



NARSIMHA REDDY ENGINEERING COLLEGE
UGC AUTONOMOUS INSTITUTION

Maisammaguda (V), Kompally - 500100, Secunderabad, Telangana State, India

UGC - Autonomous Institute
Accredited by NBA & NAAC with 'A' Grade
Approved by AICTE
Permanently affiliated to JNTUH

A

Course File

On

“MC4001-INTELLECTUAL PROPERTY RIGHTS”

Submitted by

Dr. P. Dileep Kumar Reddy
Professor-CSE & Dean-IPR



NARSIMHA REDDY ENGINEERING COLLEGE (UGC-AUTONOMOUS)

(Affiliated to J.N.T.U, HYDERABAD)

MAISAMMGUDA (V), DHULAPALLY (P), MEDCHAL (M) SECUNDERABAD-500100
(2024-2025)



Your roots to success...

NARSIMHA REDDY ENGINEERING COLLEGE

UGC AUTONOMOUS INSTITUTION

Maisammaguda (V), Kompally - 500100, Secunderabad, Telangana State, India

UGC - Autonomous Institute
Accredited by NBA & NAAC with 'A' Grade
Approved by AICTE
Permanently affiliated to JNTUH

Program Name : B.Tech- All Branches
Name of the Course : Intellectual Property Rights
Course Code : MC4001*
Year & Semester : IV, III, B.Tech- I SEM & II Sem
Faculty Name : Dr. P. Dileep Kumar Reddy

S.NO	CONTENTS	Included
1	Vision, Mission Institute and IPR	YES
2	Academic Calendar	YES
3	Syllabus	YES
4	Subjects Notes	YES
5	Unit Wise Question Bank	YES
6	Assignment	YES
Recommendation/ Remarks :		

Dean-IPR

Dean-Academics

Principal

1. Institute State the Vision and Mission

Vision of the Institute

To produce competent professionals who can contribute to the industry, research and societal benefits with environment consciousness and ethical Values.

Mission of the Institute

M1: Adapt continuous improvements in innovative teaching-learning practices and state-of-the-art infrastructure to transform students as competent professionals and entrepreneurs in multi-disciplinary fields.

M2: Develop an innovative ecosystem with strong involvement and participation of students and faculty members.

M3: Impart National development spirit among the students to utilize their knowledge and skills for societal benefits with ethical values.

Intellectual Property Rights

Vision

To promote creativity and innovation thereby generating Intellectual Property in the areas of Science, Engineering, Technology, and all allied areas to foster development through knowledge and technology transfer

Mission

Promote an intellectual property development culture to foster entrepreneurship and research in the focused areas of science, engineering and technology by establishing systems for awareness, generation, Legal and Legislative Framework, Administration and Management, Commercialization, Enforcement, and Human Capital Development

2. Academic Calendar:



ACADEMIC CALENDAR :: 2024-25 B.TECH IV YEAR I & II SEMESTER

I SEM

S.No.	Description	Duration		Duration (Weeks)
		From	To	
1	Commencement of I Semester class work	03.07.2024		
2	1 st Spell of Instructions	03.07.2024	27.08.2024	8
3	First Mid Term Examinations	28.08.2024	31.08.2024	4 Days
4	2 nd Spell of Instructions (Including Dussera Recess)	02.09.2024	02.11.2024	9
5	Second Mid Term Examinations	04.11.2024	09.11.2024	1
6	Preparation Holiday	11.11.2024	16.11.2024	1
7	End Semester Examinations	18.11.2024	30.11.2024	2
8	Lab Examinations	02.12.2024	04.12.2024	3 Days

II SEM

S.No.	Description	Duration		Duration (Weeks)
		From	To	
1	Commencement of II Semester class work	06.12.2024		
2	1 st Spell of Instructions	06.12.2024	06.02.2025	9
3	First Mid Term Examinations	07.02.2025	08.02.2025	2 Days
4	2 nd Spell of Instructions	10.02.2025	05.04.2025	8
5	Second Mid Term Examinations	07.04.2025	08.04.2025	2 Days
6	Project Work Viva-Voce	09.04.2025	12.04.2025	4 Days
7	End Semester Examinations	14.04.2025	19.04.2025	1

Copy to:

1. Deans
2. IQAC
3. All HODs
4. Administrative Officer
5. Account officer
6. Web Portal I/C
7. ERP I/C
8. Library
9. Student Notice Boards

PRINCIPAL
NARSIMHA REDDY ENGINEERING COLLEGE
UGC AUTONOMOUS
Survey No.518, Maisammaguda (V), Dhulape
Medchal (M), Medchal Dist., Hyderabad-500

3. SYLLABUS: INTELLECTUAL PROPERTY RIGHTS

B.Tech. IV Year I Semester								
Course Code	Category	Hours / Week			Credits	Maximum Marks		
		L	T	P		C	CIA	SEE
MC4001*	Mandatory	3	0	0	3	30	70	100
Contact classes: 60	Tutorial Classes : NIL	Practical classes : NIL			Total Classes :60			
Prerequisites: No Prerequisites								

COURSE OBJECTIVES:

- To understand the concepts IPR
- To understand Trademarks, Trade Secretes and GI of goods.
- To understand Copyrights, Patents and Industrial Designs.
- To learn about how to manage IP rights and legal aspects.
- To understand the concepts of Cyber laws in IPR.

COURSE OUTCOMES:

- Able to demonstrate understanding of basic concepts of IPR.
- Able to differentiate between Trademarks, Trade secrets and GI of goods.
- Able to understand Copyrights, Patents and Industrial Designs..
- Able to manage and protect IP
- Apply statutory provisions to protect particular form of IPRs.

Unit – I

Introduction to Intellectual property:

Introduction, types of intellectual property, international organizations, agencies and treaties, importance of intellectual property rights.

Unit – II

Trade Marks:

Purpose and function of trademarks, acquisition of trade mark rights, protectable matter, selecting, and evaluating trade mark, trade mark registration processes.

Unit – III

Law of copy rights:

Fundamental of copy right law, originality of material, rights of reproduction, rights to perform the work publicly, copy right ownership issues, copy right registration, notice of copy right,

international copy right law. Law of patents: Foundation of patent law, patent searching process, ownership rights and transfer

Unit – IV

Trade Secrets:

Trade secretes law, determination of trade secretes status, liability for misappropriations of trade secrets, protections for submission, trade secrete litigation. Unfair competition: Misappropriation right of publicity, false advertising.

Unit – V

New development of intellectual property:

New developments in trade mark law; copy right law, patent law, intellectual property audits. International overview on intellectual property, international – trade mark law, copy right law, international patent law, and international development in trade secrets law.

TEXT BOOKS & REFERENCES:

1. Intellectual property right, Deborah. E. Bouchoux, Cengage learning.
2. Intellectual property right – Unleashing the knowledge economy, prabuddha ganguli, Tata McGraw Hill Publishing company ltd.



UNIT – I

INTRODUCTION TO INTELLECTUAL PROPERTY:

Introduction, types of intellectual property, international organizations, agencies and treaties, importance of intellectual property rights.

Intellectual Property Defined

Intellectual property (IP) is a term referring to creation of the intellect (the term used in studies of the human mind) for which a monopoly (from greek word monos means single polein to sell) is assigned to designated owners by law. Some common types of intellectual property rights (IPR), in some foreign countries intellectual property rights is referred to as industrial property, copyright, patent and trademarks, trade secrets all these cover music, literature and other artistic works, discoveries and inventions and words, phrases, symbols and designs. Intellectual Property Rights are themselves a form of property called intangible property. Although many of the legal principles governing IP and IPR have evolved over centuries, it was not until the 19th century that the term intellectual property began to be used and not until the late 20th century that it became commonplace in the majority of the world.

Types of Intellectual Property:

The term intellectual property is usually thought of as comprising four separate legal fields:

1. Trademarks
2. Copyrights
3. Patents
4. Trade secrets

1. Trademarks and Service Marks:

A trademark or service mark is a word, name, symbol, or device used to indicate the source, quality and ownership of a product or service. A trademark is used in the marketing is recognizable sign, design or expression which identifies products or service of a particular source from those of others. The trademark owner can be an individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher or on the product itself. For the sake of corporate identity trademarks are also being.

General Logos:



The Trademark Registration Logo



In addition to words, trademarks can also consist of slogans, design, or sounds. Trademark provides guarantee of quality and consistency of the product or service they identify. Companies expend a great deal of time, effort and money/ in establishing consumer recognition of and confidence in their marks.

Federal Registration of trademarks:

Interstate use of trademarks is governed by federal law, namely, the United States Trademark Act (also called the Lanham Act), found at 15 U.S.C 1051 et seq. In the United States, trademarks are generally protected from their date of first public use. Registration of a mark is not required to secure protection for a mark, although it offers numerous advantages, such as allowing the registrant to bring an action in federal court for infringement of the mark. Applications for federal registration of trademarks are made with the PTO. Registration is a fairly lengthy process, generally taking anywhere from twelve to twenty-four months or even longer. The filing fee is \$335 per mark (Present \$225 per class) per class of goods or services covered by the mark. A trademark registration is valid for 10 years and may be renewed for additional ten year periods thereafter as long as the mark is in used in interstate commerce. To maintain a mark the registrant is required to file an affidavit with the PTO between the fifth and sixth year after registration and every ten years to verify the mark is in continued use. Marks not in use are then available to others. A properly selected, registered and protected mark can be of great value to a company or individual desiring to establish and expand market share and better way to maintain a strong position in the marketplace

2. Copyrights:

Copyright is a form of protection provided by U.S. law (17 U.S.C 101 et seq) to the authors of "original works of authorship" fixed in any tangible medium of expression. The manner and medium of fixation are virtually unlimited. Creative expression may be captured in words, numbers, notes, sounds, pictures, or any other graphic or symbolic media. The subject matter of copyright is extremely broad, including literary, dramatic, musical, artistic, audiovisual, and architectural works. Copyright protection is available to both published and unpublished works. Copyright protection is available for more than merely serious works of fiction or art. Marketing materials, advertising copy and cartoons are also protectable. Copyright is available for original working protectable by copyright, such as titles, names, short phrases, or lists of ingredients. Similarly, ideas methods and processes are not protectable by copyright, although the expression of those ideas is. Copyright protection exists automatically from the time a work is created in fixed form. The owner of a copyright has the right to reproduce the work, prepare derivative works based on the original work (such as a sequel to the original), distribute copies of the work, and to perform and display the work. Violations of such rights are protectable by infringement actions. Nevertheless, some uses of

copyrighted works are considered “fair use” and do not constitute infringement, such as use of an insignificant portion of a work for noncommercial purposes or parody of a copyrighted work.

Definition: General Definition of copyright “Copyright owner”, with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right. Federal Registration of Copyrights: The works are protected under federal copyright law from the time of their creation in a fixed form. Registration, however, is inexpensive, requiring only a \$30 (present \$85) filing fee, and the process is expeditious. In most cases, the Copyright Office processes applications within four to five months. Copyrighted works are automatically protected from the moment of their creation for a term generally enduring for the author’s life plus an additional seventy years after the author’s death. The policy underlying the long period of copyright protection is that it may take several year for a painting, book, or opera to achieve its true value, and thus, authors should receive a length of protection that will enable the work to appreciate to its greatest extent.

3. Patents:

A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions. Under certain circumstances, patent term extensions or adjustments may be available. The right conferred by the patent grant is, in the language of the statute and of the grant itself, “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States. What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

There are three types of patents:

Utility patents may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;

Design patents may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and

Plant patents may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

Federal Registration of Copyrights:

Patents are governed exclusively by federal law (35 U.S.C 100 et seq). To obtain a patent, an inventor must file an application with the PTO (the same agency that issues trademark registration) that fully describes the invention. Patent prosecution is expensive, time consuming and complex. Costs can run into the thousands of dollars, and it generally takes over two year for the PTO to issue a patent. Patent protection exists for twenty years from the date of filing of an application for utility and patents and fourteen years from the date of grant for design patents. After this period of time, the invention fall into the public domain and may be used by any person without permission. The inventor is granted an exclusive but limited period of time within which to exploit the invention. After the patent expires, any member of the public is free to use, manufacture, or sell the invention. Thus, patent law strikes a balance between the need to protect inventors and the need to allow public access to important discoveries.

4. Trade Secrets:

A trade secret consists of any valuable business information. The business secrets are not to be known by the competitor. There is no limit to the type of information that can be protected as trade secrets; **For Example:** Recipes, Marketing plans, financial projections, and methods of conducting business can all constitute trade secrets. There is no requirement that a trade secret be unique or complex; thus, even something as simple and nontechnical as a list of customers can qualify as a trade secret as long as it affords its owner a competitive advantage and is not common knowledge.

If trade secrets were not protectable, companies would no incentive to invest time, money and effort in research and development that ultimately benefits the public. Trade secret law thus promotes the development of new methods and processes for doing business in the marketplace.

Protection of Trade Secrets: Although trademarks, copyrights and patents are all subject to extensive statutory scheme for their protection, application and registration, there is no federal law relating in to trade secrets and no formalities are required to obtain rights to trade secrets. Trade secrets are protectable under various state statutes and cases and by contractual agreements between parties.

For Example: Employers often require employees to sign confidentiality agreements in which employees agree not to disclose proprietary information owned by the employer.

If properly protected, trade secrets may last forever. On the other hand, if companies fail to take reasonable measures to maintain the secrecy of the information, trade secret protection may be lost. Thus, disclosure of the information should be limited to those with a “need to know” it so as to perform their duties, confidential information should be kept in secure or restricted areas, and employees with access to proprietary information should sign nondisclosure agreements. If such measures are taken, a trade secret can be protected in perpetuity.

Another method by which companies protect valuable information is by requiring employee to sign agreements promising not to compete with the employer after leaving the job. Such covenants are strictly scrutinized by courts, but generally, if they are reasonable in regard to time, scope and subject matter, they are enforceable.

Agencies Responsible For Intellectual Property Registration

United States Patents and Trademark Office:

The agency charged with granting patents and registering trademarks is the United States Patent and Trademark Office (PTO), one of fourteen bureaus within the U.S. Department of Commerce. The PTO, founded more than two hundred years ago, employs nearly 700 (present 1000 employs) are working. At present it is located in 18 building in Arlington, Virginia. Its official mailing address is Commissioner of Patents and Trademarks, Washington, DC 20231.

