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Multidisciplinary International E-research Journal

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December-2018 Special Issue – LXXVIII

Guest Editor :**Dr. C. S. Kakade****Principal****Anandibai Raorane Arts, Commerce & Science College,
Vaibhavwadi, Dist. Sindhudurg [M.S.] INDIA****Chief Editor -****Dr. Dhanraj T. Dhangar,****Assist. Prof. (Marathi)****MGV'S Arts & Commerce College,
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26	Information Technology and Security for Data Access for Higher Education System in India under Rusa Scheme Prof. Himmatsingh Mahor	150
27	Marketing of Information Products and Library Services in Academic Libraries Pravin Mane	162
28	Institutional Repository: A Study Mrs. Hemangi Mehetre	167
29	Role of Academic Libraries in Educational Development in ICT Era. Mrs. Prajakta Mhaprolkar	174
30	A Study of Disaster Management Plans Prepared by College Libraries in Ratnagiri District Mr. Sudhir More	183
31	National Digital Library of India : An overview Dr. Nandkishor Motewar	193
32	Best practices in MSP Mandal's R. B. Attal College Library:A Study Mr. R. B. Pagore	200
33	Knowledge Management Smt. Sharayu Patil-Chavan	206
34	Natural Language Processing and Digital Library Management System Dr. Sanjay Raibole	211
35	Library Automation : An overview Dr. Sandip Sangle	220
36	Assessment of Librarians' Motivation in College Libraries in Pune Prof. Sandhya Sathe	224
37	Library Automation: An overview Mr. Kamalakar Sawant	229
38	Use and Impact of Library E-Resources At College of Fisheries, Ratnagiri, Maharashtra:A Case Study Mrs. Manisha Sawant	234
39	Information Seeking Behaviour of Doctoral Research Scholars in Social Science of Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur – A Literature Review Najim Hussain A. Sheikh & Dr. S. N. Sable	240
40	Paper Presentation on Consortia and Networks Mrs. Aparna Shedge	246
41	Library and Information Science Education Through Distance Mode: IGNOU Experience Mr. Sandeep. K. Surve	254
42	Need of Information Seeking Behavior Among PG Students Ms. Padmavati Tubachi	262
43	Use of Mobile Technology in A Academic Library Services Smt.Susmita Walake	267
44	The Use of Electronic Information Resources and Services in Modern Libraries Dr.Yekanath Ningappa	271
45	Zotero: Reference Management Tools for Research Scholars and Academicians N. B. Thakare & Deepak Patil	275
46	The Role of E-Commerce in Employment Generation Mr. Ganesh Tekale & Mr. Gaurav Pawar	279
47	A Study of Role Perception of Secondary School Students Savita Desai & Dr.U.K.Kulkarni	284
48	Self Help Groups: A Key of Poverty Education Mr. Vyankatesh More	289
49	Pre-Ambedkar dalit Movement in Maharashtra Dr. Janardan Kamble	293
50	Gender Justice from Legal Perspective Sandhya F. Dokhe	298
51	Mainstreaming women Empowerment – The Role of National Women Commission Prof. Geeta Girwalkar	302
52	Rights of Women Prisoners Within Walls of Stones and Cages of Iron – A Socio – Legal Study Mrs. Veena Ingle	308
53	Execution of CEDAW: Indian Scenario Dr. G. Laxman	314
54	Fundamentals of Intellectual Property Rights Dr. Sangeeta Mahajan	319



Fundamentals of Intellectual Property Rights

Dr. Sangeeta Ajay Mahajan

Abstract:

Intellectual property rights are the rights similar to other property rights. The economic and technological development of a nation will come to an end if no protection is given to intellectual property rights. The pedagogic work is adopted in order to make conscious the community. Large number of people like educated and uneducated is not aware about the intellectual property rights. It is an attempt to make easy for understanding the rights of copyright owner, rights of patentee etc.

Introduction:

Intellectual property is the work produced by shaping thoughts, ideas of a human intellect. Intellectual property speaks about a part of information which can be included in concrete items spread over in an infinite number of copies at different sites anywhere in the world.

