

Analytical Study of Intellectual Property Rights with Special Reference to Patent, Copyright and Trademark in India

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Abstract

An intellectual property right (IPR) is a legal entitlement that provides creators or inventors exclusive powers to own and have complete control over their original creations within a specific period. In India, the IPR ecosystem aims to protect the monetary interests of creators via a series of statutes approved by law that foster innovation and creative expression. In India, the three main categories of IPR are patents, copyrights, and trademarks, which are each different forms of IPR, and each enters through a separate legal mechanism. A patent is an exclusive entitlement granted to an inventor for producing a new invention, which can be a product or process. The primary aim of the patent system is to incentivise or promote innovation by ensuring the inventor is rewarded through a limited (temporal) monopoly in exchange for full public disclosure of the invention. In India, patent law is governed by the Patents Act, 1970. The Act sets out the conditions for an invention to be patentable. The invention must be new and not published or used anywhere in the world prior to the filing of the patent application. The invention must not be obvious to a person skilled in the relevant field. The invention must be capable of being made or used in some kind of industry. The term of a patent in India is 20 years from the date of filing the application. Upon expiry, the invention falls into the public domain, and anyone can use it without the patent holder's permission. This system balances the private interests of the inventor with the public interest of technological progress.

Keywords:

Patent, Copyright, Act, Trademark

Introduction

The Patents Act, 1970 specifies particular inventions deemed non-patentable discoveries under Sections 3 and 4. These non-patentable inventions include: methods of agriculture or horticulture, methods of medical or surgical treatment of human beings or animals, mere discoveries of scientific principles, or inventions that are contrary to public order or morality. This feature of the Indian patent system is important to avoid monopolizing basic goods and processes, especially in the pharmaceutical and agricultural industries, as this is particularly important for developing countries. (Maskus, 2020). Copyright is a legal right that protects original work of authorship in literary, dramatic, musical, artistic and cinematographic works. Unlike a patent, copyright does not protect ideas, concepts, or facts. Copyright protects the expression of those ideas. In India, copyright law is governed by the Copyright Act of 1957. The main feature of copyright law is that the copyright is automatic as soon as a work is created in tangible form. Copyright protection can be obtained without registration of a work; however, registration is a proof of copyright in case of dispute and it is required before proceeding with litigation.

In India, copyright lasts for the lifetime of the copyright holder and 60 years from the beginning of the calendar year following their death. Copyright lasts 60 years from the calendar year of publication for cinematographic films, sound recordings and certain other works. Copyright law provides the copyright holder with a bundle of exclusive rights, including the right to reproduce the copyrighted work, issue copies to the public and perform the work in public. Someone who uses copyrighted works without permission is said to infringe the copyright holder's rights. The Copyright Act also provides "fair dealing" exemptions that allow limited use of a copyrighted work without the owner's permission for certain purposes, including research, criticism, review and reporting of current events. A trademark is a sign which is capable of distinguishing the material goods, or services of one enterprise from other enterprises. A trademark may be a word, name, logo, symbol or combination of colors. Trademarks are an important part of brand identity and consumer protection. (Bhattacharya, 2021)

The central body of law governing trademarks in India is set out within The Trademarks Act of 1999. This Act sets out the process of registration of trademarks, which - once registered - gives to the owner an exclusive right to use the trademark in respect of the goods or services which have been registered. Registration of a trademark also allows for a legal route to bring action for infringement of the trademark. A trademark registration lasts for an initial period of 10 years, capable of being renewed indefinitely as long as the trademark is in use.

Another significant law is the Patents Act, 1970, as it is a revolutionary piece of legislation that has shaped the continuum of intellectual property in India. The Patents Act of 1970 replaces the previous colonial law; the Indian Patents and Designs Act of 1911, with a wider intention of achieving indigenous innovation, whilst ensuring that patented inventions were also made available in areas of public interest (such as the health sector). The Act underwent amendments expanding the scope of patents over the years to accommodate and meet India's obligations under the trade agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as a member of the World Trade Organization (WTO).

The purpose behind the Patents Act, 1970 is to achieve a balance between the rights of inventors and the public interest. The invention should be novel and must not have been disclosed to the public in any part of the world. The invention must involve a technical advancement that is not obvious to someone of skill in the art based on the existing knowledge. The invention needs to be capable of being made or used in an industry.

The Act articulates various inventions that should not be patentable, signaling a clear public welfare mindedness. Perhaps most famously, Section 3(d) precludes the “evergreening” of patents, which is when a lawyer obtains a new patent for the slight change of a known substance. These quickly gained notoriety as a way of improving the efficacy of an existing drug, and it became something that was overly basic to deny because the patentably basic variation inherently provides a better approach than the existing substance. Section 3(d) is crucial in the field of pharmaceuticals to ensure the

availability of affordable medications by preventing companies from expanding their monopolies for existing substances through minor, insignificant changes. (Mueller, 2021)

Literature Review

Bansal et al. (2021): The Act provides protection of patents for a period of 20 years from the date the application is filed. This is a worldwide standard that allows inventors to recover costs for research and development and obtain profits from that particular invention for a limited time.

