Neha Saxena
Sourabh Batar

CONCEPT OF INTELLECTUAL PROPERTY

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CHAPTER 1

INTRODUCTION OF INTELLECTUAL PROPERTY RIGHTS (IPR)

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ABSTRACT:

A product of the human mind is defined as intellectual property (IP), which includes innovations, literary and creative works, as well as symbols, names, pictures, and designs that are utilized in business. In this chapter, we talked about the intellectual property, its importance and important features. It describes the core ideas behind intellectual property, how it encourages innovation and creativity, and how it affects different sectors. The goal of the introduction, such as examining the historical evolution of intellectual property rights and the difficulties in enforcing them, may also be mentioned. Intellectual property rights (IPRs) are legal protections for inventions and/or works of art emerging from intellectual activity in the sectors of business, science, literature, and the arts.

KEYWORDS:

IP Creation, Copyright, Design, Intellectual Property, Innovation, Intellectual Property Rights, Patents.

INTRODUCTION

Since northern Italy during the Renaissance is seen as the system's birthplace, the idea of intellectual property is not a new one. The first organized effort to safeguard people was undertaken in a Venetian Law in 1474. Innovations protected by a kind of patent, which for the first time gave a person an exclusive right. Around 1450, Johannes Gutenberg created the printing press and moveable type within the same century led to the creation of the world's first copyright system[1], [2].New creative manufacturing techniques helped spark widespread industrialization towards the end of the 19th century, which was accompanied by an increase in transoceanic commerce, rapid urbanization, the development of railway networks, and capital investment. Many nations developed their contemporary intellectual property laws as a result of new industrialist values, the rise of larger centralized governments, and nationalism. With the establishment of the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the Protection of Literary and Artistic Works in 1886, the International Intellectual Property system also began to take form at this time.

The foundation of intellectual property has been recognition and benefits that come with owning innovations and creative works have been shown to encourage greater imaginative and creative effort, which in turn supports economic development. Ideas and knowledge have evolved throughout time, especially in the modern corporate paradigm becoming more and more significant components of commerce. The amount of invention, creativity, movies, music, research, design, and testing that goes into high-tech goods and novel medications accounts for a large portion of their worth. Not often because of the plastic, metal, or paper used to manufacture them, records, books, computer software, and online services are purchased and sold because of the creativity and knowledge they contain. Many previously traded low-technology items or commodities now have a larger percentage of high-technology components. In terms of value, innovation and design may be shown in things like designer clothes or novel plant species. Therefore, creators are granted the right to forbid the use of their ideas, designs, or other works. These rights are referred to as Intellectual

property rights[3], [4].The following list of the topics covered by intellectual property rights is provided by the 1967 convention creating the World Intellectual Property Organization:

1. Works of literature, the arts, and science.
2. Broadcasts, phonograms, and performances by performers.
3. Developments in all spheres of human activity.
4. Scientific breakthroughs.
5. Commercial designs.
6. Business names and designations, service marks, and trademarks.
7. Defense against deceptive business practices and
8. All other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.

The Trade-Related Intellectual Property Systems (TRIPS) Agreement. were created in response to the founding of the World Trade Organization (WTO), which has helped to clarify the value and function of intellectual property protection. The General Agreement on Tariffs and Trade (GATT) treaty's Uruguay Round ended in 1994, and this is when the negotiations for it began. The TRIPS Agreement strives to harmonize, reinforce, and provide for efficient enforcement at both the national and international levels. Part I, it discusses the application of broad GATT principles as well as the clauses of global IP agreements. It defines guidelines for the accessibility, range, and application of intellectual property rights (Part II), enforcement (Part III) as well as for their acquisition and upkeep (Part IV). It also discusses associated conflict prevention and resolution techniques (Part V). Parts VI and VII of the Agreement, which cover institutional and transitional arrangements, respectively, deal with formal stipulations. The most extensive international agreement on intellectual property to date is the TRIPS Agreement, which went into force on 1 January 1995. The scope of intellectual property includes the following areas:

1. Copyright and related rights (i.e., performers' rights, sound recording producers' rights, and broadcasting organizations' rights)
2. Trademarks, such as service marks
3. Geographical cues, such as appellations of origin
4. Industrial designs
5. Patents, which provide protection for novel plant kinds
6. The topographies (layout designs) of integrated circuits
7. Unreleased data, including test results and business secrets

DISCUSSION

In a wide sense, intellectual property refers to the legal rights that come from intellectual work in the sectors of business, science, literature, and the arts. For two fundamental reasons, nations have laws to safeguard intellectual property. One is to give formal expression to the public's right to access these works of art as well as the moral and financial rights of authors to their works. The second is to actively foster innovation, as well as the distribution and implementation of its findings, as well as fair commerce, which would support economic and

social progress. Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of origin, and copyright, which includes literary and artistic works like novels, poems, and plays, films, musical compositions, artistic creations like drawings, paintings, photographs, and sculptures, and architectural designs, are the two categories of intellectual property. Performers' rights in their performances, phonogram makers' rights in their recordings, and broadcasters' rights in their radio and television broadcasts are all covered by copyright laws. By granting creators ownership rights over their works, intellectual property laws safeguard their interests.

However, the most obvious distinction between intellectual property and other types of property is that the former is intangible, meaning that it cannot be described or recognized by its own physical characteristics. To be protected, it must be stated in a recognizable manner. In general, it includes four independent and distinct categories of intangible property, including trade secrets, copyrights, patents, and trademarks. These categories are together referred to as "intellectual property." However, as fresh forms are added to the intellectual property portfolio, the meaning and scope of intellectual property are always changing. Geographical indications, plant variety protection, semiconductor and integrated circuit protection, and confidential information have all recently been included within the definition of intellectual property[5], [6].

What are Intellectual Property Rights?

Similar to other property rights, intellectual property rights exist. They enable the owners of patents, trademarks, and works protected by copyright to profit from their own labor or investment in a production. The right to profit from the protection of moral and material interests stemming from the authorship of scientific, literary, or creative achievements is defined in Article 27 of the Universal Declaration of Human Rights.The Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886) were the first international agreements to acknowledge the significance of intellectual property. The World Intellectual Property Organization (WIPO) oversees both treaties.

Why Promote And Protect Intellectual Property?

There are many strong arguments. First, humanity's ability to innovate and produce new works in the fields of technology and culture is essential to its growth and wellbeing. Second, legal protection for original works stimulates the earmarking of more funds for further innovation. Third, promoting and safeguarding intellectual property encourages economic progress, develops new markets and industries, and improves people's quality of life and enjoyment of it. All nations may achieve intellectual property's potential as a driver of economic progress and social and cultural well-being with the aid of an effective and fair intellectual property system. The intellectual property system provides a setting in which innovation and creativity may thrive, to the advantage of everyone, balancing the interests of inventors and the general public.

History of the World Intellectual Property Organization (WIPO)

1. One of the specialized agencies of the United Nations (UN) system of organizations is the World Intellectual Property Organization (WIPO). In Stockholm in 1967, the "Convention Establishing the World Intellectual Property Organization" was signed, and it became effective in 1970. However, the Paris and Berne Conventions' acceptance in 1883 and 1886, respectively, marked the beginnings of WIPO. These two treaties both allowed for the creation of global secretariats, and both were

governed by the Swiss Federal Government. The few people that were required to handle the two conferences' administration were in Berne, Switzerland.

2. To manage the two conventions, there were initially two secretariats (one for industrial property and one for copyright), but in 1893 they merged. Before it changed its name to WIPO, the organization was known most recently as BIRPI, which is an abbreviation for the term United International Bureaux for the Protection of Intellectual Property (in English). BIRPI relocated from Berne to Geneva in 1960.
3. All of the then-existing multilateral treaties that were managed by BIRPI had their administrative and concluding terms changed during the 1967 diplomatic conference in Stockholm, which led to the establishment of WIPO. In order to give WIPO the same standing as all other comparable intergovernmental organizations and to open the door for it to become a specialized agency of the United Nations system of organizations, member States had to assume the role of full governing body of the Organization (WIPO), removing the Swiss Government's oversight authority in the process.
4. Prior to the Second World War, the majority of the intergovernmental institutions that are today known as specialized agencies did not exist. They were developed with the express intent of addressing a certain topic or area of work on an international scale. Some intergovernmental organizations, such as the International Labor Office (ILO), the Universal Postal Union (UPU), and the International Telecommunication Union (ITU), existed long before the United Nations was founded and had already taken on the role of the responsible intergovernmental organization in their respective fields of activity. These organizations were transformed into specialized agencies of the United Nations system when it was founded.
5. Similar to how BIRPI was the responsible international body in the sphere of intellectual property long before the United Nations was founded. When an agreement was negotiated between the United Nations and WIPO to that effect, it went into effect on December 17, 1974, and WIPO, the organization that succeeded BIRPI, became a specialized agency of the UN.
6. A specialized agency maintains its independence while being a member of the family of UN entities. The membership of each specialized organization varies. All United Nations members have the right to join any of the organization's specialized agencies, although in reality, not all members of the UN are also members of every specialized organization. Each State makes its own independent decision over whether or not to join any given specialized organization. Every specialized agency has its own constitution, governing bodies, elected executive head, and sources of funding, budget, personnel, and set of initiatives. However, each agency essentially continues to be answerable, under the terms of its own constitution, to its own governing body, which are the States that are members of the organization. Mechanism exists for coordinating the work of all the specialized agencies, among themselves and with the United Nations.
7. The agreement between the United Nations and WIPO acknowledges that WIPO is accountable for taking appropriate action in accordance with its basic instrument and the treaties and agreements it administers, including, inter alia, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to developing countries in order to accelerate economic, social and cultural development.

The Goals and Activities of WIPO

1. The goal of WIPO is to advance the development, use, and protection of works created by the human intellect for the global community's economic, cultural, and social advancement. By adequately preserving the moral and material interests of creators on the one hand, and granting access to the socio-economic and cultural advantages of such creativity on the other, it has the effect of helping to maintain a balance between the stimulation of creativity across the globe.
2. Since its inception, when it was established to act as the secretariat of treaties signed between States, WIPO's position on the global stage has undergone significant transformation. While WIPO has continued to fulfill this role (it presently oversees 23 such treaties), in addition to the logical one of fostering international collaboration in the administration of intellectual property, its operations have significantly broadened and become far more diverse.
3. In recent years, WIPO has been more aggressive in its promotion of all forms of intellectual property. This is only a means to a goal, namely the encouragement of human creativity, which produces commercial and cultural goods and services that benefit society as a whole. Thus, WIPO is becoming more active in assisting poorer nations, whose ingenuity has not yet been fully tapped, to reap the rewards of both their own citizens' and other peoples' inventions. The WIPO's duty is to support them in these areas as well, including the creation of reliable institutions and administrative frameworks, the enforcement of laws, and the training of qualified employees. WIPO has paid special attention to the 49 Least Developed Countries (LDCs) and has also provided comparable support to nations in Central Asia, Central and Eastern Europe, and the Baltic area whose economies are in transition.
4. Governmental and intergovernmental cooperation, including WIPO's agreement with the World Trade Organization (WTO), in which WIPO supports developing nations in the implementation of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), is closely entwined with the organization's cooperation for development program.
5. The issue of development is made worse by the acceleration of scientific and technical advancement. WIPO's strategy consists of two parts: identifying and promoting global solutions to the legal and administrative issues that digital technology, particularly the Internet, pose to the established ideas and procedures of intellectual property.
6. The WIPO Arbitration and Mediation Center has expanded its work in alternative dispute resolution between people and businesses to address the issues brought on by improper usage of domain names on the Internet. The Internet Corporation for Assigned Names and Numbers (ICANN) has granted WIPO accreditation to handle disputes brought under its Uniform Domain Name Dispute Resolution Policy. Online dispute handling and resolution enables parties to settle matters quickly and affordably without being present in the same location.
7. The worldwide network for the exchange of important intellectual property information (WIPONET), an initiative started by WIPO in 1999, will significantly improve the advantages of exchanging such information. WIPONET is intended to provide a safe, international network connecting the intellectual property offices of all WIPO Member States, allowing information access and exchange on a global scale. The main and auxiliary WIPO websites are already well-used all across the globe.
8. The World Intellectual Property Organization (WIPO) is increasingly taking a global perspective on intellectual property as a whole as well as its position within a broader

framework of growing concerns including traditional knowledge, folklore, biological variety, environmental preservation, and human rights. To determine, for instance, the relationship between intellectual property and genetic resources, traditional knowledge, and folklore, WIPO has used the process of consultation and empirical study.

9. One of WIPO's most important current tasks is to demystify intellectual property so that it is understood as a part of daily life by everyone who makes up civil society, including those who work in non-governmental organizations, small businesses, farmers, public health professionals, individual creators, and simply interested members of the general public. Small and medium-sized businesses (SMEs) are crucial to market economies, and WIPO has devised a program to support them in realizing their potential as a significant driver of wealth creation.
10. Through their involvement as stakeholders and participants in international and domestic intellectual property systems, WIPO aims to reach out to all societal groups. WIPO adopts an empowerment approach to make sure that such participation benefits the parties involved. This implies that WIPO's actions are intended to raise awareness of how everyone in society has an interest in a strong intellectual property system and to offer people access to the information, skills, and expertise they need to utilize such systems successfully.

WTO and WIPO

By signing a cooperation agreement with the World commerce Organization (WTO), WIPO enlarged its mandate and further illustrated the significance of intellectual property rights in the administration of globalized commerce. It calls for collaboration on the TRIPS Agreement's implementation, including notice of laws and regulations, legal-technical support, and technical aid in favor of poor nations[7]. A cooperative endeavor to assist poor nations in upholding their TRIPS responsibilities until the year 2000 was started in July 1998. It should be noted that WIPO now oversees 24 treaties, three of which it administers in collaboration with other international organizations. Through its member States and secretariat, WIPO also carries out a comprehensive and diverse program of activity that aims to:

1. Coordinating national intellectual property policies and laws,
2. Assist with international requests for industrial property rights;
3. Sharing data on intellectual property;
4. Offering developing nations and other countries legal and technical aid,
5. Assist in private intellectual property dispute settlement; and
6. Make use of information technology to store, access, and use priceless intellectual property data.

Intellectual Property System in India

As previously mentioned, the Venetian Ordinance, which was initially implemented in 1485, was the first mechanism in history to safeguard intellectual property. The Statute of Monopolies in England, which expanded patent rights for technological inventions, came after this. Patent laws were first adopted in the US in 1760. Between 1880 and 1889, most European nations created their patent laws. In India, the Patent Act was first passed in 1856 and was in effect for more than 50 years until being revised and altered in 1911 under the name "The Indian Patents and Designs Act". A comprehensive patent rights law known as "The Patents Act, 1970" was passed in the years after Indian independence. Only limited

types of intellectual work were protected by specific legislation; until recently, only four types were.

Copyright, patent, design, and trademark grants served as protection. The Copyright Act of 1957, the Patents Act of 1970, the Trade and Merchandise Marks Act of 1958, and the Designs Act of 1911 all governed intellectual property rights in India. Several new laws were created for the protection of intellectual property rights to comply with international commitments after the creation of the WTO and India's signature on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These included the Trade Mark Act of 1999, the Designs Act of 2000, which superseded the Designs Act of 1911, the Copyright (change) Act of 2012, which was the most recent change to the Copyright Act of 1957, and the 2005 revisions to the Patents Act of 1970. Additionally, new laws governing geographical markers and plant types were passed. These are referred to as the Farmers' Rights Act of 2001, the Protection of Plant Varieties Act of 1999, and the Geographical Indications of Goods (Registration and Protection) Act of 1999, respectively.

Intellectual property rights have developed to the point that they now significantly influence the growth of the global economy during the last fifteen years. Many nations tightened their rules and regulations in this field unilaterally in the 1990s, and many more were prepared to follow suit. The World Trade Organization's (WTO) successful completion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) raises the protection and enforcement of IPRs to the status of a serious international commitment at the multilateral level. Stronger IPR protection is believed to boost incentives for innovation and raise returns on foreign technology transfer in the context of a globally competitive market.

India's Development of a Trips-Compliant Regime

To institutionalize the global framework of commerce, the creation of the WTO necessitates the harmonization of numerous facets of Indian law about intellectual property rights. The TRIPS agreement established baseline requirements for IPR rights protection as well as a deadline by which nations had to amend their legal systems to provide the necessary level of protection. In light of this, India has recently made steps to alter and revise the different IP Acts.

Patents Act 1970

The Patents Act, of 1970 was amended in the years 1995, 1999, 2002, and 2005 to comply with the TRIPS agreement after India became a signatory. The TRIPS agreement is a component of the Agreement establishing the World Trade Organization (WTO) and aims to reduce trade distortions and obstacles while promoting effective and adequate protection of intellectual property rights. The Patents Act has been updated to take into account India's growing technical capacity as well as the need to harmonize the nation's intellectual property laws with those of other countries. The changes were made to satisfy India's international responsibilities under the TRIPS Agreement and to modernize, harmonize, and make the Act easier to use while still protecting national and public interests. The Patent Act's regulations were subsequently modified, and these changes took effect in May 2003. With effect from January 1, 2005, the Patents (Amendment) Rules 2005 have further altered these regulations. As a result, the Patent Amendment Act of 2005 is now fully effective.

Trade Mark Act, 1999

Under the Trademarks Act of 1999, the legislation governing trademarks has also been updated. A trademark is a unique sign used to separate the items sold or otherwise made

available for purchase by one merchant from those of another. In India, trademarks have been protected by the terms of the Trade and Merchandise Mark (TMM) Act of 1958 for more than 40 years. India joined the WTO as a member right away. One of the contracts in that one concerned TRIPS (intellectual property rights). India became a party to the Paris Convention in December 1998. In the meantime, efforts to update the Trade and Merchandise Marks Act of 1958 were made while taking into account recent changes to business and trading practices, the growing globalization of trade and industry, the need to promote investment flows and technology transfer, the need to simplify the trademark management system, and the need to implement significant judicial decisions. The Trademarks Bill was proposed in 1994 to fulfill these goals.

The Designs Act, 2000

The Designs Act of 2000 is the successor of the Designs Act of 1911. A more effective legal system for the protection of industrial designs was felt to be necessary in light of the significant advancements in science and technology to ensure that registered designs are effectively protected as well as to promote design activity to highlight the design element in a product. In light of this, the Designs Act, 2000 was passed primarily to strike a balance between these interests and ensure that the law does not unnecessarily extend protection beyond what is required to encourage design activity while removing barriers to the unrestricted use of existing designs. Since the new Act conforms to TRIPS' standards, it has immediate bearing on global commerce. The original design or aesthetics of an industrial product are the subject of industrial design legislation. A typical industrial product has both artistic and utilitarian features, and elements of both art and craft.

The operational components of an item are not covered by the design legislation, which only protects those that are aesthetically pleasing. For instance, a teacup's design must have a handle and a hollow chamber for storing tea. These features are functioning but cannot be registered. However, if it had a unique form or decoration, it would be registrable. A table, for instance, has a flat top that can accommodate other things. This is what makes it work. However, if it is distinctive and innovative, its form, color, and how it is supported by legs or otherwise fall within the category of design or creative aspects and are thus registrable[8], [9].

Industrial design is becoming a crucial component of consumer culture, as competing products vie for consumers' attention. It has become crucial to provide a unique industrial design with suitable protection since it is not always simple to distinguish between the form and function of a final product. However, according to the law, only the visual appeal or the design element may be registered and protected. For instance, while creating furniture, whether for export or otherwise, one must ensure that no one else has a design right in that specific design before copying it from a catalogue. Making sure that the furniture's design is not already registered as a patent or design in the exporting nation is very important when exporting furniture. Otherwise, the exporter can get entangled in pointless legal battles and perhaps be subject to damage claims. Contrarily, if ethnically inspired furniture is being exported and the design satisfies the criteria for what constitutes a "design" under the Designs Act, it would be worthwhile to register the design in the country where the product is being sold so that others cannot copy it and deny the designer of the design the financial benefits of his creation.

The Geographical Indications of Goods (Registration and Protection) Act, 1999

Geographical indications were not previously registrable in India, and in the lack of legislative protection, they have been abused by people outside of the country to denote the

origin of items other than those from the stated location in India. The patenting of basmati, neem, and turmeric are the cases that generated the most interest in this area of intellectual property. It should be noted that, unless a geographical indicator is protected in the country of its origin, other nations are not required to provide reciprocal protection under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). India lacked a clear legislation controlling geographic indicators of products that could appropriately safeguard the interests of such products' producers.

A comprehensive law requiring the registration of geographical indications and adequate protection for them was needed to address these issues, and the Parliament responded by passing the Geographical Indication of Goods (Registration and Protection) Act, 1999. The Geographical Indication Registry, which is under the general supervision of the Controller General of Patents, Designs, and Trade Marks, is responsible for administering the law.

Copyright Act, 1957

The Copyright Act of 1957 governs copyright in India. To adapt to the times, this Act has undergone several revisions. According to this Act, a copyright gives the owner lifelong protection and 60 years after a death. On cultural commodities, products, and services, copyright and associated rights result from individual or group creation. "Works eligible for copyright protections" refers to all original intellectual works that are expressed in a reproducible manner. Copyright laws provide distinctions between several classifications of works, such as musical, artistic, and literary works as well as sound recordings and motion pictures. The work is protected regardless of how good it is and even though it may not have anything in common with recognized genres of literature or art. Novel rights, which include the right to claim authorship of a work and the right to reject alterations that would damage the creator's reputation, are also covered by copyright protection.

The person who created the work or who owns the copyright to it has the authority to pursue his or her rights administratively and in court by inspecting a location for signs of the manufacture or possession of "pirated" items connected to protected works. The owner may seek damages for lost financial gain and notoriety as well as judicial orders to prohibit such actions. The computer industry is a crucial sector that is protected by copyright. When the Copyright Act of 1957 was revised in 1984, computer programming was included to the list of what constitutes "literary work." A series of instructions represented in works, codes, or in any other form, including a machine readable media, that may direct a computer to carry out a certain job or produce a specific outcome is referred to as a "computer program" according to the new definition that was adopted in 1994. The piracy of works, whether they be books, musical compositions, films, television programs, computer software, or computer databases, is the copyright industry's biggest worry and concern. The Copyright (Amendment) Act of 1994 included a new section 63 B in response to the unique nature of copyright infringement in computer programs.

According to the new section, anyone found guilty of intentionally using a pirated copy of a computer program on a computer faces a minimum sentence of seven days in jail and a maximum sentence of three years in prison as well as a minimum fine of $50,000 and a maximum fine of $2,000,000. The proviso to section 63 B, however, states that the court may, at its discretion and for reasons stated in the judgment, not impose any term of imprisonment and instead impose merely a fine of up to 50,000/- when the computer program has not been utilized for gain or in the course of commerce or business. If the item being transacted is not the primary object protected by the Copyright Act, the Copyright (Amendment) Act, 1999 allows the purchaser of a piece of equipment or technology to freely

sell it to a third party. This implies that computer software that is a necessary component of a device or piece of equipment may be freely traded without the owner's consent. This amendment also assures equitable dealing with "broadcasting," which is becoming more and more popular as the Internet expands. With this revision, India has brought the Act up to date to address the concerns of the copyright industries, which primarily include the book, music, film, and television sectors, as well as the computer and database businesses.

The Protection of Plant Varieties and Farmers' Rights Act, 2001

The idea of plant breeders' rights was developed in response to the need to reward plant breeders who engage in creative research that advances agriculture by generating returns on research investments, as well as to persuade the researcher to share the fruits of his creativity with society. Since the TRIPS agreement under the WTO, which aims to promote efficient protection of intellectual property rights in all domains of technology, the problem of establishing legislation pertaining to Plant Varieties Protection and Farmers' Rights in India has become more important. The TRIPS Agreement's Article 27 specifies patentable subject matter and mandates that member nations safeguard plant varieties by patenting, an effective sui generis system, or any combination of the two.

The Semi-Conductor Integrated Circuits Layout Design Act, 2000

One of the industries with the quickest growth rates and one that has contributed significantly to the global economy is electronics and information technology. The development of electronics, computers, and telecommunications is largely to blame for this. Microelectronics, which primarily refers to Integrated Circuits (ICs) ranging from Very Large Scale Integration (VLSI) to Small Scale Integration (SSI) on a semiconductor chip, has rightly been recognized as a core, strategic technology on a global scale, especially for Information Technology (IT) based societies. Depending on the intricacy, integrated circuit design involves a lot of knowledge and work. Therefore, it is crucial to safeguard the Intellectual Property Rights (IPR) that are built into layout designs in order to stimulate continuing expenditures in R & D that lead to breakthroughs in the technology of microelectronics. The techniques of copyright and patent protection were not sufficient to adequately address the needs of intellectual property rights protection for integrated circuit layout designs. This was done because originalitywhether it be a "novelty or not"is of the highest importance in the context of layout designs. While the copyright law is too vague to account for the original ideas of scientifically created Layout-Designs of Integrated Circuits, the patent law stipulates that the concept must be both unique and innovative. Given the above, it was decided that Layout-Designs of Integrated Circuits needed to be protected in order to reward and promote a sufficient level of investment of human, financial, and technical resources.

The majority of nations that value the protection of IP rights in semiconductor integrated circuits have a sui generis method of protection for integrated circuit layout-designs, which is often covered by a separate Act. The WTO Trade Related Intellectual Property Rights (TRIPS) Agreement comprises provisions relating to the establishment of standards on the availability, scope, and use of intellectual property rights, geographical indications, integrated circuit layout-design, etc. In order to preserve semiconductor integrated circuits, the government passed the Semiconductor Integrated Circuit Layout Designs Act in 2000. Layout-Designs through the registration process, a method for identifying Layout-Designs that can be protected, regulations to prevent the registration of Layout-Designs that are not original and/or that have been commercially exploited, a period of protection, provisions regarding infringement, payment of a royalty for registered Layout-Designs, provisions for dealing with willful infringement by way of punishment, appointment of a Registrar for

registering the Layout Designs, and more. In conclusion, India's endeavor toward a new IPR regime to better position itself for the global trade competition can be seen in the many adjustments and amendments to prior Intellectual Property Laws.

Trade Secrets:

An organization may get a competitive advantage from secret business knowledge. These are often business secrets as well as manufacturing or industrial secrets. These include of production procedures, lists of suppliers and customers, sales techniques, distribution techniques, consumer profiles, and advertising plans. Trade secrets are protected without registration, in contrast to patents. A trade secret may be kept indefinitely, but there must be a significant amount of secrecy such that finding the knowledge would be difficult unless inappropriate techniques were used. Given the abundance of traditional knowledge in the nation, the protection provided by this will be essential for obtaining the advantages of this kind of information.

CONCLUSION

The introduction to intellectual property has laid the groundwork for comprehension of the intricate and developing area of intellectual property rights. The value of intellectual property is emphasized in terms of encouraging innovation, creativity, and economic expansion. The conclusion can also stress the need for strong enforcement practices to safeguard intellectual property and handle problems brought on by globalization and new technology. The introduction provides a jumping-off point for exploring the many types of intellectual property, such as patents, copyrights, trademarks, and trade secrets, and their importance in the contemporary world by laying the groundwork for a future investigation.

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CHAPTER 2

EXPLORING THE TYPES OF INTELLECTUAL PROPERTY

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ABSTRACT:

The legal privileges granted to people or organizations for their inventive and creative works are referred to as intellectual property (IP). This chapter examines the many forms of intellectual property, such as trade secrets, patents, and trademarks. It talks about the unique traits, functions, and defense systems connected with each kind. This chapter also discussed the main ideas and emphasizes the value of intellectual property in encouraging innovation and defending artists' rights. The works and/or inventions originating from intellectual activity in the economic, scientific, literary, or artistic domains are protected by a variety of Intellectual Property Rights (IPRs).IPRs are crucial because they safeguard the rights of artists and innovators, enabling them to profit from their work and promoting originality and creativity. Depending on the nature of the creator's work, the various IPR kinds offer various levels of protection.

KEYWORDS:

Copyright, Industrial Design, Intellectual Property, Patents, Trademarks.

INTRODUCTION

The legal rights that are given to people or organizations for their innovations or works are referred to as intellectual property (IP). It includes a broad spectrum of intangible assets, such as creations, works of literature and art, symbols, designs, and brand names. By giving owners or inventors of these intangible goods exclusive rights, intellectual property protection aims to promote innovation and creativity. The idea of intellectual property acknowledges that works of art, inventions, and technical developments all have value and should be safeguarded from unlawful use or exploitation. Intellectual property laws seek to encourage people and organizations to devote their time, money, and effort to the creation of novel ideas and inventions by providing legal protection for these intangible asset[1].

Legal procedures are used to uphold intellectual property rights, enabling creators and owners to file lawsuits to stop infringement or unlawful use. These privileges differ from nation to nation, but there are international agreements like the World Intellectual Property Organization (WIPO) that seek to unify and safeguard intellectual property on a worldwide level. Intellectual property gives creators and innovators the tools to safeguard and profit from their intangible assets, laying the groundwork for innovation, creativity, and economic success[2].Intellectual property (IP) has a long history and has undergone tremendous development. The legal rights given to people or organizations for their discoveries, works, or designs are referred to as intellectual property. These rights provide artists exclusivity and protection while enabling them to profit from their creative works.

Synopsis of Intellectual Property History

1. Intellectual property has been a notion since ancient civilizations, according to history. For instance, innovators were given restricted monopolies for their works in

classical Greece and Rome. However, promoting innovation took precedence over defending exclusive rights.

2. Middle Ages: Trade secrets were very important for safeguarding intellectual property throughout the Middle Ages. In order to preserve a competitive advantage, guilds, and craft groups would tightly control their methods and expertise. There were no copyrights or patents in the modern sense during this time.
3. The Statute of Monopolies was a significant piece of English law that was adopted in 1624. In addition to establishing the first official patent system, it sought to manage monopolies. The act encouraged invention and provided a foundation for the protection of intellectual property by giving innovators a 14-year monopoly right.
4. Industrial Revolution: The 18th century's start of the Industrial Revolution resulted in substantial technical developments and prompted the need for more robust IP protection. The Patent Act of 1790, which gave innovators a temporary exclusive right to their ideas, created the first modern patent system in the United States.
5. International IP Treaties: In the late 19th and early 20th centuries, nations started to realize how crucial it was for them to work together internationally on intellectual property. Early international agreements that sought to standardize IP laws across various countries include the Berne Convention for the Protection of Literary and Artistic Works (1886) and the Paris Convention for the Protection of Industrial Property (1883).
6. 20th Century: Intellectual property rights continued to advance throughout this century. The Lanham Act, which created federal trademark protection, was approved by the United States in 1946. In order to strengthen IP protection on a worldwide scale, the United Nations also founded the World Intellectual Property Organization (WIPO) in 1967.
7. Digital Age: As the internet and other digital technologies advanced, intellectual property rights faced new difficulties. Significant issues include things like copyright violations, internet piracy, and software patents. To address these issues and provide a framework for IP protection in the digital age, many international agreements, notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO), were made.
8. Current Developments: As technology advances and social requirements change, intellectual property continues to change. Blockchain technology, biotechnology, and other emerging fields pose particular difficulties for IP law. To keep up with these changing needs, nations, and international organizations are continually attempting to update and modify IP legislation.

DISCUSSION

The term "intellectual property" refers to the collection of intangible assets that a business or person owns and is legally entitled to protect against unauthorized use or application by third parties. A firm or individual may hold intangible assets, which are non-physical assets. The idea of intellectual property stems from the idea that certain creations of the human brain ought to have the same legal protections as tangible goods, or tangible property. Legal protections for both types of property are in place in the majority of industrialized countries[3].

1. A collection of intangible assets, or assets that are not physical, are collectively referred to as intellectual property.
2. A person or business that owns the intellectual property has it legally protected against unauthorized use or implementation by other parties.
3. Trademarks, patents, and copyrights are just a few examples of the many assets that may be included in intellectual property.
4. Any illegal use of the material by a third party constitutes intellectual property infringement.
5. Most intellectual property has legal rights that eventually expire, although others (like trademarks) have perpetual protections.

Understanding Intellectual Property

Because intellectual property is so highly valued in today's increasingly knowledge-based economy, businesses take great care to identify and protect it. Additionally, generating valuable intellectual property involves significant brainpower and labor-intensive time inputs. This translates into significant expenditures made by businesses and people, which should not be used without permission from others. Every business must get value from intellectual property while prohibiting others from doing the same. There are many different types of intellectual property. Despite being an intangible asset, intellectual property often has a far higher value than a company's concrete assets. Because it may be a source of competitive advantage, intellectual property is jealously guarded and safeguarded by the businesses that possess it[4].A product of the mind is referred to as intellectual property. This includes innovations, literary and creative works, as well as symbols, names, and pictures utilized in trade.Two distinct categories of intellectual property are distinguished:

1. **Industrial property**
2. **Copyright**

Patents for innovations, trademarks, industrial designs, and geographical indicators are all examples of industrial property.Literary works (such as books, poetry, and plays), motion pictures, music, creative creations (such as sculptures, paintings, and photos), and architectural designs are all covered by copyright. Performers' rights in their performances, phonogram makers' rights in their recordings, and broadcasters' rights in their radio and television broadcasts are all covered by copyright laws.Major categories may be used to broadly classify intellectual property as depicted in Figure 1.

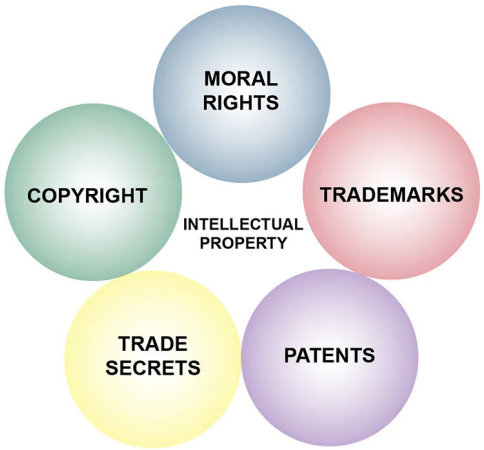

Figure 1: Types of Intellectual Property

The Intellectual Property Right (IPR) known as copyright safeguards creative works of authorship, including books, music, and motion pictures. Authors, composers, artists, filmmakers, and others are protected and paid for their creations thanks to copyright laws. For a specific amount of time, copyright grants the original work's creator the only right to use, distribute, and profit from that work. Digital technologies have had an impact on copyright law because they have significantly altered how creative content is created, shared, and accessed. Eleven directives and two regulations make up the EU's copyright legislation, which harmonises the fundamental rights of writers, performers, producers, and broadcasters.

1. Patents

Patents are issued for fresh discoveries or innovations that provide a novel technological remedy for a problem. For a certain amount of time, they provide the inventor exclusive ownership of the innovation, barring anybody else from creating, using, or selling it. An innovation, such as a product or procedure that gives a novel approach to a problem or a new technological solution is given an exclusive right called a patent. The innovations of patent holders are protected by a patent. Protection is given for a short time, often 20 years[5].Governmental patent agencies, like the United States Patent and Trademark Office (USPTO) or the European Patent Office (EPO), award patents. As part of the grant process, the invention is thoroughly examined to establish its originality, non-obviousness, and industrial usefulness.An innovation must satisfy a number of requirements in order to be eligible for patent protection, including:

1) Novelty:
2) Non-obviousness/Innovative Step.
3) Industrial Application

When a patent is issued, the owner is given the only authority to use and sell the invention. This covers the ability to produce, use, market, or provide a license for the patented invention to other parties. In exchange for this exclusive privilege, the patent holder must provide all relevant information about the innovation in the patent application so that others may benefit from it once the patent has expired. By giving innovators incentives and rewards for their discoveries, patents serve a critical role in fostering innovation. They promote investment in R&D, ease the transfer of knowledge, and promote economic progress by promoting a competitive environment where innovative ideas may be safeguarded and made commercially viable.

Why do patents need to be filed?

By acknowledging ingenuity and giving the chance of financial compensation for commercial discoveries, patents serve as incentives for people. These incentives promote innovation, which raises the standard of living.

What type of protection is provided by patents?

Without the permission of the patent holder, an innovation cannot be manufactured, utilized, disseminated, or sold for a profit. In most systems, courts have the power to prevent patent infringement, hence courts are often where patent rights are enforced. If a third party successfully challenges a patent, a court may also rule that the patent is invalid.

2. Copyright

Copyright protects original literary creations including books, music, movies, and software. For a certain amount of time, it gives the author the only authority to copy, distribute, perform, and exhibit their creation as well as to make derivative works.Copyright is a legal principle that gives authors of creative works of writing exclusive rights. It is a kind of intellectual property protection that provides the author control over how their works are used and distributed. A wide variety of artistic expressions are referred to as "works of authorship" under copyright law, including literary works (such as books, articles, and poems), musical compositions, artistic creations (paintings, sculptures, photographs), dramatic works (plays, scripts), architectural designs, software code, and other unique intellectual works.

The right to reproduce, distribute, publicly perform, and make derivative works based on the original work are often included in the exclusive rights given to the copyright holder. These rights provide the author the power to restrict how their work is used and to profit financially from its exploitation. When a work is made and fixed in a physical form, such as by writing it down or storing it in a digital format, copyright protection instantly exists. To provide a public record of ownership and make legal enforcement easier, it could be wise to register the copyright with a recognized government body in certain areas[6]–[8].

Depending on the nation and the sort of work, copyright protection lasts a different amount of time. The copyright term often lasts for the creator's lifetime and a specified number of years after their passing, giving creators and their successors an incentive to profit from their works. The work often becomes public domain when the copyright period has passed, allowing anybody to use it without restriction or compensation. Copyright is a crucial instrument for encouraging innovation, encouraging the development of new works, and giving artists the power to manage and monetize their works. It achieves a compromise between fostering access to and diffusion of information, culture, and creative expression in society and protecting artists.

3. Trademarks

In the marketplace, trademarks serve to identify and differentiate the source of products or services employing unique signs, symbols, logos, or names. They protect a company's trademark identity and prevent rivals from adopting identical marks that can mislead customers. In the marketplace, trademarks are unique signs, symbols, logos, names, or any combination of these that are used to identify and differentiate the source of products or services. They are significant resources for companies, assisting in building brand identification and differentiating their goods or services from those of rivals.

Trademarks are primarily used to avoid customer misunderstanding and to safeguard the reputation and goodwill connected to a certain brand. Consumers should be able to identify trademarks and link them to particular businesses or goods, which will help them make judgments about what to buy. Typically, trademark rights are obtained by filing a trademark registration application with the relevant intellectual property authority in the nation where protection is desired. Once a trademark is registered, the owner is given the only right to use the mark in connection with the products or services listed in the registration. These rights often last for an ever-expanding period, giving the owner legal remedies against unlawful use or infringement by third parties. Trademarks help companies by defending their interests, but they also help consumers by allowing them to make educated decisions and depend on the caliber and reputation of a specific brand. Additionally, trademarks encourage businesses to spend on creating unique brands and upholding high standards of quality, which helps promote fair competition in the marketplace as a whole.

4. Industrial designs

Industrial designs are the decorative or aesthetically pleasing features added to a product to improve its outside look. They are distinguishing characteristics or designs added to a product's form, arrangement, surface, or ornamentation. Industrial designs are mostly concerned with how something looks from the outside and are meant to help a product stand out from similar ones on the market. Industrial designs may have components like a product's pattern, color, texture, form, or any combination of these aspects. They are present in a large variety of consumer and industrial goods, including furniture, appliances, cars, packaging, clothes, and electrical equipment. Industrial designs are very important for branding, customer perception, and product distinction.

Industrial designs are often protected by intellectual property laws, particularly via design patents or industrial design registrations. The author or owner of an industrial design may stop others from duplicating or mimicking the aesthetic of their product by securing legal protection. This protection promotes innovation, supports fair competition, and gives manufacturers and designers an incentive to spend money on creating novel and distinctive designs. The overall visual appeal, marketability, and financial performance of items are all influenced by industrial designs. They enable businesses to produce aesthetically attractive and unique items that draw customers and establish brand awareness in the marketplace.

5. Geographical indication

A geographical indicator is a label applied to products with a particular geographic origin and attributes or a reputation derived from that location. A geographical indicator typically consists of the name of the country or region where the product was made. Agricultural goods often include characteristics that are unique to the region in which they were grown and that are affected by local geographical elements like soil and climate. Depending on national legislation and consumer perception, a sign may or may not serve as a geographical indicator. A broad range of agricultural goods may employ geographic indicators, for as "Tuscany" for olive oil produced in a particular region of Italy or "Roquefort" for cheese manufactured in that region of France. Geographical indicators are used for items other than only agricultural ones. They may also draw attention to certain characteristics of a product that result from local human characteristics, such as regional manufacturing practices and customs. The origin might be a hamlet, town, nation, or region.

6. Trade Secrets

Trade secrets are a kind of intellectual property that refers to priceless, private knowledge that organizations utilize to differentiate themselves from rivals in the market. Formulas, procedures, methods, tactics, customer lists, marketing strategies, pricing data, and other proprietary knowledge are just a few examples of the types of non-public information that might be considered trade secrets.

Trade secrets, as opposed to other types of intellectual property like patents or copyrights, depend on their confidentiality for protection. This implies that the owner of a trade secret is required to take reasonable steps to protect the information's confidentiality and stop anybody else from using or disclosing it without authorization. Non-disclosure agreements (NDAs), employment contracts, and restrictive covenants are a few ways to safeguard trade secrets. The owner of a trade secret has the right to file a lawsuit to seek redress and damages from the offending party if it is wrongfully taken or illegally revealed.Contrary to patents or copyrights, trade secrets do not have an expiry date. The owner may continue to profit from the information's exclusivity forever as long as it stays a secret and isn't revealed or acquired

improperly. However, a trade secret loses its protected status if it is legally found or independently produced by others. Businesses depend heavily on trade secrets to protect important information and retain a competitive edge in the market.

Trade secrets are important and private corporate knowledge including formulae, procedures, client lists, and marketing tactics. Trade secrets are protected by their confidentiality rather than by patents or copyrights. The owner has exclusive rights and competitive advantage so long as the information is kept private.By offering legal protection and exclusive rights, these many forms of intellectual property act as essential stimuli for innovation and creativity. In addition to fostering competitiveness and economic progress, they stimulate investment in R&D. By guaranteeing that inventors and creators may profit from their innovations, effective intellectual property protection promotes a favorable environment for the development of science and technology.

CONCLUSION

The idea of intellectual property comprises numerous types of legal safeguards for original and creative works. Patents protect innovations and technical developments by giving the creators temporary exclusivity. Trademarks safeguard unique names, images, or designs connected to goods or services, enabling companies to build their brand identities and preventing unlawful usage. Copyrights provide creators with unique rights and allow them to manage the use and distribution of their works. They protect original works of authorship such as literature, music, and creative creations. Trade secrets provide businesses with a competitive edge by protecting important business knowledge that is kept private. To promote a dynamic and inventive ecosystem, people, companies, and society at large must uphold and protect intellectual property rights.

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CHAPTER 3

BIODIVERSITY AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

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ABSTRACT:

The link between biodiversity and the defense of intellectual property rights (IPRs) is examined in this chapter. IPRs are the legal frameworks that provide producers and innovators exclusive rights. Biodiversity is the variety of living things and ecosystems on Earth. The chapter talks about the value of biodiversity for human well-being, how IPRs may encourage biodiversity conservation and sustainable usage, and the potential and problems associated with combining IPRs with biodiversity preservation. As a whole, there are many different facets and a complex link between biodiversity and IPRs. IPRs can encourage the creation of new products and technology that can enhance biodiversity, but they can also result in the privatisation of that resource and the exploitation of traditional knowledge. The preservation of biodiversity and the protection of IPRs must coexist in harmony.

KEYWORDS:

Biodiversity, Industrial Design, Intellectual Property, Patents, Trademarks.

INTRODUCTION

Simply said, biodiversity is the variety of different living forms found within the Biosphere. The cornerstone of life on Earth is biodiversity. It is essential for the health of ecosystems that provide us the goods and services we need to survive. We have a significant impact on both human health and the health of all other living things when we alter biodiversity. Biodiversity is typically divided into three main categories: genetic diversity, which represents the substantial amount of variability occurring within a species, species diversity, which represents variability at the level of families, genera, and species, and ecosystem diversity, which represents the major bio geographical regions and habitats. Numerous stakeholders have engaged in a variety of local, state, national, and international activities and initiatives to preserve and maintain priceless resources like biodiversity in order to reap the societal advantages that come with them[1], [2].

It is a well-known fact that developing nations have a wealth of the world's flora and fauna, and that they are home to 80% of the planet's terrestrial biodiversity. This biodiversity serves as the "raw material" for biotechnology, which uses genes, folk varieties, and land races to create new varieties. Prior to the development of molecular biology and genetic engineering, access to genetic diversity within a species was a prerequisite for successful plant breeding. However, genetic engineering has made it feasible for genes to bypass sexual boundaries, increasing the economic worth of biodiversity.Although the industrialized nations are better prepared for research and development, they are not particularly wealthy in biogenetic resources. They use the biogenetic resources obtained from underdeveloped nations. It follows that there is a start in the unprotected movement of genetic information from the developing worlds to the capital-rich west, and a protected flow in the other way, largely via patents and Plant Breeders' Rights (PBR). It has both overt and covert effects. One of the

most significant unseen effects is genetic degradation, which over time manifests itself dramatically in the loss of biodiversity.

IPRs like patents may encourage innovation in industries like biotechnology, agriculture, and medicines that are tied to biodiversity. They support the creation of novel medicines, plant species, and biotechnological remedies that may assist in the preservation of biodiversity and advance the wise use of natural resources. IPRs must also strike a balance between the public's interest in accessing information and resources on biodiversity and the exclusive rights of innovators. For the protection of biodiversity, it is crucial to include indigenous and local groups' traditional knowledge and traditions[3], [4]. Traditional knowledge, which is often connected to the use and management of biodiversity, may aid in the creation of long-term fixes. However, the fair and equitable sharing of benefits with indigenous and local populations must be ensured through the safeguarding of traditional knowledge via suitable IPR systems. IPRs and the goals of biodiversity protection cannot always be reconciled. Attention must be paid to problems like bio piracy, in which genetic resources and traditional knowledge are misused without an acceptable benefit-sharing arrangement. Effective regulatory frameworks, international collaboration, and the participation of many stakeholders are required to strike a balance between the rights of inventors and innovators and larger social and environmental interests.

Biological Diversity Convention (CBD), 1992

The Convention on Biological Diversity is an international treaty for the conservation of biodiversity, the sustainable use of its components, and the equitable sharing of the benefits derived from the use of genetic resources. It was made open for signature at the Earth Summit in Rio de Janeiro in 1992 and came into effect in December 1993. Several international treaties and processes, such as those at the WIPO and the TRIPS Council of the WTO, have an impact on how biodiversity and intellectual property interact. The Convention enjoys almost universal national involvement, with 193 Parties. The Convention aims to address all threats to biodiversity and ecosystem services, including those posed by climate change, through scientific assessments, the creation of tools, processes, and incentives, the dissemination of technologies and best practices, and the active participation of all relevant parties, including indigenous and local communities, young people, NGOs, women, and the business sector. The Convention has a secondary accord known as the Cartagena Protocol on Biosafety[5], [6].

It aims to safeguard biological variety against the dangers that living modified creatures brought on by contemporary biotechnology may cause. The term "biodiversity" is used in the treaty to refer to "the variability among living organisms from all sources, including, among others, terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are a part; this includes diversity within species, between species, and of ecosystems". The Convention reaffirms the concept of state sovereignty, which accords states the right to exploit their resources in accordance with their own environmental policies and the duty to ensure that activities under their jurisdiction or control do not harm the environments of other states. A comprehensive legal framework governing access to biological resources and the distribution of advantages accruing from their usage is also provided by the Biodiversity Convention. The 1992 Convention on Biological Diversity includes India as a party. While acknowledging the enormous economic worth of the world's germplasm stockpile, the Convention on Biological Diversity outlines key criteria for the conservation of biodiversity. While undermining prospects for social and economic growth as well as cultural variety, the proliferation of international trade agreements that establish a worldwide framework of intellectual property rights generates incentives that may damage

biodiversity. The member nations were under pressure to modify their intellectual property (IPR) laws to comply with the TRIPS agreement. India followed suit by establishing legislative frameworks for the management of biodiversity and regulations pertaining to intellectual property. The Biological Diversity Act, 2002 was enacted after India ratified the Convention on Biological Diversity (CBD) on a global scale. The Biological Diversity Act seeks to preserve biological resources and related knowledge while also promoting equitable and sustainable access to them.

DISCUSSION

Competing Justifications for IP Protection

The right to own and benefit from one's creative, scientific, and technical inventions is granted by intellectual property regulations for a certain amount of time. These rights only pertain to the intellectual product itself, not to any physical item in which it may be incorporated. For two fundamental reasons, nations have passed laws to safeguard intellectual property. One is to give formal expression to the public's right to access these works of art as well as the moral and financial rights of authors to their works. The second is to actively foster innovation, as well as the distribution and implementation of its findings, as well as fair commerce, which would support economic and social progress. It is widely acknowledged that knowledge and innovations have contributed significantly to the economic development of the nations. It is seen in the economic growth certain nations had in the 1990s. The TRIPS Agreement was included as one of the agreements in the framework of the multilateral trade negotiations under the Uruguay Round as a result of the growing importance of intellectual property and the new pattern of global trade, which gave momentum for creating a link between intellectual property policies and trade law. The power and significance of intellectual property are also shown in the way knowledge-intensive companies aim to maximize shareholder value. Whether it be via intellectual property licensing, joint ventures, international collaborations, manufacturing, purchase or distribution agreements, or mergers and acquisitions, intellectual property is currently one of the most valuable assets in business transactions. Patent, copyright, and trademark usage licenses are increasingly significant terms in technology transactions and are often paired with know-how transfers[7], [8].

These licenses make items and technology available to licensees who would not have otherwise had access to them while still paying royalties to the owner of the intellectual property. The licensees may also get the right to develop their own Intellectual Property assets and make enhancements or derivative works, which they may then cross-license or license to others. This starts a highly fruitful cycle of creativity and invention that boosts the businesses' profits. The World Intellectual Property Report 2011: The Changing Face of Innovation, a recent WIPO report, details how intellectual property (IP) rights ownership has risen to the forefront of innovation-focused companies' global business strategy. The Report comes to the conclusion that increasing investments in innovation and the globalization of economic activity are the major drivers of this trend, with the number of patent applications worldwide increasing from 800,000 in the early 1980s to 1.8 million in 2009.

IP policy has thus risen to the top of the innovation agenda. Francis Gurry, the director general of the World Intellectual Property Organization, states that "innovation development is no longer the exclusive province of high income nations; the technical divide between wealthier and poorer countries is closing. On par with top-notch technical advances, incremental and more regional kinds of innovation support economic and social progress. In addition to being utilized in commercial transactions, intellectual property assets are also exchanged on online exchanges for the assessment, purchase, sale, and licensing of patents

and other types of intellectual property. Similar to investors in stocks, options, and other financial instruments, intellectual property purchasers and sellers handle their intellectual property as financial assets. Strong intellectual property protections enable customers to make informed decisions regarding the security, dependability, and efficacy of their products. Enforced intellectual property rights guarantee that goods are genuine and meet the high standards that customers know and expect. IP rights provide the assurance and comfort that customers want and markets need.

