INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed Edition :

www.ijlra.com

 ISSN: 2582-6433

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 ISSN: 2582-6433

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 ISSN: 2582-6433

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INTELLECTUAL PROPERTY IN CORPORATE LAW: RESEARCH METHODOLOGY FOR ANALYSING PATENT AND TRADEMARK ISSUES.

AUTHORED BY - REETAMBHAR KUMAR DAS

Chapter 1: INTRODUCTION

Every human being on this Earth has the right to protect his/her property against another person. The term 'property' here would indicate assets like house, jewellery, car, etc. But when it comes in the context of 'intellectual property' it would mean property created from the 'mind' of a human being and is in tangible form.[1] This property is usually a brain child of a person which has been given a tangible form by reshaping it.

Every creation needs a lot of efforts and without new creations a country cannot develop.

Intellectual property is a wide term including copyright, patents, trademarks, GI, Biodiversity Act etc. The following laws are being recognized under Indian laws.

The basic IPR laws which are being used in corporate sectors are limited to Patent and Trade mark laws.

The Patent Act, 1970 was introduced in order to protect the inventions for a limited period of time by the government. The patent enjoys an exclusive right to prevent a third party from unauthorized act of making, sell or reproduce the same product.

Similarly Trade Mark Act 1999 was introduced in order to do free trade without the fear of the work being stolen by any third party.[2]

[1] Lalit Jajpura, Bhupinder Singha and Rajkishore Nayak, *'An Introduction to Intellectual Property Rights and their Importance in Indian Context'*, Vol 22 2017 https://docs.manupatra.in/newsline/articles/Upload/41C26FED-7AFE-40EA-8736-4E6C516917AE.pdf

[2] Making a mark Intellectual property for business series, No1 https://www.wipo.int/export/sites/www/sme/en/documents/guides/customization/making_a_mark_nig.pdf

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All this laws in today's world help in smooth governing of the organization. IPR is crucial in each of these scenarios because it's vital to protect the items' value. The protection is provided by means such as intellectual property laws and technological security measures.

In comparison to any physical property a corporate entity may own, the majority of firms around the world believe their intellectual property to be a significantly more valuable asset. This is because firms are protected by intellectual property laws from both unfair competition as well as exposure of their trade secrets. The promotion of the creation of various intellectual properties is the main objective of intellectual property regulation. To do this, the law normally allows individuals and organizations ownership rights for a limited period of time to the information and creative products they develop this in turn creates an economic incentive for their creation by allowing people to profit from the knowledge and intellectual products that they create. These financial incentives are expected to promote innovation and improve technology in nations, depending on the level of protection offered to innovators.

The establishment of rules and procedures that control how IP laws are applied has encouraged new creations in addition to protecting the creator's labour. It is against the law to take someone else's intellectual property (IP) and use it to make money without paying the inventor for their time and labour.

Chapter 2

Overview of Intellectual Property in Corporate law

2.1 Importance of patents and trademarks in a corporate sector

Act VI of 1856, the nation's first statute governing patents, had its inception in India. The objective was to publicize inventions and persuade inventors to reveal their ideas' trade secrets. Later, a new law known as Act XV of 1859 was adopted to grant exclusive privilege. The law was changed to the Patterns and Designs Protection Act which was passed in 1872. The only revision to the statute during its 30-year existence was in 1883.

The Indian Patents and Design Act repealed all previous Indian legislation. This legislation established rules for the issuance of secret patents, patents for improvements, and a 16-year patent term extension. The law was examined by many committees after India gained independence, and as a result, a bill was introduced in the Lok Sabha in 1965 but was not passed. The Patents

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Act, 1970—currently in use in India—was adopted on the committee's final recommendation in 1970, despite the fact that the original bill had expired in 1965.[3]

The British Trademark Act of 1938 was modified to create the Trademark Act of 1940, which was the first law pertaining to trademarks in India. After independence, the Trade and Merchandise Act of 1958 were also passed.

Until December 30, 1999, when the Trade Mark Act, 1999, was established and is in use in India this law serves two main purposes: ***a) to protect the owner from confusion and competitor mark infringement; and b) safeguard the reputation, business, and goodwill that the trademark owner has established.***

There were trademarks which were in use even in ancient history. Around 3000 years ago, Indian craftsmen used to engrave their signature on jewellery or other works of art. Trademarks have been a crucial component of the modern world of worldwide trade since industrialization. ***A trade mark is a distinguishing symbol or emblem that indicates that a certain product is created or offered by a particular person, business, or industry***.[4] Service marks, like trademarks, set apart businesses that offer services from their rivals. A firm may use a variety of trademarks to identify its various products, but it also uses its trade name to set itself apart from other businesses. Trademarks and trade names assist businesses in building their brand awareness, reputation, and customer trust.

