat. The high effect on employment in Spain, France and Italy (44% of total losses in the EU among the three countries) reflects the importance of employment in wine and agriculture industries in those countries.

Finally, the reduced economic activity in the legitimate private sector has an impact on government revenues<sup>21</sup> as well. If this assumption is accepted, the lost taxes that sales of spirits and wine valued at €1.3 billion would have generated can be calculated, as well as the tax revenues corresponding to the total (direct + indirect) loss of € 3 billion calculated above. Four main types of taxes have been considered<sup>22</sup>: Value Added Tax (VAT), taxes on household income, taxes on the income or profits of companies and excise duties.



- 1) Lost VAT is estimated on the basis of household consumption of direct lost sales in the spirits and wine sectors (€1.3 billion)<sup>23</sup>, amounting to €181 million.
- 2) Lost household income tax, estimated on the basis of the share of wages corresponding to lost employment in total wages, considering direct and indirect effects on employment, amounts to €89 million.
- 3) The lost tax on corporate profits is estimated from the share of direct and indirect costs to industry and amounts to €35 million.
- 4) The lost excise duties are estimated based on revenues from taxes on consumption of alcoholic beverages, considering taxes on ethyl alcohol, still and sparkling wine, at country level. Ratios of lost sales of spirits and wine are applied to tax revenues separately for each of the two sectors, yielding a total of €739 million in lost excise duty revenue.

In addition, social security contributions linked to the direct and indirect employment losses are also estimated. Social security contributions data by industry are available in Eurostat, so that social security contributions per employee in each industry can be used to calculate lost contributions as a consequence of counterfeiting. These lost social security contributions amount to €133 million.

Excise duties on alcoholic beverages have been estimated separately for spirits and wine at country level. Revenues from wine taxes are only significant in a limited number of Member States, such as Belgium, Denmark, Finland, Ireland, the Netherlands, Sweden and United Kingdom. Lost revenues from excise duties due to counterfeiting of spirits and wine are shown in the table below for the countries with the biggest losses:

UNITED KINGDOM 197

FRANCE 100

SPAIN 90

GERMANY 65

POLAND 47

GREECE 33

SWEDEN 24

ITALY 18

EU28 739

LOST REVENUES FROM EXCISE DUTIES (€ MILLION)

### III. CONCLUSIONS AND PERSPECTIVES

The studies aiming to quantify the scale and impact of IPR infringements in cosmetics and perfumes, clothing and footwear, sports goods, toys and games, jewellery and watches, handbags and luggage, recorded music and now spirits and wine have provided coherent estimates of the size of the problem of counterfeiting for legitimate businesses and society in terms of lost sales, leading to lost jobs and loss of public revenue. These studies have used a common methodology and demonstrated the benefits from working in cooperation with stakeholders to take advantage of their

knowledge of market conditions, while relying on harmonised European statistical data for the analysis.

The eight sectorial studies published to date will be followed in the coming months by other similar studies covering additional sectors, applying the same methodology and combining it with knowledge from industry stakeholders. These sectors include medicines; computers; and other sectors, such as smart phones, depending on availability of data. In parallel, the Observatory has carried out a joint study with the Organization for Economic Cooperation and Development (OECD) to estimate the value of counterfeit and pirated goods in international trade. That study, published in April 2016, estimated the value of international trade of counterfeit goods in 2013 at €338 billion (USD 461 billion) globally, corresponding to 2.5% of world trade. The corresponding figures for the EU were €85 billion (USD 116 billion), representing 5% of EU's imports from the rest of the world. Taken together, these studies complement each other and will provide a complete and objective picture of the impact of IPR infringements in Europe, in order to help policy makers develop effective enforcement policies.