Leading International Instruments Concerning IPR

Instead of being a collection of rigid laws, the international intellectual property system is rather a system of accumulated behaviors. International treaties governing such treatment as well as national laws outlining the treatment to be given to foreigners control the practice of international relations in the area of legal protection of innovations and literary and creative works. It should be emphasized that a country's laws defining foreigners' rights are still a part of the international system even if that country is not a signatory to any relevant international treaties because they serve as the foundation for the protection of intellectual property in multiple nations. The numerous facets of intellectual property and industrial property are covered by a variety of international treaties and conventions. The World Intellectual Property Organization, or WIPO, is in charge of overseeing these Conventions.

World Intellectual Property Organization (WIPO)

A specialized UN agency is the World Intellectual Property Organization (WIPO). It is committed to creating a fair and open worldwide intellectual property (IP) system that encourages innovation, rewards creativity, and aids in economic growth while protecting the public interest. With a mission from its Member States to advance IP protection globally via intergovernmental cooperation and partnership with other international organizations, WIPO was formed by the WIPO Convention in 1967. Geneva, Switzerland serves as its corporate headquarters. The Paris Convention for the Protection of Industrial Property, the first significant international agreement aimed at assisting citizens of one nation in obtaining protection for their intellectual creations in the form of industrial property rights, also known as inventions (patents), trademarks, and industrial designs, was established in the year 1883.

The Paris Convention came into effect in 1884 with 14 signatories, who established an international bureau to handle administrative duties including planning member state meetings. The Berne Convention for the Protection of Literary and Artistic Works was established in 1886, and it helped citizens of its member states obtain international protection for their right to manage and be compensated for the use of their creative works, including songs, operas, musicals, sonatas, and drawings, paintings, sculptures, and architectural works. The Berne Convention established an International Bureau to handle administrative duties, similar to the Paris Convention. The United International Bureau (BIRPI) for the Protection of Intellectual Property was founded in 1893 as a result of the merger of these two modest bureaux. The World Intellectual Property Organization was in fact preceded by the BIRPI.

The legal framework and processes that guarantee the fair and equitable sharing of benefits resulting from the use of biological resources and traditional knowledge linked with biodiversity are part of the protection of intellectual property rights (IPRs) in connection to biodiversity. It strives to do so while upholding the rights of indigenous and local populations by offering incentives for the preservation and sustainable use of biodiversity.In the context of biodiversity, the protection of IPRs is often linked to two key elements:

Access and Benefit Sharing (ABS)

Access and Benefit Sharing (ABS) is the term used to describe the just and equitable distribution of gains made through the use of genetic resources and related traditional knowledge. ABS frameworks are designed to make sure that the nations and people that own the genetic resources or traditional knowledge participate in the advantages of commercializing or using biodiversity. This encourages sustainable biodiversity use, supports conservation efforts, and recognizes the contributions of indigenous and local populations.

Protection of Traditional Knowledge (TK)

Over many centuries, indigenous and local cultures have created knowledge, inventions, and traditions. It often contains insightful information on the sustainable use of biodiversity, including plant medicinal characteristics, farming methods, and ecological management techniques. By safeguarding traditional knowledge via IPRs, local and indigenous groups' rights are upheld, misappropriation is avoided, and their involvement in processes for biodiversity conservation and exploitation is ensured.In order to support ecosystem conservation, promote ethical bio prospecting, and encourage the fair and equitable distribution of benefits, IPR protection in the context of biodiversity is crucial for sustainable development. IPRs support the preservation of biodiversity and the maintenance of ecological balance for the benefit of current and future generations by recognizing and defending the rights of communities and allowing the transfer of knowledge and resources.Intellectual property rights (IPRs) protection has several advantages for people, companies, and society at large.

Here are some major advantages of IPR protection:

Incentive for Innovation and Creativity:

IPRs create a framework that promotes innovation and creativity by giving creators, inventors, and innovators legal protection and exclusive rights. Individuals and businesses are driven to devote time, energy, and resources to creating new technologies, inventions, creative creations, and other types of intellectual property when they are certain that their intellectual property will be protected.

Economic Growth and Competitiveness:

Strong IPR protection stimulates economic development and boosts competitiveness, which in turn promotes both. IPRs encourage entrepreneurship, attract investments, and energize R&D activities by rewarding and safeguarding intellectual property. As a result, new industries are developed, employment possibilities are increased, and already existing enterprises expand, eventually resulting in economic success.

Encourages Technology Transfer and Collaboration:

Technology transfer and cooperation are encouraged because to IPR protection, which makes it easier for businesses, universities, and research organizations to share ideas and work together. Partnerships and licensing agreements enable the sharing of information, skills, and technology, which results in the creation of new goods and services. IPRs provide a legal framework for such partnerships, guaranteeing fair remuneration and encouraging more innovation.

Cultural Heritage Preservation:

Copyright protection protects artistic, intellectual, and cultural works, conserving cultural variety and legacy. It promotes the production and transmission of artistic works, including traditional cultural manifestations like music, cinema, and literature. IPRs assist preserve cultural traditions, advance cultural identity, and guarantee the survival of creative and cultural activities by defending the rights of producers.

Consumer Protection:

IPRs help to ensure the quality and authenticity of goods and services, which helps to safeguard consumers. For instance, trademarks enable customers to recognize and distinguish between brands, ensuring that they are buying real and dependable goods. Products that are fake or copycat may hurt customers and genuine firms' reputations. IPR protection aids in preventing such violations, maintaining the security and contentment of customers.

Global Collaboration and Harmonization:

The protection of intellectual property promotes global cooperation and the unification of rules and laws. Countries may create uniform IPR protection rules via international treaties and accords, allowing enterprises to operate internationally with more assurance and predictability. This promotes international commerce, the transfer of technology, and cross-cultural interaction, which is advantageous to all economies and communities.IPR protection has several advantages, including fostering innovation, fostering economic progress, conserving cultural heritage, safeguarding consumers, and encouraging international cooperation. IPRs support innovation, investment, and the growth of knowledge and technology by encouraging and compensating creators and innovators.

Common Rules

All of the contracting States are required to abide by the common regulations established by the Convention. The following are more crucial:

Patents

1. Patents awarded for the same innovation in several contracting States are independent of one another.

2. The issuance of a patent in one contractual State does not compel the issuance of a patent in the other contracting States.

3. No contractual State may deny, revoke, or cancel a patent on the grounds that it has already done so in another contracting State.

4. The inventor is entitled to have their name included in the patent.

5. It is not permissible to refuse to award a patent or to invalidate an existing patent on the grounds that the sale of a patented product or a product made using a patented method is subject to domestic legal restrictions or limits.

6. Each contracting State that enacts legislation allowing for the issuance of compulsory licenses to stop abuses that might arise from the exclusive rights granted by a patent is only permitted to do so within specific bounds. Therefore, a compulsory license based on failure to work the patented invention must be denied if the patentee provides sufficient justification for his inaction and may only be granted in response to a request made after three or four years of failure to work or insufficient working of the patented invention.

Trade Mark

The filing and registration requirements for marks are not governed by the Paris Convention and are instead governed by local law in each contracting State. As a result, neither a registration nor an application for registration of a mark submitted by a citizen of a contracting State may be rejected on the grounds that the filing, registration, or renewal has not been impacted in the place of origin. When a mark is registered in a contracting State, it becomes independent of any potential registrations in other nations, including the place of origin; as a result [9], [10].

1. The validity of registration in other contracting States is unaffected by the expiration or annulment of a mark's registration in one of those states.

2. If a mark is lawfully registered in the country of origin, it must be accepted for registration and granted protection in the other contracting States in its original form upon request.

3. The registration may be denied in certain circumstances, such as when the mark would violate third parties' acquired rights, when it lacks distinctiveness, when it violates morals or public order, or when it is of a type that might lead to public misinformation.

4. If the use of a registered mark is required in any contracting State, the registration cannot be revoked until after a fair amount of time has passed, and then only if the owner can no longer defend his inactivity.

5. Each contracting State is required to refuse registration and forbid the use of marks that are a reproduction, imitation, or translation that could lead to confusion of a mark that the competent authority of that State deems to be widely known in that State as being the mark of an individual entitled to the benefits of the Convention and used for the same or similar goods.

6. Provided that they have been communicated through the WIPO International Bureau, each contracting State is also required to refuse registration of and outlaw the use of marks that incorporate or contain without authorization armorial bearings, state emblems, and official signs and hallmarks of contracting states.

7. The same rules also apply to some intergovernmental organizations' names, acronyms, flags, and other insignia.

8. Protection for collective markings is required.

Industrial Designs

Every contracting State is required to preserve industrial designs, and protection cannot be revoked because the goods using the design were not produced there.

CONCLUSION

Biodiversity is essential to maintaining life on Earth, providing environmental services, and enhancing human well-being. The preservation and promotion of the sustainable use of biodiversity may be significantly aided by the protection of intellectual property rights (IPRs). IPRs encourage the creation of technology, goods, and procedures that support

biodiversity conservation, restoration, and sustainable management by giving inventors and innovators exclusive rights. Striking a balance between the need for access to resources and information connected to biodiversity, especially traditional knowledge, and the necessity for exclusive rights is vital. To guarantee the preservation and integrating IPRs with biodiversity conservation necessitates a multidisciplinary strategy that involves cooperation between policymakers, scientists, indigenous groups, and other stakeholders.

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CHAPTER 4

AN EVALUATION OF BERNE AND PARIS CONVENTION

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ABSTRACT:

Two important international treaties in the area of intellectual property are the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. While the Paris Convention largely deals with industrial property rights, such as patents, trademarks, and industrial designs, the Berne Convention concentrates on copyright protection. An overview of these agreements is given in this chapter, emphasizing their goals, significant clauses, and importance in promoting global cooperation and harmonization in intellectual property protection.Two international agreements that provide the minimum requirements for intellectual property protection are the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

KEYWORDS:

Berne Convention, Copyright, Intellectual Property, Industrial Property, Intellectual Property Rights, Paris Convention, Patents.

INTRODUCTION

Berne Convention

A foundation for copyright protection is established by the international treaty known as the Berne Convention for the Protection of Literary and Artistic Works, or simply the Berne Convention. The Berne Convention, which bears the name of the Swiss city where it was initially ratified in 1886, has grown to be one of the most important international accords in the area of intellectual property rights. The Berne Convention's main goal is to establish a uniform system of copyright protection that guarantees the recognition and defense of the rights of writers and artists in their literary and creative creations. It aims to standardize copyright laws across nations and set minimum requirements for the defense and enforcement of these rights.

Several basic concepts in the area of copyright law were established by the Berne Convention. One of the main tenets is "national treatment," which calls on member nations to provide foreign writers the same degree of protection as they accord their citizens. This idea seeks to remove prejudice towards foreign authors and to advance the fair and equal treatment of all writers. The Berne Convention's "automatic protection" tenet is another crucial one. This theory states that creators immediately get copyright protection after finishing their work, without the need for official registration or other formalities. This clause makes it easier for authors to get copyright protection and guarantees that they are instantly entitled to its advantages and protections [1], [2].

The Berne Convention also outlines the minimal privileges that writers are entitled to, such as the only right to copy, distribute, publicly exhibit, or perform their works as well as the right to prevent their works from being translated or adapted. Additionally, it specifies the minimum time frame for copyright protection, which is often the author's lifetime plus a

certain number of years following their passing. The Berne Convention has been amended and altered throughout time to take into account new issues and developments in technology related to copyright. Its concepts have affected the creation of national copyright laws and international accords since it has been extensively embraced by nations throughout the globe.

Background of Berne Convention:

The international agreement known as the Berne Convention for the Protection of Literary and Artistic Works, or simply the Berne Convention, laid the groundwork for current copyright law. The treaty was first signed in the Swiss city of Berne in 1886, thus its name. Here is a synopsis of the Berne Convention's history:

1. Origins: The necessity for global copyright protection grew in the 19th century as the Industrial Revolution and technological breakthroughs made it easier for the mass duplication and dissemination of creative works. Authors and artists looked for a way to safeguard their works internationally and provide fair pay for their creative labor.

2. Formation: In the late 19th century, several bilateral consultations took place between different nations before the French government proposed the Berne Convention. On September 9, 1886, 10 nations, including Belgium, France, Germany, and Switzerland, signed the convention's first draft. Its original purview was restricted to safeguarding creative creations.

3. Key Ideas: The Berne Convention provided the foundation for contemporary copyright law by introducing several important ideas. Under these principles, works are automatically and unconditionally protected from infringement from the moment they are created, formalities (like registration) for copyright protection are prohibited, authors' exclusive rights are acknowledged, and member nations are required to uphold certain minimum standards of protection.

4. Expansions and amendments: The Berne Convention has undergone several expansions and amendments throughout time to accommodate the changing requirements of the worldwide copyright environment. Paris underwent significant changes in 1896, Berlin did so in 1908, Rome in 1928, Brussels did so in 1948, Stockholm did so in 1967, and Paris did so in 1971.

5. Membership and internationalization: The Berne Convention has gained a lot of membership and a worldwide reputation. It was once restricted to European nations before increasingly including those from other continents. One of the most well-known and significant international treaties in the area of intellectual property, the Berne Convention now has 179 member nations.

6. Subsequent Treaties and Harmonization Efforts: The Universal Copyright Convention (UCC) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) were both modeled after the Berne Convention. These agreements unified and extended copyright protection on a worldwide scale.

7. Current Relevance: The Berne Convention is still a crucial tool for ensuring global copyright protection. In terms of the degree of protection, the length of rights, and restrictions and exceptions, it establishes the rules for copyright law. Additionally, it offers a framework for global collaboration and reciprocal acknowledgment of works protected by copyright, making cross-border enforcement and licensing easier.

Paris Convention

A foundation for the protection of intellectual property rights is provided by the Paris Convention for the Protection of Industrial Property, sometimes known as the Paris Convention. It was first ratified in Paris, France, in 1883, and has subsequently undergone several revisions to reflect evolving international intellectual property laws. One of the main cornerstones of the global intellectual property system is the treaty. The main goal of the Paris Convention is to encourage and make it easier to protect industrial property, which includes trade names, utility models, trademarks, industrial designs, and patents. It defines essential rules and requirements that signing states undertake to follow, assuring a minimum degree of protection and respect for each other's intellectual property rights [3], [4].

The Paris Convention's national treatment principle, which calls on member nations to provide foreign applicants the same degree of protection that they do to their citizens or residents, is one of its most important clauses. This concept promotes fair and equitable treatment in the granting and enforcement of intellectual property rights and attempts to prevent prejudice against foreign inventors or creators. The priority right mechanism is yet another crucial element of the Paris Convention. An applicant who has submitted a patent, trademark, or industrial design application in one member nation is allowed to benefit from a 12-month priority period when submitting equivalent applications in other members. This gives the applicant the benefit of obtaining protection in many nations since subsequent applications will be processed as if they were submitted on the same day as the first application.

The Paris Convention also defines guidelines for the use of official marks, rules for the use of official markings, and measures for the protection of collective marks and geographical indications. These guidelines and processes govern trademark protection and enforcement. The Paris Convention made a substantial contribution to the international harmonization of intellectual property rules and practices. The World Intellectual Property Organization (WIPO) and other later international intellectual property agreements and organizations have been able to flourish because of it. Most nations in the world today are signatories to the Paris Convention, which encourages collaboration, information sharing, and innovation on a global scale[5], [6].

Background of Paris Convention:

The Paris Convention is an international agreement that was initially ratified in 1883 and has subsequently undergone several amendments and changes. It is among the most important and historic accords in the area of intellectual property. The agreement outlines fundamental guidelines and requirements for industrial property protection and offers a framework for coordination and harmonization among member nations.

Synopsis of the Paris Convention's history:

1. Adoption in 1883: On March 20, 1883, in Paris, France, the Paris Convention was first signed. It was the first significant international agreement with a focus on securing intellectual property rights.
2. Expansion and modifications: The Paris Convention has undergone several adjustments and expansions throughout time to take into account new problems and advancements in the area of industrial property. Brussels in 1900, Washington, D.C. in 1911, The Hague in 1925, London in 1934, Lisbon in 1958, Stockholm in 1967, and Geneva in 1979 all saw significant adjustments.

3. Membership and Global Impact: A large number of nations have participated in the Paris Convention. It is one of the most broadly approved intellectual property treaties at the moment, with 177 member nations. Its provisions have been integrated into member nations' legal frameworks, impacting their local industrial property laws and regulations.
4. Important Provisions: The Paris Convention lays forth several key tenets and requirements for the defense of industrial property. These include the obligation to provide a minimum period of protection for patents and trademarks, as well as the right of priority, which enables applicants to claim priority based on an earlier application filed in a member country. Member countries are also required to treat foreign applicants equally to domestic applicants under the principle of national treatment.
5. Relationship with Other Treaties: Subsequent international intellectual property agreements have been built on the principles of the Paris Convention. It is noteworthy because it had an impact on the drafting of other significant treaties, including the Patent Cooperation Treaty (PCT) and the TRIPS Agreement, which is run by the World Trade Organization (WTO).

In order to encourage global collaboration and harmonization in the area of industrial property, the Paris Convention continues to be very important. It has aided in the creation of a worldwide framework for protecting intellectual property, making it easier to enforce industrial property rights across international boundaries.

DISCUSSION

Paris Convention for the Protection of Industrial Property

The Convention created the Paris Union, which has an Assembly and an Executive Committee. A member of the Assembly is any State that is a member of the Union and has complied with at least the administrative and final conditions of the Stockholm Act (1967). Except for Switzerland, which is a member ex officio, the members of the Executive Committee are chosen from among the Union's members. The Paris Convention, which was signed in 1883, was updated in 1979 and altered in 1900 at Brussels, 1911 at Washington, 1925 at The Hague, 1934 at London, 1958 at Lisbon, and 1967 at Stockholm. In its broadest meaning, the Convention covers all forms of industrial property, including patents, trademarks, industrial designs, utility models, trade names, geographical indications, and the stifling of unfair competition. The primary categories of the Convention's substantive provisions are national treatment and priority rights.

National Treatment

The Convention's national treatment requirements provide that each signatory state shall give all other contracting states' nationals the same level of industrial property protection as it does for its nationals. If they reside in a contracting State or have a genuine and functional industrial or commercial business there, citizens of non-contracting States are also entitled to national treatment under the Convention.

Right of Priority

The Convention stipulates that patents, trademarks, and industrial designs have the right of priority. This right of priority means that the applicant may apply for protection in any other contracting State within a specific timeframe (12 months for patents and utility models; 6

months for industrial designs and marks) based on a regular first application filed in one of the contracting States, and these later applications are treated as if they had been filed on the same day as the first application. In other words, these later applications have precedence over any subsequent ones that may have been submitted for the same invention, utility model, mark, or industrial design within the same period by other people. Additionally, as these applications are based on the first application, they are unaffected by any subsequent events, such as the disclosure of the invention in a publication or the sale of goods with the mark, or the integrationof the industrial design. One of the main practical benefits of the right of priority is that when an applicant wants protection in multiple countries, he is not required to submit all of his applications at once. Instead, he has six or twelve months to choose the countries in which he wants protection and to carefully plan out the steps necessary to obtain protection[7], [8].

Berne Convention for the Protection of Literary and Artistic Works

There is an Assembly and an Executive Committee in the Berne Union. The Assembly is comprised of all Union member nations that have ratified at least the administrative and concluding clauses of the Stockholm Act. Except for Switzerland, which is a member ex officio, the members of the Executive Committee are chosen from among the Union's members. The Berne Convention was first established in 1886 and later updated in Paris in 1896, Berlin in 1908, Berne in 1914, Rome in 1928, Brussels in 1948, Stockholm in 1967, and Paris in 1971. It was further modified in 1979. The Convention is based on three fundamental principles and includes measures defining the minimum level of protection to be provided as well as additional provisions for developing nations.

Basic Principles

These are the three fundamental ideas:

1. Each of the other contracting States must provide works created in one of the contracting States the same level of protection as the latter does for works created by its citizens.

2. Such protection shall not be subject to any formalities-based requirements.

3. This protection is independent of any protection in the nation where the work was created. However, if a contracting State allows for a longer period than the minimum set out by the Convention and the work no longer has protection in the place of origin, protection may be revoked after that protection expires.

The minimal requirements for protection concern the works and rights that must be safeguarded as well as the length of the safeguards:

1. In terms of works, every creation in the literary, scientific, and creative fields must be protected, regardless of how it is expressed.

2. The following rights must be acknowledged as exclusive rights of permission, subject to any permissible reservations, limits, or exceptions:

1) The right to perform in public dramatic, dramatic-musical, and musical works;
2) The right to read public literary works;
3) The right to communicate to the public the performance of such works;
4) The right to translate;
5) The right to adapt and arrange the work; the right to broadcast (with the possibility that a contracting State may provide for a mere right to equitable remuneration instead of a right of authorization);

6) The right to make derivative works of the work.
7) The Convention also establishes "moral rights," which include the right to claim authorship of a work and the right to object to any alteration, distortion, modification, or other negative conduct that would harm the author's honor or reputation.
8) The Paris Convention, on the other hand, is more concerned with industrial property rights, including patents, trademarks, and industrial designs.

Its objectives are to encourage and make it easier to protect industrial breakthroughs, advance fair competition, and stop unfair business activities. Principles including national treatment, priority rights, and the creation of the World Intellectual Property Organization (WIPO) to regulate global cooperation in industrial property concerns are all established under the Paris Convention[9], [10].

Duration of Protection

Protection must generally be provided up to the end of the 50th year after the author's death. However, there are certain exceptions to this generalization. The term of protection for anonymous or pseudonymous works expires 50 years after the work has been lawfully made available to the public unless the pseudonym is clear that the author is who he claims to be or he reveals that identity during that time; in that case, the general rule is applicable. The minimum period of protection for audiovisual (cinematographic) works is 50 years from the "release" of the work to the public, orin the absence of such an occurrence—from the day the work was created. The minimum term for works of applied art and photographic works is 25 years from the date of production.

CONCLUSION

The Paris Convention and the Berne Convention are key international agreements that are essential to the protection of intellectual property. The Berne Convention lays forth baseline requirements for copyright protection, encouraging author and creator rights internationally and allowing the flow of creative works. It guarantees immediate and unconditional protection upon creation, acknowledges the exclusive rights of writers, and forbids copyright protection procedures. The evolution of intellectual property law and practices, as well as international collaboration and harmonization, are all facilitated by these two agreements. They serve as a foundation for the mutual recognition of intellectual property rights, make international enforcement easier, and encourage the exchange of ideas, innovation, and creativity.

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CHAPTER 5

RULES OF PATENT COOPERATION TREATY (PCT)

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ABSTRACT:

An international agreement known as the Patent Cooperation Treaty (PCT) offers a simplified and centralized method for requesting and obtaining patent protection across several nations. The filing procedure, worldwide search and examination, and the PCT's consequences on patent applicants and the whole patent system are all topics covered in this chapter along with other important PCT characteristics and advantages. In this chapter, we also focused on the PCT and its importance in promoting international harmonization and patent protection.In general, the PCT is a significant international agreement that offers a standardised process for submitting patent applications to safeguard inventions in each of its signing states. The PCT has been praised for giving inventors an affordable and practical approach to get patent protection across several nations.

KEYWORDS:

PCT, Copyright, Intellectual Property Rights, Patents,Patent Cooperation Treaty.

INTRODUCTION

The filing of patent applications across many nations is streamlined and made simpler by the Patent Cooperation Treaty (PCT), an international agreement. Through a single worldwide application, it offers a consolidated and consistent process for requesting patent protection across many nations. The World Intellectual Property Organization (WIPO) founded the PCT in 1970 and is in charge of its administration. It is now a system for international patent applications that is well known and used, with over 150 member nations. The PCT's main objective is to make submitting patent applications across many nations simpler and less expensive. An applicant or inventor may concurrently seek patent protection in numerous nations that are parties to the treaty by submitting an international application under the PCT rather than submitting individual applications in each jurisdiction [1]–[3].

An international application must be submitted, usually via the national patent office or in the applicant's country of residence, to start the PCT procedure. The WIPO foreign Bureau then receives this foreign application. To ascertain the previous art and assess the invention's patentability, the International Bureau conducts a preliminary examination and search. The applicant has the option to proceed to the national or regional phase in the nations where they are seeking patent protection after the first international phase. The applicant may continue the examination of the patent application at this phase in each of the listed nations. The application is subsequently evaluated by the national or regional patent offices following their respective patent policies. The PCT system offers patent applicants several benefits. They have more time to determine if their idea is commercially viable and where to file for patent protection. Additionally, it offers a centralized platform for doing thorough prior art searches, which may be used to determine the likelihood of acquiring a patent [4]–[6].

Additionally, the PCT system allows applicants to postpone the expenses related to submitting and executing individual patent applications in several nations, offering a more

economical method of granting global patent protection. Although the PCT streamlines the procedure for submitting worldwide patent applications, it does not issue a "global patent." Instead, it offers a structure for simplifying the application procedure and makes it easier for patents to be examined at the national or regional level.

Background of Patent Cooperation Treaty (PCT)

A worldwide agreement known as the Patent Cooperation Treaty (PCT) was created to expedite and simplify the process of acquiring patent protection for ideas. The procedure of obtaining patent rights across borders was time-consuming, expensive, and sometimes involved negotiating numerous legal systems and languages. The treaty was developed to alleviate these issues for companies and inventors. The World Intellectual Property Organization (WIPO) member nations started debating the creation of a single system for submitting foreign patents in the early 1970s, which is when the PCT's founding debates took place. The idea was to create a system that would let inventors submit a single patent application that would be legally binding in several nations, easing the financial and administrative burden of submitting separate applications in each nation. The Patent Cooperation Treaty was finalized and signed in Washington, D.C., on June 19, 1970, after many years of talks. Since the treaty's implementation on January 24, 1978, a sizable number of nations worldwide have ratified it. It has grown to be among the international agreements on intellectual property that is most generally known and used [7]–[9].

The International Bureau of WIPO, which is in charge of coordinating and facilitating the different phases of the PCT process, is in charge of running the PCT. The treaty establishes a centralized system for the submission and review of international patent applications, enabling applicants to submit a single application for patents, referred to as an "international application." The worldwide application submitted under the PCT acts as a standard format and offers a foundation for applying for patent protection in the PCT member nations. A designated International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) perform an international search and review of the application after submission. These experts evaluate the invention's originality and inventive step and provide a written judgment on its patentability.

The applicant has the option to proceed to the national or regional phase after the international phase when the application is subject to assessment and award processes unique to each country or area of interest. The succeeding processes are streamlined and harmonized by the PCT, making it simpler for applicants to negotiate the various national patent systems. The PCT considerably streamlines the procedure for requesting patent protection worldwide by offering a uniform and centralized mechanism. It ensures a particular degree of quality and uniformity in patent assessment while lowering expenses, administrative difficulties, and linguistic obstacles. The PCT has been instrumental in fostering international cooperation, coordinating patent systems, and easing the sharing of technical knowledge between inventors and patent offices globally[10], [11].

A Union was founded by the PCT. A Union Assembly exists. Every State that has signed the PCT is represented in the Assembly. Among the Assembly's most crucial duties are

1) The acceptance of the Union's biennial budget and program, the modification of the Regulations published under the Treaty, and the determination of the costs associated with using the PCT system.

2) The growth of the PCT system may be seen in the difference in the number of foreign applications received by the foreign Bureau in 1979 (2,625) and 2003 (110,065). In 1979, there were 6.66 designations per application, and there were 132 in 2003.

3) The PCT was finalized in 1970 and revised in 1979, 1984, and 2001. States that have ratified the 1883 Paris Convention for the Protection of Industrial Property are eligible. Depositing ratification or accession documents with the WIPO Director General is required.

4) By submitting an international patent application, the Patent Cooperation Treaty enables simultaneous patent protection for innovation in a large number of nations. Any person who is a citizen or resident of a contractual State may apply to the national patent office of the contracting State they are a citizen or resident of, or, at the applicant's discretion, to the International Bureau of WIPO in Geneva. The international application may also be filed with the European Patent Office (EPO), the African Regional Industrial Property Organization (ARIPO), or the Eurasian Patent Office (EAPO), as appropriate, if the applicant is a national or resident of a contracting State that is a party to the European Patent Convention, the Harare Protocol on Patents and Industrial Designs (Harare Protocol), or the Eurasian Patent Convention.

DISCUSSION

The formal specifications that must be met by every international application are regulated in great detail by the Treaty.

1. Generally referred to as specified States, the applicant must specify the nations in which he wants his international application to take effect. In each designated State, the international application has the same effect as if a national patent application had been submitted to the state's national patent office. The applicant must choose the outcome of a European patent application if a designated State is a signatory to the European Patent Convention. The applicant may choose to have the effects of a Eurasian patent when a specified State is a signatory to the convention. The applicant may choose to have an ARIPO patent application's effects in cases where a specified State is a party to the Harare Protocol. The impact of the designation is automatically that of a regional application submitted with OAPI when a designated State is a member of the African Intellectual Property Organization (OAPI).
2. One of the major patent offices conducts an international search about an international application, and the results of this search are an international search report, which is a list of the citations of published documents that may have an impact on the patentability of the invention claimed in the international application.
3. The worldwide search report is sent to the applicant, who may choose to withdraw his application, particularly if the report's content indicates that patents are unlikely to be granted. If the foreign application is not withdrawn, the foreign Bureau publishes it together with the international search report and notifies all designated Offices.
4. The applicant can wait until the end of the 20th month following the filing of the international application, or, where that application claims the priority of an earlier application, until the end of the 20th month following the filing of that earlier application, before starting the national procedure before each designated Office by submitting a translation (w). If the applicant requests an international preliminary examination report that provides a preliminary and non-binding opinion on the patentability of the claimed invention before the expiration of the 19th month from

the priority date, the 20 months may be extended by an additional 10 months. However, during the international preliminary examination, the applicant is allowed to make changes to the international application.

The Benefits of Filing a PCT

The following are some benefits of PCT filing for applicants, patent offices, and the general public:

1. The applicant has up to 18 months longer than in a proceeding outside of the PCT to consider whether it would be beneficial to seek protection abroad,
2. Designate regional patent agents in each foreign nation,
3. To complete the required translations and pay the applicable national fees.
4. The PCT filing provides the applicant with the assurance that his international application will not be rejected on formal grounds by any designated Office during the national phase of the application's processing provided it is submitted in the manner required by the PCT.
5. The applicant may reasonably predictably assess the likelihood of his invention being patentable based on the worldwide search report.
6. The applicant has the option to alter the international application to correct any errors before the designated Offices handle it, making that chance even higher based on the results of the international preliminary examination report.

Application of PCT Filing

For patent applicants looking for global protection, PCT filing provides several benefits and applications. The following are some important uses for PCT filing:

International Patent Protection: The main use of a PCT file is to request patent protection in several different nations using a single international application. Applicants may specify numerous nations or areas where they want to seek patent protection by applying under the PCT. This simplifies the process of acquiring patent rights globally, reducing the time, effort, and money required to submit individual applications in each target nation.

Evaluation of economic feasibility: Before incurring the costs of submitting separate national or regional applications, PCT filing enables applicants to evaluate the economic feasibility of their innovation. The preliminary assessment and worldwide search performed following the PCT provide important insights into the invention's previous art and patentability. This knowledge enables applicants to assess their prospects of acquiring a patent and to decide whether to continue investing in the patenting process.

Extended Decision-Making Period: PCT filing gives applicants more time to choose the nations in which they wish to file for patent protection. Entry into the national or regional phase may be delayed under the PCT system for up to 30 or 31 months after the priority date. Before deciding whether to enter certain nations, applicants might acquire market knowledge, evaluate business potential, look for finance, or carry out more research and development.

Cost Control: For patent applicants, PCT filing provides cost-control advantages. Applicants may postpone the expenses of submitting and pursuing several national or regional applications by submitting a single international application. This enables applicants to concentrate on nations of interest based on market potential, company strategy, or available funds and deploy resources more wisely. For applicants with low resources or startups seeking worldwide patent protection, PCT filing might be very beneficial.

Harmonization of the Examination Process: PCT filing enables member nations to harmonize their patent examination policies and methods. Consistency in determining an invention's patentability is facilitated by the worldwide search and preliminary assessment carried out under the PCT. Greater predictability and consistency in the patent examination across the board are benefits of this harmonization.

Collaboration among patent offices and access to worldwide patent cooperation are both made possible by PCT filing. A network of international authorities is established by the PCT system, and they cooperate in performing searches and exams. By combining the knowledge and resources of several patent offices, this collaboration improves the effectiveness and quality of patent examination. It's crucial to remember that although submitting a PCT application accelerates and simplifies the patent application procedure, a worldwide patent is not granted as a result. Instead, it offers a centralized structure for initial submission and review, enabling applicants to seek patent protection in specific nations via a subsequent national or regional phase entry.

Role of Patent Cooperation Treaty (PCT)

In the global patent system, the Patent Cooperation Treaty (PCT) has numerous significant functions. The PCT's main functions and advantages are listed below:

Streamlining the Application Process: For submitting international patent applications, the PCT offers a centralized and uniform process. The difficulties and expenses of submitting many applications in various countries may be avoided by applicants by submitting a single worldwide application under the PCT. This eliminates administrative work and speeds up the application process.

Preliminary International Search and Assessment: The PCT enables a preliminary international search and assessment of the innovation. The International Searching Authority (ISA) searches for relevant prior art records to assist applicants determine if their inventions are patentable. The International Preliminary Examining Authority (IPEA) conducts a preliminary examination and offers an advisory opinion on the invention's patentability that is not legally enforceable. Before moving on to the national or regional phase, these stages assist applicants in assessing their prospects of winning a patent.

Delaying National Phase Entry: Under the PCT, applicants may put off filing their patent applications for up to 30 or 31 months from the priority date. This gives applicants additional time to evaluate the marketability of their innovation and choose the nations in which they wish to apply for patent protection.

Cost Savings:Applicants may be able to save money by using the PCT to submit a single worldwide application as opposed to submitting individual applications in each target nation. By delaying the costs associated with national phase admission and examination until later stages, the PCT system provides a cost-effective strategy and enables applicants to select countries of interest.

Freedom in Entry into National Phase: The PCT allows for freedom in selecting the nations in which to enter the national or regional phase. According to market potential, corporate goals, or other considerations, applicants may choose certain nations or areas. This adaptability enables applicants to customize their patent protection approach following their requirements and available funds.

Facilitating International Cooperation: The PCT encourages information exchange and collaboration between patent offices on a global scale. The International Authorities are a

network of patent offices that cooperate to perform searches and exams. This collaboration promotes efficiency, improves quality, and harmonizes patent examination procedures across the board.

The claim of Priority: The PCT upholds the applicant's entitlement to priority based on an earlier national or regional filing. As a result, the overseas application is given the same consideration as if it had been submitted on the same day as the earlier application. This gives the applicant a priority date for evaluating novelty and confirming the invention's validity.

The multinational search and assessment procedure is a key advantage of the PCT. Patent applications submitted via the PCT are thoroughly searched for and examined by a global authority. Before submitting their applications to the national or regional patent offices, patent applicants may benefit from the procedure's assistance in locating previous art and evaluating the invention's patentability. The worldwide patent system benefits from the high standard and uniformity of this international search and evaluation. In addition, the PCT encourages coordination and collaboration between international, national, and regional patent offices. The PCT makes it easier for people to get worldwide patent protection and gives companies and inventors access to a wider market by offering a centralized and uniform system for international patent filing and examination. It supports global information transmission, boosts research and development, and encourages innovation

CONCLUSION

The Patent Cooperation Treaty (PCT) is an essential tool for streamlining and easing the process of acquiring patent protection globally. By enabling applicants to file a single worldwide patent application that serves as the foundation for requesting patent rights in several nations, the PCT simplifies the filing process. It promotes information exchange, practice uniformity, and teamwork while examining patent applications. By minimizing differences and improving the effectiveness of the patent examination procedures, this harmonization contributes to the development of a more uniform and predictable worldwide patent system. The PCT is essential for fostering international cooperation, defending intellectual property rights, and advancing technology and the world economy.

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CHAPTER 6

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS) AGREEMENT

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ABSTRACT:

The World Trade Organization (WTO) is in charge of enforcing the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which establishes minimum requirements for the protection and enforcement of intellectual property rights (IPRs) across the world. It covers a variety of IPRs, including trade secrets, patents, trademarks, copyrights, and geographical indications. The TRIPS Agreement seeks to achieve a balance between fostering access to technology, innovation, and the general welfare and providing effective protection for IPRs. A summary of the TRIPS Agreement's main provisions, its effects on international commerce, and its implications for intellectual property protection are given in this chapter.

KEYWORDS:

TRIPS Agreement, WTO, Copyrights, Intellectual Property, Patents, Trademarks, World Trade Organization.

INTRODUCTION

Since the World Trade Organization (WTO) was founded, the Trade-Related Intellectual Property Systems (TRIPS) Agreement has served as a clear statement of the value and significance of intellectual property protection. The General Agreement on Tariffs and Trade (GATT) treaty's Uruguay Round ended in 1994, and this is when the negotiations for it began. The Preamble to the Agreement, which reproduces the fundamental Uruguay Round negotiation goals set in the TRIPS area by the 1986 Punta Del Este Declaration and the 1988-89 Mid-Term Review, lays out the overall objectives of the TRIPS Agreement. These goals include lessening trade distortions and obstacles, promoting adequate and effective intellectual property rights protection, and making sure that the procedures and laws used to enforce intellectual property rights do not themselves obstruct legal trade[1], [2].

The TRIPS Agreement strives to harmonize, reinforce, and provide for efficient enforcement at both the national and international levels. It embraces, in theory, all types of intellectual property. of Part I, it discusses the application of broad GATT principles as well as the clauses of global IP agreements. It defines guidelines for the accessibility, range, and application of intellectual property rights (Part II), and enforcement (Part III), as well as for their acquisition and upkeep (Part IV). It also discusses associated conflict prevention and resolution techniques (Part V). Parts VI and VII of the Agreement, which covers institutional and transitional arrangements, respectively, deal with formal stipulations. All TRIPS member nations are subject to the same responsibilities. However, depending on their degree of development, underdeveloped nations were given more time to adopt the necessary revisions to their national legislation. For developing nations, the transitional phase ended in 2005. The transition phase for the least developed nations has been prolonged until 2016 and may continue beyond that year.

A legally binding international agreement known as the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement lays forth basic requirements for the protection and enforcement of intellectual property rights (IPRs) among WTO members. It was agreed upon during the global trade talks known as the Uruguay Round and went into force on January 1st, 1995. By creating a thorough framework for the protection of various types of intellectual property, such as patents, copyrights, trademarks, industrial designs, and trade secrets, the TRIPS Agreement aims to strike a balance between the interests of intellectual property rights holders and the general public. By offering a robust and reliable system of intellectual property protection, it aims to encourage innovation, technological transfer, and economic growth[3], [4].

Member nations are mandated by the TRIPS Agreement to provide appropriate and effective protection for IPRs on their soil. This involves issuing patents for innovations across all technological sectors, protecting creative works through copyright, securing trademark protection for recognizable marks used in commerce, and preserving confidential information and trade secrets. The agreement also specifies minimum requirements for the use of administrative and civil processes, remedies, and border security measures to prevent piracy and counterfeiting. It urges member nations to put in place efficient intellectual property protection systems and to develop procedures for resolving disputes over intellectual property rights.

The TRIPS Agreement significantly altered the landscape of intellectual property throughout the world by fostering uniformity in national intellectual property laws and practices. It has aided the expansion of international commerce in sectors that rely heavily on intellectual property, but it has also generated questions about the public's access to necessary medications, the transfer of technology, and the correct balance between protection and the interest of the general public. The TRIPS Agreement gives member nations considerable latitude to modify their intellectual property laws to suit their particular demands for technical, social, and economic advancement. It also establishes minimum requirements that all member nations must satisfy. The agreement offers a forum for continuous WTO discussions and negotiations on intellectual property issues, enabling nations to address new problems and modify the international intellectual property system to take into account changing conditions.

The World Trade Organization (WTO) is in charge of overseeing the Trade-Related Aspects of Intellectual Property Rights (TRIPS) accord, which is a global legal accord. The General Agreement on Tariffs and Trade (GATT) Uruguay Round was used to negotiate it, and it went into force on January 1st, 1995. To safeguard and enforce intellectual property (IP) rights, such as copyrights, trademarks, patents, industrial designs, and trade secrets, among others, the TRIPS Agreement strives to define minimum standards. It aims to find a balance between encouraging innovation and creativity and making sure that intellectual property rights do not become trade obstacles[5], [6].

Synopsis of the TRIPS Agreement's history:

1. TRIPS Agreement Negotiations during the Uruguay Round of GATT, which Began in 1986 and Ended in 1994, The TRIPS Agreement was negotiated. Along with the creation of the WTO, the accord was one of the main results of these discussions.

2. Recognition of IP as a commerce Issue: By acknowledging that intellectual property could be a topic of commerce and that unified standards were required, the TRIPS Agreement signaled a substantial change in the way that international trade negotiations were conducted.

3. Goals and Principles: The TRIPS Agreement strives to promote efficient IP rights enforcement, the transfer of technology, and the proper protection of IP rights. Additionally, it highlights how crucial it is to strike a balance between IP holders' rights and the larger public interest, including expanding access to medical care.
4. Minimum Standards: The TRIPS Agreement lays forth minimum requirements for intellectual property (IP) protection, requiring WTO members to provide a certain degree of legal protection and IP rights enforcement procedures. It sets rules for trade secrets, trademarks, geographical indications, patents, industrial designs, and copyright and associated rights. It also defines criteria for trademarks and trade dress.
5. Transitional phase: The terms of the TRIPS Agreement were to be implemented by developing nations during a transitional phase. They were given more time to fulfill several requirements, such as securing patent protection for pharmaceutical items.
6. Settlement of Disputes: The TRIPS Agreement has provisions for dispute resolution, enabling member nations to seek resolution via the WTO's dispute resolution process in instances of alleged TRIPS commitments infringement.
7. Reviews and revisions: Since its establishment, the TRIPS Agreement has undergone periodic reviews and revisions to address new concerns about intellectual property and international commerce. These assessments seek to maintain the agreement's relevance and fairness.

The protection and enforcement of intellectual property throughout the world have been significantly impacted by the TRIPS Agreement. It has encouraged increasing commerce in products and services based on knowledge and helped build a more consistent and predictable worldwide framework for IP rights. It has, however, come under fire for perhaps restricting access to cost-effective medications, especially in underdeveloped nations. Through the agreement's flexibilities, such as the Doha Declaration on TRIPS and Public Health, which reaffirmed nations' rights to employ flexibilities to safeguard public health, efforts have been taken to allay these worries.

DISCUSSION

The most extensive international agreement on intellectual property to date is the TRIPS Agreement, which went into force on 1 January 1995. Its scope of intellectual property includes the following areas:

1. Copyright and associated rights (i.e., performers', sound recording producers', and broadcasting organizations' rights)
2. Trademarks, such as service marks
3. Geographical indications, such as appellations of origin
4. Industrial designs
5. Patents, which protect novel plant kinds
6. The topographies (layout designs) of integrated circuits
7. Unreleased data, including trade secrets and test data.

The TRIPS Agreement's Covered Issues:

1. The following topics are the general emphasis of the TRIPS agreement:
2. How fundamental rules of the economic system and other international accords on intellectual property should be put into practice.
3. How to preserve intellectual property rights effectively.

4. How nations should properly uphold such rights inside their borders.
5. How to resolve intellectual property conflicts amongst WTO participants.
6. Specific transitional contracts for the time the new system is being implemented.

Characteristics of the Agreement

The following are the TRIPS Agreement's three key components:

Standards: The TRIPS Agreement outlines the minimal levels of protection that each Member must provide.

Enforcement: Domestic processes and remedies for the enforcement of intellectual property rights are covered under the second major group of provisions. The Agreement sets forth a few overarching guidelines that apply to all IPR enforcement processes.

Dispute settlement: The Agreement requires that any disagreements between WTO Members over the observance of the TRIPS commitments be resolved via the WTO's dispute resolution processes.

The Agreement also establishes some fundamental principles, such as national and most-favorable-nation treatment (nondiscrimination), and some broad guidelines to ensure that procedural challenges in acquiring or maintaining IPRs do not negate the substantive benefits that should result from the Agreement. The TRIPS Agreement is a basic standards agreement that gives Members the option to provide more comprehensive intellectual property protection if they so choose. Members are free to choose how to apply the Agreement's provisions in accordance with their respective legal framework and customs.

Protection of Intellectual Property under TRIPS

To guarantee that there are acceptable levels of protection in every member country, the TRIPS Agreement provides for the protection of several types of intellectual property rights. The Paris Convention for the Protection of Industrial Property (patents, industrial designs, etc.) and the Berne Convention for the Protection of Literary and Artistic Works (copyright) are the main international agreements of the World Intellectual Property Organization (WIPO) that were in place before the establishment of the WTO. These treaties did not apply to all locations, and in certain circumstances, the standards of protection were deemed insufficient[7], [8]. Thus, a substantial number of new or improved requirements for the protection of intellectual property rights are added by the TRIPS agreement. The Agreement's Part II tackles the many categories of IPR in its several parts and sets standards for each one.

Copyright and Related Rights

The Berne Convention's fundamental requirements must be followed by member nations under the TRIPS Agreement. The Berne Convention for the Protection of Literary and Artistic Works of 1971 is cited in Article 9.1 of the Agreement, which states that Members must abide by its Articles 1 through 21 and the Appendix. Members, however, do not have any rights or obligations under the TRIPS Agreement concerning moral rights (the right to claim authorship and the right to object to any derogatory action concerning a work that would be detrimental to the author's honor or reputation) conferred under Article 6bis of that Convention. The clauses of the Berne Convention mentioned below address issues including the subject matter to be protected, the minimum duration of protection, the rights to be granted, and the scope of those rights that may be restricted. The Appendix permits developing nations to restrict the right to translation and the right to reproduction in specific

circumstances. Aside from that, the TRIPS Agreement adds and clarifies a few particular matters.

According to Article 9.2 of the Agreement, phrases are only covered by copyright protection, not ideas, techniques, methods of operation, or mathematical concepts as a whole. Computer programs and compilation: According to Article 10.1 of the Berne Convention (1971), computer programs, whether in source code or object code, are entitled to literary work protection. This clause affirms that computer programs must be copyright protected and that the Berne Convention's requirements that apply to literary works must also apply to them. It also affirms that a program's format, such as source code or object code, has no bearing on the level of security. Computer programs must be protected like literary works, which implies, for example, that only those restrictions that apply to literary works may be imposed on computer programs. Additionally, it reaffirms that computer programs are covered by the 50-year general term of protection. Possible shorter phrases that apply to photography and applied artworks may not be used.

According to Article 10.2, a compilation of data or other material must be protected as such under copyright laws, even if the databases include data that are not, in and of themselves, covered by copyright laws. Databases are eligible for copyright protection if the choice or organization of their information qualifies as an intellectual production. Additionally, the clause affirms that databases must be safeguarded regardless of their format—whether machine-readable or in another form. The section also makes it clear that any copyright that may exist in the data or material itself is unaffected and that such protection does not apply to the data or material itself.

Rental Rights: According to Article 11, authors have the right to permit or forbid the commercial rental of originals or copies of their copyrighted works to the general public, at least concerning computer programs and, under certain conditions, cinematographic works. The exclusive rental right for cinematographic works is subject to the so-called impairment test, under which a Member is exempt from the obligation unless the rental has resulted in widespread copying of the works, which materially reduces the exclusive right of reproduction granted to that Member by the authors and their successors in title. The duty does not apply to computer program rentals if the software itself is not the main purpose of the rental.

The duration of protection is the author's lifetime and 50 years after his or her passing, in accordance with the basic principle stated in Article 7(1) of the Berne Convention as incorporated into the TRIPS Agreement. In some circumstances, shorter periods are explicitly permitted under that Article's paragraphs 2 and 4. These provisions are supplemented by Article 12 of the TRIPS Agreement, which states that the term of protection of a work, other than a photographic work or a work of applied art, shall be no less than 50 years from the end of the calendar year of authorized publication or, in the absence of such authorized publication within 50 years of the making of the work, 50 years from the end of the year of authorized publication.

Limitations and Exceptions: Article 13 specifies that Members must apply any restrictions or exceptions to exclusive rights in a way that does not interfere with the right holder's legal interests. It also mandates that Members limit these restrictions or exceptions to only those special circumstances that do not interfere with the regular exploitation of the work.Protection of Artists, Phonogram Producers, and Media Organizations: Article 14 contains protections for phonogram manufacturers, performers, and broadcasting organizations. According to Article 14.1, artists have the option to stop their performance

from being unjustly fixed into a phonogram (such as the recording of a live musical performance). Only auditory fixations, not audiovisual ones, are covered under the fixation right. Additionally, actors must be able to stop others from developing similar fixations. They will also be able to stop their live performance from being broadcast without permission through wireless devices and from being made public.

Trademarks

Protected topics include: Any sign, or any combination of signs, that can distinguish the goods and services of one undertaking from those of other undertakings must be eligible for registration as a trademark, provided that it is visually perceptible, according to the fundamental rule stated in Article 15 of the TRIPS Agreement. Such signs must be qualified for registration as trademarks, particularly words, including personal names, letters, numbers, figurative elements, and color combinations, as well as any combination of such signs. Member nations are permitted to demand that distinctiveness that has been gained through usage is an additional criterion for eligibility for trademark registration in cases where signs are not naturally capable of differentiating the relevant products or services. Members may choose whether to permit the recording of indications that cannot be seen, such as sound or scent markings. Members may make usage a requirement for registration. However, actual use of a trademark is not permissible as a requirement for submitting a registration application, and failure to materialize an intent to use is not permitted as a reason for rejecting the application until at least three years have elapsed after the filing date (Article 14.3).

According to the Agreement, service marks must be protected in the same manner as marks used to identify commodities. Where the use of identical or similar signs for goods or services that are identical or similar to those for which the trademark is registered would increase the likelihood of confusion, the owner of a registered trademark must be granted the exclusive right to prevent all third parties without the owner's consent from using such signs in the course of trade. A probability of misunderstanding must be assumed when the same sign is used for similar products or services (Article 16.1).

In addition to the protection mandated by Article 6bis of the Paris Convention, which is incorporated by reference into the TRIPS Agreement, which requires Members to refuse or cancel the registration and to forbid the use of a mark that conflicts with a well-known mark, the TRIPS Agreement contains certain provisions on well-known marks. First, services must be covered by the terms of that Article. Second, it must be taken into consideration that the public's knowledge in the relevant field was obtained via a variety of channels, including its marketing, in addition to the mark's usage. Additionally, the protection of registered well-known marks must extend to goods or services that are distinct from those for which the trademark has been registered, provided that doing so would suggest a connection between those goods or services and the registered trademark owner, and that doing so would likely harm the owner's interests (Articles 16.2 and 3).

