Module - 4

Role of IP in the Economic and Cultural development of the society:

It is crucial for us to recognize the importance of intellectual property rights (IPR) and support its implementation. By safeguarding the rights of creators and innovators, we not only promote a culture of creativity but also foster economic growth and social progress. IPR acts as a catalyst for innovation, inspiring individuals to push boundaries and explore new possibilities.
In order to strike a balance between the interests of creators/inventors & the community, various laws, exceptions, and limitations have been enacted. These measures aim to address the potential drawbacks of IPR and ensure a fair & equitable system for all stakeholders involved. Compliance with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

Farmers "rights under the Protection of Plant Varieties and Farmers" Rights (PVP&FR) Act, 2001 entitles them to many privileges, such as _Rights on seeds' provides rights to the farmers to save seeds, use seeds and share, exchange or sell seeds to other farmers and _Right to protection against accusations of infringement' protects the farmers from infringement and other legal accusation levied upon them due to his legal ignorance in using other's plant varieties. India is enriched with massive biodiversity and genetic resources and their use is embodied in what is referred to as Traditional Knowledge (TK).

With initiatives like Make in India', Atmanirbhar Bharat' and supporting local homegrown brands, and an easy as well as accessible approach to patents and trademark registration, it is possible to reap the benefits of our resources.

IP Governance:

IP is an integral component of human society, each and every nation has dedicated agencies for laying out the guidelines, implementation and enforcement of IP-related matters. In India, many organizations/agencies deal with various aspects of IP. The governance of all categories of IP, except the Plant Variety and Farmers' Rights Act, is carried out by the Department for Promotion of Industry & Internal Trade (DPIIT) under the aegis of Ministry of Commerce and Industry, GoI.

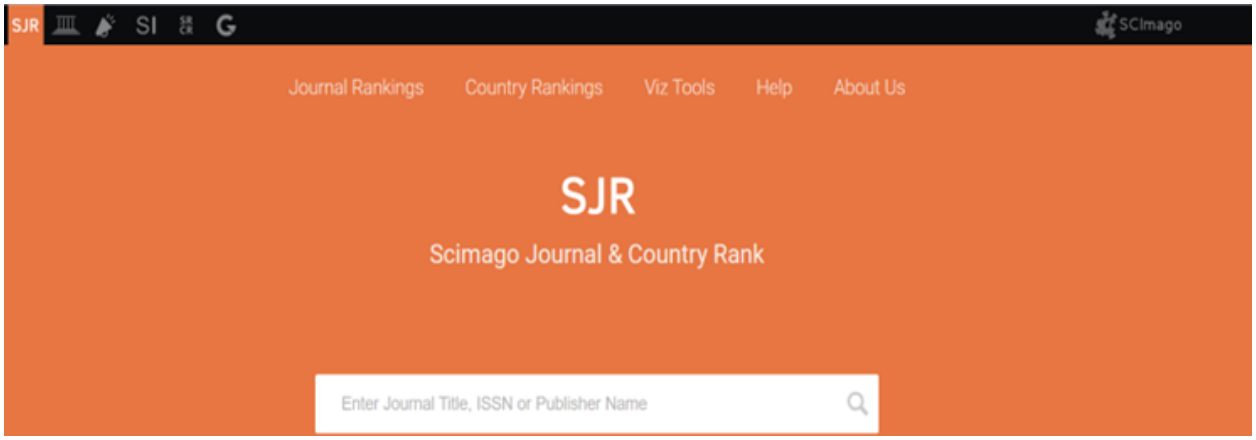
Examples

- ➢ Technology Information Forecasting and Assessment Council (TIFAC),
- ➢ National Research Development Corporation (NRDC),
- ➢ Cell for IPR Promotion and Management (CIPAM), etc.