## REFERENCES

- [1] EUIPO/OECD, Trade in counterfeiting and pirated goods: mapping the economic impact. 2016 <https://euiipo.europa.eu/ohimportal/en/web/observatory/mapping-the-economic-impact>
- [2] OECD, The economic impact of counterfeiting and piracy, 2008. [http://www.oecd-ilibrary.org/trade/the-economic-impact-of-counterfeiting-and-piracy\\_97892640445521-en](http://www.oecd-ilibrary.org/trade/the-economic-impact-of-counterfeiting-and-piracy_97892640445521-en).
- [3] OHIM, The European Citizens and intellectual property: perception, awareness and behaviour, 2013. [https://euiipo.europa.eu/ohimportal/en/web/observatory/ip\\_perception](https://euiipo.europa.eu/ohimportal/en/web/observatory/ip_perception).
- [4] EUIPO, The economic cost of IPR infringement in the recorded music sector, 2016. [https://euiipo.europa.eu/ohimportal/en/web/observatory/ipr\\_infringement\\_music](https://euiipo.europa.eu/ohimportal/en/web/observatory/ipr_infringement_music).
- [5] RAND, Measuring IPR infringements in the internal market. Development of a new approach to estimating the impact of infringement on sales, 2012. [http://ec.europa.eu/internal\\_market/iprenforcement/docs/ipr\\_infringement-report\\_en.pdf](http://ec.europa.eu/internal_market/iprenforcement/docs/ipr_infringement-report_en.pdf).
- [6] WCO, Informal trade practices, 2012. [http://www.wcoomd.org/en/topics/research/activities-and-programmes/~/\\_media/CE615C7CC64746688498F807A0F032A3.ashx](http://www.wcoomd.org/en/topics/research/activities-and-programmes/~/_media/CE615C7CC64746688498F807A0F032A3.ashx).
- [7] WEFA, the Economic Impact of Trademark Counterfeiting and Infringement. Report prepared for the International Trademark Association, 1998.
- [8] WIPO, The economic effects of counterfeiting and piracy: a literature review, 2010. [http://www.wipo.int/edocs/mdocs/enforcement/en/wipo\\_ace\\_6/wipo\\_ace\\_6\\_7.pdf](http://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_6/wipo_ace_6_7.pdf).

# GI Protection for Indian Handicrafts-Roadmap for Socio-Economic Development

Dr.P. Geetha, Associate Professor, Department of Economics, Sri GVG Visalakshi College for Women.

Dr.G. Yamuna, Associate Professor, Department of Economics, Sri GVG Visalakshi College for Women.

Dr.K. Kaliammal, Associate Professor, Department of Economics, Sri GVG Visalakshi College for Women.

## I. INTRODUCTION

THE desire of mankind for quality and genuine premium products such as silk, cotton, spices, wines, designs and handicrafts having distinct characteristics originating from a particular region, have over centuries created an impact on human civilization which has resulted in discovery of new sea routes and new continents. These identifications became so important that these regions started specializing in producing these unique products, which led to identifying such goods as originating from a particular region, which over a period of time has become renowned globally. Drastic development in the technologies of transport and communication has made available of everything at everybody's doorstep. The Internet have helped this process, enabling business to communicate more smoothly and efficiently and sparking what some have called the "Third Wave" of economic growth.

India has a rich history of traditional art and handicrafts that has evolved over centuries and has survived through the ages. It is unique with its traditional characters, beauty, styles and culture based craftsmanship passed down through generations. Indian Handicrafts have always been distinguished for their great aesthetic and functional value and a perfect blend of design ability as well as technical skills. Its exclusiveness and mystical value always has a magnetic appeal. It has grown around religious values, needs of the common people and also the needs of the ruling elites. The craft traditions have withstood the ravages of time and several foreign invasions and continue to flourish till date. This traditional knowledge is a major source of income for the rural communities and also plays a vital role in the economic development of the country.

Origin labeled products is often considered useful instruments to preserve local culture and traditions and to foster rural development, especially in disadvantaged areas. Consumers are willing to pay a high premium for origin-guaranteed products. But today, the sustainability and survival of these traditional products are threatened due to anti-competitive practices and counterfeit products. These traditional arts need to be protected from being copied through unfair means. A study by the OECD (1995) pointed that the two main factors that influence the success of small rural enterprises are: market access and socially constructed differentiation. One of the effective approaches to address these factors is for the enterprises to work together in order to develop a competitive advantage. But today, the sustainability and survival of these traditional products are threatened due to anti-competitive practices and counterfeit products. These traditional arts need to be protected from being copied through unfair means. An effort to safeguard the interest of the producers and consumers led to evolution and conceptualization of "Geographical Indications". The idea is that, 'A product originating from a particular place with some unique quality or characteristic

should not be falsely represented as originating from some other place.' If harnessed properly, trade gains from enhanced sale of these goods could provide tremendous socio-economic benefits to the producers of such goods.

