

ANALYTICAL STUDY OF INTELLECTUAL PROPERTY RIGHTS WITH SPECIAL REFERENCE TO PATENT, COPYRIGHT AND TRADEMARK IN INDIA

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Abstract

In the modern, knowledge-driven economy, intellectual property (IP) has become a crucial asset for individuals and businesses alike. Intellectual property rights (IPR) provide creators and innovators with a legal framework to protect their unique creations and benefit from their hard work. In India, the three most significant forms of IPR are patents, copyrights, and trademarks. While they all serve the common purpose of safeguarding intellectual creations, they protect different types of assets and are governed by distinct legal statutes. This article will delve into the intricacies of these three pillars of Indian intellectual property law, exploring their definitions, legal frameworks, and their importance in fostering innovation and creativity. The legal landscape for intellectual property in India is a result of a historical evolution, moving from a colonial framework to one that is aligned with international standards, particularly the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement of the World Trade Organization (WTO). A patent is a statutory right granted by the government to an inventor for a new, non-obvious, and industrially applicable invention. It gives the patent holder the exclusive right to prevent others from making, using, selling, or importing the patented product or process for a limited period, typically 20 years from the date of filing. The core purpose of patent law is to encourage innovation by providing inventors with a period of monopoly in exchange for a full public disclosure of their invention.

Keywords:

Intellectual, Property, Rights, Patent, Copyright, Trademark

Introduction

The Patents Act, 1970, also lists specific inventions that are not patentable, such as frivolous inventions, mere discoveries of scientific principles, or computer programs "per se". This is to strike a balance between promoting innovation and preventing monopolies on fundamental knowledge. (Maskus, 2020)

Copyright, unlike a patent, protects the *expression* of an idea, not the idea itself. It is a bundle of rights granted to the creators of original literary, dramatic, musical, and artistic works, as well as cinematograph films and sound recordings. The protection is automatic as soon as the work is created and fixed in a tangible form; registration is not mandatory but is recommended for a stronger legal position.

The duration of copyright protection in India generally extends for the lifetime of the author plus 60 years. For anonymous works, cinematograph films, and sound recordings, the term is 60 years from the year of publication. The Copyright Act, 1957, also provides for "fair dealing" exceptions, which allow for the use of copyrighted material without permission for purposes like research, criticism, or reporting of current events.

A trademark is a recognizable symbol, word, name, or slogan used by a business to identify and distinguish its goods or services from those of its competitors. The primary function of a trademark is to act as a source identifier, helping consumers to recognize and trust a particular brand. Trademarks can be registered, which provides legal protection and a strong market position, or they can be protected under common law principles of "passing off" even if unregistered.

The Trade Marks Act, 1999, defines a trademark as a mark capable of being represented graphically and distinguishing the goods or services of one person from another. A registered trademark is valid for 10 years and can be renewed indefinitely, as long as it is in use. The law also provides protection for "well-known marks" and allows for the registration of non-conventional trademarks like sound marks and 3D marks. Trademark infringement occurs when a person uses a mark

that is identical or deceptively similar to a registered trademark, causing consumer confusion. (Bhattacharya, 2021)

The Patents Act, 1970, stands as a cornerstone of India's intellectual property legal framework. It governs the grant, protection, and enforcement of patents, serving a dual purpose: to incentivize innovation by granting exclusive rights to inventors while simultaneously ensuring that these rights do not impede public welfare. The evolution of this Act, from its inception rooted in a nationalistic and pro-public health philosophy to its modern, internationally compliant form, is a fascinating narrative that reflects India's journey as a developing nation.

The historical context of the Act is crucial to understanding its original intent. Before 1970, India's patent law was primarily governed by the colonial-era Indian Patents and Designs Act, 1911, which was largely a replica of the British system. This law granted both product and process patents, often benefiting foreign multinational corporations and leading to high prices for essential goods, particularly life-saving drugs. Following independence, the government sought to create a legal framework that would promote indigenous research and development, industrial growth, and the affordability of critical products. This desire culminated in the Ayyangar Committee Report of 1959, which laid the ideological foundation for the Patents Act, 1970.

The original Patents Act, 1970, was a revolutionary piece of legislation for its time. Its most significant feature was its distinction between process and product patents. While product patents were granted for all fields of technology, the Act specifically excluded product patents for food, medicines, and chemicals, allowing only process patents for a short duration. This meant that while an inventor could patent the specific method to create a drug, other companies could legally reverse-engineer and create the same drug using a different process. This provision single-handedly spurred the growth of India's now-thriving generic drug industry, which became a global leader in producing affordable medicines. The Act also introduced the concept of "compulsory licensing," a crucial safeguard that allowed the government to authorize a third party to manufacture a patented invention without the patent

holder's consent if the patent was not being adequately worked in India or if it was required for public interest. (Mueller, 2021)

Literature Review

Bansal et al. (2021): India's entry into the World Trade Organization (WTO) in 1995 necessitated a major overhaul of its patent regime. As a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), India was obligated to grant product patents in all fields of technology, including pharmaceuticals. This led to a series of amendments, culminating in the landmark Patents (Amendment) Act, 2005.