The PTO is physically located at 2900 Crystal Drive in Arlington, Virginia. Its web site is <http://www.uspto.gov> and offers a wealth of information, including basic information about trademarks and patents, fee schedules, forms, and the ability to search for trademarks and patents. Since 1991, under the Omnibus Budget Reconciliation Act, the PTO has operated in much the same way as a private business, providing valued products and services to customers in exchange for fees that are used to fully fund PTO operations.

It uses no taxpayer funds. The PTO plans to move all of its operations to Alexandria, Virginia, by mid-2005. The PTO is one of the busiest of all government agencies, and as individuals and companies begin to understand the value of intellectual property, greater demands are being made on the PTO.

Legislation passed in 1997 established the PTO as a performance-based organization that is managed by professionals, resulting in the creation of a new political position, deputy secretary of commerce

for intellectual property. In brief, the PTO operates more like a business with greater autonomy over its budget, hiring, and procurement. U.S patents issued its first patent in 1790. Since 1976 the text and images of more than three million are pending for registration. The PTO is continuing its transition filing for both trademarks and from paper to electronic filing for both trademarks and patents.

The PTO is led by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (the “Director”), who is appointed by the President. The Secretary of Commerce appoints a Commissioner for Patents and a Commissioner for Trademarks. Citations to many cases in this text will be to “U.S.P.Q”., a reference to United States Patent Quarterly, a reporter of cases decided by the Trademark Trial and Appeal Board (TTAB) as well as patent and copyright cases.

INTERNATIONAL ORGANIZATIONS, AGENCIES AND TREATIES

There are a number of International organizations and agencies that promote the use and protection of intellectual property. Although these organizations are discussed in more detail in the chapters to follow, a brief introduction may be helpful:

International Trademark Association (INTA) is a not-for-profit international association composed chiefly of trademark owners and practitioners. It is a global association. Trademark owners and professionals dedicated in supporting trademarks and related IP in order to protect consumers and to promote fair and effective commerce. More than 4000 (Present 6500 member) companies and law firms more than 150 (Present 190 countries) countries belong to INTA, together with others interested in promoting trademarks. INTA offers a wide variety of educational seminars and publications, including many worthwhile materials available at no cost on the Internet (see INTA’s home page at <http://www.inta.org>). INTA members have collectively contributes almost US \$ 12 trillion to global GDP annually. INTA undertakes advocacy [active support] work throughout the world to advance trademarks and offers educational programs and informational and legal resources of global interest. Its head quarter in New York City, INTA also has offices in Brussels, Shanghai and Washington DC and representative in Geneva and Mumbai. This association was founded in 1878 by 17 merchants and manufacturers who saw a need for an organization. The INTA is formed to protect and promote the rights of trademark owners, to secure useful legislation (the process of making laws), and to give aid and encouragement to all efforts for the advancement and observance of trademark rights.

World Intellectual Property Organization (WIPO) was founded in 1883 and is specialized agency of the United Nations whose purposes are to promote intellectual property throughout the world and to administer 23 treaties (Present 26 treaties) dealing with intellectual property. WIPO is one of the 17 specialized agencies of the United Nations. It was created in 1967, to encourage creative activity, to promote the protection of Intellectual Property throughout the world. More than 175 (Present 188) nations are members of WIPO. Its headquarters in Geneva, Switzerland, current Director General of WIPO is Francis Gurry took charge on October 1, 2008. The predecessor to WIPO was the BIRPI [Bureaux for the Protection of Intellectual Property] it was established in 1893. WIPO was formally created by the convention (meeting) establishing the world intellectual Property organization which entered into force on April 26 1970.

Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention)

An International copyright treaty called the convention for the protection of Literary and Artistic works signed at Berne, Switzerland in 1886 under the leadership of Victor Hugo to protect literary and artistic works. It has more than 145 member nations. The United States became a party to the Berne Convention in 1989. The Berne Convention is administered by WIPO and is based on the precept that each member nation must treat nation must treat nationals of other member countries like its own nationals for purposes of copyright (the principle of “nation treatment”). In addition to establishing a system of equal treatment that internationalized copyright amongst signatories, the agreement also required member states to provide strong minimum standards for copyrights law. It was influenced by the French “right of the author”.

Madrid Protocol It is a legal basis is the multilateral treaties Madrid (it is a city situated in Spain) Agreement concerning the International Registration of Marks of 1891, as well as the protocol relating to the Madrid Agreement 1989. The Madrid system provides a centrally administered system of obtaining a bundle of trademark registration in separate jurisdiction. The protocol is a filing treaties and not substantive harmonization treaty. It provides a cost-effective and efficient way for trademark holder. It came into existence in 1996. It allows trademark protection for more than sixty countries, including all 25 countries of the European Union

Paris Convention The Paris convention for the protection of Industrial Property, signed in Paris, France, on 20th March 1883, was one of the first Intellectual Property treaties, after a diplomatic conference in Paris, France, on 20 March 1883 by Eleven (11) countries. According to Articles 2 and 3 of this treaty, juristic (one who has through knowledge and experience of law) and natural persons

who are either national of or domiciled in a state party to the convention. The convention is currently still force. The substantive provisions of the convention fall into three main categories: National Treatment, Priority right and Common Rules. An applicant for a trademark has six months after filing an application in any of the more than 160 member nations to file a corresponding application in any of the other member countries of the Paris Convention and obtain the benefits of the first filing date. Similar priority is afforded for utility patent applications, although the priority period is one year rather than six months. The Paris Convention is administered by WIPO.

North American Free Trade Agreement (NAFTA) came into effect on January 1, 1994, and is adhered to by the United States, Canada, and Mexico. The NAFTA resulted in some changes to U.S. trademark law, primarily with regard to marks that include geographical terms. The NAFTA was built on the success of the Canada-U.S Free Trade Agreement and provided a compliment to Canada's efforts through the WTO agreements by making deeper commitments in some key areas. This agreement has brought economic growth and rising standards of living for people in all three countries.

General Agreement on Tariffs and Trade (GATT) was concluded in 1994 and is adhered to by most of the major industrialized nations in the world. The most significant changes to U.S intellectual property law from GATT are that nonuse of a trademark for three years creates a presumption the mark has been abandoned and that the duration of utility patent is now twenty years from the filing date of the application (rather than seventeen years from the date the patent issued, as was previously the case).

THE INCREASING IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS

- Protecting Intellectual Property Rights
- Technology has led to increase awareness about the IP
- Some individuals and companies offer only knowledge. Thus, computer consultant, advertising agencies, Internet companies, and software implementers sell only brainpower.
- Domain names and moving images are also be protected
- More than fifty percent of U.S. exports now depend on some form of intellectual property protection.
- The rapidity with which information can be communicated through the Internet has led to increasing challenges in the field of intellectual property.

- The most valuable assets a company owns are its Intellectual property assets
- Companies must act aggressively to protect these valuable assets from infringement (breaching, violation of law) or misuse by others
- The field of intellectual property law aims to protect the value of such investments.



UNIT – II TRADE MARKS:

Purpose and function of trademarks, acquisition of trade mark rights, protectable matter, selecting, and evaluating trade mark, trade mark registration processes.

DEFINITION OF TRADEMARK:

A trade mark is a word, phrase, symbol or design, or combination of words, phrases, symbols or designs used in the course of trade which identifies and distinguishes the source of the goods or services of one enterprise from those of others. As stated above, the definition of "trade mark" under Section 2(1) is “A mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from others and may include shape of goods, their packaging and combination of colours and covers both goods and services”. “Mark” includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof”. [Section 2(1)].

PURPOSE AND FUNCTION OF TRADEMARKS: A trade mark (popularly known as brand name in layman’s language) is a visual symbol which may be a word to indicate the source of the goods, a signature, name, device, label, numerals, or combination of colours used, or services, or other articles of commerce to distinguish it from other similar goods or services originating from another. It is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise. Its origin dates back to ancient times, when craftsmen reproduced their signatures, or "marks" on their artistic or utilitarian products. Over the years these marks evolved into today's system of trade mark registration and protection. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trade mark, meets their needs. A trade mark provides protection to the owner of the mark by ensuring the exclusive right to use it or to authorize another to use the same in return for payment. The period of protection varies, but a trade mark can be renewed indefinitely beyond the time limit on payment of additional fees. Trade mark protection is enforced by the courts, which in most systems have the authority to block trade mark infringement.

In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trademarks with recognition and financial profit. Trade mark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or

different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade. Trademarks perform two critical functions in the market place:

- They provide assurance that goods are of a certain quality and consistency, and
- They assist consumers in making decisions about the purchase of goods.

The main purpose of trademark is to show the difference about the quality of goods and service. For example: If a trademark such as NIKE could be counterfeited (imitating) and used by another on inferior merchandise (goods), there would be no incentive for the owners of the NIKE mark to produce high-quality shoes and to expend money establishing consumer recognition of the products offered under the NIKE marks.

The value inherent in achieving consumer loyalty to a particular product or service through the maintenance of consistent quality of the products or service offered under a mark is called goodwill.

- They indicate that all goods or services offered under the mark come from a single producer, manufacturer, or “source”
- They indicate that all goods or services offered under the mark are of consistent quality.

TYPES OF MARKS

There are four different types of marks.

They are:

1. Trademark
2. Service mark
3. Certification mark
4. Collective mark

Trademark:

The term trademark thus refers to some physical and tangible good and servicemark refers to an intangible service, in common usage the term trademark is often used to refer to marks for both goods and service. The key point in this legal description is that a trademark is a visual mark that may use any combination of letters and imagery to aid a company in differentiating itself from other entities.

The purpose of a trademark is to visually represent a person, company, or product and trademark should be designed to provide easy and definite recognition. The term mark will be used as a

synonym for both trademark and servicemarks. The federal statute ((law) an act passed by a legislative body) governing trademark law, the U.S. Trademark Act (Lanham Act, found at 15 U.S.C 1051etseq.) itself states that the term mark includes any trademark, servicemark, collectivemark, or certificatemark.



Service mark:

A service mark is the same as a trademark, but instead of a particular product, it identifies and differentiates the source of a service. A service mark is nothing but a mark that distinguishes the services of one proprietor/owner from that of another. Service marks do not represent goods, but the services offered by the company.

They are used in a service business where actual goods under the mark are not traded. Companies providing services like computer hardware and software assembly, restaurant and hotel services, courier and transport, beauty and health care, advertising, publishing, etc. are now in a position to protect their names and marks from being misused by others. The rules governing for the service marks are fundamentally the same as any other trademarks.

The logo for Amazon.com, featuring the text 'amazon.com' in a black, lowercase, sans-serif font with a yellow curved arrow underneath.



Certification mark

A certification mark is a word, name, symbol, device, or combination thereof used by one person to certify that the goods or services of others have certain features in regard to quality material mode of

manufacture or some other characteristic (or that the work done on the goods or services was performed by members of a union or other organization). For example: Hallmark, ISO mark and in U.S Under writers Laboratory seals of approval (Underwriters Laboratory is the large stand best known independent, not for profit testing laboratory in the world based in Northwood, Illinois, UL conducts safety and quality tests on abroad range of products, from firedoor's to CCTV cameras seals of approval).



Collective Mark:

A collectivemarkisoneusedbyacollectivemembershiporganization,such as a labor union, fraternity, or professional society, to identify that the person displaying the mark is a member of the organization. These are the trademarks used by a group of companies and can be protected by the group collectively. Collective marks are used to inform the public about a particular characteristic of the product for which the collective mark is used. The owner of such marks may be an association or public institution or it may be cooperative. Collective marks are also used to promote particular products which have certain characteristics specific to the producer in a given field. Thus, a collective trademark can be used by a more than one trader, provided that the trader belongs to the association.



ACQUISITION OF TRADEMARK RIGHTS

In a global scope, obtaining a trademark right through Use or through Registration are two major legislative models of system for the grant of trademark rights.

- By Use

- By Registration

The “use” model is based on the objective facts of trademark use, and decides the ownership of a trademark according to the time that the trademark was first used.

While the “registration” model grants trademark rights according to registration and the first applicant will obtain the trademark right.

In history, the earliest trademark legislations all took “use” principle, for instance, the first statute of trademark-Law of Manufacturing Signs and Trademarks concerning the Content of Use and Non-examination Principle enacted by France in 1857 took the “use” model.

However, since there are many defects of the “use” principle, France abandoned this principle which was already implemented for more than one hundred years in 1964 and shifted to adopt the “registration” model which was succeeded by the current Code of Intellectual Property. Article 712-1 of the code provides: “trademark rights shall be obtained through registration”.

In India one can acquire and claim a Trademark only by Registration and not by Use

The registration of a trade mark confers on the registered proprietor of the trade mark the exclusive right to use the trade mark in relation to the goods or services in respect of which the trade mark is registered. While registration of a trade mark is not compulsory, it offers better legal protection for an action for infringement. As per Section 17 of the Act, the registration of a trade mark confers the following rights on the registered proprietor:

- (i). It confers on the registered proprietor the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered.
- (ii) It entitles the registered proprietor to obtain relief in respect of infringement of the trade mark in the manner provided by the Trade Marks Act, 1999 when a similar mark is used on (a) same goods or services, (b) similar goods or services, (c) in respect of dissimilar goods or services.
- (iii) Registration of a trade mark forbids every other person (except the registered or unregistered permitted user) to use or to obtain the registration of the same trade mark or a confusingly similar mark in relation to the same goods or services or the same description of goods or services in relation to which the trade mark is registered.
- (iv). After registration of the trade mark for goods or services, there shall not be registered the same or confusingly similar trade mark not only for the same goods or services but also in respect of similar goods or services by virtue of Section 11(1) of Trade Marks Act, 1999.

v. Moreover, after registration of the trade mark for goods or services, there shall not be registered the same or confusingly similar trade mark even in respect of dissimilar goods or services by virtue of Section 11(2) in case of well-known trademarks.

vi. Registered trade mark shall not be used by anyone else in business papers and in advertising. Use in comparative advertising should not take undue advantage of the trade mark. Such advertising should not be contrary to honest practices in industrial or commercial matters. The advertising should not be detrimental to the distinctive character or reputation of the trade mark.

vii. There is a right to restrain use of the trade mark as trade name or part of trade name or name of business concern dealing in the same goods or services. The registered trade mark continues to enjoy all the rights which vest in an unregistered trade mark. By registration the proprietor of an unregistered trade mark is converted into proprietor of the registered trade mark. An application for registration may be based on a trade mark in use prior to such application and such a trade mark is already vested with rights at Common law from the time the use of the mark was commenced

TRANSFER OF TRADE MARK :

The intellectual property rights assignment is a transfer of the rights of the owner, title and the interest in certain intellectual property. The party transferring the rights are called assignor and the party receiving the rights are called assignee. The assignor transfers to the assignee its property in intellectual property rights such as trademarks, patents etc.

