

Understanding Intellectual Property Rights: Types, Filing Processes, and Infringement Issues

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The government of India confers the unique permission known as Intellectual Property Right (IPR) preserve the distinctiveness of an inventor's work. The basic right to IP is an indivisible product of innovation. Industrial design, trademark, trade secrets, patents, layout design and copyright-oriented rights fall under IPR. A pharmaceutical product or service's safety, effectiveness and quality rely on its IP, which serves as the global standard for product authentication and certification.

Keywords: IPR, Patent, Trademark, Copyright, Geographical Indications, Trade Secrets, Industrial Design, Infringement

IPR relate to the legal protections afforded to inventors and creators to secure their discoveries for a predetermined duration. These rights exclusively allow the inventor or assignee to employ their product, reflecting the importance of intellectual labour in promoting innovation and public benefit in today's economy.¹

Since they give developer of an IP the sole power to use creation for a predetermined period of time, IPRs are a powerful instrument to safeguard the creator's resources and hard works. Therefore, IPR enhances economic growth and development through the promotion of competition, innovation, and industrial expansion.¹

IP laws aim to encourage innovation and creativity. The Paris and Berne Conventions, established in 1883 and 1886, respectively, were the first international agreements to recognize the importance of intellectual property, and are now overseen by WIPO.²

Enforcing IPR, such as patents, geographical indications, trademarks, copyrights, and industrial designs, entails pursuing legal action against infringement. Stopping the violation, avoiding similar ones in the future, and making amends for any harm inflicted are the objectives.³

TYPES OF IPRs

The types of IPRs are described below and is shown in Fig.1:

- (i) **Patents:** Grants exclusive rights to an inventor or assignee for a new, useful, and non-obvious invention.
- (ii) **Trademarks:** Distinctive logo, sign, symbol, phrase, word, or design that identifies a goods or service and distinguishes it from others in the market.
- (iii) **Copyrights:** Grants exclusive rights to creators for their original literary, artistic works dramatic, or musical.
- (iv) **Industrial Designs:** Rights granted for the Industrial design refers to the visual appearance and aesthetic features of a product, such as its shape, configuration and pattern.
- (v) **Geographical Indications(GIs):** Signs or symbols that identify a product as originating from a specific geographic region, indicating its unique quality, reputation, or characteristics.
- (vi) **Trade Secrets:** Confidential and valuable pieces of information, such as formulas, designs, or methods, that are not publicly disclosed and are protected by law to maintain a competitive advantage.¹

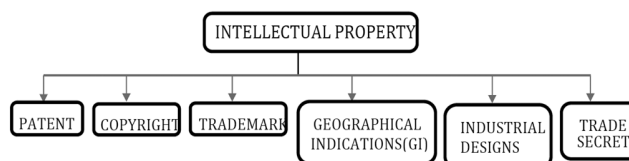


Fig. 1 — Types of IPRs

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Patent

In India, the Patent Act of 1970 originally stated that a patent's validity lasted 14 decades from the date of filing, but this has since been revised to a period of 20 years, providing protection coverage for this duration. A patent is a government-issued license that provides exclusive ownership to an inventor for a specified period of time, usually preventing others from manufacturing, using, or commercializing the invention. In that period, the patent owner has the authority to control who can or can.

It is a major source of incentives for researchers and inventors working in the e-commerce and online business sectors. In e-commerce, patents help in licensing, outsourcing contracts, and the formation of strategic alliances. By giving your products unique characteristics that differentiate them from those of your online rivals, patents not only help you capture and develop new ideas for your e-commerce firm, but they also boost sales.⁴

Steps in Patent Registration

The steps involved in patent registration is described below and shown in Fig. 2.

Filing of Patent Application

When applying for a patent, the applicant must submit a completed application form, which includes a detailed description, claims, drawings, and an abstract. If the invention is still in its early stages, the applicant has the option to file a provisional specification to secure priority. However, this must be followed by a complete specification, which must be filed within 12 months and adhere to the required format.

Publication of Application

As a standard rule, patent applications are published 18 months after filing, but applicants have the option to accelerate publication by paying a supplemental fee.