Chiruvoori et al. (2022): A patentee is granted the exclusive right to stop others from making, using, selling, or importing the patented invention without their consent. This provides a powerful incentive for innovation and investment.

Agrawal et al. (2023): The original Patents Act, 1970, was a departure from the pro-product patent regime of colonial days. The Patents Act of 1970 primarily provided process patents for food, drugs, and chemicals. The Patents Act of 1970 permitted Indian companies to reverse engineer products and produce low-cost generics, and this model has been the backbone of the growth of India's pharmaceutical industry.

Patil et al. (2020): When India became a member of the WTO in 1995, substantial changes to patent law were required so that India's laws would be compliant with the TRIPS Agreement. As a result of these requirements, a number of significant amendments were enacted to the Patents Act, including the Patents (Amendment) Act of 2005, which made India fully compliant with TRIPS.

Saha et al. (2021): The 2005 amendment provided patent protection for products in all fields of technology, including pharmaceuticals and chemicals, marking a significant departure from the prior regime, which only allowed for process patents.

Shivam et al. (2023): The patent term was standardized to 20 years, consistent with international practice. The Act also retained and refined the provisions related to compulsory licensing in conjunction with the introduction of product patents.

Navneet et al. (2020): The 2005 amendment mechanism enables the government to permit a third party to manufacture a patented product even without the agreement of the patent holder, provided that several conditions are met, such as the patent invention is not available at a reasonably affordable price and/or the reasonable requirements of the public have not been met. This is an important provision that protects public health and access to certain goods.

Analytical study of intellectual property Rights with special reference to patent copyright and trademark in India

The Patents Act, 1970, and its amendments have had a significant impact on the Indian industry and society. The original Act promoted the establishment of a self-reliant and innovative domestic industry by enabling Indian companies to flourish through reverse-engineering, particularly the pharmaceutical sector.

Following the implementation of the TRIPS Agreement, we now have product patents and a seat at the global IP table, but we also have complexities. In tandem with the greater interest of MNCs in India and the focus on getting Indian companies to invest more in their own R&D as part of their transition to a product patent regime, we now have the issue of the cost of patented drugs to access those drugs. This increases the significance of provisions like Section 3(d) and compulsory licensing.

The Patents Act, 1970, is a living document, a policy tool, which keeps changing. It represents India's dedication to achieve a balance between protection and public interest, stressing the need for hospital national industry. Its past is of stimulating indigenous innovations, building a world class pharmaceutical industry alongside a national legal framework which has the global essence but with strong anchors to the socio economic values of India.

The Copyright Act of 1957 is an integral part of intellectual property law in India. Its purpose is to protect the rights of creators and promote an ecosystem for innovation and artistic expression. The legislation itself came into force on January 21, 1958, and is an

exhaustive law relating to copyrights in India. It is a legal framework that serves to protect the works of authors, artists, musicians, and other creators of original works while balancing their rights with the public's right to receive and use knowledge.

The Copyright Act of 1957 is intended to fulfill two primary purposes - to grant original creators exclusive rights to their works, and to provide a remedy for the unauthorized use or infringement of their works. The Copyright Act protects not only the musical composition - the melody, harmony and rhythm, but it also includes a wide variety of works, such as paintings, sculptures, drawings, engravings, photographs and architectural works and provides separate protection for movies and other audiovisual works and recordings of sounds, such as music, speeches, or other sounds.

It is crucial to understand that copyright protects the expression of an idea, not the idea itself. Someone may have a great idea for a book, but it is the actual expression of that idea in a manuscript that copyright protects.

The Act creates a "bundle of rights" (as they are termed in the Act) that are not simply or only economic but also possess moral rights. These are the exclusive rights that allow the author to commercially exploit the work - as you can see in the Act. The right to reproduce the work in any material form. The right to communicate the work to the public in various ways (for example, broadcasting, streaming online). The right to adapt the work into a new work (for example, to convert a book into a movie). The right to translate the work into another language. And lastly to sell or otherwise distribute the work to the public in a material form.

Section 57 protects moral rights, which are separate and distinct from economic rights. Moral rights are the rights that stay with the author after the copyright is transferred to another party. Moral rights are deeply personal and protect the integrity and reputation of the author.

The duration of copyright protection varies based on the category of work. For most literary, dramatic, musical, and artistic works, copyright exists for the lifetime of the author, plus sixty years from the beginning of the calendar year after the individual's death. For

other works classified as cinematograph films, sound recordings, and works with an anonymous name, protection lasts for a period of sixty years from the date the work becomes available to the public.

