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## Intellectual Property Rights: Property or Right? The application of the transfer rules to intellectual property

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*Intellectual property rights (IPR) have been determined as notions, innovations, and imaginative articulations established on which there is a general eagerness to confer the significance of the property. IPR furnish specific rights to the creators or makers of that property, to allow them to obtain marketable benefits from their efficient endeavours or prestige. Intellectual property immunity comes in many forms, including patent, copyright, trademark, and so on. The patent is a credit for a creation that meets the international originality, non-obviousness, and industrial application criteria. IPR is required for improved designation, planning, commercialization, and rendering, and thus for the protection of invention or creativity. Depending on its field of practice, each industry should develop its IPR policies, management style, strategies, and so on. Intellectual property rights are defined as any rights pertained to intangible assets acquired by an individual or corporation and protected from unauthorised use. Intangible assets are non-physical property, such as the right to utilize intellectual property.*

**Keywords:** *intellectual property, innovations, commercialization, intangible assets, creators.*

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### INTRODUCTION

Intellectual property (IP) implies any authentic invention of the benevolent intellect, such as an artistic, scholarly, technological, or scientific invention. Intellectual property rights (IPR) are the lawful possession bestowed to the inventor or maker to conserve his invention or

innovation for some time legitimate rights grant the inventor the sole right to entirely exploit his innovation for a set duration. It is well established that intellectual property (IP) has a significant role in the modern economy. It has also been conclusively ascertained that the intellectual labour related to the creation should be given due consideration so that public good results. Research and development (R&D) costs have skyrocketed, as have the investments needed to bring new technology to market. Technology developers' interests have become very high, and thus the need to conserve information from unauthorised use has become necessary, at least for a time, to ensure the recovery of R&D and other associated costs, as well as sufficient profits for ongoing R&D investments. Because it grants the inventor/creator the exclusive right to use his invention/creation for a set time, IPR is an influential tool for ensuring the inventor of an IP's investments, time, wealth, and effort. In this way, intellectual property rights (IPR) contribute to a country's economic growth by motivating robust contests and encouraging industrial advancement and economic growth.

### **BRIEF HISTORY**

Intellectual property laws and implementation protocols were born in Europe. The patenting movement began in the 14th century. In a sense, the United Kingdom was technologically developed in comparison to other European countries and was utilized to entice craftsmen from other countries for a favourable duration. The first recognized copyright was organized in Italy.<sup>1</sup> Venice can be considered the birthplace of the intellectual property procedure, as it was here that most of the legal reflections in this area took place. Laws and institutions were established here for the first time in the world and have continued over time in other countries. Indian patent law is 150-200 years old. The first is the 1856 Act based on the British patent procedure and has a 14-year patent term, followed by various legislations and amendments.

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<sup>1</sup> Chandra Nath Saha & Sanjib Bhattacharya, 'Intellectual Property Rights: An Overview and implications in Pharmaceutical Industry' (*National Library of Medicine*)

<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/>> accessed 25 June 2022

## TYPES OF INTELLECTUAL PROPERTY

Intellectual property<sup>2</sup> can include different types of intangible assets, some of which are common assets listed below.

### *Patent*<sup>3</sup>

A patent is an equity right consented by the government agency to the investors. This patent awards the inventor a deluxe right in creation. This can be a design, procedure, modification, or physical creation of a device, etc. Mainly, design patents are acquired by technology and software companies. For instance, Steve Jobs and 3 other Apple Inc. employees documented a personal computer patent in 1980.

### *Copyright*<sup>4</sup>

Copyright gives the writers and producers of the unique stuff the sole right to utilize and reproduce the material. Musicians and book authors acquire the copyright of their work. The copyright also asserts that the actual inventor may give anyone authorization to utilize the work through a license agreement.

### *Trademark*<sup>5</sup>

A trademark is a recognizable symbol, term, or emblem that exemplifies a product that is lawfully different from other products. Trademarks are solely allocated to the company. That is, the company owns the trademark and no one else can utilize or duplicate it. Brands are often correlated with a company's brand. For instance, the Coca-Cola logo and brand name are acquired by The Coca-Cola Company (KO).

