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IPR LITIGATION: PAST, PRESENT AND FUTURE ASPECTS

AUTHORED BY - AAILA ZAREEN

Abstract

The fastest-growing rights that commercial and industrial developments all around the world strive for. IPR laws are evolving quickly in India due to the growth of foreign trade, particularly after the 1990s when the Indian government liberalised trade and the demand for the protection of Intellectual Property is what a strong economic country strives for. IPR plays a key role in the economic development of a country.

The field of intellectual property encompasses a broad range of regulations pertaining to patents, designs, trademarks, copyright, geographic indications, plant varieties, and semiconductor integrated circuit design. There is a widespread perception that the protection of one's Intellectual Property is not as important as that of tangible property. Such an assumption, however, does not hold well in today's fast-paced globalizing world.

In conclusion, defining intellectual property as merely the result of one's own creativity would be an injustice to the many additional rights that it entails, like as the goodwill, reputation, and identity, which is attached to Intellectual Property like trademarks, copyrights etc. Losing one's intellectual property owing to a lack of initiation of appropriate civil and/or criminal action is a heavy price to pay.

India's intellectual property rights (IPR) litigation is highly varied due to the country's several courts and their various customs. Different strategies must be developed for such diverse practices. In this case, intellectual property infringement may include patent, copyright, trademark, and other violations.

INTRODUCTION

Intellectual Property Rights are one of the fastest-growing rights that commercial and industrial developments all around the world strive for. IPR laws are evolving quickly in India due to the growth of foreign trade, particularly after the 1990s when the Indian government liberalised trade and the demand for the protection of Intellectual Property is what a strong economic country strives for. IPR plays a key role in the economic development of a country.

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In conclusion, defining intellectual property as merely the result of one's own creativity would be an injustice to the many additional rights that it entails, like as the goodwill, reputation, and identity, which is attached to Intellectual Property like trademarks, copyrights etc. Losing one's intellectual property owing to a lack of initiation of appropriate civil and/or criminal action is a heavy price to pay.

India's intellectual property rights (IPR) litigation is highly varied due to the country's several courts and their various customs. Different strategies must be developed for such diverse practices. In this case, intellectual property infringement may include patent, copyright, trademark, and other violations. Intellectual Property Rights: An Overview

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce[1]. Largely, it covers all types of intangible creations. These creations are protected by the legal system by providing monopoly rights to encourage the efforts of inventors in terms of manpower, time, energy, skills etc. by enabling the inventors or creators to harvest the economic benefit from their inventions. In simple terms, IPR aims to create a safer environment for inventors, creators, scientists, artists, designers, traders, etc. to foster their creativity, innovation skills, scientific or technological advancements. Like physical properties, IPR can also be sold or brought, if the inventors choose to register them with a legal authority. There are four main types of intellectual property: Copy right, Trademark, Patent and Trade secret. WIPO is a specialized

agency of the UN. It was formed in 1967, to encourage creativity and promote protection of intellectual property around the world[2]. An IP dispute is a dispute over Intellectual Property rights. A good and efficient legal mechanism is needed to protect these rights from any type of infringements or any other dispute. Absence of this mechanism will result in death of confidence of inventors, lack of advancements and innovation and thus it will result in economic loss. In today's global world, IPR has become a focal point in trade practices as a result disputes arising from these practices have also become innumerable. In IPR disputes, the "mens rea" of the infringer is not taken into account, intellectual property infringement though unintentional is still illegal and not acceptable. The issues related to IPR generally arise when the innovator or creator or the right holder finds out that others are taking undue advantage of their intellectual property and even without consent. These innovators can be individuals, firms or businesses. The most significant Intellectual property disputes include Copyrights, Trademarks, patents and trade secrets.

1.2 Acknowledgement

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1.3 Methodology

Data analysis and carry out the study, secondary data analysis approach will be adopted. Data from different websites, articles, journals and other materials has been browsed for the same.

1.4 Literature Review

A literature review of the "Principles of Intellectual Property: A Comprehensive Guide to Intellectual Property Litigation" by Peter Goodhart provides an in-depth overview of intellectual property law, including the litigation process. It covers the key areas of IPR such as patents, trademarks, copyrights, and trade secrets, and explores the legal frameworks surrounding them. It is particularly helpful for those involved in or studying IPR litigation.

Scholars like William F. Patry whose notable work is Patry on Copyright is a leading figure in copyright law and has written extensively on copyright litigation and related issues. His work, Patry on Copyright, is considered one of the most comprehensive texts on U.S. copyright law. Also, Peter Goodhart In his work Principles of Intellectual often cover a broad spectrum of IPR issues, from theory to practical litigation strategies. His book on the principles of intellectual property is frequently cited.¹

IPR litigation is a significant subject of study within the laws related to IPR. Another significant contributions are “Intellectual Property and Litigation” by Elizabeth Verwey and Fiona N. Ross focuses on the litigation of intellectual property disputes. It provides a detailed analysis of different types of IPR cases, including patent and trademark disputes, and the strategies that can be employed in resolving them through litigation. It is suitable for both legal practitioners and students interested in IPR law. “Intellectual Property: Litigation and Commercialisation” by Rachael Mulheron provides a tremendous comprehensive text examines both the litigation and commercialization aspects of intellectual property. It includes practical advice on litigation strategies and techniques, especially in the context of intellectual property disputes in high-value industries such as technology These literatures and legal scholars provides a practical guide to the pre-trial and trial processes in IPR litigation. It covers procedural aspects, litigation strategies, and case law that guide IPR cases through the courts. It is highly useful for practicing attorneys dealing with intellectual property disputes.

