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IPR IN INDIA: AN INTRODUCTION

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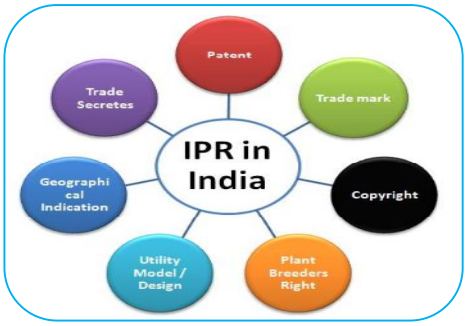
ABSTRACT

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 a 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.



KEY WORDS: - *Intellectual property rights (IPR) , intellectual property protection.*

INTRODUCTION:

Licensed innovation (IP) alludes to manifestations of the brain, for example, creations; scholarly and masterful works; structures; and images, names and pictures utilized in trade. IP is secured in law by, for instance, licenses, copyright and trademarks, which empower individuals to gain acknowledgment or monetary profit by what they concoct or make. By finding some kind of harmony between the interests of trailblazers and the more extensive open intrigue, the IP framework expects to cultivate a situation where innovativeness and advancement can prosper.

HISTORY OF IPR IN INDIA

The first patent law was introduced in India in 1856, which was followed by the Indian Patent Act of 1970. The first major step towards IPR protection came in 1995 when India joined the World Trade Organization (WTO) and became a signatory to the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement. This set minimum standards of intellectual property regulation by its members. The Madrid Protocol, of which India is a part, now permits the filing, registration and maintenance of trademark rights in more than 90 countries.

TYPES OF IPR IN INDIA

PATENT: A patent is allowed for a creation which is another item or procedure including an innovative advance and equipped for modern application."New development" signifies the topic has not fallen in open space or that it doesn't frame some portion of the best in class; Inventive advance is the feature(s) of the creation that

includes specialized development when contrasted with the current information or having financial centrality or both and that makes the innovation not evident to an individual gifted in the craftsmanship. Equipped for Industrial application implies that the creation is fit for being made or utilized in an industry.

DESIGN: A structure alludes just to the highlights of shape, setup, design, ornamentation, sythesis of shading or line or a mix thereof, applied to any article, regardless of whether a few dimensional or in the two structures by any modern procedure or means which, in the completed article, request to and are judged exclusively by the eye.

TRADEMARK: A trademark implies an imprint equipped for being spoken to graphically and which is fit for recognizing the merchandise or administrations of one endeavor from those of different endeavors. A trademark can be a sign, words, letters, numbers, drawings, pictures, token, hues or mix of hues, state of products, realistic portrayal or bundling or sound or any mix of the above as applied to merchandise or administrations.

GEOGRAPHICAL INDICATIONS: A geological sign distinguishes rural or regular or made merchandise as starting or fabricated in the region of a nation or district or region in that domain, where a given quality, notoriety or different qualities of such merchandise is basically inferable from its topographical birthplace and, on the off chance that where such merchandise are made merchandise, one of the exercises of either the creation or handling or planning of the products concerned happens in a such area, district, or region, all things considered.

COPYRIGHT : Copyright is a correct given by the law to makers of abstract, emotional, melodic and creative works and makers of cinematograph movies and sound accounts. Indeed, it is a heap of rights including, entomb alia, privileges of generation, correspondence to people in general, adjustment and interpretation of the work.

SEMICONDUCTOR INTEGRATED CIRCUITS LAYOUT-DESIGN: The aim 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.

PLANT VARIETY PROTECTION AND FARMER'S RIGHTS : Protection granted for plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

POLICY FOR IPR:

Adopted on 12th May 2016, the policy was formulated after intensive consultation with nearly 300 stakeholders and individuals by an IPR Think Tank, as well as 31 departments of the Government of India and 5 foreign Governments. Its aim is to spur creativity and stimulate innovation and ensure effective IPR protection in India.

The Vision articulation conceives an India where innovativeness and advancement are animated by Intellectual Property to support each of the; an India where protected innovation advances headway in science and innovation, expressions and culture, customary information and biodiversity assets; an India where information is the primary driver of improvement, and information claimed is changed into information shared.

Its clarion call is "Creative India; Innovative India: Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce, Government of India, has been appointed as the nodal department to coordinate, guide and oversee the implementation and future development of IPRs in India.