For a hassle-free exchange of IP related activities amongst all the nations, it is imperative to have minimum standards of rules and regulations pertaining to all aspects of IP including rights, empowerment, exceptions, etc. To achieve this goal, the ***United Nations (UN)*** has established an organization called the ***World Intellectual Property Organization (WIPO).*** This agency is at the forefront of imparting knowledge about IP and governs international filing and registration of IP through various Conventions and Treaties like Paris Conventions, Patent Cooperation Treaty (PCT), Rome Convention, Berne Convention, etc.

IP as a Global Indicator of Innovation:

IP, especially patents, is considered one of the important cogs in assessing the innovation index of a nation. The global ranking organizations always have IP or a subset of IP as one of the parameters for understanding and grading the Science, Technology, and Innovation (STI) ecosystem of a nation. Scimago (publically available online portal which ranks journals and countries based on the data taken from Scopus) 2020 report ranked India at 4th position in the parameter of a number of 'Research Publications', and 50th position in the parameter of 'Intellectual Property Rights'.



Origin of IP:

Though there is no official record of the origin of IP, it is believed that a rudimentary form of IP was being practised around 500 Before the Common Era (BCE) in Sybaris, a state of Greece. A practical and pragmatic approach for IP governance started taking shape in medieval Europe. However, this legislation brought a lot of resentment amongst the public, and thus was replaced by the _Statute of Monopolies‘, which gave the rights to the original creator/inventor for 14 years. By the end of the 18th century and the beginning of the 19th century, almost every country started laying down IP legislation to protect their novel inventions and creations.

History of IP in India:

The new Act was rechristened as ―The Patterns and Designs Protection Act under Act XIII of 1872. This Act was further amended in 1883 (XVI of 1883) to include the provision of protection for **‘Novelty’** in the invention. At the beginning of the 20th century, all the earlier Acts related to inventions and designs were done away with the introduction of ‘The Indian Patents and Designs Act, 1911’ (Act II of 1911). As per this Act, the governance of patents was placed under the management of the Controller of Patents. In the next three decades, many amendments were introduced for reciprocal arrangements with other countries for securing priority dates.

- Use of invention by the government.
- Patent of Addition.
- Enhancing the term of the patent from 14 years to 16 years.
- Filing of 'Provisional Application' and submission of 'Complete Application' within 9 months from the date of filing the application.

Priority Date:
The date on which the first application for the invention is filed, whether it is provisional or with complete specifications.

With the rapidly changing scenario of IPR at a global level, a need was felt to further amend the Patent Act, 1970.

The highlight of the Patents (Amendments) Act 2005 were:

- ➢ Product patent for inventions in all fields of technology.
- ➢ New forms of known substances are excluded to prevent evergreening of the patent.
- ➢ Rationalization of the opposition procedure.
- ➢ Introduction of pre-grant opposition by representation.
- ➢ Introduction of post-grant opposition.
- ➢ Compulsory license for export purposes.
- ➢ Compulsory license for manufacture.
- ➢ Extension of grace period from 6 months to 12 months for filing a patent, if published in government exhibition.

Copyrights and Related Rights:

'Copyrights' refer to the legal rights provided by law to the original creator of the work in the fields of literature and computer software. The 'Related Rights' encompass the author's work in the fields of dramatics, sound recording, film/video recordings, paintings, architecture, etc. Copyrights and Related Rights are one of the categories of IP and governed by the Copyright Act, 1957 of India. This Act provides rights of reproduction, communication to the masses, adaptation and translation of the work.

Classes of copyrights:

In India, following classes of Copyrights exist:

- ➢ **Literature:** Books, Essays, Research articles, Oral speeches, Lectures, Compilations, Computer programme, Software,Databases.