## II. HANDICRAFT PRODUCTS

Handicrafts are products which are produced either completely by hand or with the help of tools. Mechanical tools may be used as long as the direct manual contribution of the artisan remains the most substantial component of the finished product. They are made from raw materials and can be produced in unlimited numbers. Such products can be utilitarian, aesthetic, artistic, creative, culturally attached, decorative, functional, traditional, religiously and socially symbolic and significant (UNESCO/ITC, 1997).

Crafts play a very important role in representing the culture and traditions of any country or region. They are associated with people's lifestyle and history. They provide ample opportunities for employment even with low capital investments and become prominent medium or foreign earnings. Hence, it is hugely important in terms of economic development for our country. The endearing quality of Indian handicraft designs has always been enchanting. So naturally, the demand for the export of authentic handicraft products is too high, resulting into a good addition to the foreign reserves. Many naturally crafted products in different geographic location of India represent the beauty of local culture. To sustain its share in the global market the Indian crafts need to adapt and innovate according to changing tastes and demands. Protection of crafts through intellectual property rights like GIs and Certification marks has encouraged artisans to diversify their product range and adopt new and innovative designs. To sustain its share in the global market the Indian crafts need to adapt and innovate according to changing tastes and demands. As per the rough estimate there are over 1000 products which qualify for GI tags in India. These are in the SME and mostly rural sector and have potential to transform rural economy if properly exploited

## III. GEOGRAPHICAL INDICATIONS OF INDIA

Geographical Indications (GI) is one of the six Trade-Related Intellectual Property Rights (TRIPS) of the World Trade Organization (WTO) that seeks to provide comprehensive and effective protection to goods registered as GI goods. Geographical Indication (GI) is defined as any indication that identifies a good as originating from a particular place, where a given quality, reputation or other characteristics of the good are essentially attributable to its geographical origin. GIs may be associated with agricultural, manufactured or industrial goods. Non-agricultural products, which typically qualify for GI protection, include handicrafts, jewellery, textiles, etc. India, in acquiescence with the TRIPS Agreement of the WTO, enacted 'The Geographical Indications of Goods (Registration and Protection) Act, (GI Act) on 15th September 2003 to provide protection to the goods registered under the Act.

## IV. WHY GI?

Consumers do not have perfect access to information regarding the prices of goods, and even less so to the quality of the goods. The unethical practice of selling fake products in the name of reputed products to fetch better prices is rampant in the

Indian market and even abroad. While original producers suffer a loss of market for their goods, consumers end up paying inflated prices for fake goods. This information asymmetry can be eliminated and both the producers and the consumers can benefit only with the help of GI protection. Once the goods are registered as GI, they will be protected under the GI Law and any violation on this account would be a legal offence. The products attached with GI tag helps producers to differentiate their products from competing products in the market and enable them to build reputation and goodwill around their products, which allows them to fetch a premium price.

## **V. THE INDIAN SCENARIO**

As per the rough estimate there are over 1000 products which qualify for GI tags in India. These are in the SME and mostly rural sector and have potential to transform rural economy if properly exploited. The southern States in India have topped the charts in obtaining GI registrations as against the rest of the States. The state of Karnataka is leading the way with 32 per cent of GI registrations followed by the state of Tamil Nadu with a total number of 24 per cent registrations. Andhra Pradesh 22 per cent and Kerala 20 per cent are also not far behind, falling in the third and the fourth positions respectively. These four states together account for over 50 per cent of the total GI registrations granted in India. Of the 193 Registered GIs, only 24 per cent are agricultural Products and rest (76 per cent) are from non-agricultural products. Of this more than one-half (66 per cent) are handicrafts, followed by 8 per cent from manufactured goods and 2 per cent were from food stuff (Chari, 2013). Major centres in Uttar Pradesh are Moradabad also known as the "Peetalnagari" (City of Brass), Saharanpur for its wooden articles, Firozabad for Glass. The North Western state of Rajasthan has to offer the famous Jaipuri quilts, Bagru and Sanganer printed textiles and wooden and wrought iron furniture from Jodhpur. The coastal state of Gujarat comes with embroidered articles from Kutch. Narsapur in Andhra Pradesh is famous for its Lace and Lace goods.