Under the conditions that such exceptions take into consideration the legitimate interests of the trademark owner and third parties, Members may grant limited exceptions to the rights granted by a trademark, such as the fair use of descriptive phrases (Article 17). The initial registration of a trademark and any renewal thereof should be for not less than seven years. (Article 18) Trademark registration may be renewed indefinitely. A mark cannot be canceled based on non-use before three years have passed without interruption, provided the trademark owner can demonstrate good cause based on the presence of barriers to such use. Conditions that develop without the owner of the trademark's consent, such as import limitations or other

governmental restrictions, must be accepted as good grounds for non-use. According to Article 19 of the Trademark Act, the use of a trademark by a third party while under the control of its owner shall be acknowledged as the use of the trademark to uphold the registration.

The use of the trademark in commerce must also not be unjustifiably restricted by specific conditions, such as used in conjunction with another brand, use in a unique format, or use in a way that compromises the trademark's capacity to identify the products or services (Article 20). Members have the authority to set restrictions on the trademark licensing and assignment processes. Trademark licensing under duress is prohibited (Article 21).

Geographical Indications

Sometimes, place names are used to designate a product. Examples that come to mind include "Basmati" rice, "Darjeeling" tea, "Champage", "Scotch", "Tequila", and "Roquefort" cheese. The TRIPs agreement has specific safeguards for wine and alcoholic beverage manufacturers because they are especially concerned about the use of geographical names to identify their goods.For the Agreement, "geographical indications" are defined as indications that place a good's quality, reputation, or other characteristic primarily attributable to its geographic origin in the territory of a Member, or a region or locality in that territory (Article 22.1).

Article 22.2 states that interested parties must have access to legal means to prevent the use of any geographical indications that deceive the public about the geographic origin of the good or that would be considered unfair competition under the terms of Article 10bis of the Paris Convention. If the law enables it or at the request of an interested person, the registration of a trademark that employs a geographical indication in a manner that misleads the public as to the real place of origin shall be rejected or canceled ex officio (Article 22.3). Protection of Wines and Spirits: According to Article 23, interested parties must have the legal ability to stop the use of a geographical indicator to identify wines for wines that are not from the location designated by the geographical indication. This holds even when the audience is not being misled, there is no unfair competition, and the geographical indicator is supplemented with terms like "kind," "type," "style," or "imitation," among others, indicating the genuine provenance of the commodity. Geographical markers used to identify spirits must also be protected when employed on spirits. It is necessary to protect trademark registration in this manner.

Industrial Designs

Protection Requirements: According to Article 25.1 of the TRIPS Agreement, Members must provide innovative or original industrial designs that were independently generated by the right to protection. If designs do not substantially vary from existing designs or combinations of existing design characteristics, members may state that the designs are neither unique nor original. Members may stipulate that this protection does not apply to designs that are primarily driven by functional or technical reasons. To account for the short lifespan and the large number of new designs in the textile industry, Article 25.2 contains a special provision that states that any requirements for securing the protection of such designs, particularly regarding any cost, examination, or publication, must not unreasonably limit the ability to seek and obtain such protection. Members are allowed to fulfill this commitment following copyright or industrial design legislation.

Under Article 26.1, Members must grant the owner of a protected industrial design the right to prevent third parties from making, selling, or importing products that bear or embody a design that is a copy, or substantially a copy, of the protected design when such acts are

carried out for commercial gain. Under the conditions that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of third parties, Members are permitted by Article 26.2 to provide limited exceptions to the protection of industrial designs. The term of the protection must be at least ten years.

Patents

Patentable Subject Matter: In accordance with the TRIPS Agreement, Member nations must grant patents for all innovations, including goods and processes, across all technological disciplines, without restriction, as long as they pass the customary standards for novelty, creativity, and industrial usefulness. Additionally, it must be possible to obtain patents and enjoy patent rights without regard to the location of the invention or whether the goods are manufactured locally or elsewhere (Article 27.1).

Layout-Designs of Integrated Circuits

Article 35 of the TRIPS Agreement mandates that Member nations safeguard integrated circuit layout designs in line with the terms of the IPIC Treaty (the Treaty on Intellectual Property in Respect of Integrated Circuits), which was negotiated in 1989 under the supervision of WIPO. These clauses include exploitation, registration, and disclosure as well as the definitions of "integrated circuit" and "layout-design (topography)," as well as criteria for protection, exclusive rights, and limits[9], [10].

The TRIPS Agreement explains and/or expands on four topics in addition to requiring Member nations to safeguard integrated circuit layout designs in line with the IPIC Treaty's requirements. These issues include the duration of the protection (ten years instead of eight, Article 38), the application of the protection to items incorporating infringing integrated circuits (final subparagraph of Article 36), and the handling of unintentional infringers (Article 37.1). Instead of the provisions of the IPIC Treaty on compulsory licensing (Article 37.2), the conditions in Article 31 of the TRIPS Agreement apply mutatis mutandis to compulsory or non-voluntary licensing of a layoutdesign or its use by or for the government without the right holder's consent.

Protection of Undisclosed Information

Undisclosed information, such as trade secrets or know-how, must comply with the TRIPS Agreement to be protected. Article 39.2 states that secret information has economic value because it is secret, and has been subject to reasonable efforts to keep it secret and must be covered by the protection. The Agreement does not require that undisclosed information be treated as property, but it does mandate that the person lawfully in control of such information be able to prevent it from being disclosed to, acquired by, or used by others without his or her consent in a way that is inconsistent with honest commercial practices. A "manner is contrary to honest commercial practices" is defined as a breach of contract, a breach of confidence, the encouragement of a breach, or the acquisition of nonpublic information by third parties who knew or were egregiously negligent in failing to know that such practices were involved in the acquisition, and other similar actions.

The Agreement also includes clauses on unreleased test results and other data that must be submitted before governments would approve the sale of medicinal or agricultural chemical goods that include novel chemical entities. In this case, the relevant Member government is required to safeguard the data against improper commercial usage. Additionally, Members

are required to keep such information private, except in cases of public safety or unless efforts are made to shield it from improper commercial usage.

Enforcement of Intellectual Property Rights

Part III of the Agreement, which is broken down into five Sections, contains the provisions on enforcement. The basic requirements for all enforcement processes are outlined in the first Section. These are particularly intended to guarantee its efficacy and the observance of certain fundamental rules of due process. The sections that follow include criminal proceedings, provisional measures, particular requirements connected to border measures, and civil and administrative procedures and remedies. These provisions have two main goals: the first is to guarantee that right holders have access to efficient means of enforcement; the second is to guarantee that enforcement procedures are applied in a way that prevents the creation of barriers to legitimate trade and that offers protection against their abuse. The Agreement distinguishes between general infringing activity, for which civil judicial procedures and remedies must be available, and counterfeiting and piracy, the more egregious and overt forms of infringing activity, for which additional procedures and remedies, such as border controls and criminal procedures, must also be provided. For this reason, a slavish imitation of trademarks qualifies as counterfeit goods, and products that infringe the copyright or a similar right are considered pirated goods.

UNESCO: United Nations Educational, Scientific and Cultural Organization

On November 16, 1945, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) was established. The General Conference and the Executive Board oversee UNESCO, which has 195 Members and 8 Associate Members. The decisions of these two organizations are carried out by the Secretariat, which is led by the Director-General. The Organization's headquarters are in Paris, and it has more than 50 field offices spread out over the globe. The goal of UNESCO is to use education, the sciences, culture, communication, and information to promote the establishment of a culture of peace, the elimination of poverty, sustainable development, and intercultural understanding.

UNESCO seeks to foster conversation across civilizations, cultures, and peoples that are founded on respect for shared ideals. The world can attain global ideals of sustainable development—all of which are at the core of UNESCO's mandate and activities—through this discussion, which encompasses respect for one another, observance of human rights, and the reduction of poverty. At the start of the twenty-first century, copyright, a long-standing instrument for fostering innovation, has even more capacity to do so. Since its inception, UNESCO has been dedicated to advancing copyright protection; the Universal Copyright Convention was enacted under its auspices in 1952. Over time, UNESCO has been more concerned with guaranteeing widespread respect for copyright in all domains of invention and the cultural industries. Along with providing information, training, and research in the area of copyright law, it also carries out awareness-raising and capacity-building programs within the framework of the Global Alliance for Cultural Diversity. It is primarily interested in creating new anti-piracy strategies. Copyright protection has not been impacted by the digital revolution. The United Nations Educational, Scientific and Cultural Organization (UNESCO) makes an effort to contribute to the global discussion on this issue, taking into consideration the development perspective and paying particular attention to the need to maintain a fair balance between the interests of authors and the general public's access to knowledge and information.

CONCLUSION

Since its establishment, the TRIPS Agreement has had a tremendous impact on the world's intellectual property environment. It has defined minimum requirements for the defense and enforcement of IP rights, creating a framework for coordination and collaboration among WTO members. By providing intellectual property owners with a stable and safe environment, the agreement has been crucial in promoting innovation, technology transfer, and foreign direct investment. However, the TRIPS Agreement has also come under fire for perhaps obstructing access to necessary medications, restricting the ability of poor nations to solve issues with public health, and escalating global disparities. The TRIPS Agreement will continue to be a crucial resource for referencing intellectual property protection and how it relates to international commerce as the global economy and technological breakthroughs change.

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CHAPTER 7

DESCRIBING THE CONCEPT OF PATENTS

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ABSTRACT:

Patents are a kind of intellectual property rights that are given to inventors or creators to safeguard their original creations. This article examines the idea of patents, their function, and their effects on technological advancement, technology transfer, and economic growth. It talks about the essential components of a patent, such as inventive step, novelty, and industrial applicability. The essay also looks at the difficulties and disagreements related to patents, including patent trolls and the argument over how to strike a balance between encouraging innovation and facilitating access to information. Overall, patents are essential for encouraging innovation and giving inventors incentives, but it is important to carefully weigh their consequences in order to strike a balance between safeguarding intellectual property and advancing the public good.

KEYWORDS:

Copyright, Industrial Design, Innovation, Invention, Patents, Trademarks.

INTRODUCTION

Due to the likelihood of their widespread adoption by huge segments of society both domestically and abroad, inventions resulting from human creativity have significant economic worth. The protection of scientific innovations with the potential for commercial use is often accomplished via the use of patents. Few scientific bodies and even fewer enterprises in India take the necessary steps to safeguard their discoveries. The Patents Act, 1970 in India contains the laws governing patents. In order to comply with India's commitments under the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement that is a component of the Agreement establishing the World Trade Organization (WTO), this Act has been revised in the years 1995, 1999, 2002, and 2005. As of right now, India's duties under the WTO's TRIPS Agreement are completely met by the Indian Patents Act. Over the last several decades, patents have become very significant. Every business is building a strong patent portfolio. It is crucial to understand the benefits of obtaining a patent and how an inventor might profit from one[1], [2].

The lesson's goal is to raise students' understanding of Indian patent law and explain the steps involved in getting a patent, in addition to patent licensing and assignment, as well as forced licensing. There are many ways to preserve the creative work of the human mind, and the major reason for doing so is because doing so is a clear way to stimulate the creative process. Many different types of creative activity protection have emerged, including some that are particularly relevant to industrial growth. Among them are patents. In general, a patent is a monopoly award that gives the inventor control over the production and, up to a certain point, the price of the patented goods. The patent system's primary economic and commercial argument is that it encourages investment in industrial innovation. The upkeep and expansion of a country's portfolio of valuable, tradable, and industrial assets are facilitated by innovative technologies.

It is possible to date the earliest patent award to 500 B.C. It was the gourmand-dominated city that granted what is now known as a patent right to promote culinary art, making it perhaps the first. Because it granted exclusive sales rights to any confectioner who created a delectable dessert first. The practice took on the term "monopoly," a Greek portmanteau word from mono (alone) and pole in (selling), as it spread to other Greek towns and to other crafts and goods. Evidence of exclusive property rights being granted to private persons by monarchs and other authorities goes back to the 14th century, but their uses have changed through time. History demonstrates that monopoly rights for inventors were routinely used in Venice throughout the 15th century to promote innovation. The invention's usefulness and novelty were key factors in determining whether to issue a patent privilege. The inventors also had a deadline by which they had to exploit their innovation commercially[3], [4].

The German rulers of the 16th century gave prizes to those who created new arts and devices while also taking into account their usefulness and originality. Early regulations in the American colonies were largely intended to provide protected domestic markets to foreign manufacturers in order to encourage them to start new businesses there. By the late 15th century, the English monarchs had begun to employ monopoly privilege more often to reward royal favorites, to maintain allegiance, and to maintain control over the industry, but not to promote innovations. The inventors patent was recognized as a legitimate monopoly in 1623 by the English Parliament, which also created a Statute of Monopolies to set it apart from other monopoly rights. The giving of monopoly powers was prohibited by the Statute, with the exception of the first and genuine inventor of a new product. During the 16th and 17th centuries, the inventor's patent of monopoly had grown in significance across England. The laws recognizing the patent monopoly extended throughout Europe and North America from the middle of the eighteenth century to the middle of the nineteenth century, but these advantages were not given without struggle. The Act of 1856 that granted inventors special rights is the source of the Indian Patent System. The Patents and Designs Act, 1911, which provided provisions for both product and process patents, regulated the patent system at the time of Independence. However, it was widely believed that the patent legislation had not done much to benefit the populace of the nation[3], [5].

Foreigners profited from the Act's design significantly more than Indians did. It hindered Indians' ability to be imaginative and creative, and it did absolutely nothing to further scientific research or industry in the nation. In order to conduct a thorough examination of the operation of the 1911 Act, a committee headed by Justice (Dr.) Bakshi Tek Chand, a retired judge of the Lahore High Court, was established shortly after Independence in 1949. The Committee made suggestions for preventing the exploitation or abuse of patent rights in India in its interim report, which was presented on August 4, 1949, and in its final report, which was submitted in 1950. It also suggested that the Patent Act clearly state that food, medicine, and surgical and curative equipment must be made accessible to the general public at the lowest cost possible while yet providing the patent holder with adequate recompense. The 1911 Act was updated in 1950 (by Act XXXII of 1950) to address the functioning of innovations, including compulsory licensing and patent revocation, in accordance with the committee's recommendations. A subsequent modification (Act LXX of 1952) was enacted to allow for obligatory licensing of food, medicine, pesticide, germicide, or fungicide, as well as any innovation pertaining to a technique for generating substances or surgical or curative instruments. The government introduced a measure (measure no. 59 of 1953) in Parliament in response to the committee's suggestion, but the bill was not pushed and was allowed to expire.

A new committee was established in 1957, headed by Justice N. Rajagopala Ayyangar, to examine the patent law from a fresh perspective and reformat it entirely so that it would best serve the requirements of the nation at the time. In particular, patents for chemical innovations and patents for inventions pertaining to food and medicine were covered in Justice Ayyangar's findings. The Patents Act, 1970, which replaced the Patents and Designs Act, 1911, entered into force on April 20, 1972, and was largely based on the recommendations made in Justice Ayyangar's thorough Report on Patent Law Revision, which was submitted in September 1959. However, designs were still covered under the 1911 Act.

The history of patents and the idea behind them dates back thousands of years.

Synopsis of Patent History:

1. Ancient Civilizations: In the past, inventors were given temporary exclusive rights to their creations in ancient civilizations like ancient Greece and Rome. These early systems, however, lacked established legal structures.
2. The rights of craftsmen and artisans were protected throughout the middle Ages in Europe by guilds and other craft organizations. To preserve quality standards and stop unlawful copying of ideas and methods, these organizations implemented laws and regulations.
3. The Venetian Republic passed one of the oldest known patent statutes in 1474, known as the Venetian Patent Statute. In return for releasing their ideas to the public, inventors were given a monopoly for a certain time frame, often 10 years.
4. The English Statute of Monopolies, passed in 1624, was a significant turning point in the development of patents. It gave inventors the exclusive ownership of their ideas for a certain amount of time and was passed to solve the problem of royal monopolies. This legislation laid the groundwork for current patent law.
5. Industrial Revolution: In the 18th and 19th centuries, the Industrial Revolution led to a considerable surge in technical development. Countries started to realize how important it was to use patent systems to preserve and promote innovation. During this time, countries including the United States, France, and the United Kingdom formed their patent laws.
6. An international agreement known as the Paris Convention for the Protection of Industrial Property was signed in 1883 with the goal of establishing uniform protections for industrial property, including patents. In order to promote innovation and global collaboration, it planned to provide inventors rights in many nations.
7. International initiatives to unify patent rules and expedite the patent application process gained traction in the 20th century. In order to streamline the procedure for submitting international patent applications, the Patent Cooperation Treaty (PCT) was developed in 1970. In order to further the protection of intellectual property, including patents, on a worldwide level, the World Intellectual Property Organization (WIPO) was established in 1967.
8. TRIPS Agreement (1995): The World Trade Organization (WTO) put into force the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement in 1995. On a worldwide level, it set basic requirements for the defense and enforcement of intellectual property rights, including patents.

DISCUSSION

Patents Act, 1970

The Patents Act of 1970 remained in effect until December 1994 for almost 24 years without any modifications. The fundamental tenet of the Act, which is a turning point in India's industrial growth, is that patents are granted not just to give the patentee a monopoly on importing the patented item into the nation, but also to encourage inventions and ensure that they are quickly implemented on a commercial scale. The aforementioned philosophy is being put into practice through compulsory licensing, registration of only process patents for food, medicine or drug, pesticides, and substances produced by chemical processes, which include items like alloys, optical glass, semi-conductors, inter metallic compounds, etc. in addition to chemicals as they are typically understood. However, it should be remembered that some goods, such as those used in agriculture and horticulture, atomic energy discoveries, and all living beings, are not subject to patent protection. Therefore, it was anticipated that the Patents Act of 1970 would strike a suitable balance between the advancement of technology, the public interest, and the unique demands of the nation, on the one hand, and the necessary and effective protection of patents, on the other.

WTO was established as a result of the GATT discussions in Uruguay. India was thereby forced by contract to update its Patents Act to comply with TRIPS's requirements. On January 1st, 1995, India had to comply with the first set of conditions. As a result, on December 31, 1994, an Ordinance was enacted that made certain adjustments to the Act but only lasted for six months. Another Ordinance was then published in 1999. The Patents (Amendment) Act, 1999, which went into effect retroactively on January 1, 1995, later superseded this Ordinance. Although such patents were not permitted, the modified Act allowed for the submission of applications for product patents in the fields of medications, pharmaceuticals, and agrochemicals. But after December 31, 2004, these applications were only going to be reviewed. If certain requirements are met, the applicants may be granted Exclusive Marketing Rights (EMR) to sell or distribute certain items in India.

The Patents (Amendment) Act, 2002, which was passed in India in 2002, revised the Patents Act once again, extending the patent period to 20 years for all technologies and reversing the burden of proof. The previous Patents Rules of 1972 were replaced with the newer Patent Rules of 2003, which went into effect on May 20, 2003. The Patents (modification) Ordinance, 2004, which took effect on January 1, 2005, brought the third modification to the Patents Act of 1970. It included provisions for the awarding of product patents in all technological domains, including chemicals, food, pharmaceuticals, and agrochemicals. The Patents (Amendment) Act 2005, which went into effect on January 1, 2005, eventually took the place of this Ordinance. It was passed on April 4, 2005.

Patent Rules: Section 159 of the Patents Act of 1970 gives the Central Government the authority to create regulations to carry out the Act's provisions and control the administration of patents. As a result, on April 20, 1972, the Patents Rules, 1972, were announced and implemented. These Rules were periodically updated until May 20, 2003, when the 2003 Patents Rules took effect and repealed the 1972 Rules. The Patents (Amendment) Rules of 2005 and the Patents (Amendment) Rules of 2006 further modified these regulations. The most recent changes become effective on May 5, 2006. The Patents (Amendment) Rules 2005 include four schedules. The First Schedule stipulates the fees to be paid, and the Second Schedule lists the forms and their texts that must be used in conjunction with different operations under the Patents Act. These forms should be used whenever necessary, and they

may be changed if necessary with the Controller's approval. The Third Schedule specifies the kind of patent that must be granted upon patent grant. The Fourth Schedule specifies the expenses that must be awarded in certain Act-related cases before the Controller.

Salient Features of the Act

An exclusive right to produce, use, sell, and market an invention is known as a patent. This right is awarded by a nation to the inventor, providing the creation complies with specific legal requirements. Exclusivity of right means that the innovation cannot be created, used, manufactured, or marketed by anyone else without the patent holder's permission. This privilege is only accessible for a brief length of time. However, additional regulations of the nation that granted the patent may have an impact on how it is used or exploited[6], [7].

These laws may deal with things like food, security, safety, and the like. Existing patents in a related field may likewise be a hindrance. According to the law, a patent is a property right and may be given, inherited, sold, transferred, or leased. Even if the patent has already been sold, licensed, produced, or marketed, since the right was granted by the State, it might still be canceled by the State in very limited situations. The patent right is territorial in nature, thus inventors and their assignees must submit separate patent applications in the nations in which they are interested, together with the required fees, in order to be granted patents there. A patent is a legal document issued by the government to an inventor that enables him to prevent anybody else from financially exploiting his creation for a certain time period, now 20 years. According to the Supreme Court, the goal of patent law is to promote innovative research, cutting-edge technology, and economic development. A limited-time grant of the only right to own, use, or sell a patented technique or product encourages the development of new commercially useful ideas. The disclosure of the invention at the Patent Office is the cost of the monopoly grant; when the predetermined amount of time has passed, the innovation reverts to the public domain [M/s Bishwanath Prasad v. Hindustan Metal Industries, AIR1982 SC 1444]. Patents give incentives to people by giving an exclusive right, rewarding them financially for their commercial ideas and recognizing their talent. In order for others to benefit from the new information and advance the technology, the inventor must appropriately reveal the patented innovation to the public in exchange for the exclusive right. Thus, the disclosure of the invention is a crucial factor in any process for getting a patent.

Patents for Goods And Processes

Only process patents may be granted for certain types of innovations under Section 5 of the Patent Act of 1970. It should be noted that product and method patents have been granted under the Patent Act of 1970 in all other fields. The Paris Convention has left it up to each state to decide how to address this problem in its own laws. Article 27.1 of the TRIPs Agreement states that, with the exception of the exclusions outlined in Articles 27.2 and 27.3, patents shall be accessible for all innovations, whether they are goods or processes, across all technological sectors.

The TRIPs agreement allowed for the 2002 amendment of the Patent Act of 1970. According to Section 5 of the Patents Act of 1970 (as it stood after the 2002 changes), only patents covering the production processes of such substances may be granted for innovations that were claimed to relate to food, medicine, pharmaceuticals, or chemicals.According to an explanation included with Section 5, "chemical process" encompasses microbiological, biotechnological, and biochemical processes. The Patents (Amendment) Act, 2005, which went into effect on January 1, 2005, later repealed Section 5 of the Patents Act, 1970, opening the door for the creation of product patents.

This intentional policy of excluding pharmaceutical ideas from product patent protection may be traced back to the Ayyangar Committee Report, which served as the fundamental inspiration for the Patents Act of 1970. The Committee discovered that between 80% and 90% of Indian patents were controlled by foreigners, and that more than 90% of these patents were not even developed in India. The Committee came to the conclusion that multinational corporations were abusing the system to gain monopolistic control over the market, particularly in respect to essential sectors like food, chemicals, and medicines.

The Patents Act has been updated to take into account India's growing technical capacity as well as the need to harmonize the nation's intellectual property laws with those of other countries. The Act has been updated in order to appropriately defend national and public interests and to satisfy India's international responsibilities. The Act has also been harmonized, modernized, and made more user-friendly.

Duration of Patents

According to Section 53, the term of any patent granted following the start of the Patents (Amendment) Act, 2002, as well as the term of any patent that has not yet expired or ceased to be in force on the date of such start, shall be twenty years from the date of filing of the patent application.

The explanation to Section 53(1) makes it clear that the term of the patent in cases of international applications submitted under the PCT designating India should be twenty years from the date given under the Patent Cooperation Treaty as the international filing date. If the renewal fee is not paid within the specified time or within any extended period that may be imposed, the patent will expire when the period for payment of the renewal fee expires.Further, the subject matter covered by the stated patent shall not be entitled to any protection upon termination of the patent right owing to non-payment of renewal fee or upon expiration of the term of patent.

According to Rule 80, in order to maintain the validity of a patent, the renewal fees listed in the First Schedule must be paid at the end of the second year following the date of the patent, or at the end of any succeeding year, and they must be submitted to the patent office prior to the end of the second or any succeeding year. The Patents (Amendment) Rules, 2005's Sub-rule (1A) states that if a request for an extension of time is submitted in Form 4 with the fee listed in the First Schedule, the timeframe for payment of renewal fees may be extended to a period not exceeding six months. It is necessary to specify the patent's number, expiration date, and the year for which the fee is being paid when paying the renewal fee. It is possible to pay the yearly renewal costs for periods of two or more years in advance[8], [9].

Patents

The fundamental principle of patentability has three allowable exceptions. One is for innovations that violate morals or the public order; this expressly includes inventions that are harmful to the health or well-being of people, animals, plants, or the environment. In order to invoke this exemption, the economic exploitation of the innovation must also be blocked, and this prohibition must be required to uphold public morals or order public (Article 27.2).The second exemption is that Members may not grant patents for surgical, medicinal, or diagnostic procedures used to treat people or animals (Article 27.3(a)). The third is that Members may exclude plants and animals other than microorganisms and fundamentally biological processes other than non-biological and microbiological procedures for the creation

of plants or animals. Any nation that exempts plant types from patent protection, meanwhile, must have a strong sui generis method of defense. In addition, the whole clause is up for review four years after the Agreement enters into effect (Article 27.3(b)).

Rights Granted: A product patent must provide the exclusive right to make, use, offer for sale, sell, and import the invention for these purposes. Patent protection for processes must provide rights to both the things produced directly via the method as well as their usage. In accordance with Article 28 of the Patent Act, patent owners are also entitled to license agreements and the ability to assign or transfer their patents via succession.

Exceptions: Under certain conditions, Members may grant limited exceptions to the exclusive rights granted by a patent, as long as these exceptions do not unreasonably conflict with a patent's normal exploitation and do not unreasonably jeopardize the legitimate interests of the patent owner, taking into account the legitimate interests of third parties (Article 30).

Protection period: According to Article 33, the applicable protection period cannot terminate before 20 years have passed after the filing date.

Conditions for Applicants for Patents: Members may require a patent applicant to specify the best method for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application (Article 29.1). Members may also require an applicant to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

Process patents: Where certain circumstances indicating a likelihood that the protected process was used are met (Article 34), the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process.

Other Use without the Right Holder's Permission: Government use without the right holder's consent and mandatory licensing are both permitted, but only under restrictions designed to safeguard the right holder's legitimate interests. Article 31 primarily outlines the circumstances. These requirements include the need to pay adequate compensation in each case while taking into account the license's economic value, the requirement that decisions be subject to judicial or other independent review by a distinct higher authority, and the requirement that such licenses only be granted if an unsuccessful attempt has been made to acquire a voluntary license on reasonable terms and conditions within a reasonable period of time. When compulsory licenses are used to stop activities that have been shown to be anticompetitive via a legal procedure, some of these criteria are loosened. These requirements should be read in conjunction with the relevant clauses of Article 27.1, which demand that patent rights be enjoyed without regard to the technological sector or whether goods are manufactured locally or elsewhere.

CONCLUSION

.In conclusion, patents are an essential instrument for encouraging innovation, rewarding inventors, and boosting economic growth. They provide innovators unique rights and legal protection, enabling them to sell their ideas and profit from their labors. Patents aid in the transmission of technology and promote spending on research and development. The patent system does face certain difficulties, however. Concerns have been expressed regarding the delicate balance between promoting innovation and preserving intellectual property due to the emergence of patent trolls, who use patents only for the purposes of litigation and licensing. Furthermore, disagreements still exist about the extent and length of patent

protection, especially in sectors like pharmaceuticals where it is crucial to have access to life-saving medications. For the patent system to continue fostering innovation and social benefit, it is crucial to strike the ideal balance between these two objectives. These issues may be resolved and made sure that patents continue to be an effective instrument for innovation in the contemporary world by ongoing conversations, changes, and the careful use of patent laws.

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CHAPTER 8

PATENTABLE AND NON-PATENTABLE SUBJECT MATTER

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ABSTRACT:

An essential component of intellectual property law is the idea of patentable subject matter. It establishes what works of art qualify for patent protection. The notion of patentable and non-patentable subject matter is explored in this essay, along with the standards and restrictions used by various nations. The significance of achieving a balance between promoting innovations and avoiding the monopolization of ideas is discussed. It also covers new problems and difficulties in figuring out patent eligibility, such as biotechnology innovations and artificial intelligence. For innovators, decision-makers, and the legal community to promote innovation while maintaining fair competition, a thorough understanding of patentable subject matter is necessary.

KEYWORDS:

Intellectual Property, PatentableSubject Matter, Non-PatentableSubject Matter, Design Patent.

INTRODUCTION

Patent law is essential for encouraging innovation and protecting inventors' rights. But not all works of art or innovations qualify for patent protection. What is eligible for patenting and what is not is determined by the idea of patentable subject matter. To find a balance between encouraging innovation and opposing the monopolization of ideas, this difference is crucial. The term "patentable subject matter" refers to ideas or works that satisfy the requirements for receiving a patent. These standards differ across countries but often call for the invention to be new, obscure, and useful in industry. On the other hand, ideas, concepts, and discoveries that are deemed unsuitable for patent protection are included in the category of non-patentable subject matter.

The choice of what is patentable matters greatly for many industries, including technology, research, health, and software development. It shapes the parameters of intellectual property rights and affects the degree of rivalry and innovation in a particular sector. This chapter tries to go further into the idea of patentable and non-patentable subject matter. It will examine the standards and constraints used by various nations to determine patent eligibility. Additionally, it will look at certain kinds of subject matter to determine their position concerning patentability, including scientific discoveries, natural laws, abstract concepts, phenomena, and computer software.In addition, new difficulties and complications in figuring out if an invention qualifies for a patent, such as biotechnological innovations and artificial intelligence. These developments provide particular problems that, when seen in the context of patentable subject matter, need careful attention[1], [2].

Through different legislative frameworks and international agreements, the idea of patentable and non-patentable subject matter has changed throughout time. It is possible to trace the origins of patentable and non-patentable subject matter to the early stages of the creation of patent law.

1. Early Patent Systems: In ancient civilizations like Ancient Greece and Rome, innovators were given exclusive rights to their creations, which is where the roots of patent law may be found. However, the range of what might be patented was often restricted to useful innovations; natural events or abstract concepts were not seen as being eligible.
2. Statute of Monopolies (1623): The English Statute of Monopolies is regarded as one of the first significant developments in contemporary patent law. It curtailed the issuance of monopolies and established criteria for an invention's uniqueness or creative step for it to qualify for patent protection. This law contributed to the development of the notion that certain subject matters ought to be exempt from patent protection.
3. Industrial Revolution: The 18th and 19th centuries Industrial Revolution saw substantial technical developments and a rise in the need for patent protection. Governments have given patents for several industrial innovations in recognition of the value of fostering innovation. However, only useful and material innovations were within the purview of what might be patented.
4. One of the first international accords to address patentable subject matter was the Paris Convention for the Protection of Industrial Property (1883). It sought to align the member nations' patent laws. In order to guarantee that international inventors would be granted the same patent rights as local inventors, the convention established the concept of national treatment. It did not, however, provide clear instructions on what particular subject matter should be patentable.
5. The Patent Act of 1952 in the United States marked a critical turning point in the definition of what qualifies as patentable subject matter. It established the criteria of utility, which stipulates that innovations must have a use or purpose in practice in order to qualify for patent protection. The statute also prohibited the patenting of natural laws, abstract concepts, and occurrences of nature.
6. TRIPS Agreement (1994): The TRIPS Agreement, which was overseen by the World Trade Organization (WTO), set basic requirements for intellectual property protection, including patents. It mandated that member nations provide patent protection to innovations in all technological sectors so long as they satisfied the requirements of originality, innovative step, and industrial usefulness. However, the agreement did not go to considerable length to precisely address the problem of patentable subject matter.
7. Case Law and Jurisprudence: Through their rulings and interpretations of the patent laws, the patent offices and courts have played a significant part in defining the idea of patentable and non-patentable subject matter throughout the years. The idea of whether biotechnological innovations qualify for patent protection has been impacted by landmark judgments like Diamond v. Chakrabarty (1980), which took place in the United States.

As new technologies are developed, the idea of patentable and non-patentable subject matter is always changing. Debatable topics in recent years have included innovations relating to genes, business practices, and software patents. Determining the limits of patentable subject matter has been a source of continual debate and difficulty since different jurisdictions have taken different strategies.

DISCUSSION

Patentable Subject Matter

Elements of Patentability

As previously mentioned, a patent may be issued for an innovation that is connected to any method or item. A discovery is not the same thing as an innovation. Something that had been discovered was something that had previously existed. Not every innovation is eligible for a patent. The criteria for patentability are standards that an invention must satisfy. According to Section 2(1)(j) of the Patents Act of 1970, an "invention" is defined as "a new product or process involving an inventive step and capable of industrial application." The innovation must be the subject of the patent, not a finding. The basic tenet of patent law is that only innovative and beneficial inventions are eligible for patent protection. It must thus be both unique and useful. A patent must represent the inventor's original discovery rather than just a confirmation of what was previously known at the time the patent was filed. It is crucial to keep in mind that an improvement on something previously known or a combination of several already known things must be more than a simple workshop improvement and must independently fulfill the test of the invention or an "inventive step" to be patentable[3], [4].

The combination of improvement must provide a new outcome, a new item, or a better or less expensive article than before for it to be patented. When a patent application with a complete specification is filed, it is considered to be a "new invention" if the invention or technology has not yet been used in the country or elsewhere in the world, has not yet entered the public domain, or does not already constitute the state of the art [Section 2(1)(l); When referring to an invention, the phrase "capable of industrial application" (Section 2(1)(ac)) signifies that it may be manufactured or employed in the industry. In Raj Prakash v. Mangat Ram Chaudhary (AIR 1978 Del. 1), it was determined that invention—as is commonly known—means to learn something or make a discovery that hasn't been made before. Innovation does not have to be very difficult. The most important factor is that the innovator used it initially. The underlying idea is that any basic innovation that is claimed is an invention as long as it is something fresh or new, and the claims and specifications must be interpreted in that context.

The following are the requirements for patentability: •

1. Novelty
2. Inventive step; and
3. Industrial applicability (utility)

Novelty

A novel invention has not previously been disclosed in the prior art, which is defined as everything that has been published, presented, or otherwise made public as of the patent filing date (the term "prior art" includes documents that have been made public in foreign languages in any format and throughout the world). The disclosed knowledge must not be found in the "prior art" for an invention to be considered innovative. This implies that before the date on which the application is originally submitted, or the "priority date," there should be no previous publication of any information included in the patent application (anywhere in the public domain, either written or in any other form, or any language).

Therefore, if an invention is not included in the previous art, it is regarded to be novel. The provisions of Section 13 read with those of Sections 29 to 34 must be used to determine previous art, even if the term has not been defined by the Indian Patents Act.

(a) An invention is not deemed innovative if it has been disclosed before the application's filing date in any specification submitted in support of an Indian patent application on or after January 1st, 1912, or any later date.

(b) An invention will not be regarded as innovative if it was previously published in any document in any nation before the application was filed.

(c) If an invention is included in a claim of another entire specification filed in India before the application but published after that application, it will not be regarded as new.

(d) An innovation is not regarded as unique if it was known beforehand, whether via oral tradition or other means, within any local or indigenous group in India or abroad.

Inventive Step

An invention's inventive step is a characteristic that requires a technological advance over previously known information, has economic value, or both, and renders the invention obscure to a person of ordinary competence in the art. In addition to the previously mentioned criterion for defining the inventive step, the concept of the inventive step as used here has been expanded to include the economic relevance of the invention[5], [6].

If, given the state of the art, an invention is apparent to a person versed in the art, it should not be deemed to have included an inventive step. The definition of "obvious" is defined as anything that follows obviously or logically from the previous art and does not need the exercise of any skill or talent that would be beyond what would be anticipated of a person competent in the art. An ordinary practitioner who is aware of what was widespread common knowledge in the pertinent art at the pertinent date shall be assumed to be a "person skilled in the art" for this definition. In other instances, the person who is talented in art may be considered to be a team or group of people rather than a single individual.

Industrial Applicability

An innovation may be employed in the industry if it meets the following three requirements in any combination:

1. Can be created;
2. Can be used in at least one area of activity;
3. Can be repeatedly produced with the same features.

1) Innovation must be helpful to be patented. The criteria of innovation are not met if the subject matter has no practical application.
2) The aspect of commercial or financial success has no bearing on the issue of usefulness concerning patent law.
3) The usefulness of an alleged invention depends not on whether all the results not required for commercial success can be obtained by following the directions in the complete specification, but rather on whether the effects that the application or patentee professed to produce could be obtained by following such directions.
4) Whether a non-commercial use is involved, the definition of usefulness is thus helpful for the purpose stated by the application or patentee.
5) If an invention was useful at the time the patent application was filed and has since been replaced by better technology, the patent will still be valid although it is now no longer useful and has no commercial value.
6) Hypothetical or hypothetical industrial applications are not accepted as satisfying the industrial application criteria.

Non-Patentable Subject Matter

Even if an invention satisfies the requirements for originality, creativity, and utility, it still could not be eligible for patent protection. According to Section 3 of the Patents Act of 1970, the following are not inventions:

(a) A frivolous innovation or one that makes claims that are manifestly at odds with well-known natural laws;

(b) a creation whose main or intended use, or commercial exploitation, could violate morals or public order, or which gravely jeopardizes the health or environment of people, animals, plants, or the environment;

(c) The simple identification of a scientific principle, the development of an abstract theory, or the identification of any naturally existing living being or non-living object;

(d) the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine, or apparatus unless such known process produces a new product or employs at least one new reactant; The explanation to clause (d) clarifies that salts, esters, polymorphs, metabolites, pure form, particle size, and isomers are all examples of known substances.

(e) A material made by a straightforward mixing that just aggregates the attributes of its constituent parts or a method for making such a substance;

(f) The simple grouping, regrouping, or duplication of known devices, each of which operates separately and in a known manner;

(g) Patents (Amendment) Act of 2002 omitted subsection.

(h) A horticultural or agricultural technique;

(i) any procedure for the medical, surgical, curative, prophylactic diagnostic, therapeutic, or other care of humans, or any procedure for the comparable care of animals to make them disease-free or to raise their economic worth or that of their products;

(j) All forms of plants and animals, except microorganisms, including seeds, species, variations, and fundamentally biological processes for growing or reproducing plants and animals;

(k) A computer program in and of itself, as opposed to a combination of hardware or its technological application to industry;

(l) A piece of literature, theater, music, art, or any other aesthetic creation of any kind, including films and television shows;

(m) A simple plan, rule, or technique for carrying out a mental act, or game-playing strategy;

(n) An informational presentation;

(o) Integrated circuit topography;

(p) An innovation that, in essence, duplicates or aggregates previously known qualities of a component or components that are common knowledge.

A patent cannot be granted for an atomic energy innovation that falls within subsection (1) of section 20 of the Atomic Energy Act of 1962, according to section 4.

The Atomic Energy Act of 1962 provides a particular clause regarding innovations in Section 20. No patents shall be granted for inventions that, in the opinion of the Central Government, are useful for or relate to the production, control, use, or disposal of atomic energy, or the prospecting, mining, extraction, production, physical and chemical treatment, fabrication, enrichment, canning, or use of any prescribed substance or radioactive substance, or the ensuring of safety in atomic energy operations, according to Section 20 (1) of the Atomic Energy Act, 1962.

Application for Patent

According to Section 6 of the Act, any of the following individuals may apply for a patent for an invention, either alone or jointly with another person:

(a) By anybody claiming to be the invention's real and original creator;

(b) By anybody who has the right to file such an application as the assignee of the person claiming to be the genuine and original inventor;

(c) By the legal representative of any dead person who had the right to submit such an application at the time of his or her passing.

According to Section 2(1) (y), "true and first Inventor" does not refer to anybody who brings an invention into India for the first time or to someone to whom an invention is first disclosed from outside of India. The applicant must provide the first applicant's genuine name, address, and country of citizenship.

According to S.2 (1) (s), the assignee may be a natural person or an entity other than a natural person, such as a registered business, institution of higher learning, or research organization. According to S. 2(1) (ab), an assigned party also includes an assigned party. The assignee must produce "Proof of Right" to apply, such as an assignment deed.

According to S.2 (1) (k), a legal representative is a person who legally represents the estate of a dead person. As confirmation of their legal position, they should provide death certificates and other documents. The convention applicant's legal agent or assignee in the convention country may also submit a patent application in India in the event of a convention application.

Application Form

Every patent application must be filed for a single invention alone, according to Section 7 of the statute governing application forms. When the application is made thanks to the assignment of the right to file for a patent on the invention, documentation of the application's legal standing must be included.

There must be a single patent issued for a single innovation. Both processes and substances are eligible for patent protection. However, a patent cannot be split into two and claims to pertain to a material and a procedure, respectively. The specifications and the claims must be precisely and concisely specified to have a full patent. Imperial Chemical Industries Ltd. v. Controller General of Patents, Designs, and Trademarks and another AIR 1978 Cal.77.

If a matching application has also been filed with the Controller in India, every worldwide application under the Patent Cooperation Treaty (PCT) for a patent that may be submitted naming India will be regarded to be an application under the Act[7], [8]. The worldwide filing date recognized under the PCT shall be the filing date of such an application and its entire specification as processed by the patent office acting as designated office or elected office. Every such application, except convention applications and applications submitted

under the PCT designating India, is required to be accompanied by a provisional or full specification, according to Section 7(4).

It should be mentioned that applying for patents may be a time-consuming and costly procedure. Fortunately for inventors, several nations resolved to streamline the procedure for securing patents globally in 1970 by establishing the Patent Cooperation Treaty (PCT). A single worldwide application that is valid in any or all of the more than 120 member nations is all that inventors are permitted to submit under the Patent Cooperation Treaty. A patent application may be submitted either in all PCT member countries or in a specific set of member nations[9], [10]. Inventors may only utilize this more convenient approach to submit international patent applications if they are inhabitants or nationals of one of the PCT member nations.

CONCLUSION

Deciding what is patentable requires juggling a fine balance between encouraging innovation and guarding against excessive monopolization of ideas. Different legal systems use different standards and restrictions to determine whether a patent is eligible. Due to their inherent characteristics or absence of human interference, scientific discoveries, laws of nature, abstract concepts, and natural occurrences are often regarded as non-patentable subject matter. The lines may, however, become hazy, particularly when it comes to cutting-edge technology like biotechnological innovations and artificial intelligence. To guarantee a fair and efficient intellectual property system, policymakers and legal professionals must adapt to the new problems these developments provide in establishing patent eligibility. In the end, a clear framework for the patentable subject matter is essential to promote innovation, safeguard the rights of inventors, and ensure fair competition in the global market.

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CHAPTER 9

AN ANALYSIS OF PATENT SPECIFICATION TYPES

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ABSTRACT:

An overview of the many kinds of patent specifications is given in this chapter. Patent descriptions are essential for outlining innovations and safeguarding intellectual property. There are several sorts of specifications to meet the various needs and demands of inventors and patent applicants. It is crucial to comprehend these categories to efficiently develop and submit patent applications. The main features and goals of utility, design, and provisional patent standards are also highlighted.A patent specification should be properly written from both a legal and a technical standpoint. The language and content of the patent specification should make it possible for a person with ordinary competence in the art to put the invention into practise, and the scope of the invention should be clearly defined to stop rivals from using the patent. The claims, which specify the scope of the legal monopoly sought for the invention, are the most significant part of the patent specification.

KEYWORDS:

Complete Specifications, Intellectual Property, Innovation, Invention, Patents, Patent Specifications, Provisional Specifications.

INTRODUCTION

In the sphere of intellectual property, patent specifications are crucial papers. They are essential in securing legal protection for creative ideas and describing innovations. To satisfy the variety of innovations and the unique needs of inventors and patent applicants, many sorts of patent specifications are available. For inventors and legal experts engaged in the patenting process, understanding these many forms is crucial. Each type has a particular use and is protected by rules that must be followed. Inventors may successfully navigate the patent system and ensure that their ideas are properly protected by understanding the features and goals of these different kinds of patent specifications [1].

It seeks to provide inventors and patent applicants with the information required to make wise choices about their patent applications and methods for protecting their intellectual property. Understanding the various sorts of patent specifications helps inventors better design their applications to satisfy the demands of each category, increasing the likelihood that their ideas will get strong patent protection.The development of patent systems and procedures is strongly related to the history of specifications. The idea of provisional and complete specifications has been important to the patenting process in many nations, although the particular terminology and standards may differ among jurisdictions[2], [3].

Synopsis of the Development Of Patent Specifications:

1. Early Patent Systems: Patent laws have a long history. They date back several centuries. Early patent applications frequently just needed a simple explanation of the invention to prove priority. These applications were regarded as provisional and acted

as a temporary stand-ins while the inventor worked on their invention or looked for funding.

2. Formalization of Patent Procedures: As the patent system became increasingly organized, it became clear that a thorough and thorough disclosure of the invention was required. A detailed explanation of the invention, including its novelty, inventive step, and practical application, was intended to be provided by the introduction of complete specifications. The examination of patent applications and determining the extent of protection were based on complete specifications.

3. Introduction of Provisional Specifications: As time went on, patent systems realized that it was practical for inventors to choose an early filing date while giving themselves extra time to develop and complete their inventions. To meet this need, provisional requirements were developed. They allowed inventors to file their patent applications sooner, frequently with a more condensed and informal disclosure, while reserving the ability to file a full specification within a set time frame.

4. Development of Patent Laws and Practices: Different national patent laws and practices have influenced the unique requirements and processes for provisional and complete specifications. Variables can include filing requirements, specification content, and the timeframe for turning provisional specifications into complete specifications.

5. Provisional specifications are frequently filed as a preliminary stage in current patent systems. They are used to secure an early priority date, providing inventors with some breathing room to develop their ideas further and determine whether their invention is commercially viable. Inventors are expected to provide a complete specification that gives a thorough and detailed explanation of the invention within a set timeframe, usually one year.

DISCUSSION

Patent Application Types

1. Ordinary Application An application that has been submitted directly to the Indian Patent Office, or an ordinary application.

2. Convention Application.

3. PCT Application.

4. Divisional Application: A division of a patent application may lead to a divisional application.

5. Patent of Addition, which may be submitted for an improvement or change after the filing of a patent application.

Specification

A detailed specification must be provided by the applicant to completely and especially characterize the invention that is claimed in the application. A detailed specification of the invention must be provided such that a person with ordinary competence in the art might carry out the invention. Only when an applicant fully discloses the invention, specifically mentioning the ideal method of implementation, is this feasible? The Specification is a techno-legal document that makes claims for patent rights as well as complete scientific descriptions of the invention. Thus, a key component of the Patent Application is the

Specification. It is required of an application to complete and specifically disclose all elements that make up the invention. Either a preliminary or a full specification of the standard may be submitted. The Application in Form-1, the Specification (full or provisional), and other papers are to be submitted in duplicate together with the First Schedule-required fee in Form-2. The following must be on the first page of the Form 2:

1. The invention's name;
2. Each patent applicant's name, address, and country of citizenship; and
3. The preamble to the description

The precise elements of the invention must be adequately clear in the title. Every specification, regardless of how tentative or comprehensive, must explain the innovation. Where necessary, the applicant must supply drawings. At the time of the examination, the Controller may additionally request the applicant to provide drawings [Section 9, 10. Rule 13. Form-1, 2]. Such drawings must be included in the specification, and the specification must include the necessary references to them. To further illustrate the innovation, the Controller may request that the applicant present models or samples relating to the invention at any point before the award. Such prototypes or samples, however, are not permitted to be included in the specification[4], [5].

1. Provisional Specification

The applicant may prepare a disclosure of the invention in the form of a written description and submit it to the Patent Office as a provisional specification that describes the invention when he discovers that his invention has reached a stage where it can be disclosed on paper but has not yet reached the final stage. A provisional specification guarantees the application's priority date above any other application that is anticipated to be submitted in connection with the same invention that is being developed simultaneously. The Patent Office assigns a filing date and application number to the Application as soon as it receives the Provisional Specification. Under Section 9 of the Patent Act, a complete specification must be filed with a patent application that includes a provisional specification within a year of the application's filing date; otherwise, the application will be deemed abandoned. A single full specification comprising both provisional applications may be submitted by an applicant if the two provisional specifications are identical or if one is a revision of the other. A comprehensive specification of this kind must be submitted within a year after the initial provisional application's filing date. In these situations, the application's filing date corresponds to the day the earliest preliminary specification was submitted, and it must include that application's number. A full specification (that is neither a convention application nor a PCT National Phase Application) may be converted into a provisional specification by the applicant within a year after filing[6], [7].

As a result, within a year following the initial filing, the applicant must provide a full specification. A provisional specification may be postdated to the date of filing of the full specification, whether it was filed directly or converted from one. Patent specifications that serve as temporary or preliminary filing are known as provisional specifications. It offers a preliminary explanation of an invention, emphasizing its main attributes. A provisional specification is used to set an early filing date for an invention while giving the inventor more time to develop it and write a more thorough, comprehensive specification. Formal claims or an exhaustive description of the invention are not necessary for a provisional specification. It acts as a stand-in and offers a fundamental comprehension of the idea and its potential originality. Inventors can establish priority rights and their position in the patent queue by filing a provisional specification, guaranteeing that their invention will have a priority date.

2. Complete Specification

A techno-legal document known as the entire specification clearly and specifically explains the innovation and makes known the most effective way to implement it. The whole specification should be prepared with the greatest care and without any ambiguity since it is a crucial document in the patent process.

Aspects of the Complete Specification That Are Important

According to Section 10, each entire specification must:

1. Thoroughly and specifically define the invention, its function or use, and the procedure to be followed;
2. Reveal the most effective way to use the invention that the applicant is aware of and for which he is qualified to seek protection; and
3. Conclude with one or more claims that specify the range of the invention for which protection is sought;
4. Come with an abstract that explains the invention's technical details.

Also include, if appropriate, the biological material's deposit with the International Depository Authority. However, if the applicant mentions a biological material in the specification that cannot be described in a way that satisfies clauses (a) and (b) above and if such material is not accessible to the general public, the Controller may amend the abstract to provide better information to third parties. The application must be completed by depositing the material with an international depository authority following the Budapest Treaty and by fulfilling the following condition.

1) The material must be deposited no later than the date the patent application is filed in India, and a reference to it must be made in the specification within the allotted time;
2) the specification contains all the features of the material that are currently known and necessary for its accurate identification or indication, such as the name and location of the depository institution and the date and number of the material's deposit at the institution;
3) If a priority is claimed after the priority date, access to the material is only possible at the depository institution after the date of the Indian patent application;
4) When biological material is employed in an invention, specify where it came from and how it was used.