- **Dramatics:** Screenplays, Dramas.
- **Sound Recordings:** Recording of sounds regardless of the medium on which such recording is made e.g. a Phonogram and a CD-ROM.
- **Artistic:** Drawing, Painting, Logo, Map, Chart, Photographs, Work of Architecture, Engravings, and Craftsmanship.
- **Musical:** Musical notations, excluding any words or any action intended to be sung, spoken or performed with the music. A musical work need not be written down to enjoy Copyright protection.
- **Cinematograph Films:** 'Cinematograph Film' is a visual recording performed by any medium, formed through a process and includes a sound recording. For example, Motion Pictures, TV Programmes , Visual Recording, Sound Recording, etc

Criteria for copyright:

- To qualify for Copyright protection, a work must exist in some physical (or tangible) form. The duration of the existence of the physical form may vary from a very short period to many years. Virtually any form of expression which can be viewed or listened to is eligible to qualify as Copyright.
- The Copyright work has to be expressed by the creator in his frame of thought. In other words, the work has to be original i.e. the author created it from independent thinking void of duplication

Ownership of copyright:

- The person who created the work is considered as the first (original) holder (owner) of the Copyright
- In case the author is an employee and has been contracted to do the work by a proprietor (of the company/firm/society /organization, etc.), the owner of the Copyright shall be the proprietor.
- The government will be the primary owner of the government work in the absence of any kind of arrangement.
- The person delivering a speech is the first owner of the Copyright.

Copyrights of author:

- ➢ A Copyright owner enjoys two types of rights i.e. **Economic Rights** (or Proprietary Rights) and **Moral Rights** (or Personal Rights).
- ➢ **Economic Rights are associated with financial benefits accruing** from the sale of copyrights. As per the Act, Copyright owners can authorize or prohibit:

a. Reproduction of the work in any form, including printed publications or sound recordings.

b. Distribution of copies of the work.

c. Public performance of the work.

d. Broadcasting/communicating the work to the public.

e. Translating the work into other languages.

f. Adaptation of the work, such as converting a novel into a screenplay.

Patents:

A patent is a grant from the government which confers on the guarantee for a limited period of time the exclusive privilege of making, selling and using the invention for which a patent has been granted

Conditions for Obtaining a Patent Protection

There is a set criterion, as provided in Section 2(1)(j) of the Patents Act, 1970, which must be fulfilled for a product or a process to qualify for the grant of a patent.

A. **Novelty:** *Not part of 'State of the Art*
B. **Inventive step:** *Not obvious to the person (s) skilled in the art.*
C. **Capable of industrial application:** *For the benefit of society*

Invention is the creation of a new idea or concept.
Innovation is the process of translating an invention into commercial entity or widespread use.

To Patent or Not to Patent an Invention:

- ➢ Once an invention has been developed, the inventor has to decide whether to exploit the invention for personal benefits as provided by the statutory laws of the country or put it in the public domain
- ➢ If the owner of an invention wishes to seek monetary gains, he can choose from either of the two options, i.e. patenting or Trade Secret
- ➢ If the inventor is absolutely sure of maintaining the secrecy of the invention for a very long period (maybe 100 years or more) and the probability of reverse engineering of the technology is nil or very low, then the Trade Secret category is preferred
- ➢ If the invention has a short life span or can be kept secret only for a small period of time (a couple of years or so) or the probability of reverse engineering is high once the invention is in the public domain, then the patent category is preferred

Non-patentable Matters:

- **Invention contrary to public morality** - a method for human cloning, a method for gambling.
- **Mere discovery** - finding a new micro-organism occurring freely in nature, laws of gravity.
- **Mere discovery of a new form of a known substance** - use of aspirin for heart treatment. Aspirin was patented for reducing fever and mild pains.
- **Frivolous invention** - dough supplemented with herbs, merely changing the taste of the dough, 100 years calendar, bus timetable.
- **Arrangement or rearrangement** - an umbrella fitted with a fan, a torch attached to a bucket.
- **Inventions falling within Section 20(1) of the Atomic Energy Act, 1962** - inventions relating to compounds of Uranium, Beryllium, Thorium, Plutonium, Radium, Graphite, Lithium and more as notified by the Central Government from time to time.
- **Literary, dramatic, musical, artistic work** - books, sculptures, drawings, paintings, computer programmes, mathematical calculations, online chatting method, method of teaching, method of learning a language as they are the subject matter of Copyright Act. 1957.
- **Topography of integrated circuits** - protection of layout designs of integrated circuits is provided separately under the Semiconductor Integrated Circuit Layout Designs Act, 2000.
- **Plants and animals** - plants and animals in whole or any part including seeds, varieties and species and essentially biological processes for the production or propagation of plants and animals are excluded from the scope of protection under patents.
- **Traditional knowledge** - an invention which in effect is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known components are also excluded.