### *Franchise*<sup>6</sup>

A franchise is a license developed by a corporation, individual, or party called a franchisee, which authorizes you to utilize the name, trademark, proprietary understanding, and method

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<sup>2</sup> Will Kenton, 'Intellectual Property' (*Investopedia* 19 Dec 2021)

<<https://www.investopedia.com/terms/i/intellectualproperty.asp>> accessed 25 June 2022

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

of the firm that is the franchisor. A franchisee is usually the owner or entrepreneur of a small business that runs a business or franchise. The license permits the franchisee to sell commodities or give services in the name of the company. In return, the franchisor receives an initial expense and an ongoing license fee from the franchisee. Instances of companies using this business model are United Parcel Service and McDonald's Corporation (NYSE: MCD).

### *Trade Secrets*<sup>7</sup>

Trade secrets are company processes or practices that are not public information and provide financial benefits or benefits to the owners of the company or trade secrets. Trade secrets must be vigorously insured by the company and are usually the outcome of the company's research and development. Instances of trade secrets include designs, patterns, recipes, formulas, and proprietary processes. Trade secrets are utilized to establish a business model that distinguishes what a company offers to its consumers by giving a competitive benefit.

## **THE ROLE OF NON-PUBLIC INFORMATION IN INTELLECTUAL PROPERTY**

The security of sensitive data is slightly known and least discussed by IPR stakeholders, but it is possibly the most important form of insurance for the IPR enterprise, R & D organizations, and other agencies. Private information, commonly recognized as trade secrets or sensitive information, comprises formulas, patterns, configurations, programs, devices, procedures, technologies, or processes. Protecting undisclosed information and trade secrets is nothing new to humankind.<sup>8</sup>

At all stages of development, humans have typically developed ways to keep important information confidential by limiting knowledge to the family. In India, there are various stages of enforcement of laws on all kinds of intellectual property rights, but there is no distinct and exclusive law to conserve private / trade secrets or sensitive data. The apprehension of globalization was not so great in the 1950s and 1980s, and many nations, including India, could do without a powerful IPR system. Globalization driven by the chemical, pharmaceutical, electronics, and IT industries has led to significant investments in R & D. This

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<sup>7</sup> *Ibid*

<sup>8</sup> Chandra Nath Saha & Sanjib Bhattacharya (n 1)

procedure is illustrated by product cycles, reduced periods, and increased chances of reverse engineering by opponents. The industry was aware that trade secrets were not enough to protect technology. Without unified legislation on patents, trademarks, copyrights, etc., it would have been difficult to benefit from innovation. Therefore, IPR has become a crucial part of the World Trade Organization (WTO).

## **RATIONALE OF PATENT**

The patent is a commendation of the shape of IP exemplified in the creation. Patents are awarded for patentable innovations, which fulfill the necessities of originality and utility under the strict inspection and resistance methods stipulated in the Indian Patents Act, 1970, but there is not even a prima-facie assumption as to the certainty of the patent granted.<sup>9</sup> Most nations have organized national regimes to conserve the IPR within their jurisdiction. Except in the case of copyrights, the security granted to the inventor in a nation (such as India) or a territory (such as European Union) is constrained to that region where conservation is strived and is not legal in other nations. For instance, a patent approved in India is credible only for India and not in the USA. The main explanation for patenting a creation is to earn money through exclusivity, i.e., the inventor would have a monopoly if,

(a) the creator has made a crucial innovation after taking into account the improvements that the consumer, and

(b) if the patent envoy has interpreted and contended the innovation correctly in the patent specification framed, then the consequent patent would provide the patent holder with an exclusive market. The patentee can utilize his exclusivity either by trading the patented invention himself or by authorizing it to a third party.

*The following are not patentable:*

(1) A creation, which is trivial or assertions something apparent or opposite to the adequately organized customary law. An innovation, the preliminary or planned usage of which would be inconsistent with law or ethics or harmful to public health.