Protection of crafts through intellectual property rights like GIs and Certification marks has encouraged artisans to diversify their product range and adopt new and innovative designs. Products have been diversified to meet the changing life styles and international demands. Mysore Silk, Kanchipuram Silk, the Banaras Brocades and Sarees, Pochampally Ikat, Kota Doria, Tangalia Shawls, Chamba Rumals, the Nilgiris Toda Embroidery, Kullu shawls, Lucknow Chikan, Channapatna toys and dolls, Bidriware, artistic metallic work of Karnataka, Allepey coir, Nagercoil temple jewellery and lots more of Indian crafts which has acquired GI patent diversified its product range adopting newer ideas and promoted it in the international market. Some artists created fusion of two or more GI products to produce a new innovation catering to the younger age groups, who look for trendy designs and new looks. The new designs range from Indian to international themes with the latest in home and lifestyle accessories.

Quality is indispensable for GI products. Strict adherence to traditional aspects of manufacture and making also form part and parcel of the GI quality control mechanism, The Certification Marks also ensure the specified quality standards. Handicrafts Mark Silk Mark, etc, specify minimum quality standards for different crafts.

New innovative designs, improved quality standards and enhanced brand image for these GI products shall result in value addition and would boost up its price.

The members registered under Craftsmark get a chance to showcase their products at international fairs, exhibitions and melas which enable meeting of buyers and sellers and procuring orders for their products. The sheer gorgeousness of these products is used for home décor or gifting purpose or simply for the collection of designs. Hence, ethnic designs and flourishing patterns of Indian handicrafts are demanded all across the globe.

## **VI. THE MAIN DRAWBACKS**

- 1) The biggest concern is near complete absence of an effective post-GI mechanism in the country.
- 2) Building up reputation about a GI-product is not an easy task.
- 3) Absence of organized structure.
- 4) No focused and coordinated effort for brand promotion of these products.
- 5) There were hardly any substantial efforts by these entrepreneurs and government agencies to promote "Made in India" brand internationally.
- 6) Threat of counterfeit products.
- 7) No proper coordination or linkage among craft manufacturers for any process of business.
- 8) No consortium or network type activity was in practice in most of the craft clusters.
- 9) Most producers and artisans of traditional and unique products in India lack the financial resources for internationally promoting their product.
- 10) Various economically powerful intermediaries may still continue their control over the products.

## **VII. SOCIO-ECONOMIC ISSUES**

The key socio-economic issues relating to geographical indications particularly relevant to developing countries are misappropriation, protecting traditional and indigenous knowledge and culture, improving market access, creating niche markets, protection of reputation, potential income effect and rural development. One of the effective approaches to address these factors is for the enterprises to work together in order to develop a competitive advantage. The premium captured by products displaying a geographical indication suggests that some form of value is embedded in the use of GI which is a mixture of economic, cultural and social values reflected in product-place linkages.

The GI stamp socio-economically helps the artisans. The GI label tripled their earnings. The products get sourced out through top designers and big market chains. After being accorded GI status, the artisans enjoy suitable marketing initiatives. A good number of women are becoming economically solvent due to increased demand of craft products from India after GI registrations. They help the family change the socio-economic condition through their earnings. The development of a creative craft culture will not only provide more opportunities for creative talents but will add to the quality of life. They need to be more attuned to what others are able to appreciate and to able to educate the public about quality, design and creativity.

GIs are collective rights owned by the concerned communities. As most of these GI goods or potential GI goods have their origin in rural areas, their increased sales as a result of protection under the GI Act has the potential to lead to enhanced income to the producers' communities and hence to rural development. The impact on rural development depends on the extent to which local actors succeed in appropriating the rent with respect to actors located outside the territory. The rural development potential of GIs is dependent on an inclusive and representative Producers' Association that ensures participation of local artisans and capacity building so that they are able to capture more of the rents from the production and supply chain.

Well-crafted policies and strategies on post-GI mechanisms are required for marketing, distribution, branding and promotion of the Indian GI products which would translate into socio-economic benefits to the community. Success in exploiting the economic potential of a GI, to a great extent, depends on effective marketing and promotional efforts to develop consumer perceptions about the 'niche' acquired by the product on account of product-place link. Building up reputation about a GI-product is not an easy task, however. It takes a lot of time, patience, money, quality control and a well crafted marketing strategy to create a valuable GI brand. There is the need for setting up a national level fund for fighting against infringement, brand building and promotional efforts of GI products (Chari, 2013).