Trademark:

A trademark or trade mark is a distinctive sign or indicator of some kind which is used by an individual, business organization or other legal entity to uniquely identify the source of its products and/or services to consumers, and to distinguish its products or services from those of other entities. A trademark is a device which can take almost any form, as long as it is capable of identifying and distinguishing specific goods or services.

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(for an **Unregistered Trademark**, that is, a mark used to promote or brand goods)

- SM (for an unregistered **Service mark**, that is, a mark used to promote or brand services)

- ® (for a registered trademark)

Trademark classification in India:

Trademark in India is classified in about 45 different classes, which includes chemical substances used in industry, paints, lubricants machine and machine tools, medical and surgical instruments, stationary, lather, household, furniture, textiles, games, beverages preparatory material, building material, sanitary material, and hand tools, other scientific and educational products. These classes again are further sub-divided. The main objective of trademark classification is to group together the similar nature of goods and services. Here are the classes for product and for services.

The term of registration of trademark is 10 (Ten) years, but may be renewed subject to the payment of the prescribed fee, in accordance with the provisions of the Trademarks Act, 1999. An application for renewal of a trademark can be filed within six months from Constantia (Body) the expiry of the last registration of trademark.

Use of the .TM. and ® symbols

Generally, one who has filed an application (pending registration) can use the TM (trademark) designation with the mark to alert the public of his exclusive claim. The claim may or may not be valid. The registration symbol,
®,may only be used when the mark is registered.

Geographical Indications:

A Geographical Indication (GI) is defined as a sign which can be used on products belonging to a particular geographical location/region and possesses qualities or a reputation associated with that region. In GI, there is a strong link between the product and its original place of production.

Rights granted to holders

- ➢ Right to grant the license to others
- ➢ Right to sue
- ➢ Right to exploit
- ➢ Right to get reliefs

Registered GIs in India:

GI	Type	State
Darjeeling Tea	Agriculture	West Bengal
Mysore Silk	Handicraft	Karnataka
Kashmir Pashmina	Handicraft	Jammu & Kashmir
Banaras Brocades and Sarees	Handicraft	Uttar Pradesh
Naga Mircha	Agriculture	Nagaland
Tirupathi Laddu	Foodstuff	Andhra Pradesh
Phulkari	Handicraft	Punjab, Haryana, Rajasthan
Basmati	Agriculture	India

Source: http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/GI_Application_Register_10-09-2019.pdf

Documents required for GI registration:

- ➢ Details about the applicant‘s name, address and particulars.
- ➢ Application form GI-1A.
- ➢ Statement about the designated goods being protected under GI.
- ➢ Class of goods.
- ➢ Affidavit to establish the claim of genuinely representing the interest of the producers.
- ➢ Characteristics of GI.
- ➢ The special human skill required (if any)

Trade Secrets:

Trade Secret, a form of IP, deals with a practice or a process of a company that is generally not known outside the company. The confidential secret provides the company a commercial advantage over its rivals and is often a product of internal R&D. Trade Secret document comprises of technical information involving manufacturing processes, experimental research data, formulas, recipes, software algorithms, and commercial information comprising of marketing strategies and a list of product/process recipients.

Criteria for trade secret:
For a product/process to qualify as a Trade Secret, the information should have, at least, the following criteria:

- ➢ Should be of commercial value.
- ➢ Secret information should not be in the public domain. It should be known to a limited group of people.
- ➢ Legal owner/s of the secret must ensure taking reasonable steps to keep the secret information and agreements (if any) confidential.