The owner of the rights may transfer all of his rights or part of his rights. Like the copyright owner could assign only some of his economic rights. The license agreements, grants permissions to use the intellectual property rights under certain conditions. Likely, the general rule assignments are transfers of property rights without any condition under which rights will be used.

An intellectual property assignment agreement is a contract to transfer intellectual property ownership from assignor to assignee. It empowers the assignor to permanently consign all of his intellectual property rights to the willing candidate in exchange for a defined amount. This agreement makes the owner sell his rights similarly as he could sell a physical property marking a permanent transfer. It means he will no longer hold any control, involvement, or claim on the transferred rights.

Section 37 of the Trade Mark Act, 1999 recognizes the right of registered proprietor to assign the trade mark for any consideration and to give receipt. It provides that subject to the provisions of the act and to any right appearing from the register to be vested in any other person, the proprietor of a

trade mark has the power to assign the trade mark and to give effectual receipt for any consideration for such assignment. It is a settled principle that the assignor cannot possibly transfer more rights to the assignee than what he himself has.

A registered trade mark is only assignable, whether with or without the goodwill of the business concerned and in respect either of all the goods or services in respect of the trademark which is registered for those goods or service.

Section 2(1)(b) of the Trade Mark Act, 1999 defines the “assignment” to mean “an assignment in writing by act of the parties concerned”. In view of this definition, an assignment has to be in writing and by the act of the parties concerned. Both the assignor and the assignee must execute the document. Such document will be known as the assignment agreement. There cannot be a unilateral execution of document by one party alone.

Type of Assignment of Trademark:

Complete Assignment of a Trademark: Here the owner of the trademark transfers his ownership and rights completely to the assignee related to the trademark. Such also includes the right to make any further transfer to other person as assignee. After the complete assignment of the trade mark the owner loses his rights over the trademark and the assignee retains all the respective rights.

Partial Assignment of a Trademark: Here the transfer of the ownership is done to certain products and services only. The assignor holds the rights over the part which he has not transferred to the assignee in terms of assignment. The assignor has the right to make choice related to the partial assignment. The assignor can use such exclusive rights in his business and administration.

Trademark Assignment with Goodwill: Here the assignor can transfer the rights of ownership as well as the image valued rights over the trademark. Then the assignee can use such representation in the market reputation of the trademark for the promotion of the product.

Trademark Assignment without Goodwill: Here lies the restriction over the usage of the trademark product on the part of the assignee i.e the assignor can restrict the assignee for not using the trademark in business. The same trademark can be used by both, the assignor and the assignee in their different business filed. This assignment is also called as gross trademark assignment.

Registration of Assignment Section 45 of the Trade Mark Act, 1999 lays down the procedure for the registration of the assignment. Where a person becomes entitled by assignment to a registered trade mark, he shall apply in the prescribed manner to the registrar to register his title. Registrar shall

upon the receipt of the application, register him as the proprietor of the trade mark in respect of the goods or services in respect of assignment.

Registrar may require further evidences and statement in proof of title if there is any reasonable doubt about the veracity of the statement or any document furnished.

The assignment agreements are always considered important in the intellectual property. It allows the property owner to transfer his ownership rights for the commercial returns and ensures the monetary gains to him. It is a written, enforceable contract that pertains to transfer the rights in a formalize agreement between two persons. It protects and regulates the rights of all the parties that are engaged in the agreement. Assignment agreement involves the exclusive sale of the rights which gives the assignee complete ownership over the marks of the assignor in whatever way, shape, or form it is in.

SELECTING AND EVALUATING TRADEMARK

Selecting a Mark

The selection of mark occurs in a variety of ways companies hold contests and encourages employees to create a mark for a new product line or service. Companies engage sophisticated research. Branding firms that will conduct surveys and create a mark and a logo or design for the company.

Once the mark is selected, it must be screened and evaluated for use and registrability, if failed then it leads to wastage in expenditure of time and money in advertising, using and applying for a mark that is rejected for registration by the PTO or, in the worst case scenario, might subject the owner to damages for trade mark infringement and unfair competition

Once a mark is selected, it should be carefully scrutinized to ensure that it will not be excluded from protection under the Lanham Act.

- Firstly they have check whether the mark contains scandalous (giving offence to moral sensibilities and injurious to reputation)
- Whether consent from a living person will be required,
 - Whether the mark is generic,
 - Whether it is statutorily protected
 - Whether the mark is descriptive of some feature of the goods and services offered under the mark,
- It also see that the mark includes foreign terms

- Many law firms specializing in trademark work use a questionnaire form or datasheet to gather questionnaire form or datasheet together basic information from clients about their marks.

Evaluating Trademark

Trademarks are not only used to provide legal protection to a company's name, design, word, etc. rather are intangible assets. Evaluating the exact value of the trademark is challenging. Till a decade or two ago, no one used to evaluate the value of their intangible assets of the company. However now, brands create the reputation of a product; motivates the purchasing power; and makes the product different from other generic products. Valuating intangible assets of your company like trademark or patent is a complex task which can turn your head upside down, and thus makes the selling transaction adversative. But the need to evaluate a brand is essential for many business activities, like a merger or acquisition; sale or purchase of the trademark or if you want to sell your company.

The first step in evaluating the trademark is to examine the historical prospects of the trademark like the total cost invested in it; profit margin associated with the products and the time it was first used, etc. After considering these options, one must follow the methodologies and different approaches as listed below:

The Income Approach

The most crucial element on which a trademark's value is determined is the income generating power of the business. The more the earning power, the higher the value of the brand would be.

Through future estimates of economic benefit, cash flows and risks involved, and converting this analysis into simple information; the income approach enables you to evaluate your company trademark.

Market Approach

In this method, the price of similar marks is considered and compared. It uses market-based indicators of value and takes similar marks into account; it analyses royalty rates and transaction prices to determine what the market is paying for similar intangible assets. In this approach, market trends are considered, and other transactions are analyzed.

Cost Approach

Cost approach considers the implicit as well as explicit cost incurred in creating the Trademark. Cost approach also covers the cost accrued in promoting the company and its brand promotion. A

particular focus on forecasts of market transactions is employed and estimated time and cost that would be required to make a similar trademark are considered

Other Factors

- Along with the ones listed above, there are other factors which a company should consider while evaluating a trademark or trademarks and to maximize their values:
- Qualitative and quantitative characteristics of the trademark.
- If there is any contract assigned or associated with the trademark.
- Sustainability of the trademark in the market in future.
- Market position a trademark holds in the current business.

• Trademark carries a significant value in the business, and a company should evaluate its brand and know the exact value of their intangible assets. A company should work towards the goal of enhancing the value of trademark and other intangible assets for long-term profits

TRADEMARK REGISTRATION PROCESS:

- Investing your time and money to build a particular brand and seeing the same brand name being used by another, robbing you of your hard-earned brand reputation is not an agreeable state of affairs.
- Many a time, trademark (TM) owners end up in protracted litigation because when the time was right, they did not do trademark registration in India of their brand name
- Trademark registration process of the brand name is not a difficult task.
- A few simple steps, as explained below and you would have the much-needed legal protection of your brand name registration in India.

A trademark application can be made by:

- Private firms
- Individuals
- Companies- Limited Liability Partnership, OPC, Private limited, Public, Partnership, etc.
- NGO's

Note: In the case of NGOs and LLP companies the trademark has to be applied for registration in the name of the concerned business or a company

Any person, pretending to be the proprietor of a trademark used or intended to be applied by him, may apply in writing in a prescribed manner for registration. The application must include the

trademark, the goods or services, name and address of the candidate with power of attorney, the time of use of the mark. The application must be in English or Hindi. It must be registered at the appropriate office.

Step 1: Trademark Search

- Many entrepreneurs do not comprehend the importance of a TM search.
- Having a unique brand name in mind is not good enough reason to avoid a TM search.
- TM search helps you to know if there are similar trademarks available and it gives you a fair picture of where your trademark stands, sometimes, it also gives you a forewarning of the possibility of trademark litigation.
- Why waste your money in time-consuming trademark litigation later when you can choose to avoid it in the first place?

Step 2: Filing Trademark Application:

- Based on the nature of product a class is chosen among 45 classes of trademark.
- Once the chosen brand name or logo is not listed in the Trademark Registry India, then we can opt for registering the same.
- The first step is to file a trademark application at the Trademark Registry India through online / offline.
- Once the application is filed, an official receipt is immediately issued for future reference with TM application number.

Step 3: Examination

- The examination might take around 12-18 months.
- The examiner might accept the trademark absolutely, conditionally or object.
- If accepted unconditionally, the trademark gets published in the Trademark Journal. If not accepted unconditionally, the conditions to be fulfilled or the objections would be mentioned in the examination report and a month's time would be given to fulfill the conditions or response to the objections.
- Once such response is accepted, the trademark is published in the Trademark Journal.
- If the response is not accepted, one can request a hearing. If in the hearing, the examiner feels that the trademark should be allowed registration, it proceeds for publication in the Trademark Journal.

Step 4: Publication

- The step of publication is incorporated in the trademark registration process so that anyone who objects to the registering of the trademark has the opportunity to oppose the same.
- If, after 3-4 months from publication there is no opposition, the trademark proceeds for registration.
- In case there is opposition; there is a fair hearing and decision are given by the Registrar.

Step 5: Registration Certificate

- Once the application proceeds for trademark registration, following publication in Trademark Journal, a registration certificate under the seal of the Trademark Office is issued.

Step 6: Renewal

- The trademark can be renewed perpetually after every 10 years. Hence, your logo or brand name registration can be protected perpetually.

While filing for the trademark registration, the documents required to provide are as follows:

Identity and business proofs: The trademark owner or the person who is approved by the trademark owner requires presenting their identity proof. It can be your Aadhar Card, Driving License, Passport, Ration card, or Voter's ID.

Using Logo with Tagline: If a trademark application is prepared for a tagline with only words, then there is no requirement for a logo. In cases where a logo is applied, then it must be submitted in black and white format. The number of words in the logo must exactly be the same as specified in the application for a trademark

Brand Name & Logo: The logo must have the brand name

User Affidavit: If a particular user data is to be claimed, the user affidavit is expected to be Submitted

Proof of TM use: To demand specific user date, documentary proof like invoices, registration certificates, etc. with the brand name must be given.

MSME or Start-up Recognition: A partnership firm or Corporate entities can give a certificate of registration under MSME or Start-up India scheme to get a 50% rebate on the Government fee

Signed Form TM – 48: M-48 is a lawful document that enables the attorney to file the trademark on your behalf with the trademark registry. The document will be made by LW professionals for the signature

International Registration

The system of international registration of marks is governed by two treaties:

The Madrid Agreement, concluded in 1891 and revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957), and Stockholm (1967), and amended in 1979, and the Protocol relating to that Agreement, which was concluded in 1989, with the aim of rendering the Madrid system more flexible and more compatible with the domestic legislation of certain countries which had not been able to accede to the Agreement.

The Madrid Agreement and Protocol are open to any State which is party to the Paris Convention for the Protection of Industrial Property. The two treaties are parallel and independent and States may adhere to either of them or to both. In addition, an intergovernmental organization which maintains its own Office for the registration of marks may become party to the Protocol. Instruments of ratification or accession must be deposited with the Director General of WIPO. States and organizations which are party to the Madrid system are collectively referred to as Contracting Parties.

The system makes it possible to protect a mark in a large number of countries by obtaining an international registration which has effect in each of the Contracting Parties that has been designated.

CLAIMS

Intellectual property claims are legal actions brought by one party against another when a party feels its intellectual property (IP) rights have been infringed upon. India being a mixed market has many industries that operate under the free market concept. The competition in the market system is extreme. For any enterprise to thrive in the open market, they have to create brand recognition and brand value. The simplest way through which this is achieved is via trademarks.

The need for trademarks can be considered a three-prong approach to represent goods or services by:

- Helping consumers recognize the source
- Helping consumers determine the quality
- Helping consumers make a purchasing decision

Once such value is attached to the trademark, it is imperative to protect it from misuse and infringement by others.

UNIT – III LAW OF COPY RIGHTS:

Fundamental of copy right law, originality of material, rights of reproduction, rights to perform the work publicly, copy right ownership issues, copy right registration, notice of copy right, international copy right law. Law of patents: Foundation of patent law, patent searching process, ownership rights and transfer.

Introduction:

In ancient days creative persons like artists, musicians and writers made, composed or wrote their works for fame and recognition rather than to earn a living, thus, the question of copyright never arose. The importance of copyright was recognized only after the invention of printing press which enabled the reproduction of books in large quantity practicable.

Copyright –Definition:

Copyright is a right of use given by the law to the creator of literary, dramatic, musical, artistic work , software etc for a limited period of time

In India all the law related to copyright is regulated by the copyright Act 1957. Its latest amendment was brought in 2012

A copyright is an exclusionary right. It conveys to its owner the right to prevent others from copying, selling, performing, displaying, or making derivative versions of a work of authorship.

Exclusive copyright rights

The entire bundle of rights that a copyright owner is exclusively entitled to exercise under the copyright laws.

These rights consists of:

- the right to reproduce (copy) the work
- the right to prepare derivative works
- the right to distribute copies of the work
- the right to perform the work, and
- the right to display the work.

COPYRIGHT ACT, 1957: Copyright Act refers to laws that regulate the use of the work of a creator, such as an artist or author.

This includes copying, distributing, altering and displaying creative, literary and other types of work. Unless otherwise stated in a contract, the author or creator of a work retains the copyright. Copyright

does not ordinarily protect titles by themselves or names, short word combinations, slogans, short phrases, methods, plots or factual information

NEED FOR COPYRIGHT:

- It gives you the exclusive right to reproduce or copy the work or change its form.
- Registration informs the world that you own the work
- If you succeed in an infringement suit, you are entitled to money damages

Indian perspective on Copyright Protection :

The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two forms:

- (a) Economic rights of the author
- (b) Moral Rights of the author (i) Right of Paternity (ii) Right of Integrity

TERM OF COPYRIGHT:

It varies according to the nature of work - 60 years, in India.

- Literary, dramatic, musical or artistic work (other than a photograph), when published during the lifetime of the author, copyright subsists during the lifetime of the author, plus 60 years.
- In the case of photographs, cinematograph films and sounds recordings; the term is 60 years from the date of publication.
- When the first owner of copyright is the government or a public undertaking, the term of copyright is 60 years from the date of publication.