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<sup>9</sup> *Ibid*

- (2) A finding, scientific theory, or mathematical procedure.
- (3) A sheer finding of any recent commodity or recent application of a known material, or the sheer application of a general procedure, device, or apparatus, unless such known process results in a new product or assigns at least one new reactant.
- (4) A material produced by a pure admixture that results only in the accumulation of the properties of its constituent elements, or a procedure for producing such a material
- (5) A simple configuration, re-arrangement, or recurrence of a known device, each operating independently of the others in its way.
- (6) An agricultural or horticultural technique
- (7) Any procedure for the medicinal, surgical, therapeutic, or other treatment of humans, or any procedure for the synonymous treatment of animals, to make them disease-free or to increase the economic value of their products.
- (8) An innovation encompassing atomic energy
- (9) A creation that is essentially traditional knowledge

### **BASIS OF LICENSE**

A license or authorization is a contract that allows a licensor to engage in particular actions that would otherwise be illegal. For instance, a patent license allows the licensee to exercise the defined rights to the patent.<sup>10</sup> The impact is to provide the licensee with the right to do what is forbidden. H. The license makes what would otherwise be illegal legal. Licensors can also license "know-how" related to the exercise of licensed patent rights. B. Data, processes, or devices found or used in industry activities. These may be included in the license agreement along with the patent rights. For example:

- (i) Technology data such as formula, technique, operating procedure, and

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<sup>10</sup> *Ibid*

(ii) Commercial data such as consumer lists, deal data, marketing, and competent and administrative methods. Any technological, commercial, commercial, or other data may be protected. Benefits for

Licensors:

- (1) Develop fresh markets
- (2) Create fresh sectors to generate income
- (3) Help meet the challenges of organizing technology in a variety of markets, particularly abroad – reduce expenses and risks, and save on sales and marketing costs.

The benefits for licensees are:

- (1) Saving R & D and eliminating obstacles pertained to R & D
- (2) Quickly harness market needs before interest declines
- (3) Make sure the product is up to date

### **THE ROLE OF THE PATENT COOPERATION TREATY**

In 1978, a multilateral treaty Patent Cooperation Treaty (PCT) came into effect. Through the PCT, the creator of a partner country that is a party to the PCT can give priority to the innovation in all or some partner nations at the same time by naming the target country without filing a separate application in the target country. Can be obtained. PCT applications do so. All actions associated with the PCT are corresponded by the World Intellectual Property Organization (WIPO) based in Geneva.<sup>11</sup>

To conserve the inventions of other countries, it is necessary to file autonomous patent applications in each nation of concern. In some cases, within the time limit set to attain preference in those nations. This will require a huge investment in a short period to cover expenses such as submission payments, translations, and statutory costs. In addition, we understand that the decision to file a patent request in a nation may not be justified due to the short available time. On the other hand, the inventor of a PCT Contracting Party can obtain the

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<sup>11</sup> *Ibid*

priority of the invention at the same time without keeping to file a different application in the country of concern. This saves primary investments such as registration costs and translations.

In addition, this procedure furnishes an extended time for filing patent applications in the Member States. The available period under the Paris Convention to secure preference in other nations is twelve months from the date of first filing. Under PCT, it can be accessible for a minimum of 20 months and an utmost of 31 months. In addition, the inventor will benefit from the exploration report produced under the PCT system to ensure that the contended creation is new. The creator may also select an initial inspection before applying in another country to double-check whether the invention is patentable.

## **WORLD IP DAY**

Every year on April 26 we commemorate World Intellectual Property Day to encourage conversations about the function of IP in promoting invention and imaginativeness.

## **IS IPR RIGHTS OR PROPERTY?**

Intellectual property is a vast term for the collection of intangible assets acquired and lawfully safeguarded by a corporation or person from unauthorised usage or undertaking. An intangible asset is a non-physical property held by a firm or individual. Intellectual property refers to the idea that some commodities of human intellect should be protected in a similar way that material property, also known as tangible assets. The majority of developed economies have legal safeguards in place to conserve both types of property. Intellectual property is a catch-all term for a variety of intangible or non-physical assets. Intellectual property is acquired by a person or company and is legally protected from unauthorised use or enactment. Intellectual property can include a variety of assets, such as trademarks, patents, and copyrights. A breach of intellectual property happens when a third party brings about the unauthorised use of an asset. Most intellectual property legal protections end after a specific period; however, some (for example, trademarks) last indefinitely.

Companies are careful to identify and protect intellectual property because it is so valuable in an increasingly knowledge-based economy. Furthermore, creating valuable intellectual property necessitates significant investments in brainpower and skilled labour time. This

summarizes significant investments by organisations and people that should not be accessed by others with no rights. Taking out price from intellectual property and deterring others from doing so is a critical obligation for any business. Intellectual property can come in a variety of forms. Intellectual property, despite being an intangible asset, can be far more valuable than a company's physical assets. Because intellectual property can provide a competitive advantage, it is fiercely shielded and insured by the companies that acquire it.