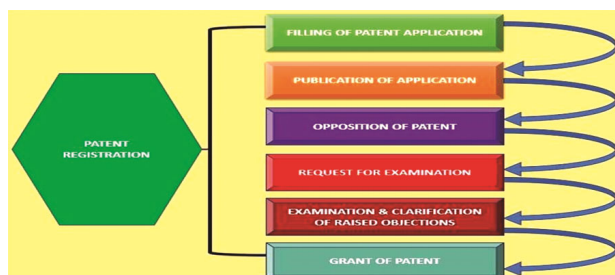


Fig. 2 — Patent registration

Opposition of Patent

Any opposition to a patent can be filed within three months of its publication, provided the patent applicant has requested an examination. The patent office controller will consider these pre-grant oppositions. Additionally, there are also provisions for opposing a patent after it has been granted.

Request for Examination

The applicant must submit a separate request for patent examination, along with the required fees, within 4 years of filing the initial patent application.

Examination and Clarification of Raised Objections

The patent examiner assesses the application's patentability, considering factors like inventiveness, novelty, non-obviousness, and industrial applicability, and issues a First Examination Report (FER). If the FER contains objections, the applicant must address these concerns within a year.⁵

Grant of Patent

Upon successfully addressing examination objections, the Controller grants the patent to the applicant. To maintain the patent, periodic renewal fees must be paid, as mandated by the Patent Amendment Act 2002. For comprehensive information on Indian patents, refer to the DIP&P website. Since 2007, patents can also be e-filed. After patent rights are secured, the owner can utilize them through production, sale, distribution, or licensing. Patent rights are valid for 2 decades, the invention enters the public domain after the patent expires, allowing anyone to access and utilize the knowledge.⁵

Patent Infringement

Patent infringement occurs when someone engages in unauthorized activities related to a patented product or process. This includes the unauthorized use, manufacture, sale, or importation of a patented product, as well as products made using a patented process. Essentially, patent infringement happens when someone exploits a patented product or process without permission, including making, using, selling, or importing. Infringement can take many forms, but ultimately, it involves the unauthorized exploitation of a patented process or product. This can include manufacturing, using, selling, or importing a patented process or product without authorization. As a result, patent infringement can have serious consequences for both the infringing party and the patent holder.³

Copyright

"Copyright" refers to the ownership of rights that are given to authors, painters, performers, and various other creatives for their indigenous art of works, or performers, writers, and broadcasters for the rights associated with such works. Works of literature, including literary works, poetry, plays, online encyclopedia media outlets, and computing programs; databases; theatrical productions, musical compositions, and dance outcomes; artistic creations, including drawings, paintings, photographs, and an architectural works and utilized diagrams, advertisements, maps consist of these kind of creations that are secured by the laws of it.⁴

The exclusive authority to sell, release, and reproduce any work of literature, music, theatre, art, or architecture belongs to the author and its lawful

assignee. whichever of the jurisdiction in which it was created, a copyright granted under public statute often expires from fifty to one hundred years after the creator's death.⁴

Exclusive rights grant the owner control over their work, prohibiting unauthorized use, reproduction, or distribution without their consent is known as copyright. In order to preserve the general public's domain, or to assert and defend the copyright under the copyright act, a copyright law strikes an agreement between the rights and interests of the public and those of the author. Copyright registration is shown in Fig. 3.⁶

Copyright Infringement

Copyright infringement happens when someone exploits a copyrighted work without the owner's