In order to achieve a compromise between creator protection and public interest, the Copyright Act, 1957, includes the doctrine of "fair dealing" under Section 52. This allows the user to use copyright works without the owner's permission for certain purposes.

The Copyright Act, 1957 has been amended multiple times since it was first introduced to keep up with technology and international standards of law. The most significant amendment was the Copyright (Amendment) Act, 2012, which took measures to bring Indian law in line with the WIPO Internet Treaties to curb challenges of digital piracy and global online communication. The amendment sought to ensure payment of royalties to performers and lyricists/composers for public performances of their work in films and sound recordings. The Act also increased penalties and imprisonment periods for copyright infringement, particularly digital piracy, significantly.

More recent discussions and proposed amendments, such as those in 2023, have aimed to address the challenges posed by artificial intelligence (AI) and its role in content creation. This reflects the Act's ongoing evolution to remain relevant in a rapidly changing digital world.

The Copyright Act, 1957, is a foundational piece of legislation that has played a crucial role in shaping India's creative and intellectual landscape. By providing a clear legal framework for protecting the rights of creators, it has encouraged a culture of originality and rewarded artistic and scholarly endeavors. While the Act has been adapted over time to meet the demands of a modern, digital society, its core principles remain steadfast: to protect the exclusive rights of creators, while also ensuring that their work contributes to the broader progress and cultural enrichment of society.

The Trademarks Act, 1999 is a landmark piece of legislation in India that governs the law relating to trademarks. It was enacted to replace the outdated Trade and Merchandise Marks Act, 1958, and to align India's trademark law with international standards,

particularly the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Act is a comprehensive legal framework that aims to provide for the registration, better protection, and enforcement of trademarks for goods and services, and to prevent the use of fraudulent marks. Its significance lies in its modern approach to intellectual property, fostering fair competition, and protecting both businesses and consumers.

One of the key features of the Trademarks Act, 1999, is its broadened definition of a "trademark." The Act defines a trademark as a mark capable of being represented graphically and which can distinguish the goods or services of one person from those of others. This inclusive definition expanded the scope of what could be registered, going beyond traditional words and logos to include non-traditional marks like the shape of goods, their packaging, and even a combination of colors or sounds, provided they are capable of graphical representation and are distinctive. This provision reflects a modern understanding of branding and brand identity in a globalized economy.

The Act introduced several significant provisions that streamlined the trademark registration process and enhanced protection. It introduced the concept of "service marks," which allows for the registration of marks for services in addition to goods, a crucial development in a service-driven economy. The Act also provides for the registration of "collective marks" and "certification marks," which are used by associations and certifying bodies, respectively. Furthermore, it extended the term of registration and renewal from seven to ten years, providing a more stable and long-term protection for brand owners.

A crucial aspect of the Act is its robust provisions against infringement and passing off. It clearly defines what constitutes a trademark infringement, including the unauthorized use of a mark that is identical or deceptively similar to a registered trademark, in a manner likely to cause confusion among consumers. The Act provides for both civil and criminal remedies for infringement, including injunctions, damages, and a clear legal basis to seize infringing goods. It also recognizes the common law remedy of "passing off" for

unregistered trademarks, thereby protecting the rights of brand owners who have not yet registered their marks but have established a reputation in the market.

A notable feature of the Trademarks Act, 1999, is the special protection accorded to "well-known trademarks." The Act acknowledges that certain marks have a reputation that extends beyond the goods or services for which they are registered. It prohibits the registration of marks that are deceptively similar to well-known trademarks, even if they are for different classes of goods or services. This provision prevents the dilution of the reputation of famous brands and protects them from being used for unfair commercial advantage.

The Act also modernized the administrative and judicial machinery for trademark law. It established the Trademark Registry and provided for the classification of goods and services according to the international Nice Classification system. It also introduced the concept of the Intellectual Property Appellate Board (IPAB) for speedy disposal of appeals and rectification applications, which were previously handled by the High Courts. While the IPAB has since been abolished, the move demonstrated the intent to create a specialized forum for intellectual property disputes.

The Trademarks Act, 1999, is a comprehensive and forward-looking legislation that has played a pivotal role in strengthening India's intellectual property framework. By aligning with international standards, broadening the definition of a trademark, introducing new types of marks, and providing a robust legal framework for protection and enforcement, the Act has created a conducive environment for businesses to innovate and build their brands. It serves as a vital tool for safeguarding brand identity, protecting consumer interests from deceptive practices, and promoting fair competition in the marketplace. The Act's provisions continue to be relevant in the contemporary business landscape, where trademarks are increasingly recognized as valuable and indispensable assets.

Conclusion

The analytical study of three core IPRs in India reveals a legal system that is both comprehensive and dynamic. It balances the need to incentivize creativity and invention

with the broader societal goals of public access and economic development. The specific laws for patents, copyrights, and trademarks, along with their respective terms and provisions, reflect India's commitment to building a robust intellectual property framework that is aligned with both domestic needs and international standards.

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