The Fundamentals of Copyright:

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. It means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever (Kartar Singh Giani v. Ladha Singh & Others AIR 1934 Lah 777). Section 14 of the Act defines the term Copyright as to mean the exclusive right to do or authorise the doing of the following acts in respect of a work or any substantial part thereof, namely In the case of literary, dramatic or musical work (except computer programme):

- (i) reproducing the work in any material form which includes storing of it in any medium by electronic means;
- (ii) issuing copies of the work to the public which are not already in circulation;
- (iii) performing the work in public or communicating it to the public;
- (iv) making any cinematograph film or sound recording in respect of the work; making any translation or adaptation of the work. Further any of the above mentioned acts in relation to work can be done in the case of translation or adaptation of the work

In the case of a computer programme:

- (i) to do any of the acts specified in respect of a literary, dramatic or musical work; and
- (ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme. However, such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental

In the case of an artistic work:

- (i) reproducing the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
- (ii) communicating the work to the public;
- (iii) issuing copies of work to the public which are not already in existence
- (iv) including work in any cinematograph film; making adaptation of the work, and to do any of the above acts in relation to an adaptation of the work.

In the case of cinematograph film and sound recording:

- (i) making a copy of the film including a photograph of any image or making any other sound recording embodying it;
- (ii) selling or giving on hire or offer for sale or hire any copy of the film/sound recording even if such copy has been sold or given on hire on earlier occasions; and
- (iii) communicating the film/sound recording to the public

In the case of a sound recording:

- (i) To make any other sound recording embodying it •
- (ii) To sell or give on hire, or offer for sale or hire, any copy of the sound recording
- (iii) To communicate the sound recording to the public

Foundations of Copyright Law:

Copyright is a form of protection arising from the Patent and Copyright Clause of the U.S. Constitution. Copyright protects the works of authors and artists to ensure their products are not unlawfully reproduced, distributed, performed, or displayed, acts that would deprive them of revenue and discourage further creative work. As new technologies have developed, copyright law has evolved to keep pace, thereby affording protection to works not originally contemplated by the framers of the Constitution, such as computer programs and websites.

The present act governing copyrights in the United States is the Copyright Act of 1976, which provides protection upon creation of a work in a fixed form rather than requiring publication of a work as a prerequisite to protection as did the previous Copyright Act of 1909. Rights arise automatically upon creation of a work, and no publication or registration with the Copyright Office is required to secure copyright, although there are several advantages to registration.

Just as trademark law protects the investment by merchants in the marks under which their goods are sold, copyright law protects the creators of books, music, and art by providing them with the exclusive right to reproduce their works and derive income from them. Protecting these rights fosters creative effort—there would be little to be gained from investing and pouring effort into composing a song or writing a novel if others could reproduce the song or book at will without compensating its creator.

Copyright law in the United States stems from the Patent and Copyright Clause of the Constitution, which provides that Congress shall have the power “to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries.” U.S. Const. art. I, § 8. Under this clause, Congress has the power to enact legislation to provide copyright protection for authors for limited periods. Over time, the wording in the clause has been liberally interpreted to incorporate new technologies and protect new forms of expression such as films and video games as varieties of “writings.”

COMMON LAW RIGHTS AND RIGHTS UNDER THE 1976 COPYRIGHT ACT:

Until January 1, 1978 (the effective date of the 1976 Copyright Act), the United States had a dual system of copyright protection in that a distinction was drawn between unpublished works and those that were published. Until 1978, authors had a perpetual common law right to their unpublished works. Thus, the author of an unpublished manuscript could exclude others from copying the material forever. Once the work was published with a proper copyright notice, however, the

common law perpetual copyright was extinguished and protection was afforded by virtue of the 1909 act, which then provided a period of protection up to 56 years. **Publication** is the distribution of copies or phonorecords of a work to the public for sale or other transfer of ownership, by rental, lease, or lending.

- Before an infringement suit may be filed in court, registration is necessary for works of U.S. origin.
- Registration establishes a public record of the copyright claim.
- If made before or within five years of publication, registration will establish prima facie evidence in court of the validity of the copyright and of the facts stated in the certificate.
- If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorneys' fees will be available to the copyright owner in court actions.
- Registration allows the owner of the copyright to record the registration with the U. S. Customs and Border Protection for protection against the importation of infringing copies.

The U.S. Copyright Office

The U.S. Copyright Office is a division of the Library of Congress and is located in Washington, DC. Its address and telephone number are as follows: Register of Copyrights, Copyright Office, Library of Congress, 101 Independence Avenue SE, Washington, DC 20559-6000 (202/707-3000 or toll-free at 877/476- 0778). Its chief officer is the Register of Copyrights, and its powers and procedures are established in the 1976 Copyright Act. The primary function of the Copyright Office is to issue copyright registrations and serve as a depository for materials in which copyright is claimed. The Copyright Office is not permitted to give legal advice and will not offer guidance on matters such as disputes over the ownership of a copyright, suits against possible infringers, or other matters related to copyrights. It does, however, provide, free of charge, a variety of information, publications, circulars (information packets), and forms related to copyright. Among the more useful publications and materials (all of which are available for free viewing and downloading at the Copyright Office's website at <http://www.copyright.gov>) are the following:

- Forms for copyright registration
- Circular 1, "Copyright Basics"
- Circular 2, "Publications on Copyright"
- Circular 3, "Copyright Notice"
- Circular 4, "Copyright Office Fees"

- Circular 15a, “Duration of Copyright”
- Circular 38a, “International Copyright Relations of the United States”
- Circular 61, “Copyright Registration for Computer Programs”

Originality of Material:

To be eligible for copyright protection, material must be original, meaning that it must have been independently created and must possess a modicum of creativity.

The requirement of originality should not be confused with novelty, worthiness, or aesthetic appeal.

The requirement is rather that the material must be an independent product of the author and not merely some copy or minimal variation of an existing work.

A work can be original even if it is strikingly similar or identical to that of another. The Copyright Act only requires originality, meaning independent creation by the author. Thus, if two photographers each take photographs of the Washington Memorial, each will have copyright protection for the work (as long as one did not copy another). Similarly, if two authors independently write novels that are strikingly similar, each will have copyright protection (again, assuming there was no copying). In a famous copyright case, *Feist Publ’n’s, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345–46 (1991), the Supreme Court held:

Originality does not signify novelty; a work may be original even though it closely resembles other works so long as the similarity is fortuitous, not the result of copying. To illustrate, assume that two poets, each ignorant of the other, compose identical poems. Neither work is novel, yet both are original, and, hence, copyrightable.

“Originality” thus does not mean “first”; it merely means “independently created” rather than copied from other works. In regard to the level of creativity required for copyright protection, the threshold is quite low. Even a slight amount of “creative spark” will suffice. In order to be protected by copyright, however, a work must contain at least a certain minimum amount of original expression. Thus, copyright does not extend to blank forms, column headings, names, titles, or lists of ingredients. In *Feist*, the Supreme Court held that telephone white page listings did not satisfy the originality requirement inasmuch as they lacked minimal creativity. The Court held that the names, towns, and telephone numbers were all merely facts arranged in alphabetical order, an age-old practice, and thus were uncopyrightable. Although facts are not copyrightable, an author’s original selection and arrangement of those facts may be copyrightable as a compilation. (See the section in this chapter entitled “Compilations, Collections, and Derivative Works.”)

Rights of reproduction:

The right of reproduction commonly means that no person shall make one or more copies of a work or of a substantial part of it in any material form including sound and film recording without the permission of the copyright owner. The most common kind of reproduction is printing an edition of a work.

Aviolationofthecopyrightactoccurswhetherornottheviolatorprofitsbythereproduction

- Only the owner has the right to reproduce the work
- Secretly taping a concert, taking pictures at a performance, or recording all violate the owner's right to reproduce
- The suggestion of congress, in 1978 a group of authors, publishers and users established a not-for-profit entity called Copyright Clearance Center[CCC]
- CCC grants licenses to academic, government and corporate users to copy and distribute the works
- It collects royalty fees, which are distributed to the authors
- Companies that photocopy articles from journals and magazines often enter into licensing arrangements with the CCC so they can make copies.

Rights to perform the work publicly in copyright:

Under the public performance right, a copyright holder is allowed to control when the work is performed "publicly." A performance is considered "public" when the work is performed in a "place open to the public or at a place where a substantial number of persons outside of a normal circle of a family and its social.

- Section 106 of the copyright Act provides that the owner of a copyright has the exclusive right to prepare derivative works based upon the copyrighted work
- This right I often referred to as the right to adapt the original work
- “A derivative work is broadly defined as a work based upon one or more preexisting works, such as a translation, dramatization, fictionalized motion pictures version, abridgment condensation or any other from in which a work maybe recast, transformed, or adapted.
- a work consisting of editorial revisions, annotations, elaborations, or other modifications is also a derivative work.

New material represents original work of authorship

Rights of distribution and the first sale doctrine:

- A violation of the distribution right can arise solely from the act of distribution itself
- The distributor did not make an unlawful copy or the copy being distributed was Unauthorized
- The new owner the right to lend the book or movie to a friend, resell the work at a garage sale, or even destroy it.
- Without permission of authorship the goods are not permitted to imported into the U.S.

Rights to perform the work publicly:

- Section 106 [5] of the Copyright Act provided that in the case of all copyrighted works other than sound recording & works of architecture, the copyright owner has the exclusive right to display the work publicly.

Copyright Ownership Issues [17U.S.C. §201(a)]:

- Copyright in a work protected under the copyright activists [provide with power and authority] in the author or authors of the work.

Ownership of a physical object is separate and distinct from ownership of the copyright embodied in the material object.

i. Issues about ownership arise when more than one person creates a work.

Unless copyright has been explicitly conveyed with those physical articles, the original

ii. authors generally retain all other rights associated with the works.

Joint Works[intent to create a unitary whole]

- A joint work is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.
- One copyright exists in the created works
- Joint authors are those who “mastermind” or “supermind” the creative effort

Ownership Rights in Joint Works:

- If individual are authors of a joint work, each owns an equal undivided interest in the copyright as a tenant in common, [each has the right to use the work, prepare derivative works, display it without seeking the other coauthor’s permission].
- If profits arise out of such use, an accounting must be made so, that each author shares in the benefits or proceeds.

- The death of a coauthor, his or her rights pass to heirs who then own the rights in common with the other coauthor.

Ownership in Derivative or Collective Works

- The author of the original book has rights only to his or her work and cannot reproduce or perform the derivative work without permission.
- If a work such as a book is created by one person who intends it to be complete at the time and illustrations are later added to it by another, the work cannot be a joint work because there was no intention of the parties to create a unitary whole at the time of their creation.
- The author of the derivative work cannot create further works based on the original book without permission and cannot reproduce the original work without permission.

For Example:

If essays written by Jerry Seinfeld, Ellen DeGeneres, and Paul Reiser are collected into a humor anthology by Bill Jones (with permission of the original authors), the original authors retain their exclusive rights (such as rights to reproduce, distribute, and perform) in their respective essays. No joint work is created because there was no intent at the time the separate essays were created to merge them into a unitary whole. No derivative work is created because the original works have not been transformed in any way and nothing new has been added to them. The anthology by the compiler, Bill Jones, is a collective work and pursuant to section 201(c) of the act, Jones acquires only the right to reproduce and distribute the contributions as part of the particular collective work or any revision of the collective work.

Works Made for Hire:

The general rule is that the person who creates a work is the author of that work and the owner of the copyright therein, there is an exception to that principle: the copyright law defines a category of works called **works made for hire**.

The employer or commissioning party may be a company or an individual.

Copyright Registration:

- work is “created” when it is fixed in a copy or phonorecord for the firsttime.
- Although not required to provide copyright protection for a work, registration of copyright with the Copyright Office is expensive, easy and provides several advantages, chiefly, that registration is a condition precedent for bringing an infringement suit for works of US origin.
- To register a work, the applicant must send the following three elements to the

Copyright Office: a properly completed application form, a filing fee, and a deposit of the work being registered.

- Registration may be made at any time within the life of the copyright

THE APPLICATION FOR COPYRIGHT REGISTRATION:

The following persons are entitled to submit an application for registration of copyright:

- the author (either the person who actually created the work or, if the work is one made for hire, the employer or commissioning party)
- the copyright claimant (either the author or a person or organization that has obtained ownership of all of the rights under the copyright originally belonging to the author, such as a transferee)
- the owner of exclusive right, such as the transferee of any of the exclusive rights of copyright ownership (for example, one who prepares a movie based on an earlier book may file an application for the newly created derivative work, the movie); and

Application Forms

The Copyright Office provides forms for application for copyright registration.

- Each form is one 8½ by 11” (inches) sheet, printed front and back.
- An applicant may use photocopies of forms
- The Copyright Office receives more than 6,00,000 applications each year, each application must use a similar format to ease the burden of examination.
- The type of form used is dictated by the type of work that is the subject of copyright

For example: One form is used for literary works, while another is used for sound recording. Following are the forms used for copyright application

Form TX (Literary works, essays, poetry, textbooks, reference works, catalogs, advertising copy, compilations of information, and computer programs)

- Form PA** (Pantomimes, choreographic works, operas, motion pictures and other audio visual works, musical compositions and songs.
- Form VA** (Puzzles, greeting cards, jewelry designs, maps, original prints, photographs, posters, sculptures, drawings, architectural plans and blueprints.
- Form SR** (Sound recording)
- Form SE** (periodicals, news papers magazines, newsletter, annuals and Journals.Etc.

Notice of copyright

Since March 1, 1989 (the date of adherence by the United States to the Berne Convention), use of a **notice of copyright** (usually the symbol © together with the year of first publication and copyright owner's name) is no longer mandatory, although it is recommended and offers some advantages. Works published before January 1, 1978, are governed by the 1909 copyright Act.

Under that act, if a work was published under the copyright owner's authority without a proper notice of copyright, all copyright protection for that work was permanently lost in the United States.

With regard to works published between January 1, 1978, and March 1, 1989, omission of a notice was generally excused if the notice was omitted from a smaller number of copies, registration was made within five years of publication and a reasonable effort was made to add the notice after discovery of its omission

International Copyright Law

Developments in technology create new industries and opportunities for reproduction and dissemination of works of authorship.

A number of new issues have arisen relating to the growth of electronic publishing, distribution, and viewing of copyrighted works.

Along with new and expanded markets for works comes the ever-increasing challenge of protecting works from piracy or infringement.