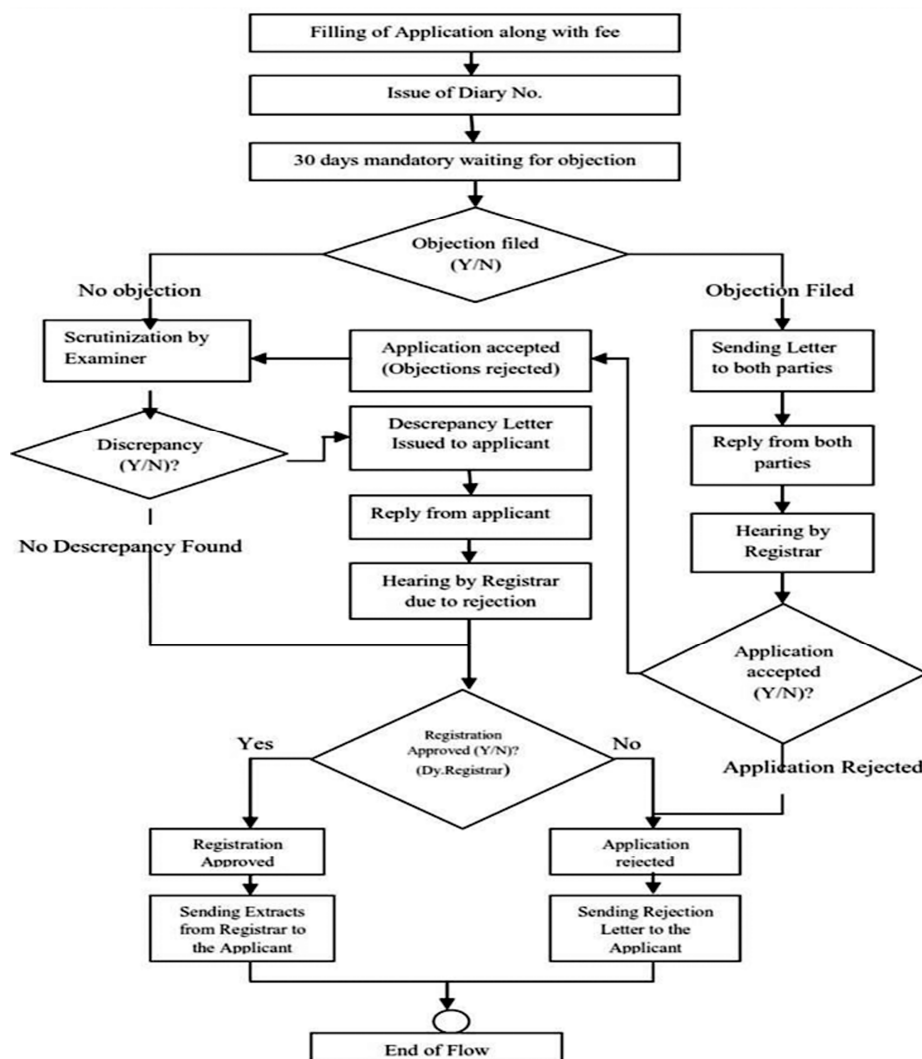


Fig. 3 — Copyright registration

consent, including unauthorized use, reproduction, distribution, modification, performance, or display. A specific type of copyright infringement, known as copyright piracy, involves reproducing a copyrighted work without the owner's consent.

Copyright piracy is a specific type of copyright infringement that involves reproducing a copyrighted work without the owner's consent. This can include:

- (i) Counterfeiting: Creating fake copies of a copyrighted work, such as DVDs, CDs, or software.
- (ii) Bootlegging: Recording or distributing live performances without permission.
- (iii) Digital Piracy: Sharing or downloading copyrighted digital content, such as music, movies, or software, without permission.³

Trademarks

A registered trademark is a distinctive mark that designates a company or organization as a producer or supplier of a specific product. Text, letters, numbers, phrases, characters, designs, shapes, sounds, colors, textures, packaging, or any amalgamation of these could be its form. It instils confidence in clients about the quality and standards of the goods, while also elevating the service provider's or manufacturer's professional standing. Customers are more likely to recognize and buy a product or service because of its nature and quality, which are reflected in its unique trademark, which meet their needs. Ten years is the initial registration period; it may then be regularly extended.⁴

The trademark law of India is sophisticated and well-developed. If the mark is "distinctive," the law gives the owner the right to register it. Certain statutory provisions contain the guidance that has been provided. A strict test of proof that the complaint mark is "deceptively similar" to the plaintiff's mark must be met in order for an action for trademark infringement to be filed.⁶

Steps in Trademark Registration

The steps in trademark registration is described below and is shown in Fig. 4

Application

To apply for a trademark, start by submitting a completed application form and paying the necessary fees. You can obtain the form from the trademark office or download it online. A trademark application requires a visual depiction of the mark, such as a logo

