

Intellectual Property Rights – Indian Scenario

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Abstract—

With the beginning of the new knowledge economy age, the old and some of the existing management constructs and approaches would have to change. The knowledge economy places a label of importance on thinking and running knowledge based assets such as innovations and know-how. The duration for gaining knowledge is nowadays an important parameter for deciding the success of an institution, enterprise, government and industry; the shorter the time better are the chances of success. Intellectual Property Rights (IPR) have become significant in the era of varying trade environment which is characterized by the features namely global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development (R&D), production and marketing and need for highly skilled human resources. Geographical barriers to trade among nations are collapsing due to globalization, a system of multilateral trade and a new emerging economic order. All these factors demand a thorough analysis on the IPR status in India. In this paper the awareness of Indian corporate houses regarding their IP rights will be studied and future prospects will be forecasted.

Keywords— Intellectual Property Rights, Copyrights, Patents.

I. INTRODUCTION

The term intellectual property refers to the innovations of the human mind. Intellectual property rights protect the interests of these innovators by giving them property rights attached to those ideas. The term "intellectual property rights" stands for these legal rights that authors, inventors, and other creators have. Intellectual property laws relate to a particular way in which ideas or information is expressed or displayed, but not the actual ideas or exact concept itself.

II. MEANING

Intellectual property (IP) is a term referring to a number of distinctive types of conceptions of the mind for which a set of exclusive rights are acknowledged, and the corresponding fields of law. Under intellectual property law, proprietors are granted certain exclusive rights to a variety of intangible assets, such as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs. Intellectual property relates to items of information or knowledge, which can be amalgamated in tangible objects at the same time in an unlimited number of copies at different locations in the world. The property is not in those copies but in the information or knowledge reflected in them. IP, protected through law, like any other form of property can be a matter of trade, that is, it can be owned, donated, sold or bought. The major features that differentiate it from other forms are their intangibility and non-exhaustion by consumption.

III. TYPES OF INTELLECTUAL PROPERTY RIGHTS.

A. Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

- Copyright doesn't protect ideas. The work must be fixed.
- There is no official registration system for copyright. It's an automatic right.
- A copyright work could be marked with ©, the owner's name and the year it was created.

B. Patent

A patent grants an inventor the right to exclude others from making, using, selling, offering to sell, and importing an invention for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, which may be a product or a process.

- Exclusive marketing rights for the time period of 5 years.
- Patents assist in running the research and development.
- Inventions must be kept confidential to be patentable.
- Inventions must be capable of industrial applications.

C. Trademark

A trademark is a recognizable sign, design or expression which distinguishes products or services of a particular trader from the similar products or services of other traders.

- At the time of any violation, the owner can take upon the case in the court.
- A ® or ™ is used by owner who has registered his goods or services provided.
- Trademark offers the guarantee for the unchanged quality

D. Trade Secrets

A trade secret is a formula, practice, process, design, instrument, pattern or compilation of information which is not generally known or reasonably ascertainable, by which a business can obtain an economic advantage over competitors or customers.

- It is also recognized as "confidential information" or "classified information".
- Is not well-known by the public.
- Provides some monetary sort of gain to its holder.
- Involves practical efforts from the holder side for preserving secrecy.
- Trade secrets offer protection for indefinite time period, not like patent it does not expire.

E. Geographical Indication

Geographical Indication (GI) indicates to the name or sign, used in reference to the products which are corresponding to the particular geographical area or related to the origin like town, region or nation.

- GI also differs from one country to another as high alterations have been found out in the use of general terms across the world.
- Registering of the GI is not obligatory in India.
- GI indicates to the rights of community or a group therefore, an individual cannot register geographical indication on his/her name.
- Some of the common geographical indicators are- Basmati Rice, Kanjeeपुरam Sarees, Darjiling Tea.

F. Industrial Design Rights

Industrial design rights are defined as the rights which discuss the rights of exclusiveness to the visual designs of objects which are generally not popular functional. It defends the appearance, style, design of the industrial object such as spare parts, textiles, furniture.

- As these designs consist of the appealing features therefore they do not provide any protection to the technical features of the article.
- It excludes of any trademark or artistic type of work.
- It helps in increasing commercial feasibility of product and increases its market potentiality.
- **Industrial Design Rights in India**
 - In India the first design related legislation was passed by the British Government and was popularly named as the Designs Act, 1911.
 - The Industrial Designs Bill, 1999 was passed in the Upper House of the Indian parliament for substituting the Designs Act, 1911.
 - In present scenario, the Designs Act, 2000 and the Designs Rules, 2001 are governing India's design law.