In order to stand out from the competition, a certain demographic of customers places a high value on brand prestige, even for products which are of comparable quality. In order to differentiate one company or service from another, a trademark or service mark may include words (such as a company name, surname, geographical name, slogan, etc.), letters, numbers, drawings, logos, phrases, images, designs, or a combination of these components.

On the other hand a ***patent is a sole right granted to the inventor by the State that forbids anybody from making, using, or selling the invention for a predetermined period of time***.[5] It

[3] Máté, D., Kun, A.I. and Fenyves ‘’ *The Impacts of Trademarks and Patents on Labour Productivity in the Knowledge-Intensive Business Service Sectors’* https://www.econstor.eu/bitstream/10419/168990/1/aej-v18-i41-p104.pdf
[4] Devki Nandan, Trademark, “Introduction, Functions, Requirements & Salient Features”, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3625716
[5] V. K. Unni,’ *Indian Patent Law and TRIPS: Redrawing the Flexibility Framework in the Context of Public Policy*

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pertains to an inventive monopoly right. The exclusivity of patent protection for inventions is not required, nor is all inventions patentable. The finished product that arises from an innovation may be protected by other types of intellectual property rights. By offering innovators exclusive rights to their ideas, the main goal of patent law is to motivate them to contribute more to their field. An innovation in India is one that incorporates the inventive phase, is usable in industry, and qualifies for patent protection.

The sub-set portion of the intellectual property legislation which deals with new innovations is called the Patents Act. ***Product patents and process patents are the two categories of patents*** recognized by the Patents Act of 1970. The process patent describes the steps taken to produce a patent, whereas the product patent describes the final product or output of a product. According to the Patent Act, if a procedure or product is novel, involves an innovative step, and has the potential for industrial use, it qualifies as an invention.

Legal foundations of patents and trademarks

India's intellectual property rights are protected through patents and trademarks. The Indian Patents Act of 1970 incentivizes innovation by granting exclusive rights for up to 20 years to eligible inventions. The application process involves rigorous examination by the Indian Patent Office to ensure novelty, non-obviousness, and industrial applicability. Patent holders enjoy exclusive rights to use, make, and sell their invention, fostering innovation and competition. The Act also allows for compulsory licensing and revocation if the patent is not adequately exploited. Trademarks are regulated by the Trade Marks Act of 1999, which protects distinctive signs like names, logos, and symbols used in commerce.[6] To secure trademark protection, individuals or businesses must file an application with the Trademarks Registry. Once approved, trademark owners have exclusive rights for ten years, with the option for indefinite renewal. India also recognizes Geographical Indications (GIs) under separate legislation, protecting products originating from specific regions with quality and unique characteristics. This system ensures consumers can trust the authenticity and origin of products tied to a particular geographical area.

Inter-link between IPR and Corporate laws

Intellectual Property Rights (IPR) and Corporate Laws are interconnected legal domains that play

and Health', Vol 25 Issue 1 https://core.ac.uk/download/pdf/303865429.pdf

[6] Mohammad Amin Naser, "*Rethinking the Foundations of Trademarks"*, Vol 5 Issue 1, https://core.ac.uk/download/pdf/236347735.pdf

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a crucial role in shaping modern business and innovation. The relationship between these two domains is symbiotic, fostering innovation, protecting assets, and ensuring economic growth. M&A activities involve mergers and acquisitions (M&A), where corporations often acquire or merge with companies possessing valuable intellectual property assets. Corporate laws govern the acquisition or merger process, while IPR safeguards these assets.[7] Due diligence in M&A involves assessing the target company's IPR portfolio to assess its value, risks, and compliance with relevant laws. Failure to account for these assets can lead to legal disputes, financial losses, or missed opportunities. Licensing agreements to use, exploit, or sublicense intellectual property are regulated by both IPR laws and corporate contract laws. Companies must navigate these intricacies to ensure compliance with licensing terms, royalty payments, and protection of their IP rights.[8] Corporate governance also intersects with IPR and Corporate Laws. Boards of directors and executives have a fiduciary duty to protect and maximize the value of a corporation's assets, including intellectual property. They must ensure compliance with IPR laws and take necessary measures to protect their IP.