1.5 Research Questions

- A. How the IPR legislations evolve.
- B. Is there any traces of IPR litigation in the ancient India.

1.6 Objective of Research

The objective of research of this paper is to trace the evolution along with present and future growth of litigations dealing with the IPPR laws.

1.7 Synopsis

The core aim of this research paper is to trace the timeline of the IPR litigation and prepare a

¹ <https://babariaip.com/blog/the-future-of-intellectual-property-law-in-india/>
<https://www.ijlsi.com/wp-content/uploads/IPR-Litigation-in-India-Scope-Evolution-.pdf>
<https://www.maheshwariandco.com/blog/intellectual-property-litigation-in-india/>

timeline from the very ancient era till the modern days .The research paper also provides a deep insight of the current scenario along with the issues and challenges involved providing way for the resolution and possibility of the future growth.

Legal Framework for IP Litigation in India

The legal framework for intellectual property (IP) litigation in India is comprehensive, incorporating various statutes aimed at protecting IP rights effectively. Here is an overview of the key elements of this framework:

Statutory Framework

The primary statutes governing IP rights in India are:

1. **The Patents Act, 1970:** The Patents Act, 1970, governs the filing, examination, grant, and enforcement of patents in India. It provides inventors with exclusive rights to their inventions for 20 years, contingent on meeting criteria of novelty, inventive step and industrial applicability. The Act includes mechanisms for opposition and revocation of patents and offers remedies such as injunctions and damages against infringement.
2. **The Trademarks Act, 1999:** The Trademarks Act, 1999, regulates the registration and protection of trademarks in India. It allows for the registration of various types of marks and protects against unauthorized use. The Act provides procedures for opposition and cancellation of trademarks and legal remedies for infringement, including injunctions and damages. Registered trademarks are valid for 10 years, renewable indefinitely.
3. **The Copyright Act, 1957:** The Copyright Act, 1957, protects original literary, artistic, musical and other intellectual works by granting creators exclusive rights to reproduce, distribute, perform and display their works. The Act recognizes the moral rights of authors and provides remedies for infringement, including injunctions and damages. Copyright protection typically lasts for the author's lifetime plus 60 years.

National IPR Policy 2016

This policy aims to foster innovation and creativity while protecting IP rights. It seeks to strengthen IP administration and enforcement, promote public awareness and encourage the commercialization of IP assets. The policy provides a strategic framework for the holistic development of IP in India and emphasizes the importance of effective IP litigation mechanisms.

- Modernization: Enhances infrastructure of IP offices for efficient processing.
- Fee Reductions: Offers reduced fees for startups and MSMEs.
- Expedited Examinations: Prioritizes examination for specific categories.
- Awareness Programs: Promotes IP awareness and education.
- Commercialization Support: Facilitates IP commercialization through Technology Innovation Support Centres.
- Review and Enforcement: Emphasizes the protection, enforcement, and review of IP laws.

Types of Intellectual Property Disputes

- Patent Infringement and Defences: Patent infringement occurs when an unauthorized party makes, uses or sells a patented invention without the patent holder's permission. Defending against patent infringement requires a thorough understanding of the patent's claims and a detailed comparison with the allegedly infringing product or process. Common defences in patent litigation include challenging the validity of the patent, arguing noninfringement, or asserting that the patent has expired. Patent litigation in India often involves complex technical and legal issues, requiring expertise in both patent law and the relevant field of technology.
- Trademark Infringement and Passing Off: Trademark infringement cases arise when a party uses a mark that is identical to a registered trademark, leading to consumer confusion. This occurs when one party misrepresents its goods or services as those of another, causing harm to the goodwill of the latter. To succeed in a trademark infringement or passing-off action, the plaintiff must prove ownership of a valid trademark, the likelihood of confusion and damage to their brand reputation. IP rights enforcement in India plays a crucial role in protecting trademarks and maintaining fair competition in the market.
- Copyright Infringement Cases: Copyright infringement involves the unauthorized reproduction, distribution or display of a copyrighted work. This can include literary works, music, films, software, and other creative content. Copyright disputes often require a detailed analysis of the originality and substantial similarity between the works in question, making intellectual property disputes in this area particularly challenging.
- Design Rights Infringement: Design rights protect the aesthetic features of a product, such as its shape, pattern or colour. Infringement occurs when a product with a

substantially similar design is made, used or sold without the design holder's consent. Design right enforcement involves proving the novelty and originality of the design and demonstrating that the infringing product does not differ significantly from the protected design. The IP litigation process in India for design rights ensures that creators can protect the unique visual aspects of their products.

The IP Litigation Process in India

Pre-Litigation Steps

Before initiating formal litigation, parties often engage in pre-litigation steps to resolve intellectual property disputes amicably. These steps include sending cease and desist letters to the alleged infringer, outlining the IP holder's rights and demanding that the infringing activity stop immediately. Negotiation and mediation are also common pre-litigation strategies, allowing parties to settle disputes out of court. These methods can save time and resources while achieving satisfactory resolutions.

Filing an IP Infringement Lawsuit

When pre-litigation efforts fail, the next step is to file an IP infringement lawsuit. The process begins with the plaintiff submitting a plaint to the appropriate court, detailing the nature of the infringement and the relief sought. The defendant is then served with a summons and required to file a written statement in response. The primary goal of intellectual property litigation in India is to provide a legal framework for resolving disputes and enforcing IP rights.