After the title, a comprehensive specification typically starts with a broad prologue describing the topic to which the invention pertains, followed by a thorough explanation of one or more inventive embodiments. The Court's role in an infringement action is to interpret the claims that are allegedly violated without consulting the body of the specification and to only consult the body of the specification if the claims are unclear or difficult to interpret. Unichem Laboratories v. Farbwerke Hoechst, AIR1969 Bom 255

Under Rules 13, 14, and 15, the specifications' criteria have been covered. For the Act, the title, description, drawings, abstracts, and claims submitted with an international application naming India must be deemed to represent the full specification. The claim or claims in a comprehensive specification must be clear, short, and reasonably based on the information provided in the specification. They must also relate to a single invention or to a collection of inventions connected to constitute a single creative idea. (As per Section 10(4)). A complete specification, sometimes referred to as a non-provisional specification, is a thorough document that offers a complete disclosure of an invention. It offers a thorough explanation

of the invention's technical specifications, workings, and possible uses. A thorough specification also includes the claims, which outline the invention's parameters and the level of legal protection demanded. A comprehensive specification, as opposed to a tentative one, must adhere to strict guidelines and offer an exhaustive and useful description of the invention. It should make it possible for someone with the necessary expertise to replicate the innovation using the information given. After a provisional specification, a complete specification is normally submitted to replace it and complete the patent application procedure[8], [9].The basis for the patent office's examination of the patent application is a thorough specification. It is essential in deciding whether an innovation can be patented and provides the legal framework for the defense and enforcement of patent rights

3. Convention application

A convention application is submitted to request a priority date based on an earlier application that is identical or very similar and was filed in any of the convention countries. An application for convention status must be submitted to the Indian Patent Office within a year of the date an identical application was originally submitted in the convention country to qualify. In other words, submitting a convention application gives the applicant the ability to assert priority in each convention country.

4. International PCT Application (PCT)

As suggested by its name, a PCT Application is a global application. Although the application does not result in the acquisition of a global patent, it does pave the way for a streamlined patent application process in several countries at once. It is governed by the Patent Corporation Treaty and is recognized in as many as 142 countries. Innovation may be shielded against imitation in various countries by submitting this application. It gives the applicant more time to evaluate the possibility of the invention than other applications since it enables the applicant to apply to additional countries between 30-31 months after the international filing date or priority date.

In addition, it offers the following benefits:

1) An international search report that evaluates the novelty of the invention by citing previous art is included in the application.
2) It provides the option of getting an International Preliminary Examination Report, a document that gives a conclusion about the patentability of the invention.
3) The aforementioned reports assist the applicant in making more informed judgments early in the patent process since the applicant may update the application to address any contradicting facts. In addition, before paying fees to submit and pursue the application in each country, the applicant would get a preview of the invention's patentability.
4) Indian applicants may submit this application at: The Indian Patent Office (IPO) is the office that receives patent applications.
5) After receiving foreign filing permission from the IPO, or after submitting an application to the International Bureau of WIPO in India for six weeks or twelve months.

5. Application for the PCT National Phase

In each nation where protection is desired, an applicant must submit a national phase application. The application must be submitted no later than 31 months from the priority date

or the international filing date, whichever is earlier. The time limit may be extended under the national laws of each member nation.

The whole specification for the National Phase Application shall be considered to comprise the title, description, abstract, and claims contained in the International Application under PCT. The procedures for filing and handling a typical patent application still apply, except for that.

6. Patent for Addition

This application must be submitted if the applicant discovers that his new invention is only a little modification of one for which he has previously applied or obtained a patent. It can only be submitted if the invention lacks a major inventive step. There is no additional renewal fee to pay for the duration of the original patent since a patent of addition is only granted after the parent patent. Additionally, it will be granted a patent for the same duration as the parent invention's patent, ending when that patent does. The application for a patent on the addition will be considered to have been filed on the day it was submitted.

How do apply for Patent Application?

A patent application must be submitted to the relevant patent office listed below following Rule 4 of the Patents Rules, 2003 [as amended by the Patents (Amendment) Rules, 2005], where the territorial jurisdiction is determined by whether any of the following events occur within the territory.

1. The applicant's home, place of business, or both (first applicant listed in the case of joint applications)
2. The actual location where the invention was created.
3. The applicant's address for service in India if he does not have a residence or place of business there.

An address for service in India should be provided by a foreign applicant, and that will be used to determine the jurisdiction. If an applicant (whether Indian or international) desires, they may also include the address of their Patent Agent as the address for serving papers.

Key Points for Filing the Patent Application:

1. Non-disclosure

Before submitting a patent application, you must first keep your invention a secret. It can be difficult to obtain protection for any features of your innovation that have been made public. Use non-disclosure agreements (NDAs) if required while conversing with external parties such as investors or developers.

Once you have submitted a patent application, you are free to disclose any characteristics of the invention that are listed in your patent application without risking the patentability of your invention.

2. Patented inventions (assessing novelty and inventive steps)

To be patented (novel), an invention must be inventive. Anything made widely known before the filing date of the patent application may be utilized against it. The importance of pre-filing confidentially is underscored by the fact that this covers any disclosures you make regarding your invention in the UK and Europe.Not only must the invention be novel, but it must also be inventive (not obvious). This means that the innovative aspects of the proposal won't be obvious if someone working in that technology industry tries to solve the same

problem. In actuality, this means providing evidence that your suggestion is a technical response to a technological problem.

3. Searches before filing

You can acquire a rough idea of whether an innovation is already known by running keyword searches using free online resources like E-space Net, Google Patents, or the US Patent and Trademark Office website.Even if keyword searches aren't complete, they can help you get a solid picture of what's already available and identify the aspects of your innovation that you want to guard against competitors the most. Although it is not necessary, you may alternatively decide to hire an expert to conduct comprehensive IP searches.

4. Drafting

Once you have decided to submit a patent application for your innovation, you must prepare the patent application. A series of claims that describe the level of protection offered are included in a patent application along with a comprehensive description and technical drawings. It must give a thorough explanation of the invention's operation, with an emphasis on any novel elements or previously unidentified functionalities. Or, to put it another way, the description must permit a knowledgeable individual to engage in a meaningful discussion on the invention.

5. Priority date

Patents have a territorial focus. You must independently submit a patent application in each jurisdiction to protect your concept. A year has passed since the priority deadline for you to submit further patent applications in other nations. The time frame is known as the priority period.

6. Subsequent filings

One choice is to submit direct applications (on or before the end of the priority period) in each of the jurisdictions in which you are interested. By asserting priority for your original application, you can maintain the priority date. For reasons of originality and inventiveness, this is essential, especially if you disclosed your invention after the priority date.Another choice is to use the Patent Corporation Treaty to submit a so-called international application (often referred to as a PCT application), claiming priority to your initial application to maintain the priority date. You still need to submit individual patent applications in each jurisdiction based on the PCT application; a PCT application does not result in an "international patent". A PCT application can be tempting since it gives you 30 months from your priority date, or an additional 18 months, to decide where to file subsequent patent applications. It's important to remember that the term of a patent starts on the filing date and not the priority date. The patent application (and any subsequent filed patent applications) are published 18 months following the priority date.

7. Investigation and search

In each jurisdiction where a patent application is filed, the patent office will search to find the records required to establish novelty and inventive steps (although some patent offices do not publish a separate search report). These materials are typically the foundation of the examination technique. Although some efforts have been made to standardize this process, each nation handles patent prosecution differently, so different prior art may be cited globally. As a result, it is not always feasible to provide the same level of protection across

all jurisdictions. When a patent office concludes that an application meets the necessary criteria, it can be issued and put into use.

8. Fees

1) A combination of official feesdecided by patent officesand professional feesdecided by law firmsmust be paid throughout a patent.
2) Drafting costs primarily based on attorney time (these costs can change depending on how complicated your invention is).
3) Filing costs vary depending on the jurisdiction and the type of patent application; nonetheless, you should anticipate paying a formal filing fee when submitting a patent application.
4) Fees for search and examination, which include both governmental costs and court costs. While a patent office produces search and examination reports, patent attorneys draft and file replies to objections made by patent examiners. A patent may go through numerous rounds of prosecution before being deemed acceptable.
5) Grant fees may also include formal charges like publishing and validation fees (for instance, when an EP patent is granted) and translation charges (if necessary).
6) Renewal fees are expenses paid to patent offices each year to maintain a patent in effect.

CONCLUSION

Several kinds of patent specifications are available to meet the various requirements of inventors and patent applicants. The most frequent kind of patent isa utility patent, which covers fresh and practical ideas and includes thorough claims, descriptions, and disclosure requirements. Clear visual representations are necessary for design patents, which concentrate on the decorative elements of a product's look. While they work on perfecting their innovation and putting together a utility or design patent application, inventors might set an early filing date using provisional patents. For successful intellectual property protection and to provide a solid basis for future patent applications, it is essential to comprehend the features and goals of these diverse patent requirements.

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CHAPTER 10

AN ASSESSMENT OF PATENT APPLICATIONPREPARATION

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ABSTRACT:

An invention's technical components are briefly described in the chapter on a patent application. A brief description of the issue addressed the invention's proposed remedy, and any potential advantages or benefits are often included. To help readers grasp the novelty and possible commercial worth of the innovation. This chapter mainly focused on the contents of Patent applications, potential advantages, and how to prepare the application form forpatents.In general, meticulous attention to detail and a full comprehension of the patent examination procedure are required while writing a patent application. Before submitting a patent application, it's crucial to conduct a patent search, examine the market, and assess the idea. The patent application must satisfy the criteria for patentability, and the specification and claims must be written clearly and straightforwardly.

KEYWORDS:

Intellectual Property, Innovation, Inventor, Patents, Patent Application Preparation.

INTRODUCTION

A vital step in ensuring legal protection for innovation is preparing a patent application. A patent gives the creator exclusive ownership of the innovation, banning unauthorized production, use, or sale. Planning, investigation, and close attention to detail are crucial to producing a solid and successful patent application[1], [2]. The main procedures for putting up a patent application will be briefly discussed in this introduction.

1. Know the idea: It's important to have a thorough grasp of the idea before preparing a patent application. Understanding its technological characteristics, distinctive qualities, and prospective applications falls under this category. Analyze the uniqueness of the idea in great detail, and determine how it differs from similar technologies or solutions. The patent application will be based on this comprehension.

2. Conduct a Prior Art Search: It is essential to conduct a thorough prior art search to find any existing technologies or innovations that are comparable to the one that is being patented. This search guarantees that the patent application is not denied for failing to be innovative by assessing the novelty and ingenuity of the invention. To obtain pertinent information, make use of a variety of resources, including patent databases, academic literature, and business magazines.

3. Consult a Patent Attorney or Agency: To understand the intricate legal requirements of a patent application, it is strongly advised that you work with a knowledgeable patent attorney or agency. They are knowledgeable about patent law, are familiar with the complexities of the application procedure, and may assist. Their expertise might increase the likelihood of acquiring a solid and enforceable patent.

4. Create a thorough Description: An invention must have a thorough description for a patent application. Highlight the technical details, functionality, and other distinguishing characteristics of the innovation in a clear and succinct description.

Include any visual aidsdrawings, schematics, etc.that will assist the reader understand the invention's design or workings. The description should be written such that, using the information supplied, a person with the requisite expertise might reproduce the invention.

5. Patent claims and specifications: The claims portion of a patent application is essential. Claims specify the parameters of an invention and establish the reach of a patent's protection. Draft claims that are detailed enough to set the invention apart from previous technologies while being wide enough to encompass multiple implementations of the invention. The application's technical descriptions and specifications should back up the claims.
6. Review and finalize the patent application, making sure it complies with all legal criteria and correctly captures the idea. Pay close attention to technical precision, grammar, and spelling. Before applying, make any required changes or additions. Consider asking the patent attorney or agent for input to make sure the application is thorough and organized.

DISCUSSION

Patent Application and its Contents

The agreement between the inventor and the government agency that leads to the grant of a patent is documented in a patent application. Therefore, a patent application resembles a contract in many aspects. A well-written patent application is crucial because it clearly outlines the conditions under which the patent owner and others will be held to. Writing a scientific paper and creating a patent application are distinct tasks in this regard[3], [4]. Although it normally does not reach the level of a blueprint for producing an invention covered by a patent, the patent document will share certain parallels with a scientific or technical paper with its technical subject matter. Over time, the issued patent will be examined by public figures like judges, patent examiners, and commercial partners. Therefore, it is vital to consider these key audiences while writing the patent application.

The Background, Summary, Detailed Description and Drawings, Claims, and Abstract are usually included in a patent application. Reading a patent application involves:

1. The Background section sets the groundwork for what follows;
2. The Summary section confirms the assertions;
3. Detailed Descriptions and Drawings provide sufficient technical disclosure of the invention, enabling the claims;
4. The Claims specify the boundaries of exclusive defense; and
5. The Abstract typically receives very little substantive assessment and serves largely as a tool for patent searchers.

The preparation of a patent application must be done in complete and strict accordance with the applicable jurisdiction's patent legislation. The Patents Act of 1970 and the Patent Rules of 1972, as revised from time to time, govern the filing of applications in India.

Writing of Patent Document

A patent document need not follow a certain format. Having the application prepared by a professional is worthwhile. By authoring the disclosure and claims and creating any relevant forms, the patent professional helps the applicant. The World Intellectual Property Organization (WIPO) has a publication titled WIPO Patent Drafting Manual, which is

pertinent to highlight. The preparation and submission of patent applications have been thoroughly covered in Part III of the aforementioned Manual. For the benefit of the pupils, we have replicated the same in the brief below.

Preparing Patent Applications

When a patent agent is asked to draft a patent application, the first thing they want to know is when the application needs to be filed. Every country's patent law has specific guidelines on when to applythe light of different occurrences. The first date of attempted commercial exploitation, the first export date, and the first date of public exposure are a few examples of these occasions. The patent agent must be aware of:

1. Where would my client like to have his idea protected?
2. Has something already occurred that would make it more difficult for the client to protect the invention in the targeted nations?
3. How soon does the client intend to take action that could impair his capacity to secure the invention's protection in the targeted nations?

The patent agent should try to finish the patent application as soon as possible, as would be anticipated of any professional, even if there are no time restraints in his path. At any point, a third party could submit an application based on the client's idea, making the patent agent the main factor in why his client didn't get a patent. Additionally, if the application had been filed sooner, previous art that could not have been used against the client's application would now be accessible (for example, a published article). However, the patent agent should be aware that much of the time, the dates that determine his workload are largely outside of his control, and that he regularly needs to rearrange his calendar to make room for unforeseen time bar discoveries[5], [6].

After applying, you should make a file for the provisional patent application that contains copies of all the paperwork you provided to the patent office, including any forms and checks you used to pay the application fee. The original mail deposit receipt from the post office, which bears the date of deposit, is also included in the file. As a result, if the patent office fails to provide your patent application with the correct date of receipt, you have everything you need to give the patent office the correct filing date, which is essential for maintaining your client's ability to get patent protection. That one day late is too late and must be remembered. Patent agents must work to safeguard the rights of their clients, and occasionally this just entails making sure that important deadlines are met. The patent agent in the example above might have returned to his office and spent the following two weeks creating a beautiful legal document for an invention that could no longer be patented if he had failed to inquire about potential bar dates or if he had not pressured the engineer for exact information[7], [8].

Finally, if the applicant intends to file in a foreign jurisdiction, the patent agent must attempt to ascertain this early. After the national filing date (or priority date) in nations that are signatories to the Paris Convention, applicants have one year to submit their patent application abroad. The Paris Convention's one-year time limit is likewise applied to the submission of a PCT application. The priority application's filing date should be docketed, and the patent agent should contact the applicant well in advance of the anniversary date. Even if the applicant previously expressed no interest in filing internationally, he may alter his mind after one year. Aside from that, keep in mind that the patent agent does not need to wait a complete year before filing. Before submitting the priority application, the patent agent should ascertain whether the applicant is interested in securing protection in a nation that is not a party to the Paris Convention. The patent agent must be aware of the country's unique

priority laws if the applicant is considering a non-Paris Convention nation. Countries outside the Paris Convention may have highly specific regulations governing applications from abroad. In some instances, the only way to guarantee patentability is for the patent agent to simultaneously co-file the application in the inventor's home country and the non-Paris Convention country.

It's unlikely that a patent agent will be permitted to speak on behalf of his client in front of foreign patent offices. The client will be represented internationally by foreign associate attorneys. There are various ways to communicate with associate attorneys from other countries. The foreign partner in the "hands off" approach writes official communication and offers information on local laws, but does not actively participate in the case. All significant decisions are made by the patent agent who submitted the initial priority application. The overseas associate develops potential answers to office actions in the "hands-on" paradigm and submits them to the patent agent for approval. For various foreign associate attorneys, the patent agent may employ various models, such as "hands-on" in some nations and "hands-off" in others.

Article 2.1 of the TRIPS Agreement mandates that signatories who have not ratified the Paris Convention uphold certain clauses of that agreement, including the one-year window for claiming priority. As previously said, the patent agent must confirm the actual practice and formal specifications followed in nations of interest to his client.

1. Obtaining Invention Disclosures from Inventors

Clients of a patent agent are likely to range in expertise concerning their knowledge of how to handle patent paperwork. Some customers could have administrative departments that are very advanced and capable of delivering finished invention disclosure packages to patent agents, who will then carry out a follow-up evaluation as required. On the other end of the spectrum are customers that have no IP infrastructure and need a lot of direction and help from the patent agent.

Over time, the patent agent will discover which strategy yields the finest outcomes for certain clientele. For certain customers, the patent agent may wish to provide an inventor(s) a blank Invention Disclosure Form so they can fill it out on their own. For some customers, the patent agent may need or desire to speak with the inventor(s) in person to get all the information he needs regarding the invention. In any case, the patent agent should make an effort to speak with the inventors at least once, either in person or over the phone. Without some type of "live" interaction with the inventor, it is very improbable that an inventor will be able to provide the patent agent with enough information for the agent to have a clear grasp of the invention. Additionally, without a visit with the patent agent, it is doubtful that the inventor would comprehend the legal/background information requested regarding his invention. An Invention Disclosure Form and any accompanying documentation should be sent by the inventor to the patent agent well in advance of their face-to-face meeting[9], [10]. The patent agent will go through the disclosure materials and make a note of any areas where he has concerns or feels that further information would be beneficial. During the meeting with the inventor, the patent agent confirms that he fully understands the invention, determines whether he should also receive any additional disclosure information (or that he does receive the additional disclosure information), ascertains the invention's most commercially significant features, and either confirms or verifies the exact bar dates. Before meeting with the inventor, the patent agent should carefully read the invention disclosure. This will guarantee that the patent agent will have had enough time to identify all the aspects of the

invention disclosure that create issues, both technically (e.g., "How does A function with B"?) and legally (e.g., "Who else could be an inventor?").

2. Identifying Patentable Inventions

The patent agent must remain focused on any specified patentable innovations when reading an invention disclosure and/or chatting with an inventor. It is likely that a significant portion of the content of invention disclosure and/or talks with the inventor will not be about a strictly patentable innovation but will instead contain additional non-patentable technical features. The patent agent shouldn't be shocked to learn that inventors often are unaware of their inventions, at least in terms of "patentability," since they frequently conceive in terms like "discoveries." As a result, the patent agent will often be the one to define what qualifies as a patentable invention.

3. Understanding the Invention

The patent agent should never take credit for the innovation; instead, they should work to understand the idea as well as possible so that they may file for a patent with the widest possible claims. This implies that the patent agent must have a thorough understanding of the invention to develop claims that accurately describe it with the fewest restrictions. To put it another way, the patent agent must be familiar enough with the invention to recognize which details may be left out of the invention's broadest claim. Understanding the invention also means that the patent agent is familiar enough with it to create a specification for a patent application that discloses all potentially patentable aspects of the invention as well as sufficient supporting details to enable a layperson who is technically proficient to make the invention. Understanding the invention also entails that the patent agent will be able to explain the distinctions between the invention and the prior art and/or amend the pending claims to emphasize these distinctions in a way that minimizes the reduction in the scope of claim coverage upon receipt of a prior art description, such as one that served as the basis for a claim rejection by a patent office.

The patent agent may find that the inventor doesn't have all the answers. The creator may be able to make assumptions about potential substitutes and, in certain cases, could even have the time to do some more study. But a functional embodiment of the invention must be disclosed in the specification, according to the patent agent. The patent agent must thus use his best professional judgment to determine how to proceed if the inventor is unsure about the response to any of his queries. The patent agent may be able to fill in any gaps in the technical disclosure, but he should always have the inventor's approval to make sure the replacement information is accurate and in keeping with the spirit of the invention. The patent agent may help the inventor brainstorm potential alternative inventive implementations. Many times, inventors design their ideas with a single use in mind and do not truly explore how well they may work in different contexts.

The procedure of filling out the Patent Application

The process of filling out a patent application might be complicated, however, the following basic steps can assist you:

Find out what kind of patent application it is: Depending on the nature of your innovation, choose whether you will submit a utility patent, design patent, or plant patent.

Perform a Prior Art Search: Before submitting your application, be sure your innovation is original and hasn't been covered by any patents or published works.

Obtain Information and Documentation:

1. Compile any pertinent details regarding your idea, such as technical drawings, descriptions, and prototypes or experimental results.
2. Write accurate and thorough explanations of the characteristics, benefits, and functions of the invention.

Select the appropriate patent office: Depending on the region and geographic coverage you want, choose the right patent office to submit your application to. As an example, the World Intellectual Property Organization (WIPO) for international applications, the European Patent Office (EPO) for Europe, and the United States Patent and Trademark Office (USPTO) for domestic applications.

Fill out the Application Forms:

1. Obtain the necessary application forms from the website or electronic filing system of the relevant patent office.
2. Fill out the application forms completely and accurately, including all required fields.
3. Include any essential supporting documents, drawings, and diagrams.

Draft the Claims For The Patent:

1. Prepare the claims section, which outlines the boundaries of the protection afforded to your invention.
2. The claims should be unambiguous, and precise, and include all of your invention's key components.

Prepare the Specification:

1. Create a thorough specification that contains the invention's history, a synopsis, a thorough explanation, and any required illustrations or diagrams.
2. Give a thorough explanation of your invention's technical details and distinguishing characteristics so that others with similar expertise may easily comprehend and implement it.

Review and Proofread:

1. Thoroughly examine the finished application to make sure that all of the information is true, consistent, and comprehensive.
2. Verify that the application, claims, and specifications are accurate and consistent by proofreading them.

Submitting the Application

1. Send the filled-out application forms and any necessary payment to the relevant patent office.
2. As per their criteria, adhere to the precise filing processes of the patent office, including submission by online portals, mail, or in-person filing.

Monitor the Application:

1. Through the patent office's online system or by communicating with the designated examiner, keep tabs on the status of your application.
2. Any extra information or activities requested by the patent office throughout the examination process should be complied with without delay.

It is essential to remember that the procedure for applying for a patent might differ based on the jurisdiction and the kind of patent being submitted. To make certain that you comply with the necessary standards and to increase your chances of acquiring a powerful patent for your innovation, consulting with a knowledgeable patent attorney or agent is strongly advised.

CONCLUSION

In this chapter, we have covered how to prepare the patent application and how to fill the patent application also how to create a patent application requires writing a thorough description of the invention and all of its distinguishing characteristics. Strong intellectual property protection for the innovation is more likely to be granted with a well-written patent application, which also gives the creator more market influence. To make sure that the application complies with all legal and technical standards and effectively safeguards the uniqueness and commercial value of the invention, it is advised to speak with an experienced patent attorney or agent.

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CHAPTER 11

DETERMINING THE TYPICAL PARTS OF PATENT APPLICATION

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ABSTRACT:

A legal document submitted to a patent office in order to request protection for innovation is known as a patent application. A patent application's abstract gives a succinct overview of the invention, emphasizing its technical aspects, uniqueness, and prospective advantages. It acts as a concise summary of the invention, allowing readers to understand its essential ideas without having to read the complete description and claims.A patent application should be properly written from both a legal and technical standpoint. The wording and content of the patent application should make it possible for a person with ordinary ability in the art to put the invention into practise, and the scope of the invention should be clearly defined to stop rivals from using the patent.

KEYWORDS:

IP, Copyright, Claims, Detailed Description, Intellectual Property, Patents, Prior Art.

INTRODUCTION

The United States Patent and Trademark Office (USPTO) might be presented with an invention that is described in a number of elements that make up a patent application. A thorough description of the invention with references to accompanying figures and drawings, an abstract, a background of the invention, a summary of the invention, and claims are all included in the application form. Administrative papers such as an Application Data Sheet and an Oath or Declaration signed by each inventor are submitted with the application [1], [2]. Typically, an inventor and one of our patent lawyers collaborate to draft the patent application. The patent application is a legal and technical document that legally defines the scope and metes and bounds of the invention that is patent-protected while also technically describing the whole innovation. The application is normally a lengthy document between fifteen and seventy pages in length that fully describes the invention and offers several alternatives and modifications. Each element of the application serves a crucial role, thus it is important to prepare each piece carefully. Poorly written patent applications may result in patents with limited scope, patents with little legal protection, or they may prevent granting an issue altogether[3], [4]. It is the initial stage in the process of getting a patent, which gives the inventor or the assignee exclusive rights to prevent anyone from creating, using, or selling the invention for a certain amount of time. Typical elements of a patent application include the following:

1. Title
2. The innovation is briefly summarized in the abstract, emphasizing its technical aspects and potential benefits.
3. The invention is fully described in the specification, which also includes any relevant drawings, diagrams, or examples. It also covers the invention's technical details and

functional capabilities. It should make the idea understandable and reproducible to someone with industry knowledge.

4. Claims
5. Drawings: If appropriate, the patent application may contain illustrations or diagrams that assist explain the technical aspects of the invention.
6. Background and Prior Art

A declaration or oath signed by the inventor, stating that they are the actual and original creator of the claimed invention, may be needed in certain countries. The patent office carefully examines each application when it is submitted to assess its uniqueness, non-obviousness, and utility. The applicant and the patent examiner may correspond and communicate during the examination. A patent may be issued, giving the creator temporary exclusivity, if the application satisfies legal conditions and successfully establishes the invention's patentability. The processes and prerequisites for applying for a patent might differ based on the jurisdiction and the kind of patent being sought (such as a utility patent, design patent, or plant patent), thus it's vital to be aware of this. To understand the intricacies of the patent application process and increase the likelihood of getting effective intellectual property protection for the innovation, speaking with a knowledgeable patent attorney or agent is strongly advised.

DISCUSSION

Common Components of a Patent Application

A patent agent may start drafting the patent application after he has a thorough understanding of the idea.

Typically, the application's components are:

i. Title of the Invention
ii. Claims
iii. Detailed description (or specification)
iv. Drawings
v. Background
vi. Abstract
vii. Summary

Early on, a patent agent will want to think about the title of the patent application. The innovation should be extensively described in this title. However, titles are seldom checked. On rare occasions, a patent examiner will rule that the invention's title is not sufficiently descriptive. Although the title of the invention should appropriately convey its subject matter, it is advisable to avoid being excessively specific. The names of the inventors should be included in the patent application as submitted. Following the title, such as on the cover page, the inventors' names should be included. All priority information, such as the listing of similar applications, should be included in the patent application itself. Priority information, for instance, should be included in the application's opening phrase in the US. The inventor's name and priority information may be provided on other forms that the patent agent must fill out, but it is more definite when this information is part of the application itself[5], [6]. Always keep in mind who will be reading the patent application. Judges and patent examiners are among the target audiences. The inventor and the client of the patent agency are, of course, both the audiences; the patent agent must ensure that the inventor is aware of his

patent application. Competitors, pirates, and investors are among more possible audiences. Before investing, many investors will often thoroughly review the patent portfolio of a technological business.

1. Title of the Invention

The invention's title should adequately describe the state of the art in the field or the field to which it pertains. Like any other title, the patent specification's title should be brief, unambiguous, and as explicit and definitive as possible. The specifics of the innovation itself are not shown by this, however. The title should ideally not exceed 15 words. It is forbidden to use acronyms for the word "patent" in English or any other language, or the personal information of the inventor.

2. Claims

Making the claims for the innovation is one of the first things to accomplish. In the disclosure conference with the inventor, the patent agent could even wish to draw up the claims. This will often provide the patent agent proof that he has a clear understanding of the innovation. Since inventors often lack familiarity with the language of patent claims, the patent agent may want to employ some kind of "picture claim" during the first consultation.

In the disclosure conference with the inventor, the patent agent should refrain from describing the invention in a manner that is too abstract. As their initial step in creating a patent application, the majority of patent agents generate many patent claims. Every aspect of a patent application, including the claims, is what is legally binding. The patent agent will be aware of which phrases need to be defined in the specification if the claims are drafted before writing the specification.The patent agent should carefully review the claims after creating the specification due to their crucial relevance. This is because the patent agent will probably have a better grasp of the invention after preparing the specification. He will now be better able to identify arbitrary constraints in the claims that would impede gaining the fullest possible claim coverage, for instance. Similarly to this, the patent agent may suddenly realize that the claims do not adequately explain the invention after writing the specification. The patent agent must examine the drawings and specifications once the claims are finished to ensure that the terms of the claims have been adequately disclosed and specified[7], [8].

Claim Types: Independent And Dependent

Multiple independent and dependent claims may be included in a patent application. Each element of the invention that is required to produce the desired result is described in independent claims. Dependent claims include additional characteristics, provide alternative embodiments, and provide further information regarding the invention. For example, "A device according to claim 1, characterized in that...," should be used to indicate which independent claim each dependent claim relates to.

3. Detailed Description or Specification

The detailed description section, also referred to as the "preferred embodiment of the invention" section or the "disclosed embodiment of the invention," gives the invention's claims substance and gives enough information about it so that a person of ordinary skill in the relevant field could make and understand it.

It is sufficient to remark that "detailed description" and "specification" are typically the same for patent drafting. In certain countries, the word "specification" is also used to refer to the description in addition to the summary and background portions of the application. The

portion of the full description has to be closely related to the illustrations. Once the application has been submitted, this part cannot be substantively changed. Because he won't have a second opportunity to change this area of the application, the patent agent must ensure that the detailed description section offers a sufficient level of technical disclosure on the day the application is submitted. During prosecution, the patent agent cannot change his application to add fresh technical information.

Consequently, a patent agent must ensure that the patent application

1) It Includes the inventions' disclosure materials;
2) It gives enough details for a typical craftsman to replicate the invention; and
3) It offers enough detail so that the claims may be made more specific throughout the patent application process to avoid near previous art.

The patent agent must use his best judgment to strike a compromise between his worries about the specification section's inclusivity and the application's inclusion of an excessive amount of unclaimed subject matter. Unclaimed subject matter in a patent application is often seen as having been "dedicated to the public" by the inventor in many patent regimes. Public domain information cannot be protected by a patent. Similarly to this, if an unclaimed invention is disclosed in the patent application, the patent agent can want to draft claims for it. Any previously unclaimed invention claims may, if required, be included by the patent agent in either a divisional application or a continuation application, depending on the situation. Any divisional or continuation applications must have the client's approval before being filed, the patent agent will wish to confirm. Generally speaking, the patent agent should advise the client on any important issues involving the client's active patent application.

For the reasons outlined above, the patent agent will often wish to err on the side of inclusion when creating the comprehensive description section. The "best mode" criterion that emerges in countries like the US and India should also be taken into account by the patent agency. The best way to use the invention that the inventors are aware of must be disclosed in the patent application. The patent agent should refrain from using words like "the invention is" while creating the specification. In its place, the patent agent should use words like "in an embodiment of the invention." This will guarantee that patent claims are interpreted as broadly as possible. Without restricting language to the contrary, it is typically assumed that the thorough description section discloses "an embodiment" rather than the actual invention. The scope of the claimed invention may, however, be similarly constrained if the patent agent forbids this more expansive interpretation. Well-known components that would be required to create a product linked to the invention but are not required to be included by the patent agent in the patent application. A patent application does not have to be a detailed blueprint, and at least one court has declared that items that are well-known in the field should ideally be "omitted" from a patent[9], [10].

For instance, a patent specification submitted in the US must meet the three criteria of enablement, written description, and best mode. The enablement and written description criteria are equivalent to or extremely comparable to those found in the majority of patent laws across the globe. According to the "Enablement" criterion, a patent application must explain how to create and utilize the invention to regular people who are knowledgeable in the field. Enablement is often regarded as of the date the patent application was filed. A patent application cannot be activated by subsequent technological advancements if it is not enabled as of the application's filing date. The wording used by the patent agent in a patent application must be quite precise. Not just during patent prosecution but particularly if/when the invention is challenged, the language choices made by the patent agent will be critical.

The patent agent should exercise extra caution when using any kind of absolute in his language. Therefore, the patent agent will want to ensure that any phrases like "must" and "always" used in a patent application are used to very specifically and properly describe the circumstance at hand. The legislation and pertinent regulations of the nation where he is requesting patent protection for his client must always be investigated and reviewed by the patent agent. Online resources on patent laws and regulations abound. For instance, the WIPO website offers details on the Patent Cooperation Treaty and helpful advice on submitting PCT applications; the EPO website offers details on submitting and prosecuting applicants; and the website of the US Patent and Trademark Office offers details on US patent laws and submitting applications in the US.

4. Drawings

A good visual description of the invention must be prepared by the patent agency. Many patent attorneys would contend that, after the claims, the drawings are the most crucial component of the patent application. Some patent laws demand that a sketch be submitted for each claimed ingredient. Insofar as is practical, the drawings should describe the invention in such detail that reading the comprehensive description part just serves to corroborate in writing what the drawings have already shown. Not all innovations will make this feasible. The patent agent should consider the narrative he wants to convey and the format in which he wants to present it while designing the drawings.

The degree of information required to produce an enabling disclosure is something else the patent agent should consider. The components included in a patent's drawings often come with a brief written description and a reference number, such as "clock 102". The reader will anticipate seeing "clock 102" in the detailed description section's supporting text. The reference numbers should be numbered consistently by the patent agency. Between the part on the summary of the invention and the section on the full description, the patent application itself should include a list of the drawings. A statement stating that the drawings serve as illustrations of one or more embodiments of the invention should come before the drawing section.

5. Background

The usage of background parts differs amongst patent systems throughout the globe. The background section is used in various patent systems to make the public aware of the closest previous art used to evaluate the patent application. In the majority of European systems, things are like this. In certain nations, like the US, both the prior art that the patent applicant supplied and the prior art that the examiner uncovered are printed on the patent's cover. Usually, the background information is regarded as previous art that the innovator provided. Therefore, the patent examiner may mention this part in the rejection of the applicant's claims if the applicant's creative disclosure ends up in the background section. One of the reasons why patent agents should carefully craft background sections is that certain patent offices have a strict policy about innovative disclosures.

Good background material should be brief and used just to introduce the comprehensive description section's extensive presentation of technical information. The background section might include a very high-level summary of the previous art. A brief, succinct remark describing the drawbacks of the prior art may be used to complete the background section, but it must be stated in a way that does not reveal the solution that will be discussed later in the application.

6. Abstract

The innovation should be described in as few words as possible in the patent abstract. The first sentence of the section on the summary of the invention may be used by the patent agent as the abstract.

7. Summary

As was already said, not all legal systems need a summary of the invention part. Even when they are not needed by national law, these parts are nonetheless typically written in many countries. When working on his client's foreign counterpart patent applications, the patent agent may find himself studying summary sections written by foreign patent attorneys. Therefore, the patent agent should be familiar with the specific guidelines and accepted practices surrounding a summary of the invention sections in the jurisdictions in which his customers are interested. Some patent attorneys transform each of the independent claims in the patent application into paragraphs before preparing the summary of the invention section. Another benefit of this approach is that the specification will always include the exact phrases used in the claims. Many patent attorneys only use language from the application's claims to summarize the invention's key features in the summary of the invention section. One of the final sections of the patent application that the patent agent should draft is the summary of the invention section. Avoid giving a "big picture" explanation in the summary of the invention parts that in any way go beyond the claims.

CONCLUSION

Finally, a well-written patent application contains an abstract that succinctly captures the idea of the invention. The invention's special technical characteristics, uniqueness, and prospective benefits should all be included in the abstract. It is essential for getting the interest of stakeholders like prospective funders and patent examiners. The entire patent application, which includes the whole description, claims offer complete and comprehensive legal protection for the innovation, even if the abstract just gives a brief overview of it. To guarantee that the abstract adequately describes the invention and complies with the particular requirements of the patent office where the application is being filed, it is advised to speak with a certified patent attorney or agent.

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CHAPTER 12

SURRENDER AND REVOCATION OF PATENTS

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ABSTRACT:

The legal procedures of patent surrender and revocation entail ending or canceling the rights and defenses provided by a patent. Revocation entails the invalidation of a patent by an authorized institution, such as a court or patent office. Surrender refers to the voluntary act of voluntarily giving up a patent, usually by the patent owner. These procedures make it possible to get rid of patents that are no longer wanted, required, or legitimate.In general, there are two distinct procedures for giving up and rescinding patents. While the revocation of a patent is a legal procedure started by interested parties to contest the validity of a patent, surrendering a patent is a voluntary act by the patentee to give up their rights. While revocation involves review and external control, surrendering a patent is under the power of the patentee.

KEYWORDS:

IP, Controller, Intellectual Property, Invention, Patents, Revocation, Rights.

INTRODUCTION

Legal processes that deal with the termination or cancellation of patent rights include surrender and revocation. By addressing numerous instances when the continuance of patent protection may no longer be desirable, essential, or lawful, these methods play an important role in the patent system. When a patent is surrendered, the owner voluntarily gives up his or her patent rights. A number of factors, including changes in corporate strategy, a lack of economic success, or the desire to get rid of prospective infringement liability, might lead to this. A patent owner essentially terminates a patent by giving it up, giving up all related rights and safeguards [1], [2].

On the other hand, revocation is the procedure for invalidating a patent via authorized means. Various parties, including third parties or agencies like courts or patent offices, may start a revocation. It takes place when a patent is discovered to have been wrongfully awarded or is determined to be invalid for reasons such as failure to comply with legal requirements, the discovery of previous art, a lack of originality or creative step, or fraudulent procurement. Revocation is a legal process used to remove patents that were improperly awarded or are no longer regarded as legitimate, as well as to fix any faults or other problems with the patent. The patent system's checks and balances depend on the surrender and cancellation of patents. By ensuring that patents are only issued and upheld when they comply with the relevant legal requirements, they aid in maintaining the legitimacy and dependability of patent rights. Furthermore, by enabling the cancellation of patents that may otherwise obstruct innovation or unfairly limit market activity, these procedures promote an environment that is equitable and free from unfair competition [3], [4].

To maintain legal compliance and to safeguard the rights and interests of both patent owners and the general public, it is crucial to understand the steps and prerequisites for surrendering or revoking a patent. To help you through the complicated legal environment surrounding the

surrender and cancellation of patents, consulting with an experienced patent attorney or agent may be very helpful.

Since the beginning of the patent system itself, patents have been surrendered and revoked.

Synopsis Of These Procedures' Past

Patent Surrender: During the early stages of the creation of patent law, the idea of voluntarily giving up a patent first appeared. The Statute of Monopolies in England from 1624 established a legal foundation for the issuance of patents, which patentees might renounce if they no longer want to pursue their exclusive rights. This gave patent holders the freedom to renounce their patent rights whenever they saw fit or when they were no longer beneficial.

Revocation of Patents: Revocation of Patents entails the cancellation or invalidation of a Patent and is normally started by a court or a patent office. The justifications for revoking a license have changed throughout time and depend on the jurisdiction. Here are some significant turning points in the development of patent revocation:

1. ***Initial Phases:***
    1) Revocation was extremely unusual in the early phases of patent systems; instead, the main emphasis was on obtaining and maintaining patent rights.
    2) However, procedures for contesting and rescinding patents started to evolve when patent laws were drafted and patent offices were established.
2. ***Introduction of Revocation Grounds:***
    1) Over time, legal structures that give justifications for revoking patents were developed.
    2) These justifications often included things like fraud, a lack of originality, a lack of innovative step, inadequate disclosure, or formality violations.
    3) The purpose of include these reasons was to guarantee that only worthy and legitimate patents remained in force.
3. ***The growth of patent offices***
    1) Specialized organizations were entrusted with assessing and issuing patents with the founding of patent offices in different nations.
    2) By giving other parties a means of contesting the legality of patents that had been awarded, patent offices also played a significant part in the revocation process.
4. ***Legal Issues and Court Proceedings:***
    1) Legal actions brought by interested parties or third parties trying to invalidate a patent were often engaged in patent revocation.
    2) Courts were essential in resolving disputes and deciding whether to cancel patents.
    3) Various legal regimes have various criteria for revoking patents and different processes for doing so.
5. ***Law's Changing Standards:***

1) As nations improved the rules for evaluating patent validity and the procedures for contesting and revoking patents, legal standards and requirements for revocation changed throughout time.

2) The revocation processes and standards used by various nations have also been impacted by international accords and attempts at harmonization.

It's crucial to remember that depending on the country and the particular legal framework in existence, the processes and justifications for surrendering and revoking patents might differ greatly. In order to combine giving incentives for invention with ensuring that patent rights are issued and maintained only when necessary, patent laws and regulations are constantly changing.

DISCUSSION

The patentee has the right to propose to give up his patent at any moment by notifying the Controller in accordance with Section 63. When such an offer is made, the Controller is required to inform every person other than the patentee whose name appears in the register as having an interest in the patent and to publicize the offer in the manner specified. Any interested party may submit a notice of objection to the Controller within the allotted time after such publication, and the Controller must inform the patentee if such a notice is submitted[5], [6]. The offer may be accepted, and the patent may be revoked by order if the Controller decides that the patent may legitimately be relinquished after hearing from the patentee and any opponents who want to be heard.

1. Patent revocation

Any interested party, including the government, may submit a petition for any of the reasons listed in Section 64 of the Patents Act for revoking a patent. Following Section 64 of the Act, which deals with the revocation of patents, any patent, whether issued before or after the effective date of the Act, may be revoked upon petition of any person interested or of the Central Government by this Appellate Board or upon a counterclaim in a lawsuit brought by a third party alleging patent infringement by the High Court on any of the following grounds:

1. That the invention was previously disclosed in a legitimate claim with an earlier priority date that was included in the whole specification of another patent awarded in India, inasmuch as any such claim is made in the complete specification;
2. That the patent was awarded based on an application by a person who was not qualified to do so under the terms of this Act;
3. That the patent was awarded based on a third party's application rather than the petitioner's rights or those of any third parties he claims to be entitled to;
4. That no claim of the whole specification's topic constitutes an invention as defined by this Act;
5. that the invention, as claimed in any claim of the entire specification, is not novel in light of what was published in India or abroad in any of the papers referred to in section 13 or what was publicly known or utilized in India previous to the priority date of the claim:
6. that the invention, as stated in any claim of the entire specification, is apparent or lacks any creative step in light of what was widely used or known in India before the priority date of the claim, or what was published there or elsewhere:
7. That the invention is useless inasmuch as any claim of the whole specification makes such a claim;

8. that the invention and the method by which it is to be carried out are not sufficiently and fairly described in the complete specification, meaning that the description of the method or the instructions for carrying out the invention as contained in the complete specification are insufficient on their own to allow a person in India with average skill in and knowledge of the relevant art to carry out the invention.
9. That no claim in the whole specification is reasonably founded on the information supplied therein, or that no claim in the entire specification's scope is adequately and clearly specified;
10. That a misleading suggestion or representation was used to secure the patent;
11. That no claim in the whole specification's subject matter is patentable under this Act;
12. Previous to the priority date of the claim, the invention, to the extent that it is claimed in any claim of the full specification, was surreptitiously employed in India in a manner unrelated to that described in subsection (3);
13. If the patent applicant omitted to disclose to the Controller the information required by Section 8 or provided information that, to his knowledge, was false in any material detail;
14. If the applicant violated any confidentiality directive issued under Section 35 or submitted or caused to be submitted a patent grant application outside of India in violation of Section 39
15. That permission to change the whole specification according to Section 57 or Section 58 was fraudulently acquired;
16. The origin and source of the biological material utilized in the invention are not disclosed in full or are incorrectly mentioned;
17. That the invention was anticipated in light of information, whether oral or written, that was known within any local or indigenous population in India or elsewhere at the time any claim of the entire specification was made.

For the purposes of clauses (e) and (f) of sub-section (1), according to section 64(2):

a) No account of a personal document, a private trial, or a secret usage must be taken; and
b) Unless the importation was made solely for the purpose of a reasonable trial or experiment, the importation into India of a product made abroad using a process described or claimed under the patent constitutes knowledge or use of the invention in India as of the date of importation.

No account shall be taken of any use of the invention for the purposes of clause (l) of sub-section (1), according to section 64 (3).

a) Only for the purpose of a justifiable test or experiment; or
b) by the Government, by any person authorized by the Government, or by a Government undertaking as a result of the patent applicant or any person to whom he or she derives title communicating or disclosing the invention to the Government, to a person so authorized, or to the Government undertaking, whether directly or indirectly; or
c) Without the applicant's agreement or that of any person from whom he derives title and as a result of the applicant for the patent or any person from whom he derives title having communicated or revealed the invention.

A patent may be revoked by the High Court on the Central Government's request, without affecting the provisions of subsection (1), if the High Court is convinced that the patentee has refused to comply with the Central Government's request to make, use, or exercise the

patented invention for the purposes of Government within the meaning of section 99on reasonable terms without good reason. Any person who appears in the register to be the owner of a patent or to have shares or interests therein must receive notice of any petition for revocation of that patent filed according to this section; it is not essential to provide notice to anyone else.

2. Patent Revocation In The Public Interest

According to section 66 of the Patents Act, if the Central Government believes that a patent or the way in which it is used is harmful to the State or generally unfavorable to the public, it may, after providing the patentee with a chance to be heard, make a declaration to that effect in the Official Gazette and the patent will then be deemed to be revoked.

3. Revocation of Patents for Non-Working

If the legitimate needs of the public are not still being satisfied after the issuance of a compulsory license, the controller may issue an order to revoke a patent for non-working. The Central Government or any interested party may, after the passing of two years following the date of the order granting the first compulsory license, apply to the Controller for an order revoking the patent on the grounds that the patented invention has not been used in the territory of India or that reasonable public requirements with respect to the invention have not been met.

In circumstances involving atomic energy, Section 65 deals with patent revocation and entire specification amendments in response to government directives. When the Central Government determines, at any time after the grant of a patent, that a patent relates to an invention involving atomic energy for which no patent may be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962, it may direct the Controller to revoke the patent. The Controller will then do so after giving notice to the patentee and everyone else whose name has been enumerated on the patent. In lieu of canceling the patent, Section 2 gives the Controller the authority to let the patentee to modify the whole specification as he sees fit[7], [8].

The Controller is obligated to publish the notice of an offer made under section 63 in accordance with Rule 87 of the Patents Rules of 1970. Any interested party may submit a notice of objection in duplicate on Form 14 to the Controller within three months of the notice's publication date. To the extent possible, the hearing of the opposition under section 63 will follow the same process as the hearing in the opposition case as it relates to the submission of written statements, reply statements, leaving evidence, hearings, and expenses. The patent will be revoked by order after it is received by the Controller if the Controller accepts the patentee's request to surrender the patent. The Controller may instruct the patentee to return the patent if he approves the patentee's offer to surrender the patent.

Patent Assignments

The act by which the patent holder transfers all or part of their patent rights to the assignee, who then has the right to exclude others from creating, utilizing, exercising, or commercializing the invention, is referred to as an assignment. The person or individuals registered as the grantee or owner of a patent have the authority to transfer, issue licenses under, or otherwise deal with the patent under Section 70 of the Patents Act, 1970, and to make effective receipts for any compensation for any such assignment, license, or dealing. Either the assignment is exclusive or it is not. The exclusivity might be further restricted, for

instance, to a region, market, or product line.The three primary categories of patent assignments are as follows:

1. Legal Assignments

A lawful assignment is one made to an existing deed. Only a deed may assign a patent that was established by deed. A legitimate assignee has the right to register as the patent's owner and to all of the patent's rights.

2. Equitable Assignments

An equitable assignment is a legal agreement that transfers a patent or a part of a patent immediately. Although it doesn't directly alter ownership, this has an impact on it. The right to change the ownership of the patent in law in equity belongs to the person to whom it is fairly given.

3. Mortgages

Patent rights are transferred to the assignee through a mortgage in exchange for a monetary payment. The patent rights are returned to the assignor after payment of the debt. According to Section 2(1) of the Patents Act of 1970, the legal representative of a dead assignee is included in the definition of the word "assignee." A grantee or owner of a patent has the right to transfer it whole or in part to another person or parties, according to Section 70 of the Patents Act of 1970. According to Section 68 of the Patents Act of 1970, a written assignment must include all terms and conditions governing the parties' rights and obligations. The application for registration of such a document must be submitted in the prescribed manner to the Controller within six months of the execution of the document or the start of the Act, whichever occurs later. According to Section 69, once a person has access to a patent by an assignment, he must apply in writing to the Controller for the registration of his title in the appropriate way.

Working of Patented Inventions-General Principles

According to Section 83, which deals with general principles that apply to working with patented inventions, the following general considerations must be taken into account while using the rights granted for working with patents and obligatory licenses:

1. That patents are issued to promote ideas and ensure that they are developed commercially and as fully as is practically practical in India without excessive delay;
2. That they aren't only given out to give patent holders a monopoly on importing the patented item;
3. that the promotion of technological innovation and the transfer and dissemination of technology are made possible by the protection and enforcement of patent rights, to the mutual benefit of producers and users of technological knowledge and in a way that promotes social and economic welfare and a balance of rights and obligations;
4. That the granting of patents should not interfere with the preservation of public health and nutrition and should be used as a tool to advance public interest, particularly in fields crucial to India's socioeconomic and technical growth;
5. That patents issued in no manner prevent the Central Government from taking actions to safeguard the public's health;
6. That the patentee or anyone who derives title or an interest in the patent from the patentee does not misuse the patent right and does not engage in conduct that unreasonably restricts trade or has a negative impact on the transfer of technology internationally; and

7. The public will be able to benefit from the patented innovation at rates that are equitably attainable.

Compulsory Licenses

The provisions for compulsory licensing are established to stop patents from being used as monopolies and to open the door for an interested party to commercially utilize the idea. After three years from the date the patent was granted, anybody interested may submit an application for the award of a compulsory license for a patent on any of the following reasons, per Section 84:

1. That the patented innovation has not met the reasonable expectations of the public, or

2. That the patented invention cannot be purchased by the general public for a reasonable price; or

3. The patented innovation is not being used on Indian soil.

Anyone may submit a compulsory license application, even if they already hold a license under the patent, and they are not barred from making claims that the public's reasonable needs in relation to the patented invention are not being met, that the patented invention is not being used in Indian territory, or that the public cannot obtain the patented invention for a reasonable price due to any of the aforementioned reasons[9], [10].Every application for a compulsory license must include a statement describing the applicant's interest, together with any further information that may be required under subsection (3), as well as the facts upon which the application is founded. When the Controller is satisfied that the public's reasonable needs regarding the patented invention have not been met, the patented invention is not being used in Indian territory, or the patented invention is not reasonably accessible to the general public at an affordable price, the Controller may grant a license under the conditions that he deems appropriate.

