

PROTECTION OF INTELLECTUAL PROPERTY

- ◆ Intellectual property is an intangible property, which refers to the products of human intelligence and creation used in commerce
- ◆ Intellectual property rights are an incentive to encourage and reward innovation by providing intellectual property creators and owners with the time and opportunity to exploit their creation
- ◆ There are various types of intellectual property protection available, with differing terms of protection, application requirements and benefits
- ◆ Some common types of intellectual property protection are patents, industrial designs, trade marks, geographical indications and copyrights. Other alternative methods can also be used.
- ◆ The value of IP rights :
 - Reward and encouragement
 - ◆ Encourage owners to engage in innovative activities that benefit society
 - ◆ Reward the innovator's effort and skills
 - ◆ Provide a set period of protection
 - ◆ Promote wider access to innovations and advance further research and development by others
 - Provide competitive advantage
 - ◆ IP rights can provide an extremely valuable bargaining tool and in most cases can be sold for financial gain
 - ◆ Helps the owner to compete on the basis of the reputation associated with a product rather on price alone
 - ◆ IP laws give the owner the right to determine who can use the IP and how it can be used
- ◆ Attributes of IP rights: They may be restricted and exclusive and also entail the qualities of ownership, transferability and territoriality
- ◆ Protecting IP allows to:
 - ◆ stop others using what you have created without permission
 - ◆ charge others for the right to use what you have created
- ◆ IP protection is a prerequisite for creating the incentives necessary for business growth.
- ◆ IP assets are to be managed strategically and effectively
- ◆ IP tools patents, industrial designs, trademarks, copyrights, trade secrets etc. can be used either separately, simultaneously or in any combinations as a legal shield
- ◆ IP strategy may differ depending on the type of innovations, but either way the IP system remains a valuable tool

PATENTS

- ◆ Invention is generation of a new idea aimed at solving a specific technical problem
- ◆ The patent system is based on a two-way deal. The owner (patentee) is legally required to disclose the invention to the public in exchange for an exclusive, time-limited, legal right to prevent others from making, using, offering for sale, selling or importing a patented invention without permission.
- ◆ Disclosure serves the wider public good, by enabling others to understand the new solutions or technology underpinning each invention
- ◆ Patent information:
 - ◆ The largest repository of technical information in the world has become a strategic business and creative thinking tool
 - ◆ Used to forecast the direction of technical change, or to assess a company's relative technological strength in a marketplace
 - ◆ Helps to identify potentially profitable areas for R& D, key technologies and market opportunities
 - ◆ The success or failure of a new product under development may be predicted
 - ◆ Prevent infringement and save huge amounts in litigation fees and payments of compensation for damages
 - ◆ Intelligent exploitation of patent information a unique source of technical, business and legal information will contribute to the success of any enterprise
- ◆ First-to-File principle is followed by the patent system
 - ◆ File the application as early as possible
 - ◆ File before making any non-confidential disclosures
- ◆ The applicant(s) holding it are given legal/commercial protection
 - Individual (s)
 - ◆ Liberty to enjoy monopoly of the invention for 20 years
 - ◆ Facilitates the creation of distribution and licensing agreements
 - ◆ Provides inventors a basis for further invention or improvisation
 - ◆ Establishes the patent owner and inventor as the market leader and attracts customers
 - ◆ Informs the marketplace of an individual's serious commercial intent
 - Company (s)
 - ◆ Licensing or sale avenues open up, creating new revenue streams
 - ◆ Strengthens market position
 - ◆ Increase in negotiating power through cross licenses or joint venture agreements
 - ◆ Fuels a company culture of innovation, brand presence and design
 - ◆ Creates and enhances company image to potential investors, customers, manufacturers and distributors

- ◆ A negative right granted to exclude others from making, using or selling the invention within a certain jurisdiction for a limited period of time
- ◆ Patents are good indicators of R& D outputs
- ◆ Patents have business impact. A three fold approach can be followed for enhancing business competitiveness
 - (i) Build a patent fortress
 - i) Development of product or processes differentiators
 - ii) Improvements made to the products or processes
 Advantages:
 - Maintain product or processes differentiators
 - Create an entry barrier for competitors
 - Protect products or processes from being copied by competitors
 - Increase valuation of the company
 - (ii) Proactively safeguard self business interests
 - Monitor the patent fortress built by competitors
 - (iii) Respect others IP
 - Freedom to Operate (FTO) study is to be carried out before introducing a product in a country.
 Advantages:
 - Ensure against introducing infringing products to the market
 - Avoid expensive patent infringement suits

TRADEMARKS

- ◆ A trademark is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking
- ◆ It identifies the goods/ or services and its origin, guarantees its established quality, advertises the goods/ services, creates an image for the goods/ services
- ◆ Distinctiveness is the hallmark of a trademark
- ◆ A trademark protects the identity of the goods and services and is a vital element in developing and maintaining a brand (a seal of authenticity)
- ◆ Trademarks can be very effective in penetrating new markets and extending commercial benefits beyond the life of a patent
- ◆ It is a useful tool in launching new product segments or entirely new products
- ◆ Protects consumers from confusion or deception by preventing other businesses from using the same or a confusingly similar name for their products
- ◆ Trademarks can be used to establish a market presence that can be quickly identified visually
- ◆ Before pursuing for trademark registration trademark search should be performed to prevent unnecessary investment in the promotion of a product under a trademark that is already in use (www.ipindia.nic.in)
- ◆ Rights are obtained
 - (i) By Common law:
 - Adoption and use
 - Life – As long as commercially used as a mark