IV. IPR – AN INDIAN SCENARIO

- ✓ India has defined the establishment of legislative, administrative and judicial framework for protecting the intellectual property rights in the Indian territory, whether they indicate the copyright, patent, trademark, industrial designs or with other parts.
- ✓ Modification with the changing industrial world, the intellectual property rights have continued to strengthen its position in India. In 1999, the government has passed the significant legislation in relation to the protection of intellectual property rights on the terms of the international practices and in accordance to the India's obligations under the Trade Related Aspects of Intellectual Property Rights.
- ✓ Department of Industrial Policy & Promotion is the nodal Department in the Government of India for all problems concerning WIPO (World Intellectual Property Organization).
- ✓ India is also member of 2 major treaties:
 - Paris Convention for the Protection of Industrial Property (relating to patents, trademarks, designs, etc.) of 1883.
 - Berne Convention for the Protection of Literary and Artistic Works (relating to copyright) of 1886.
- ✓ India is also a member of the Patent Cooperation Treaty (PCT) which enables obtaining of patents in several countries by filing a single application.
- ✓ India is also a member of the World Trade Organization (WTO). The WTO agreement contains an agreement on IP, namely, the Agreement on Trade Related Aspects of Intellectual Property (TRIPS). This Agreement made protection of intellectual property an enforceable responsibility of the Member States.
- ✓ India has complied with the responsibilities contained in the TRIPS Agreement and amended/enacted IP laws.

A. *Department of Industrial Policy and Promotion (DIPP) and Intellectual Property Rights (IPRs)*

- ✚ DIPP is concerned with legislations involving Patents, Trade Marks, Designs and Geographical Indications. These are managed through the Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM), subordinate office, with headquarters at Mumbai, as under:
 - The Patents Act, 1970 (amended in 1999, 2002 and 2005) through the Patent Offices at Kolkata (HQ), Mumbai, Chennai & Delhi.
 - The Designs Act, 2000 through the Patent Offices at Kolkata (HQ), Mumbai, Chennai & Delhi.
 - The Trade Marks Act, 1999 through the Trade Marks Registry at Mumbai (HQ) Chennai, Delhi, Kolkata & Ahmedabad.
 - The Geographical Indications of Goods (Registration & Protection) Act, 1999 through Geographical Indications Registry at Chennai.
- ✚ The Controller General of Patents, Designs and Trade Marks (CGPDTM) is also in-charge of the Office of the Patent Information System, Nagpur and the Intellectual Property Training Institute, Nagpur. The office has 446 employees in the patents and designs Offices and 291 employees in trademarks and geographical indication Offices.
- ✚ Essential safeguards have been built into the IP laws, in particular in the Patents law, for protection of public interest including public health.
- ✚ Along with the legislation, rules have also been amended to install a user-friendly system for processing of IP applications.

B. *Intellectual Property Appellate Board (IPAB)*

Intellectual Property Appellate Board (IPAB) has been set up at Chennai to hear appeals against the judgments of Registrar of Trademarks, Geographical Indications and the Controller of Patents.

C. *Modernization of Ip Administration*

- To balance the legislative initiatives
- E-filing facility for patent & trademark applications has been introduced on 20.7.2007.
- Administration of Intellectual Property
- Civil and criminal provisions exist in various laws for dealing with fabricating and piracy.
- The Department of IPP has set up an Inter-ministerial Committee to direct IP enforcement issues.

D. *Impact of Modernization*

Patents:

- ✚ The filing of patent applications has improved from 4824 in the year 1999-2000 to 28,882 applications in the year 2006-2007.
- ✚ The number of applications scrutinized has gone up to 14,119 in 2006-07 against the figure of 2824 in the year 1999-2000.

Trademarks:

- ✚ The excess of unexamined applications of approximately 5 lakh cases brought down to zero.
- ✚ Renewal of Trademarks certificates being done rapidly in clear cases and new applications are examined within one week.
- ✚ As against only 8,010 registrations in 1999-2000, 13 times more Trade Marks were registered in 2006-07, that is, 1,09,361.
- ✚ 3.38 lakh trademark certificates were delivered during the last 3 years whereas only 1.65 lakh marks were registered in 64 years (since 1940 to 2004).

Geographical Indications:

- ✚ 39 Geographical Indications items have been registered since September, 2003. These include Darjeeling Tea, Chanderi Saree, Pochanpally Ikat, Solapur Chaddar, Mysore Silk, Kullu Shawl, Bidriware, etc.

Designs:

- ✚ The filing of applications for Design has improved from 2874 in 1999-2000 to 5372 in 2006-07.
- ✚ The number of applications scrutinized has also gone up to 5179 in 2006-07 against the figure of 2067 in 1999-2000.
- ✚ The total of Designs registered has also increased from 1382 in 1999-2000 to 4431 in 2006-07.

E. *Current Issues*

- ❖ Establishment of NIIPM

The Government has sanctioned a proposal for establishment of a National Institute for Intellectual Property Management (NIIPM) at Nagpur. The Institute will perform training, education, research & think tank functions.