The interplay between IPR and Corporate Laws also influences competition and antitrust regulations. Corporations must navigate the delicate balance between protecting their IP rights and avoiding anti-competitive behaviour when holding dominant positions due to their intellectual property.[9] Financial aspects of corporate operations, such as valuation, asset management, and financing, are deeply intertwined with intellectual property. A company's IP portfolio can significantly affect its valuation, attracting investors or lenders who recognize the value of these assets. Corporate laws govern financial transactions, mergers, and IPOs, which often involve IP considerations. In conclusion, the inter-link between IPR and Corporate Laws is essential for businesses operating in today's knowledge-based economy.

As we know that a company is one which runs its business and in return they generate profit. Whatever creation they does, needs a protection. For economic growth and development, every company needs to create something new which would make his product stands out of the queue. As the technology is advancing, new creations and inventions are taking place and as a result, the protection of the product needs to be done in order to protect it from the buyers getting confused

[7] Danai Christopoulou · Nikolaos Papageorgiadis · Chengang Wang & Georgios Magkonis, (2021) *"IPR law protection and enforcement"*https://link.springer.com/article/10.1007/s11575-021-00443-0
[8] Supreet Kaur 'Interface between Intellectual Property and Competition Law: Essential Facilities Doctrine' (2011) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1802450
[9] Santanu Mukherjee, 'Intellectual Property Rights and Patents: Introduction to Intellectual Property Rights', (2023) https://doi.org/10.1163/9789004542815_003

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between two similar or identical products.

Now coming to the international conventions, India is a signatory to World Trade Organization (WTO) and committed to the agreement on Trade related aspects of Intellectual property rights (TRIPS).

Furthermore the economics growth and development depends on the new creation of any products. According to Global Innovation Index 2023, India ranked 40th in comparison to the whole world. This statistical data would not have been possible without new inventions or creations.

In corporate sector Trade mark and patent are the most required legislations as this two areas are the most vulnerable aspects of attacks.

Intellectual property rights (IPR) can directly impact a country's economic growth by encouraging innovations in various sectors, which in turn improve productivity. IPR can also affect inflows of foreign direct investment (FDI), technology transfers, and trade, which may intrude on growth. Studies show a non-linear relationship between IPR protection and development level, suggesting that patent protection tends to decline as economies move beyond the poorest stage into a middle-income stage. Economic indicators like national or sector trade balance is used to quantify trade-related intellectual property, but these are often contradicted and considered inaccurate for policy purposes.

The impact of copyright on an economy is unclear, with debates over whether lowered or increased provisions lead to more or fewer books, films, movies, websites, or pro or anti-competitive business practices. However, it can be concluded that there is at least some economic impact arising from copyright protection if income distribution can be considered a matter of economic policy rather than a social policy issue.

Intellectual property rights (IP) are crucial in fostering international trade and are essential for businesses worldwide. However, they also have limitations like time and space constraints. Strong domestic and international protection of IP is essential for a country's success in the competitive global marketplace. IP will remain part of most international trade agreements, but varying standards and less discriminatory enforcements will characterize future global activity.

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The evolution of trade-related IP is evidence of social, cultural, and political scenarios, leading to a finely tuned understanding of the associations between creation, innovation, and efficient IP dissemination.

Chapter 3: Research Methodology

Research methodology is a critical component of any scientific inquiry, guiding the systematic investigation of a research question or problem. It involves the formulation of clear objectives and hypotheses to guide the study's focus, selecting an appropriate research design, and employing various techniques for data collection and analysis.[10] Data collection is another critical aspect of research methodology, with researchers using methods such as surveys, interviews, experiments, observations, or content analysis. The choice of data collection method should align with the research design and objectives, ensuring validity and reliability.

Types of Research those are required for the enforcement of IPR laws in India:

1. ***Doctrinal Methods:*** This type of Research focuses on basically the letter of Law rather than the law in action. In doctrinal research methods, it is a crucial method in legal and academic studies, focusing on analysing existing legal principles and precedents to derive conclusions and interpretations. This approach involves a systematic examination of legal texts, statutes, case law, and legal literature to gain a deeper understanding of the legal framework.
2. ***Analytical Methods:*** Analytical research is a systematic and rigorous method of examining data to draw meaningful conclusions and insights. It is crucial in understanding complex phenomena, such as economics, where it helps assess data on inflation rates, GDP growth, and consumer behaviour. In science, analytical research is essential for experiments and data analysis, using spectroscopy to identify molecules or separate chemical compounds. By applying analytical methods, researchers can unravel intricate details, make informed decisions, and contribute to advancements in their respective disciplines.
3. ***Qualitative Methods:*** Qualitative research methods are crucial for understanding human experiences, behaviors, and social phenomena. They focus on understanding the "why" and "how" behind a particular issue, providing rich insights into complex human

[10] Mimansha Patel & Nitin Patel *"Exploring Research Methodology: Review Article",* Vol 6 issue 3, (2019) https://www.ijrrjournal.com/IJRR_Vol.6_Issue.3_March2019/IJRR0011.pdf

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behaviors and societal dynamics. For example, in sociology, in-depth interviews can reveal the experiences of marginalized communities, while content analysis of open-ended survey responses can uncover underlying themes and emotions. This approach aids in informed decision-making and policy formulation.