Court Procedures and Timelines

The IP litigation process in India involves several stages, including preliminary hearings, framing of issues, evidence presentation, cross-examination and final arguments. The timeline for each case can vary significantly depending on the complexity and the specific court's schedule. The introduction of the Commercial Courts Act, 2015 has expedited the process for high-value IP disputes, aiming to resolve cases within 12 months from the date of the first case management hearing.

Role of Intellectual Property Lawyers in India

IP attorneys play a crucial role in navigating IP right enforcement in India. They provide expert legal advice, prepare necessary documentation and represent clients in court. Expert witnesses, such as technical specialists in patent litigation in India or market analysts in trademark

infringement cases, can provide valuable testimony to support the plaintiff's or defendant's case. Their expertise helps clarify complex issues and strengthens the overall litigation strategy.

Post-Litigation Considerations

Enforcement of Court Orders: After obtaining a favourable judgment in an intellectual property litigation in India case, the next step is the enforcement of court orders. This involves ensuring that the infringer complies with the court's directives, which may include ceasing the infringing activities, paying damages or both. Effective IP rights enforcement in India is crucial to uphold the integrity of the legal system and protect the rights of IP holders. Non-compliance can lead to further legal actions, such as contempt of court proceedings.

Damages and Remedies: The court may award various remedies in intellectual property disputes to compensate the IP holder for losses suffered due to the infringement. These remedies include monetary damages, which can be compensatory or punitive and injunctions to prevent further infringement. In some cases, the court may also order the delivery or destruction of infringing goods. The aim is to restore the IP holder's position and deter future infringements, reinforcing the importance of the IP litigation process in India.

Role of Courts and Tribunals in IP Litigation

In India, the role of courts and specialized tribunals in intellectual property (IP) litigation has evolved significantly, particularly after the abolition of the Intellectual Property Appellate Board (IPAB) in 2021. The High Courts, especially the Delhi High Court, now play a central role in adjudicating IP disputes. The Delhi High Court has established a dedicated Intellectual Property Division (IPD) to handle the increased caseload following the dissolution of the IPAB. This division ensures the expedited resolution of IP cases, including patents, trademarks, and copyright disputes, providing more specialized attention and streamlined procedures for complex IP matters. The Delhi High Court's new rules governing patent suits, notified in 2022, illustrate the comprehensive approach taken to handle IP litigation efficiently. These rules include detailed guidelines for filing invalidity briefs, claim construction briefs and other procedural requirements. This structured approach aims to reduce litigation timelines and improve the quality of judicial decisions in IP cases.

Chapter: 1 THE BACKGROUND AND FUTURE OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

Market but also in the foreign or international market which would help a company run and improve the flow of income from other states to its domestic state. The definition of intellectual property rights will be covered in this article. its development in India, its future, certain laws, and how our legal system is impacted by them. the IPR conversation.

The term intellectual property rights is distinct from property rights. Intellectual Property Rights are those rights that an individual acquires because of a work done from 'creation of mind' like logo, song, establishing a trademark, design, or creation of a movie, etc. IPR laws protect intangible assets of a company or an individual such as copyrights or trademarks while on the other hand PROPERTY LAWS protect the tangible rights such as money, real estate, infrastructure, equipment, securities, etc. The phrase "intellectual property" refers to the result of human intellect, or more accurately, the creations of human inventiveness. It consists of a work, product, or industrial model.

(which consists of certain properties like novelty and goodwill). Copyright, trademark, patent, design, and geographic indication are a few of the terminology and rights that the owner of intellectual property enjoys under IPR. States have enforced specific laws to safeguard the rights of intellectual property owners. For example, if the movie made by any production house gets leaked into pirated before its release due to which it is facing any kind of monetary loss, then the production house has the right to sue the infringer.

Litigation in Intellectual Property Rights (IPR) in India is quite diverse because there are multiple Courts and different Courts have different practices. Such varied practices require formulation of different strategies. In IPR cases it is important to obtain ex-parte orders where infringement is of such nature that prior notice to the defendant will defeat the effectiveness of the action. Some Courts in India as a matter of practice do to grant ex-parte injunctions because of internal policies and some Courts do grant such injunctions. This prompts the litigants to resort to forum shopping which is perfectly legitimate. However, forum shopping has limitations with respect multiple factors.

On the question of jurisdiction, different facets of IPR have different provisions and this

requires different litigation strategies. In Trademarks the owner can sue in the Court of his own territorial jurisdiction if his trademark is registered but he cannot do so in case of passing off where his trademark is used but unregistered. In Patents and Designs the right holder has to choose a Court where the defendant resides or where the infringing goods are made or sold. On the other hand, in case of Copyright infringement the owner can sue within his own jurisdiction irrespective of where the infringement action may have occurred. From, time to time, Court made laws have brought in changes in the practice which made finer interpretation of provisions resulting in hindrances in the choice of appropriate Courts where the right holder has access in accordance with law. For example, the right holder has places of business in five cities in India and has the right to sue in any of the five Courts in the five cities against the infringement of its registered trademark but Courts have held that the choice of forum in such cases would be confined to the Courts within the defendant has his place of business. This is to make sure that the plaintiff does not make wrongful use of its presence in multiple places to cause inconvenience to the defendant.