Chiruvoori et al. (2022): The 2005 Amendment marked a fundamental shift, reintroducing product patents for food, pharmaceuticals, and chemicals. This change brought India's law into compliance with international standards, but not without critical safeguards to protect public interest.

Agrawal et al. (2023): A key innovation of this amendment was the introduction of Section 3(d). This provision explicitly states that the "mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance" is not patentable.

Patil et al. (2020): The primary purpose of Section 3(d) was to prevent "evergreening," a practice where a company extends the life of a patent by making minor, non-inventive modifications to a known product. This provision, which has been rigorously tested in Indian courts, ensures that patents are granted only for genuine innovation and not for trivial improvements, thus maintaining a balance between rewarding innovation and keeping essential products accessible.

Saha et al. (2021): The 2005 Amendment strengthened the compulsory licensing provisions in line with the Doha Declaration on TRIPS and Public Health, which affirmed the right of countries to use TRIPS flexibilities to protect public health. The amended Act made it possible to issue compulsory licenses for the export of

medicines to countries with insufficient or no manufacturing capacity to address public health emergencies, solidifying India's position as the "pharmacy of the world."

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

The Patents Act, 1970, is a dynamic piece of legislation that has evolved to meet both national aspirations and global commitments. From its original form designed to nurture domestic industries and ensure public access to affordable goods, to its modern avatar that complies with international treaties while retaining critical public interest safeguards like Section 3(d) and compulsory licensing, the Act has successfully navigated the complex demands of intellectual property in a globalized world. It stands as a testament to India's calibrated approach, balancing the monopoly rights of inventors with the fundamental needs of its citizens.

The Trade Marks Act, 1999 marks a pivotal moment in the history of intellectual property law in India. Enacted to repeal and replace the outdated Trade and Merchandise Marks Act, 1958, the new legislation was a comprehensive and forward-looking response to the evolving global economic landscape. Its primary objective was to modernize the legal framework governing trademarks, bringing it into compliance with international standards, particularly the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This act not only streamlined the process of trademark registration but also broadened the scope of protection, establishing a robust system that safeguards the interests of both trademark owners and consumers.

The 1999 Act was born out of a necessity to create a more efficient and user-friendly system for trademark protection. One of its most significant features is the inclusion of "services" within the definition of a trademark, a crucial addition that recognized the growing importance of the service sector in the Indian economy. The act also introduced the concept of "well-known trademarks," providing enhanced protection for marks that have gained widespread recognition. This provision ensures that such

marks cannot be misused by others, even in relation to dissimilar goods or services, thereby preventing dilution of their reputation.

Furthermore, the act simplifies the trademark registration process by introducing a single application for multiple classes of goods and services. This move significantly reduced procedural complexities and costs for businesses seeking to protect their brand identity. It also established the Intellectual Property Appellate Board (IPAB) to hear appeals from the Registrar of Trademarks, a specialized body that provides a faster and more efficient alternative to traditional civil courts for resolving trademark disputes.

The act provides a broad and inclusive definition of a trademark, moving beyond traditional visual representations to include non-conventional marks. A "mark" can now encompass a name, word, device, brand, heading, label, ticket, signature, letter, numeral, shape of goods, packaging or a combination of colours. Most notably, the act allows for the registration of "sound marks" and "smell marks" if they are capable of being graphically represented. This expansive definition reflects a modern understanding of branding, where a company's identity can be communicated through a variety of sensory cues.

A key aspect of the act is its clear distinction between trademark infringement and passing off. Trademark infringement occurs when a registered trademark is used by an unauthorized person in relation to goods or services for which it is registered, without permission. The test for infringement is a simple one: is the mark deceptively similar to the registered trademark?

Passing off, on the other hand, is a common law remedy that protects the goodwill and reputation of an unregistered trademark. It occurs when a person misrepresents their goods or services as those of another, causing confusion among consumers and harming the original business. The 1999 Act provides statutory recognition to this common law principle, offering a strong legal recourse for businesses that have not yet registered their marks. The remedies available for both infringement and

passing off include an injunction to stop the infringing activity, damages, or an account of profits.