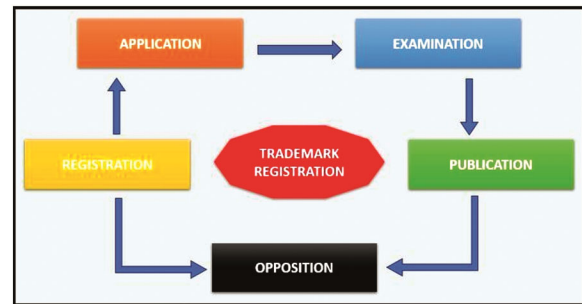


Fig. 4 — Trademark registration

or word, along with a detailed list of the goods or services it applies to. This information enables the trademark office to accurately process and register the mark. Additionally, some offices may require documentation showing proof of use or a statement of intent to use the trademark.

Examination

The trademark office conducts an examination to verify that the application meets the necessary administrative requirements, such as payment of fees and proper form completion. The scope of the examination varies by country, with some offices checking for compliance with trademark laws and others also reviewing for potential conflicts with existing trademarks.

Publication

The trademark is typically published in an official journal, but the timing of publication differs by country - some publish before registration, while others publish only after registration is complete.

Opposition

Various trademark offices offer a window for third parties to challenge a trademark registration. This opposition process can occur before or after registration, and the office's decision will be based on submitted evidence. Typically, this decision can be appealed.

Registration

After clearing all objections, the trademark is registered, and a certificate is issued, typically valid for 10 years. Registration can be extended indefinitely by paying the renewal fee.⁷

Trademark Infringement

Unauthorized use of a registered trademark or similar sign to distinguish and recognize products that are the same as or similar to those associated with a

trademark that has been officially registered. Constitutes trademark infringement when it causes consumers to become confused regarding the origin of products that display these symbols. One particular type of trademark infringement is trademark counterfeiting. In regard to products that are similar to people are secured by trademark registration, it consists of the unapproved use of any sign that is identical to or indistinguishable from the registered trademark in its essential elements.³

Geographical Indications (GI)

A Geographical Indication (GI) is a unique label that identifies products originating from a specific region, town, or country, possessing distinct characteristics, qualities, or reputations directly linked to their geographical origin. Key features of GIs include specific geographical origin, unique characteristics such as flavor or aroma, and reputation closely tied to origin.

The reputation and qualities of a product with a GI are inextricably linked to its place of origin, which can be a country, region, town, or even a small village. As a unique privilege granted to a specific community, the registration of a GI benefits everyone within that community.⁴⁸

Geographical Indications (GI) Infringement

GIs are essential for identifying products that originate from specific regions or countries. However, when used without permission or in a misleading manner, GIs can lead to infringement.

Using a GI without the right holder's consent, in a way that falsely suggests a product is from a specific region, is considered infringement. This can occur in various forms, such as:

- (i) Using a GI on a product that doesn't meet the required standards
- (ii) Misleading labeling or packaging that implies a product is from a specific region
- (iii) Using a GI in a way that confuses customers about the product's true origin.³

Consequences of Infringement

GI infringement can have serious consequences, including:

- (i) Customer confusion about the product's true origin and characteristics
- (ii) Damage to the reputation of the genuine product and its producers

- (iii) Economic losses for rightful producers
- (iv) Potential health and safety issues, particularly with food and beverage products.³

Importance of Protection

Protecting GIs is crucial for maintaining the integrity and authenticity of products. It ensures that customers are not misled and that the reputation of genuine products is safeguarded. By understanding what constitutes GI infringement, businesses and consumers can work together to promote fair trade practices and protect the value of geographical indications.³