Protection of IP is necessary to encourage the development of science and technology, arts, literature and other creative works. Intellectual property also support and gave inspiration the creativity.

Intellectual Property Rights

Development in India

- ❖ 1947: Patents & Designs Act, 1911
- ❖ 1995: India joins WTO
- ❖ 1998: India joins Paris Convention/PCT
- ❖ 1999: Patent amendment provided EMR retrospectively from 1/1/95
- ❖ 2003: 2nd amendment in Patents Act
- ❖ Term of Patent – 20 years after 18 months publication
- ❖ Patent Tribunal Set up at Chennai
- ❖ 2005: Patents (Amendment) Act 2005
- ❖ 1999 – 2005: Plant Varieties and Farmers' Rights Act & Biodiversity Act. Designs, TM/Copyright Acts updated GI Registry set up at Chennai. IP Acts TRIPS Compliant

Aims and Objectives of the Research

01. To facilitate the view of WIPO in the light of Intellectual Property
02. To find out grounds and protection of Intellectual Property
03. To make aware about the various Intellectual Property Rights.

According to article 2(viii) of the Convention Establishing the World Intellectual Property Organization (WIPO) 1967, IPR includes right relating to

1. Literary, artistic and scientific works
2. Performance of performing artists, phonograms and broadcasts
3. Inventions in all fields of human effort
4. Scientific discoveries
5. Industrial designs
6. Trademarks, service marks and commercial names and designations



7. Protection against unfair competition

and all other rights out coming from scholar activity in the business, scientific, fictional or inventive fields.

Grounds to promote and protect Intellectual property Rights

1. For the development and well-being of peoples
2. Legal protection of new creations gives assurance towards commitment of extra resources for further innovation.
3. To encourage monetary growth, creates new employment and business and increases the value and happiness of life
4. To develop societal and cultural well-being.
5. To strengthen the advantage of innovators and the public interest, and offer environment in which creativity and invention can increase, for the benefit of society

Intellectual property includes copyright, trademarks, service marks, geographical indications, patents, utility models, plant varieties, industrial designs, trade secret, layout design of integrated circuits, etc.

Intellectual property divided into following categories-

Copyright

Copyright exist in the following works.

1. Original literary, dramatic, musical and artistic works
2. Cinematograph films and
3. Sound recording

Copyright consist of literary work like computer programme containing database, poems, novels, music, school textbooks, question paper set for examination, law reports, catalogues, consignment note, directories, mathematical tables, railway timetables, road books, guide books, books for scientific questions and answers, rules of a game, trade statistics, any piece for recitation, choreographic work or entertainment in dumb show, the pictorial arrangement or acting form of which is fixed in writing or otherwise, a painting, a sculpture, a drawing (including a diagram, map, chart or plan), design or a photograph, whether or not any such work possesses artistic quality, work of architecture and any other work of artistic craftsmanship etc.

Copyright law generally provides to the owner of copyright.

Industrial property

Industrial property is a type of intellectual property and therefore relates to creation of the human intelligence. Such creations are mainly innovation and industrial designs. These include trademarks, service marks, and layout designs of integrated circuits, commercial names and designations, geographical indications and protection against unfair competition.

Trademarks

A trade mark is a symbol used for marketing of goods or services. It appears on the container or wrapper and in which business men sold. There are various marks are there.

However, Trademark Act, 1999 defined the term under section 2(1)(zb) of the Trade Marks Act, 1999, a trade mark should be capable of being represented graphically and should also be competent of differentiating the goods of services of one person from those of others. Trade mark includes any device, brand, heading, label, ticket, name, signature, word, letter,



numeral, shape of goods, packaging or combination of colors or any combination thereof. The main function of trademark is identification of goods, identification of source, identification about quality of goods and advertising.

Patent

Patent is a monopoly right granted to a person by the Patent Office to exploit his invention for a limited period of time. In India, a patent is approved for a period of 20 years. An invention is patentable only when it is new, involves an inventive step and capable of industrial application. After 20 years patent falls into public domain and becomes public property. Anyone can use this invention without previous authorization of the inventor and without paying any royalty to him.