In India if a person or an individual wants to get a patent one needs to do prior search on the product, that is to say whether that product is already been registered or not, the next step includes filing of the application before the patent office which is followed by publication of that patent for any objections. The very important step is to request for examination followed by response to objection. Finally the patent is granted by the Government of India for exclusive use of it. Prospective patentees must analyse the Patents Act to understand statutory requirements like patentable subject matter, novelty, non-obviousness, and industrial applicability. Study of Indian patent jurisprudence through relevant case law needs to done in order to understand the interpretation and application of patent law.

Analytical research is used by inventors and applicants to conduct a thorough prior art search, examining existing patents, publications, and technologies to determine if the proposed invention is novel and non-obvious, thereby identifying potential obstacles and preparing for the patent examination process.

Analytical research methods are crucial for trademark registration in India, assessing the viability, distinctiveness, and protect ability of a proposed trademark. The first step is a comprehensive search of existing trademarks, identifying potential conflicting marks. This prior art search ensures the proposed trademark is unique and doesn't infringe on existing rights, preventing legal complications and ensuring the proposed trademark doesn't infringe upon existing rights.

Qualitative research is a method used by patent applicants to gather detailed insights into their innovation's market and industry. This helps them assess its practical utility and market demand, ensuring it aligns with real-world needs and is commercially viable. It also helps in understanding the competitive landscape by identifying gaps, opportunities, and challenges in the industry. Additionally, it helps applicants understand the real-world impact of their invention by engaging with potential users, stakeholders, and experts.

Qualitative research is a valuable tool for trademark applicants to understand consumer

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perception and associations with their proposed trademark. Through focus groups, surveys, and interviews, it helps assess the trademark's alignment with brand identity and market positioning, ensuring it accurately represents the product or service and resonates with the target audience. Additionally, it helps identify potential trademark infringement risks by engaging with experts and industry stakeholders, allowing them to anticipate conflicts and make necessary adjustments to their trademark application. Overall, qualitative research is essential for effective trademark application.

Patent and Pharmatecuals companies in India

India's biotechnology companies, including Biocon Limited, Dr. Reddy's Laboratories, Sun Pharmaceutical Industries, Zydus Cadila, and Intas Pharmaceuticals, are advancing biosimilar products, contributing to the pharmaceutical and healthcare sectors. India has regulatory pathways for safety and efficacy in biosimilar, compulsory licensing for essential medicines and data exclusivity provisions for clinical trial data. These measures ensure access to essential medicines and protect innovators' clinical trial data for a specified period.

A biosimilar product patent is the intellectual property rights for a biologic medicine that is highly similar to a reference biologic drug. In other words a biosimilar is a product with a structure that closely resembles but is not identical to a brand name biologic. These patents cover specific aspects of the biosimilar product, such as its manufacturing process, formulation, or unique administration method. The biosimilar patent landscape is complex, involving composition-of-matter, method-of-use, and process patents. To commercialize a biosimilar, manufacturers must negotiate licensing agreements with the reference product's manufacturer or engage in legal battles to invalidate or circumvent relevant patents.

The biosimilar market has grown in recent years, offering cost-effective alternatives to expensive biologics. However, the legal intricacies of biosimilar patents remain a focus for the pharmaceutical industry and regulatory bodies, impacting the availability and affordability of these critical medicines.

The COVID-19 pandemic has highlighted the significance of biosimilar in expanding access to essential treatments like monoclonal antibodies and vaccines. These biosimilar versions address supply chain issues, reduce costs, and increase global vaccine availability, ensuring equitable access to life-saving treatments and contributing to public health resilience and global recovery

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efforts.

The questions lies over here is that are this Bio-similar products comes under the ambit of patented products or not, or does it reduces the effects of the originality of the product. In India, the Central Drugs Standard Control Organization (CDSCO) and its advisory bodies are responsible for overseeing the approval process for biosimilar in India.