With the increase in awareness the number of cases are growing and the Courts are getting greater and more frequent opportunities to deal with IPR cases and gather greater knowledge and experience. That is helping the enforcement laws getting streamlined and uniform in application. However, considering the vastness of the country and number of Courts in India exceeding 600 it is difficult have uniformity of approaches. In India most of the states have one High Court and some additional benches in different cities in the same States. India has about 24 High Courts each of which have appellate jurisdiction over about 30 District Courts, each, on an average.

While the above is the status with regard to civil cases, the criminal laws also play a major role in trademark and copyright counterfeit actions. In India criminal law has no application in case of Patent and Designs. In litigations, investigation has a major role to play because the litigation strategies can be accurately formulated only with information on the defendants/counterfeiters and several successful litigations have been possible as a result of prior information on the details of the infringement and the infringer.

Chapter: 2 - WERE THERE INTELLECTUAL PROPERTY RIGHTS IN THE ANCIENT ERA?

As we all know IPR plays a key role in present times in part of the current commercial world but during the ancient period, the human intellect was used for social purposes instead of commercial purposes. Nowadays, the owner of songs, music, and any other artistic creation has copyright protection, which prevents others from using them for profit without first obtaining his consent. However, different texts, Vedas, and rags are allowed to be used.

Anyone at that time. However, in the past, people would conduct business using their name or identity as a trust, a symbol of trust, and a representation. There was no such thing as a trademark, and anyone could copy someone else's inventions without the protection that modern patents provide. In my opinion, Intellectual Property was formed during the ancient period but the topic of rights related to Intellectual Property was formed in the 14th century and is still developing in India thanks to the system of common law remedies.

HISTORY OF IPR AND IPR LITIGATION

Intellectual property right is not a concept of the new age it has been in existence for centuries in various parts of the world. IPR rights have their roots in the Byzantine Empire when the idea of monopolies was prevalent. In India, the IPR law found its existence through the English Copyright Act, of 1872. This act was further revised in 1976. After this enactment, there has been an enormous increase in intellectual property protection due to greater awareness and upcoming new intellectual. This increase results in IPR litigations within 25 years.

THE EVOLUTION OF INTELLECTUAL PROPERTY RIGHTS AROUND THE GLOBE

History shows that Venetian Law, 14746 (also known as English Law), was the first effort to establish intellectual property rights. It was done through the declaration of rights through patents. As trade and its practices expanded, so did the necessity for intellectual property rights (IPR), which eventually led to the creation of rights and the legal protection of such rights.

One of the first international events for the exchange of knowledge, culture, and education, THE WORLD EXPOSITION took place in Vienna. It raised awareness among states about the importance of intellectual property rights, which paved the way for the PARIS

CONVENTION of 1883, also referred to as the Origin of Universal IP Rights. Berne Convention for Literary and Artistic Rights, States committed to giving creators international intellectual property rights and protection in 1886. Previously, the creator's rights were exclusive to their respective states. The WTO states signed the TRIPS Agreement in Marrakech, Morocco, on April 15, 1994. With regard to intellectual property, this agreement provided all states with a set of minimal requirements. It created national protocols and techniques for resolving intellectual property rights disputes. In theory, all forms of intellectual property are covered under the TRIPS Agreement, which also aims to strengthen and complement existing protection standards and provide for both domestic and international operational enforcement. It discusses the applicability of both the rules of international IP agreements and the broader GATT principles (Part I).¹³ Additionally, it establishes guidelines for the acquisition and upkeep of intellectual property rights (Part IV), scope, usage, preparedness, enforcement (Part III), Part II, and 1415.¹⁶ It also covers pertinent dispute resolution and prevention strategies (Part V).¹⁷ Formal requirements are covered in Part VI¹⁸ of the Agreement and Part VII¹⁹, which deals with institutional arrangements and transitional arrangements, respectively.

Cases involving intellectual property

Violations of intellectual property pose a severe risk to a business's profitability. One of the most important services a legal company can offer its customers is making sure their intellectual property is completely safeguarded and, if required, appearing in court to defend it against infringement.

IP litigators do what?

The goal of IP litigators in court is the same regardless of the type of intellectual property at issue. If they are representing the plaintiff, they must prove two things: that the defendant has intentionally or unintentionally violated the intellectual property's ownership rights, and that their client is the legitimate owner of the property.

Chapter: 3 Types of IPR Litigation Patent litigation

Plaintiffs in patent cases claim either direct infringement, where the defendant is accused of manufacturing, using, selling, and/or importing the plaintiff's patented invention, method, or service without authorisation, or indirect infringement, where the defendant is accused of enabling or inducing a third party to infringe.

The average duration of patent litigation in civil court is three to five years. It costs about \$4 million on average to file a lawsuit. Usually, juries are present throughout trials. The court may impose monetary fines and injunctions that prevent the defendant from using the patent in question if it is determined that they have violated the law.

Copyright Litigation

In a copyright lawsuit, the owner of the copyright aims to prevent the defendant from using the protected content without permission and to obtain compensation.

A plaintiff has three years from the date of discovery of possible copyright infringement to bring a lawsuit due to the "statute of limitations" on copyright infringement. According to a 2017 report by the American Intellectual Property Law Association, it can take more than a year to prosecute a copyright infringement case in federal court, and the average cost is \$278,000. The maximum statutory damages for copyright infringement cases are \$15,000 per work and \$30,000 per claim, which are handled by the recently established Copyright cases Board.²

³The plaintiff must prove in court that it has a legitimate copyright (registered with the U.S. Copyright Office) and that the defendant violated it in order to prove copyright infringement. The U.S. government may potentially pursue criminal charges in copyright cases. In this case, federal prosecutors aim to demonstrate that the defendant intentionally violated the law in order to obtain financial or commercial advantage. The defendant risks criminal penalties, which include up to five years in prison and fines of up to \$250,000 for each offence, if these allegations are proven.