## VIII. CONCLUSION

In India, though assistance from all corners have been provided to artisans in getting their craft registered as Geographical Indications, the state authorities have been lethargic on post registration activities such as encouraging artisans to become registered users, ensure product quality, creating a brand value for the craft and monitoring and surveillance to identify infringements. A GI registration or getting a Certification Mark by itself is no guarantee of a better quality of life for the producers of such products. To reap the maximum benefit from IP acquisition, efforts needs to be taken by the State Authorities, Craft Promotion Agencies and by the Craft Communities themselves to get the proper implementation and enforcement of the rights acquired and also to include the IP asset in marketing and brand promotion campaign. IPR protection benefits artisan and craft producers in many ways by enhancing value of products, protecting them from piracy and thereby improving the socio-economic status of the artisans through increased sales and profitability. A proactive involvement of the government, NGOs and stakeholders of the GI products would ultimately assist in the economic development of the country.

## REFERENCES

- [1] Chari, A Growing Sector: Non-Agricultural GIs in India, 2013.
- [2] Das, Kasturi, Socioeconomic Implications of Protecting Geographical Indications in India, WTO Centre, IIFT, New Delhi, 2009.
- [3] Gautam, Kumar and Nupur Bahl, "Geographical Indications of India- Socio- Economic and Development Issues", All India Artisans and Craftworkers Welfare Association (AIACA) Policy Brief, 2010. [www.aiacaonline.org](http://www.aiacaonline.org).
- [4] Jaiya, Guriqbal Singh, "Role of the Intellectual Property System in Development and Marketing of new products" WIPO, Geneva.
- [5] John, K. Satish "75 handicrafts to get geographical indication", Business Standard, New Delhi August 14, 2006. [http://www.business-standard.com/article/economy-policy/75-handicrafts-to-get-geographical-indication-106081401084\\_1.html](http://www.business-standard.com/article/economy-policy/75-handicrafts-to-get-geographical-indication-106081401084_1.html).

- [6] D. Rangnekar, "The Socio-Economics of Geographical Indications: A Review of Empirical Evidence from Europe", Capacity Building Project on Intellectual Property Rights and Sustainable Development, UNCTAD/ICTSD, October 2003b.
- [7] N. Vats, "Indian Handicrafts and Globalization: A Review", IOSR Journal of Humanities And Social Science (IOSR-JHSS) Vol. 19, No. 1, Ver. IV (Jan), PP. 40-43, 2014.
- [8] P. Verma, "Protection and Promotion of Indian Handicrafts through Intellectual Property Rights", <http://www.academia.edu/7927875/>.
- [9] WIPO Magazine, "Geographical Indications: From Darjeeling to Doha", 2007.



# Geographical Indications: Which way Should India Go

Dr.S. Sundari Bai, Associate Professor, Sri GVG Visalakshi College for Women, Udumalpet.

J. Geetha Mani, Assistant Professor, Sri GVG Visalakshi College for Women, Udumalpet.

## I. INTRODUCTION

**T**HE TRIPS is the first multilateral text providing for a comprehensive protection of GIs. It provides for

- (a) Base-level protection for geographical indications related to all products.
- (b) An additional protection for wines and spirits and
- (c) An extra-additional protection only for wines.

The TRIPS mandates the need to accord protection for each GI for wines in the case of homonymous indications and the establishment of a multilateral system of notification and registration of GI for wines eligible for protection in the jurisdictions of those WTO members participating in the system the creation of a hierarchical system of GI protection in the first instance the reason for the current deadlock is that on the one hand, some Asian, European and African countries are seeking to extend the extra-additional protection to include other products which can help to promote the export of valuable products and prevent misappropriation. On the other hand countries like United states, Australia, Philippines, Japan and New Zealand, India are of the view that according higher protection to all GI products will lead to increased administrative costs as well as potentially hinder imports. To understand the following objective of GI.

## II. DEFINING GEOGRAPHICAL INDICATIONS

Geographical indication is an identifier which associates a product to a particular region. For example 'Sarawak pepper' of Malaysia and 'Thung Kula Rong-Hai Thai Hom Mali Rice' of Thailand are GIs. The TRIPS defines GIs in the following terms:

Indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other.