India's legal landscape for biosimilar includes the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945, which outline clinical trials, manufacturing, labelling, and post-marketing surveillance. CDSCO guidelines provide detailed information on the approval process, including data requirements and immunogenicity assessments. India's compliance with the World Trade Organization's TRIPS agreement impacts biosimilar' legal aspects, including patent protection and data exclusivity.

A New Dimension in the field of Patent

The US Supreme Court's decision in ***Diamond v. Chakraborty*** [11]in 1980 allowed living, genetically altered organisms to qualify for patent protection as new manufactures or compositions of matter under Section 101 of the US Patent Code. This broad directive expanded the categories of living subject matter eligible for patent protection to include plants and animals. The explosion of commercial interest in the field and the emergence of commercial biotechnology companies have amplified the importance of intellectual property in biomedical sciences. Many biotechnology firms find a market niche between fundamental research and end product development in more established commercial firms, needing intellectual property rights in discoveries that arise significantly upstream from commercial product markets. This creates pressure to patent discoveries closer to the work of research scientists than to ultimate consumer products.

The passage of the Bayh-Dole Act and the Stevenson-Wydler Act in 1980[12] encouraged research institutions to patent discoveries made in the course of government-sponsored research. This represented a 180° shift in policy for health-related research institutions. Federal policy now

[11] Diamond v. Chakraborty, 447 U.S. 303 (1980)
[12] *"THE BAYH–DOLE ACT (P.L. 96–517, AMENDMENTS TO THE PATENT AND TRADEMARK ACT OF 1980)—THE NEXT 25 YEARS*" (June 2007)https://www.govinfo.gov/content/pkg/CHRG-110hhrg36592/pdf/CHRG-110hhrg36592.pdf

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reflects the opposite assumption, stating that if research results are made widely available, they will languish in government and university archives, unable to generate commercial interest in using the results to develop commercial products.

Understanding patent protection in India

A patent confers a right to exclude anyone else from using an invention, even an innocent infringer who independently develops the same invention without any knowledge of the patent holder's rights. Trade secrets receive more limited protection and may not be enforced against innocent infringers. Trade secrecy is one way to keep inventions and discoveries out of the hands of competitors to protect an investment in R&D. However, secrecy only works for inventions that can be exploited commercially without disclosure, such as manufacturing processes.[13] Many inventions and discoveries are self-disclosing once they are put on the market in the form of a product, and thereafter may only be protected through a patent. Even when secrecy is feasible, it might not be desirable. For some inventions, patents provide an alternative strategy for protecting intellectual property rights that does not require (and indeed does not permit) secrecy. To get a patent, it is necessary to file an application that includes a full disclosure of the invention and describes how to make and use it. In many parts of the world, this disclosure will be made public 18 months after the filing date of the application. In the US, the disclosure is made public when the patent is issued.

Once the patent application is on file, disclosure will not jeopardize the applicant's prospects for obtaining a patent. A patent gives an inventor the rights to exclude others from making, using, and selling the invention for a limited term, 20 years from the application filing date in most of the world. During the patent term, the inventor may choose to make, use, and sell the patented invention herself (assuming this does not violate the patent rights of others or any applicable laws), or to license others to do so on an exclusive or non-exclusive basis, or even to suppress the use of the invention entirely. One thing an inventor who wants a patent cannot do is keep the invention secret. In the industrial realm, patents are generally believed to promote technological progress by providing an economic incentive to make new inventions and developing them into commercial products and by promoting disclosure of new inventions to the public.

[13] Chandra Nath Saha and Sanjib Bhattacharya, "Intellectual property rights: An overview and implications in pharmaceutical industry" Vol 2(2) (2011) https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/

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The extent to which the patent system achieves these goals is essentially an empirical question with different answers in different fields.

Requirement for Patent protection

Patent protection consists of three basic requirements: novelty, utility, and non-obviousness. Novelty refers to an invention that did not exist before, while utility is the extent to which an invention constitutes a significant advance over what was known previously. This standard is satisfied if the invention would not have been obvious to a person of ordinary skill in the field who was knowledgeable about the prior art. The utility requirement limits patent protection to inventions with practical applications, rather than basic knowledge. The meaning of this requirement has varied over the years, from a minimal standard to a stricter one that has sometimes approached what the FDA would require for approval of a new drug. Recent developments in the courts and the PTO suggest that the utility requirement may be receding from its all-time high level as an obstacle to patent protection. In theory, the utility requirement can be justified as a means of distinguishing between basic research discoveries that are more likely to be effectively utilized if left in the public domain and more practical technological applications that may require a patent to ensure adequate incentives for commercial development. The Supreme Court has stated that discoveries whose only value is as an object of scientific inquiry do not satisfy the utility standard, suggesting that utility could be an important limitation on the use of the patent system to protect research tools.