Copyright protection for computer programs

Copyright protection for Automated Databases

Copyright in the Electronic Age

The Digital Millennium Copyright Act

PATENTS

A patent is a government granted right for a fixed time period to exclude others from making, selling, using, and importing an invention, product, process or design, or improvements on such items. These exclusive, monopoly rights are powerful, and in return the inventor is required to describe the invention in writing. The end result is simply a written description, accompanied by diagrams and drawings, that explains the invention. The public benefits because anyone can read the details of the invention and improve upon it. Importantly, the patent not only allows the public to gain an understanding of the invention, but also defines its limits. Once the patent term expires

(generally 20 years from the application filing date), the technology covered by the patent becomes a part of the public domain and is essentially free to use by the public.

Types of Patents

Generally, there are three main types of patents: utility patents, design patents and plant patents.

1) Utility Patent – When most people think of patents, they are referring mainly to utility patents. A utility patent is a patent that covers inventions, whether it's an innovative software process, a new product that is distinct from prior art, or an improvement to a car engine. A utility patent can be granted for any new, useful, and non-obvious process or product

Design Patent – A design patent covers a new and original ornamental design of a product.

In other words, a design patent protects the look of a product. Examples of products protected by design patents include jewelry and watches, electronic devices, computer icons, and beverage containers. A design patent consists of numerous drawings that show a product from various angles and contains very little written description, if any

Plant Patents - Plant patents were first created by the Patent Act of 1930, which had been proposed by Luther Burbank to protect new species of asexually reproduced plants, mostly flowers. These are different than the utility patents granted to bioengineered plants used in agriculture. The United States was the first country in the world to grant plant patents, and even today many countries continue to deny protection for plants. Indeed, even some signatories to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) administered by the World Trade Organization (WTO) reserve the right to deny patents for plants

To be patentable, plants must be cultivated rather than found in the wild, and plant patents are granted only to protect a new, distinct, and non-obvious variety of asexually reproduced plant—i.e., those grown not with seeds but by grafting, budding, or cutting. A plant need not be useful to qualify for a patent, but it must be distinctive in its color, habit, soil, flavor, productivity, form, or other aspects

FOUNDATION FOR PATENT LAW

The main motive behind patent was to encourage scientific research, new technology and industrial progress. Patent law grants a monopoly to the inventor to use their patented product and allow the use of the same to someone with prior permission against certain consideration. Patent confers the right to manufacture, use, offer for sale, sell or import the invention for the prescribed period to the

inventor. In short, the patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. Patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the patent owner's consent. It protects against infringement of the patent i.e. if someone tries to replicate the invention or invents against an existing patent the original inventor can enforce their right against such duplicate product.

There is some evidence that some form of patent rights was recognized in Ancient Greece. In 500 BCE, in the Greek city of Sybaris (located in what is now southern Italy), "encouragement was held out to all who should discover any new refinement in luxury, the profits arising from which were secured to the inventor by patent for the space of a year." Athenaeus, writing in the third century CE, cites Phylarchus in saying that in Sybaris exclusive rights were granted for one year to creators of unique culinary dishes.

In England, grants in the form of letters patent were issued by the sovereign to inventors who petitioned and were approved: a grant of 1331 to John Kempe and his company is the earliest authenticated instance of a royal grant made with the avowed purpose of instructing the English in a new industry. These letters patent provided the recipient with a monopoly to produce particular goods or provide particular services.

The first extant Italian patent was awarded by the Republic of Venice in 1416 for a device for turning wool into felt. Soon thereafter, the Republic of Florence granted a patent to Filippo Brunelleschi in 1421. Specifically, the well-known Florentine architect received a three-year patent for a barge with hoisting gear, that carried marble along the Arno River.

Patents were systematically granted in Venice as of 1450, where they issued a decree by which new and inventive devices had to be communicated to the Republic in order to obtain legal protection against potential infringers. The period of protection was 10 years. These were mostly in the field of glass making. As Venetians emigrated, they sought similar patent protection in their new homes. This led to the diffusion of patent systems to other countries. The Venetian Patent Statute, issued by the Senate of Venice in 1474, and one of the earliest patent systems in the world.

King Henry II of France introduced the concept of publishing the description of an invention in a patent in 1555. The first patent "specification" was to inventor Abel Foullon for "Usaige & Description de l'holmetre", (a type of rangefinder.) Publication was delayed until after the patent expired in 1561. Patents were granted by the monarchy and by other institutions like the "Maison du

Roi" and the Parliament of Paris. The novelty of the invention was examined by the French Academy of Sciences. Digests were published irregularly starting in 1729 with delays of up to 60 years. Examinations were generally done in secret with no requirement to publish a description of the invention. Actual use of the invention was deemed adequate disclosure to the public.

The English patent system evolved from its early medieval origins into the first modern patent system that recognized intellectual property in order to stimulate invention; this was the crucial legal foundation upon which the Industrial Revolution could emerge and flourish. By the 16th century, the English Crown would habitually grant letters patent for monopolies to favored persons (or people who were prepared to pay for them). Blackstone (same reference) also explains how "letters patent" (Latin *literae patentēs*, "letters that lie open")

were so called because the seal hung from the foot of the document: they were addressed "To all to whom these presents shall come" and could be read without breaking the seal, as opposed to "letters close", addressed to a particular person who had to break the seal to read them.

This power was used to raise money for the Crown, and was widely abused, as the Crown granted patents in respect of all sorts of common goods (salt, for example). Consequently, the Court began to limit the circumstances in which they could be granted. After public outcry, James I of England was forced to revoke all existing monopolies and declare that they were only to be used for "projects of new invention". This was incorporated into the 1624 Statute of Monopolies in which Parliament restricted the Crown's power explicitly so that the King could only issue letters patent to the inventors or introducers of original inventions for a fixed number of years. It also voided all existing monopolies and dispensations with the exception of:

the sole working or making of any manner of new manufactures within this realm to the true and first inventor and inventors of such manufactures which others at the time of making such letters patent and grants shall not use...

The Statute became the foundation for later developments in patent law in England and elsewhere.

James Puckle's 1718 early autocannon was one of the first inventions required to provide a specification for a patent. Important developments in patent law emerged during the 18th century through a slow process of judicial interpretation of the law. During the reign of Queen Anne, patent applications were required to supply a complete specification of the principles of operation of the invention for public access. Patenting medicines was particularly popular in the mid-eighteenth century and then declined. Legal battles around the 1796 patent taken out by James Watt for his steam

engine, established the principles that patents could be issued for improvements of an already existing machine and that ideas or principles without specific practical application could also legally be patented

This legal system became the foundation for patent law in countries with a common law heritage, including the United States, New Zealand and Australia. In the Thirteen Colonies, inventors could obtain patents through petition to a given colony's legislature. In 1641, Samuel Winslow was granted the first patent in North America by the Massachusetts General Court for a new process for making salt.

Towards the end of the 18th century, and influenced by the philosophy of John Locke, the granting of patents began to be viewed as a form of intellectual property right, rather than simply the obtaining of economic privilege. A negative aspect of the patent law also emerged in this period - the abuse of patent privilege to monopolise the market and prevent improvement from other inventors. A notable example of this was the behavior of Boulton & Watt in hounding their competitors such as Richard Trevithick through the courts, and preventing their improvements to the steam engine from being realized until their patent expired.

During the British reign in India, the Act VI of 1856 granted protection of inventions based to inventors of new manufacturers for a period of 14 years. It underwent many modifications thereafter and in 1911 Indian Patents & Designs Act was enacted. Then again modifications took place and the present Patents Act, 1970 came into force in the year 1972, amending and consolidating the existing law relating to Patents in India. The Patents Act, 1970 was again amended by the Patents (Amendment) Act, 2005(1), wherein product patent was allowed against all fields of technology including food, drugs, chemicals and microorganisms. The new law allows compulsory grant of patent except in prohibited cases as done earlier. The new amendment of 2005 also included pre-grant and post-grant opposition. A patent application in India can be filed either individually or jointly, by true and first inventor of the assignee.

PATENT SEARCH

Patent search is a search of the patent database to determine if there are any patent application similar or identical to an invention that is to be patented. Patent search can be done to improve the chances of obtaining a patent registration or to find information about new inventions that have patent protection.

Before filing a patent application, a patent search can help with different objectives like

- Determining the probability of having a patent granted to a proposed invention.
- Determining the claims to be filed in the patent application.
- Determining the freedom to operate.
- Determining whether a granted patent can be invalidated.
- Knowing more about similar inventions and status of similar patent filings

The Seven Steps in a Preliminary Search of U.S. Patents and Published Patent Applications

1. Brainstorm terms to describe your invention based on its purpose, composition and use.
2. Use these terms to find initial relevant Cooperative Patent Classifications using the USPTO website's Classification Text Search Tool

(<https://www.uspto.gov/web/patents/classification/>) Enter the keyword or keywords you wish to search in the Search Tool box. For example, if you were trying to find CPC Classifications for patents related to umbrellas, you would enter "umbrella". The default search system is CPC, Cooperative Patent Classification, so the button "All CPC" is selected. Click on the "Search" button. Scan the resulting classification's Class Schemes (class schedules) to determine the most relevant classification to your invention. If you get zero results in your Classification Text search, consider substituting the word(s) you are using to describe your invention with synonyms, such as the alternative terms you came up with in Step 1.

3. Verify the relevancy of CPC classification you found by reviewing the CPC Classification Definition linked to it (if there is one).
4. Retrieve U.S. patent documents with the CPC classification you selected in the PatFT (Patents Full-Text and Image) database (<http://patft.uspto.gov>). Review and narrow down the most relevant patent publications by initially focusing on the front page information of abstract and representative drawings.
5. Using this selected set of most relevant patent publications, review each one in-depth for similarity to your own invention, paying close attention to the additional drawings pages, the specification and especially the claims. References cited by the applicant and/or patent examiner may lead you to additional relevant patents.

Retrieve U.S. published patent applications with the CPC classification you selected in Step 3 in the AppFT (Applications Full-Text and Image) database (<http://appft.uspto.gov>).

Use the same search approach used in Step 4 of first narrowing down your results to the most relevant patent applications by studying the abstract and representative drawings of each on its front

page. Then examine the selected published patent applications closely, paying close attention to the additional drawings pages, the specifications and especially the claims.

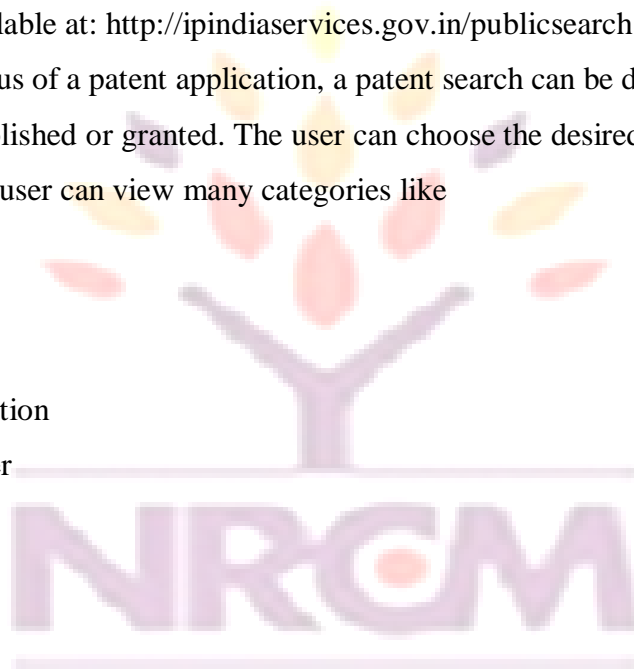
Broaden your search to find additional U.S. patent publications using keyword searching in PatFT or AppFT databases, classification searching of non-U.S. patents on the European Patent Office's Worldwide Espacenet patent database (<http://worldwide.espacenet.com>) and searching non-patent literature disclosures of inventions using the free electronic and print resources of your nearest Patent and Trademark Resource Center (<http://www.uspto.gov/ptrc>).

Patent search in India

There is no cost for doing a patent search in India. A patent search can be done through the Patent database of India available at: <http://ipindiaservices.gov.in/publicsearch>.

Depending on the status of a patent application, a patent search can be done under two publication types: published or granted. The user can choose the desired publication type by clicking on the checkbox. The user can view many categories like

- Application Date
- Title
- Abstract
- Complete Specification
- Application Number
- Patent Number
- Applicant Number
- Patent Number
- Applicant number
- Applicant Name
- Inventor Name
- Inventor Country
- Inventor Address
- Filing office
- PCT Application Number
- PCT Publication number



The entire category has a drop down box from which the user has access to change the

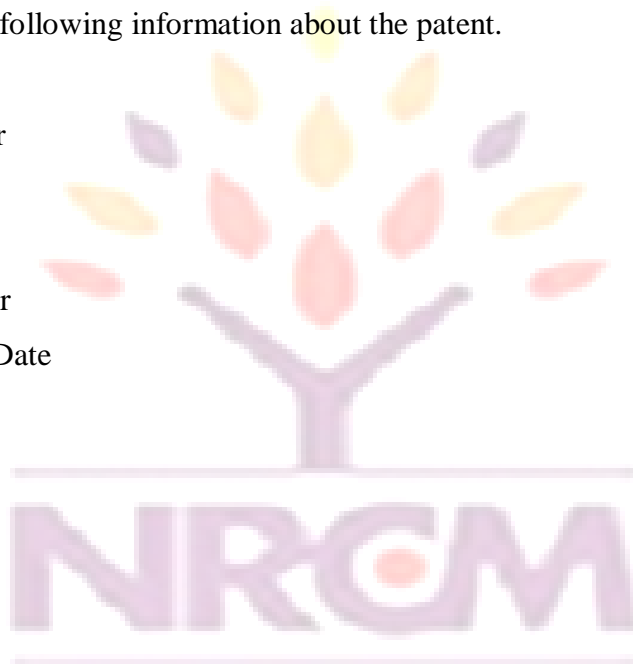
category. There is a search box next to every category where the user can enter the keyword of the patent that he wants to view. By entering a query in more than one box, the applicant can run very precise patent searches. Once the required keywords are entered in the respective boxes, there is a captcha code the user has to clear.

Patent Information

Once the code is entered, there are a number of relevant patent results for the patent search query that the user has entered. On selecting an application, the document opens with the Application Number, Title, Application Date and Status. The user can get further details about the patent by clicking on the Application Number, Title, Application Date and Status. Through patent search, the applicant can find the following information about the patent.