Litigation over trademarks

The following allegations regarding the infringement are commonly made by a plaintiff in trademark litigation: Possibility of confusion. The trademark owner contends that the similarities between its trademark and the defendants' trademark mislead customers about the source of the goods or services. To establish the likelihood of confusion, the trademark owner asserts that the competing marks have similar designs and are geographically close (e.g., in the

² <https://sagaciousresearch.com/blog/ip-litigation-india-past-present-future/>
<https://www.ijlsi.com/wp-content/uploads/IPR-Litigation-in-India-Scope-Evolution-.pdf>

³ <https://www.wipo.int/portal/en/index.html> <https://www.wipo.int/portal/en/index.html>

same region).

Dilution of trademark

A competitor's unregistered trademark that is identical in name or image, according to the plaintiffs, lessens the distinctiveness of their brand and, consequently, its value.

The average cost of trademark infringement cases that go to trial ranges from \$375,000 to \$2 million. If the trademark owner proves infringement, remedies include monetary damages, the destruction of the defendant's goods that utilise the infringed trademark, and injunctions to prevent the defendant from using the brand going forward.

Trade secret litigation

The intellectual property in question must fit into the three main categories of trade secrets in order to be subject to trade secret litigation: In addition to having "actual or potential independent economic value by not being commonly known," the knowledge must also be valuable to those who cannot "legitimately" get it and be the subject of "reasonable measures" to keep it secret.

DEVELOPMENT OF IPR IN INDIA

Development of IPR in India Took place with the enactment of the Trades and Merchandise Act, 1958. It had a fairly narrow scope but was later expanded by court rulings until being eliminated by the Trademarks Act of 1999. The Government of India's economic liberalisation had a stronger effect on the IPR subject because, as international trade and industrial development increased, protecting rights from infringement became increasingly important.

Additionally, the Copyrights Act, Patents Act, Design Act, and GI Act have all undergone periodic revisions. In addition to the GOI, the Judicial Legal System has been essential in expanding the definition of each significant act or phrase over time. For example, the trademark was limited to goods and services in the early days of the Trade and Merchandise Act of 1958. However, the Court broadened the trademark's definition to encompass domain names as online companies like Amazon and Yahoo gained popularity. In the Trademarks Act of 1999 (passing off), it was referenced and thereafter used as recommendations.

TYPES UNDER IP

There are five types of rights under IP²⁴:

Trademark

One of a company's most significant intellectual property rights is its trademark. It is the name or logo of a business's goods or services that it uses to identify itself to customers or clients. Trademarks have a significant impact on how a product or service is identified. For example, if a company like Amazon sells products of third-party sellers or brands directly to consumers (Amazon provides service) and has established goodwill and trust in the market. If a company wants to provide the same service with a similar name like Amazon or Amazonia it cannot do so as it will come under Trademark Infringement. Trademark prevents misrepresentation and misuse of trust or goodwill established by the first owner.²⁵ In India, Trademarks are protected through The Trademark Act, of 1999.

It was enacted primarily to improve trademark protection and prevent deceptive advertising of goods and services. As time has progressed, court rulings have expanded the trademark's reach to include the domain name. In contrast to the Trade and Merchandise Act of 1958, this act also uses passing-off remedies to safeguard unregistered trademark rights.

Copyright

Copyright is a type of IP Protection granted to creators of original authorship for their such as literary works, dramatics, musical and artistic works, cinematographic films, and recordings. As per the Copyrights Act, of 1957²⁶, the protection of copyright applies to these subjects only. However, some rights, such as the right to reproduction, publication, modification, or publication in line with Section 14 of the Copyrights Act of 1957, can be enjoyed by the owner or by someone who has been properly licenced by the owner.

India's adoption of the Universal Imprints Convention and the Berne Convention for Protection of Literary and Cultural Works, 1886, is fully reflected in the (Indian) Brand Act, 1957, as amended in 1999, 2002, and 2012. India is a party to the Geneva Convention for the Protection of Rights of Directors of Phonograms and an active member of the World Intellectual Property Organisation (WIPO).²⁴

⁴ <https://www.wipo.int/portal/en/index.html>

SpicyIP – De-Coding Indian Intellectual Property Law

Patent

What are patents? For a set amount of time, the government grants patents, which are exclusive rights that only the inventor may use, manufacture, or sell. Like how copyright laws protect the original owner's writing or trademark laws protect a company's representation in the marketplace, patent laws protect an inventor's invention by prohibiting its use, creation, or sale by another person without the inventor's consent or licence. The goal of patent laws is to safeguard inventors' rights and to incentivise them by granting them exclusive rights, which will stimulate further invention. The Patents Act of 1970³⁰ is the current law that governs patents in India. In 1972, it was first put into effect. The Patents Act had a number of revisions in 1999, 2002, 2005, and 2006, respectively. Several changes had to be made to the Patents Act in order to conform with TRIPS.