The Trade Marks Act, 1999, is more than just a piece of legislation; it is a foundational pillar of India's intellectual property framework. By aligning the country's laws with global standards and introducing modern provisions for trademark protection, the act has fostered a more predictable and secure environment for businesses to innovate and build brand value. It not only protects a company's unique identity but also plays a crucial role in safeguarding consumer interests by preventing deception and confusion in the marketplace. The act's robust provisions and streamlined procedures have solidified its position as a landmark piece of legislation that continues to shape India's economic and legal landscape.

The Copyright Act of 1957 is a foundational piece of legislation in India that governs the intellectual property rights of creators. It is designed to safeguard original works of authorship, ensuring that authors, artists, musicians, and other creators have the exclusive right to control and profit from their creations. By striking a balance between the rights of creators and the public interest in accessing and using knowledge, the Act fosters a vibrant environment of innovation and artistic expression.

The primary purpose of the Copyright Act is to protect the expression of an idea, rather than the idea itself. This distinction is crucial, as it prevents monopolization of concepts while still rewarding the unique effort and skill put into an original work.

The Act extends its protection to a wide array of works, which are broadly categorized as follows:

Literary Works: This includes not only novels, poems, and articles, but also computer programs, databases, tables, and compilations.

Dramatic Works: These encompass plays, scripts, screenplays, and choreographic works.

Musical Works: This category covers both the musical score (sheet music) and the lyrics.

Artistic Works: This is a broad category including paintings, sculptures, drawings, photographs, architectural designs, and works of artistic craftsmanship.

Cinematograph Films: This covers all visual recordings, including the soundtrack, and is protected as a separate category.

Sound Recordings: This refers to any recording of sounds, regardless of the medium on which it is stored.

For a work to be eligible for copyright protection, it must be original, meaning it must have originated from the author and not been copied. The work must also be fixed in a tangible form, such as being written down, recorded, or painted.

A copyright owner is granted a bundle of exclusive rights, often referred to as "economic rights," that allow them to control how their work is used. These rights include:

Right of Reproduction: The exclusive right to make copies of the work.

Right of Distribution: The right to sell or rent copies of the work to the public.

Right of Public Performance: The right to perform the work in public, such as playing a song on the radio or screening a film in a theater.

Right of Communication to the Public: The right to make the work available to the public, for example, through a website.

Right of Adaptation: The right to create a new, derivative work based on the original (e.g., turning a novel into a film script).

In addition to these economic rights, the Act also grants "moral rights" to the author, which remain with the author even after the copyright is sold. These include the right of paternity (the right to be identified as the author) and the right of integrity (the right



to prevent any distortion, mutilation, or modification of the work that would be prejudicial to the author's honor or reputation).

The term of copyright protection is a crucial aspect of the Act. For literary, dramatic, musical, and artistic works, the general term is the lifetime of the author plus 60 years. For cinematograph films, sound recordings, photographs, and government works, the term is 60 years from the date the work was first published. This extended period ensures that creators and their heirs can benefit from the work for a significant time.

Copyright infringement occurs when any of these exclusive rights are violated without the permission of the copyright holder. This can include unauthorized copying, distribution, or public performance. The Act provides for both civil remedies (like injunctions and damages) and criminal remedies (such as imprisonment and fines) to deter and punish infringement.

To prevent the Act from stifling creativity and public discourse, it includes a number of exceptions and limitations. The concept of "fair dealing" (often referred to as "fair use" in other jurisdictions) is a key exception.

The Copyright Act, 1957, has been amended multiple times to keep pace with technological advancements. The most significant changes came with the 2012 amendment, which addressed challenges posed by the digital era. It introduced provisions to protect digital rights management (DRM) systems, extended copyright to new forms of communication, and strengthened the rights of authors in the film and music industries.

Despite these updates, the Act continues to face new challenges. The ease of digital copying and distribution makes enforcement difficult, and the rise of the internet has complicated jurisdiction and the definition of what constitutes "public communication." Furthermore, balancing the interests of multinational corporations with those of individual creators and the public remains an ongoing challenge.

The Copyright Act, 1957, is a cornerstone of India's intellectual property framework. It provides essential protection for a wide range of creative works, granting creators the rights to control and benefit from their efforts. While it has successfully adapted to many changes over the years, its continued relevance hinges on its ability to evolve in the face of new technologies and global challenges, ensuring that creativity remains a valued and protected asset in Indian society.

Conclusion

Patents, copyrights, and trademarks are distinct but complementary forms of intellectual property protection in India. Patents incentivize technological innovation, copyrights fuel the creative industries, and trademarks protect the brand identity and goodwill of businesses. The Indian legal framework, with its dedicated acts and administrative bodies, aims to provide robust protection for these intangible assets, ensuring a balance between the rights of creators and the public interest. As India continues to evolve as a global economic player, a strong and dynamic intellectual property regime is essential for fostering a culture of innovation, creativity, and fair competition.

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