The Controller is obligated to examine before deciding whether to grant a forced license.

i. The nature of the invention, the amount of time that has passed since the patent was sealed, and the steps that the patentee or any licensee has already done to fully use the invention;
ii. The applicant's capacity to use the innovation for the benefit of society;
iii. The applicant's willingness to take on the risk of financing and developing the innovation if the application were approved;
iv. If the applicant has attempted to negotiate a license agreement with the patentee on acceptable terms and circumstances and whether such efforts have failed within a reasonable time frame that the Controller may judge appropriate.

The controller, however, is not required to take into consideration circumstances that have arisen after the application was submitted. It has been made clear that a reasonable term is to be understood as one that typically does not exceed six months. It has been made clear that in this case, the public's reasonable standards will be held to have not been fulfilled if

1. Due to the patentee's failure to provide a license or licenses on acceptable conditions,
    i. The growth of an existing trade or industry, the formation of a new trade or industry in India, the trade or industry of any person or class of people dealing or manufacturing in India, or the trade or industry of any of the above is prejudiced;

ii. The demand for the patented item has not been sufficiently satisfied or under reasonable conditions;
iii. No supply or development of a market for the patented goods made in India for export;
iv. There are biases against the formation or growth of commercial activity in India.

2. The manufacture, use, or sale of materials not covered by the patent, or the establishment or growth of any trade or industry in India, is prejudiced as a result of restrictions placed by the patentee on the grant of licenses under the patent or upon the purchase, hiring, or use of the patented article or process;

3. The patentee places a restriction on the licenses granted under the patent that prevents challenges to the patent's validity, grants exclusive grant back, or imposes coercive package licensing; or

4. The patented innovation is not sufficiently being used commercially in India or is not being used commercially to the greatest extent that is practically possible; or

5. The importation of the patented item from abroad by — prevents or hinders the operation of the patented invention on a commercial scale in the territory of India.
   i. The patentee or those making claims on his behalf; or
   ii. Anyone who buy from him directly or indirectly; or
   iii. Other individuals against whom the patentee is not pursuing or has not pursued infringement claims.

Understanding the exact legal requirements and processes for surrendering or canceling a patent in a given country requires speaking with an experienced patent attorney or agent. Following these procedures correctly may assist safeguard the rights of patent owners, preserve the reliability of the patent system, and support an environment that is fair and balanced for innovation and competition.

CONCLUSION

In this chapter, we have studied about the surrender and cancellation of patents are significant legal tools that handle a variety of patent-related situations. Due to changes in company strategy, a decline in sales, or other factors, surrender enables patent owners to voluntarily give up their patent rights. On the other side, patent revocation refers to the cancellation of a patent by a court or patent office, often for reasons including failure to comply with legal criteria, the existence of previous art, a lack of originality or innovative step, or fraudulent acquisition. The procedures of surrender and revocation both uphold the reliability and efficiency of the patent system. They provide ways to fix mistakes, deal with invalid or wrongly awarded patents, and make sure that patent rights are only given and maintained when they are necessary. The patent system aims to achieve a balance between encouraging innovation and safeguarding the interests of the general public and rival businesses via these measures.

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CHAPTER 13

POWERS OF CONTROLLER IN GRANTING COMPULSORY LICENSES

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ABSTRACT:

This chapter examines a controller's authority to issue compulsorily issued licenses. The use of a patented innovation without the express consent of the patent holder is permitted using mandatory licensing. Since they have the power to give such licenses, the controller is a key player in the process. In this chapter, we look at the controller's authority and the criteria they use to decide whether to award compulsory licenses, such as the public interest and sufficient compensation for the patent holder. It also talks about how these abilities would affect innovation and intellectual rights.The Controller of Patents may issue forced licenses under certain situations. Compulsory licensing is used to avoid anti-competitive practices such as monopolistic control over importation and exploitation of patent rights. Based on several considerations, the Controller will decide on the royalty or compensation due to the patentee. Governments have been granted incredibly strong privileges known as compulsory licenses, which should only be utilized under special situations.

KEYWORDS:

Compulsory licenses, Controller, Innovation, Licenses, Patent Rights, Public Interest.

INTRODUCTION

According to Section 85, which deals with the revocation of patents by the Controller for not working, the Central Government or any interested party may apply to the Controller for an order revoking the patent on the grounds that the patented invention has not been used in the territory of In after two years have passed from the date of the order granting the first compulsory license. Every request for revocation must include the required information, the supporting evidence, and, in the event of requests made by parties other than the Central Government, a description of the applicant's intended course of action[1], [2]. The Controller may issue an order revoking the patent if she is of the opinion that the reasonable expectations of the public with regard to the patented invention have not been met, the patented invention has not been used in Indian Territory, or it is not accessible to the public for a reasonably reasonable price. However, the controller is now required to normally decide on such an application within a year of its submission.

Procedure for Dealing with Applications

According to Section 87, the applicant must serve copies of the application on the patentee and anyone else who appears from the register to be interested in the patent in respect of which the application is made. The application must also be published in the Official Journal if the Controller determines, after considering an application for compulsory licensing or revocation of a patent that a prima facie case has been made out for the making of an order. The patentee or any other party wishing to oppose the application may provide the Controller notice of objection within the time frame specified or within such additional time as the

Controller may grant on application. Any such notice of objection must provide a reasoned argument for the disagreement to the application. When such a notice of objection is properly provided, the Controller is required to inform the applicant and afford both parties a chance to be heard before making a decision.

An essential legal mechanism that permits the use of patented innovations without the express consent of the patent holder is a compulsory license. They are normally awarded by the controller, a regulatory body that is crucial in deciding when and under what conditions a compulsory license should be issued. The controller's authority has a big impact on public interest, innovation, and patent rights. The controller's authority to give compulsory licenses stems from the understanding that, in certain circumstances, the exclusive rights granted by a patent may make it difficult to access important innovations or hamper the creation of necessary goods or services. It is believed that mandatory licenses are a way to overcome these issues and guarantee that significant breakthroughs be made accessible to the general population [3], [4].

The controller's authority and authority range are governed by local, national, and international agreements, which vary depending on the jurisdiction. The use of these abilities is nonetheless governed by certain universal norms. The main goal is to establish a balance between patent holders' rights and the wider social advantages that may be obtained by using their discoveries.The controller's authority includes the capacity to assess petitions for obligatory licenses and reach well-informed judgments based on predetermined standards. They have the power to judge if the justifications put forward by the party requesting the license are legitimate and to decide whether the situation justifies the deployment of a forced license. Considerations for this assessment include the influence on innovation and competition, the public interest, and the attempts taken to get a voluntary license from the patent holder.

The controller must also make sure that the terms and circumstances of the required license are reasonable and fair. The extent of the license, its tenure, and the payment the patent holder is entitled to receive in recompense for the unlawful use of their innovation are all part of this process. Important concerns about how to strike the correct balance between individual property rights and the public interest are raised by the controller's authority to award compulsorily issued permits. Compulsory licenses have the potential to reduce the exclusivity afforded to patent holders, which might undercut the incentives for research and development even if they are meant to increase access to essential technology and encourage innovation [5], [6].

In this situation, it is crucial for controllers to use their authority sensibly and properly. The ability of the controller to use its authority in a fair and impartial way may be helped by a clear legislative framework, open decision-making procedures, and well-defined standards for the granting of obligatory licenses. The controller's authority to award compulsory licenses, examining the elements they take into account, the effects on innovation and patent rights, and the significance of a well-regulated framework for the use of these powers. By looking at these elements, we can better comprehend the function and relevance of the controller in facilitating access to necessary innovations while defending the rights of patent holders and fostering technological advancement.

The authority of a controller to issue compulsorily issued permits has a long history and has changed throughout the years. The idea of compulsory licensing came into existence as a way to strike a balance between the need for public welfare and the exclusive rights provided to patent holders. The Paris Convention for the Protection of Industrial Property of 1883 is one

of the oldest records of forced licensing. The basis for forced licensing was created by Article 5 of the convention, which allowed signatory nations to issue licenses for patented innovations in situations of national emergency, public interest, or anticompetitive activities. The later development of compulsory licensing provisions in national patent laws was made possible thanks to this provision.

Compulsory licensing has been covered by several international accords and treaties throughout the years. The World Trade Organization (WTO), which is in charge of enforcing the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), has had a considerable impact on how controllers are able to give compulsive licenses. As a precaution against the exploitation of patent rights, TRIPS contains provisions on compulsory licensing and lays forth basic requirements for intellectual property protection.

The use of compulsory licensing for the manufacturing and distribution of inexpensive medicines in nations confronting public health crises, such as HIV/AIDS, was particularly addressed in the Doha Declaration on the TRIPS Agreement and Public Health, which was released in 2001. It reaffirmed the ability of WTO members to impose compulsory licensing and stressed the need of guaranteeing everyone's access to necessary medications. Since they are largely controlled by national patent laws, the authority of controllers to give forced licenses varies across nations. The terms and circumstances under which forced licenses may be issued are often outlined in these laws, together with the function and power of the controller. In general, controllers are in charge of assessing requests for compulsory licensing, taking into account things like the public interest, national security, and attempts to get a voluntary license from the patent holder [7], [8].

It is important to note that the use of these powers is subject to legal review and often requires following formalities like notifying the patent holder, paying fair remuneration, and routinely reviewing the conditions of the license. With a special emphasis on topics like public health and access to necessary technology, the history of the powers of controllers in giving compulsory licenses demonstrates the continual attempts to achieve a compromise between patent rights and the public interest. The extent and constraints of these authorities have evolved in accordance with international accords and national legislation, placing emphasis on the need of using compulsory licensing systems in a responsible and fair manner.

DISCUSSION

Powers of Controller in Granting Compulsory Licenses

According to Section 88, the Controller may order the grant of licenses under the patent to such customers of the applicant as he thinks fit in addition to the applicant when the Controller is satisfied that the manufacture, use, or sale of materials not protected by the patent is hampered by conditions imposed by the patentee upon the grant of licenses under the patent, or upon the purchase, hire, or use of the patented article or process. The Controller may, if he makes an order for the grant of a licence to the applicant, order the existing licence to be cancelled, or may, if he thinks fit, order the existing licence to be amended instead of making an order for the grant of a licence to the applicant, in the case of a compulsory license application made under Section 84 by a person who is the holder of a licence under the patent. If the Controller is satisfied that the applicant cannot effectively or satisfactorily use the licence granted to him under those patents without infringing the other patents held by the patentee and if those patents involve important technological advances, then where two or more patents are held by the same patentee and an applicant for a compulsory licence establishes that the reasonable requirements of the public have not been satisfied with respect

to some only of the said patents, If the Controller has established the terms and conditions of a license, the licensee may, at any time after commercially exploiting the invention for at least a year, request a revision of the terms and conditions on the grounds that the settled terms and conditions have proven to be more onerous than anticipated and that, as a result, the licensee is unable to exploit the invention. The Controller, however, shall not consider such an application a second time.

Terms and Conditions of Compulsory Licenses

Section 90 states that the Controller must make every effort to ensure that while determining the terms and conditions of a compulsory licence.

1. Considering the nature of the invention, the costs incurred by the patentee in creating or developing the invention, obtaining a patent for it, maintaining it in force, and other relevant factors, the royalty and other compensation, if any, reserved to the patentee or other person beneficially entitled to the patent, is reasonable;

2. The person to whom the license is given uses the patented innovation to the maximum extent while making a fair profit for himself;

3. The patented products are made accessible to the general public at costs that are within reason;

4. The granted license is non-exclusive;

5. The licensee's right cannot be transferred;

6. Unless a shorter term is compatible with the public interest, the license is valid for the remaining term of the patent;

7. The license is given primarily for the purpose of selling on the Indian market, albeit, in line with section 84(7) (a) (iii), the licensee may also export the patented goods.

8. The license granted in the case of semiconductor technology allows for the use of the innovation for noncommercial public purposes.

9. If the license is issued to address a practice that is anti-competitive via legal or administrative channels, the licensee will be allowed to export the patented goods if necessary.

According to Section 90(2), no license issued by the Controller may permit the licensee to import a patented good or a good or substance made using a patented process from a foreign country if doing so would violate the patentee's rights without the license. However, following Subsection (3), the Central Government may order the Controller to permit any licensee of a patent to import from abroad the patented article or an article or substance made using the patented process (subject to any conditions it deems necessary to impose, including those relating to the royalty and other compensation, if any, payable to the patentee, the quantum of import, the sale price of the imported article, and the period of import).

Licensing of Related Patents

According to Section 91, anyone who holds the exclusive or nonexclusive right to work any other patented invention may apply to the Controller for the grant of a license of the first

mentioned patent at any time after the sealing of a patent on the grounds that he is prevented or hindered from working the other invention effectively or to his best advantage without such licence. The Controller must be convinced that the applicant is able and willing to grant, or procure the grant of a licence in respect of the other invention to the patentee and his licensees if they so desire, on reasonable terms, and that the other invention has significantly contributed to the establishment or development of commercial or industrial activities in the territory of India before making an order for the grant of such licence[9], [10]. The Controller may issue an order granting a licence under the first mentioned patent and a similar order under the other patent if requested by the owner of the first mentioned patent or his licensee after the Controller is satisfied that the conditions outlined in Section 91(1) have been established by the applicant. However, until the relevant patents are assigned, the license that the Controller issued is not transferable.

Compulsory Licenses on Notifications by Central Government

In accordance with Section 92, the Central Government may declare in the Official Gazette that it is necessary for compulsory licenses to be granted at any time following the sealing of a patent to work on an invention in the event of a national emergency, extreme urgency, or in the case of public noncommercial use. The Controller shall then, upon application, grant the compulsory licenses. When determining the terms and conditions of a license, the controller will make an effort to ensure that the goods produced following the patent will be sold to the general public at the most affordable rates while yet allowing the patentees to profit reasonably from their patent rights.

Compulsory Licensing of Patents Relating to the Manufacture of Pharmaceutical Products for Export to Countries with Public Health Problems

The Patents (Amendment) Act of 2005 added Section 92A to the Patents Act of 1970, which stipulates that in certain extraordinary cases, the export of patented pharmaceutical items requires a compulsory license. It states that provided a compulsory license has been granted by such country or such country has, by notification or otherwise, permitted the importation of the patented pharmaceutical products from India, compulsory licenses shall be available for the manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems. In accordance with subsection (2), the Controller is empowered to grant a compulsory license on the basis of the terms and conditions he deems appropriate, solely for the manufacture and export of the relevant pharmaceutical product to the relevant country under the terms and conditions he deems appropriate and publishes. Any patented product, or product made using a patented process, of the pharmaceutical industry that is required to address public health issues is referred to as a "pharmaceutical product" in the explanation appended to Section 92A. This definition includes ingredients required for their manufacture and diagnostic kits required for their use.

Termination of Compulsory Licence

According to Section 94, the Controller may terminate a compulsory licence upon application by the patentee or any other person deriving title or interest in the patent, provided that the circumstances giving rise to the grant thereof no longer exist and such circumstances are unlikely to recur. The owner of the required license has the right to oppose to such termination in this respect.

Procedure in Respect of Compulsory Licence

Procedures for coercive licensing and patent revocation are covered in Rules 96-102. According to Rule 96, Form 17 or Form 19 must be used, as appropriate, when submitting an application to the Controller for an order under Section 84, Section 85, Section 91, Section 92, or Section 92A. The application must specify the applicant's interest and the terms and circumstances of the license they are ready to accept, with the exception of applications submitted by the Central Government. According to Rule 97, the Controller shall notify the applicant of his decision and, unless the applicant requests to be heard in the matter within one month of the date of such notification, shall refuse the application if the Controller is satisfied that a prima facie case has not been made out for the making of an order under any of the sections referred to above. If the applicant seeks a hearing within the allotted period, the Controller must decide whether to accept the application or reject it after providing the applicant a chance to be heard.

1. Notice of Opposition under Section 87(2)

A notice of objection under section 87(2) must be made in Form 14 and forwarded to the Controller no later than two months after the application was published, according to Rule 98. However, the notice of objection should be backed by supporting documentation and indicate the terms and circumstances of the license, if any, that the opponent is willing to provide to the applicant. The opposing party must provide a copy of the notice of objection and supporting documents to the applicant, and they must also let the Controller know when this has been done. Except with the Controller's permission or at his or her request, no party is compelled to provide any more testimony or evidence. According to Rule 98(5), the Controller must set a hearing date and time and provide the parties at least ten days' notice before the hearing. The method outlined in sub-rules (2) to (5) of rule 62, as far as is possible, shall apply to the procedure for hearing, as they apply to the hearing in opposition proceedings, according to rule 98(6). The Controller must publish the order he issued under section 85(3) cancelling a patent as per rule 99.

2. Procedure for Application under Section 88(4)

According to Rule 100, a request under Section 88(4) for the revision of license terms and conditions that the Controller has approved must be made in Form 20, include the facts the applicant is relying on and the relief he is seeking, and be accompanied by supporting documentation. The Controller may notify the applicant that he or she does not have a prima facie case for the revision of the terms and conditions of the licence and, if so, may refuse the application if the applicant does not request a hearing within a month. The Controller will decide whether to go forward with the application or reject it after giving the applicant a chance to be heard.

3. Application for Termination of Compulsory Licence under Section 94

The patentee or any other person deriving title or interest in the patent must submit the application for termination of the obligatory licence under section 94(1) in Form 21 together with the supporting documentation, according to Rule 102. The holder of the obligatory license must be served with a copy of the application and supporting documentation, and the applicant must notify the Controller of the date on which the service was completed. Within one month of the date on which he received the application and any supporting documentation from the Controller, the holder of the mandatory license may submit his objection to the application, together with any supporting documentation, if applicable, and serve a copy of the objection to the applicant. With the exception of specific permission from or upon the Controller's request, neither party is obliged to provide any further evidence or statements. After the aforementioned processes are finished, the Controller must set a date

and time for the case's hearing and provide the parties at least ten days' notice of the hearing. The process described in sub-rules (2) to (5) of rule 62, as far as is possible, apply to the hearing procedure just as they do to the hearing in opposition proceedings, according to rule 102(6). If the Controller chooses to end the obligatory license, he must serve copies of the order to both parties together with any applicable terms and restrictions.

CONCLUSION

In order to balance intellectual rights and public interest, a controller's authority to give compulsory licenses is important. The controller serves as a regulatory body with the power to approve the use of patented innovations when it is thought to be required for reasons like public safety or health. While the controller's abilities provide a way to guarantee access to necessary technologies, it is crucial that they use their power wisely and ethically. Controllers must take into account important factors such the level of public need, attempts to get voluntary licensing, and fair pay for the patent holder. It is difficult to strike a reasonable balance between patent holders' rights and wider community advantages. A well-defined legal framework and precise rules for the use of controller powers may help to promote innovation while successfully meeting social demands.

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CHAPTER 14

ROLE OF PATENT AGENTS IN GRANT OF INVENTIONS

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ABSTRACT:

Patent agents are experts in the area of intellectual property law who provide specialized services. By negotiating the convoluted patent application and prosecution processes, they help businesses and inventors get patents for their innovations. Patent agents increase the likelihood of acquiring valuable patents by collaborating closely with inventors to guarantee that the innovations are adequately protected. An overview of the function and significance of patent agents in the patenting process will be cover in this chapter.In general, patent agents are essential to the process of applying for patents. They support inventors in navigating the intricate patent system and making sure their discoveries are safeguarded. Patent attorneys are qualified to offer crucial services for safeguarding inventions.

KEYWORDS:

IP, Patent Agents, Intellectual Property, Patent Application, Prosecution, Invention, Legal Services

INTRODUCTION

A lawyer who specializes in intellectual property law and helps clients secure and defend patents for their ideas is known as a patent agent, sometimes known as a patent attorney or patent practitioner. By offering legal advice and experience to inventors and businesses seeking patent protection, patent agents play a significant part in the patenting process.A patent agent's main duty is to guide clients through the convoluted patent system and make sure that their ideas satisfy the prerequisites for patentability. This include preparing patent applications, representing clients before patent offices during the inspection and prosecution of their patent applications, and performing prior art searches to assess the originality and non-obviousness of an invention [1], [2].

Patent agents have in-depth knowledge of the rules and legislation governing patents as well as technical proficiency in many areas of science and technology. They collaborate closely with inventors to comprehend the technical aspects of their creations and convert them into thorough and precise patent applications. To evaluate an invention's patentability and spot possible patent infringers or disputes, patent agents need to be very adept at both investigation and analysis. Patent agents play a crucial role in the application process as well as in the administration of patent portfolios and intellectual property rights. If required, they may help customers with legal support, licensing contract negotiations, and performing infringement studies. To provide their customers full legal services, patent agents often collaborate with other legal experts, such as patent lawyers and intellectual property litigators [3], [4].

People often require a background in science, engineering, or another technical discipline to become patent agents. Additionally, they must succeed on the patent bar test given by the local patent office. Patent agents may represent clients before the patent office in certain

nations, like the United States, without having a law degree, while in others, like the United Kingdom, they are needed to have both technical knowledge and legal credentials.

Appropriate Office in Relation to International Applications

The receiving office, designated office, and elected office for purposes of foreign applications submitted under the Treaty should be the relevant office in accordance with rule 4 according to Rule 18 of the Patents Rules, 2003. The International Bureau of the World Intellectual Property Organization, International Searching Authorities, and International Preliminary Examining Authorities should all be dealt with via the patent office's main office. The basic rules related to international applications under the Patent Cooperation Treaty (PCT) and the regulations created under the PCT shall be followed while filing and processing an international application under the Treaty at the relevant office. Upon receiving an international application, the competent office is required to send two copies: one copy as the application's record copy to the International Bureau of the World Intellectual Property Organization and another copy as the search copy to the Competent International Searching Authority. The relevant office must concurrently provide the head office of the patent offices with all pertinent information about the application. It should be noted that Section 39 specifically specifies that an Indian applicant cannot file for patents outside of India unless they have a written permission that has been requested in the proper way and approved by the Controller or on their behalf.

An Indian applicant may use one of the following methods to submit a PCT International application:

1. Filing at the receiving office, the Indian Patent Office. In these circumstances, it is advised that the application be submitted with a copy of the Controller's authorization for overseas filing under section 39. If such authorization is requested along with the application, there is a chance that it may be delayed and sent to the DRDO/Department of Atomic Energy for guidance.

2. Directly filing in the International Bureau of WIPO after obtaining Indian Patent Office clearance under section 39.

3. After submitting an Indian patent application, submit an international application in the IB of WIPO or in the Indian Patent Office acting as the receiving office at any time before the lapse of a year after the date of submission. However, if the international filing must be made within six weeks of the date of the Indian file, authorization under section 39 from the Indian Patent Office must first be obtained.

International Applications Filed with Appropriate Office as Receiving Office

According to Rule 19, an overseas application must be submitted in triplicate to the relevant agency in Hindi or English. In addition to the costs stated in the rules under the Treaty, the fees outlined in the First Schedule to the Patents Rules, 2003, must also be paid in respect of an international application lodged with the relevant office. If an international application submitted with the relevant office has not been prepared in accordance with the aforementioned requirements and the applicant requests that the appropriate office create the extra copies needed, the applicant is responsible for covering the cost of creating those copies. For the purposes of an international application filed with the appropriate office with notification to the applicant and the head office, the appropriate office shall, upon receipt of a request from the applicant and upon payment by him of the prescribed fee, prepare a certified

copy of the priority document and promptly transmit it to the International Bureau of the World Intellectual Property Organization.

International Applications Designating or designating and Electing India

According to Rule 20, a Form 1 application may be used to submit a request that corresponds to an international application under the Patent Cooperation Treaty. However, the Patent Office cannot begin processing a submitted application that corresponds to an overseas application naming India until 31 months have passed from the priority date. However, the Patent Office may process or evaluate the application at any time before 31 months from the priority date upon explicit request made in Form 18 together with the fee stated in the First Schedule.

An applicant for an international application designating India must pay the prescribed national fee and other fees to the patent office before the prescribed period; additionally, if the international application was not filed or published in English, the applicant or the person duly authorized by him must file with the patent office an English translation of the application, duly verified by him or her that the contents thereof are According to Rule 20(5), the translation of the international application should include an English translation of the description, the filed claims, any text matter of the drawings, the abstract, and, if the applicant has not chosen India and the claims have been amended under Article 19, the amended claims along with any statement filed under the said Article; if the applicant has chosen India and any description amendments, the claims[5], [6]. If the applicant does not submit a translation of the amended claims and annexures as described above within the time frame that may be set by the appropriate office with consideration for the amount of time left to meet the requirements, the amended claims and annexures will be ignored when the appropriate office continues to process the application. The applicant must utilize the forms listed in the Second Schedule before the relevant authority as the designated office with regard to an overseas application naming India.

Filing of Priority Document

If the applicant for an international application designating India has not complied with the requirements of paragraph (a) or paragraph (b) of rule 17.1 of the regulations under the Treaty, Rule 21 mandates that the applicant file the priority document referred to in that rule with the patent office before the expiration of the allotted time period. If the priority document is not in the English language, the applicant or the person lawfully authorized by him must submit an English translation of it within the allotted time frame, with proper verification. The appropriate office will invite the applicant to file the priority document or the translation thereof, as applicable, within three months of the date of such invitation if the applicant fails to comply with the aforementioned requirements. If the applicant does not comply, the applicant's claim to priority will be rejected.

DISCUSSION

The beginnings of the current patent system are where the history of patent agents may be found.

Synopsis of the Background of Patent Agents

Origins of Patent Systems: In ancient societies like Greece and Rome, inventors were given exclusive rights to their creations. This is where the idea of patents first emerged. However, the 18th century saw the beginning of the modern patent system as we know it today.

Early Patent Agents: Before patent offices, inventors often represented themselves in the 18th and 19th centuries. However, several inventors sought the advice of those who were familiar with the patent system as the complexity of patent rules and processes rose.

The emergence of patent attorneys: The function of patent agents began to take on a more structured structure in the 19th century. Legal professionals started specialized in patent law and offering assistance to innovators. These early patent agents often had advanced technical knowledge of discoveries and were attorneys or engineers.

Professionalization and Regulation: As the need for patent services increased, several nations began putting rules into place to guarantee the integrity and skill of patent agents. For instance, the US adopted a registration system for patent agents in 1861 and founded the United States Patent and Trademark Office (USPTO) in 1836.

Organizations for Patent Agents: Professional organizations for patent agents have developed throughout time to encourage information exchange, moral behavior, and career advancement. For instance, the United Kingdom's Chartered Institute of Patent Attorneys (CIPA) was established in 1882.

Expansion of Patent Agent Services:The job of patent agents has evolved beyond conventional patent prosecution as technology has developed and intellectual property (IP) has become more valuable. The provision of services including patent portfolio management, IP strategy, litigation support, and licensing aid by patent agents first appeared.

Global Harmonization: With the expansion of globalization and worldwide commerce, attempts have been made to harmonize patent laws and the requirements for patent agents in many nations. Cooperation and standardization in the area of patents have been greatly facilitated by international organizations like the World Intellectual Property Organization (WIPO).

Patent Agents

A qualified Patent Agent is entrusted with the task of drafting specifications, filing a patent application, following up with the Patent Office regarding objections raised, presenting the applicant's case at hearings, filing an opposition, and defending the application against opposition. The Patent Agents are covered under Sections 125–132 of the Patents Act of 1970 and Rules 108–120 of the Patents Rules of 2003. The Controller keeps a registry known as the "register of patent agents," in which all individuals eligible to have their names entered in accordance with section 126 will have their names, addresses, and any other pertinent information that may be specified[7], [8]. Rule 4 mandates that such a record be kept at the Patent Office's Calcutta headquarters. The qualification and the date of registration of entrance as a Patent agent, as well as the name, nationality, address of the major place of business, branch office address, and any other pertinent information that may be mandated, are all included in the register.

Qualifications for Registration as Patent Agents

If a person meets the requirements listed in Section 126, he will be eligible to have his name added to the register of patent agents, specifically:

1. He or she is an Indian national.
2. He or she has reached the age of 21.
3. He or she has the other comparable credentials that the Central Government may designate in this regard, and in addition. He or she has earned a degree in Science,

Engineering, or Technology from any university established under the legislation now in effect in the territory of India.

i. Has successfully completed the required qualification test; or
ii. served as an examiner, carried out the Controller's duties under Section 73 for a cumulative period of not less than ten years, or both, but had ceased to do so at the time the registration application was submitted;

4. He has made the appropriate payment.

However, a person who was registered as a patent agent prior to the implementation of the Patent (Amendment) Act, 2005, shall be eligible to remain registered or, where necessary, be reregistered as a patent agent, subject to payment of the fee.

Qualifying Examinations for Patent Agents

According to section 126 of the Act, certain mandated qualifications for patent agents are required in order to maintain high professional efficacy. A written test and a viva voce examination will make up the qualifying examination for patent agents, according to clause (c)(ii) of subsection 1 of section 126. The written test will consist of two exams, each worth 100 marks: 1) Patents Act and Rules; and 2) Drafting and Interpretation of Patent Specification and Other Documents. A candidate will only be deemed to have passed the test if he or she receives an overall score of 60% of the qualifying marks for both the written paper and the viva voice examinations (Rule 110 (3)).

Registration of Patent Agents

According to Rule 111, after a candidate passes the qualifying examination outlined in Rule 110, the Controller will enter the candidate's name in the register of patent agents and issue him a certificate of registration as a patent agent after obtaining any additional information that the Controller deems necessary and upon receipt of the fee.

Details to be Included in an Application for the Registration of Patent Agents

According to Rule 112, a person who is eligible to have his name registered as a patent agent under Subsection 2 of Section 126 must additionally submit a Form 22 with the required fee in order to disclose information about his patent agent activity. The registration will be filled up with the following information:

1. Name and credentials,
2. The location of his or her office, including any branches, if any
3. The date the specified fee was paid.
4. Additional information as may be required

Disqualification for Registration as a Patent Agent

Conditions for a person's exclusion from registration as a patent agent are outlined in Rule 114. According to Rule 114, an individual will not be qualified to register as a patent agent if he-

1. Has been deemed incompetent by a court of competent jurisdiction;
2. Is bankrupt and undercharged.
3. Having been declared bankrupt and having acquired a certificate from the court stating that his insolvency was due to bad luck rather than any wrongdoing on his part;

4. Has been sentenced to a term of imprisonment by a court of competent jurisdiction, whether in India or outside of India, unless the crime for which he was sentenced has been absolved or, in response to his request, the Central Government has issued an order in this regard;
5. Professional misconduct has been committed while acting as a lawyer; or
6. Having engaged in carelessness or misconduct as a chartered accountant.

Register of Patent Agents

In accordance with Section 125, it is necessary to keep a register of patent agents in order to determine who has been registered as an agent and is authorized to represent the applicant in the prosecution of a patent application. By paying the renewal cost each year, the name may be kept on the register.

Alteration of Names etc. in the Register of Patent Agents

According to Rule 118, a patent agent may submit a request to have his name, the address of his major place of business and, if applicable, any branch offices, or the qualifications listed in the register of patent agents changed. The Controller will cause the appropriate changes to be made in the register of patent agents upon receipt of such an application and the fee stipulated therefor in the First Schedule. Each change to the registry of patent agents will be made public.

Publication of the Names of Patent Agents, Registered under the Act

According to Rule 120, the names and addresses of individuals who have registered as patent agents may sometimes be published in the official journal, newspapers, trade journals, and other media the Controller may see appropriate. It will also be included in the Controller General's Annual Report on Patents, Designs, and Trademarks. When properly authorized, a person whose name is in the register of Patent Agents may practice before the Controller and sign all applications and communications to the Controller[9], [10]. Additionally, he drafts specifications, submits patent applications, corresponds with the Patent Office in the future, represents applicants at hearings, files and participates in opposition proceedings, or defends his case against an opposition filed by another party. Any of the following actions are considered to be part of practicing as a patent agent:

1. Obtaining patents in India or abroad by applying for them.
2. Creating specifications or other documents for this Act's or a nation's patent law's objectives.
3. Offering opinions on the legality of patents or the violation of their rights that are not of a scientific or technical character.

CONCLUSION

In conclusion, patent agents play a critical role in the patenting process by offering invaluable knowledge and direction to corporations and inventors. They can successfully manage the difficulties of patent applications and prosecutions because of their in-depth understanding of intellectual property laws and regulations. Their assistance supports the expansion of companies and sectors while stimulating innovation and defending intellectual property rights. Overall, patent agents are essential experts in the realm of intellectual property law since they play a key role in the effective acquisition and maintenance of patents.

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CHAPTER 15

A COMPREHENSIVE OVERVIEW OF PATENT INFORMATION

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ABSTRACT:

The Intellectual Property Office in India and patent Information are briefly summarized in the chapter on patent information. It often comprises a succinct explanation of the issue the invention addresses, the suggested fix, and any advantages or benefits provided. In this chapter, we mainly focused on the reasons for using Patent Information and tries to provide readers with a summary of the patent so they may decide if it applies to their own study or professional endeavors.As a whole, a variety of vocations can benefit from patent information. In exchange for comprehensive information on an invention, patents grant the sole right to create and distribute it. There are several ways to get patent information, and the prior art is the corpus of generally known information that serves as the standard by which novelty and non-obviousness are assessed.

KEYWORDS:

IP, Intellectual Property, Patent, Patent Information, Technology.

INTRODUCTION

The Intellectual Property Office in India is committed to fostering the necessary IP culture to promote the application of technical innovation for socio-economic development. The administration of the Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, and the Patents Act, 1970 is the responsibility of the Office of the Controller General of Patents, Designs, and Trade Marks (CGPDTM), which has intellectual property offices in Mumbai, Delhi, Kolkata, Chennai, and Ahmedabad. Information on patents is not merely technical or legal. The success or failure of a new product, and therefore the success or failure of the firm creating it, may be influenced by comparative technical knowledge. Conducting a patent search is an essential step before submitting a patent application. A patent search is a search made in the accessible literature and patent databases to see whether any inventions that are comparable to the inventor's creation already exist[1], [2].

Numerous national and local Patent Office provides free internet access to both their libraries of patents as well as a selection of patents from other offices. Online databases with open access to patent information are also provided by a variety of for-profit and nonprofit organizations. The students with the Indian Intellectual Property Office, the value of patent data in company growth, the significance of patent searches, and the many databases that may be used to carry out patent searches.The establishment and preservation of intellectual property rights (IPR) are crucial for the long-term development of a country since they are seen as the foundation of any economy. Today, intellectual property rights are utilized to forge strategic partnerships for the development of socioeconomic and technical sectors as well as to safeguard innovation and produce income. As a result, the Intellectual Property Office in India is committed to fostering the necessary IP culture to mobilize the use of such

technical innovation for socio-economic development, which is mandated by the constitution[3], [4].

Who grants patents?

National or regional agencies that do examination work for several nations, such as the European Patent Office (EPO) and the African Intellectual Property Organization (OAPI), mayaward patents. In such regional systems, an inventor submits a request for protection in one or more nations, and each one independently chooses whether to grant a patent for the invention within its own boundaries. The Patent Cooperation Treaty (PCT), which is overseen by WIPO, allows for the submission of a single worldwide patent application that serves the same purpose as national applications submitted in the designated nations. A person requesting protection has the option to submit a single application and ask for protection from as many signature nations as necessary.The Intellectual Property Office's (IPO) history differs based on the nation or area being discussed. Governmental or semi-governmental entities known as intellectual property offices are in charge of managing and defending intellectual property rights, such as patents, trademarks, copyrights, and sometimes other types of intellectual property.

Broad Outline of How Intellectual Property Offices Have Evolved Throughout Time:

Origins of Intellectual Property Laws: The history of intellectual property laws and safeguards dates back to early civilizations. However, during the Enlightenment era in the 17th and 18th centuries, communities came to realize how important it was to protect inventors, writers, and artists, and this is when the legal acknowledgment and formation of intellectual property rights started to take shape.

Establishment of Patent Offices: In the 18th century, Europe saw the establishment of the first specialist patent offices. For instance, the Patent Office in the United Kingdom was founded in 1852 and subsequently renamed the Intellectual Property Office. In a similar vein, the USPTO, or United States Patent and Trademark Office, was founded in 1802 by the US. These agencies were in charge of giving innovators patents and guaranteeing their ownership of their ideas.

Trademark and Copyright Offices: In the late 19th and early 20th centuries, trademark and copyright protection began to become more significant. To provide companies, writers, and artist's legal protection, offices devoted to registering trademarks and copyrights were set up abroad. These offices were in charge of keeping track of trademark and copyright registries and providing owners with legal protection.

Expansion of Responsibilities: The duties of intellectual property offices have grown to include more than just copyrights, trademarks, and patents. Depending on the country, they started to manage several different types of intellectual property rights, such as industrial designs, geographical indicators, and integrated circuit layouts.

Worldwide cooperation: As the world's population and commerce grew, it became clear that worldwide intellectual property rules needed to be harmonized and that international frameworks needed to be put in place. The World Intellectual Property Organization (WIPO), which seeks to promote and safeguard intellectual property rights internationally, was founded as a result of this in 1967.

Modernization and digitalization: Significant modernization and digitization initiatives have been made recently in intellectual property offices. In order to increase productivity and

accessibility for applicants and rights holders, several offices have adopted electronic filing systems, online databases, and digital services.

Patent Offices in India

The Ministry of Commerce and Industry's Department of Industrial Policy and Promotion oversees the Controller General of Patents, Designs, and Trade Marks (CGPDTM). In recent years, the Controller General's office has also gone by the name Intellectual Property Office (IPO). Through its Intellectual Property Offices in Mumbai, Delhi, Kolkata, Chennai, and Ahmedabad, the Office is in charge of administering the Patents Act of 1970, the Designs Act of 2000, the Trade Marks Act of 1999, and the Geographical Indications of Goods (Registration and Protection) Act of 1999.

Mumbai is home to the Office of the Controller General of Patents, Designs, and Trade Marks (CGPDTM). The Patent Office's headquarters are in Kolkata, and it also has branch offices in Chennai, New Delhi, and Mumbai. Mumbai serves as the headquarters for the Trade Marks register, which also has offices in Kolkata, Chennai, Ahmedabad, and New Delhi. The Patent Office in Kolkata houses the Design Office. In order to manage the Geographical Indications of Goods (Registration and Protection) Act, 1999 under the CGPDTM, a Geographical Indications Registry has been created in Chennai[5], [6].

The Controller General oversees the application of the Trade Marks Act of 1999, the Designs Act of 2000, and the Patents Act of 1970, as amended, and also provides recommendations to the Government on issues pertaining to these laws. The first IAS official to hold the position of Controller General was Mr. P.H. Kurian. Recently, Mr. Chaitanaya Prasad took over as CGPDTM.

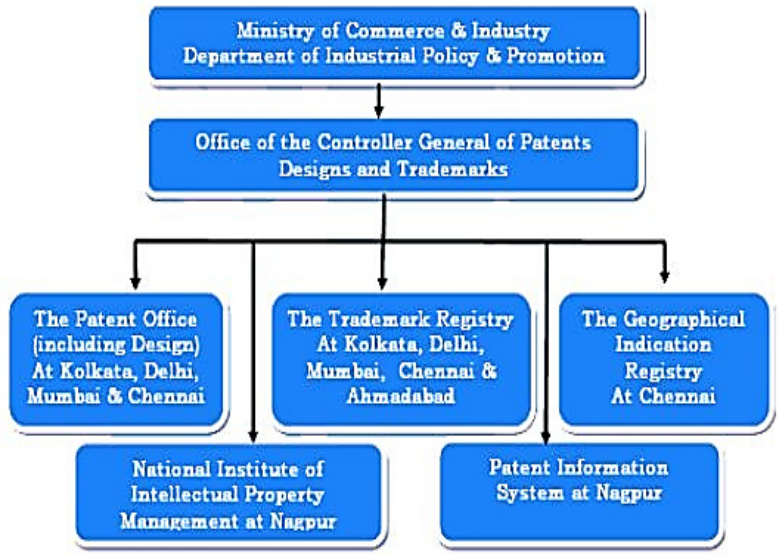

Figure 1: Illustrating the Organization Details of Intellectual Property Offices.

Under the supervision of the CGPDTM are also the Nagpur-based National Institute of Intellectual Property Management (NIIPM) and Patent Information System (PIS). To meet the demand for technological information from various users in R&D establishments, government organizations, industries, business, inventors, and other users to enable them to make informed business decisions, PIS maintains a comprehensive collection of patent specifications and patent related literature on a global basis[7]. As a national center of

excellence for training, management, research, and education in the field of intellectual property rights-related issues, the National Institute for Intellectual Property Management (NIIPM) provides training for the country's patent and design examiners, trademark and geographical indication examiners, IP professionals, and IP managers as well as providing basic education to the general public, government officials, and stakeholders involved in creation, c Additionally, the institution will assist with the development of study reports and policy analyses pertinent to the government for research on IP-related problems. There is currently no organization in the nation that deals with these operations. The organization details of Intellectual Property Offices are given below in Figure 1.

DISCUSSION

When doing a patent information search, it is customary to do so as part of the application writing process before submitting a patent application or when organizing and arranging for a patent lawsuit. This micro-level use of patent information has developed into a much more strategic use of patent information as a consequence of the fast advancement of information technology and the increased accessibility to online databases of patent information. Recent years have seen an increase in the meso and macro-level usage of patent information by economists, social scientists, politicians, businesspeople, and professionals. In order to determine or forecast the direction of technical change, or to determine the relative technological position of a company in a market, for instance, this analysis is being done of the patenting activities of a country's technical patterns of internationalization, the patenting activities in a sector, technology, or company, etc. As a result, many diverse tactical and strategic commercial, research, and policy-making activities at the national, institutional, or firm levels now make use of patent information[8], [9].

What is Patent Information?

In addition to the text of published patent papers, patent information may also comprise bibliographic and other details about invention patents, inventors' certificates, utility certificates, and utility models. The biggest, most organized, and most recent collection of technical publications on cutting-edge technology is available here. In compliance with the requirements of local or national patent laws, patent applications are submitted. An applicant might be an individual inventor, a public or private firm, a government body, a researcher at a university or in a research and development facility. A patent document includes a plethora of information on the state-of-the-art in that field of technology as determined in an international setting, and it does so in a standardized manner.

Reasons for Using Patent Information

Information on patents is not merely technical or legal in nature. Comparative technical data may be used to predict a new product's success or failure, which may ultimately affect the company's performance. The following are some examples of how patent information is used in practice:

1. Tool for Creative Thinking

Researchers and innovators may utilize patent information as a source of technological knowledge to come up with fresh approaches to technical issues. The TRIZ approach (Russian abbreviation for Theory of the Solution of Inventive Problems) is a particular methodology created using patent data. Genrich Altshuller and his associates created the TRIZ approach based on the examination and evaluation of a collection of international patent papers. TRIZ was founded in 1946 on the premise that there are fundamental

principles of invention that all inventions must follow in order to advance technology. If these principles could be discovered and codified, people could learn them and develop or improve their capacity for invention. More than 2 million patent papers have been studied, categorized by degree of creativity, and analyzed to seek for creative principles as part of the TRIZ study, which has been conducted in phases. Internationally, TRIZ is now used to develop and enhance goods, services, and systems. TRIZ is used by big and small businesses alike, including several Fortune 500 organizations, on a variety of levels to address current issues and create plans for the future of technology. Universities all around the globe have created undergraduate courses connected to the TRIZ approach to increase students' creativity and imaginative thinking skills, which is based on one of the theories' findings that inventiveness and creativity can be acquired. As a result, patent information offers a wealth of knowledge for learning and creating innovative and creative problem-solving techniques.

2. Input for Licensing Strategy

The interested parties must gather trustworthy information about the target or important technology in order to make the best option while thinking about "licensing in" of technology held by others, "licensing out" of owner's technology, or "cross licensing" between two patent portfolio owners. Because it is inherently unstable and difficult to retain a technology as a trade secret, if it is valuable enough, it will typically be secured by a patent. As a result, the examination of patent data gives them useful technical and commercial information about the target or critical technology. It is crucial that the parties have a complete grasp of the target technology itself, its value, and in terms of its strengths and limitations before beginning license discussions. This is greatly facilitated by a thorough and rigorous review of pertinent patent material.

Analyze patent data to take into account the following before getting ready to "license in" technology:

i. If the technology in issue is already common knowledge in your target market as a result of the patent's lack of protection, expiry, non-payment of maintenance fees, or judicial invalidation;
ii. If there is a chance that someone else may file a claim against you for infringement and hold you responsible for paying any resulting damages;
iii. By comparing it to similar or alternative technologies, if the technology is overpriced or undervalued, etc.

Similar to this, while getting ready to "license out" your invention, examine patent data to take into account:

i. Who in the market may be potential licensees?
ii. How important is your technology for creating a compelling offer?
iii. If it is a key technology for your company, which, if licensed out, would make it difficult to keep using this technology, etc.

Cross-licensing is the exchange of one or more patent licenses between two firms, allowing the companies to operate freely and without concern about being accused of infringing on the other party's intellectual rights. In a cross-licensing arrangement, the party with the more valuable patent portfolio is thought to make the necessary payment(s). Let's imagine that Company X and Company Y are in negotiations. Company Y can be required to make one-time or ongoing payments to Company X to make up the difference if Company X claims that its portfolio is more valuable than Company Y's. Patent analysis here helps to determine

who should pay who and how much by comparing the patent portfolios of the two firms and finding significant patents.

3. Supporting Mergers and Acquisitions (M&A)

A corporation must first locate all the businesses that own the essential patents and associated assets if it wants to purchase a certain technology together with other complementary assets but is unsure where to get them.

A patent search may help you find every patent connected to your research topic. Once one or more suitable target technologies or businesses have been discovered, the corporation may do further patent research to whittle down its options and choose the most advantageous target for a merger or purchase. Once a target firm has been identified, patent research may help address other concerns, such as: Is the target's technology as advanced as it is marketed to be? Is the business charging fairly? Who are the principal innovators, and will they continue working for the combined or purchased business? Let's examine a situation. A huge high-tech firm purchased a tiny specialty company as part of a comprehensive strategic strategy to plug holes in the company's technological foundation[9], [10]. The purchasing corporation soon learned that the acquired company's R&D skills were extremely weak, which was in stark contrast to its belief that it had purchased a business with great technical capabilities. One essential researcher was required for it to be technologically capable, but he was not included in the sale. Before the transaction was completed, he was moved to the parent business. Before moving through with the purchase, a patent study would have allowed the corporation to identify the essential researcher and take the necessary steps to keep him on staff.

4. Guiding Management of Research and Development (R&D)

A corporation should be able to capture the comprehensive picture of the relevant technological sector and effectively estimate the market demands in order to launch a new business or create a new product. The flow of technology from fundamental technologies and the expansion of those technologies, the trend of technological change, the life cycle of a technology (which includes growth, development, maturity, and decline), problems and solutions in the development of a particular technology, competitors' technologies, and solutions to deal with potential problems can all be discovered through patent analysis.

Understanding a technology's life cycle enables one to time the application of development policies and to concentrate on certain development topics. Additionally, it may stop an infringement from happening, which would save a ton of money on legal fees and damages reimbursement.

Patents are often associated with research and development and may be used to measure R & D production. A corporation may have a higher dedication to research and development if it has more patents than a rival. But not all patents are worth the same. Most patents are obtained for incremental but non-obvious breakthroughs; only a small number of patents are for profound discoveries that alter the course of history. A patent is seen to have a bigger effect or to be of better quality if it is mentioned more often than other patents of the same age. It is feasible to prioritize the purchase of strong patents based on the connections between patents revealed by patent citation analysis, which increases R&D productivity and, as a consequence, leads to the development of much better or new goods.

5. Human Resources Management

The evolution of technology is driven by a small number of very prolific innovators, whereas a considerably greater number of researchers in any one labor organization only create one or

two patents. A co-inventor brain map, for example, may be used in patent analysis to identify significant inventors who will be crucial to the company's future. Such brain maps may discover significant innovators in other organizations in addition to star inventors inside a company, which is a helpful analysis for headhunting and creating a successful M&A strategy.

CONCLUSION

In this chapter, we have discussed about the patent offices in India and about the patent information and also covered the ramifications, and possible applications of the invention is given in the conclusion section of a patent information document. The originality and creativity of the revealed technology are often emphasized, along with any experimental or real-world findings, and the potential economic value or market prospects. The patent and its prospective effects on the industry or subject in question are intended to be included in the conclusion. It can also include any potential enhancements or new lines of study that might be developed in light of the disclosed invention.

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CHAPTER 16

AN ANALYSIS OF PATENT SEARCH AND PATENT DATABASES

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ABSTRACT:

An overview of patent search and patent databases is given in this chapter. To assess an invention's uniqueness and patentability, inventors, researchers, and corporations must do a patent search, which is a critical step in intellectual property research. Due to their accessibility to substantial collections of published patents and patent applications, patent databases play a crucial part in this process. The main ideas surrounding patent searches, patent databases, search methods, tools, and procedures are examined in this chapter. In as a whole, patent databases and searches are crucial tools for scholars, corporations, and innovators. Free patent search engines are excellent for generating immediate leads, however, commercial databases provide more thorough results. Analyzing patent trends and connections between patents can be done using patent databases. Finding knowledge that was widely known before the invention with the use of a patent search is helpful.

KEYWORDS:

IP, Intellectual Property, Patent Search, Patent Databases, Novelty, Patentability, Search Strategies, Tools, Techniques.

INTRODUCTION

In the sphere of intellectual property, technologies like patent searches and databases are crucial for finding information on already-issued patents. These tools provide information on previous art, technical developments, and patent landscapes to inventors, researchers, lawyers, and companies. An innovation may be legally protected against unlawful use, sale, or replication for a certain amount of time by the issuance of a patent to the inventor or assignee. To ascertain if an invention meets the crucial requirements for receiving a patent newness and non-obviousness a patent search is a method that looks for already-issued patents [1]. Patent databases are extensive compilations of the patent records issued by the many international patent offices. These databases include the title, abstract, description, claims, drawings, and legal status of the patents, together with comprehensive information regarding patented inventions. They are useful tools for doing patent searches, examining patent trends, keeping an eye on rivals, and deciding on patent strategy [2]. A number of patent databases are accessible, each with unique features and coverage. Several of the most popular patent databases are as follows:

1. One of the biggest patent databases is maintained by the United States Patent and Trademark Office (USPTO), which also publishes patent applications from the United States.
2. European Patent Office (EPO): Access to patents and patent applications from European nations and international organizations is available via the EPO's E-spacenet database.
3. World Intellectual Property Organization (WIPO): Access to international patent papers, such as PCT applications, is available via WIPO's PATENTSCOPE database.

4. Google Patents: A user-friendly interface, Google Patents enables users to search and browse a large database of international patents and patent applications.

5. Free Patents Online (FPO): Free Patents Online (FPO) is a well-known free patent database that offers access to a variety of patent papers from different nations.

These databases include sophisticated search capabilities, including keyword, categorization, and citation searching, enabling users to efficiently find pertinent patent material. Additionally, a lot of databases provide information on the legal standing of patent applications and awarded patents, allowing users to follow the development and status of these documents.The earliest days of the patent system itself are where the history of patent search and patent databases begins. As the number of awarded patents rose, a method to search and access patent information became necessary. Patents have been given for centuries to protect and promote invention.