❖ **Modernization of IP Offices**

Modernization of IP Offices to offer additional human resources, higher level of computerization to support on-line processing, strengthening of data-base and novelty search facilities, awareness generation activities, accession to international treaties/conventions is being taken up in 11th Five Year Plan.

❖ **Madrid Protocol on Trademarks**

✚ Madrid Protocol, administered by WIPO, is a simple, facilitative & cost effective system for registration of International Trademarks. India's membership of Madrid Protocol helps Indian companies to register their trade marks in the member countries of the Protocol through a single application.

✚ An exercise to alter the Trade Marks Act is underway to enable joining the Madrid Protocol.

❖ **ISA and IPEA**

A proposal is under consideration to seek acknowledgment for the Indian Patent Office as an International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) under the Patent Co-operation Treaty. ISA and IPEAs offer search reports on novelty and examination reports on patentability of inventions.

❖ **Mashelkar Committee**

Government has set up a technical skilled group under the chairmanship of former Director General of CSIR (Dr. R.A. Mashelkar) to examine the following two patent law issues:

✚ whether it would be TRIPS compatible to limit the grant of patent for pharmaceutical substance to new chemical entity or to new medical entity involving one or more creative steps; and

✚ Whether it would be TRIPS compatible to eliminate micro-organisms from patenting.

V. NEW ARENA OF IPR IN INDIA

A. *Publicity & Image Rights:*

The right of publicity and the right of image flow from the right to privacy of individuals. The jurisprudence on publicity and image rights is in its budding stages in India. The judiciary is yet to identify the right of publicity and the right of image as distinct legal rights. This is of strategic significance for celebrities who propose to use their image and likeness to identify their own or an authorized line of merchandise. Recently, well-known Indian actress Mallika Sherawat registered her name as a trademark.

B. *Data Protection:*

The significance of IP exponentially increases in companies that are planning to accomplish some of their core projects offshore and in companies that need to provide access to classified company data to the offshore location for BPO/Call center initiatives. It is important for companies to understand IP rights in India and the best practices that can be followed to safeguard the IP.

VI. LIMITATIONS

- ❖ The public awareness is harmed by ever extensive monopolies in the form of copyright extensions, software patents and business method patents.
- ❖ The intellectual property inclines to be administered by economic goals when it should be viewed mainly as a social product; in order to serve human well-being, intellectual property systems must respect and conform to human rights laws.
- ❖ Permitting property rights in ideas and information creates artificial shortage and infringes on the right to own tangible property.
- ❖ Other criticism of intellectual property law concerns the tendency of the protections of intellectual property to enlarge, both in duration and in scope. The tendency has been toward longer copyright protection.
- ❖ In addition, the designers and controllers of items of intellectual property have sought to bring more items under the protection. Patents have been granted for living organisms and colors have also been trademarked.

VII. CASE STUDY

Glivec by Novartis

Glivec (Gleevec in US) (Compound-imatinib mesylate) by Novartis is patented in 35 countries & cooperative in Chronic Myeloid Leukemia.

The consistent Indian Application for Glivec in India 1602/MAS/1998, titled, "Crystal modification of A N-phenyl-2-Pyrimidineamine derivative, processes for its manufacture and its use" was filed by Novartis on July 17th, 1998. This application is directed to Mesylate salt of Imatinib. Two polymorphs of imatinib mesylate are claimed: Alpha & Beta. [Original molecule imatinib is disclosed in US 5521184 titled "Pyrimidine derivatives and processes for the preparation thereof" in 1993]

Issue: Pre-grant Resistance to Glivec in India

Different interest groups filed a pre-grant opposition to the Indian Application 1602/MAS/1998 under the provision of section 25(1) of the Indian Patent Act. Chennai Patent Office banned Gleevec patent application in January 2006, on the grounds that the application claimed 'only a new form of a known substance.'

Challenge to the Indian Patent Office

Novartis filed a legal petition in the Chennai High Court by Novartis challenging the Indian Patent Office for:

- * Rejection of its patent application for Glivec
- * Constitutional validity of section 3(d) of Indian Patent Law.

Novartis stated that the Section 3(d) was not well-suited to the agreement on Trade Related aspects of Intellectual Property Rights (TRIPS) and that it was vague, illogical and arbitrary. It said the provision discussed "uncanalised" discretionary power on the patent controller, who would apply his own norms that might not be uniform, while deciding the effectiveness of the substance submitted for patent.

Justice R. Balasubramanian and Justice Prabha Sridevan of the Madras High Court ordered to handover the case to Appellate Board (2nd April, 2007)

Novartis disagreed with the nomination of the former Controller General of the Indian Patent Office to the IPAB. Novartis filed another request in the High Court in Chennai for a new technical member of the Intellectual Property Appellate Board (IPAB).