Before the grant of patent, the invention has to be disclosed to avoid wasteful duplication of effort and the multiplication cost of research aimed to find out solutions to technical problems can entail. The patentee has to describe in the patent application about the invention with such clarity and completeness of all the technical details that anyone having ordinary skill in the art should by simply reading the description, be able to carry out the invention.

Designs

Design means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article in both two dimensional and three dimensional form, by any industrial process or means whether manual, mechanical or chemical, separate or combined which in the finished article appeal to and are judged solely by the eye.

Thus as a general rule design consists of

1. Three dimensional features, such as shape of a product
2. Two-dimensional features, such as ornamentation, patterns, lines or color of a product or
3. A mixture of one or more such features

In short design must be a superior article the feature of it 'appeal to and are judged solely by the eye.' A good subject of design must be visually appealing, even if it won't be an inventive job or possess artistic merit. Protection of design is important because it encourages the creativity in the industrial and manufacturing sectors and thus helps in economic development of a nation. As the design added products commercial value, the manufacturers invests substantial capital and carry out research. In this regard legal protection is necessary to ensure fair return on investment.

Geographical indications

Geographical indications itself implies that particular goods from a country, region or locality having some special characteristics i.e. natural things such as unprocessed resources, loam, regional weather, heat, humidity etc. or manufacture method.

Geographical indications performs three functions

1. Identify goods originations in a particular territory, region or locality
2. Suggests the consumers that the goods come from specific area or country are of quality and basically attributable to their geographic origin and
3. They promote goods of producers of a particular area.



Geographical indications and trademarks work differently as trademarks owned by enterprises whereas geographical indications never belongs to a particular enterprise, rather geographical indications can be used by several enterprise at the same time.

Layout designs of integrated circuits

Layout designs means layout of transistors, and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit.

Integrated circuit play a significant role for the advancement of technology especially for electronics and information technology which includes mobile phones, television, watches, radio, washing machine, data processing equipments etc. Now a day, layout designs which reduce the dimensions of existing integrated circuits with increasing functions is need of hour.

A layout design is registrable in India only when

1. It is original
2. It has not been commercially exploited anywhere in India or in a convention country and
3. It is inherently distinctive
4. Inherently capable of being distinguishable from any other registered layout design.

The term of registration of a layout-design shall be only for a period of 10 years.

Plant varieties

A new variety of plant developed by farmers and plant breeders is protected under protection of plant varieties and farmers' rights act, 2001. A new variety is able to register only it fulfills the criteria of originality, uniqueness, uniformity and stability.

Trade secrets

Trade secret may include designs, drawings, architectural plans, blueprints and maps, data compilations such as list of customers, algorithms and processes that are implemented in computer programmes and the programs themselves, instructional methods, manufacturing or repair processes, formulae for producing products, business strategies, business plans, methods of doing business, marketing plans, financial information, personnel records, schedules, manuals, information about research and development(R&D) activities etc.

Trade secrets are confidential information of a business or enterprise used in the operation of a business or other enterprise. The holder of trade secret should take every safety measure to keep it secret.

Knowhow

Know how is achieved or developed by a person during research and development activities or through the application of industrial and business techniques in the operations of the enterprise. In short know how is a data or knowledge resulting from experience or skills and can be identified in terms of relevant documentation e.g. figure of the outline of the plant, drawings or plan of equipment, handbook or instructions prepared by the operation of machines or the assembly of components, specifications of raw materials, labor and machine time calculations, packaging and storing instructions etc.

The rights mentioned above will be protected by following legislations.

1. The copyright Act, 1957
2. The Patents Act, 1970



3. The Trade Marks Act, 1999
4. The Geographical Indications of Goods Act, 1999
5. The Designs Act, 2000
6. The Semiconductor Integrated Circuits Lay Out Designs Act,
7. The protection of Plant Varieties and Farmers' Rights Act, 2001
8. The Biological Diversity Act, 2002

Conclusion

Intellectual property rights encourage the intellectual creation with rights for a limited period of time. Everybody has to aware the rights of Intellectual Property in respect of Copyright, rights of trademarks, patent, designs, geographical indications, Layout designs of integrated circuits, Plant varieties, Trade Secrets otherwise it may cause violation of Intellectual Property Rights.

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