Industrial Design

Industrial Designs are also a part of Intellectual Property which constitutes the ornamental or aesthetic aspect of an article. Industrial design uses lines or colours to give an object a three-dimensional appearance.³³

According to Design Act 34, no third party may import or sell any design that is identical to the original without the owner's prior consent. Since a product's design or display is an essential component of the business, it is prohibited to copy any design in any way. This would have negative effects on the organisation. **Geographical Indications** Geographical Indications refer to certain goods represented by their Geographical origin from where they were derived. The originating territory provides a sense of reputation and superior quality to the consumers. For example, Darjeeling Tea is popular for its benefits of boosting immunity, strengthening bones, and promoting healthy skin. When geographical indicators are registered, the registered proprietor and authorised user are granted specific rights and can file a lawsuit for infringement. The quality and capability of the product created in a traditional way are preserved by the protection of the use of the geographical designation with the items originating in it. This would stop foreign producers from adulterating GI products under their name. 'The Geographical Indications of Goods.

Chapter:4 FUTURE OF IPR LAWS IN INDIA

As we all know that the technology and IT sector is booming all around the world and with its rapid development all around the world it is logical to conclude that it will play a much more

significant role in each sector. With the increasing impact of technology over the lives of individuals (natural as well as artificial like companies etc.) there will always be a need for protection of the rights and regulations concerning Intellectual Properties which would play a vital role which would play dominant role in the representation of rights of a company or an individual through Technological mode. IPR laws are bound to arise with time. For example, after independence, there were various IP-related laws but with the time and development of ways in trades and rights IPR laws have been repealed from time to time from the Trade and Merchandise Act, 1957 to The Trademarks Act, 1999 or Copyright was amended for the first time in 1983 and now the copyrights act, 2012 is the most substantial. Various amendments or the formation of new laws for the protection of rights are bound to take place in the future.

THE SCOPE OF IPR LAW FOR PROFESSIONALS AND LAW STUDENTS

IPR is a growing field that has been gaining importance from the 1990s till today. Unlike other fields of⁵ Law like criminal, and civil awareness related to IP rights is increasing among individuals and companies which was not there before. IP-related rights violations and disputes are getting popular and increasing day by day with the rise in IP rights and because of the same various IP firms and Lawyers are now specializing in IPR laws. Various IPR firms are now established in all the states and more will come. IPR law is in the growing stage and this field demands more growth in the future if we see the view role of Trade and Commerce in the economy. When I see the past, current, and future of the IPR field I can say that it is a lucrative field and it is the right time for a lawyer or a student to grasp more knowledge of IPR Laws if they want to keep their career upgraded with the time as in the future as per my view, IPR deals and conflicts are bound to arise and it will have much more impact on our legal system than today.

WHY KNOWLEDGE OF IPR IS IMPORTANT FOR COMPANIES AND BUSINESS PEOPLE.

An ideal company must know about its products but if they are performing the same on a larger scale it is much more important to have knowledge of their rights and laws concerning the products they sell. A company can save their business and improve their financial performance by suing the infringers who are diverting their funds or flow of income by using the distinctive mark or their image in front of the consumers or clients. These days if the companies find any.

⁵ https://ipindia.gov.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf
<https://www.indiacode.nic.in/bitstream/123456789/1583/7/A1963-47.pdf>

IP DISPUTE:A TIMWLINE IP Dispute – A Timeline

Under the traditional procedure, the first stage in a civil proceeding conventionally lasts for 2-3 years. It is only after this stage that the written statements, framing of issues, admission of evidence or expert evidence takes place, thereby pushing the final hearing further down by 5-8 years from the filing of the suit.

As per the current trend in India, IP infringement cases are disposed within 1-2 years. This is because, since 2016, IP disputes are considered commercial disputes by the virtue of the Commercial Courts Act, 2015. These commercial disputes are heard at High Courts known as commercial benches, which function under a stricter timeline for speedy disposal of suits. The High Courts have laid out strict timelines for each stage of the suit and the final hearing. The hearing of an interim application in the initial stages of a trial is regarded as a deciding factor in achieving the objectives of an infringement suit. The Commercial Courts Act, 2015, has enabled the courts to provide urgent relief to preserve the rights of IP holders. Resultantly, commercial courts in Mumbai, Chennai and Delhi have been successfully upholding IP holders' rights.

Current Trends in IP Litigation

In the last few years, IP holders have been inclined towards taking civil action due to quick disposal of cases by the commercial benches in High Courts. The courts in these civil infringement cases have awarded compensatory, punitive and exemplary damages.

In terms of civil actions, the spectrum of reliefs that may be claimed ranges from injunction orders, search and seizure orders, to accounts of profits, damages and costs. In criminal actions, search and seizure orders and destruction of infringing goods orders are easily obtained.

In 2019, in the case of *Utv Software Communication Ltd. & Ors. V. 1337x. To. & Ors.*, the Delhi High Court appropriately molded the current relief method to adapt to the challenges of the evolving internet age. In domain name disputes, an injunction prohibiting the use of a domain name is granted immediately against the identical variants of the banned websites which were used in large numbers, wherein the infringers were usually back with a variant of a website.

Therefore, to tackle the situation, the courts now grant dynamic injunctions under which the

IP holder is only required to notify the court of the new variant websites. Moreover, the earlier order prohibiting the domain names is immediately applicable on the subsequent variants of the same. This highlights that the present IP regime in India is witnessing a reform in the protection of Intellectual Property Rights.

Rise of Complex Disputes and Evolving Solutions

After the emergence of e-commerce businesses in India, more complex disputes are arising every day. Previously, the e-commerce websites did not monitor the legitimation of goods and services being sold and/or provided on their websites. It was only upon a complaint from the IP holder that the intermediary websites such as Amazon and Flipkart took cognizance of the illegitimate/infringing goods and services being sold to the unaware customers.

