

WHAT IS INTELLECTUAL PROPERTY?

Previously property means the right of ownership on material things such as land, chattels etc. Now the property has been given wide meaning. People can have right over intangible things or products such as skills, labour, etc. The law of Intellectual Property Rights gives an individual a proprietary right over products created by human brain.

What is IPR (Intellectual Property Rights)?

The products got from innovations, creation and inventions including literary, artistic performing arts, phonogram and such other properties created by man is called **Intellectual Property** and the rights over such property is called **Intellectual Property Rights**.

The intellectual properties are categorised by international agreements such as TRIPS Agreement (Trade Related Intellectual Property), World Trade Organizations, the intellectual property rights got the authority to enforce the law internationally. As per TRIPS Agreement, the intellectual property rights are;

I. Copyright and related rights:-

The copyright is the literary expression of facts or thoughts. The copyright owner has the exclusive use of his work and any infringement of his right in his work results into legal action against the infringement.

II. Trademarks:-

The trademark is a **sign** that is used **to identify certain goods and services** as those produced or provided by a specific person or enterprise. Trademarks are territorial rights. This means that trademark is to be registered separately in each country in which protection is desired. For protection of trademark registration, it be distinctive but not deceptive and shall not be contrary to public order or morality. Also, **should not be identical or confusingly similar to an existing trademark.**

III. Geographical Indications:-

The right conferred on geographical indications confers the right to prevent competitors from commercially exploiting the respective rights to the detriment of the owner of that property.

IV. Industrial Designs:-

In the case of industrial design, the property consists on the exclusive right to apply the design registered under the statute.

V. Patents:-

The patent is an exclusive right granted in respect of an invention, which may be a product or a process, but provides a new and inventive way of doing something or offers a new and inventive technical solution to a problem.

How inventions are protected?

An invention must fulfil the following conditions to be protected by a patent.

- i. It must be **new** or **novel** i.e., it must show some new characteristic which is not known by anybody or existing knowledge ("prior art") in the technical field.
- ii. It must be **non obvious**, it shall involve an **inventive step**.
- iii. It must be **useful** that is capable of **industrial application**.

Another way of obtaining protection is to keep the technology secret; they are also called the **trade secrets**.

How is patent granted?

The patent application can be filed in the national patent office of the respective country which contains the details of the invention which is sufficiently clear for evaluation and carried out by a person having ordinary skill in the arts.

What rights does a patent provide?

The owner of a patent may, in principle, **exclude others** in the territory covered by the **patent** from **making, using, offering** for sale,

importing or **selling** the invention without his or her consent.

Furthermore, the patent owner may give permission to, or **license**, other parties to use the invention on mutually agreed terms. The owner may also **sell** the right to the invention to someone else, who will then become the new owner of the patent.

How extensive is patent protection?

A patent is, in general, granted by a national patent office. The effects of such a grant are, however, limited to the country concerned. Patents may also be granted by a regional office that does the work for a number of countries, such as the European Patent Office (EPO) and the African Regional Industrial Property Organization (ARIPO).

The WIPO-administered Patent Cooperation Treaty (PCT) is an agreement for international cooperation in the field of patents. The PCT does not provide for the grant of "international patents".

Why protect inventions by patents?

Patents provide incentives to individuals by offering them recognition for their creativity and material reward for their marketable inventions. These incentives encourage innovation, which assures that the quality of human life is continuously enhanced.

Furthermore, patent owners are obliged, in return for patent protection, to publicly disclose information on their invention. Such an ever-increasing body of public knowledge promotes further creativity and innovation by future researchers and innovators.

The patent rights are usually enforced in a court, which, in most systems, holds the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.

VI. Layout designs of Integrated circuits:-

In the case of layout designs of integrated circuits the property

consists in the exclusive right to apply the layout-design registered under statute in relation to the class of goods for which it is registered for a prescribed period. The right can also be licensed for use by third party or assign to any person.

VII. Protection of Undisclosed Information:-

Confidential information and know-how can be protected only so long as the owner is able to keep them secret and takes action against unlawful use of such information by others by an action for breach of confidence or contract.

The trade related aspects of intellectual property rights (TRIPS) are the agreements of World Trade Organization (WTO). These international conventions shall give protection of IPR on all member countries of WTO. The international conventions are recognized for IPR as follows;

- I. Copyright and related rights.
- II. Trademarks.
- III. Geographical Indications.
- IV. Industrial Designs.
- V. Patents.

India being the member of the World Trade Organization, WTO, has implemented all the provisions of the TRIPS Agreement along with other conventional agreements apart from the National Law of IPR. The following acts are recognised by the National Law of IPR,

- I. The Copyright Act, 1957 as amended in 1999.
- II. The Trade Marks Act, 1999.
- III. The Geographical Indications of Goods (Registration and Protection) Act, 1999.
- IV. The Designs Act, 2000
- V. The Patents Act, 1970 as amended in 1999, 2002 and 2005
- VI. The Protection of Plant Varieties and Farmers Rights Act, 2001
- VII. The Biological Diversity Act, 2002
- VIII. The Semiconductor Integrated Circuits Layout Design Act, 2000.