1. **Early Patent Systems:** The first recorded patent system dates to the fifth century BC in ancient Greece. But with the advent of the Venetian Patent Statute in 1474, the modern idea of patents started to take form in the 15th century. This law pioneered the notion of giving inventors temporary exclusive rights in return for revealing their innovations.

2. **Print Databases:** As the number of patents awarded increased, it became clear that there was a need for an organized means to search for and retrieve patent data. Several nations began issuing official patent gazettes in the 19th century that included data on patents that had been awarded. Usually, these gazettes were printed and distributed to the general population. These printed papers might be manually searched by academics and inventors to locate pertinent patent data.

3. **Creation of Patent Offices:** The development of national patent offices in many nations led to the formation of central repositories for patent papers. These offices were in charge of reviewing patent applications, awarding patents, and keeping track of patents that had been issued. They were essential in organizing patent data and facilitating public access to it.

4. **Microfilm and Indexing Systems:** In the early 20th century, the storage and retrieval of patent papers underwent a revolution thanks to microfilm technology. Patent records were first microfilmed by patent offices, which made it simpler to keep massive amounts of paperwork in a small space. Indexing systems were created in conjunction with microfilm to classify patents according to their subject matter and provide classification numbers. These technologies were designed to make searching and retrieving for patent information more effective.

5. **Online Patent Databases:** Online patent databases have significantly improved patent search and retrieval since the invention of computers and the internet. Patent offices started digitizing their records and making them accessible via internet databases in the latter half of the 20th century. In the middle of the 1990s, the United States Patent and Trademark Office (USPTO) introduced its online database, known as the Patent Full-Text and Image Database (PatFT). Following suit, several patent offices throughout the globe developed their own online patent search tools.

6. **Global Patent Databases:** In addition to national patent databases, global patent databases are now being developed by international organizations and partnerships. The World Intellectual Property Organization (WIPO), which created the Patent

Cooperation Treaty (PCT) system, is one of the most noteworthy instances. The PCT enables inventors to submit a solitary worldwide patent application, which is subsequently processed and made public in a centralized database that is accessible to member nations.

7. **Advanced Search Tools and Machine Learning:** Machine learning and advanced search tools have transformed patent search in recent years, along with other technological developments like natural language processing. With the advent of sophisticated search methods like semantic and concept-based searching in patent databases, users may now more quickly and reliably locate relevant patents. The analysis of patent data by machine learning algorithms may potentially reveal prior art, trends, and patterns.

These days, patent databases are essential tools for corporations, academics, patent agents, and creators. They provide people and organizations access to a plethora of data about already-issued patents, previous art, and technical developments, allowing them to perform thorough patent searches and decide on their discoveries.

DISCUSSION

Patent Databases & Patent Search

Conducting a patent search is a crucial step prior to submitting a patent application. Before embarking on any commercial initiative, corporations must do due diligence, and the same is true for patent owners before they submit a patent application. A patent search is a search that is done in the literature and patent databases to see whether any inventions that are comparable to the one for which a patent is sought already exist. In other words, it assesses the likelihood that an inventor will get a patent award. Therefore, if one undertakes the patentability search before moving on with the filing, one can clearly determine the patentability of the invention, if the application should be submitted, and the strengths and weaknesses of his invention. Before submitting an application, it is wise to do a patentability search since patenting is a costly process. Although doing a patent search incurs extra costs, it may end up saving the innovator money in the long run. Through a number of databases, the public may access information on patents. One specific collection of patent papers is covered by each database. There is currently no database that fully encompasses all patent papers ever published globally. As a result, it could be required to search through many databases to identify and then obtain patent materials that are relevant to your interests[3], [4].

Databases on CD-ROM

Access to patent data on CD-ROM in text and image form is made possible by information technology. Documentary searches are made much easier by CD-ROM databases. Users just need a CD-ROM driver and a computer to get things done; no other connections are required. However, there are certain downsides to CD-ROM databases. Their update is an issue, to start. The material on CD-ROM quickly goes out of date, at least for certain sorts of research, since online databases may be readily updated on a frequent basis. Additionally, it is difficult to create statistical series using CD-ROM databases; as a result, they are not yet appropriate for statistical applications.

On-line Databases

Online databases are those that are based on the Internet. Anyone with Internet connection may be able to peruse the entire text of published patent filings using either for-profit or public databases. Users worldwide may quickly obtain patent papers from a computer linked

to the Internet since access to these types of databases is not limited by national boundaries. Many national and local patent offices already provide free internet access to both their own libraries of patents as well as a selection of patents from other offices. For instance, one of the first and free online patent information services is the Full-Text and Full-page Image Database of the United States Patent and Trademark Office (USPTO). Espacenet, esp@cenet®, offered by the European Patent Organization via the EPO (European Patent Office) and the national offices of its member states, is another significant free online patent database. Espacenet provides free access to more than 80 million patent records from throughout the globe that detail innovations and scientific advancements from 1836 to the present. On the website www.wipo.int/patentscope/endbsearch/national_databases.html, a comprehensive list of national patent databases is available.

Through its PATENTSCOPE search tool, WIPO provides free online access to all international patent applications filed under the PCT as well as the supporting documentation and patent collections from National and Regional Offices: (http://patentscope.wipo.int/search)The International Patent categorization (IPC) is a hierarchical categorization scheme that is mainly used to categorize and search patent documents (such as utility models, patent applications, and patent specifications) following the technical domains to which they are relevant[2], [5]. As a result, it acts as a tool for the systematic organization of patent papers, a foundation for the selective release of information, and a starting point for research into the state of the art in certain technological sectors. IBM Intellectual Property Network (IPN) is a free IBM patent site offered by IBM (International Business Machines Corporation). It offers free searching, full text access, and front page display. This database includes:

1. United States patents (US): updated every week from 1971 to the present. (Full image/full text).
2. European patent applications (EP-A): weekly updates from 1979 to the present. (Front page, claims, and complete pictures).
3. Weekly updates for European patents-issued (EP-B) from 1980 to the present. (Front page, claims, and complete photos).
4. Weekly updates to WIPO (World Intellectual Property Organization) PCT publications (WO) from 1990 to the present. (Title page, claims, and all pictures).
5. Weekly updated Patent Abstracts of Japan (JP) from 1976 to the present. (Titles on the front page/Representative photo).

Online databases with open access to patent information are also provided by many for-profit and nonprofit organizations. Value-added services, such as translations of patent material and further systematic categorization, such as by chemical structures and reactions or biological sequences, have been developed by certain commercial providers for access on a fee-paying basis.

In addition, if an initial search does not provide the desired results, professional search services that may conduct prior art searches on behalf of prospective patent applicants may be helpful. You may find a comprehensive list of patent service providers at: (www.piug.org/vendors.php). Even though anybody may access free online patent databases, it is important that the work be delegated to someone who is knowledgeable at performing searches. This is due to the time-consuming, repetitive nature of patent searches in diverse patent and non-patent literature. The large volume of literature that has to be searched would be impossible for a non-skilled individual to adequately search. A knowledgeable individual also recognizes the significance of a patent's claims. When a patent that is comparable to your invention already exists, the patent claims are of vital significance; in such a situation, one

has to examine the patent claims to establish the degree of similarity between the two. A qualified individual might also provide advice on how to improve your patent so that it doesn't violate other works of art or on the strength of your patent. These ideas may not make sense to a layperson.

Various Types of Searches Using Patent Documentation

There are a number of more or less common reasons to conduct searches in collections of patent papers, and each of them calls for a somewhat different strategy in the search technique used. While some of the search categories are primarily concerned with technical data as such, others are focused on processing patent applications or are pertinent to the legal status of emerging technologies. The various search categories are described below individually even though it is common knowledge that numerous pieces of bibliographic data may be merged when searching. In general, inventors' searches are often less thorough than those conducted by specialists at patent offices. To find out whether someone has previously patented a comparable idea or to learn pertinent details about other patents that fall under the same category as the inventor's creation, such insights into patent records are sometimes quite helpful.

1. Pre-Application Searches (PAS)

An innovation begins as simply an idea. Many specifics aren't even understood or acknowledged as important components. A novelty search based on an ill-defined concept can only provide an ill-defined understanding of the previous art. A "Pre-Application Search" (PAS) should be carried out by the inventor prior to submitting a patent application since the patent application process is challenging, time-consuming, and costly. The inventor should do this search to find any printed materials, common knowledge, or previously granted domestic or international patents that may be relevant to the specific invention.

2. State-of-the-Art Searches

This type of search, also known as a "Informative Search," is conducted to ascertain the general state-of-the-art for the resolution of a specific technical problem in order to provide background knowledge for R&D activities and to learn what patent publications are already available in the relevant technical or research fields. Additional motivations for doing this sort of search may include the desire to find alternatives to currently used technologies or to assess a particular technology that is up for license or being evaluated for purchase. Modern searches are extremely helpful for transferring or developing new technologies.

3. Novelty Searches

A "Novelty Search" seeks to ascertain if an invention claimed in a patent application, a patent that has already been awarded, or an invention for which no application has yet been submitted is unique or not.

The search's objective is to find relevant previous art. An early novelty patent search often yields negative results. The fundamental innovative concepts are often expressed in such a general manner that numerous publications will apply to this wide definition[6], [7]. The choice to continue or cease developing the innovation will depend on the results of the novelty search. If nothing pertinent was discovered, moving forward is simple and advised. If one or more relevant papers are located, the choice becomes more challenging. The most crucial step is to focus the search in the right place. This may be achieved by locating the appropriate location or places in the IPC for the search topic.

4. Patentability or Validity Searches

A "Patentability or Validity Search" is performed to find documents pertinent to the assessment of not only novelty but also other patentability criteria, such as the accomplishment of useful results or technical advancement or the presence or absence of an inventive step (i.e., whether the alleged invention is obvious or not). This kind of search need to include all the technological areas that could have information relevant to the innovation. Industrial property offices often conduct searches for novelty and patentability as part of the review of patent applications[8].

5. Name Searches

These searches are used to find details on published patent filings involving certain businesses or people who served as applicants, assignees, patent holders, or inventors.

6. Technological Activity Searches

They should be seen as searches for locating businesses and/or innovators who are working in a certain technological sector. In order to know where to go for specific information in a certain technological sector, these searches are also useful for finding the nations in which a particular invention is being patented.

7. Infringement Searches

An "Infringement Search" seeks for published patent applications and patents that may be violated by a certain industrial activity. Determine if an existing patent grants exclusive rights covering that industrial activity or any portion of it is the goal of this sort of inquiry.

8. Patent Family Searches

A search of this sort is conducted to locate a member of a "patent family." Uses for patent family searches include:

1. Identify the nations where a certain patent application was submitted (if published);
2. Track down a "patent family member" written in the preferred language;
3. Obtain a list of "References Cited" or previous art materials.
4. Determine the innovation's significance (based on the number of patent papers referencing the same invention that are published by industrial property organizations or in other nations).

9. Legal Status Searches

According to the relevant patent laws in one or more countries, a search for this kind of research is done to learn the state (status) of a patent or a published patent application on a certain date. Such data may be useful for making judgments about, say, exporting or negotiating licensing contracts. It may also provide advice on the value that the patentee has placed on a certain patent.

CONCLUSION

Patent databases and searches are crucial elements of the intellectual property environment. For assessing an invention's uniqueness and patentability and preventing possible patent infringement, a comprehensive patent search utilizing specialist databases is essential. The efficacy of patent searches may be increased by using a variety of search methods, instruments, and procedures. Patent databases provide a sizable collection of patent applications and papers, allowing firms, academics, and inventors to access important data

and remain up to date on the most recent advancements in their respective sectors. Patent databases and searches will become more and more crucial as technology develops, promoting innovation and defending intellectual property rights.

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CHAPTER 17

INTRODUCTION AND HISTORICAL PERSPECTIVE OF TRADEMARK

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ABSTRACT:

This chapter introduces trademarks and offers a historical perspective on them. Businesses need trademarks to identify their goods and services from those of rivals, making them vital assets. A quick review of trademarks, their function, and their importance in contemporary business is provided in the introductory section. The historical viewpoint explores the beginnings and development of trademarks, charting their progression from ancient civilizations to the contemporary legal systems that regulate them. This investigation demonstrates the trademarks' historical significance and paves the way for a thorough comprehension of their current function. In general, the history of trademarks dates back to the time when a businessman used a trademark to distinguish his goods and services. Under Henry III of England's rule, the first law governing trademarks was issued in 1266. In the latter half of the 19th century, the first contemporary trademark laws came into being, and France and Britain both enacted extensive trademark legislation. The first federal trademark regime in the United States was attempted by Congress in 1870, and was later affirmed by the Supreme Court in the Trade-Mark Cases.

KEYWORDS:

IP, Goods, Services, Trademark, Historical Perspective.

INTRODUCTION

A trademark protects the owner of the mark by granting them the only right to use it or to permit another person to do so in exchange for money. While the length of protection varies, a trademark may be renewed forever after the period has passed by paying more costs. Trademarks, in a broader sense, encourage initiative and entrepreneurship globally by bringing fame and financial gain to their owners[1], [2].The use of comparable distinguishing marks by unscrupulous rivals, such as counterfeiters, to advertise inferior or unrelated goods or services is likewise hampered by trademark protection. The system makes it feasible for anyone with initiative and talent to manufacture and sell products and services under the most ethical terms, promoting global commerce. The Trade Marks Act of 1999, which was updated in light of the WTO, brings the law of trademarks into compliance with two important international agreements on the topic: the Paris Convention for the Protection of Industrial Property and the TRIPS Agreement. Given the significance of trademarks as a component of intellectual property, students should be well-versed in the trademark's philosophical and legal underpinnings as well as its procedural requirements.

A trademark (commonly referred to as a brand name in layman's terms) is a visual symbol that can be a word to identify the source of the goods, a name, device, label, numerals, or color combination to distinguish it from other similar goods or services coming from another source. It is a distinguishing mark that shows certain products or services are made or offered by a certain individual or business. Its history begins in antiquity, when artisans imprinted

their "marks" or signatures on decorative or functional items. These marks developed into the system of trademark registration and protection that exists today through time. Because a product or service's nature and quality, as represented by its distinctive trademark, match their demands, the system aids customers in recognizing and purchasing it.

By guaranteeing the owner's exclusive right to use it or granting another party permission to do so in exchange for payment, a trademark offers protection to the mark's owner. A trademark may be renewed indefinitely after the time restriction has passed by paying extra fees, albeit the duration of protection varies. The courts, who often have the power to prevent trademark infringement, are responsible for enforcing trademark protection. In a broader sense, trademarks encourage effort and business endeavor by bringing fame and financial gain to their owners. The use of comparable distinguishing marks by unscrupulous rivals, such as counterfeiters, to advertise inferior or unrelated goods or services is likewise hampered by trademark protection. The system makes it feasible for anyone with initiative and talent to manufacture and sell products and services under the most ethical terms, promoting global commerce [3], [4].

Historical Overview

The first laws governing trade markings in India was the Indian Trade markings Act of 1940. Trademark protection was formerly regulated by Common Law. While registration was acquired by obtaining a declaration of ownership under the Indian Registration Act of 1908, cases involving trademarks were adjudicated in light of Section 54 of the Specific Relief Act of 1877. The first Trade Marks Act of 1940 went into effect in parts on March 11, 1940, and in full on January 6, 1942. The Trade Marks (Amendment) Act of 1941 and two other modifications subsequently changed the aforementioned law. With the passage of the Trade Marks (Amendment) Act of 1943, the Trade Marks Registry, which had previously been a division of the Patent Office in Calcutta (now Kolkata), was split off to create a distinct Trade Marks Registry that was supervised by a Registrar of Trade Marks in Bombay (now Mumbai). After that, the Trade Marks (Amendment) Act of 1946 was revised the Act to implement the agreement on trademarks between the Government of India and the then-Indian States, and Part B States Laws Act of 1951 brought further revisions.

The Trade Marks Enquiry Committee, which the Government of India established in November 1953, recommended some changes, but the report revealed some disagreements among the members, so the Government of India appointed Mr. Justice Rajagopala Ayyangar (then a judge of the Madras High Court, later serving and retiring as a judge of the Supreme Court) to review the Trade Marks Act, 1940, concerning the report of the Trade Marks Enquiry Com. The Trade & Merchandise Marks Act, of 1958, which was based on Mr. Justice Ayyangar's findings, superseded the Trade Marks Act, of 1940. The Trade & Merchandise Marks Act of 1958 combined the trademark-related provisions of the Trade Marks Act of 1940, the Indian Merchandise Marks Act of 1889 (which had been in effect since January 1, 1889), and the Indian Penal Code. On Lesson 7 Trade Marks 115 the 25th of Lesson 7 Trade Marks November 1959, the Trade & Merchandise Marks Act, 1958, became operative. The Repealing & Amending Act of 1960 and the Patents Act of 1970 both made a few small changes. Thus, trademark legal protection in India has a history dating back more than a century.

Harmonization with International Norms and Standards

When it was felt that a thorough review of the Trade & Merchandise Marks Act, of 1958 should be made in light of new developments in trading and commercial practices, increasing globalization of trade and industry, the need to encourage investment flows and the transfer

of technology, and the need for simplification and harmonization of the trade mark management system in the nation, the process of harmonization with international norms and standards was started. The Trade Marks Act of 1999, which allows for the registration of service marks and adds several other requirements in compliance with the Trade Mark Law in industrialized countries, modernizes the law of trademarks in light of the WTO.

In this regard, on May 19, 1993, the Trade Marks Bill, 1993, which followed the Standing Committee's advice, was tabled in the Lok Sabha. The Bill, however, expired at the dissolution of the Lok Sabha since it was unable to pass the Rajya Sabha. The Rajya Sabha introduced the Trade Marks Bill, 1999, which was ultimately approved by both Houses of Parliament. On 30.12.1999, the President gave his approval to the Bill, which then became an Act. As stated in the Preamble to the Act, the Trade Marks Act, of 1999 was passed to update and codify the legislation about trademarks, to allow for the registration of trademarks for products and services, to improve their protection, and to prohibit the use of false marks[5], [6]. The old Trade & Merchandise Marks Act, of 1958, was repealed by it. The Paris Convention for the Protection of Industrial Property and the TRIPS Agreement, both of which India is a member, and the present trademark legislation as out in the Trade Marks Act, 1999, are both compliant with one another.

According to the Trade Marks Act, the 'Registrar of Trade Marks' is the Controller-General of Patents, Designs, and Trade Marks under the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. The Trade Marks Registry (TMR) is managed and directed by the Controller General of Patents, Designs, and Trade Marks. The Trade Marks Act, 1999, and its implementing Rules are administered by the Trade Marks Registry. TMR serves as a clearinghouse for resourcaes, information, and facilitation in issues involving trademarks across the nation[7], [8]. The Registry's primary duty is to register trademarks that meet the requirements of the Act and Rules for registration.The Trade Marks Act of 1999's key characteristics include, among others:

1. Allowing for the registration of trademarks for both products and services.
2. Expansion of the definition of a trademark to cover the registration of an item's packaging, color scheme, and form.
3. India is now subject to all 42 international classifications of goods and services (as previously applied).
4. Recognition of "well-known trademarks" as a concept.
5. Extending the time for trademark registration and renewal from seven to ten years, in line with generally recognized worldwide practice.
6. Extending the reach of trademark infringement. For instance, using a mark that is identical to or confusingly similar to a registered trade mark as a trade name or as part of a trade name.
7. Establishing a "Intellectual Property Appellate Board" to hear appeals against the Trade Marks Registrar's orders and judgments to expeditiously resolve disputes and rectification requests that have previously been pending before the High Courts.
8. Criminal penalties for trademark fabrication.
9. Acceptance of trademark use by a licensee who isn't even registered.

10. On payment of five times the application price, an expedited examination of a trademark application will be conducted.

The rights given by the Act are valid throughout India. The revised Act also made it easier to register a user, broadened the range of legal uses, and facilitated the registration of "collective marks" held by groups, among other things. The Registrar may register certification trademarks within the authority of the Act. This authority used to belong to the Central Government. The new Act also includes provisions for heightened penalties for trade mark-related offenses along the lines of the Copyright Act of 1957, restrictions on the sale of counterfeit products, and prohibitions on using another person's trade mark as part of corporate names or the name of a business concern. The definition of infringement of a registered trade mark has also been expanded by the new Act to include legal action against the unauthorized use of a mark that is confusingly similar, not only in relation to the goods and services covered by registration, as was the case previously, but also in relation to goods and services that are so similar that there is a likelihood of deception or confusion. Any individual who feels wronged may file a civil lawsuit with the District Court in whose local jurisdiction they truly and willingly dwell, do business, or engage in gainful employment. With the addition of this additional clause, the trade mark legislation is now consistent with the jurisdictional clauses of the Copyright Act of 1957.

The Trade Marks Act of 1999 gives the Government of India the authority to establish regulations to carry out the Act's provisions and control the Trade Marks Administration. The Government created the Trade Marks Rules, 2001, in response. These regulations were later updated in 2002 and went into effect on September 15, 2003, the same day the TradeMarks Act, 1999, did. The Trade Marks (Amendment) Rules, 2010, which were updated these regulations once again, and they became effective on May 20, 2010.

DISCUSSION

In Dau Dayal v. State of Uttar Pradesh, AIR 1959 SC 433 the Supreme Court stated the purpose of trade mark legislation as follows. The goal of trade mark law is to defend the rights of those who produce and sell items bearing distinctive trade marks against infringement by third parties who misrepresent the origin of their goods and use fake trademarks. A civil court lawsuit is often the best course of action to address such infringements. However, the law grants them the right to bring the matter before the Criminal Courts and prosecute the offenders in order to enable them to effectively and swiftly vindicate their rights because of the delay that is inherent in civil proceedings and the significant injustice that could result if the rights of manufacturers are not promptly protected. The Supreme Court clarified the difference between a trade mark and a property mark in the case of Sumat Prasad Jain v. Sheojanam Prasad and Ors., AIR 1972 SC 413. The difference between a trade mark and a property mark, according to the Apex Court, is that the former indicates the manufacturing or quality of the items to which it is connected, whilst the latter indicates ownership of those things. In other words, a trade mark is concerned with the products, but a property mark is concerned with the owner. Even if a portion of a person's moveable property leaves his possession and ceases to be his, a property mark linked to it remains.

The 'first-to-file' approach of Indian trade mark law does not need proof of the mark's earlier usage. A trade mark application may be submitted based on the mark's "proposed to be used or intent-to-use" status or on evidence of usage. Under the Trade Marks Act of 1999, the word "use" has taken on a wide definition and is no longer limited to the actual presence of the products in India. The use of a trademark in India is also regarded to occur when it

appears on the Internet and is published in foreign periodicals with a readership in India. The "Whirlpool case" [N. R. Dongre v. Whirlpool Corporation, 1996 (16) PTC 583], one of the first significant rulings in this area, established that a rights holder may pursue a passing-off lawsuit against an infringer based on the reputation of its trademarks abroad and that the presence of the goods or actual use of the mark in India is not required. If the rights holder has established a reputation and goodwill for the mark in India via marketing or other methods, it would be sufficient.

Important Definitions in the Trade Marks Act, 1999

1. Trade Mark

A trade mark is any term, phrase, symbol, or design, or a combination of words, phrases, symbols, or designs, that is used in commerce to identify and differentiate the source of products or services provided by one firm from those of other businesses. As previously mentioned, the definition of "trade mark" under Section 2(1)(zb) has been expanded to mean a mark that can be represented graphically and that can distinguish the goods or services of one person from those of others. This definition now encompasses both goods and services and may include the shape of the goods, their packaging, and a combination of colors.

The term "mark" refers to any design, brand, heading, label, ticket, name, signature, word, and letter, and number, form of the product, packaging, or combination of colors. (See Section 2(1) (m)).

Due to the comprehensive nature of the definition, any mark will be covered as long as it meets the following criteria:

a. capable of being visually portrayed; and
b. Able to differentiate between the products or services provided by different people.

2. Service

The addition of the new definition of "service" is intended to benefit businesses that provide services like banking, communications, education, finance, insurance, chit funds, real estate, transport, storage, material treatment, and processing as well as businesses that provide boarding, lodging, entertainment, amusement, construction, repair, or the dissemination of news or information. The only difference between a service mark and a trade mark is that a service mark is used to identify and differentiate the provider of a service as opposed to a product. A mark for products often appears on the item or its packaging, whereas a service mark typically appears in advertisements for services. The term "registered trade mark" as used in Section 2(1) (w) now refers to a mark that is genuinely listed on the Register and is still in use. Instead of every seven years as required by the current Act, a trade mark's registration should be renewed every 10 years.

3. Certification Trade Mark

"Certification trade mark" refers to a mark that can distinguish between goods or services that it is used in connection with and that are certified by the mark's owner in terms of origin, material, mode of manufacture of goods or performance of services, quality, accuracy, or other characteristics, from goods or services that are not so certified and are registrable as such under Chapter IX in respect of those goods or services.

4. **Collective Mark**

The introduction of "collective mark" will benefit the traditional Indian family trademarks. The new definition of "collective mark" has been supplied for the advantage of members of an association of individuals (but not partnerships). A trade mark used to differentiate the products or services of members of an organization of people (not a partnership within the definition of the Indian Partnership Act, 1932) that is the mark's owner from those of others is referred to as a "collective mark" under Section 2(1) (g) of the Act.

5. Trade Description

Any description, assertion, or other indication, whether direct or indirect, is considered a trade description under Section 2(1) (z a).

a. with regard to the amount, size, scope, weight, or number of any items; or
b. based on a categorization that is widely accepted or utilized in the industry, as to the level of quality of any products or services; or
c. about a product's suitability for its intended use, strength, performance, or behavior, including whether it qualifies as a "drug" under the 1940 Drugs and Cosmetics Act or a "food" under the 1954 Prevention of Food Adulteration Act;
d. about the location or nation in which such products or services were created, produced, or offered, as the situation may be; or
e. with regards to the manufacturer's name and address or another indication of their identification, the individual providing the services, or the client for whom the items are being produced;
f. as to the manner in which any commodities are manufactured, produced, or provided; or
g. with regard to the components of any items; or
h. with regard to any items covered by an active patent, privilege, or copyright, and includes:
    i. any description of the use of any mark that, in accordance with commercial tradition, is often interpreted to constitute a sign of any of the aforementioned things;
    ii. any bill of entry or shipping bill's description of any imported items;
    iii. any other description that may be mistaken for all or any of the aforementioned things;

6. Well Known Trade mark

India acknowledges the idea of well-known trademarks as a signatory to the Paris Convention and TRIPS. In accordance with Section 2(1) (z g) of the Trade Marks Act of 1999, "well-known trade mark" refers to a mark that has become so well-known to the significant portion of the public who uses such goods or receives such services that the use of such mark in relation to other goods or services would likely be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to those other goods or services. A mark is given enhanced protection if it has been given the well-known mark designation. The Registrar is required by the Act to defend a well-known mark against an identical or similar trade mark[9], [10].

7. Acceptable Use

In regard to a registered trade mark, Section 2(1)(r) defines "permitted use" as the use of the following:

A. in connection with products or services by a registered user of the trade mark –

i. to which he is associated professionally; and
ii. with regard to which the trade mark is now still registered; and
iii. for which he has a registered user account; and
iv. That adheres to any restrictions or criteria that apply to the registration of registered users.

B. In respect to goods or services, by a person other than the registered owner and registered user.

i. to which he is associated professionally; and
ii. with regard to which the trade mark is now still registered; and
iii. with the registered proprietor's agreement expressed in writing; and
iv. That conforms with any restrictions or requirements that apply to both the user and the registration of the trademark.

The term "Appellate Board" has been substituted for "High Court" in the definition of "Tribunal" under Section 2(1)(ze). The clause to establish an Appellate Board in place of the High Court for appeals has caused the term "High Court" to be eliminated.

CONCLUSION

In conclusion, trademarks have a long and illustrious history that dates back centuries. Trademarks have played a crucial role in commerce and business, from the early symbols used by merchants to distinguish their wares to the elaborate legal structures that protect companies today. The introductory part gave a succinct summary of the importance and purpose of trademarks, focusing on how they help to identify goods and services and increase brand identification. The historical viewpoint illuminated the development of trademarks and demonstrated their flexibility and durability across many cultures and periods. We may better understand trademarks' continuing importance in contemporary society and recognize their essential role in promoting fair competition and consumer protection when we are aware of their historical foundations. Trademarks are still essential for creating brand identification and building customer confidence as firms develop and grow in the global market.

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CHAPTER 18

AN OVERVIEW OF REGISTRATION OF TRADEMARKS

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ABSTRACT:

Trademark registration is a crucial legal procedure that gives companies unique rights to safeguard their brand identity and set themselves apart from rivals' products and services. The importance of trademark registration is examined in this chapter along with its advantages for legal protection, brand identification, and market competitiveness. It also covers the prerequisites and steps necessary to register a trademark, highlighting the need of performing exhaustive searches and abiding by all applicable rules and laws. This chapter also emphasizes how trademark registration contributes to customer confidence, innovation, and ease of international commerce.

KEYWORDS:

IP,Intellectual Property, Trademark,Trademark registration, Market Competitiveness.

INTRODUCTION

In the realm of business and commerce, trademarks are very important. They act as important assets for businesses, enabling them to safeguard their brand identities and differentiate their goods apart from those of their rivals. Understanding trademarks' definition, function, registration procedure, and the rights and advantages they grant is necessary for an introduction to them. A unique sign, symbol, term, phrase, design, or combination of these that identifies and symbolizes a certain business, item, or service is known as a trademark. As a distinctive identifier, it enables customers to identify and link the source of the products or services to it. Brand names, logos, catchphrases, taglines, product packaging, and even distinctive sounds or fragrances are all examples of trademarks[1], [2].

The main function of a trademark is to provide the owner exclusive rights and prevent competitors from using identical indications that can confuse customers or lessen the uniqueness of the brand. A company may prove its ownership of a trademark and get legal protection by registering it in a particular country.An application must normally be submitted to the relevant intellectual property agency or entity to register a trademark. The mark must be described in full in the application, together with its visual representation and the particular products or services it will be used to distinguish. The intellectual property office may also conduct a full review as part of the registration procedure to make sure the mark complies with all rules and does not clash with any already registered marks.

A trademark owner acquires the only right to use the mark in connection with the designated products or services when it has been registered and authorized. This gives the owner the right to forbid others from making use of the same mark or acting in a way that could lead to misunderstanding or damage the reputation of the brand. The owner may take legal action to protect these rights and seek redress if their trademark is violated or used without authorization.

Trademarks provide companies with several advantages. By setting their goods or services apart from competitors' offerings, they create a competitive edge by encouraging client loyalty and brand awareness. Due to customer associations with the mark and certain attributes and characteristics, trademarks can help businesses establish and safeguard their reputation. Trademarks may also be leased, sold, or used as loan collateral, which increases their worth significantly[3], [4].Ancient civilizations have been using trademarks for thousands of years. Trademarks were first used by merchants and artisans to distinguish their products from those of rivals and build a reputation for excellence.

Quick Synopsis Of Trademark History:

1. Ancient Trademarks: Ancient civilizations including Egypt, Greece, and Rome all used trademarks. To identify the origin or caliber of their wares, artisans would label their products with distinctive symbols or marks.
2. During the Middle Ages, guilds were established to control commerce and defend the interests of artisans. Guild members would use markings or symbols to distinguish their goods and show that they were part of a certain guild.
3. Royal Charters and Monopoly Marks: European monarchs started awarding exclusive rights to people or organizations to make and sell certain items in the 13th century. These rights often included a mark or symbol, which developed into the first kind of trademark protection.
4. Early Trademark Legislation: The Bakers' Marking Law, the earliest known trademark legislation, was passed in England in 1266. To distinguish the source and quality of their bread, bakers were compelled by this rule to adopt a distinguishing mark. In the years that followed, similar legislation was passed in other European nations.
5. Trademarks and the Industrial Revolution: During the 18th and 19th centuries, the Industrial Revolution significantly increased commerce and the creation of branded products. Trademarks have become more important in differentiating items and safeguarding producers' reputations as mass manufacturing has increased.
6. Trademark Registration: In the 19th century, the idea of official trademark registration first emerged. The first federal trademark registration system was established in the United States in 1875. Subsequently, other nations established their registration procedures.
7. Worldwide Trademark Cooperation: As the world's economy grew, attempts were undertaken to create worldwide agreements for the protection of trademarks. In 1883, the Paris Convention for the Protection of Industrial Property was ratified, establishing a basis for international trademark protection.
8. Modern Trademark Laws: Trademark legislation has grown and changed through time to include more facets of intellectual property. Today, trademarks may also include words, phrases, sounds, colors, and even product packaging in addition to symbols and emblems.
9. Trademarks in the Digital Age: With the development of the internet and e-commerce, new possibilities and problems for trademark protection have emerged. In the digital age, issues including counterfeiting, domain name conflicts, and online trademark infringement have grown significantly.

The Trade Mark Registrar

The Controller-General of Patents, Designs, and Trade Marks is designated by the Central Government as the Registrar of Trade Marks for the Trade Marks Act, 1999, according to Section 3 of that law. Under Section 3(2), the Central Government may also designate other officials to carry out the duties that the Registrar may delegate to them for execution under his supervision and guidance.

Single Register of Trade Marks

The requirements of Section 6 pertain to the upkeep of a single Register of Trade Marks at the Trade Marks Registry's Head Office and permit the upkeep of records on computer floppies, diskettes, or in any other electronic form as long as the required precautions are followed. To register trademarks, Section 7 gives the Registrar the authority to categorize products and services following the International Classification of commodities and services and to resolve any ensuing disputes. The Registrar must publish an alphabetical index of categorization of products and services following Section 8 of the Act[5], [6].

How extensive is trademark protection?

Nearly all nations in the world allow trademark registration and protection. To simplify scrutiny, search, and possible objection by third parties, each national or regional office maintains a Register of Trademarks that contains complete application information on all registrations and renewals. However, the ramifications of the registration are restricted to the nation (or nations, in the case of a regional registration) in question.WIPO oversees a worldwide registration system for trademarks, eliminating the need to submit separate applications to each country or regional office. The Madrid Agreement Concerning the International Registration of Marks and the Madrid Protocol are the two agreements that regulate the system. People who have a connection (whether through nationality, domicile, or establishment) to a nation that is a party to one or both of these treaties may obtain an international registration that is effective in some or all of the other nations of the Madrid Union based on a registration or application with the trademark office of that nation (or related region).

DISCUSSION

Registration of Trade Marks

Registration is the procedure through which a trademark is registered in the Register of Trademarks. Anyone claiming ownership of a trademark that they have used or intend to use may submit an application for registration of that trademark in the manner specified by the Trade Mark Registry, whose jurisdiction includes the applicant's principal place of business. Anyone may submit an application in his name for a later assignment of the registration in the name of a business that is intended to be founded. The Trade Marks Rules, 2002's provisions included in Rules 25 to 31 and 33 to 36 specify the application process for trademarks[7], [8].

Registration Procedure

The 'first to file' approach is the foundation of the Indian registration process. Therefore, the owner of the rights must apply for the registration of its mark as soon as feasible. Depending on whether a third party files an opposition to the trademark, the registration of a trademark in India normally takes two to three years. In India, the proper office to file a trademark application with is the Office of the Controller General of Patents, Designs, and Trade Marks. The Mumbai, Delhi, Chennai, Ahmedabad, and Kolkata offices are all branches of this one.

Based on the geographical jurisdiction, any of these offices may receive a trademark application.

The following are the several stages that are included in the registration procedure in India:

1. Trade Mark Search

It is wise to review the list of trademarks that have already been registered before submitting a registration application to guarantee that registration won't be rejected due to the proposed mark's similarity to an already registered or forbidden mark. To find out whether any other parties are perhaps already utilizing the trademark, it is important to do a common law search as well.

2. Who May Apply for Trade Mark?

Any person "claiming to be the owner" of the trademark "used" or "planned to be used" by him" may submit an application in the required way for registration of his trademark, according to Section 18 of the Trade Marks Act, 1999. The term "any person" is broad enough to refer to any person, business, organization, group of people, society, HUF, partnership firm, whether registered or not, government, trust, etc. [General Clauses Act, 1897, Section 3(42)]

3. Company

A business may submit a request for the registration of a trademark under its name. The country of incorporation and the kind of registration, if any, must be stated in the case of a company that was formed outside of India.A partnership firm must apply the names of each partner who engages in business with the company. A minor's name should be included in the partnership together with the name of the guardian who will be acting on their behalf. According to a ruling, any partner's name that is missing from the TM-1 (an application to register a trademark for a particular commodity or service) or related new application form may be rectified with the proper documentation. Such adjustments won't result in a change in the mark's ownership. Jupiter Match Works v. Vivekananda Match Company, 1991 PTC 61. Nevertheless, the partnership will alter if a partner's name is added or removed after the application date.

4. Trust

A trust may apply on its behalf, via its managing trustee, chairman, etc.

5. Government

Like any other individual, the Central or State Government, as well as any enterprise or corporation they own or control, may apply for the registration of a trademark.

6. Joint Applicant

When the mark is used or expected to be used in connection to products or services associated with the joint applicants, Section 24 permits the registration of two or more individuals as joint owners of the trademark. Only those who have a place of business in India are eligible to register a trademark application under Indian law. If it isn't the case, the rights holder must apply to a trademark agency or attorney. The trademark agency or attorney may prepare, submit, and pursue the applications in addition to doing a trademark search.

7. Filing and Prosecuting Trademark Applications

According to Rule 4, depending on where the applicant resides or has his principal place of business, an application for registration of a trademark may be made on Form TM-1 with the prescribed fee of "2500/- at one of the five offices of the Trade Marks Registry located at Mumbai, Delhi, Kolkata, Chennai, and Ahmedabad. In the event of joint applications, the individual whose name is initially indicated as having a place of business shall be the applicant's major place of business in India. If the applicant does not have a major place of business in India, he must apply at the office whose territorial jurisdiction includes the location of the address he provided for service in India (as required by Rule 18). The jurisdiction of the relevant office once established is unaffected by changes to either the primary place of business in India or the address for service in India (Rule 5). Additionally, trademark applications may be submitted online using the website (www.ipindiaonline.gov.in/etmr/).

8. Review by the Trade Marks Office

The Trade Marks Office examines the application once it is submitted to make sure it is comprehensive in all aspects before assigning an application number. The application number becomes the registration number if the trademark is registered.

9. Preliminary Approval and Publication, Show Cause Hearing or Rejection of the Application

The Trade Marks Office evaluates whether the trademark is disqualified from registration throughout the examination procedure based on either absolute reasons for rejection or relative grounds for refusal as specified in the Trade Marks Act, 1999. As a result, they publish an examination report, and the applicant has one month from the publication of the examination report to react to the objections mentioned in the examination report. The Registrar of Trade Marks then decides whether the application should be refused, accepted for advertisement, accepted subject to certain limitations, or put up for a "show cause" hearing, during which the application may be accepted, rejected, or accepted subject to certain limitations, based on the response to the examination report that has been filed by the applicant. If the application is denied, the applicant may appeal the decision of the Registrar of Trade Marks by contacting the Intellectual Property Appellate Board.

10. Registration

If a third party does not object to the trademark within three months of its publication in the Trade Marks Journal, the trademark will continue to registration, at which point the Trade Marks Registry will issue a registration certificate.

11. Requisites for Registration

There are no requirements for registration that are explicitly listed in the Trade Marks Act of 1999. The definition of a trademark and the formalities for registration have converged. Instead of describing requirements for registration, Sections 9(1), (2), and (3) and Section 11 identify reasons for denial, which are also requirements for registration. The majority of the substantive legislation established by the Trade & Merchandise Marks Act, of 1958 is still enforceable and would serve as the foundation for applying the Trade Marks Act, 1999's provisions. Four types of trademarks, including names, signatures, words, and other unique markings, were established by the earlier application of trademark law. The majority of the underlying ideas would still be valid under the new regime. Now, any trademark that is not affected by one of the two types of reasons for rejection or other specified restrictions may be

registered for any products or services. As was already noted in the preceding section on the legal definition of a trademark, the first requirement is that it must be a trademark within the meaning of the Trade Marks Act, of 1999. This idea itself imports several criteria. Many restrictions result from Section 2(1) (z b)'s definition of a trademark. The trademark that is being sought for registration in India must serve the purposes of identification and distinction. It is not a consideration to be taken into account when deciding whether to register a trademark if the mark is already registered in another member nation of the Paris Convention* or if registration has been rejected. To allay concerns about compliance with Article 7 of the Paris Convention, an explanation has been included in Section 9. The phrase "capable of distinguishing goods of one person from those of others..." appears in the definition of a trademark in Section 2(1)(zb), and it indicates the existence of a unique character. Only when a mark meets the criteria of unique character, in addition to the other requirements in the definition of the trademark, is it deemed to be a trademark? The phrase "distinctiveness" has been replaced with "distinctive character," which would bring the law's treatment of the trademark's differentiating function into line with international standards. Like prior legislation, the Trade Marks Act of 1999 acknowledges that unique character may be innate or acquired.

Duration and Renewal of Trade Mark Registration

In India, trademark protection is unwavering as long as the registration is renewed every ten years. Six months before the trademark's validity term expires, a renewal application may be submitted. A trademark may be registered under Section 25 of the Act for a maximum of ten years. Section 25 permits renewal of registration for further periods of 10 years, starting from the date of the initial registration or the most recent renewal, followingthe widely recognized worldwide practice and to lessen the workload of the Trade Marks Office. Section 25(3) allows for a grace period of six months for payment of the renewal cost after the registration expires to simplify renewal, subject to payment of the necessary premium. In accordance with subsection (4), trademarks may be added back to the register and registered again after paying the renewal costs. Contrary to patents, copyright, or industrial designs, trademark rights may continue to exist for as long as the mark is used by the owner. A registered trademark, however, runs the risk of being expunged from the register if it is not renewed[9].

If the owner of a trademark comes across another trademark that is confusingly similar to theirs and has been published in the Trade Marks Journal, they have three months from the journal's publication to file an opposition. Regardless of how long they have been using the mark or the size of their business, a trader just has to employ a unique mark on or in connection with their products to gain a property interest in it. [Consolidated Foods Corporation v. Brandon & Co. Pvt. Ltd., AIR 1965 Bom.35] Priority in the use and use of a trademark is preferable to priority in registration. According to the Supreme Court's ruling in Commissioner of Income-tax v. Finlay Mills Ltd., AIR 1951 SC 464, the cost of trademark registration is a capital expense and is thus deductible under the Income-tax Act. The Apex Court ruled in Ramdev Food Products (P) Ltd. v. Arvind Bhai Rambai Patel, 2006 (8) SCC 726, that the registration of trademarks is intended to clear up any uncertainty in customers' minds. Thus, selling products made from two different sources might confuse the minds of customers. It may even be seen as public fraud in a specific circumstance. Unquestionably, the owner of a registered trademark has a legal claim to such mark. He will have legal recourse under Section 21 of the Trade & Merchandise Marks Act, 1958 if such use is made by someone other than the person in whose name the trademark is registered. Therefore, unless an explicit license is in place, two individuals are often not permitted to use the same trademark.

Opposition to Registration

According to Section 21, "any person" who has or does not have a business or personal interest in the case may submit a Notice of Opposition to the application for registration of a trademark. The individual does not have to have previously owned a registered trademark. He may be a consumer, a buyer, or a member of the general public who will probably utilize the products. It is not necessary to consider the opponent's credibility.

Important prerequisites for submitting a Notice of Opposition:

1. The Notice of Opposition must be submitted in every instance (whether it involves a certification mark, collective mark, or ordinary trademark) on the standard form TM-5 and include the required cost of '2,500.
2. It must be submitted to the proper office; see Rule 8
3. Where applicable, the "address for service" requirements of Rule 18 must be followed.
4. The Notice of Opposition must include the information required by Rule 48, which is as follows:

An opposition notice must include these things.

(a) About an application to which an opposition is made-

i. The application number that opposition is being filed against;
ii. A description of the products or services included in the trademark application that opposition is being filed against; and
iii. The applicant's name for the trademark.

(b) About the earlier mark or the earlier right that forms the basis of the objection,

i. A declaration to that effect and a description of the status of the earlier mark in cases where the objection is based on an earlier mark;
ii. The filing date, including the priority date of the earlier mark, and, if available, the application number or registration number;
iii. If the objection is based on an earlier mark that is said to be a well-known trademark as defined by subsection (2) of section 11, a statement to that effect and a mention of the country or countries in which the earlier mark is acknowledged as being well-known.
iv. Information indicating whether the earlier mark is registered or unregistered and if it has a repute within the meaning of paragraph (b) of sub-clause (2) of section 11 of the Act if the objection is based on an earlier trademark;
v. A depiction of the opponent's mark and, when necessary, an explanation of the opponent's mark or earlier right.

Reasons for Opposition

No grounds may be used to register an objection under Section 21, which mandates the submission of a Notice of objection. As a result, the opponent is free to assert any defense in objection to the registration of the trademark under any section of the Trade Marks Act, 1999, and the Rules thereunder. However, under section 11(5), a trademark may not be rejected for registration on any of the grounds listed in subsections (2) and (3) unless the owner of the earlier trademark objects on one or more of those grounds during the opposition process. In this regard, it should be observed that sections 9 and 11 both provide provisions for "absolute grounds for refusal of registration" and "relative grounds for refusal of registration,"

respectively. [See also Sections 12, 13, 14, and 18, which may serve as grounds for objection].

The following is a list of potential defenses against registration.

(1) That the advertised trademark is not registrable because it is not unique nor distinguishable or because it does not meet the Act's registrability standards;

(2) The applicant is not entitled to obtain an exclusive right therein by registration since the said trademark's fundamental component is a phrase that is commonly used to describe the nature or quality of the products;

(3) That a visual representation of the trademark is not possible;

(4) The trademark lacks unique character, or the inability to differentiate the products or services of one person from those of another;

(5) That the trademark only consists of marks of indication (marks that are directly describing the nature or quality of the goods or services or indicating geographical origin) that may serve to designate the kind, quality, intended use, values, geographical origin, or the time of production of the goods or rendering of the services, as well as other characteristics of the goods or services;

(6) That the trademark only comprises marks or indications that are in use today or that are legitimately and consistently used in the industry (may relate to generic names or marks widely used in the industry);

(7) That the trademark is of a kind that might mislead consumers or create confusion;

(8) That the trademark includes or consists of any material that might be harmful to any class or group of Indian citizens' religious sensitivities;

(9) That scandalous or obscene material is included in or included by the trademark;

(10) The trademark is

a. If a trademark is identical to or similar to one that was used earlier, and
b. It is registered for goods or services that are not comparable to those for which the earlier trademark is registered in the name of a different proprietor, the earlier trademark is well-known in India, and the unjustified use of the later mark would unfairly exploit the earlier trade mark's distinctive qualities or reputation.

(11) That the applicant's mark is ineligible for court protection because the use of the mark would violate the opponent's registration and might be stopped by the court;

(12) That the applicants lack the necessary qualifications to register under Section 12 of the Act;

(13) The information provided by the user in the registration application is false.

CONCLUSION

Trademark registration is essential for protecting firms' intellectual property rights and promoting fair competition in the market. Businesses may protect their brand identity legally by registering it and limiting unlawful usage and replication by others. Because registered marks are seen as credible and legitimate, trademark registration also improves brand awareness and customer confidence. Additionally, the registration procedure promotes

innovation by encouraging companies to spend money on R&D to build distinctive and original brands. Additionally, trademark registration makes it easier for companies to enter new markets and establish themselves internationally. Companies need to do thorough research to make sure their mark is distinctive and does not infringe on preexisting rights to realize the advantages of trademark registration. Businesses may successfully use trademark registration to preserve their priceless brand assets and boost their market position by abiding by the relevant rules and regulations.

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CHAPTER 19

A COMPREHENSIVE OVERVIEW OF COPYRIGHT

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ABSTRACT:

The notion of copyright, its significance, and its effects on numerous creative sectors are all introduced in this chapter. It looks at how copyright laws have evolved historically and how they serve to encourage creativity, reward innovation, and safeguard the rights of artists. The importance of originality, authorship, and the range of protection are other crucial aspects of copyright. Additionally, it explores the concerns and disagreements surrounding copyright in the digital era, particularly those about piracy, fair use, and striking a balance between increasing access to information and preserving intellectual property. In conclusion, this introduction serves as a starting point for further investigation of copyright law and its ramifications in the modern, dynamic creative environment.

KEYWORDS:

Copyright, Creativity, Intellectual Property, Innovation,Copyright Laws.

INTRODUCTION

The legislation grants the makers of cinematograph films and sound recordings, as well as authors of literary, theatrical, musical, and aesthetic works, the right to use the term "copyright." In contrast to patents, copyright protects expressions rather than ideas. A concept is not protected by copyright. Creators want to safeguard their creations, just like you would want to protect anything you own. Copyright guarantees a minimum level of protection for writers' rights over their works, fostering and fostering innovation[1], [2].Since creativity is the foundation of development, no civilized society can disregard the need of fostering it. Creativity is a necessary component of a society's economic and social progress. The copyright protection offered to the works of writers, artists, designers, dramatists, musicians, architects, and producers of sound recordings, cinematograph films, and computer software fosters a creative environment that inspires further creation from them and other creators.

Students are often taught the value of original thought and the significance of refraining from copying other people's work. The study lesson's goal is to increase students' knowledge and understanding of copyright law in general, including why it exists, how it got started, and significant developments in the field of copyright. It also aims to make students aware of the moral and ethical implications of using materials that are copyrighted.The concept of copyright protection didn't take off until the introduction of printing, which made it possible for literary works to be mechanically replicated rather than copied by hand. This resulted in the granting of privileges by rulers and monarchs, entitling recipients to exclusive reproduction and distribution rights for a certain amount of time, with penalties including fines, seizure, confiscation of copies made in violation of the privilege, and perhaps damages[3], [4].

The Statute of Anne, the first copyright Statute, was adopted in 1709 as a result of criticism of the privileges system. The link between common law copyright and copyright protected by the Statute of Anne was under issue in the 18th century. The issue was eventually resolved by the House of Lords in 1774, who decided that although under common law the author had the only right to print and publish his work after publication the rights in it were solely governed by the Statute. Before the Copyright Act of 1911, which repealed the Statute of Anne, this common law privilege in unpublished works persisted. The well-known property right known as copyright has its origins in the common law system and is now administered by the national laws of every country. The term "copyright" refers to an author's exclusive right to duplicate his work and to forbid others from doing the same. Even before the idea of copyright took root, there are well-known examples of legal action to penalize a person for stealing another's literary or artistic creation. Initially, the notion was focused on the literary and artistic industries. With recent technical breakthroughs, copyright protection has significantly increased. The protection provided by copyright laws today now includes not just artistic, musical, theatrical, and literary works but also sound recordings, movies, television shows, transmissions, cable programs, and publishing layouts. Additionally, computer programs are now covered by copyright laws.

