
INTELLECTUAL PROPERTY RIGHTS: AN OVERVIEW AND IMPLICATIONS IN INDUSTRY

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Abstract :

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is a recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of specialty. Pharmaceutical industry currently has an evolving IPR strategy requiring a better focus and approach in the coming era.

Keywords: Drug, intellectual property, license, patent.

Introduction :

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time.[1] These legal rights confer an exclusive right to the inventor/creator or his assignee to fully utilize his invention/creation for a given period of time. It is very well settled that IP play a vital role in the modern economy. It has also been conclusively established that the intellectual labor associated with the innovation should be given due importance so that public good emanates from it. There has been a quantum jump in research and development (R&D) costs with an associated jump in investments required for putting a new technology in the market place.[2] The stakes of the developers of technology have become very high, and hence, the need to protect the knowledge from unlawful use has become expedient, at least for a period, that would ensure recovery of the R&D and other associated costs and adequate profits for continuous investments in R&D.[3] IPR is a strong tool, to protect investments, time, money, effort invested by the inventor/creator of an IP, since it grants the inventor/creator an exclusive right for a certain period of time for use of his invention/creation. Thus IPR, in this way aids the economic development of a country by promoting healthy competition and encouraging industrial development and economic growth. Present review furnishes a brief overview of IPR with special emphasis on pharmaceuticals.



Brief History :

The laws and administrative procedures relating to IPR have their roots in Europe. The trend of granting patents started in the fourteenth century. In comparison to other European countries, in some matters England was technologically advanced and used to attract artisans from elsewhere, on special terms. The first known copyrights appeared in Italy. Venice can be considered the cradle of IP system as most legal thinking in this area was done here; laws and systems were made here for the first time in the world, and other countries followed in due course. Patent act in India is more than 150 years old. The inaugural one is the 1856 Act, which is based on the British patent system and it has provided the patent term of 14 years followed by numerous acts and amendments.

Types of Intellectual Properties and their Description :

Originally, only patent, trademarks, and industrial designs were protected as 'Industrial Property', but now the term 'Intellectual Property' has a much wider meaning. IPR enhances technology advancement in the following ways:

- it provides a mechanism of handling infringement, piracy, and unauthorized use
- it provides a pool of information to the general public since all forms of IP are published except in case of trade secrets.

IP protection can be sought for a variety of intellectual efforts including

- Patents
- Industrial designs relates to features of any shape, configuration, surface pattern, composition of lines and colors applied to an article whether 2-D, e.g., textile, or 3-D, e.g., toothbrush
- Trademarks relate to any mark, name, or logo under which trade is conducted for any product or service and by which the manufacturer or the service provider is identified. Trademarks can be bought, sold, and licensed. Trademark has no existence apart from the goodwill of the product or service it symbolizes
- Copyright relates to expression of ideas in material form and includes literary, musical, dramatic, artistic, cinematography work, audio tapes, and computer software
- Geographical indications are indications, which identify as good as originating in the territory of a country or a region or locality in that territory where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin.

Role of Undisclosed Information in Intellectual Property :

Protection of undisclosed information is least known to players of IPR and also least talked about, although it is perhaps the most important form of protection for industries, R&D institutions and other agencies dealing with IPR. Undisclosed information, generally known as trade secret or confidential information, includes formula, pattern, compilation, programme,



device, method, technique, or process. Protection of undisclosed information or trade secret is not really new to humanity; at every stage of development people have evolved methods to keep important information secret, commonly by restricting the knowledge to their family members. Laws relating to all forms of IPR are at different stages of implementation in India, but there is no separate and exclusive law for protecting undisclosed information/trade secret or confidential information.

Pressures of globalisation or internationalisation were not intense during 1950s to 1980s, and many countries, including India, were able to manage without practising a strong system of IPR. Globalization driven by chemical, pharmaceutical, electronic, and IT industries has resulted into large investment in R&D. This process is characterized by shortening of product cycle, time and high risk of reverse engineering by competitors. Industries came to realize that trade secrets were not adequate to guard a technology. It was difficult to reap the benefits of innovations unless uniform laws and rules of patents, trademarks, copyright, etc. existed. That is how IPR became an important constituent of the World Trade Organization he patentee can exercise his exclusivity either by marketing the patented invention himself or by licensing it to a third party.

The following would not qualify as patents:

- An invention, which is frivolous or which claims anything obvious or contrary to the well-established natural law. An invention, the primary or intended use of which would be contrary to law or morality or injurious to public health
- A discovery, scientific theory, or mathematical method
- A mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine, or apparatus unless such known process results in a new product or employs at least one new reactant
- A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance
- A mere arrangement or re-arrangement or duplication of a known device each functioning independently of one another in its own way
- A method of agriculture or horticulture
- Any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products
- An invention relating to atomic energy
- An invention, which is in effect, is traditional knowledge

The Role of Patent Cooperation Treaty :

The patent cooperation treaty (PCT) is a multilateral treaty entered into force in 1978. Through PCT, an inventor of a member country contracting state of PCT can simultaneously



obtain priority for his/her invention in all or any of the member countries, without having to file a separate application in the countries of interest, by designating them in the PCT application. All activities related to PCT are coordinated by the world intellectual property organization (WIPO) situated in Geneva.

In order to protect invention in other countries, it is required to file an independent patent application in each country of interest; in some cases, within a stipulated time to obtain priority in these countries. This would entail a large investment, within a short time, to meet costs towards filing fees, translation, attorney charges, etc. In addition, it is assumed that due to the short time available for making the decision on whether to file a patent application in a country or not, may not be well founded.

Inventors of contracting states of PCT on the other hand can simultaneously obtain priority for their inventions without having to file separate application in the countries of interest; thus, saving the initial investments towards filing fees, translation, etc. In addition, the system provides much longer time for filing patent application in the member countries.

Conclusion :

It is obvious that management of IP and IPR is a multidimensional task and calls for many different actions and strategies which need to be aligned with national laws and international treaties and practices. It is no longer driven purely by a national perspective. IP and its associated rights are seriously influenced by the market needs, market response, cost involved in translating IP into commercial venture and so on. In other words, trade and commerce considerations are important in the management of IPR. Different forms of IPR demand different treatment, handling, planning, and strategies and engagement of persons with different domain knowledge such as science, engineering, medicines, law, finance, marketing, and economics. Each industry should evolve its own IP policies, management style, strategies, etc. depending on its area of specialty.

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