When to apply for Trade Secret Protection

In case of an innovation, there are no specific guidelines whether to opt for a Patent or Trade Secret. However, Trade Secret is preferred when:

- ➢ Innovation does not qualify the criteria set for patenting.
- ➢ Trade secret is an attractive proposition provided the information can be kept secret for more than 20 years i.e. time period of patent.
- ➢ Innovation is concerned with the manufacturing process (and not a novel product).

Semiconductor Integrated Circuits layout design:

A layout design or topography can be defined as the unique and novel combination of electronic components and interconnections through signal tracks between those components. This circuit design will be protected under the national law and the creator of the layout will be conferred with certain rights if it is original. Semiconductor Integrated Circuits are made up of a complex series of layers of semiconductors, insulators, components, metals, and other materials on a substrate.

The specific criteria for the protection under the Semiconductor Integrated Circuits Layout Design (SICLD) Act, 2000 are:

- ➢ The layout design should be original.
- ➢ There must distinctiveness in the Design.
- ➢ The design must be novel and capable of distinguishing from any other layout Design
- ➢ The Design must not be exploited commercially anywhere in India or a Convention Country.

Basic definitions of SICLD are as follows:

- ➢ **Semiconductor Integrated Circuit** is defined as the product having transistors or any circuitry elements, which are formed on a semiconductor/insulating material which is designed to perform an electronic circuitry function.
- ➢ **Layout-Design** means a layout if circuitry elements like transistors, resistors, capacitors, etc. and lead wires connecting all components have been articulated in a semiconductor integrated circuit.
- ➢ **Commercial exploitation or use**, with regards to the SICLD , means to sell, export, lease, offer or exhibit for sale or otherwise distribute such semiconductor integrated circuit layout design for making any commercial benefit out of registered design.

Plant varieties:

A plant variety represents a more precisely defined group of plants, selected from within a species, with a common set of characteristics. Under the unique system of IPR, protection to new plant varieties is provided through _Plant Breeder‘s Right‘ (PBR), granted to the breeder of the new plant variety. A breeder is a person who bred, discovered or developed a variety.

Need for plant protection as an IP:
The development of new plant varieties with improved yields, better quality and higher pest and disease resistance has contributed immensely to agricultural productivity. Plant Breeders spend years developing new plant varieties with superior characteristics that require substantial financial investments. Therefore, IP protection of newly developed plant varieties offers a reward system for breeders and encourages them to develop new plant varieties.

Conditions for registration of new plant variety

- ➢ Novelty - Plant variety (propagated and harvested material) has not been exploited earlier than one year in India and earlier than four years outside India.
- ➢ Distinctiveness - Plant variety is distinct in its essential characteristics from other plant varieties.
- ➢ Uniformity - All plants of the plant variety show the same characteristics (subjected to variation in generations due to propagation).

- ➢ Stability - Through many generations, the essential characteristics of the plant should not change in terms of quality and content.

Industrial Designs:

Definition: The word Design‘ is defined as the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article.
The main object of registration of industrial designs is to protect and incentivize the original creativity of the originator and encourage others to work towards the art of creativity.
Eligibility Criteria: Design must be novel or original and should be significantly distinguishable from the already registered Designs existing in the public domain.
Acts and Laws: In India, Industrial Designs are governed under _The Designs Act‘, 2000 and _Design Rules‘, 2001 and have been amended from time to time.
Administration: The administration of matters pertaining to Industrial Designs is carried out by the Office of CGPDTM, GoI under DPIIT.
Rights: Registration of Design ensures the exclusive rights of the applicant on the Design. The Design registration confers a monopolistic right to the proprietor by which he can legally exclude others from reproducing, manufacturing, selling, or dealing in the said registered Design without his prior consent. The owner can prevent the registered Design products from piracy and imitation.
Validity: The registered Designs are protected for 10 years in India and can be extended by 5 years after making a renewal application.
Items which cannot be registered as Industrial Design: Flags, emblems or signs of any country, and any Industrial Design which is against public moral values.
Treaties/Conventions/Agreements: Hague Agreement for international registration (1925); Locarno Agreement (1968) for international classification.
Additional Information: Designs are registered in different classes as per the Locarno Agreement, 1968.