Industrial Designs

Industrial designs refer to creative efforts that give a product a unique aesthetic or functional appearance. A registered design is a unique right granted to the owner of a legitimately registered design. As a key component of intellectual property, industrial designs play a crucial role in protecting innovative and creative designs that enhance the visual appeal. The TRIPS Agreement has set minimum standards for industrial design protection, which India, as a developing country, has incorporated into its domestic laws, ensuring a baseline level of protection for industrial designs. Promoting and safeguarding the design component of industrial production is the primary goal of design law. It also aims to encourage creative activities in the industrial sector. The New Creations Law of 2000 is India's latest industrial design acts, and it will be used its intended use well in the face of rapid technological and international advances. India has also attained a mature position in the realm of industrial designs, and given the increasingly global nature of the economy, the current legislation is intended to comply with international design administration trends and is in line with the altered technical and commercial reality. To align with international standards and accommodate the expanding scope of design-oriented initiatives across various sectors, the revised Act aims to introduce a more comprehensive and nuanced classification system for designs.

Industrial Designs Infringement

Unauthorised use of an authorised industrial design is infringing of a design's rights and may cause consumers to become confused about the goods' origin. The production, sale, or importation of goods that bear or include a design that is a copy of, or significantly similar to, the registered design may be one of these unlawful uses.³

Trade Secret

A confidential information is an important piece of information that is kept private and provides a business with an advantage over rivals.

Formulas, procedures, techniques, concepts, tools, concepts, as well as knowledge collections that have intrinsic value due to their obscurity to the general public or difficulty for others to determine and that confidential information that owners protect through reasonable measures to maintain secrecy is classified as a trade secret. Trade secrets are secured by IPR, or IP, are eligible for sold or licensed. Trade secrets are protected by intellectual property rights, or IP, which may be sold or licensed. These confidential assets include exclusive methods, instruments, styles, frameworks, formulas, procedures, techniques, and strategies that have delivered a competitive edge or added value for clients, yet remain unclear to external parties.⁴

Steps to Implement a Trade Secret Strategy

Employees

Companies often face the greatest risk of trade secret loss from within, specifically from unintentional disclosures by employees. Clearly communicating expectations and protocols from the start can help mitigate this risk.

Departing information

When an employee leaves, it's crucial to protect the company's trade secrets. Ensure the departing employee returns all confidential materials and information, and promptly cut off their access to sensitive company data, including emails and accounts.

Business Partners

Protect your trade secrets by signing non-disclosure agreements (NDAs) with potential partners, such as customers and suppliers, at the outset of the relationship. Also, ensure that confidentiality obligations are included in contracts with third parties and review/update them periodically as needed.

Competitive information Gathering

To minimize risks, establish a code of conduct and ethics that prohibits illegal and unethical behavior. This includes directing employees and business partners to refrain from using fake identities to access confidential information, such as restricted website content, exclusive industry events, or competitors' products and services.⁹

Trade Secret Infringement

Trade secret protection enables owners to prevent unauthorized access, disclosure, or use of confidential information under their control, particularly when it involves unethical business practices. Breaches of trade secret protection are determined on a case-by-case basis and often involve contract violations, confidentiality breaches, or corporate surveillance.³

Duration of Intellectual Property Rights

- (i) Whether a patent application is filled with an entire specification and an interim one, term for a patent will be two decades from its point of filing.
- (ii) Trademark registrations are valid for a period of 1 decade, commencing from the date of registration, and can be renewed indefinitely, effectively allowing trademark protection to continue for a lifetime.
- (iii) The application for registration of a topographical indicator is valid for ten years; Copyright typically lasts for sixty years.
- (iv) Chip configuration registration remains effective for 1 decade from date of application submission or first commercial exploitation in India, any convention country, or a government-specified country, whichever comes first.
- (v) Registered varieties have varying durations of protection: eighteen years for plants and vines, fifteen years for other crops, and existent varieties.

Conclusion

The original works, ideas, and designs of creators and inventors are safeguarded by IPR. Unauthorized use of certain rights results in infringement, which harms the owner of the rights and may confuse customers. Patents, which deal with the unapproved use of inventions; copyrights, which deal with the unapproved use of creative works; trademarks, which deal with the unapproved use of brands and logos; industrial designs, which deal with the unapproved use of registered designs; and trade secrets, which deal with the unapproved disclosure or use of private information, are examples of IP rights and their infringement. While infringement can have major legal and financial repercussions, protecting intellectual property rights fosters innovation, creativity, and fair competition.

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