Invention title

- Publication Number
- Publication Date
- Publication Type
- Application Number
- Application Filing Date
- Priority Number
- Priority Country
- Priority Date
- Field of Invention



Classification

Inventor Name, Address, Country, Nationality

Applicant Name, Address, Country, Nationality

When each column is selected, the patent application's details about that section can be known by the user. When a user selects application number details like Invention Title, Publication number, date, type, etc. There are separate columns that give the user the inventor's and the applicant's Name, Address, Country, and Nationality

Patent Status: There is an Abstract column which has a summary of the patent application that the user can view. Under this, there is a complete specification that gives the details about the specification if the user has mentioned any. At the end, there is an option through which the user can view the application status. When it is opened, the user can get the application details

Basic Criteria for Patentability

An invention is patentable subject matter if it meets the following criteria –

- i. It should be novel.
- ii. It should have inventive step or it must be non-obvious
- iii. It should be capable of Industrial application.
- iv. It should not attract the provisions of section 3 and 4 of the Patents Act 1970.

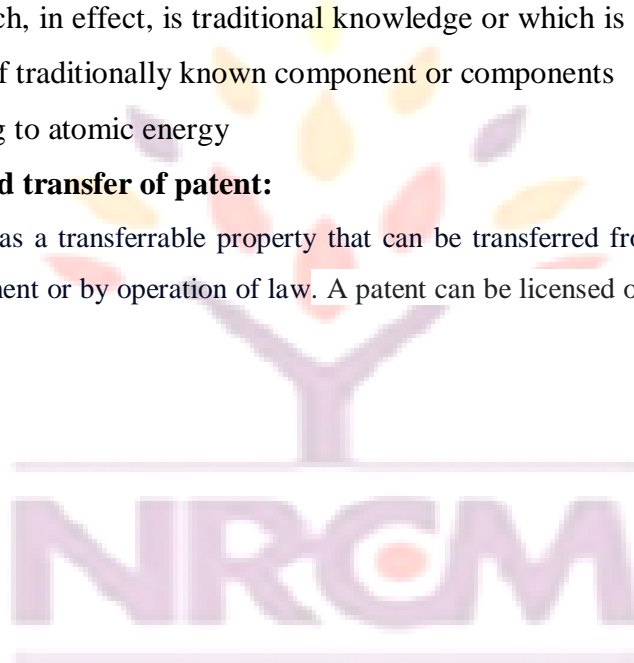
An invention may satisfy the condition of novelty, inventiveness and usefulness but it may not qualify for a patent under the following situations:

- 1) An invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- 2) An invention the primary or intended use or commercial exploitation of which could be contrary to public order or morality or which causes serious prejudice to human , animal or plant life or health or to the environment;
- 3) The mere discovery of scientific principle or the formulation of an abstract theory or discovery of any living thing or non-living substance occurring in nature;
- 4) The mere discovery of a new form of a known substance which does not result in enhancement of the known efficacy of that substance or the 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;
Explanation: For the purposes of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regards to efficacy;
- 5) A substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- 6) The mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- 7) A method of agriculture or horticulture;
- 8) Any process for 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;

- 9) Plants and animals in whole or any part thereof other than microorganisms but including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals;
- 10) A mathematical or business method or a computer program per se or algorithms;
- 11) Literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions;
- 12) A mere scheme or rule or method of performing mental act or method of playing game
- 13) A presentation of information;
- 14) Topography of integrated circuits;
- 15) An invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components
- 16) Inventions relating to atomic energy

Ownership rights and transfer of patent:

A patent is considered as a transferrable property that can be transferred from the original patentee to any other person by assignment or by operation of law. A patent can be licensed or assigned only by the owner of the patent.



UNIT – IV TRADE SECRETS:

Trade secrets law, determination of trade secrets status, liability for misappropriations of trade secrets, and protection for submission, trade secrets litigation. Unfair competition: Misappropriation right of publicity, false advertising.

The Law Governing Trade Secrets:

Trademarks, copyrights, and patents are all subject to extensive federal statutory schemes for their protection, there is no federal law relating to trade secrets, and no registration is required to obtain trade secret protection.

Most trade secret law arises from common law principles, namely, judge-made case law.

The first reported trade secret case in the United States was decided in 1837 and involved manufacturing methods for making chocolate.

In 1939, the Restatement of Torts (a wrongful act or an infringement of a right) adopted a definition of a trade secret, and many states relied on that in developing their body of case law, leading to greater consistency in the development of trade secrets law.

Additionally 1979, the National Conference of Commissioners on Uniform State laws drafted the uniform Trade Secrets Act (UTSA) to promote uniformity among the states with regard to trade secrets law. The UTSA was amended in 1985. The following definition of trade secret has been adopted by the UTSA:

Trade secret means information, including a formula, pattern, compilation, program, device, method, technique or process that:

Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

is the subject of efforts that are reasonable under the circumstance to maintain its secrecy.

DETERMINATION OF TRADE SECRET STATUS

Restatement of Torts (a wrongful act or an infringement of a right) §757 cmt.b lists six factors to be considered in determining whether information qualifies as a trade secret. Courts routinely examine these factors to determine whether a company's information constitutes a trade secret

The extent to which the information is known outside the company:

Although information may be known to other outside the company and still qualify as a trade secret, the greater the number of people who know the information, the less likely it is to qualify as a trade secret. Secrecy need not be absolute

The extent to which the information is known within the company:

Although an employer or company is permitted to disclose confidential information with a demonstrated “need to know” the information. If the information is widely known within the company, especially among those who have no business need to know the information, it may not qualify as a trade secret.

The extent of the measures taken by the company to maintain the secrecy of the information:

- One claiming trade secret protection must take reasonable precautions to protect the information.
- Courts are unlikely to protect information a company has not bothered to protect.
- A company is not obligated to undertake extreme efforts to protect information, but reasonable precautions are required.
- Some experts predict that courts will likely require advanced security measures to protect trade secrets transmitted via e-mail, including encryption and protocols to ensure confidentiality.

The extent of the value of the information to the company and its competitors:

- If information has little value either to its owner or to the owner’s competitors, it is less likely to qualify as a trade secret
- Conversely, information that is valuable to a company, such as the recipe for its key menu product, and that would be of great value to the company’s competitors is more likely to be protectable trade secret

The extent of the expenditure of time, effort, and money by the company in developing the information:

- The greater the amount of time, effort, and money the company has expended in developing or acquiring the information, the more likely it is to be held to be a protectable trade secret

The extent of the ease or difficult with which the information could be acquired or duplicated by other:

- If information is easy to acquire or duplicate, it is less likely to qualify a trade secret.

Similarly if the information is readily ascertainable from observation or can be easily reproduced, it is less likely to be a trade secret.

On the other hand, if it can be reverse engineered only with significant expenditures of time, effort, and money, the product may retain its status as a trade secret.

LIABILITY FOR MISAPPROPRIATION OF TRADE SECRETS:

Misappropriation of a trade secret occurs when a person possesses, discloses, or uses a trade secret owned by another without express or implied consent and when the person used improper means to gain knowledge of the trade secret.

knew or should have known that the trade secret was acquired by improper means; or

Knew or should have known that the trade secret was acquired under circumstances giving rise to a duty to maintain its secrecy.

The term *improper* means includes bribery, theft, and misrepresentation, breach of duty to maintain secrecy, or espionage (the practice of spying or of using spies, typically by governments to obtain political and military information) or other means

Absence of Written Agreement:

A written agreement prohibiting misappropriation of trade secrets can be enforced through an action for breach of contract; a company's trade secrets can be protected against misappropriation even in the absence of any written agreement between the parties.

A party owning trade secrets can bring an action in tort for breach of the duty of confidentiality, which duty can arise even without an express agreement.

Courts will impose a duty of confidentiality when parties stand in a special relationship with each other, such as an agent-principal relationship (which includes employer- employee relationship) or other fiduciary (involving trust, especially with regard to the relationship between a trustee and a beneficiary) or good faith relationship.

Courts have consistently held that employees owe a duty of loyalty, fidelity, and responsibility to their employers.

In fact, more trade secret cases are brought in tort for breach of confidentiality than in contract for breach of written agreements.

For example: If XYZ company is attempting to make a sale to Jones and informs Jones that the XYZ product is superior to that of competitors because it involves a new breakthrough in technology and explains the trade secret, courts would likely find that Jones is subject to a duty not to disclose

the information. Similarly, if XYZ co., explains its trade secrets to its bankers in an attempt to obtain financing, the bankers would likely be precluded from disclosing or using the information. Such implied contracts to protect the information generally arise when the parties' conduct indicates they intended the information to be kept confidential or impliedly agreed to keep it confidential.

Misappropriation by Third Party:

A number of other parties may also have liability for misappropriation of trade secrets if they knew or should have known they were the recipients of protected information.

For example:

1. Assume Lee is employed by XYZ co., In course of time Mr.Lee learns valuable trade secret information. If Mr.Lee resigns jobs and begins working for new company and it prohibited for both in using the information. He may not misappropriate the information because he was in an employee-employer relationship with XYZ company. New company should not use the information if Mr Lee reveals, if it happen so, then XYZ Company would generally prefer to sue New Company inasmuch as it is far likelier to have deep pockets, meaning it is more able to pay money damages than is an individual such as Lee.

2. If New Company has no reason to know the information was secret or that Mr. Lee may not reveal it, New Company would not have liability for such innocent use of the information. Similarly, if trade secret information were innocently obtained by New Company by mistake, New Company would have no liability for subsequent use or disclosure of the information.

Written Agreement:

Employers are generally free to require employee, independent contractors, and consultants to sign express agreements relating to the confidentiality of information. These agreements are usually enforced by courts as long as they are reasonable. The agreements usually include four specific topics:

- Ownership of Inventions
- Non-disclosure Provisions
- Non-solicitation Provisions
- Non-competition Provisions
- Purpose
- Reasonableness
- Consideration

PROTECTION FOR SUBMISSION:

Submission to Private Parties:

- In many instances individuals wish to submit an idea for an invention, process, game, or entertainment show to a company or business in the hope that the company or business in the hope that the company will market and develop the idea and the individual will be compensated for the idea?
- Idea submission disputes frequently arise in the entertainment industry. In one case an individual claimed that the producers of the Cosby Show (American comedian) misappropriated her idea for a television program portraying a wholesome and loving African American family. A court held there were no people and the idea was so general as to lack the element of concreteness to be protectable.
- The solution to such a dilemma is for the “inventor” to submit the idea pursuant to an evaluation agreement, or submission agreement, whereby the other party agrees to evaluate the idea only for the purpose of considering a future transaction between the parties and further agrees not to circumvent the submitter or to disclose the idea to others.

Submission to Government Agencies:

- Private companies that present bids to government agencies in the hope of obtaining a government contract are often required to disclose confidential or trade secret information to the agency.
- Under freedom of information act (both at the state and federal levels), the proposal might later be released to any member of the public requesting the document, thus resulting in loss of confidential information to possible competitors.
- The protected information is usually blocked out.
- If a government agency discloses trade secret information, the owner may have a cause of action for an unconstitutional taking of private property and may be awarded compensation if the owner had a reasonable expectation of confidentiality.

REMEDIES FOR MISAPPROPRIATION:

A trade secret owner may request a variety of remedies from a court. Among them are the following:

- Injunctive relief:** In many cases, a trade secret owner is more interested in ensuring the defendant cease use of the trade secret (or is precluded from commencing use) than in recovering damages. In cases in which money damages are not sufficient to protect a trade secret owner, a court may issue an injunction. A court may also issue an injunction to compel the defendant to surrender or destroy trade secret information. In fact, courts may issue injunctions’ to prevent inevitable disclosure,

reasoning that even if a former employer cannot show a particular secret has been taken, it is inevitable that key employees will eventually disclose what they know to a new employer.

☐ **Money damages:** A trade secret owner whose information has been misappropriated may recover money damages from the defendant. The Plaintiff may recover its lost profits as well as the profits made by the defendant. Alternatively, the plaintiff may seek and recover a reasonable royalty arising from defendant's use of the trade secret. Punitive damages may also be awarded in cases in which the defendant's conduct is reckless, willful, and intentional. The USTA provides that punitive damages not exceed more than twice the compensatory damages awarded

Attorneys' fees and costs: In most cases, the parties bear their own attorneys' fees and costs. The UTSA, however, provides that reasonable attorneys' fees and costs may be awarded to the prevailing party if bad faith or willfulness is shown.

TRADE SECRET LITIGATION:

☐ If a trade secret is disclosed in violation of a written confidentiality agreement, and the parties cannot resolve the dispute themselves, an action for breach of contract may be brought, similar to any other breach of contract action.

☐ The plaintiff may add other causes of action as well, for example, for misappropriation in violation of a state trade secret law.

To protect itself against a lawsuit by another alleging trade secret violation, companies should require new employees who will have access to confidential information to acknowledge in writing that accepting employment with the new company does not violate any other agreement or violate any other obligation of confidentiality to which the employee may be subject.

If grounds for federal jurisdiction exist (the parties have diverse citizenship and the claim exceeds \$75000), the action may be brought in federal court.

☐ The UTSA [Uniform Trade Secrets Act] provides that an action for misappropriation must be brought within three years after misappropriation is discovered or reasonably should have been discovered.

☐ In federal court, the action will be governed by the Federal Rules of Civil Procedure relating to federal civil actions generally.

Most states have rules relating to civil procedure that are modeled substantially after the Federal Rules of Civil Procedure and likewise govern the litigation.

If the defendant has a cause of action to assert against the plaintiff relating to the trade secret, it must be asserted by way of a counterclaim in the litigation so that all disputes between the parties relating to the information can be resolved at the same time.

After the complaint, answer, and counterclaim have been filed, various motions may be made. Discovery will commence. The plaintiff and defendant will take depositions to obtain testimony from those who may have information about the case. Ultimately, if the matter cannot be resolved by private agreement, it will proceed to trial. The trade secret owner must prove misappropriation by a preponderance of the evidence. Either party may request a jury trial; otherwise, a judge will render the decision. Appeals may follow.

One of the difficult issues in trade secret litigation arises from the fact that the trade secret sought to be protected often must be disclosed in the litigation so the judge or jury can evaluate whether the information is sufficiently valuable that it affords its owner a competitive advantage.

Similarly, the owner's methods of protecting the information often must be disclosed so the fact-finder can determine whether the owner has taken reasonable measures to protect the alleged trade secrets.

The dilemma faced by trade secrets owner is that they must disclose the very information they seek to protect.

As technology progresses and the value of certain communication and entertainment inventions increases, trade secret litigation is becoming an increasingly common and high-stakes occupation.