- Marked as TM for unregistered
- (ii) An application in the prescribed manner is to be made with fee to the Registrar of Trade marks
 - Perpetual life as it can be used for an indefinite period subject to renewal every 10 years
 - Marked as ® for registered trademark
- ♦ The Registered Proprietor of a trademark can stop other traders from unlawfully using his trademark, use for damages and secure destruction of infringing goods and or labels
- ♦ The owner has the exclusive right to use, sell or license the trademark
- ♦ Source of revenue generation (Trade Marks Registry)
- ♦ In case of unregistered trademarks for taking any legal action against others, a common law remedy “passing off” is available for protection of a trademark on the basis of ‘prior user’ status. Passing off action are difficult, time-consuming and expensive. The proprietor is required to produce evidence of ownership of goodwill or reputation in the mark and also that the unauthorised use of his mark accounts to a misrepresentation which is causing, or is likely to cause damage.

INDUSTRIAL DESIGNS

- ♦ In simple terms, an industrial design refer to creative activity which result in the ornamental or formal appearance of a product
- ♦ A design refers to the features of shape, configuration, pattern or ornament or composition of lines or colour or combination applied to any article, in two or three dimensional (or both) forms
- ♦ It may be applied by any industrial process or means (manual, mechanical or chemical) separately or by a combined process, which in the finished article appeals to and is judged solely by the eye
- ♦ Design right refers to a novel or original design that is accorded to the proprietor of a validly registered design
- ♦ First-to file rule is applicable for registration of design
- ♦ Promotion and protection of the design element (new and original) of industrial production
- ♦ Confers innovative activity promotion in the field of industries
- ♦ The owner has the exclusive right to use, sell or license the registered design
- ♦ The proprietor of a design on registration is conferred with ‘copyright in design’. Infringement of a copyright in registered design is known as piracy of registered design.
- ♦ A registered design gives a legally enforceable right to use product’s design to gain a marketing edge

GEOGRAPHICAL INDICATIONS

- ♦ Geographical indication is an indication used to identify agricultural, natural or manufactured goods having special characteristics originating from a definite geographical territory

- ◆ Typically, such a name conveys an assurance of quality and distinctiveness that is essentially attributable to the original place of production
- ◆ It is public property belonging to the producers of the concerned goods and shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or such other agreement
- ◆ Exclusion of unauthorized users from misusing Geographical indications would serve to protect consumers from deception
- ◆ Promotes economic prosperity of producers (Agricultural goods includes the production, processing, trading or dealing, Natural goods includes exploiting, trading or dealing and Handicrafts or Industrial goods includes making, manufacturing, trading or dealing)
- ◆ Confers legal protection to goods bearing Indian geographical indications which in turn boost exports
- ◆ The registered proprietor and authorised users can initiate infringement actions
- ◆ The authorised users are producers of goods in respect of a registered geographical indication. The persons dealing with three categories of goods (agricultural, natural and handicrafts or industrial goods) are covered under the term producer.
- ◆ The authorised users have the exclusive rights to the use of geographical indication in relation to the goods in respect of which the geographical indication is registered

COPYRIGHTS

- ◆ Copyright exists in expression of idea and not mere idea
- ◆ Essential requirement for the work to be protected
 - original
 - physically exist
- ◆ Copyright provides protection for original
 - literary and written work, like novels, poems, plays or contents on websites
 - computer software
 - illustration and photography
 - Television, film, sound and musical recordings
 - dramatic, musical and artistic works and their performances
- ◆ Rights are obtained
 - Automatic upon creation
 - By applying Copyright notice © (year of the first publication) if publicly distributed
 - An application in the prescribed manner is to be made with fee to the Registrar of Copyright (© Copyright Office, New Delhi)
- ◆ Copyright is a 'bundle of rights' enumerated as
 - Multiple statutory right (the owner can exploit and enjoy monopoly right in several manners): Example – In case of Literary work, rights of reproduction, rights of adaptation, rights of translation, rights of public performance and rights of dramatic and

- cinematographic version
- Right to transfer (the owner can transfer rights through assignment or grant permissive use to any person)
- Negative right (Right against infringement on unauthorised use and forms the core of ownership claim)
- Moral right: (i) Paternity right – to claim authority of the work even after the assignment of work, and (ii) integrity right – the right to protect author's honour and reputation
- ◆ Indian Copyrights are valid in countries which are members of the Berne Convention (1886)
- ◆ The creative industries such as music and film rely on copyright to protect and generate profit
- ◆ The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create
- ◆ Copyright is the only IP right that is automatically recognised in the global market