### **INTELLECTUAL PROPERTY INFRINGEMENT**

Intellectual property has specific rights called intellectual property rights (IPRs) that cannot be violated by anyone who does not have the right to use them. Patent violation happens when a lawfully immune patent is utilized without permission by another individual or corporation. Patents documented before June 8, 1995, are legal for seventeen years, and patents filed after that are legal for twenty years.<sup>12</sup> When the end date expires, the elements of the patent will be published. Piracy occurs when an unauthorized party reproduces all or part of the actual work, such as a work of craft, music, or fiction. The duplicated subject does not have to be the same copy of the actual work to be considered infringing. Furthermore, trademark violation arises when an unauthorized company uses a trademark similar to a licensed trademark. For example, competitors can use brands similar to their competitors to disturb their industry and lure their customer base. In addition, companies in unrelated industries may use the same or similar trademarks to take advantage of the strong brand image of other companies.

Trade secrets are frequently conserved by non-disclosure agreements (NDAs). If either party announces all or part of the trade secret to an unrelated party, it is a breach of this Agreement and the trade secret. Without a nondisclosure agreement, you could be guilty of a trade secret breach. Penalties for infringement of intellectual property rights vary from penalties to imprisonment.

### **SPECIFIC CONSIDERATIONS**

Several aspects of intellectual property can't be accommodated as assets in the balance sheet because there is no specific accounting policy for esteeming each property. However, because

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<sup>12</sup> Will Kenton (n 2)

market parties are familiar with the presence of intellectual property, the price of the property tends to be expressed in the capital price.<sup>13</sup> Some intangible properties are recognized as assets patented because it has an end date. These assets are recorded numerically as part of the depreciation. Depreciation is an analysis technique that reduces the price of an intangible asset over a specified duration.

This procedure enables companies to curtail their income by spending a fixed sum each year for tax objectives when the valuable life of an intangible asset expires. For example, it may only take twenty years for a patent to be registered in the public domain. Companies assign overall value to patents. For twenty years each year, patents are amortized at the exact sum by allocating the entire value by twenty years. Each year, depreciated assets reduce the company's net earnings or profits for tax objectives. Yet, intellectual property is contemplated eternal property, such as brands that are not depreciated because they have no expiration date.

#### **TRANSFER OF INTELLECTUAL PROPERTY**

Interesting legal issues arise in transferring intellectual property rights from a foreign company to India. In most cases, the transfer documents are outside India and the transfer can be made between two companies abroad. The tariff significances of such a transfer or transfer are sophisticated and have triggered intensifying proceedings in the imminent years as more and more such trades take place within the framework of international transactions. As per Section 2 (14)<sup>14</sup> of the Income Tax Act of 1961, the phrase "capital goods" is interpreted as any kind of property owned by a beneficiary, whether related to the beneficiary's profession or occupation. The description of "capital assets" makes it clear that the phrase has a broad significance. "All kinds of property" definitely includes intellectual property. This is just one type of intangible property. All trademarks, trademarks, goodwill, and technical understanding related to the trade of goods are treated as fixed assets for Article 2 (14) of the Act.

As the Bench Division of the Kerala High Court of CIT points out, the explanation of capital assets is broad because it includes all intangible assets. The Pfizer Corporation (271 ITR 101)

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<sup>13</sup> *Ibid*

<sup>14</sup> Income Tax Act, 1961, s 2(14)

Pre-Arbitration Body (AAR) has decided that the transmission of technical data in the configuration of documents constitutes a handover of fixed assets. The technical data contained therein is relevant to the trade of particular nutritious commodities. Clause 2 of section 55<sup>15</sup> accords with the costs of capital assets and treats goodwill, trademarks, or trade names associated with the company and other intangible rights described therein as equity assets under the law for monetary gains. It will be done.