Experimental use exemption- a new loophole

The experimental use exemption, or research exemption, is a legal provision that allows unlicensed use of a patented invention for research or experimentation. This doctrine was first introduced in 1813 by Justice Story in the case of ***Whittemore v. Cutter***[14]. It is difficult to determine the scope of this exception, as it becomes an issue only in patent infringement actions and patent holders are unlikely to file a lawsuit against an academic researcher whose use of the invention is commercially insignificant. Judicial pronouncements on the scope of the experimental use exemption address situations where a patent holder finds a defendant's activities sufficiently annoying to be worth pursuing a lawsuit. Within this universe, the experimental use defense has been frequently raised but almost never sustained. Nonetheless, courts have consistently recognized the existence of an experimental use defense in theory, although the

[14] *Whittemore v. Cutter* 29FED.CAS.—71

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defense has almost never succeeded in practice. Recent case law suggests that the experimental use defense may be available only for pure research with no commercial implications, if such a thing exists. In ***Roche Products v. Bolar Pharmaceutical Company***[15], a 1984 decision of the US Court of Appeals for the Federal Circuit, the court rejected the arguments of a generic drug manufacturer that the experimental use defense should apply to its use of a patented drug to conduct clinical trials during the patent term. The court characterized the defense as "truly narrow," noting that the defendant's use of the drug was "no dilettante affair such as Justice Story envisioned." The language of the decision offers little hope of an exemption for research scientists who use patented inventions with an aim to discover something of potential usefulness. It certainly suggests that the defense would be unavailable whenever the defendant's research is motivated by a commercial purpose. As a practical matter, this parsimonious approach could seriously limit the availability of the defense in fields of research with commercial significance, in which even academic researchers are often motivated, at least in part, by commercial interests. Congress has partially abrogated the decision of the Federal Circuit in ***Roche v. Bolar***[16] in the specific context of clinical trials of patented drugs by an amendment to the patent statute. However, the amendment did not address the broader question of when the experimental use defense would be available outside of that very narrow setting. It is difficult to imagine how a broader experimental use defense could be formulated that would exempt the use of research tools from infringement liability without effectively eviscerating the value of patents on research tools. Researchers are ordinary consumers of patented research tools, and an excessively broad research exemption could eliminate incentives for private firms to develop and disseminate new research tools, which could on balance, do more harm than good to the research enterprise.

Research tools on patent Laws In India

Research tools are not a term of art in patent law, and they are not categorically excluded from patent protection. However, there are reasons to be wary of patents on research tools. The ultimate social value of research tools is likely to be greatest when they are widely available to all researchers who can use them. Patents restrict access to inventions to increase profits for patent holders, and an important research project might call for access to many research tools, which could mount costs and administrative burdens if researchers need to obtain separate licenses for each of these tools.[17] The effects of patenting research tools will vary. For example, patents are

[15] 733 F.2d 858 (1984)
[16] Roche v. Bolar 733 F.2d 858 (Fed. Cir. 1984)
[17] Zakir Thomas, "*Patenting of Research Tools - Issues and Some Pointers",* Vol 20 Issue 2, (2008)

unlikely to interfere substantially with access to research tools like chemical reagents that are readily available on the market at reasonable prices from patent holders or licensees. Some research tools are available through catalogues under conditions that approach an anonymous market, and some are patented, but the patents are unlikely to interfere with dissemination. Another risk is that patent holders will choose to license them on an exclusive basis rather than on a nonexclusive basis, which could choke off the R&D of other firms before it gets off the ground. This licensing strategy might make sense for a start-up company that is short on current revenues, but it does not maximize value in the long run from a broader social perspective. Another risk is that patent holders will use a device employed by some biotechnology firms of offering licenses that impose "reach-through" royalties on sales of products developed in part through use of licensed research tools, even if the patented inventions are not themselves incorporated into the final products. Patent holders have had limited success with reach-through royalty licenses, and it is difficult to figure out mutually agreeable license terms.

A further complication arises in the case of inventions that have substantial current value as research tools but might also be incorporated into commercial products in the future. It might be necessary to offer exclusive rights in the ultimate commercial products to innovating firms to give them adequate incentives to develop the products, but it might be impossible to preserve this option without limiting dissemination of the inventions for their present use as research tools. In conclusion, exclusive rights risk inhibiting the optimal use of research tools and interfering with downstream incentives for product development. To address these challenges, it is essential to examine the solutions different institutions have come up with and see how they have operated in practice.