TRADE SECRET PROTECTION PROGRAMS:

Trade secrets are legally fragile and may be lost by inadvertent disclosure or failure to reasonably protect them, companies should implement trade secret protection programs to safeguard valuable information. Because trade secret protection can last indefinitely, businesses should devote proper attention to the methods used to ensure confidentiality of information. Developing programs and measure to protect trade secrets is an easy way to demonstrate to a court that an owner values its information and takes appropriate measures to maintain its secrecy.

Physical protection

There are a variety of tangible measures a company can implement to protect trade secrets, including the following:

- Safeguarding information under lock and key;
- Protecting the information from unauthorized access;

- Forbidding removal of protected information from the company premises or certain rooms;
- Retaining adequate security during evening and weekends either through alarm systems or security services;
- Ensuring tours of the company premises do not expose outsiders to valuable processes or information
- Using check-out lists when valuable equipment or information is removed from its normal location;
- Monitoring employees' use of e-mail and the Internet to ensure confidential information is not being disseminated;
- Using encryption technology and antivirus protection programs to protect information stored on computers;
- Educate employees on trade secrets and protection of trade secrets;
- Ensuring information retained on computers is available only on company networks so that access can be easily tracked.
- Most companies will not need to implement all of the measures described above. Courts do not require absolute secrecy or that extreme measure be taken to protect information. Rather, reasonable measures will be sufficient to protect the status of information as trade Secrets.

Contractual Protection

- Another method of protecting trade secrets is by contract, namely, requiring those with access to the information to agree in writing not to disclose the information to other or use it to the owner's detriment.
- Similarly, in licensing arrangements, trade secret owners should ensure the license agreements contain sufficient protection for trade secret information.
- Employers should use noncompetition agreements to ensure former employees do not use material gained on the job to later compete against the employer.
- With the advent of the Internet and the increased ease of electronic communications, employers have become concerned about the loss of trade secrets through dissemination over the Internet. It has been held that *"once a trade secret is posted on the Internet, it is effectively part of the public domain, impossible to retrieve."*

Companies can also rely on other complementary methods of protection to safeguard trade secrets. Any material that qualifies for copyright protection should be protected by registration, or at a

minimum, by ensuring a copyright notice is placed on the material or document to afford notice to other of the owner's right and internet in the material

Unfair competition: Misappropriation right of publicity, false advertising:

The way competitors conduct business can significantly impact the ability to compete in the marketplace, especially when it involves confusion as to the source or branding of products. When competitors overstep their bounds by engaging in false or misleading advertising to customers and potential customers, the goodwill, reputation and profits of a company can suffer significant harm.

We help our clients to combat false advertising and unfair competition tactics. We also work closely with clients to ensure that they are carefully advertising themselves and engaging with others in compliance with federal and state statutes so as to avoid unnecessary disputes.

Apart from the federal Lanham Act, which offers protections against false advertising, each state has various forms of false advertising and unfair competition laws that companies must keep in mind when engaging in commerce, and we can help our clients in using these laws to their advantage. A common misconception is that there must be an underlying patent or trademark in a claim of false advertising or unfair competition, but the law often protects against the misappropriation of the value of a company's business even when traditional forms of intellectual property are not involved. Therefore, we can help many clients who do not have patent or trademark protection.



UNIT- V

NEW DEVELOPMENT OF INTELLECTUAL PROPERTY:

New developments in trade mark law; copy right law, patent law, intellectual property audits. International overview on intellectual property, international – trade mark law, copy right law, international patent law, and international development in trade secrets law

New developments in trade mark law:

The object of trade mark law has been explained by the Supreme Court in *Dau Dayal v. State of Utttar Pradesh* AIR 1959 SC 433, in the following words:

“The object of trade mark law is to protect the rights of persons who manufacture and sell goods with distinct trade marks against invasion by other persons passing off their goods fraudulently and with counterfeit trade marks as those of the manufacturers. Normally, the remedy for such infringement will be by action in Civil Courts.

But in view of the delay which is incidental to civil proceedings and the great injustice which might result if the rights of manufacturers are not promptly protected, the law gives them the right to take the matter before the Criminal Courts, and prosecute the offenders, so as to enable them to effectively and speedily vindicate their rights”.

The distinction between a trade mark and a property mark has been stated by the Supreme Court in the case of *Sumat Prasad Jain v. SheoJanam Prasad and Ors.*, AIR 1972 SC 413. The Apex Court held:

“...Thus, the distinction between a trade mark and a property mark is that whereas the former denotes the manufacture or quality of the goods to which it is attached, the latter denotes the ownership in them. In other words, a trade mark concerns the goods themselves, while a property mark concerns the proprietor. A property mark attached to the movable property of a person remains even if part of such property goes out of his hands and ceases to be his.”

The Internet:

Trademark owners throughout the world are struggling with new issues presented by increased electronic communication, primarily that occurring through the Internet.

❖ The Internet derives from a network set up in the 1970s by the Department of Defense to connect military and research sites that could continue to communicate even in the event of nuclear attract.

❖ In the 1980s, the National Science Foundation expanded on the system, and its first significant users were government agencies and universities.

❖ In the early 1990s, however, it became apparent that the system could provide a global communication network, allowing people from all over the world to talk with each other; send written messages, pictures, and text to each other; and establish web pages to advertise their wares and provide information to their customers.

Assignment of Domain Names:

- A company's presence on the internet begins with its address or domain name not only serves as a locator for a company but also functions as a designation of origin and a symbol of goodwill---a trademark
- There are two portions to a domain name: the generic top-level domain, which is the portion of the name to the right of a period (such as .gov or .com) and the secondary level domain, which is the portion of the name to the left of a period (such as "kraft" in Kraft.com").
- Disputes frequently arise between owners of registered mark and owners of domain names whose domain names similar or identical to the registered marks

Internet Corporation for Assigned Names and Numbers [ICANN]:

- To help resolve the problems in the domain names registration and use process
- The government created the ICANN It is a nonprofit corporation It is governed by a board of directors elected in part by various members of the Internet Community.
- ICANN are authorized to register domain names ending with .com, .org and .net
- Registrations usually last one year, at which time they can be removed or will expire.
- Registration requires a representation that the person seeking to register the name is not doing so for an unlawful purpose and does not know of any infringement
- ICANN recently added seven new top-level domains, including .biz and .info

NEW DEVELOPMENT IN COPYRIGHT LAW:

While acknowledging that clothing is a useful article and thus not subject to copyright protection, a New York Federal court ruled that lace design, copyrighted as writing and incorporated into wedding dresses, were protectable and enjoined another maker of wedding dresses from making or marketing copies. Similarly, detailed embroideries or some other two dimensional drawing or graphic work affixed to a portion of a garment may be copyrightable.

A federal court in California recently held that while type fonts themselves are not protectable under copyright law, a software program that generated and created the typefaces was protectable.

As soon as Stephen King sold his book *The Bullet* exclusively in an Internet format, an individual cracked the copyright protection software and posted free copies of the book on the Internet. The publishers responded by adopting stronger encryption technology. Similarly, in 2000, Mr. King suspended online publication of a serial novel because too many individuals were downloading the work without paying it.

In late 1997 President Clinton signed into law the No Electronic Theft [NET] Act [amending 18 U.S.C §2319] to enhance criminal penalties for copyright infringement, even if the infringer does not profit from the transaction. The act also extends the statutes of limitations for criminal copyright infringement from three to five years, and allows law enforcement officers to use federal copyright law against online copyright violation, thereby extending the same copyright protection to the Internet that is provided to other media.

In September 1999, the Clinton administration relaxed government restrictions on the export of encryption products and simultaneously introduced new legislation to give law enforcement agencies greater authority to combat the use of computers by terrorists and criminals and to create a new code cracking unit within the FBI [Foreign Bureau of Investigation]

In mid-2000, president Clinton signed the Electronic signatures in Global and National Commerce Act, making digital execution, called e-signatures, as legally binding as their paper counterparts.

In 2000, federal prosecutors in Chicago indicted seventeen people who called themselves “Pirates with Attitude” for pirating thousands of software programs. The case was brought under the NET Act. Some of the individuals were former employees of Intel and Microsoft.

The copyright office has recommended that congress amend section 110 of the copyright Act to grant educators the right to transmit copyrighted works for distance learning if certain conditions are met.

NEW DEVELOPMENT IN PATENT LAW:

The patent Act has proven remarkably flexible in accommodating changes and development in technology. Thus advancement in technology generally has not necessitated changes in the state law governing patent protection.

Business method and software patent:

Many of the cutting-edge issues in patent law related to patents for computer software. For several years, the conventional wisdom has been that unless a computer program had significant commercial value and application patent protection was often counterproductive or ineffective in that the PTO often took two years to issue a patent, roughly the same time it took for the software program to become absolute

Biotechnology patent:

Medicines, Science, agricultural and pharmacology present the other cutting-edge issues in patent law. Research into genes may hold the key to curing disease throughout the world. Agricultural research may hold the key to providing sufficient food for the world's everincreasing population. The development of strains of plants and crops that are resistant to brought and disease has also led to an increasing number of patents issued, and attendant litigation. In the field of "agbiotech

American Investors Protection Act of 1999 [AIPA]:

The AIPA was signed into law in 1999 and represents the most significant changes to patent law in twenty years. Although some of the provisions of AIPA have been discussed earlier, its key subtitles are as follows: ➤ Inventors' Right Act of 1999

- The First Inventor Defense Act of 1999
- The patent term guarantee act of 1999
- The domestic publication of Foreign filed patent application act of 1999
- The optional Inter parts reexamination procedure Act of 1999

Introduction of International Patent protection:

The rights granted by a U.S Patent extend only throughout the U.S and have no effect in a foreign country. Therefore, an inventor who desires patent protection in other countries must apply for a patent in each of the other countries or in regional patent office.

- The Paris convention (already it is in previous units)
- The European patent organization
- Agreement on Trade-Related Aspects of IPR (already it is in previous units)
- The patent Law Treaty
- Foreign Filling Licenses

- Applications for United States Patents by Foreign applicants

The European patent organization:

The European Patent Organization (EPO) was founded in 1973 to provide a uniform patent system in Europe. A European patent can be obtained by filing a single application with the EPO headquartered in Munich (or its subbranches in The Hague or Berlin or with the national offices in the contracting nations). Once granted, the patent is valid in any of the EPO countries designated in the application and has the same force as patent granted in any one of the contracting nations.

INTELLECTUAL PROPERTY AUDITS:

Many companies believe that copyright extends only to important literary works and therefore fail to secure protection for their marketing brochures or other written materials. Similarly, companies often fail to implement measures to ensure valuable trade secrets maintain their protectability. Because clients are often unaware of the great potential and value of this property, law firms often offer their clients an intellectual property audit to uncover a company's protectable intellectual property. The IP audit is analogous to the accounting audit most companies conduct on an annual basis to review their financial status.

Another type of IP investigation is usually conducted when a company acquires another entity. At that time, a thorough investigation should be conducted of the intellectual property of the target company to ensure the acquiring company will obtain the benefits of what it is paying for and will not inherit infringement suits and other problems stemming from the targets' failure to protect its IP. This type of IP investigation is generally called a due diligence review inasmuch as the acquiring company and its counsel have an obligation to duly and diligently investigate the target's assets.

Conducting the Audit:

- The first step in the audit should be a face-to-face meeting of the legal team and company managers.
- The legal team should make a brief presentation on what Intellectual Property is, why it is important to the company, and why and how the audit will be conducted.
- Managers will be more likely to cooperate if they fully understand the importance of the audit.
- Obtaining this kind of "buyin" from the clients managers and employees will speed the audit and reduce costs.

- Moreover, education about the importance of intellectual property helps ensure that managers consider ways to further protect a company's valuable assets and remain alert to possible infringements of the company's Intellectual capital or infringements by the computer of other's right.
- Finally, having, outside counsel involved in the process will ensure that communications related to the audit are protected by the attorney-client privilege.
- Once the company's managers have been advised of the need for the audit, the legal team should provide a work-sheet or questionnaire to the company specifying the type of information that the firm is looking for so that company files can be reviewed and materials assembled for inspection by the firm and its representatives.

INTERNATIONAL OVERVIEW ON INTELLECTUAL PROPERTY:

Introduction :

International intellectual property law is a patchwork area of intersecting multilateral and bilateral agreements and their resulting harmonization of national laws. It has become an increasingly important and frequently litigated area, particularly in the patent, copyright, and trademark arenas. In addition, in the past few decades, there have been louder calls for the protection of domain names, databases, software, and traditional knowledge. Many of these cutting edge intellectual property issues are addressed on an international level through the World Intellectual Property Organization (WIPO). Along with new forms of protection, the trend towards globalization in the trade arena has had a direct effect on the harmonization of national intellectual property laws through the World Trade Organization (WTO) and regional trade organizations. With increased interest in international intellectual property law, there are now numerous high quality electronic resources that cover various facets of this ever-changing area.

International Trademark Law :

Vicenc Feliú, International Trademark Law - The Madrid System(http://www.nyulawglobal.org/globalex/International_Trademark_Law.htm) provides a brief look at the practical aspects of the Madrid Protocol and includes a selective bibliography. International Center for Trade and Sustainable Development (ICTSD) and United Nations Conference on Trade and Development (UNCTAD), IPRonline.org

General Resources on IPRs (<http://www.iprsonline.org/resources/iprs.htm>) includes online reports, articles, and web sites from 1989. It also subject indexing to limit searches to narrower topics, including traditional knowledge, biodiversity, and human rights

International Patent Law

Foreign and International Patent Law Research Guide

(<http://lawlibraryguides.bu.edu/content.php?pid=173684&sid=1686142>) from Boston University covers many of the major sources of print and electronic materials on international patent law. The print recommendations can be supplemented with a search of your local library's catalog. Introduction to International/Comparative Patent Law (<http://libguides.wmitchell.edu/IntPatentLaw>) - is quite unassuming because the introductory page is quite brief. Don't miss the tabs in green across the middle of the page because that is where the content is. This site covers primary and secondary sources as well as specific Lexis and Westlaw databases applicable to the area.