In other words, GIs are badges of origin that serve to identify the geographical source of goods, which grants a specifically identifiable attribute to the goods. Thus, a 'given quality', 'reputation' or 'other characteristics' of a good can each be a sufficient condition, *ceteris paribus*, for protection as a geographical indication.

## III. ELEMENTS AND FEATURES OF GIs UNDER THE TRIPS

The characteristic features of GIs under Article 22 of the TRIPS Agreement are as follows:

The definition of GIs in TRIPS is broader in its scope than 'appellations of origin' but narrower as compared to 'indications of source'. 'Appellations of origin' are restricted to the geographical name of the originating territory and relate only to the 'quality' and 'characteristics' of 'products'. An indication of source on a given product is merely subject to the condition that this product originates from the place designated. There is no quality or characteristic linkage.

GIs are 'indications which seek to identify' the source, they can be both direct, i.e., the geographical names per se, and indirect, i.e., indications expressed via names or symbols. On the other hand, Dragon well tea, is a variety of roasted green tea from Hangzhou, Zhejiang Province in China but the name by itself does not provide any geographical reference.

### *Comparison with Trademarks*

A trademark only identifies the manufacturer, not the geographical source. Article 15 of the TRIPS stipulates an illustrative list of signs, which may serve as trademarks such as 'words including personal names, letters, numerals, figurative elements and combination of colors.' For example, section 7(2) of the Thai Trademark Act B.E. 2534 stipulates that a mark shall be deemed distinctive if it does not have any direct reference to the character or quality of the goods and it has not been prescribed as a GI by the Minister of Commerce.

Article 22(3) connects between trademarks and GIs; it is seen as a logical complement to Article 22(3) (a) by stretching forth the protection of GIs to the area of trademarks. It recognizes a positive obligation on member countries to refuse or invalidate the registration of a trademark, which consists or contains a GI, which has the effect of misleading the public as to the true place of origin.

### *GIs as Intellectual Property*

Under the TRIPS, GIs form a subset of the corpus of intellectual property rights, but, as the foregoing analyses of the constituent elements indicates, the rights protected appear to belong to a very 'unique public sphere' rather than in private. Thus, the beneficiary in the case of GIs is almost often an association or group of manufactures in the particular field rather than an individual producer. Further, though other intellectual property branches are defined by the spatial and temporal factors, GIs appear to be protected by uninhibited rights to exclude others perpetually. Thus, while patents, copyright, trademarks and design rights have specific terms of protection, GIs are not restricted by any such conditions. It is manifest that GIs are distinguishable from the remaining branches of intellectual property like patents, copyright and trademarks. However, even though the rationale for the incorporation of GIs into TRIPS remains hazy, 'this right to exclude use on non-GI products is sanctioned by the international community on general policy grounds 'to individual geographical areas so that they can sustain their products' quality and local investments.'

### *Economic and Cultural bases for Protection of GI*

'CARROS, States GIs serve as a tool for securing consumers' loyalty by establishing the link between products attributes and the geographical origin. Secondly, 'the consumer's mental association between the indication, the place, the goods, the qualities or characteristics of the goods, and the products elevates a geographical sign to the level of a 'distinctive source' identifier' in that it functions to distinguish one producing source from another producing source when used on particular goods.

Thirdly, the significance of protecting GIs is also furnished by the cultural element. The uniqueness vests in that the producer or manufacturer of the product is a collective, a group that has some unifying inherent characteristic, trait or quality that

it is trying to protect. Likewise, protection of geographical indications considers the traditions and number of generations associated with production of the food or beverage.

### *Scope of Protection*

A unique feature of GIs under the Agreement is that there is a minimum standard of protection which applies to all GIs regardless of the nature and type of goods. It is left to the individual member countries of the WTO to determine the most appropriate method of protection. GI is accompanied by expressions such as kind type, style, imitation or the like. It is not a necessary to show that the consumers might be misled or the use constitutes unfair competition.