LEGAL RESEARCH ON TRADE MARK IN INDIA

Trademark search is a crucial process that determines if a proposed trademark belongs to an existing entity and has been used, registered, or pending for registration with relevant authorities.[18] Its purpose is to ensure the proposed trademark is available for use and registration without causing damage or infringement to existing user's intellectual property rights.[19]

https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1071&context=nlsir

[18] Richa Kumar, "*RECENT DEVELOPMENTS IN TRADEMARK LAWS IN INDIA"*, Vol 2 Issue 1, https://jlrjs.com/wp-content/uploads/2022/12/1.-Richa-Kumar.pdf

[19] TANDON & CO ADVOCATES AND SOLICITORS "*Overview of trademark laws in India"* https://www.tandonandcompany.com/tandonadmin/img/Finalist/20180215151869389 2OverviewofTrademarkLawsinIndia.pdf

 ISSN: 2582-6433

1. **Official trademark data base search**: To conduct a trademark search in India, first, search the official trademark database maintained by the Indian Trademark Registry, which contains information on all registered and pending trademark applications in the country. The search can be conducted online or in person.
2. **Common law search**: Unregistered trademarks, which have gained recognition and goodwill among consumers, are protected under common laws rather than trademark-specific laws. They can be enforced through legal action. A Common Law search may involve reviewing business directories, trade publications, and websites to identify similar brands using the proposed mark in the market.
3. **Market surveys:** A market survey is a trademark search that assesses consumer recognition and association between a proposed trademark and its intended goods or services. It evaluates the likelihood of confusion with existing trademarks and determines if the proposed trademark is distinctive and can serve as a source identifier. Market surveys can be conducted through online surveys, focus groups, and interviews, with a representative sample of consumers providing feedback on the proposed trademark.
4. **Internet Search:** Internet searches are a trademark search method that involves examining the internet for potential trademark conflicts. They aim to identify potential infringement issues or existing trademark conflicts that may not be discovered through other search methods. This process may involve reviewing search engine results, social media platforms, online marketplaces, and other online sources.
5. **Professional Trademark search services:** Professional trademark search services in India offer comprehensive searches for existing trademarks, providing accurate results on the availability of proposed trademarks. These services use various methods, including database searches, common law searches, market surveys, and internet searches, to ensure accurate results.

Important consideration while doing a Trade Mark search

A trademark search is a crucial step in protecting your intellectual property and brand identity. It helps distinguish your goods or services from competitors, and ensuring that your trademark is unique and legally defensible is vital. A comprehensive trademark search involves various aspects to minimize the risk of potential conflicts and legal issues. One of the fundamental aspects to consider during a trademark search is the uniqueness of your proposed trademark. Your trademark should be distinctive and not merely a generic or descriptive term that anyone can use. Descriptive terms are typically challenging to register as trademarks because they do not

 ISSN: 2582-6433

inherently indicate the source of a product or service. For example, if you want to trademark the name "The Coffee House," it may be considered too generic to qualify for trademark protection. Instead, selecting a more unique and creative name like "BeanBrew Café" could increase your chances of successful trademark registration. Another critical consideration is the availability of your chosen trademark. To ensure your trademark is available for registration, perform a comprehensive search of existing trademarks, covering both registered trademarks with the United States Patent and Trademark Office (USPTO) or your country's equivalent authority and unregistered, but still legally protected, trademarks. Failing to identify potential conflicts can result in legal disputes and costly rebranding efforts down the road. The geographic scope of your trademark search is also vital. Trademarks are generally registered on a territorial basis, meaning that a trademark registered in one country may not be protected in another. Therefore, if you plan to expand your business internationally or even across state lines, it's essential to conduct searches in all relevant jurisdictions to ensure your trademark is available and not infringing on others. In addition to searching for exact matches, it is essential to consider similar trademarks.

Trademarks that are phonetically or visually similar to your proposed mark can potentially cause confusion among consumers and result in legal challenges. Common-law trademarks are unregistered marks used in commerce that have acquired rights through use. Conducting internet searches, checking social media, and reviewing business directories can help identify common-law trademarks that might conflict with your proposed mark. Time is of the essence in trademark searches. The earlier you conduct your search in your branding process, the better. Failure to perform a thorough search before investing in marketing materials and business operations can be costly if you later discover your chosen mark is not available or already in use by others. Consulting with a trademark attorney or professional is highly recommended to help interpret search results, assess the risk of potential conflicts, and navigate the trademark registration process.