Judgment of the High-court

The Madras High Court terminated two writ petitions filed by Novartis AG and Novartis India Limited.

High Court on the Constitutional validity of 3(d):

Rejecting the argument, a Division Bench, comprising Justices R. Balasubramanian and Prabha Sridevan said: "The argument that the amended Section must be held to be bad in law since, for want of guidelines, it gives scope to the statutory authority to exercise its power arbitrarily, has to be necessarily rejected. We find that there are in-built materials in the amended Section and the Explanation itself, which would control/guide the discretion to be exercised by the statutory authority. In other words, the statutory authority would be definitely guided by the materials placed before it for arriving at a conclusion."

If the constitutional authority, in exercising his power, misdirects him, abuses his power in an arbitrary manner and passes an order, then it could be corrected by the hierarchy of forums provided in the Act itself, in addition to the further relief available before the courts of law.

"When that is the position, then we have to necessarily state that the amended Section cannot be invalidated solely on the ground that there is a possibility of misusing the power," the Judges said.

The Right to Equality protected in Article 14 of the Constitution could be raised only when it was shown that in the exercise of a discretionary power there was a possibility of a real and substantial discrimination, the Bench said.

"It is not shown by senior counsel appearing for the petitioners (Novartis) before us that in the exercise of discretionary power by the Patent Controller, any of the petitioner's fundamental rights are violated, namely, to carry on the trade or the petitioner stood singularly discriminated. We find that the amended Section by itself does not discriminate nor does it prohibit the trade being carried on," it said.

International treaties and agreements were essentially in the nature of a contract, the Bench said, adding that the TRIPS Agreement provided for a wide-ranging dispute settlement machinery, which was binding on its member-States.

"We see no reason at all as to why the petitioner, which itself is a part of that member-State, should not be directed to have the dispute resolved under the dispute settlement mechanism...We see no reason at all as to why we must disregard it..."

Repeating that there was no vagueness in the provision, the Judges said: "Senior counsel, except arguing that the amended Section must be struck down on the ground of ambiguity, arbitrariness, leading to exercise of uncanalised powers - with which we have not agreed at all - had not shown any other legal ground to invalidate the amended Section."

Parliament expressed its object and purpose in general terms while legislating a statute and does not foresee the minute details that were likely to arise in the future and provide a solution. "On the other hand, they would be acting wiser if they make only general expressions, leaving it to the experts/statutory authorities and then courts, to understand the general expressions used in the statute in the context in which they are used in a case to case basis."

The Judges said: "Using general expressions in a statute, leaving the court to understand its meaning, would not be a ground to declare a Section or an Act ultra vires the Constitution, is the law laid down by the Supreme Court. Interpretation of a statute must be to advance the object which the Act wants to achieve."

VIII. CONCLUSION

Novartis could not prove the improvement in effectiveness of the particular polymorphic form of the known moiety as compared to the known effectiveness of the compound.

Novartis' case suffered as they had produced a bioavailability study conducted on rats while the drug was undoubtedly in the market for many years and was consumed by humans.

For a new form of a known substance to be patented, it must offer significant advantage over the known substance in terms of effectiveness. A patent application in such cases, should clearly furnish the comparative data with regard to efficiencies of the known substance and its new forms respectively.

IX. CONCLUSION

In India Intellectual Property will no longer be seen as different or self-contained area, but rather as an important and effective policy instrument that would be relevant to a wider range of socio – economic, technological and political concerns. Moreover, as technological advancements have become an obligation for sustained growth in the future, a new stress is emerging on research and development. It is for this reason that intellectual property and its protection have gained greater significance. Intellectual Property has now been acknowledged as an important tool for technical, industrial and economic development. As globalization expands further, it also increasingly includes the sharing, utilization and enjoyment of IP products like inventions, designs, books, etc. India is fast emerging into a technology producing country, particularly in information technology and pharmaceuticals sector.

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REFERENCE

- [1] http://ipindia.nic.in/ipr/patent/mashelkar_committee_report.doc
- [2] <http://www.gnu.org/philosophy/not-ipr.html>
- [3] Glivec: Pre-Grant opposition Manish Bhargale | Publication Date: 25-Sep-2007
- [4] www.delphion.com
- [5] Office of the Controller General of Patents, Designs and Trademarks
- [6] esp@cenet@ - free online patent search in over 30 million documents (EPO member states)
- [7] MicroPatent PatSearch™ FullText
- [8] Q-PAT
- [9] Patent Information Providers: Derwent & Patent News Service
- [10] http://EzineArticles.com/?expert=Kris_Lee
- [11] Intellectual Property Guide
- [12] Businessworld, August 2010
- [13] AskLegalMart's