Copyright guarantees a minimum level of protection for writers' rights over their works, fostering and fostering innovation. Since creativity is the foundation of development, no civilized society can disregard the need of fostering it. Creativity is a necessary component of a society's economic and social progress. The copyright protection offered to the works of writers, artists, designers, dramatists, musicians, architects, and producers of sound recordings, cinematograph films, and computer software fosters a creative environment that encourages them to produce more and inspires others to produce. The Copyright Act, of 1957, which was revised in 1983, 1984, 1985, 1991, 1992, 1994, 1999, and 2012 to satisfy national and international standards, governs copyright law in India. The 1984 amendment expanded the definition of literary work to include computer programs, while the 1994 amendment included a new definition of computer programs. Computer programs are similarly the result of intellectual competence as any other literary work, which is the conceptual rationale for categorizing them as literary works.

The TRIPs agreement's requirements requiring performers' rights to be protected for at least fifty years from the end of the calendar year in which the performance took place were further implemented in 1999 by amending the Copyright Act of 1957. The Amendment Act also added a new Section 40A that gives the Central Government the authority to apply the Copyright Act's protections to broadcasts and performances produced abroad, provided that those other nations do the same for broadcasts and performances produced in India. Another new Section 42A gives the Central Government the authority to impose restrictions on the rights of foreign artists and broadcasting organizations[5], [6]. To improve clarity, eliminate operational challenges, and solve certain more recent problems that have arisen in the context of digital technologies and the Internet, the Act has been revised in 2012. In addition, the main goal of the Act's amendments is that, in the knowledge society in which we currently reside, it is essential to foster creativity to promote a culture of enterprise and innovation, so that creative people can realize their potential and keep up with the challenges of a rapidly expanding knowledge-based modern society.Although the idea of copyright has changed substantially over time, its origins may be traced back to early civilizations.

Broad Summary of The Copyright’s History

1. Early Origins: Ancient civilizations like ancient Greece and Rome, where the copying and performance of literary and artistic works were somewhat restricted, including copyright-like benefits.
2. British Statute of Anne (1710): In 1710, England passed the Statute of Anne, which marked the beginning of the current idea of copyright law. It was the first copyright legislation ever passed and gave writers temporary exclusivity over their works. This legislation was passed largely in response to publishers' worries about protecting their financial investments in book printing and distribution.
3. Copyright Laws: Other nations started to implement copyright laws based on the British model in the 18th and 19th centuries. These rules sought to strike a compromise between the rights of inventors and the general good. The scope of copyright laws has been increased to include a variety of creative works, such as literature, music, and visual arts.
4. International copyright Conventions: International copyright conventions were established in the 19th century. One of the most important international agreements in copyright law is the 1886 Berne Convention for the Protection of Literary and Artistic Works. It was designed to protect writers' rights internationally by harmonizing copyright laws.
5. Technological Developments: As new technologies like photography, sound recording, and cinema emerged, copyright law faced new difficulties. As a result of the need to respond to these changes, copyright law now includes particular clauses for various types of artistic expression.
6. Internet and the Digital Age The development of the Internet and digital technology confronted copyright law with never-before-seen difficulties. For owners of copyrights, the simplicity of duplicating and sharing digital information presented serious problems. To combat digital copyright infringement, several legislative frameworks and initiatives, like the Digital Millennium Copyright Act (DMCA) in the United States, were put into place.
7. Copyright Duration and Exceptions: There has been constant discussion over the length of copyright protection. Although copyright periods were initially just a little bit longer, they have now been greatly expanded. Today, many nations provide copyright protection for the duration of the author's life and a predetermined number of years after their death. To balance the rights of authors with the needs of the public, copyright laws also provide exceptions and restrictions, allowing for things like fair use, educational usage, and research.

It is essential to highlight that copyright law and its interpretations vary amongst nations since they each have unique legal systems and cultural settings. A complicated and dynamic issue, the history of copyright has been influenced by sociological, technical, and economic developments.

DISCUSSION

Copyright's Meaning and the Granted Rights

The legislation grants the makers of cinematograph films and sound recordings, as well as authors of literary, theatrical, musical, and aesthetic works, the right to use the term "copyright." In actuality, it is a collection of rights that includes, among other things, the

rights to the work's adaptation, translation, and public communication. It refers to having the exclusive right to create or replicate the work, or any significant portion of it, in any kind of physical form.

According to Section 14 of the Act, copyright refers to the exclusive right to perform or authorize the performance of the following actions about a work or any significant portion thereof:

For any literary, theatrical, or musical composition (apart from computer programs).

1. Storing the work on any media using electronic methods, which includes replicating it in any tangible form;
2. Distributing to the public copies of the work that aren't already in use;
3. Presenting the work in public or informing the public about it;
4. Creating a sound recording or cinematograph film on the work; or
5. Translating or adapting the work.

Additionally, if the work is translated or adapted, any of the aforementioned actions concerning the work may be carried out.

In the case of a computer program:

1. To do any of the tasks outlined about a piece of writing, theater, or music; and
2. Offering any copy of the computer software for sale or commercial leasing, or selling or giving it away for such purpose. For computer programs when the software itself is not the primary aim of the rental, however, such commercial renting does not apply.

In the case of an artistic work:

1. Replicating the work in any tangible form, including rendering a two-dimensional or three-dimensional work in two dimensions;
2. Making the work accessible to the public;
3. Making copies of a piece of art available to the public that doesn't already exist;
4. Incorporating labor into any film shot on film;

In the case of cinematograph film and sound recording:

1. creating a duplicate of the movie that includes a picture of an image or any other sound recording that contains it;
2. offering to sell, rent, or give away any copy of the movie or sound recording, even if such copy has already been rented out or sold;
3. Distributing the movie or audio recording to the general public.

In the case of a sound recording:

1. To create another audio recording that features it
2. To offer any copy of the sound recording for sale or hire, or to sell or give for hire
3. To make the sound recording available to the general audience.

The primary goal of the Act is to protect copyright owners against dishonest producers who attempt to mislead the public into thinking that the items being copied are those of the owner. Additionally, it seeks to deter dishonest producers from competing for the reputation of the copyright holder, who has worked hard to establish itself in the market.

In contrast to patents, copyright protects expressions rather than ideas. A concept is not protected by copyright. According to the ruling in M/s Mishra Bandhu Karyalaya & Others v.

Shivaratanlal Koshal AIR 1970 MP 261, copyright rules only protect certain ways in which ideas are expressed, not the ideas themselves. The same conclusion may always be drawn from different sources. The rule appears to be established that the author of a work in which absolute originality is necessary to be excluded is permitted to draw on earlier works on the subject without running the risk of being accused of plagiarism as long as he puts enough thought into what he has taken and corrects it in a way that results in an original work.

Works in Which Copyright Subsists

According to Section 13 of the Copyright Act, some classifications of works that are listed there are covered by copyright throughout India. India still upholds copyright for the following types of works:

1. Original writings, plays, songs, and other creative works;
2. Cinematograph films; and
3. Recordings of sound.

K. and J. Cooper v. Macmillan and Company Limited, AIR 1924 PC 75, it was decided that the term "original" does not imply that the work must be the product of unique or imaginative ideas. The purpose of copyright laws is to protect people's right to free speech, which includes the freedom to express ideas verbally and, in the case of literary works, in writing or print. The Act does not specify that the expression of the notion must be in an original or unique form; rather, it only stipulates that the work must not be directly or indirectly derived from another work and must have been created by the author[7], [8]. It is impossible to specify in concrete terms the exact knowledge, labor, judgment, literary ability, or taste that the author of a book or other compilation must apply to its preparation to obtain copyright in it within the meaning of the Copyright Act. It must always be substantially dependent on the unique circumstances of each instance and always primarily a matter of degree.

The Delhi High Court ruled in Camlin Private Limited v. National Pencil Industries, (2002) Del, that unique literary works are protected by copyright. However, it is not required that the work express original or innovative thinking since the Copyright Act is more concerned with the expression of mind than the originality of ideas, especially in the case of literary works, the expression of thought in print or writing. For copyright law, originality refers to the expression of ideas, although these ideas do not always have to be new or unique. The work must be original and not a copy of another piece; this is the fundamental criterion.

Artistic Work Means

a. an engraving, a painting, a sculpture, a drawing (including a diagram, map, chart, or plan), or a photograph, regardless of whether any such work is of artistic quality;
b. an architectural creation; and
c. Any other handcrafted creative creation.

A "musical work" is any composition that just consists of music; it includes any visual representation of the composition but excludes any words or actions that are meant to be sung, spoken, or performed in conjunction with the composition. A musical piece does not need to be recorded to be protected by copyright. Regardless of the media on which the recording was made or the process used to create the sounds, a "sound recording" is any recording of sounds from which other sounds may be created. Sound recordings include a CD-ROM and a phonogram.The term "cinematograph film" refers to any visual recording on any medium created using a method from which a moving image may be created by any method and includes a sound recording accompanying such visual recording. The term

"cinematograph" is also meant to include any work created using a method similar to cinematography, such as video films.

Copyright About Software

Computer programs, tables, and compilations, including computer "literary databases," are included in the definition of "Literary work" under section 2(o) of the Copy Right Act of 1957. The above-mentioned definition of "computer program" was added to the definition of "literary work" in 1984, and the new definition added in 1994 under Section 2 refers to a set of instructions expressed in words, codes, or in any other form, including a machine-readable medium, that can instruct a computer to carry out a specific task or produce a specific outcome. The development of the computer itself led to the creation of computer programs, commonly referred to as "software".

The software didn't, however, become widely accessible until the introduction of personal computers (PCs) in the 1980s, at which point the necessity for copyright protection of software arose. Initially, computer programs were created by the hardware makers of computers. As PCs became more widely used, the development of software separated from computer makers. Software development and production are becoming autonomous activities, and there are more businesses involved in these activities than ever before. However, the production and diversity, which have multiplied, are what have led to issues with copyright enforcement in them. While fierce competition among software producers has, on the one hand, improved the quality of computer programs and reduced prices, the increased opportunities have also given rise to what is commonly known as "software piracy," or the act of duplicating and distributing software without the permission of the copyright holder[9], [10].

The philosophical argument in favor of categorizing computer programs as examples of "literary works" has been that they are similarly the result of intellectual competence as other literary works. The process of creating a computer program is akin to writing a book or other literary work, with the exception that the "language" utilized and its applications are significantly different. Even thoughthe software may be built by a single programmer, the majority of important programs are the result of collective work. Medium-sized to large-sized teams spend months or even years writing a program. Unauthorized copies of computer programs are subject to the same legal repercussions as unauthorized copies of literary works under the Copyright law. However, because it is simple for a potential pirate to copy computer software and duplicate it and because copies of software are identical to the originals, publishers and owners of software face difficult challenges when trying to protect their rights under the Copyright law when widespread software piracy occurs. Software piracy has gotten out of control in certain nations and is now a sticking point in discussions for global trade agreements. Software piracy has presented severe difficulties for enforcement agencies both internationally and inside local jurisdictions. These issues were addressed by the Copyright (Amendment) Act of 1994, which also included globally accepted standards and practices for copyright enforcement in the context of computer programs. The remedies for copyright infringement contain a discussion of the pertinent clauses.

Ownership and Authority

Copyright protects the legal rights of writers or those who have created intellectual property such as books, music, plays, movies, and sound recordings. In most cases, the original owner of the copyright in a work is the author.

According to Section 2(d) of the Act, an "Author" is:

1. In the case of a literary or dramatic work the author, i.e., the person who creates the work
2. The composer of a musical composition.
3. The producer in the case of a cinematographed movie.
4. The producer in the case of a sound recording.
5. The photographer in the case of a picture.
6. In the case of any computer-generated literary, dramatic, musical, or aesthetic production, the person who makes the piece.

An audio recording of music has several rights holders. For instance, the lyricist who created the words, the composer who created the music, the vocalist who performed the song, the musician (or musicians) who created the background music, and the individual or business that created the sound recording.A sound recording often includes several rights. Every owner of a right to a sound recording must provide permission, and this is a requirement. This would, among other things, contain the sound recording's producer, the lyrics' author, and the music's composer. In the event of government work, the government shall be the first owner of the copyright therein, barring any agreements to the contrary. If a work is created or first published by, or under the direction or control of, a public enterprise, the public endeavor will be the original owner of the work's copyright absent a conflicting agreement. The owner of a newspaper, magazine, or similar periodical shall absent any agreement to the contrary, be the first owner of the copyright in the work insofar as the copyright relates to the publication of any literary, dramatic, or artistic work created by the author while employed by the owner under a contract of service or apprenticeship by a newspaper, magazine, or similar periodical. The employer must absent any agreement to the contrary, be the first owner of the copyright therein in the event of a work created during the author's employment under a contract of service or apprenticeship. Without a written agreement to the contrary, the person who requested the creation of a photograph, painting, portrait, engraving, or cinematograph film for valued consideration shall be the original owner of the copyright therein.

Duration of Copyright

The terms of copyright for published literary, dramatic, musical, and artistic works, anonymous and pseudonymous works, posthumous works, pictures, cinematograph films, sound recordings, works by governments, PSUs, and works by international organizations are covered in Sections 22 to 29. Literary, theatrical, musical, and artistic works are protected by copyright for the lifetime of the author plus 60 additional years, or 60 years after his death. The word "copyright" is to be interpreted as referring to the author who passes away last in cases of joint authorship, which indicates cooperation between two or more writers in the development of the work.The term of protection for copyright in posthumous, anonymous, and pseudonymous works, photographs, cinematograph films, sound recordings, and works of government, public enterprises, and international organizations is 60 years beginning at the start of the calendar year immediately following the year in which the work was first published. Every broadcasting organization now has a specific right known as a broadcast reproduction right concerning its broadcasts according to the Copyright (Amendment) Act of 1994. Every broadcasting organization is entitled to use this privilege for 25 years commencing on the first day of the calendar year that follows the year the broadcast is produced. According to the Copyright (Amendment) Act of 1999, if a performer participates

in a performance or appears in one, he or she has a specific right known as the "performer's right" that may be used for 50 years.

By allowing certain restricted uses of copyrighted content without asking express permission, fair use clauses in copyright law try to strike a balance. But defining what counts as fair usage may be arbitrary and differs across states.Furthermore, worries about stifling creativity, impeding innovation, and restricting access to cultural material have been highlighted by the extension of copyright tenure and the complexity of international copyright law. It is critical to reevaluate and modify copyright rules to meet the changing requirements of society as technology develops. This can include looking at alternative licensing schemes, supporting open-access projects, and encouraging team-based approaches to invention and creativity.

CONCLUSION

Copyright protects authors' rights and promotes the creation of new works, playing a critical role in the contemporary creative scene. It acts as a legal framework that gives artists and writers exclusive rights, allowing them to manage and profit from their creative works. The problems of the digital era and technical breakthroughs have led to changes in copyright laws throughout time. Although copyright protection is crucial, it also raises issues and presents difficulties in the linked world of today. The development of digital technology and the internet has made it simpler to disseminate and duplicate works of art, which has given rise to problems like piracy and unlawful usage. It has become very difficult to strike a compromise between defending intellectual property and advancing information access.

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CHAPTER 20

FUNCTIONS OF THE COPYRIGHT BOARD

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ABSTRACT:

A regulatory entity that is essential to the administration and enforcement of copyright laws is the Copyright Board. The Copyright Board's duties and importance in defending intellectual property rights are examined in this chapter. It examines the Board's primary duties, such as licensing, establishing tariffs, resolving conflicts, and formulating policies. The significance of a strong Copyright Board in promoting a fair and equitable copyright system that is advantageous to both artists and users. Policymakers, stakeholders, and people may better grasp the Copyright Board's activities and the role they play in the copyright ecosystem.The Copyright Board is in charge of arbitrating disputes, issuing licenses, setting royalties, and carrying out judicial duties. The Chairman of the Copyright Board may form Benches to help the Board exercise and carry out its authority and duties. The Copyright Board in Kenya is in charge of managing and upholding copyright and related rights as well as planning and carrying out educational campaigns to increase public knowledge of these rights.

KEYWORDS:

IP, Copyright, Copyright Board, Licenses, Rights.

INTRODUCTION

In many nations, the Copyright Board is a significant organization that is essential to the administration and enforcement of copyright laws. It is often created to manage different copyright licensing and protection-related tasks under the jurisdiction's copyright law. I can provide you with a basic outline of the duties normally performed by copyright boards, while unique jurisdictions may have variances in these duties and authorities.

Some Typical Duties Performed By A Copyright Board:

1. Granting licenses for the use of works protected by copyright is one of a copyright board's main responsibilities. This includes issuing licenses for the copyrighted works' replication, public performance, broadcasting, public communication, and other types of exploitation.
2. The tariffs or fees that copyright owners may collect for the use of their works are often decided by copyright boards. They evaluate potential uses of copyrighted information and determine fair and reasonable royalty rates for such uses, taking into account things like market circumstances, business customs, and the rights of both copyright owners and users.
3. Resolution of Disputes: Copyright Boards normally have the power to settle disagreements between copyright holders and users or licensees of works protected by copyright. They can arbitrate, judge, or settle disagreements over license conditions, royalties, terms of use, and other copyright-related issues.

4. Statutory Licenses: Copyright Boards sometimes have the authority to issue statutory licenses. These licenses often permit the use of copyrighted works for certain purposes like educational or non-commercial usage without first requesting permission from the copyright owner. The Board establishes the criteria and terms for these licenses.

5. Copyright Boards may be in charge of registering works protected by copyright in some countries. They keep track of a register of works that are protected by copyright, giving the public access to ownership information and aiding in the enforcement of copyright rules.

6. Policy Development: Copyright Boards often provide their input in the creation and formulation of copyright laws and rules. On issues about copyright law, such as proposed revisions, international treaties, and harmonization of copyright practices, they may provide advice and recommendations to the government.

7. Research and Advisory Services: Copyright Boards are permitted to do research and analysis on matters relating to copyright, such as the financial effects of copyright regulations, new technological developments, and international trends in copyright protection. Additionally, they could provide advice on questions of copyright to the general public, stakeholders, and governmental organizations.

Copyright Office

The formation of an office designated as the Copyright Office for Act purposes is mandated under Section 9 of the Copyright Act. A Registrar of Copyrights who will be nominated by the Central Government and who will operate under its supervision and directives will have direct responsibility over the Copyright Office [1], [2].

Copyright Board

The Copyright Board would be established under Section 11 of the Act, and the Central Government will be given the authority to choose its Chairman and up to two to fourteen members. A High Court judge who is now serving, recently retired, or someone who meets the requirements to be appointed as a judge shall serve as the board's chairman. The Secretary of the Copyright Board will be the Registrar of Copyright.In many nations, the administration body known as the Copyright Board is essential to the administration and enforcement of copyright laws. Although the Copyright Board's precise duties and authority may vary from nation to nation. The following are often its main responsibilities:

1. Establishing and regulating licensing and royalty rates for the use of copyrighted works is one of the Copyright Board's main responsibilities. This involves establishing the restrictions and fees that users must pay to acquire licenses for such uses, as well as defining the circumstances under which copyrighted items may be copied, distributed, performed, or transmitted. The board provides a structure for users to get essential rights while ensuring that authors are fairly compensated for the usage of their works.

2. Resolution of Disputes: The Copyright Board often acts as a venue for settling disagreements between copyright holders and users. It may consider grievances, arguments, or appeals concerning licenses, royalties, or other copyright-related issues. The board has the power to review the available evidence, take into account all sides' views, and make judgments that are intended to settle disputes fairly and equally.

3. Setting Tariffs: The Copyright Board is in charge of setting tariffs for the use of items protected by copyright in various countries. Tariffs are set amounts that users must pay to get licenses for certain uses of works protected by copyright. To decide the proper tariff rates for various uses of copyrighted content, the board considers several variables, including the nature of the work, the kind of usage, and the current state of the market.
4. Statutory Licensing: The Copyright Board may, in certain circumstances, have the power to issue statutory licenses for certain uses of copyrighted works. Certain uses of copyrighted content are permitted under statutory licenses without the requirement to get the owner's express consent. The board establishes the criteria and circumstances under which such licenses may be issued, as well as the fees and restrictions imposed on the permitted uses.
5. Policy Recommendations: Regarding copyright rules and regulations, the Copyright Board may also provide policy recommendations and counsel to the government or legislative bodies. This might include researching how new technologies affect copyright, advocating changes to current legislation, or proposing actions to strengthen the defense of artists' rights and copyrighted works.

It's vital to keep in mind that different nations and legal systems may have different restrictions on the Copyright Board's precise duties and authority[3]. The summary provided above gives a broad overview of the typical duties carried out by copyright boards, but it is always advisable to consult the specific laws and rules of a given jurisdiction to comprehend the precise scope and duties of their respective Copyright Boards.

DISCUSSION

The Copyright Board's Duties

The following are the Copyright Board's primary responsibilities:

1. Resolution of disagreements on the number of copies of any literary, dramatic, or artistic work or recordings that are made available to the general public.
2. Resolving disagreements over whether a work's copyright term is shorter in any other nation than what is specified for that work under the Act.
3. Resolution of disagreements relating to the Section 19A-covered transfer of copyright.
4. The mandatory granting of licenses for Indian works was kept from the public.
5. The mandatory granting of a publishing license for unpublished Indian works.
6. Issuing a mandated license to translate and publish literary and theatrical works.
7. The mandatory licensing of the publication and reproduction of creative, scientific, or literary works for certain purposes.
8. Determining the royalties that must be paid to the copyright owner.
9. The resolution of any objections to the fees levied by performing rights societies.
10. Register corrections upon request from the copyright registrar or any other harmed party.

The Copyright Board is not authorized to restrict copyright use to a specific geographic region. The High Court whose jurisdiction the appellant lives or does business may hear appeals against decisions made by the Copyright Board, except for decisions made according to Section 6.

In the matter of Shri Urmila Charan Gupta v. Shri Charushila Sharan Gupta and Sumitra Nandan Gupta 1983 PTC 84, the Copyright Board's authority was defined. In this instance, it has been decided that no one else has the right to contest the Board's decision to dispose of all 38 volumes on a single application if it deems it appropriate or agrees to do so within the scope of its authority.

Assignment of Copyright

Any individual may get the copyright that belongs to an existing work or the potential owner of the copyright to a future work. The Copyright Act's Section 18 permits the transfer of copyright for both current and future works. In all situations, the copyright may be assigned completely, partly, generally, or subject to restrictions, and that too for the whole copyright duration or a portion of it. However, when a copyright is assigned to a future work, the assignment doesn't take effect until the work is created. According to Section 18(3), if the assignee passes away before the creation of the work, the legal representative of the assignee is also considered an assignee concerning the assignment of the copyright in future works[4], [5].

Where the copyright vests are outlined in Sections 17 and 18 of the Copyright Act of 1957. The publisher would typically own the copyright of a work created by an author for payment to the publisher, barring any agreements to the contrary, as stated in Section 17 of the aforementioned Act. Although this Section was indeed included in the Act of 1957, the rule of law existed long before this legislative provision. Second, the copyright may be transferred following Section 18; in this case, the purchaser would become the owner of the copyright.

Mode of Assignment

According to Section 19 of the Act, a copyright transfer must be made in writing and bear the owner's signature. Copyright is not automatically assigned upon receipt of payment or delivery of a manuscript. It is illegal and invalid to allocate anything orally. Dr. Suryakantha U. Kamath v. Setty Venugopala, K.A. According to Setty v. Dr. Suryakantha U. Kamath, AIR 1992 Kar 1, Section 19 stipulates that the assignment must be made in writing and be signed by the assignor or a representative who has been given proper authorization. If the assignment is made from another document and is also signed by the assignor or representative, the statutory requirement is met.

The tangible thing that is the subject of the copyright is distinct from the copyright. Therefore, it should be obvious that the copyright is not always transferred when the material item is transferred. The assigned work, and assigned rights, including their term, assigned territories, and assigned royalties should all be specified in the assignment of copyright. The assignment is still valid for five years and only inside Indian Territory in the absence of a time frame and a geographical scope. Unless otherwise stated in the assignment, if the assignee does not exercise his rights within a year of the date of the assignment, the assignment in respect of such rights will be regarded to have expired with time.

Any copyright assignment that conflicts with the terms and circumstances of the rights that have already been granted to a copyright society in which the work's creator is a member is invalid. The right of the author of the work to demand an equal share of the royalties and consideration payable in case of utilization of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall, is unaffected by the assignment of copyright in any work to make a cinematograph film. The right of the author to claim an equal share of the royalties and consideration due for any use

of such work in whatever format is unaffected by the assignment of the copyright in any work to produce a sound recording that is not a component of any cinematograph film.

Licenses

Section 30 addresses licenses granted by copyright owners; Section 31 allows for a compulsory license in works hidden from the public, and Section 30A includes regulations about the implementation of Sections 19 and 19A. Section 31A addresses compulsory licenses for unpublished Indian works; Section 31B addresses compulsory licenses for the benefit of the disabled; Section 31C addresses statutory licenses for cover versions; Section 31D addresses statutory licenses for broadcasting of literary and musical works and sound recordings; Section 32 addresses licenses to produce and publish translations; Section 32A addresses licenses to reproduce and publish works for certain purposes; and Section 33 addresses compulsory licenses for unpublished foreign works.

Licenses from Copyright Holders

According to Section 30 of the Act, any current or potential owner of a copyright may grant any interest in the right by way of a written license issued by him or by his properly authorized representative. However, a license about copyright in a future work won't go into force until that work is created. According to the explanation for this section, if a person to whom a copyright license for future work is granted passes away before the work is created, his legal representatives will, barring any provision to the contrary in the license, be entitled to the benefit of the license.

Compulsory Licence in Unpublished "or Published Works

According to Section 31A of the Act, anyone may apply to the Copyright Board for a license to publish or communicate to the public such work or a translation of it in any language if the work is unpublished, published, or communicated to the public but is withheld from the public in India, the author is dead, unknown, or cannot be traced, or the owner of the copyright in such a work cannot be found. The applicant must publish his proposal in one issue of a daily newspaper with wide distribution in the English language before applying to the Copyright Board. If the application is for the publication of a translation into another language, the applicant must also submit the application in one issue of any daily newspaper in that language[6], [7].

After conducting the necessary inquiry, the Copyright Board may direct the Registrar of Copyrights to grant the applicant a license to publish the work or a translation of it in the language specified in the application, subject to the payment of the applicable royalty and subject to any additional terms and conditions that the Copyright Board may determine. The Registrar of Copyrights will then grant the applicant the license following the direction of the Copyright Board.

Compulsory Licence for the Benefit of Disabled

If clause (z b) of sub-section (1) of Section 52 does not apply, a person working for the benefit of persons with disabilities on a for-profit basis or for business may apply to the Copyright Board in the manner prescribed for a compulsory license to publish any work in which copyright exists for the benefit of such persons. The Copyright Board shall dispose of such application as expeditiously as possible and shall endeavor to. When the Copyright Board receives an application, it may direct the Registrar of Copyrights to grant the applicant the necessary publishing license after verifying the applicant's credentials and determining that the application was made in good faith and that a compulsory license is required to make

the work accessible to the disabled.It should be noted that Section 52's sub-section (1)'s clause (zb) states that any work may be adapted, reproduced, issued in copies, or communicated to the public in any accessible manner by:

1. Anybody who makes it easier for people with disabilities to access works, including sharing such accessible formats with people with disabilities for their own personal or individualized use, educational purposes, or research.
2. If the usual format prohibits people with disabilities from appreciating such works, any organization works for their benefit.

The organization ensures that the copies of the works in such accessible formats are used only by people with disabilities and takes reasonable precautions to prevent their entry into ordinary channels of business. However, copies of the works in such accessible formats are made available to persons with disabilities on a non-profit basis, but to recover only the cost of production. It should be noted that "any organization" includes any entity recognized under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, or registered under Section 12A of the Income-tax Act of 1961 that works for the benefit of people with disabilities. It also includes any educational institution, library, or archive that has been granted government recognition.

Statutory Licence for Cover Versions

According to Section 31C (1), anyone who wishes to create a cover version—a sound recordingof a literary, dramatic, or musical work in which sound recordings have already been made by, with the permission of, or under license from the owner of the right to the work may do so following the provisions of this section. However, unless the medium of the previous recording is no longer in active use in the commercial sector, subsequent sound recordings must be in the same format as the previous recording.The person making the sound recordings must notify the owner of the rights in each work in advance of all copies he intends to make, paying royalties to them in advance at the rate set by the Copyright Board, and providing copies of all covers or labels with which the sound recordings are to be sold.

It should be noted that such sound recordings may not be sold or released in any packaging, with any cover, or with any label that is likely to confuse or deceive the public about their identity. In particular, they may not contain the name of any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated, and they may not depict them in any way on the cover. The person creating the sound recordings is not allowed to change the literary or musical work in any way that has not already been done by or with permission from the owner of the rights or that is not strictly required for the production of the sound recordings. However, these sound recordings cannot be created until five calendar years have passed after the end of the year in which the work's first sound recordings were made.

Statutory Licence for Broadcasting of Literary and Musical Works and Sound Recording

According to Section 31D, any broadcasting organization that wishes to make a previously published literary or musical work or sound recording available to the public via a broadcast or performance may do so as long as certain requirements are met.The broadcasting organization is obligated to notify the owner of the rights to each work in advance and in the manner and at the fee set by the Copyright Board of its intention to broadcast the work, as well as the length and geographic scope of the broadcast.The Copyright Board should establish distinct rates for radio broadcasting and television broadcasting, and the

broadcasting organization shall pay an advance to the owners of rights. The rates of royalties for radio broadcasting shall be different from those for television broadcasting. The broadcasting company is required to keep such records and books of account, to provide the rights holders with reports and accounts, and to permit the rights holders or their duly authorized agents or representatives to inspect all such records and books of account in the manner specified by law.

License to Produce and Publish Translations

After seven years following the initial publication of the work, anybody is allowed to apply to the Copyright Board for a license to make and publish a translation of a literary or dramatic work in any language under Section 32. However, Section 32(1A) permits anyone to apply to the Copyright Board for a license to produce and publish a translation of a literary or dramatic work, other than an Indian work, in any language in general use in India, after three years from the first publication of such work, in printed or analogous forms of reproduction. Additionally, if the translation was done into a language that is not widely spoken in any industrialized nation, the application might be submitted one year after the publication.

Termination of Licence

The Act's Section 32B, which deals with license termination, states that if the copyright owner of the work or any person authorized by him publishes a translation of the work at any point after the license has been granted that is substantially identical in content and published in the same language for a price that is reasonably related to the price typically charged in India for the translation of works of the same standard on the same or similar subjects, the license so granted will be terminated. However, this termination won't go into effect until three months have passed after the owner of the translation rights sent notice of the publication of the translation to the person holding the license in the manner required.

Administration of Rights of Owner by Copyright Society

According to Section 34 of the Act, a Copyright Society may accept an owner's exclusive permission to manage any right in any work by granting licenses, collecting license fees, or both. However, an owner may revoke such authorization without impairing the rights of the Copyright Society. A copyright society has the authority to agree with any foreign society or organization that administers rights that are equivalent to those under the Indian Copyright Act, assigning to that foreign society or organization the responsibility of administering in that foreign country the rights that the said copyright society in India is responsible for administering in India.

According to Section 34(3), the Copyright Society may:

1. grant licenses in accordance with Section 30 about any Act-assigned rights;
2. obtaining fees in accordance with such licenses;
3. after deducting its costs, disburse such fees to rights holders; and
4. Carry out any additional tasks in accordance with Section 35's rules.

Every Copyright Society is subject to the collective control of the copyright owners whose rights it administers, according to Section 35, which deals with control over the society by the owner of rights. Owners of rights managed by a foreign society or organization are excluded.

Performer’s Right

According to Section 38, each performer who participates or appears in a performance has a particular right known as the "performer's right" concerning that performance. The

performer's right is valid for fifty years after the first day of the year that comes after the year the performance is produced.

Exclusive Right of Performer

According to Section 38A, without limiting the rights granted to writers, the performer has the sole right, subject to the Act's requirements, to do or authorize being done any of the following things concerning the performance or any significant portion thereof, namely:

1. To capture the act either audibly or visually, including
    i. its materialization in any manner, including its storage on any media by electronic or other methods;
    ii. the public receiving copies of it that are not already in circulation;
    iii. dissemination to the general public;
    iv. offering any copy of the recording for sale or rental on the commercial market or sale;

2. To convey or broadcast the performance to the general public, unless it has already been aired.

It should be emphasized that once a performer has approved in writing the inclusion of his performance in a cinematograph film, he or she may not object to the producer of the film using the performer's right in the same film as long as there is no contract to the contrary. However, if the performances are made for commercial purposes, the performer will be entitled to royalties.

Moral Right of Performer

According to Section 38B of the Act, the performer of a performance shall, independently of his right after assignment, either wholly or partially of his right, have the right to assert that he is the performer of his performance, except for situations in which omission is required by how the performance is used; and to prevent or pursue damages for any distortion, mutilation, or other modification of his performance that would be detrimental to his reputation[8], [9]. It should be underlined that the performer's reputation will not be damaged by the simple removal of any part of a performance for editing purposes, to fit the recording inside a time restriction, or for any other purely technical cause.

Acts not Constituting Infringement of Broadcast Reproduction Right and Performers Right

No broadcast reproduction right or performer's right shall be regarded to have been violated in certain circumstances, according to Section 39. These consist of:

(a) The creation of any sound or video recordings for the creator's use, or exclusively for legitimate educational or scientific objectives;

(b) The legitimate evaluation, teaching, or research of portions from a performance or a broadcast, following fair dealing, or the reporting of current events;

(c) Any additional actions, including any appropriate changes and adaptations that do not violate the copyright in violation of Section 52.

CONCLUSION

Copyright Board plays a crucial role in defending authors' and users' rights in the digital era. Its duties include licensing, determining tariffs, resolving disputes, and developing policies,

among other areas of copyright management. The Board makes sure that copyrighted works are utilized legally and that authors are fairly compensated for their efforts via the licensing procedure. By establishing fair and appropriate rates for the use of copyrighted content via tariff setting, the Board may strike a balance between the interests of rights holders and users. The Board's dispute resolution procedures provide a way to handle disagreements and encourage the swift and equitable settlement of copyright-related challenges. The Board's engagement in policy formation also contributes to the creation of copyright laws and regulations that take into account the changing demands and difficulties of the creative industries.

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CHAPTER 21

AN ASSESSMENT OF INTERNATIONAL COPYRIGHT

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ABSTRACT:

A legal structure called international copyright tries to safeguard artistic creations across international boundaries. Exclusive rights to original literary, creative, musical, and audiovisual works are granted to writers, artists, and creators. The Berne Convention for the Protection of Literary and Artistic Works and the World Intellectual Property Organization (WIPO) Copyright Treaty are only two of the treaties and conventions that regulate international copyright. These international accords set minimum requirements for copyright protection and promote international cooperation in the enforcement of copyright laws. However, given to differences in national laws, jurisdictional difficulties, and the rapid development of digital technology, it is difficult to achieve effective worldwide copyright enforcement. Despite these difficulties, worldwide copyright is essential for promoting innovation, promoting economic expansion, and guaranteeing that authors are fairly compensated in the global market.

KEYWORDS:

Artistic Works, Copyright, International Copyright, Protection,WIPO.

INTRODUCTION

The legal protection provided to writers of original works of authorship across international boundaries is known as an international copyright. It is a framework of rules and agreements designed to protect authors' rights and advance the worldwide sharing and dissemination of creative works. Creators have the only authority to decide how their works are reproduced, distributed, performed in public, and displayed thanks to copyright protection. International agreements and national legislation work together to regulate copyright internationally. Copyright laws in each nation specify the extent and length of copyright protection within those nations. However, international coordination and harmonization are essential for successful copyright protection owing to the universal character of creative works and the ease with which they may be distributed via digital channels [1], [2].

The framework of international copyright law is significantly shaped by several international accords. The Berne Convention for the Protection of Literary and Artistic Works, which was initially formed in 1886 and has subsequently undergone several revisions, is the most well-known. The Berne Convention defines "national treatment," which guarantees that creators from member nations are given the same rights and protections as local creators in each participating country. It also lays forth baseline requirements for copyright protection.

The World Intellectual Property Organization's (WIPO) Copyright Treaty (WCT), the Universal Copyright Convention (UCC), and the WIPO Performances and Phonograms Treaty (WPPT) are other significant international accords. These agreements cover certain facets of copyright protection, such as performers' and producers' rights in the digital age of phonograms. International copyright enforcement is facing increasing difficulties as a result

of the development of the internet and digital technology. It has become necessary to increase global collaboration and create new enforcement procedures as a result of problems like internet piracy, unlicensed sharing, and cross-border infringement. In the digital era, efforts are still being made to find a balance between protecting the rights of producers and fostering access to creative works.

Background of International Copyright

The development of the printing press in the 15th century, which made it easier to duplicate and disseminate written works, is credited with starting the modern era of copyright. Concerns about defending authors' rights and promoting the diffusion of information and culture grew as printing technology proliferated across Europe.

1. **Early Developments**

Several European nations started passing laws to control the printing business and give writers and publishers exclusive rights in the 16th and 17th centuries. These regulations attempted to prevent the distribution of pirated works and guarantee that producers received fair compensation. However, these early initiatives were generally restricted to certain nations and did not create universal copyright laws.

2. The Berne Convention

With the adoption of the Berne Convention for the Protection of Literary and Artistic Works in 1886, the world took its first significant step toward copyright protection. The Berne Convention, so named because it was established in Bern, Switzerland, sought to provide a framework for copyright protection and promote global collaboration. It removed the requirement for registration or other procedures in each jurisdiction by granting writers automatic rights in member nations[3], [4].The Berne Convention established several crucial tenets that now serve as the cornerstone of contemporary international copyright law. These include the national treatment principle, which guarantees that writers from member nations get the same level of copyright protection as local authors. Additionally, it defined the minimum requirements for copyright periods, which originally offered protection for the lifespan plus 50 years of the author.

3. Expansion and Harmonization

The Berne Convention achieved broad recognition on a global scale throughout time, and further updates were made to take into account developing technology and fresh modes of artistic expression. For instance, the Berlin Act of 1908 protected unpublished works, and later modifications included clauses for movies, recordings, and other forms of media. The growth of copyright protection has also been aided by other international accords. A replacement framework for nations that weren't a member of the Berne Convention was made available in 1952 with the adoption of the Universal Copyright Convention (UCC). The UCC streamlined the registration process and expanded copyright protection to include works published with a copyright notice [5], [6]. Since its founding in 1967, the World Intellectual Property Organization (WIPO) has been actively advocating global copyright harmonization. The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), both enacted in 1996, are two of the treaties and conventions that the WIPO administers. In order to meet digital technology and online dissemination, these accords strengthened copyright rules.

4. TRIPS Agreement:

The creation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO) was one of the most significant

advances in international copyright law. The 1994-adopted TRIPS Agreement establishes basic requirements for intellectual property protection, including copyright, and mandates that member nations put such requirements into effect. The TRIPS Agreement aims to advance just and equitable intellectual property protection while preventing national laws and regulations from acting as trade obstacles. It created a forum for settling disputes between member nations and strengthened enforcement measures, including sanctions for copyright infringement.

5. Continued Developments:

With the emergence of new technology and global concerns, copyright law is always changing. Concerns about digital piracy, international internet streaming, and how to strike a balance between copyright protection and information access continue to exist. Along with national laws and court rulings, international copyright treaties and accords work to solve these issues while defending the rights of authors in a global context.

DISCUSSION

Copyright Protection to Foreign Works

Regardless of the author's nationality, only works that were initially published in India are covered by the Copyright Act. However, Section 40 of the Act gives the Government of India the authority to apply some or all of the Act's provisions to works that were originally published outside. The advantages given to foreign works will not surpass those available to works in the home country, and they will be given on a reciprocal basis, meaning that the foreign nation must provide comparable protection to works entitled to copyright under the Act. The duration of the copyright in India for a foreign work will not be longer than that granted by the foreign nation. India's government has adopted the 1958 International Copyright Order. Any work initially published in a nation that is a signatory to the Berne Convention or the Universal Copyright Convention must be treated in accordance with this order as if it were first published in India.

Conditions of Copyright Protection

The following conditions must be met in order to grant international organizations' works copyright protection:

1. The work must have been created or published for the first time by, or under the supervision of, the International Organization.

2. At the time of creation or the first publication of the work, there should be no copyright in India.

3. If the work is published in accordance with an agreement with the author, no copyright in the work shall be reserved for the author and all copyright should belong to the organization.

Power of Central Government to Broadcasting Organizations and Performers in Certain Other Countries

Subject to the Central Government's satisfaction that a foreign country (other than one with which India has entered into a treaty or which is a party to a Convention relating to rights of broadcasting organizations and performers to which India is a party) has made or has undertaken to make such provisions, if any, as it appears to the Central Government

expedient to require, for the protection of intellectual property rights, Section 40A of the Copyright (Amendment) Act, 1999 provides that a foreign country (other than

1. To broadcasting organizations whose headquarters are located in a country to which the order relates or, if the broadcast was made from a transmitter located in a country to which the order relates, as if the organization's headquarters were located in India;
2. To performances that occurred outside of India but to which the order pertains in a similar way as if they did;
3. To performances included in a sound recording released in a nation to which the order is applicable as if the recording were released in India;
4. To live performances that are not fixed to a sound recording that are broadcast by a broadcasting organization whose headquarters are in a country to which the order relates or where the broadcast is transmitted from a transmitter that is located in a country to which the order relates as if the organization's headquarters were in India or the broadcast were made from India.

Additionally, Section 40A (2) states that the Central Government's decree may state any of the following:

1. The requirements shall apply generally or with respect to the class or classes of broadcasts or performances or the class or classes of other circumstances that may be indicated in the order;
2. The duration of the rights of Indian artists and broadcasting organizations must not be longer than that permitted by the applicable national legislation;
3. Fulfillment of any criteria or requirements that may be outlined in that order must be met before exercising the powers granted;
4. In whole or in part, shall not apply to broadcasts or performances made prior to the effective date of the order;
5. When it comes to the ownership of performers' and broadcasting organizations' rights, the requirements are to be followed, with any exceptions or adjustments that the Central Government deems necessary in light of the foreign legislation.

Power to Restrict Rights of Foreign Broadcasting Organizations and Performers

The Central Government may, by order published in the Official Gazette, direct that those provisions of this Act that confer rights on broadcasting organizations or performers, as the case may be, shall not apply to broadcasting organizations or performers where it appears to the Central Government that a foreign country does not provide or has not undertaken to provide adequate protection to rights of broadcasting organizations or performers.

Registration of Copyright

Sections 44 through 50A of Chapter X of the Act cover several facets of copyright registration. Under Section 44 of the Act, a framework for copyright registration has been envisioned. The provisions of the aforementioned clause make clear that registering a work under the Copyright Act is not required and is not a prerequisite to maintaining a lawsuit for damages if the copyright is violated. The purchase of a copyright is not required of registration.The provisions of Sections 44 and 45 of the Act are merely enabling and do not affect the common law right to bring a lawsuit for copyright infringement. As a result, registration of the work under the Act is not required and is not a prerequisite for continuing to bring a lawsuit for damages for copyright infringement[7], [8]. Registration only has the effect that is specified in Section 48, namely, that the information recorded in the register constitutes prima facie proof of such information. Nothing in the Act's provisions, either

individually or together, suggests that registration is a prerequisite for maintaining copyright or acquiring ownership of it. The Copyright Act of 1957 does not include a provision stating that the author has no rights or remedies until the work is registered. Kiron Chandra Mukhopadhyay v. Satsang and Others, AIR 1972 Cal 533. In the case of Jayanthilal M. Munoth and Ors. v. M. Durairajan, [2006] 132 Com Cases 797(Mad), a petition for copyright infringement was filed, and the respondents disputed it because there was no copyright registration. The Court ruled that the registration of copyright was not necessary to file a lawsuit or begin legal action for copyright infringement.

The Copyright Office is responsible for keeping track of the names or titles of works, as well as the names and addresses of writers, publishers, and copyright owners, in the Register of Copyrights. The Register of Copyrights will be divided into six sections, including Part I Literary Works, Part II Musical Works, Part III Artistic Works, Part IV Cinematograph Films, Part V Sound Recordings, and Part VI Computer Program, Tables, and Compilations, including Computer Data Bases.The process for registering a work is outlined in Chapter VI of the Copyright Rules, 1956, as modified. The Manager of Publications, Publication Branch, Civil Lines, Delhi, or his authorized dealers will provide copies of the Act and Rules in exchange for payment. The registration process is as follows:

a. The first schedule to the Rules specifies Form IV (Including Statement of Particulars and Statement of Further Particulars) to be used when applying for registration.
b. For the registration of each work, separate applications should be submitted;
c. The required fee specified in the second schedule to the Rules must be included with each application; and
d. The applicant or the attorney in whose favor a Vakalatnama or Power of Attorney has been executed shall sign the applications. Also included should be the Power of Attorney, which must be signed by the parties and acknowledged by the attorney.

The Statement of Particulars and Statement of Further Particulars need precise responses for each and every column. It is possible to register both published and unpublished items. If the works still have copyright, copyright in works published before January 21, 1958, or before the Copyright Act, 1957, went into effect, may still be registered. The application may be submitted with up to three copies of published material. A copy of the manuscript must be supplied with the application for attaching the stamp of the Copyright Office as evidence that the work has been registered if the work to be registered has not yet been published. If two copies of the manuscript are provided, one will be returned after being properly stamped, and the other will be kept secret and stored in the Copyright Office for record-keeping purposes, if at all practicable[9]. The applicant would also be free to provide just excerpts from the unpublished work rather than the whole manuscript and request that the excerpts be returned after being stamped with the Copyright Office seal. When a work is registered as unpublished but is later published, the applicant may submit a Form V modification request with the required fee to have the information in the Register of Copyright updated.

Broadcast Reproduction of Copyright

Every broadcasting organization is granted a special right known as a "broadcast reproduction right" concerning its broadcasts under Section 37 for 25 years commencing on the first day of the calendar year immediately succeeding the year the broadcast is made.Any person who, without the permission of the right's owner, does any of the following activities of the broadcast or any significant portion thereof violates Section 37, subsection (3) at the time that a broadcast reproduction right is in effect concerning any broadcast:

1. Airs the transmission again; or

2. Makes the broadcast available for public viewing or listening in exchange for payment of any fees;
3. Records the broadcast visually or audibly in any way; or
4. Creates any reproduction of the original sound or video recording for a purpose not permitted by the license, whether the original recording was made with or without a permission;
5. Any sound or visual recording mentioned in clauses (c) or clauses (d) that is believed to have violated a broadcast reproduction right is sold, given on commercial rental, offered for sale, or subject to such rental under the terms of Section 39.

Global intellectual property rights are protected and governed in large part thanks to international copyright. By guaranteeing them exclusive rights over their works, it establishes the rights of the authors and owners of creative works, such as literary, artistic, musical, and audiovisual productions.

Summary of How International Copyright Impacts:

1. International copyright guarantees that creative works are shielded from unlawful duplication, distribution, and usage. This protection promotes innovation and creativity by giving creators the assurance that their work will be valued and rewarded.
2. Economic incentives: Copyright protection gives authors the power to manage and profit from their creations. By giving exclusive rights, it offers financial incentives, allowing artists to make money off of their works via licensing, sales, or other types of exploitation. This stimulates the creation of high-quality works and supports investment in the creative industry.
3. Global Harmonization: International treaties and agreements pertaining to copyright, such as the WIPO Copyright Treaty and the Berne Convention for the Protection of Literary and Artistic Works, seek to harmonize copyright laws in various nations. Harmonization lowers legal ambiguities for producers and consumers in many countries and promotes the flow of creative works internationally.
4. Cross-Border Enforcement: International copyright is essential to the successful prosecution of copyright infringement cases. It enables owners of copyrights to pursue legal remedies and enforcement proceedings in other countries, ensuring that their rights are upheld even when violations take place in other nations.
5. In order to achieve a balance between the rights of authors and the interests of the general public, international copyright works to protect both rights and access. It has restrictions and exclusions, such as fair use or fair dealing, that allow certain uses of works protected by copyright without requiring express consent. While still preserving the rights of artists, these rules provide access to information, education, research, and cultural growth.
6. Challenges and Controversies: There are also issues with international copyright. For owners of copyrights and politicians, problems including digital piracy, online streaming, and the balance of rights in the digital era continue to be issues. The development of digital technology and the internet has made it simpler to duplicate and distribute works protected by copyright, necessitating ongoing attempts to modify copyright rules to take into account the changing technical environment.
7. Global protection, exploitation, and enforcement of intellectual property rights are all made possible by international copyright. It encourages innovation, encourages

creativity, and aims to strike a balance between the rights of artists and the larger public interest.

CONCLUSION

In an increasingly interconnected and digital world, international copyright acts as a crucial safeguard for artistic creations. To protect the rights of artists and promote the production and distribution of creative and intellectual works, it creates a framework of rights and duties among states. Minimum requirements for copyright protection are defined by international treaties and conventions, enabling more harmonization and cooperation across nations. However, there are difficulties in enforcing international copyright, especially in the digital sphere where piracy and unlawful use of content protected by copyright are common. Increasing international collaboration, increasing legal frameworks, and raising public knowledge of copyright concerns are all actions taken to overcome these difficulties. The international community can promote innovation, creativity, and cultural variety and provide fair recompense for artists by bolstering international copyright protection and enforcement procedures.

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CHAPTER 22

EXPLORING THE INFRINGEMENT OF COPYRIGHT

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ABSTRACT:

Copyright infringement is a serious issue in the field of intellectual property rights. This chapter seeks to look at copyright infringement in all of its facets, including its definition, varieties, and repercussions on the law. It also looks at the difficulties in identifying and stopping copyright infringement in the digital era. In order to secure artists' rights and foster creativity, also emphasizes the significance of strong copyright protection laws and the need of strong enforcement tactics. In general, copyright infringement refers to the unauthorized use of a work protected by copyright without the owner's consent. There are both legal and criminal repercussions for copyright infringement, which can take many different forms. To file a claim of copyright violation with the court, the plaintiff must provide evidence that they are the legitimate owner of the in-question material.

KEYWORDS:

Copyright, Copyright Infringement, Digital Era, Protected Content.

INTRODUCTION

A copyright infringement occurs when someone uses, reproduces, distributes, or displays protected content without the owner's consent. The proprietors or producers of creative works, such as literary, artistic, musical, or dramatic compositions, are given legal protection under the concept of copyright. These works might be anything from music to software to books to movies to images [1], [2]. The exclusive rights provided to the copyright holder, which often include the right to reproduce, distribute, exhibit, perform, or develop derivative works based on the original work, are violated when someone violates the copyright. Infringement may take many different forms, such as:

1. Reproduction: Making unauthorized copies of content that is protected by copyright, such as photocopying a book, making a CD twice, or illegally downloading a movie.
2. Selling, renting, or distributing copyrighted content without the required permission, whether it be in physical form or digitally.
3. Public Performance or Display: Playing or showing copyrighted content in public without first getting the required permits, for as by showing a movie or staging a play.
4. Derivative Works are new works that are created without authorization based on copyrighted content, such as a book sequel or the use of characters from a copyrighted work in a different media.