Consequently, the Supreme Court was of the opinion that various internet intermediaries such as e-commerce giants Amazon and Flipkart have taken a safe harbor of liability with respect to infringement in the past. However, through several cases, the court has ordered these websites to take greater responsibilities in cases of trademark infringement, wherein infringing items listed on their websites incur a monetary loss for the original IP holder.

For instance, the Delhi High Court in *Amazon Seller Services Pvt Ltd v. Amway India Enterprises Pvt Ltd* and others, held that it was the intermediaries' responsibility to check what may be uploaded on their websites and what may be taken down. The judgement came as a relief to sellers listed with e-commerce platforms as it watered down the protection granted to these e-commerce giants.

With respect to faster disposal of lawsuits under the Commercial Courts Act, post-grant oppositions under patents which were pending for a long time due to the late filing of evidence and extensions have been resolved in the case of *Pharmacyclics LLC v. Union of India*, wherein J. Pratibha Singh gave a narrow interpretation to those rules speeding up Post-Grant Oppositions.

The law on damages concerning IP infringement suits is also developing at a rapid pace. Recent developments also indicate a change in the landscape of conventional IP dispute mechanisms. The alternate ways of dispute resolution like arbitration, mediation and conciliation in IP are giving way to quick relief to the concerned IP right holders where they do not have to go

through the hefty court procedures.

It has also been observed that parties in an IP dispute are themselves opting for an alternate dispute resolution process to resolve their dispute outside the court itself.

Abolition of Intellectual Property Appellate Board

With the Tribunals Reforms (Rationalization and Conditions of Service) Ordinance, 2021 abolishing the Intellectual Property Appellate Board (IPAB), the pending cases are going to be listed before the commercial benches of various High Courts. This new development has received mixed reviews from various eminent legal personalities; while some criticized the abolition of the tribunal, others welcomed the move.

The tribunal was set up in 2003 under Trade Marks Act, 1999, and was exercising original and appellate jurisdiction under the provisions of the Patents Act, 1970, Trade Marks Act, 1999, the Copyright Act, 1957 and the Geographical Indications of Goods (Registration and Protection) Act, 1999.

CONCLUSION

IPR is an incredibly fascinating area, and its application is growing daily. It is among the legal professions with the quickest rate of growth. Before registering a trademark, every business, whether industrial or commercial, uses IPR. Prior to inventing, an inventor must be aware of previous patented inventions that are similar to his own. Before submitting his or any company's design, a designer must make sure it is correct. Through Copyright, an artist can preserve both his rights and financial rewards. With GI, a vendor from a specific state who sells any kind of product can protect himself from infringement. We may infer from the aforementioned statement that intellectual property rights (IPR) are a profitable field with a bright future in India.⁶

India's quickly developing IP litigation system guarantees that the rights of IP owners are properly recognised and successfully upheld by the legal system. These patterns suggest that IP owners have a bright future ahead of them. Since the IPAB was abolished, it has been seen that more parties are choosing alternative dispute resolution procedures because there is no

⁶ <https://blog.ipleaders.in/difference-between-intellectual-property-and-intellectual->

longer a tribunal. The path for IP litigation in India will be paved by this new wave of settlement procedures.

India has a tonne of potential for digital IP. India is predicted to grow significantly, with a projected CAGR of 23% by 2026, according to a report. In India, the digital IP revolution has created a wide range of job prospects. The need for technology experts, patent agents, trademark advisors, and intellectual property attorneys is rising as businesses prioritise safeguarding their digital assets. Technology advancement also calls for experts who understand the intricate legal and technological nuances of digital intellectual property. Furthermore, the need for IP litigators and judges with knowledge of digital IP has arisen.

A survey Indicates that there has been a consistent rise in the quantity of patent and trademark applications filed in India. The increase in filings highlights even more how much the intellectual property law firms in India need qualified workers. The digital transformation of India presents a huge opportunity for legal professionals, engineers, and technology specialists to contribute to the expansion of jobs in roles related to digital intellectual property.

The future of intellectual property law in India is expected to be shaped by the digital revolution in intellectual property. India is in a good position to benefit from this revolutionary trend because of the government's dedication to supporting innovation and safeguarding digital works of art. The need for IP professionals will develop in tandem with the growth of digital IP. The Indian Legal System for IP Litigation India's legal system for intellectual property (IP) litigation is extensive and includes a number of statutes designed to successfully defend IP rights. An outline of this framework's main components is provided below: Law Enforcement Structure The main laws that control intellectual property rights in India are: 1970's Patents Act: India's patent application, review, issuance, and enforcement processes are governed by the Patents Act, 1970. It grants creators the sole right to use their creations for 20 years, provided they satisfy requirements for industrial usefulness, creative step, and uniqueness. The Act provides remedies for patent infringement, including injunctions and damages, and incorporates procedures for patent opposition and revocation. The Trademarks Act of 1999 governs trademark registration and protection in India. It's 2016 National IPR Policy While defending IP rights, this approach seeks to promote creativity and innovation. Its goals include raising public awareness, bolstering IP administration and enforcement, and promoting the commercialization of IP assets. Effective IP litigation processes are emphasized, and the policy

offers a strategic framework for the comprehensive growth of IP in India. Modernization: Improves