“Assignment” related to a capital asset entails the deal, waiver of the property, and termination of all ownership to it. There is reasonable justification for claiming that an intangible can have multiple locations. The proceedings were decided in the United States and the United Kingdom also show the doctrine that benevolence is a territory in the connotation that it resides where the pertinent business resides. Brands and goodwill are interlaced, so similar principles apply to both. Intangible or intangible property, that is, the location of trademarks and goodwill is used in U.S. courts when territorial issues regarding taxation of certain state goods are to be considered in the U.S. due process anvil. It has been controversial. Constitution. For *Geoffrey Inc vs South Carolina Tax Commission* (437 SE 2d 13). Governed by the South Carolina Superior Court (313 SC 15) was one such thing.

His intangibles were localized after the Supreme Court quoted a ruling that "intangibles may acquire taxable places other than the owner's residence if they form an integral part of the local area." I rejected Jeffrey's claim. Only at the department in Delaware.

This juncture has been reviewed by Foster's Australia Ltd's pre-arbitration body, *In re* (302 ITR 289). In this case, the Australian company owned several beer-related brands, including trademarks, logos, and machines, guidelines of brands, promotional materials, technology, and knowledge. Foster's Brand has been licensed to three countries and, until recently, Indian stakeholders. We hold a Foster brand registration certificate and have been utilizing it since registration. The applicant signed the Indian Sales Agreement on 4<sup>th</sup> August 2006, in Australia, for the transit of stakes and other intangible assets of the virtue of intellectual property at SAB Miller in Britain. This is a combined pact by the applicant regarding trademark interests and

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<sup>15</sup> Income Tax Act, 1961, s 55(2)

sales, Foster brand intellectual property, and the granting of permanent licenses relating to Foster's intellectual property in breweries under Indian sovereignty.

It was restricted. A total of \$ 120 million has been agreed upon for all of these items. Before the completion of the transaction outlined in the Agreement on August 4, 2006, the applicant will terminate the trademark license previously signed with Foster's India Ltd and be exclusive to Foster's lager's brewing, packaging, labelling, and sale. Granted license and exclusive rights. Use of the trademark on Indian Territory.

The Preliminary Judgment Authority has discovered that the intellectual property consisting of the Foster brand trademark and intellectual property is placed in India and that Foster's Indian business will be carried out in collaboration with the applicant. Benevolence could not be asserted to have changed its locale, camp, and execution at the exact moment the "completion" and "assignment" events took place in Australia. With the support of Foster's India's marketing and promotion activities, the trademark and brand assets are the businesses or businesses they generated, as the applicant's commercial use of the trademark and brand ensued in the innovation of important intangible properties in India. India at the time of the transfer in 2006, along with the brand.

Intellectual property in the shape of Foster's trademarks and brands is a critical part of the applicant's Foster's India business, the goodwill created by this user, and in the sense of the section India increase. At the time of the transfer, they were in India. The intellectual property of the Brewing Manual with physical identity was removed from India at the end of the S and P contracts and transferred to Australian buyers, so this NPV is in the form of the Brewing Manual and related intellectual property. Was not subject to taxation under the Income Tax Act in India. Tax obligations may only exist for two items, the trademark and the intellectual property of other brands, but the legal allocation is because the location of the transferred property is conceptually elsewhere. There was no basis. If income was generated or deemed to be generated in India as a result of the transmission of capital assets located in India, the total deliberation obtained for the transfer had to be dealt with as total income. This is an important judgment and will surely be widely trusted in the future. Also, if the legality of a judgment is challenged, it is most likely to be considered by the Supreme Court.

## CONCLUSION

It is clear that managing intellectual property and intellectual property rights is a multifaceted responsibility and requires numerous distinct efforts and techniques that require to be aligned with federal laws and international agreements and processes. It is no longer solely motivated by a national viewpoint. Market necessities, market reaction, and the cost of converting IP into a for-profit company all have a significant impact on IP and related rights. In other terms, when managing intellectual property rights, trade and commerce considerations are critical. Various types of intellectual property rights necessitate the involvement of individuals with various treatments, administration, planning, strategy, and expertise in science, technology, medicine, law, finance, marketing, business, and other fields. Every enterprise needs to develop its IP protocols, management styles, strategies, etc. based on its area of expertise. The pharmaceutical enterprises now have a developing IP strategy. Some IPRs can be invalid, so antitrust laws must intervene to prevent the illegal exercise of invalid rights to establish and maintain an illegal monopoly in the pharmaceutical industry. In this context, there is still much to be clarified.<sup>16</sup>

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<sup>16</sup> Chandra Nath Saha & Sanjib Bhattacharya (n 1)