Copyright violations may result in harsh legal repercussions, such as monetary fines and injunctions, which require the offending behavior to cease. Owners of intellectual property have the right to sue to enforce their rights and recover damages against infringers. In

addition, several nations have laws that outline criminal consequences for deliberate copyright violations. It's crucial to remember that there are certain restrictions and exceptions to copyright, such as fair use or fair dealing, which permit the use of protected content in certain situations, including for critical or educational reasons. These exclusions, nevertheless, are often subject to certain restrictions and differ from nation to nation.Copyright infringement has a long history and has developed along with technological improvements and the dissemination of intellectual property. Here is a timeline of copyright violations over the years:

1. Early Origins: old civilizations like old Greece and Rome are where copyright protection first appeared. But at that time, there was no such thing as copyright infringement as we know it today.
2. The invention of the printing press in the 15th century brought about a fundamental change in the way that literary works were reproduced and disseminated. Unauthorized copying and distribution increased in frequency as printed materials became more widely available.
3. The Statute of Anne (1710) is regarded as the first modern copyright legislation since it was passed in England that year. For a brief time, it gave writers the exclusive authority to publish and disseminate their works. During this time, illegal book reproduction and distribution constituted copyright infringement.
4. Piracy in the nineteenth and twentieth centuries: As technology advanced, copyright infringement spread to numerous media types. Piracy in the publishing sector was rife in the 19th century, notably in the unlicensed reproduction of books. Early in the 20th century, unlicensed sheet music and phonograph recordings posed problems for the music business.
5. Cinema and television piracy: As cinema and television gained popularity, copyright infringement spread to these media as well. With the introduction of VHS cassettes and subsequently digital formats, it became normal practice to show films that were pirated and copyrighted material without license.
6. Internet and Digital Revolution: As the internet became more widely used in the late 20th century, copyright holders faced new difficulties. Through peer-to-peer networks, file-sharing websites, and streaming services, illegal sharing and distribution of music, movies, software, and other digital material gave rise to digital piracy.
7. DMCA and Online Copyright Enforcement: In order to solve copyright difficulties brought on by digital technology, the United States passed the Digital Millennium Copyright Act (DMCA) in 1998. The DMCA set guidelines for takedown requests and safe harbors for online service providers, giving copyright holders online work protection tools.
8. Worldwide Copyright Enforcement Initiatives: Copyright violations continue to be a problem on a worldwide scale. To promote and uphold copyright protection globally, several international agreements and institutions, like the World Intellectual Property Organization (WIPO), have been formed. Governments and business organizations work together on anti-piracy campaigns, which may include taking legal action against infringing websites and people.

9. Current Issues: Online piracy, streaming services, and unlawful sharing on social media platforms provide problems for copyright holders today since copyright infringement is still a problem. Copyright enforcement operations have become more challenging as a result of technological improvements and the growing ease of duplicating and distributing digital information.

It's crucial to remember that copyright regulations and enforcement methods differ throughout nations and jurisdictions and that fresh strategies are always being created to deal with the changing copyright infringement situation.Owners of works are granted exclusive rights to duplicate their creations under copyright protection, allowing them to profit financially from doing so. A copyright infringement occurs when someone uses these rights concerning a work that is subject to copyright protection without the owner's consent. If a work is reproduced after the copyright period has passed, it won't be considered an infringement[3], [4].

It was noted in the case of Penguin Books Ltd., England v. M/s India Book Distributors & Others AIR 1985 Del. 29 that copyright is violated anytime intellectual property is misappropriated and the major benefit is the copyright owner. A property right is a copyright. It is considered a kind of property deserving of particular protection in the ultimate public interest around the globe. The law assumes that protection will be as lengthy and wide as feasible and should only offer those exceptions and limits that are necessary for the sake of the public.Situations in which copyright in a work may be judged to be violated are contemplated under Section 51 of the Act. According to this provision, copyright in a work is violated when someone without a license issued by the copyright owner or the Registrar of Copyright, in violation of the terms of a license thus granted, or in violation of any requirement imposed by a competent authority.

1. Anything for which the copyright owner is granted the exclusive right, or
2. Unless he was not aware and had no reason to believe that such communication would be a copyright infringement, permits for financial gain the use of any location for the communication of the work to the public where such communication constitutes a violation of the copyright in the work.
3. Anytime someone (i) creates a copy of the work for sale or hire, or (ii) distributes it commercially or to the point where it harms the copyright owner, or (iii) exhibits it in public through trade, or (iv) imports it into India.

However, the importer is permitted to bring in one copy of any work for personal and household use. The explanation to Section 51 makes it clear that a cinematograph film reproduction of a literary, dramatic, musical, or artistic work will be judged to be an infringement copy.Any individual who does anything that the copyright owner alone has the exclusive right to do without the owner's agreement is considered to be violating the copyright in that work. Ladha Singh & Others v. Kartar Singh Giani, AIR 1934, Lah 777 (DB).According to M/s Power Control Appliances & Others v. Sumeet Machines Pvt. Ltd. (1994) 2 SCC 448, the idea of an honest and concurrent user, which is found in Section 12(3) of the 1958 Act for securing concurrent registration, is completely irrelevant as a defense in a suit for infringement and copyright arising out of the 1957 Act.

In Ushodaya Enterprises Ltd v. T.V. Venugopal, 2001 PTC 727, the division bench of the Andhra Pradesh High Court held that even though the defendant had registered the carton under the Trademark Act, that may not have helped the defendant as the plaintiff's case was that it had copyright ownership of the artistic work under the Copyright Act, which did not require registration, and that was sufficient to support its claim. In light of this, the court

determined that the plaintiff's claim of infringement of his creative work was legitimate[5], [6].Checking to see if the reader, spectator, or viewer would be clearly of the opinion and get an unmistakable impression that the subsequent work appears to be a copy of the first after having read or seen both works is one of the most reliable tests to determine whether or not there has been a violation of copyright. To put it another way, when deciding whether the respondent's work violated the applicant's copyrights, the court must determine whether the drawing, design, or artistic work in question appeared to be a copy. To do this, the court must apply the "lay observer test," which determines whether the object appears to be a copy to people who are not experts concerning objects of that kind. There is no violation of the creative copyright in the work if it does not seem to be a copy to the "lay observer". a basic examination of the two creative creations "Sharp" and "Sharp tools." Additionally, in the work of the appellant, the word "sharp" is surrounded by a semi-circle design with rays emanating from it as if it were a rising sub, while in the work of the respondent, it is simply referred to as "Sharp Tools" without any additional design[7], [8].

They seem completely different to Court based only on appearance. One doubts that anybody would compare these two pieces of art in any way, nor would they claim that the respondent's designs, layouts, and word choices were an obvious copy of the appellant's work, much less that they were comparable in any way. Applying the numerous criteria outlined above, it cannot be claimed that the respondent violated the appellant's copyright by copying it, constituting an act of piracy. The Copyright Board correctly noted that there cannot be a copyright in the word or words; rather, there can only be a copyright in the creative way in which the same is expressed, and in this instance, the works were completely different. M/s Sharp Tools v. Associated Electronic & Electrical Industries (Bangalore) Pvt. Ltd., AIR 1991 Kar 406.

M/s. Nishi Productions & others v. M/s. Video Master & another, 1998(3) Bom. CR 782. The cited case investigated the situations under which copyrights were violated during different forms of film presentation. The plaintiff objected to the defendants receiving the rights to transmit satellite content since he was awarded video playback and cable television rights. The Court noted that there were several public communication channels, each of which was distinct from the others. It was decided that each form of communication may coexist with various people at once without violating the other's copyrights.

In Hindustan Lever Ltd. v. Nirma Private Limited, Ahmedabad, AIR 1991, the Bombay High Court ruled that the differences were wholly insufficient to erase the overall impression of the naïve buyer. Therefore, there was an obvious copyright violation. The issue concerned the violation of the label's copyright when only minor alterations were made to the colorable replica of the label.Copyright is a restricted monopoly with a protective history. The author has used material from the public domain, hence there cannot be any monopoly in that area. It's OK for other people to utilize the same content. Everyone may access works on which no one owns a copyright. Every man can take what he needs from a work, enhance it, add to it, and then provide the finished productwhich includes his additions and improvementsto the public.

The plaintiffs are unable to petition the court to prevent the defendants from making this information publicly accessible under the pretense of copyright. The Supreme Court of India's open to all parties' judgments were compiled, prepared from, and reproduced in the judgments/orders published by the plaintiffs in their legal reports titled "Supreme Court Cases." These judgments/orders are not the plaintiffs' original literary works. Simply fixing certain spelling and grammar errors in the source, adding commas and full stops, and numbering the paragraphs in the ruling will not qualify their work as a unique literary work

that is protected by the Copyright Act. Therefore, the judgments that are published in the plaintiffs' legal reports are not protected by any copyright. There is no dispute that the defendant violated any purported copyright since there is no copyright in the plaintiffs. Plaintiffs are not entitled to any remedy in the application since they have not established any prima facie evidence in their favor.

The Delhi High Court held in Godrej Soaps (P) Ltd. v. Dora Cosmetics Co.2001 PTC (21) 407 Del. that the plaintiff is the assignee and the legal owner of copyright in the carton, including the logo, where the carton was designed for valuable consideration by a person in the course of his employment for and on behalf of the plaintiff and the defendant had led no evidence in his favor.A person who created the Crowning Glory carton under a contract of service for and on behalf of the plaintiff devised it for valuable compensation while working for an advertising business. The plaintiff is the rightful and equitable owner of the creative work because of the conditions under which the stated artistic work was created. The plaintiff received the copyright to the carton out of an abundance of caution. Plaintiff has established its status as the assignee of the copyright for the "Crowning Glory" carton.

Statutory Exceptions

The Copyright Act has established a few infringement exclusions. The goal of these exclusions is to make it possible to reproduce the work for certain public reasons as well as to promote private study, research, and education advancement. According to Section 52 of the Act, a list of actions that do not violate copyright has been supplied. These consist of

1. A fair dealing with a piece of non-computer-programmed literature, theater, music, or art for the sake of
   a. personal or individualized usage, including study;
   b. critique or reviews, whether they be of that particular work or another;
   c. Reporting on current affairs and events, such as a lecture that was given in front of an audience.
   d. It should be emphasized that the accidental storage of any computer program for the aforementioned reasons, even if it is not itself an infringing copy, does not constitute copyright infringement.

2. The lawful owner of a copy of a computer program may make copies of the program or adapt it from the copy in order to use it for the purposes for which it was intended. This also includes making backup copies solely as a stopgap measure against loss, destruction, or damage with the intent to use the program only for those purposes.
3. The legal owner of a computer program doing any act required to collect information necessary for operational interoperability of an independently produced computer program with other programs, provided that such information is not otherwise easily accessible.
4. Observing, researching, or testing how the computer program works in order to ascertain the concepts and precepts that guide any of the program's parts while carrying out the tasks required for the purposes for which it was designed.
5. Making copies or adapting the computer program for non-commercial personal use from a legitimately acquired personal copy.
6. The brief or accidental preservation of a work or performance only for the purposes of technical electronic transmission or public communication.
7. Temporary or incidental storage of a work or performance for the purpose of enabling electronic links, access, or integration, provided that the right holder has not expressly objected to such links, access, or integration, unless the person in charge is aware of or

has a good faith suspicion that the storage is of an unauthorized copy. It should be noted that if the person in charge of the copy's storage receives a written complaint alleging that such temporary or incidental storage constitutes an infringement, the person in charge of the storage shall refrain from facilitating the access for 21 days, or until he receives an order from the appropriate court prohibiting the facilitation of access, whichever comes first. If no such order is received before.

8. The duplication of any work for judicial purposes or use in a report on a judicial action.
9. The duplication or publishing of any work created by a legislature's secretariat, or, in the case of a legislature with two houses, by the secretariat of either house, solely for the benefit of the legislature's members.
10. The creation or supply of a certified copy of any work in compliance with any currently in effect legislation.
11. The public reading or recital of fair excerpts from a published literary or theatrical work.
12. The publication of brief excerpts from published literary or dramatic works that were not themselves published for such use in which copyright exists in a collection that is primarily composed of non-copyright material and is legitimately intended for instructional use. This intention is stated in the title and in any advertisement issued by or on behalf of the publisher. However, no more than two of these sections from the same author's works may be released by the same publisher in a five-year period. When a work has more than one author, references to passages from works in this sentence encompass passages written by any one or more of those writers alone or by any one or more of those authors working with another person.
13. A literary, theatrical, musical, or artistic piece being reproduced
    a. During education by a teacher or student; or
    b. As one of the exam's questions to be answered; or
    c. In responses to these inquiries.

Remedies against Infringement of Copyright

The issue of compliance with the procedural legislation's required requirements as well as the efficient performance of investigative and adjudicatory responsibilities by the enforcement agencies and the courts are both important to the protection of rights under the copyright law, which is essentially a negative right.Civil remedies are provided for under the Copyright Act in Sections 54 to 62. According to Section 55, the owner of the copyright may be entitled to all legal remedies, including as injunctions, damages, and accounts, where the copyright in any work has been violated, unless the Act states otherwise. The plaintiff will not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may, in the circumstances, deem reasonable. This is true even if the defendant shows that at the time of the infringement, he was unaware and had no reasonable grounds to believe that copyright existed in the work.

There was a disagreement on the transfer of copyright in the TV series "India's Most Wanted" in Zee Telefilm Limited v. Aalia Productions & Others 2000 PTC 382 Bom. It was decided that the plaintiffs could not seek an injunction against the defendant in the lack of any particular rights given by the defendants concerning the idea, screenplay, plot, synopsis, structure, and/or format of the program. The plaintiffs are not entitled to any interim remedy since the assignment agreement signed by the plaintiff and the defendants is unclear and unknown in terms of its structure, format, idea, synopsis, and screenplay.The plaintiff was granted a permanent injunction to prevent the defendant from using a pressure cooker label

that was confusingly similar to the plaintiff's registered trade mark "HAWKINS" in the case of Hawkins Cookers Ltd. v. Magicook Appliances Co., 100(2002) DLT698. Due to the plaintiff's non-appearance, an ex-parte ruling was made and it was decided that the plaintiff should be safeguarded from the infringing party's unjust enrichment under Section 55 of the Copyright Act of 1957 since it was deemed to be a mischief. Consequently, a permanent injunction was issued.

The District Court will have jurisdiction in any civil actions brought under the Copyright Act for copyright infringement. In addition, Section 62 (2) states that the District Court in whose local jurisdiction the person filing the lawsuit is actually or voluntarily residing, conducting business, or engaging in personal labor for gain will have jurisdiction in the case, regardless of any provisions in the Civil Procedure Code, 1908 or any other law currently in effect.Administrative remedies include petitioning the Registrar of Copyrights under Section 53 to prohibit the importation of copies that are infringing into India and the delivery of seized copies of copies that are infringing to the copyright holder[9], [10].

Criminal remedies allow for the accused to be imprisoned, fined, or both, as well as the confiscation of copies that have been made illegally and their transfer to the copyright holder. Before 1957, the maximum penalty for violating copyright under Section 63 of the Copyright Act was a year in jail and a fine. The Copyright (Amendment) Act, passed in 1984, strengthened these penalties in an effort to stop rampant copying of music and video recordings. According to these provisions, a person who knowingly violates or aids in the violation of copyright in a work or any other right conferred by the Copyright Act is subject to a fine of up to $2,000 and a term of imprisonment of at least six months but no more than three years. The minimum sentence of imprisonment and the minimum fine may, however, be reduced by the court if necessary and for exceptional circumstances. The minimum sentence of one year in jail and the minimum punishment of $1,000,000 have been established for the second and subsequent offenses. The 1994 amendment further limited the court's power to impose sanctions that were less severe than those required under the Act. The imposition of less severe penalties than the minimum set out in the Act is only permitted in situations where the violation was committed without intent to profit in the ordinary course of trade or business. In other words, courts have the option to impose a lighter punishment where an infraction is purely technical and not driven by commercial interests.

Owner of copyright is a term defined in Section 54. It was determined in Rupendra Kashyap v. Jiwan Publishing House 1996 PTC (16) 439 Del. that CBSE is a public enterprise, examination papers are literary works created under the supervision and control of CBSE, and the circumstances of the case clearly support the application of Section 17(dd) of the Copyright Act. The original owner of the copyright in the test papers on which it conducts exams is CBSE.The notification that states that "copyright of the question papers set at the examinations conducted by Board shall vest in the Board" is obviously wrong, according to an Allahabad High Court ruling that the copyright in the question papers set for the High School and Intermediate examinations belongs to the paper-setters and neither belonged to nor had been assigned to the Board. The State Government could not grant itself or the Board a right that neither of them had under the Copyright Act of 1957 by simply issuing a notification under the Intermediate Education Act (Agarwala Publishing House v. Board of High School and Intermediate Education & Another AIR 91: 1996 All LJ 550). According to Section 58, the owner of the copyright has the right to bring legal action against anybody found in possession of copies or other items that violate the copyright. In this situation, the provision makes it clear that any unauthorized copies of any work for which a copyright

exists as well as any plates used or intended to be used in the creation of such unauthorized copies must be regarded as the property of the copyright owner.

Moral Rights-Author's Special Right

In addition to copyright infringement remedies, the Act specifically protects the distinctive rights of authors known as moral rights. According to Section 57 of the Act, the author of a copyrighted work has the right to prevent alterations to the work or seek damages for any actions related to the work that would be detrimental to his honor or reputation. These rights are still exercisable even after the copyright has been assigned. Depending on the situation, they may be enforced via a passing off lawsuit, a defamation lawsuit, or an action for breach of contract or confidence.

Appeals

An appeal is allowed under the Copyright Act of 1957 against (a) a few magistrate orders and (b) against decisions made by the Registrar of Copyrights and Copyright Board. According to Section 71 of the Act, any person who is dissatisfied with an order made under sub-section (2) of Section 64 or Section 66 may appeal to the court to which appeals from the court making the order typically lie within thirty days of the date of the order, and such appellate court may order that execution of the order be stayed pending the outcome of the appeal.According to Section 72(1), anybody who is dissatisfied with a final decision or order of the Registrar of Copyrights may appeal to the Copyright Board within three months of the date of the order or decision.Any person who disagrees with a final decision or order of the Copyright Board may appeal it within three months of the decision or order's date to the High Court whose jurisdiction the appellant actually and voluntarily resides in, conducts business in, or personally labors for. However, no such appeal shall be allowed against a decision of the Copyright Board made pursuant to Section 6.

International Conventions

The Berne Convention, which was signed in 1886 and was intended to safeguard creative works, is the first international agreement on copyright. A nation that ratifies the Convention is required to provide copyright protection to the literary and creative creations of other members on its own soil and is also entitled to receive such protection from other nations. The Berne Convention was updated seven times, first in 1896 in Paris, then in 1908 in Berlin, 1928 in Rome, 1948 in Brussels, 1967 in Stockholm, and lastly in 1978 in Paris. The Paris Act, which was revised in 1971, is particularly significant for developing nations since it gave them specific permission to translate and reproduce foreign literary works for educational purposes. The Berne Convention now has 90 member nations.

The necessity for copyright protection on a global scale emerged in the years after World War II. Up until that point, North American nations were not signatories to the Berne Convention, and their copyright protection was regulated by a number of national and regional agreements.The Intergovernmental Copyright Conference, which was held in Geneva in August 1952, resulted in the establishment of the Universal Copyright Convention (UCC), another significant copyright agreement. The Berne Convention does not take the place of the UCC. Instead, it sought to forge ties between North American nations and those on the Bern Union. India is a participant in both the UCC and the Berne Convention.The General Agreement on Tariffs and Trade (GATT) Uruguay Round negotiations in 1994 resulted in the TRIPS Agreement, which went into force on January 1, 1995. The book is made up of 73 pieces divided into seven sections. Articles 9 through 14 cover the requirements for certain IPRs, such as copyright and associated rights.

A multifaceted strategy is needed to successfully address copyright infringement. Raising awareness about copyright laws and the significance of preserving intellectual property rights is one aspect of this. It also calls for the deployment of strong technical safeguards to stop the illicit duplication and dissemination of works protected by copyright. To prevent and punish violators, strict enforcement measures are also necessary. Additionally, to create creative ways to address copyright infringement, cooperation between content producers, owners of the copyright, and digital platforms is essential. Infringing material may be rapidly found and removed with the use of efficient digital rights management systems and content recognition technology. To promote copyright respect and deter piracy, public awareness campaigns and education are crucial

CONCLUSION

In conclusion, copyright protection is essential for promoting innovation, creativity, and economic progress. With the development of digital technology and the internet, it is now simpler than ever for anyone to disseminate and duplicate works protected by copyright without the required authority. Because of this, there have been many cases of piracy and unlawful sharing, which has cost content producers and copyright holders a lot of money. Copyright laws are essential in encouraging the creation of original material because they make sure that artists are fairly compensated for their effort. To preserve the rights of artists and sustain a flourishing creative ecosystem, work must continue to improve copyright protection, enforcement techniques, and online user conduct.

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CHAPTER 23

CONCEPT OF INDUSTRIAL DESIGN: A COMPREHENSIVE OVERVIEW

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ABSTRACT:

In the diverse discipline of industrial design, new systems, products, and services are developed. It includes several factors, including design aesthetics, usability, ergonomics, and user experience. Industrial design advances technology and enhances both the standard of living for people and society as a whole via innovation and imaginative problem-solving. An overview of industrial design, its importance, and how it influences our daily lives is given in this chapter. Industrial design, in its broadest sense, is the profession of creating the tools, equipment, furnishings, and services that millions of people use every day. Industrial design is a design process that is used to create physical objects that will be produced in large quantities. It blends art with usability to create methods for mass-producing goods. Industrial designers are both engineers and modern artists that draw inspiration from both to produce more affordable, visually beautiful items that appeal to regular consumers. They often concentrate on the physical look, utility, and manufacturability of a product.

KEYWORDS:

New Systems, Industrial Design, Protection, Advances Technology.

INTRODUCTION

The invention and enhancement of goods, systems, and services is the primary objective of the creative, interdisciplinary area of industrial design. To produce visually beautiful, practical, and user-centered designs, it integrates elements of art, engineering, and commerce. A vast variety of things, from common consumer goods to sophisticated industrial machinery, are conceptualized and designed by industrial designers. Industrial design's main objective is to improve user experience by taking into account numerous aspects including ergonomics, usability, sustainability, and aesthetic appeal. To create unique and useful solutions, industrial designers thoroughly research consumer demands, market trends, technology developments, and manufacturing methods. They collaborate closely with producers, engineers, and marketers to make sure the finished product achieves the required results and reaches the target market [1], [2].

Throughout the design process, industrial designers use a range of methods and resources. To comprehend user habits, preferences, and pain areas, they begin by doing research and accumulating insights. This knowledge forms the basis for ideation and conceptualization when designers develop and polish concepts, often using sketches, prototypes, and 3D models. These ideas are then expanded upon to create intricate designs that take resources, production limits, and manufacturing procedures into account. Industrial designers also have a big influence on how items look and are branded. To deliver the appropriate message and stay true to the corporate identity, they work to produce aesthetically engaging designs. Form, color, texture, and typographic components may all be used by designers to trigger feelings and create a strong connection between the user and the product. Industrial design typically

includes the design of interfaces, packaging, user experiences, and even services in addition to the creation of tangible items. It is an interactive and iterative process that includes constant testing, feedback, and improvement. Industrial designers contribute to innovation, sustainability, and the general enhancement of our built environment via their knowledge and creativity[3], [4].

Background of Industrial Design

A remarkable journey spanning many centuries may be found in the history of industrial design. It includes the growth of different design movements, technical developments, and changes in consumer culture. Here is a quick synopsis of industrial design history:

Pre-Industrial Revolution (Before the 18th Century):

1. Ancient civilizations produced useful, aesthetically pleasing things by artisans and craftsmen, and these early types of industrial design may be found there.
2. Furniture, textiles, pottery, and metalwork were all made by skilled artisans, often featuring complex patterns and motifs.

18th and 19th Century Industrial Revolution:

1. Manufacturing techniques, technology, and culture all underwent major change as a result of the Industrial Revolution, which started in the late 18th century.
2. Manufacturing techniques were changed by the development of steam power and the emergence of mechanization, which enabled the mass manufacturing of commodities.
3. Design solutions that could address both usefulness and efficiency were required when the focus changed from handmade things to machine-made ones.
4. This is the time when design disciplines like product design and graphic design first began to develop.

Late 19th-century Arts and Crafts Movement:

1. The Arts and Crafts Movement began to take hold in the late 19th century as a reaction to the mass-produced, machine-made commodities of the Industrial Revolution.
2. The movement, which was led by individuals like William Morris, aimed to stress the value of high-quality, handcrafted goods and revitalize craftsmanship.
3. The movement, which opposed the dehumanizing impacts of industrialization, placed a strong emphasis on the fusion of design and handicraft.

Art Nouveau (late 19th to early 20th century):

1. In the late 19th and early 20th centuries, Europe and the United States saw a design renaissance known as Art Nouveau.
2. It was distinguished by organic, flowing shapes drawn from nature, exquisite decoration, and a desire to combine architecture, interior design, and decorative arts to produce a complete piece of art.

Bauhaus (early to mid-20th century):

1. The Bauhaus was a design school that was established in Germany in 1919 and aimed to combine art, craftsmanship, and technology.
2. It placed a strong emphasis on convenience, use, and mass manufacturing with the goal of producing inexpensive, attractive items for the general public.
3. The development of modernist design concepts and the emergence of industrial design as a profession were significantly influenced by Bauhaus.

Mid-20th century to present:

1. Industrial design expanded in importance after World War II as consumer culture grew and businesses worked to provide enticing goods for a burgeoning market.
2. Famous industrial designers like Raymond Loewy, Dieter Rams, and Charles and Ray Eames rose to prominence in the post-World War II period and had a lasting influence on design.
3. Industrial design has continued to be influenced by improvements in manufacturing processes, materials, and technology, which has resulted in advances across a variety of markets, including furniture, consumer electronics, automobile design, and more.
4. Industrial design now incorporates a variety of disciplines, including digital interfaces, sustainability, and user-centered design.

The history of industrial design is a continuous narrative that is always changing as a result of new technological advancements, social shifts, and design ideologies.

DISCUSSION

In the trade of consumer goods or products, industrial design is crucial. Industrial designs contribute to a product's economic worth and boost its marketability since they are what give a product its aesthetic appeal. Industrial design is becoming a crucial component of consumer culture, as competing products vie for consumers' attention. Giving a unique industrial design proper protection has so become crucial. A fair return on investment is more likely when an industrial design is safeguarded. By encouraging fair competition and honest business activities, a good protection system also helps consumers and the general public. Aside from that, safeguarding industrial designs promotes economic growth by fostering innovation in the manufacturing and industrial sectors, as well as by boosting trade and the export of domestic goods.To comprehend what an industrial design is, why it should be protected, how it may be protected, and to what extent it is protected, students should be well-versed in the requirements of India's design law. Additionally, they should be familiar with the legal requirements for application submission.

Industrial designs are within the aesthetic category but are also meant to be used as templates for the production of commercial or handcrafted goods. An industrial design is the decorative or aesthetically pleasing element of a practical object that must be pleasing to the eye and might take the form of the object's shape, pattern, or color. An industrial design has to be brand-new and unique to be protected. Industrial designs have a five-, ten-, or fifteen-year time limit during which they are shielded against unauthorized duplication or replication [5], [6]. The earliest art forms to get legal protection were textile designs. To promote the design arts, the first Act for design protection was passed in Great Britain as early as 1787. This temporary extension of protection was an experimental tactic. Soon later, it had its lifespan increased and was declared everlasting. The Act's protection was expanded to include "Designs for Printing Other Woven Fabrics" in 1839.

An Act to Secure to Proprietors of Designs for goods of Manufacture the Copyright of Such Designs for a Limited period was enacted in the same year to provide design protection for goods of manufacture broadly. Following that, the legislative procedure for protecting designs advanced quickly. In 1842, a reorganizing and updating law was passed. All of the former acts mentioned above were abolished by an Act to consolidate and reform the laws related to the Copyright of Designs for ornamenting Articles of Manufacture. It is crucial to remember that drawings, paintings, and photos were not yet included in copyright protection when the design legislation was codified in 1842 and assumed its current form. The Fine Arts Copyright Act, of 1862, which was passed barely twenty years later, codified this. The

Imperial Copyright Act, of 1911, which was passed seventy years after the Imperial Copyright Act, was the first attempt to codify copyright law. The laws governing patents, designs, and trademarks were distinct until 1883. The Patents, Designs, and Trade Marks Act, of 1883, which removed all previous laws in the three categories, consolidated them into a single law. The legislation governing trade markings soon broke off and was independently passed as the Trade markings Act, 1905, keeping patents and designs intact. The laws governing patents and designs were combined in the Patents and Designs Act of 1907.

The Patents and Designs Protection Act, 1872, was the first piece of designs law passed in India to protect Industrial Designs. It was created to offer protection for Industrial Design and to augment the Act of 1859 that the Governor General of India passed providing exclusive rights to innovators. The Act of 1872 was created to provide comparable advantages for a much shorter period to the creators of "any new and original pattern and design" in British India. Any novel and unique pattern or design, or the use of such a pattern or design on any material or manufactured good, was included in the definition of "new manufacture." The term "new pattern or design" was not specified by the Act, nevertheless [3], [7].

Designs were covered by distinct provisions in the Innovations and Designs Act of 1898, which consolidated and reformed the legislation about the protection of innovations and designs. The Indian Patents and Designs Act, of 1911 was based on the (British) Patents and Designs Act, which was passed in 1907. The Patents Act, of 1970, a post-Independence update and consolidation of the patent law, removed the provisions pertaining to patents under the Indian Patents and Designs Act, 1911. The Designs Act, 1911 was the new name for the design portions of the Indian Patents and Designs Act, 1911, with certain subsequent revisions. India's Design Law is now TRIPS compliant thanks to the passage of the New Designs Act, 2000 by the Parliament.

What is a Design?

According to Section 2(d) of the Designs Act, 2000, design only refers to features applied to any article, whether two-dimensional or three-dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, that appeal to and are judged solely by the eye, but does not include any mode or principles.

What is not a Design?

The design does not contain the following, as indicated in the definition of design above:

1. Any trademark as described in Section 2(z b) of the Trademarks Act of 1999, or
2. Any trademark as defined under Section 479 of the Indian Penal Code, 1860, or
3. Any creative work, as outlined in Section 2(c) of the Copyright Act of 1957, falls within this category.

Artistic Work means:

1. A photograph, engraving, painting, sculpture, drawing (including a diagram, map, chart, or plan), or any other kind of visual art, whether or not it has artistic merit.
2. Any architectural work, includes any building or structure with a unique character or design, as well as any style for such a building or structure.
3. Any handcrafted piece of art (Section 2(c)).

The following is an example list of non-registrable designs:

a. Calendars, diplomas, forms, and other paperwork; and book covers.
b. Greeting cards, flyers, maps, and plan cards; dressmaking patterns.

c. Medals, postage, and stamps.
d. Drawings, cards, tokens, and labels.
e. Any rule or method used in an article's construction.
f. Simple modifications were made to assembly components in the workshop.
g. Only altering the article's size.
h. National flags, symbols, or signs of any nation.
i. Integrated circuit layout designs.

Why Protect Industrial Designs?

Industrial designs contribute to a product's economic worth and boost its marketability since they are what give it charm and aesthetic appeal. An industrial design is protected when it is registered, giving the ownerthe person or organization that registered the designan exclusive right and defense against unlawful duplication or imitation of the design by third parties.This promotes a reasonable return on investment. In addition to benefiting customers and the general public, a good protection system also encourages inventiveness, honest business methods, and more visually beautiful items. Industrial design protection fosters economic growth by fostering innovation in the manufacturing and industrial sectors as well as in traditional arts and crafts. Designs support the growth of business activities and the export of domestic goods. Industrial designs may be created and protected in a reasonably simple and affordable manner. Small and medium-sized businesses, as well as lone artisans and craftspeople, may fairly access them in both developed and developing nations.

How can Industrial Designs Be Protected?

To be protected by industrial design legislation, an industrial design must typically be registered. Typically, a design must be "new" or "original" to be registrable. These phrases have different meanings in different countries, and the registration procedure itself varies.In general, "new" denotes that no prior instance of the same or a very comparable design is known to have occurred. A registration certificate is given upon the registration of a design.After then, the protection is often provided for a period of five years with the option of additional renewal, typically for a duration of up to 15 years.

Registered IndustrialDesign

Only if a design is new or unique can it be registered.

Novelty: A design will be deemed to be new if it has not previously been published, used, or otherwise made known to the public anywhere in India or any other country before the filing date or priority date.If a design can be distinguished from existing designs or a mix of existing designs, it is seen to be novel. Section four

Originality in terms of a design refers to:

1. Coming from the creator of the design, and
2. Despite being ancient in and of themselves, the examples included in are novel in their application. Article 2(g)

For instance, the Taj Mahal statue is quite ancient. However, if someone for the first time has the idea to create a flower vase or ashtray in the shape of the Taj Mahal, it may be considered an original design and would be registrable.

Application and IndustrialDesign Registration

According to Section 5, the Controller may register a new or original design under the Act if the applicant is the owner and the design is not against public decency or order and has not been previously published in any nation. Every registration application must be submitted in the appropriate format and include the requisite money. When a design is registered, it is registered as of the application date for registration.In accordance with Section 7, the Controller must cause publication of the specified particulars of the design to be published in the prescribed way and the design to be available for public view as soon as reasonably practicable following the registration of a design. The Controller issues a certificate of registration to the owner of the design upon registration in accordance with Section 9 of the Design Act.The purpose of registration is to ensure that the craftsman, inventor, or originator of a design with aesthetic appeal does not forfeit his rightful compensation as a result of others using it on their products.

Purpose of Industrial Design:

Developing goods that are visually beautiful, practical, and user-friendly is the goal of industrial design. To improve a product's use, look, and overall experience, industrial designers combine their creative, technical, and problem-solving abilities[8], [9].User demands, market trends, ergonomics, materials, production methods, and environmental sustainability are just a few of the variables that industrial designers take into account. The idea is to create goods that, in addition to satisfying customer requirements and wants, are consistent with the company's brand identity and commercial goals.

Important Elements Of Industrial Design

1. Industrial designers concentrate on the aesthetics of a product, taking shape, color, texture, and overall style into account. They aim to provide aesthetically pleasing items that inspire good feelings and set them apart from rivals.
2. Functionality: Product designers make sure that their creations are usable and useful. To make things user-friendly and effective, designers take into account aspects like ergonomics, user interface, and accessibility.
3. User Experience: Product designers want to make sure that consumers have a satisfying and memorable experience with their goods. To improve the total user experience, they take into account elements like usability, comfort, safety, and emotional connection.
4. Innovation: Industrial designers often participate in the first phases of product creation, when they provide original and creative suggestions. To push the frontiers of what is feasible and develop innovative product solutions, they investigate novel materials, manufacturing processes, and upcoming technologies.
5. Branding and marketability: To match product design with brand values and consumer expectations, industrial designers collaborate closely with marketing departments. To create goods that appeal to customers and achieve company goals, designers take into account target demographics, market trends, and competition analyses.

To bring goods from idea to reality, industrial design, a multidisciplinary discipline, works with a range of stakeholders, including engineers, marketers, producers, and customers. Industrial designers work to develop things that are not only aesthetically pleasing but also enhance people's lives by fusing aesthetics, functionality, and user experience.

CONCLUSION

Industrial design is essential in turning concepts into real goods and services that satisfy consumer wants and preferences. Industrial designers produce items that not only seem aesthetically attractive but also improve usefulness and customer pleasure by taking into account variables including aesthetics, functionality, ergonomics, and user experience. It is a crucial field that ties together technology and human requirements to provide creative, user-centered solutions. The significance of industrial design will only increase as technology develops, ensuring that goods and services are not just practical but also visually beautiful, simple to use, and pleasant.

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CHAPTER 24

AN ANALYSIS OF GEOGRAPHICALINDICATIONS

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ABSTRACT:

Geographical indications (GIs) are an intellectual property right type that protects the names and characteristics of goods with origins in certain places. GIs are used to indicate the reputation, quality, and individuality of certain items, and they are essential for boosting regional economies and protecting cultural heritage. An overview of geographical indications, their importance, and their effects on different stakeholders, such as producers, consumers, and governments are explained in the chapter. The legislative structure governing GIs is also explored, and possibilities and concerns related to its protection and enforcement are highlighted.In as a whole, geographical indications are labels applied to goods with a particular geographic origin and traits or a reputation derived from that origin. GIs create intellectual property rights for particular goods whose characteristics are directly related to the region of production. A preliminary examination of the origin-product or origin-linked product system and the geographical indication initiative can be used to evaluate GIs. The EU geographical indications system protects the names of products that come from particular regions. The effects of GIs on global trade are a topic of continuous research, and FAO has created several resources and tools on GIs.

KEYWORDS:

TRIPS, Geographical Indications, FAO, Protection, WTO.

INTRODUCTION

A geographical indicator is a label placed on products with a particular geographic origin and attributes, a reputation, or other traits that may be directly linked to that location of origin. A geographical indicator often contains the name of the country where the products were made. Agricultural goods often include characteristics that are unique to the region in which they were grown and that are affected by local elements like soil and climate[1], [2].According to international agreements and domestic legislation, geographical indicators are protected. Other nations are not required to provide reciprocal protection under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) unless a geographical indicator is protected in the country of origin. The Geographical Indications of Goods (Registration and Protection) Act, 1999 was passed by India as a WTO member. Students must understand the legal framework in India for geographical indications of goods, including who is eligible for registration, which geographical indications cannot be registered, when a registered geographical indication is considered to have been violated, and why and how geographical indications need to be protected.

Protection for goods coming from a particular geographic area is provided by a kind of intellectual property right known as a geographic indication (GI). The idea of terroir, which refers to a product's distinctive features and attributes that are derived from its geographical

origin and includes elements like climate, soil, traditional knowledge, and cultural legacy, is closely related to GIs. The major goals of GIs are to protect producers legally and to highlight the commercial and cultural worth of their products. GIs aid customers in recognizing and differentiating items of a certain quality or reputation in the market by connecting a product with its geographic origin. By supporting local economies and maintaining traditional knowledge and practices, GIs also play a key role in protecting traditional production techniques and boosting rural development [3], [4].

GIs may be used on a variety of goods, including industrial goods, foodstuffs, handicrafts, agricultural goods (including wine, cheese, coffee, and tea), and beverages. Although the legal protection given to geographical indications (GIs) varies from nation to nation, it often entails forbidding the use of the GI term for goods that do not come from the specified area. This stops unethical business activities and those that might mislead customers. Producers or the appropriate authorities must prove that the product has certain features or characteristics that are substantially due to its geographical origin to gain protection for a GI. This is often accomplished via a registration procedure, where the applicant must provide proof and paperwork to back up their assertions on the originality and locality of the product.

Globally, GIs are safeguarded by several legal frameworks, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organization. In order to safeguard and advance GIs inside their borders, numerous nations have also created their national laws and regulations. Geographical indications are essential for preserving regional economies, cultural legacy, and sustainable development. They also provide benefits to customers by guaranteeing the reliability and excellence of goods. They help to establish a link between a product and its place of origin, enabling manufacturers to take use of local customs and resources while reassuring customers that they are getting a real, high-quality product[5], [6].Geographical indicators (GIs) have a lengthy, centuries-long history. The idea of geographical indications (GIs) was developed as a way to safeguard and promote the reputation and distinctiveness of goods originating from certain geographic areas.

A quick timeline of geographic indicators is shown below:

1. Origins in Europe: GIs have their roots in Europe, where various goods were identified with certain areas and had unique characteristics. Winemakers in France's Champagne and Burgundy started using regional designations to preserve the reputation of their wines in the early Middle Ages.

2. Early protection measures: In Europe in the late 19th and early 20th centuries, the first legislative protections for geographical indications were put in place. To safeguard the "appellations of origin" for wines, France created legislation in 1889 that subsequently served as a template for other nations.

3. International recognition: With the founding of the World Intellectual Property Organization (WIPO) in 1967, the notion of GIs gained acknowledgment on a global scale. As a result of WIPO's efforts to address the problem of GIs and their protection, GIs are now a part of many international accords.

4. One of the first international accords on intellectual property rights is the Paris Convention for the Protection of Industrial Property, which was signed in 1883. It incorporated measures for the protection of geographical indicators even though its primary concentration was on patents and trademarks.

5. TRIPS Agreement: The World Trade Organization (WTO) accords include the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which was founded in 1994. TRIPS establishes basic criteria for participating nations and includes measures for the protection of geographical indications.
6. Systems for regional and national protection: Different nations and regions have created their protection measures for geographical indicators. For instance, the Protected Geographical Indications (PGIs) and Protected Designations of Origin (PDOs) systems of the European Union (EU) safeguard a variety of goods.
7. International agreements: The preservation of geographical indications has been the subject of several international accords and treaties throughout the years. Such accords include the Geneva Act of the Lisbon Agreement of 2015 and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, both of which were signed in 1958.
8. Geographical indicators are becoming more well-known on a global scale, and many classic items are now protected and linked to particular places. Among many more, examples include Champagne, Scotch whiskey, Parmigiano Reggiano, and Darjeeling tea.

DISCUSSION

The origin of a product might affect its quality, reputation, or other qualities. Geographical indications (GIs) are place names (or, in some countries, words that refer to a place) that are used to designate goods that originate from those locations and have certain qualities. Examples include "Champagne," "Scotch whisky," "Tequila," and "Roquefort". Geographical indicators assist to acknowledge the crucial influence that geographic and climatic conditions, as well as human expertise, may play in a product's final quality. GIs are also intellectual property rights (IPRs), used to identify items and build their reputation and goodwill in the market, much like trademarks or commercial names. Minimum requirements for GI protection are outlined in the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), along with enhanced protection for wines and spirits. Geographical indicators must be protected to a minimal level, as specified in Articles 22 to 24 of Part II Section III of the TRIPS. Furthermore, TRIPS leaves it up to the Member nations to choose the best way to execute the Agreement's provisions (including the clauses relating to GIs) within their respective legal systems (Article 1.1).

Notably, governments are not required under the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) to protect a specific geographical indication unless that geographical indication already has protection in the country of origin. India lacked clear legislation controlling geographic indicators of products that could appropriately safeguard the interests of such products' producers. This led to contentious instances involving turmeric, neem, and basmati rice. In the example of turmeric, two NRIs at the University of Mississippi Medical Center Jackson were awarded a US Patent in March 1995 for the use of turmeric as a wound healing agent. The CSIR filed a "Prior Art" complaint against this patent at the USPTO, arguing that turmeric has been used for thousands of years to treat burns and rashes and was not a novel innovation. Even the CSIR offered documentation in the form of an old Sanskrit manuscript and a 1953 study that appeared in the Journal of the Indian Medical Association. The US patent office revoked the patent after upholding the objections[7], [8].

Neem extraction and preservation methods were covered by patents issued to the US Company WR Grace & Co. The US-based company WR Grace was accused of copying an Indian invention by the Indian Government, but after realizing that the patent was not based on traditional knowledge and that the US-based company had invented a new method for extracting neem, the Indian Government withdrew its complaint.

Granting a US patent to Rice Tec Inc., a Texas-based company, which claimed that this innovation relates to a unique breed of rice plants and grains, was the third instance that caused a great deal of debate. 'Basmati Rice Lines and Grains' was issued a patent by the USPTO in September 1997 following three years of review and acceptance of all 20 claims made by the applicant. Indian patents were contested. To determine if there was Indian previous art in this field, a group of agricultural experts combed through several research articles, reports, and proceedings from seminars, conferences, symposia, journals, news publications, and archives.

The documentary proof against the company's claims Nos. 15, 16, and 17 for uniqueness was so compelling that Rice Tec was forced to rescind these claims. The corporation also retracted 11 claims. Due to the Indian objections, just five of the initial 20 claims made by Rice Tec were upheld. The three hybrid types Bas 867, RT 1117, and RT 1121 are all that are provided under the patent. The new rice is unrelated to basmati. Significantly, none of the patent's claims refer to basmati rice specifically. There is no doubt that Rice Tec will get exclusive rights to use the name Basmati since Rice Tec. the application was for a patent rather than for basmati as a trade mark. Therefore, neither Indian Basmati's export to the US nor its competitive position in the market is affected by the patent that was issued.

It should be noted that in the US, unlike in India, where notice is issued asking objections to the invention before it is awarded, a patent cannot be contested until after it has been granted. India could only contest the patent after it had already been issued.It became vital to have thorough regulations for registration and for giving proper legal protection to geographical indicators to avoid such unfair use. As a result, the Geographical Indications of Goods (Registration and Protection) Act, 1999 was passed by the Parliament and took effect on September 15, 2003. The Geographical Indications of Goods (Registration & Protection) Act, 1999, and the Geographical Indication of Goods (Regulation and Protection) Rules, 2002, set up the current geographical indications framework in India.

The Geographical Indications of Goods (Registration and Protection) Act of 1999 has three main goals: first, to create a specific law governing geographical indications of goods in the nation that can adequately protect the interests of those who produce those goods; second, to prevent unauthorized parties from using geographic indications in deceptive ways; and third, to promote goods with Indian geographical indications in export marks.The Geographical Indications Registry, which was formed in Chennai under the general supervision of the Controller General of Patents, Designs, and Trade Marks, is responsible for administering this Act. The Intellectual Property Appellate Board, formed under the Trade Marks statute, would hear appeals against the Registrar's judgment.

Salient Features

The following are the key components of the Geographical Indications of Goods (Registration & Protection) Act, of 1999:

(a) The meanings and definitions of several key terminology, including "geographical indication," "goods," "producers," "packages," "registered proprietor," and "authorized user," among others.

(b) Provision for the use of computers and other technology for the upkeep of a Register of Geographical Indications that is divided into Parts A and B. Part B will include information on authorized users who have registered, whereas Part A will contain all geographical indicators that have been registered.

(b) Registering geographic indicators on products in certain classifications.

(d) The ban on registering specific geographical indicators.

(e) Requirements for the Central Government to establish regulations for the submission of applications, their substance, and issues about the substantive review of geographical indication applications.

(f) Mandatory publication of all approved geographical indication applications to solicit objections.

(g) Registering authorized users of geographical indications that have been registered and establishing procedures for legal action against infringement by either the registered owner or an authorized user.

(h) Provisions for notified products to receive a greater degree of protection.

(i) Since a geographical indicator is public property, its assignment or other use is prohibited.

(j) A geographical indicator cannot be registered as a trademark.

(k) The Intellectual Property Appellate Board, created under the Trade Mark Act, may be appealed against the Registrar's judgment.

(l) A provision outlining offenses and punishments.

(m) A clause describing how registering affects you and the privileges that come with it.

(n) Provisions for the registrar's reciprocity powers, index upkeep, homophone geographic indication protection, etc.

Geographical Indication

In the context of goods, a "geographical indication" is any indication that a good, whether it be an agricultural good, a natural good, or a manufactured good, originated in, or was manufactured in, the territory of a country, or a region or locality in that territory, where a given good's quality, reputation, or other characteristic is primarily attributable to that good's geographic origin, and where, in the case of manufactured goods. It should be noted that any name, regardless of whether it refers to a specific geographic area or not, that is used on or concerning specific goods coming from that country, region, or locality, as the case may be, shall also be considered as the geographical indication. (e) [Section 2(1)]

Goods

The term "goods" refers to any manufactured, natural, or agricultural commodities as well as any handcrafted or industrial goods, including food. Article 2(f)

Indication

The term "indication" refers to any name, geographic or figurative depiction, or any combination of them, that conveys or suggests the geographic origin of the commodities to which it relates. (g) Section 2(1)

Producer

Concerning products, a "producer" is anybody who:

1. If the items are agricultural goods, the person who produces the goods as well as the person who packs or processes them;
2. exploits the products if they are natural goods;
3. Creates or produces the commodities, whether they are industrial or handcrafted goods;
4. It includes anyone who engages in the manufacture, exploitation, production, or manufacturing of the items, as the situation dictates. [Section 2(1) (k)]

Registration of Geographical Indications

According to Section 8 of the Act, a geographical indication may be registered for any or all of the goods included in a class of goods that the Registrar may classify, as well as for a specific territory of a nation, or a region or locality within that territory, as the case may be. To register geographical indicators, the Registrar may also categorize the items following the International classification of goods and publish appropriately in an alphabetical index of classification of goods.The Registrar, whose decision is final in the matter, will decide any dispute regarding the class in which any goods fall, the specific area about which the geographical indication is to be registered, or any situation in which any goods are not listed in the alphabetical index of goods published.

Who is Entitled to Registration?

According to Section 11, any organization or entity created by or under any legislation that represents the interests of the producers of the involved commodities may submit a geographical indication registration application. The applicant must be a legitimate business organization and must speak for the manufacturers of the items being sought. Any organization or group that claims to represent the interests of producers but is not affiliated with them may need to provide proof. Any applicant authority must demonstrate that they speak for producers' interests[9]. A written application for the registration of a geographical indication must be submitted to the Registrar of Geographical Indications, together with the required fees (described in the First Schedule).

Duration of Registration

A registered geographical indicator may be renewed periodically by paying a renewal fee and is valid for 10 years according to Section 18.Any party who feels wronged by a Registrar order or judgment has three months to file an appeal with the intellectual property appellate board (IPAB)[Section31].

The Advantages of Registering

The legal right to the exclusive use of the geographical indication (GI) and the right to seek redress in the event of its violation are both granted by registration of the GI to the registered owner and its authorized users. Making ensuring that only legitimate goods from legitimate suppliers are advertised will prevent unauthorized individuals from abusing GI.

Registration of certain geographical indications is prohibited.

The GI must meet the requirements of Section 2 (1) (e) of the GI Act's definition of "geographical indication" to be registrable. A GI of this kind should also not be covered by the restrictions in Section 9, which are as follows:

1. whose use is likely to mislead or create misunderstanding; or
2. whose use would violate any already in effect legislation; or
3. consists of or includes scandalous or offensive material; or
4. consists of or includes any material that might harm the religious sensitivities of any class or group of Indian nationals; or
5. which would not otherwise be eligible for legal protection; or
6. that have either ceased to be protected in their place of origin or are no longer used there because they have been declared to be generic names or indications of commodities; or
7. which, while accurately describing the territory, region, or location from which the products originate, misrepresents to the public that the goods, as appropriate, are from another territory, region, or locality;

CONCLUSION

Geographical markers have become an effective tool for safeguarding and marketing distinctive goods associated with certain geographic areas. They provide economic gains by differentiating the market and enabling premium pricing for genuine goods. By encouraging sustainable farming techniques and helping local producers, GIs also assist the preservation of cultural traditions and rural development. However, strong legislative frameworks and international collaboration are necessary for the efficient preservation and enforcement of geographical indicators. To guarantee the ongoing profitability and integrity of GIs, issues including counterfeiting, misappropriation, and legal complications must be addressed. To fully use the potential of geographical indications in a worldwide market, governments, producers, and consumers must work together to increase knowledge of the value of GIs, develop regulatory procedures, and encourage responsible consumption.

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