IP offices' infrastructure to facilitate processing more effectively. Discounted rates: Provides startups and MSMEs with discounted rates. Exams for particular categories are prioritized through expedited examinations. Programs for Awareness: Encourages knowledge and awareness of IP. Technology Innovation Support Centers are used to facilitate the commercialization of intellectual property. Review and Enforcement: Stresses the need to safeguard, enforce, and review intellectual property laws. Different Kinds of Intellectual Property Conflicts Defenses Against Patent Violations Unauthorized use, production, or sale of a patented invention without the patent holder's consent is known as patent infringement. In order to successfully defend against patent infringement, one must fully comprehend the claims made in the patent and compare them to the allegedly infringing technique or product. In patent litigation, common defenses include claiming that the patent has expired, contesting the patent's validity, or arguing non-infringement. Complex legal and technical concerns are frequently raised in patent litigation in India, necessitating knowledge of both patent law and the pertinent technology. Passing off and infringement of trademarks When a party uses a mark that is confusing to consumers and is identical to a registered brand, trademark infringement charges are brought. When one party misrepresents its goods or services as those of another, it damages the other party's goodwill. In order for a trademark infringement or passing-off action to be successful, the plaintiff must demonstrate that they are the owner of a legitimate trademark and that there is a risk of confusion and harm to their brand's reputation. Enforcing IP rights is essential in India for both trademark protection and preserving fair competition in the marketplace. Copyright Violation Cases Unauthorized duplication, distribution, or exhibition of a copyrighted work constitutes copyright infringement. Works of literature, music, movies, software, and other creative materials can fall under this category. Copyright disputes are particularly difficult in the field of intellectual property because they frequently necessitate a thorough examination of the originality and significant similarities between the works in question.

Infringement of Design Rights A product's aesthetic qualities, including its color, pattern, or shape, are protected by design rights. A product that is created, utilized, or sold with a substantially similar design without the owner's permission is considered to be infringed. In order to enforce design rights, it is necessary to show that the design is unique and novel as

well as that the copycat product does not substantially deviate from the protected design. India's IP litigation procedure for design rights guarantees that producers can safeguard the distinctive aesthetic features of their goods. The Indian Process for IP Litigation Preliminary Actions In order to settle intellectual property conflicts amicably, parties frequently take pre-litigation actions prior to starting official litigation. The alleged infringer will get cease and desist letters detailing the IP holder's rights and requesting an immediate halt to the infringing behavior. In order to resolve disagreements outside of court, parties frequently use mediation and negotiation as pre-litigation tactics. While producing satisfactory results, these techniques can save time and money. Bringing a Lawsuit for IP Violations Filing a lawsuit for intellectual property infringement is the next step after pre-litigation attempts fail. A plaint outlining the specifics of the infringement and the requested remedy is filed by the plaintiff with the relevant court to start the process. A summons is thereafter served to the defendant, who must then provide a written statement in response. In India, the main objective of intellectual property litigation is to establish a legal framework for settling conflicts and upholding IP rights. Court Processes and Schedules India has a multi-stage IP litigation process that includes preliminary hearings, issue framing, evidence presentation, cross-examination, and closing arguments. Depending on the complexity of the case and the timetable of the particular court, each case may have a very different timeline. High-value intellectual property disputes are being handled more quickly thanks to the Commercial Courts Act of 2015, which aims to settle cases within a year of the first case management hearing. Intellectual property attorneys' function in India In India, IP lawyers are essential for managing the enforcement of IP rights. In addition to preparing the required paperwork and representing clients in court, they offer knowledgeable legal advice. Expert witnesses, such as market analysts in cases involving trademark infringement or technical specialists in patent litigation in India, can offer insightful testimony to bolster the case of the plaintiff or defendant. Their knowledge boosts the litigation strategy as a whole and helps to simplify complicated topics. Things to Think About After a Litigation Implementing Court Orders The next step after a successful intellectual property litigation case in India is the execution of court orders.

This is making sure the infringer follows the court's orders, which could be to stop the infringement, pay damages, or do both. In India, protecting IP holders' rights and maintaining the integrity of the judicial system depend heavily on effective IP rights enforcement. Contempt of court proceedings is one of the further legal measures that may result from noncompliance. Losses and Compensation To make up for the losses incurred by the IP holder

as a result of the infringement, the court may grant a variety of remedies in intellectual property disputes. These remedies include monetary damages, which can be punitive or compensatory, as well as injunctions to stop future violations. The delivery or destruction of products that violate the law may also be ordered by the court in certain situations. Reinforcing the significance of the IP litigation procedure in India, the goal is to restore the position of the IP holder and discourage further infringements. In conclusion, Legal action pertaining to intellectual property is essential in India for safeguarding the rights of companies, inventors, and artists. IP litigation guarantees that intellectual property rights are respected and enforced by offering a legal framework for settling intellectual property disputes. Maintaining fair competition in the market, promoting investment, and promoting innovation all depend on this legal protection. Intellectual property holders may effectively defend their rights and guarantee the protection of their inventions and developments by being aware of the Indian IP litigation procedure and making use of the knowledge of the top Indian IP law firms. In IP litigation, the function of courts and tribunals The function of courts and specialized tribunals in intellectual property (IP) disputes has changed dramatically in India, especially since the Intellectual Property Appellate Board (IPAB) was abolished in 2021. High courts, particularly the Delhi High Court, are becoming heavily involved in resolving intellectual property disputes. In order to manage the heightened workload after the IPAB's collapse, the Delhi High Court created a specialized Intellectual Property Division (IPD). This section offers more specialized attention and streamlined procedures for complicated IP concerns, ensuring the speedy resolution of IP claims, including patent, trademark, and copyright disputes.

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