OBJECTIVE

The Policy is a comprehensive document that lays down seven objectives which have been elaborated with actionable steps to be undertaken by the identified nodal ministry/ department:

- IPR Awareness: Outreach and Promotion - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
- Generation of IPRs - To stimulate the generation of IPRs.
- Legal and Legislative Framework - To have solid and successful IPR laws, which balance the interests of rights proprietors with bigger open intrigue.
- Administration and Management - To modernize and fortify help arranged IPR organization.
- Commercialization of IPRs - Get an incentive for IPRs through commercialization.
- Enforcement and Adjudication - To reinforce the requirement and adjudicatory systems for battling IPR encroachments.
- Human Capital Development - To reinforce and extend HR, organizations and capacities with respect to educating, preparing, research and expertise working in IPRs.

STRATEGIES FOR PATENTING :

Inventors and investors are often busy in producing patents that are unique, valuable and worldwide marketable. But for the promotion and protection of the patents, and to enhance patenting system in India and abroad a few strategies are needed. These include

- An amicable eco-system (academic and research culture, resources, infrastructure, incentives, collaboration, expertise, discourses etc.) for creativity and innovation. Prior art search, an important element to reveal/review existing research literature.
- Creating awareness of traditional and publicly available knowledge which cannot be patented. Patent filing or provisional patent filing.
- Drafting claims (defined precisely based on scope, characteristics and structure) or disclosures that help others to exploit invention. Ensuring patent proliferation, policies and protection to avoid confrontation and infringement by the patent trolls.
- Evaluation of quality of patents to avoid in patent absurdity and piling of inconsequential patents Assured economic viability and societal value of the patent
- Collaboration among individuals, institutes, and industries in creation of innovative spirit and promotion of patents.
- Encouragement of open innovation Reverse innovation (Dartmouth) to encourage low-cost goods.
- However, the culture of patenting in India is slowly growing and needs to be speeded up. It needs a strong IPR mandate for building patenting system in India for the creation and generation of products, employment, income and wealth.

CHALLENGES OF IPR

On the other hand, the impact of IPR in India is limited and currently faces challenges. Violations are rife because of poor enforcement of rights and court cases that could run on for years. This is a sore point, particularly for large multinational corporations in areas like pharmaceuticals and agriculture. India, for example, is on the United States Trade Representative's (USTR's) 'Priority Watch List' for poor protection of the rights of American companies, along with countries like China, Russia, Indonesia, Saudi Arabia and Venezuela.

The Indian government, for its part, has been reluctant to enforce IPR to protect the interest in Indian citizens in some instances. For example, under the provision of compulsory licensing, the government can force the patent owner or get someone else to mass-produce an essential drug in an emergency. Another contentious issue is Section 3(d) of the Indian Patent Act, which prevents large pharma companies from 'ever greening' or continuing the patent in perpetuity by making minor changes in earlier patents.

IPR protection in agriculture is a sensitive topic in India. Under the TRIPs agreement, subsidies like minimum support prices for agricultural produce and those for fertilizer etc. have to be phased out. Since issues of food security and livelihoods are involved here, political parties are unlikely to allow this to happen anytime soon. There has also been some resistance from farmers to the patenting of seeds by multinational corporations.

Traditional knowledge and products acquired over the centuries using local know-how, have been kept out the reach of patents. The government has created a database of such products and processes in the Traditional Knowledge Digital Library.

CONCLUSION:

God gifted a wonderful thing called Brain to Man and Mother Nature endowed him with the abundant physical and biological resources on the earth. Man started creating his own world by application of his brain or mind and by utilization of these natural resources. Man has also been bestowed with imagination and creativity. With his imagination and creativity, he has been producing various articles or products for his needs, comfort and convenience. In the earlier era, the creations and inventions by him fell in a public domain. These were the common properties. Anybody could use and copy these creations and inventions without any restriction, reservation or payment. However, with the passage of time, the importance and value of these creations was realized. The commercial aspect started playing a significant role in these creations. By end of Twentieth Century, the things created and invented by the human mind were recognized as an intellectual property of the owner .The owner's right over these properties was accepted and is known as an Intellectual Property Right (commonly called I.P.R.). A new set of laws called Intellectual Property Right Laws, were enacted to protect these property rights.

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