### **REFERENCES**

- [1] Agreement on Trade-Related Aspects of Intellectual Property Rights art 22, Apr.15, 1994, 1869 U.N.T.S. 299, 33 I.L.M.1197 [hereinafter TRIPS Agreement].
- [2] TRIPS Agreement art. 23, supra note 2, at 1205.
- [3] Bernard O'Connor, *The Law of Geographical Indications* 51 (Cameron May 2007).
- [4] TRIPS Agreement art. 23.4 and 25.1 supra note 2, at 1206-07.
- [5] Paris Convention, supra note 13.
- [6] DANIEL GERVAIS, *THE TRIPS AGREEMENT: DRAFTING HISTORY AND ANALYSIS* 194 (Sweet & Maxwell, 2<sup>nd</sup> ed. 2003).
- [7] Alberto F. Riberio de Almeida, "The TRIPS Agreement, the Bilateral Agreements Concerning Geographical Indications and the Philosophy of the WTO", *E.I.P.R.* 2005, Vol. 27, No. 4, Pp. 150-53, 2005.
- [8] Irene Calboli, "Expanding the Protection of Geographical Indications of Origin under TRIPS: "Old" Debate or "New" Opportunity? 10 MARQ", *INTELL. PROP.L. REV.* 181, 2006.
- [9] Amy P. Cotton, "123 Years at the Negotiating Table and Still No Dessert? The Case In Support of TRIPS Geographical Indication Protections", *82 CHI-KENT L. REV.* 1295, 2007.



The Editor of the book Dr.R.Radhika, M.A, M.Phil, Ph.D a recipient of the best paper awardee instituted by Association of Economist of Tamilnadu for her research work in the year 2011. She has mastered herself in the Mathematical Economics, Operations Research, Research Methodology, Econometrics and Human Resource Management. She has guided many projects at UG and PG level in the field of Industrial Economics and Human Resources. She has been guiding M.Phil and Ph.D research scholars. She has served in varied capacities such as Editor-In -Charge of College Magazine, Convenor of Fine Arts Club, NSS Co-ordinator and a Member in IQAC. She has been the backbone for organizing National level and International level workshops and seminars which will give some solutions to the benefit of the society. Hence the editor has taken her efforts to establish IPR contributions into a book. She has been a University Nominee for the Ph.D Doctoral Committee conducted by Erode Arts College, Erode. She has been a resource person for Refresher Course conducted by Academic Staff College in Bharathiar University.



Associate Professor of Economics Dr.S.Sundaribai is a recipient of best achiever award for conducting Government Executed Programs. She has nearly 29 years of teaching experience and mastered herself in the area of Industrial Economics, Investment Management, Research Methodology and Management of Small Business. She has been a NSS Advisory committee member and member of the Inspection Committee for establishment of new course M.A Economics in Bharathiar university. She has been instrumental in conducting Social Welfare Programs in association with Leonard Cheshire Homes Livelihood Resource Centre, Coimbatore. She has been awarded as a Best Co-ordinator award in the Nehru Yuva Kendra for execution of cultural events in fine arts at Government level. Currently she is a co-ordinator of Department of Women Studies, Organizing qualitative programs for self-help groups, Women Entrepreneurs and create employment opportunities for disabled. She is a member of Association of Economists of Tamilnadu and also member of Indian Economic Association.



Dr. Mallika Baskar is a recipient of Sarvalingam Memorial Awardee as a rank holder in M.A. Economics. Her academic experience include both teaching and guiding Industrial projects for both UG and PG level for the courses B.A. Co-operation, M.Com C.A., M.Com I.B nearly 12 years. Her areas of interest were in the Management Studies especially Managerial Economics, Strategic Management, Principles of Management, International Business Environment, Global Financial Management which has been dealt at UG level and PG level Courses. She is a member of Associations of Economists of Tamilnadu and Indian economic Association. She worked as District chairperson for the concept of Consumer Rights awareness for the public associated with the Lions Club of Coimbatore central 324-B1. She is currently working as Assistant Professor under the UGC Innovative Programme B.A. Economics with Logistics and Freight Management dealing both academically and also carrying out Projects for specializing the students in the field of Logistics and Supply Chain Management. She has published many articles in the National level and at international level Journal and Books. She has been as a rapportuer for the sessions in the Institute of Management. She has been a resource person for the faculty development Programme in Entrepreneurship development cell Organised in PSGR Krishnammal College for Women.



**Bonfring,**

309, 5<sup>th</sup> Street Extension, Gandhipuram,  
Coimbatore - 641 012, Tamilnadu, India.

E-mail: [info@bonfring.org](mailto:info@bonfring.org)

Website: [www.bonfring.org](http://www.bonfring.org)