International Copyright Law

Compleat World Copyright web site (<http://www.compilerpress.ca/CW/index.htm>) organizes articles on the web by major copyright scholars by author, country, institute, and journal. University of Iowa College of Law Library, Foreign, Comparative, and International Copyright Materials, (<http://libguides.law.uiowa.edu/content.php?pid=255321&sid=2108125>) is an excellent guide with links to not only treaties and print sources, but also relevant specialized journals

International Development in trade secrets law:

International Perspective for Legal Protection of Trade Secret

(A) The Indian Prospective "Intellectual Property Laws" is a diverse field for protecting the intangible assets. It is fully emphasized in the R&D, company's having secret informations, manufacturing and service units and in trade related issues. The IPR laws are quite well laid out and are in practice in developed countries like in West European Countries, United Sates, Japan, Canada, and Australia etc. However, in a developing country like India, there is somewhat lack of awareness about the IPR's and their consequential effects in the economic and business sectors. Except for law of contract, there is no specific law in India that protects trade secrets and confidential information [13]. Nevertheless, Indian courts have upheld the trade secret protection under law of contracts on basis of principles of equity, and at times, upon a common law action of breach of confidence, which in effect amounts to a breach of contractual obligation. Trade secret in the Indian perspective seems

to be below satisfactory level, as there is no full-fledged enactment of framework for the protection of trade secrets. This form of intellectual property is a new entrant in India, but is nevertheless a very important field of IP. India has not had much experience in relation to trade secret matters and the courts while determining a case, would have a diverse array of persuasive value precedents from all systems of law. There is need of a dedicated legislation, which would concretize trade secret protection in India. Trade secrets are fast becoming intellectual property of choice for many corporate bodies, SME's and R&D labs and therefore an effective legislative intervention for it is felt even more expedient.

Some Important Court Cases

(i) Ciba Inc Vs. Sequent Scientific Ltd.

The importance of clearly defining the 'confidential information' in a confidentiality agreement was discussed in a recent interim relief sought by M/s Ciba Inc against M/s Sequent Scientific Ltd. and Others. The matter in question involved a process of manufacture of a compound called as Tetrakis commonly known as PEPQ [14]. Ciba claimed that the said process was unique and had been developed in-house by Ciba, except for certain information that was available publicly. According to Ciba, the only other manufacturer of PEPQ in the world was Clariant Group. The process was disclosed by Ciba to Plama Laboratories, now known as Sequent Scientific Ltd., under a 'confidentiality agreement' in order to help it to develop a plant for the manufacture of PEPQ. Ciba claimed that the 'confidentiality agreement' provided for the non disclosure of any 'confidential information' received by Sequent from Ciba to any third party except with the prior approval of Ciba. Hence, on coming to know of Sequent transferring its entire undertaking along with all agreements and contracts to a third party without informing Ciba, Ciba filed a suit against Sequent for the breach of the 'confidentiality agreement'. Later, during the hearing of the interim relief, Sequent submitted that the definition, period of and extent of maintaining the 'confidential information' was not provided in the confidentiality agreement. In light of this, High Court of Bombay held (on 29.09.09) that Ciba had to clearly spell out the confidentiality agreement in order to determine the breach and violation of its 'confidential information', in absence of which, relief could not be provided to Ciba.

Coca Cola Vs. Gujarat Bottling Co Ltd

M/s Coca Cola entered into an agreement with M/s Gujarat Bottling Co Ltd. whereby Coca Cola granted to Gujarat Bottling Co Ltd a license to use the trademarks mentioned in the schedule to the

agreement with Coca Cola [15]. The Agreement contained a negative covenant by means of which Gujarat Bottling Co Ltd could not manufacture, bottle, sell, deal in or otherwise be concerned with the products, beverages of any other brands or trademarks during the subsistence of the agreement with Coca Cola. But shares of Gujarat Bottling Co Ltd were later on sold to a closely associated subsidiary of Pepsi, which later gave a notice to Coca Cola for cancellation of the agreement. Coca Cola filed a suit (Suit No. 400 of 1995) in the Bombay High Court seeking various reliefs. In the said suit, Coca Cola took out Notice of Motion No. 316 of 1995 seeking interim relief. The Court laid down that it was difficult to appreciate how Pepsi could ask Coca Cola to part with its trade secrets to its business rival by supplying the essence/syrup etc., for which Coca Cola holds the trademarks, to Gujarat Bottling Co Ltd which is under effective control of Pepsi[16]. Following was observed by Supreme Court in this case. ‘There is a growing trend to regulate distribution of goods and services through franchise agreements providing for grant of franchise by the franchisor on certain terms and conditions to the franchisee [17]. In such agreements, a condition is often incorporated that the franchisee shall not deal with competing goods. Also stated there in is a condition restricting the right of the franchisee to deal with competing goods for facilitating the distribution of the goods of the franchisor and it cannot be regarded as to result in restraint of trade. Although the Court had refrained from entering into the question whether reasonable restraint is outside the purview of Section 27 of the Contract Act, the appeals, therefore, fail and are accordingly dismissed”

United State of America (USA)

i) North American Free Trade Agreement (NAFTA)

The North American Free Trade Agreement (NAFTA) is an agreement signed by the government of the member countries such as Canada, Mexico and United States, creating a trilateral trade bloc in North America. Member countries have agreed on the issue of protection and they follow the steps to ensure that member countries will protect trade secrets from unauthorized acquisition, disclosure or use. Remedies must include injunctive relief and damages. In response to NAFTA, Mexico amended its 1991 Trade Secrets Law to permit private litigants to obtain injunctive relief [20]. The agreement came into force on January 1, 1994.

(ii) General Agreement on Tariffs and Trade (GATT)

On April 15, 1994, the major industrialized nations of the world, including the United States, concluded the Final Act resulting from the Uruguay Round of GATT (General Agreement on Tariffs

and Trade). GATT was established by the World Trade Organization (WTO) who also promulgated Trade-Related Aspects of Intellectual Properties (TRIPs) Agreement. Under GATT, "undisclosed information" must be protected against use by others if without the consent of the owner in case the use is contrary to honest commercial practices. Also, there is third-party liability for misappropriation if third parties knew or were grossly negligent in not knowing that such information had been obtained dishonestly

(iii) Uniform Trade Secrets Act (UTSA)

In the US, the Uniform Trade Secrets Act (UTSA) as amended in 1985, provides a widely accepted definition of a trade secret: information, including a formula, pattern, compilation, program, device, method, technique, or process, that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. In addition to the UTSA, whose adoption is voluntary with each of the States, the US Congress enacted a national Act to recognize certain forms of trade secret thefts as "criminal". The Economic Espionage Act of 1996 makes illegal the misappropriation, copying or unauthorized possession of trade secrets [22]. United States uses the different Pattern called 6- factor test for trade secrets determination by which it can be determined whether the said information is trade secret or not

(C) United Kingdom In the UK, a trade secret is some specific information known to only a few people, the disclosure of which to others would constitute a breach of confidence. The law that protects other kinds of confidential information from disclosure (Law of Confidentiality) also protects trade secrets in the UK.

(D) Brazil In 1996, Brazil renovated its Intellectual Property Laws. Trade secrets are protected under the rubric of "Unfair Competition." Borrowing from U.S. law, a variant of the Section 757, it also considered the United States 6-factor test to determine whether a piece of information qualifies as a trade secret, Common knowledge, prevalent information in the public domain, or knowledge that is apparent/ oblivious to an expert in the field cannot qualify for protection under trade secrets. The trade secret owner must take positive steps to safeguard the secrecy of the information

(E) **Japan** Effective since June 15, 1991, Japan enacted a national trade secrets law. On the basis of this law, any "technical or business information" that has commercial value, which is not in the public domain, and which has been "administered" as a trade secret, will be protected for the

purpose. Infringement occurs when a person procures a trade secret by theft, fraud, or extortion or when there is an Unauthorized use or disclosure of a lawfully acquired trade secret for unfair competition. An injured party may obtain injunctive relief and damages [23]. The trade secret owner may also request destruction of all articles that have been manufactured as a result of the illegally obtained trade secret. In the Uniform Trade Secrets Act, statute has similarities for the same purpose. For example, there is a 3-year statute of limitations after discovery of the trade secret violation. There are no criminal penalties in the statute.

(F) China The Law of the People's Republic of China (PRC) against Unfair Competition (Unfair Competition Law) was promulgated by the State Council in September 1993 and became effective on December 1, 1993. This is China's first trade secret law. The term "trade secrets" is defined for the technical information and management information that is undisclosed to the public, can bring economic benefits, is of practical value, and for which the rightful party has adopted measures to maintain its confidentiality. Article 10 of The Unfair Competition Law prohibits business operations from engaging in certain acts and the law also provides for the remedies in case of infringement of trade secrets.

(G) Korea In 1991, Korea also amended its laws to provide statutory protection for trade secrets. This law, effective since December 15, 1992, was enacted during US litigation between GE and a Korean firm that had acquired GE trade secrets from a former GE employee.

Important Websites

- www.ipindia.nic.in - Intellectual Property Office, India
- www.patentoffice.nic.in – Patent office, India
- <http://copyright.gov.in/> - Copyright Office, India
- ipr.icegate.gov.in – Automated Recordation & Targeting for IPR Protection
- <http://www.icegate.gov.in>- E- Commerce portal of Central Board of Excise and Customs
- www.ipab.tn.nic.in - Intellectual Property Appellate Board, India
- www.mit.gov.in – Department of Information Technology, India
- <http://www.mit.gov.in/content/office-semiconductorintegrated-circuits-layout-designregistry>
- Semiconductor Integrated Circuits Layout-Design Registry (SICLDR)
- www.plantauthority.gov.in – Plant Varieties and Farmers' Rights Authority, India
- <http://nbaindia.org/> - National Biodiversity Authority

- www.nipo.in – The Indian IPR Foundation
- www.wipo.int – World Intellectual Property Organization
- <http://www.wto.org> – World Trade Organization.

TEXT BOOKS & REFERENCES:

1. Intellectual property right, Deborah. E. Bouchoux, Cengage learning.
2. Intellectual property right – Unleashing the knowledge economy, prabuddha ganguli, Tata McGraw Hill Publishing company ltd.



5. Question Bank

Unit I:

S.No	Question	BL	CO	POs
1.	List and explain the objectives of intellectual property law.	L2	CO1	4,3,6, PSO2
2	Explain the International Organizations of intellectual property rights.	L3	CO1	11,3,2 ,PSO1
3.	Discuss various types of Intellectual Property Rights.	L4	CO1	12,3,1 ,PSO2
4	Explain the importance of intellectual property rights.	L2	CO1	11,3,2 ,PSO3
5	Describe the agencies and treaties of intellectual property rights.	L2	CO1	1,3,5, PSO2

Unit 2:

S.No	Question	BL	CO	POs
1.	Discuss in detail the trade mark registration process and the preparation, applications, filing, docketing and examination process in IPR.	4	2	2,3,5, PSO1
2	Illustrates the procedure for registration of trademark.	2	2	1,3,4 PSO2
3.	Explain the Purpose and Function of Trade Marks	3	2	4,3,5, PSO1
4	Describe the Selecting And Evaluating Trade Mark	4	2	3,5, PSO3
5	Illustrate the Acquisition of Trade Mark Rights	3	2	11,5, PSO1

Unit 3:

S.No	Question	BL	CO	POs
1.	What do you mean by performer's right? What are the exclusive rights of a performer under the Copyright Act?	2	3	12,3,1 ,PSO2
2	Briefly explain the Copyright disputes and International Copyright Law	4	3	11,3,2 ,PSO3
3.	List and explain the various forms of copyright with an	2	3	1,3,5, PSO2

	example			
4	Explain the concept of Copy rights with help of examples. Are Collective work and Derivative work also copyrightable? Explain.	4	3	2,3,5, PSO3
5	Compare and contrast the trade mark law and copy right law	3	3	4,3,5, PSO1

Unit 4:

S.No	Question	BL	CO	POs
1.	List and explain the types of intellectual property trade secrets.	3	4	2,3,5, PSO1
2	Difference between copyright and trade secrets.	4	4	1,3,4 PSO2
3.	Discuss the trade secrete litigation.	3	4	4,3,5, PSO1
4	Explain the liability for misappropriation of trade secrets.	2	4	3,5, PSO3
5	Describe the Unfair competition: Misappropriation right of publicity, false advertising.	3	4	11,5, PSO1

Unit 5:

S.No	Question	BL	CO	POs
1.	Explain the international trade mark law.	2	5	4,3,5,P SO2
2	Discuss international patent law.	3	5	11,3,4, PSO2
3.	Describe the international development in trade secrets law.	4	5	2,3,5,P SO1
4	Explain the national copy right law and patent law.	2	5	4,5,PS O3
5	Describe the intellectual property audits	3	5	11,5,P SO1

6. Assignment Questions (2024-2025)



IV-B.TECH I SEMESTER- ASSIGNMENT: I

MC4001: Intellectual Property Rights

S.No		Question	CO	BL	POs
1.	a)	List and explain the objectives of intellectual property law	1	3	4,3,5,PSO2
	b)	Explain the importance of intellectual property rights	1	2	11,3,4,PSO2
2.	a)	Discuss various types of Intellectual Property Rights	1	4	2,3,5,PSO1
	b)	Describe the agencies and treaties of intellectual property rights	1	3	4,5,PSO3
3	a)	Discuss in detail the trade mark registration process and the preparation, applications, filing, docketing and examination process in IPR.	2	2	11,5,PSO1
	b)	Illustrates the procedure for registration of trademark.	2	3	12,3,6PSO2
4.	a)	Explain the Purpose and Function of Trade Marks	2	4	7,6,5,PSO3
	b)	Describe the Selecting And Evaluating Trade Mark	2	2	8,3, PSO1
5	a)	What do you mean by performer's right? What are the exclusive rights of a performer under the Copyright Act?	3	1	2,3,5,PSO1
	b)	Briefly explain the Copyright disputes and International Copyright Law	3	4	4,3,5,PSO2

IV-B.TECH I SEMESTER- ASSIGNMENT: 2

MC4001: Intellectual Property Rights

S.No	Question	CO	BL	POs	
1.	a)	List and explain the various forms of copyright with an example	3	3	4,3,6,PSO2
	b)	Explain the concept of Copy rights with help of examples. Are Collective work and Derivative work also copyrightable? Explain	3	2	11,3,2,PSO1
2.	a)	List and explain the types of intellectual property trade secrets.	4	4	12,3,1,PSO2
	b)	Difference between copyright and trade secrets.	4	3	11,3,2,PSO3
3	a)	Discuss the trade secrete litigation.	4	2	1,3,5,PSO2
	b)	Explain the liability for misappropriation of trade secrets	4	3	2,3,5,PSO3
4.	a)	Illustrate the international trade mark law.	5	4	4,3,5,PSO1
	b)	Discuss international patent law.	5	2	6,3,5,PSO1
5	a)	Describe the international development in trade secrets law.	5	4	2,3,5,PSO2
	b)	Explain the national copy right law and patent law	5	3	12,3,5,PSO1