Important consideration while doing Trade Mark search are-

1. **Trade mark classification**: The Indian Trademark Registry uses the Nice Classification system for Trademark Search, categorizing goods and services into 45 classes, to identify potential conflicts when searching for existing trademarks similar to the proposed trademark in the same or related classes.
2. **Knock out search:** A knock-out search is a preliminary method used to identify identical or similar trademarks in a specific class of goods or services, allowing for early

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identification of potential conflicts and enabling the applicant to make necessary trademark changes.

3. **Clearance search**: A clearance search is a thorough process that involves a thorough search of similar trademarks, including database, common law, market surveys, and internet searches, to ensure that a proposed trademark is not infringing on existing ones and is entirely unique.
4. **INN search**: An International Non-proprietary Name (INN) search is necessary for pharmaceutical and healthcare product trademarks. The World Health Organization (WHO) maintains a database of recognized INNs, unique non-proprietary names for active pharmaceutical ingredients. No proposed trademark in the pharmaceutical product class can be similar to any recognized INN names.
5. **TESS facilities:** The Trademark Application System (TESS) is a tool that aids trademark applications by allowing web browser searches of data related to active trademark applications and registrations. It provides access to the exact trademark text and picture database via the X-Search system, allowing US Patent and Trademark Office attorneys to examine the database. TESS offers four search forms, including Structured Form Search for inexperienced users, Free Form Search for more complex queries, and Advanced Search for more complex queries. Users can also browse through search indices to see indexed terms related to a search phrase, and can switch between search forms throughout the search session.

Chapter 5: corporate strategies for IP protection

Intellectual property (IP) protection is crucial for a company's success in today's competitive business environment. Key strategies include patent filings, trademark registration, copyright protection, trade secrets, licensing agreements, regular audits, employee training, and legal action against infringers, cybersecurity measures, and global considerations. Patent filings protect unique inventions and technologies, while trademark registration protects a company's brand identity and reputation. Copyright protection prohibits unauthorized reproduction, distribution, or use of creative works. Trade secrets are safeguarded through non-disclosure agreements and internal security measures. Licensing agreements allow a company to generate revenue while maintaining control over IP usage. Regular audits assess the value and vulnerabilities of the IP portfolio, while employee training educates them about IP protection. Legal action against infringers deters future violations and protects IP's integrity. Cybersecurity measures protect

 ISSN: 2582-6433

digital IP from cyber threats. Global considerations account for international regulations, making a comprehensive IP protection strategy essential for corporate success.

Chapter 6: Conclusion and Suggestions

Access to legal research tools for patent and trademark law in India is crucial for legal professionals, researchers, and businesses. These tools enable comprehensive searches and help understand the nuances of Indian intellectual property law, which is subject to frequent updates and changes. Staying informed is essential for effective protection and management of intellectual property rights in India's dynamic legal environment.

The research methodology for analysing patent and trademark issues in corporate law involves a comprehensive review of existing literature, legal frameworks, and the corporate landscape. This includes examining statutes, case law, and academic articles to establish a strong foundation of knowledge. The next phase involves a thorough analysis of the corporate landscape, identifying the specific industry, competitors, and potential threats and opportunities associated with intellectual property. Empirical research methods, such as surveys and interviews with key stakeholders, can provide valuable qualitative data that complements the legal framework and highlights practical challenges and opportunities. The research methodology then shifts towards a detailed analysis of the corporation's existing patents and trademarks, using specialized software tools and databases to identify assets, status, and potential infringements or conflicts. A risk assessment is conducted to identify potential threats to the company's IP, such as infringement risks from competitors or third parties, and assess the strength and enforceability of existing patents and trademarks. This risk assessment informs decisions about whether to pursue legal action to protect IP assets or engage in licensing agreements to monetize them effectively.

The research methodology also evaluates the corporation's IP management practices, examining internal processes, policies, and procedures related to IP acquisition, maintenance, and enforcement. It considers international aspects of IP, especially if the corporation operates in multiple jurisdictions. Understanding the intricacies of global IP protection, including the use of international treaties and conventions, is crucial for companies with a global footprint. Emerging trends and technologies are also considered, as the landscape of IP law is continually evolving, with new challenges and opportunities emerging from advancements in areas like artificial intelligence, biotechnology, and digital media. By employing this methodology, corporations can

 ISSN: 2582-6433

navigate the complex terrain of intellectual property with confidence, ensuring their innovations and brand identities are safeguarded while maximizing their commercial potential.

The research methodology for analyzing patent and trademark issues in corporate law is crucial. It involves a well-structured approach, utilizing legal databases, intellectual property offices, data analytics tools, and expert consultation. These tools provide comprehensive legal information, enabling efficient research. Citation analysis tools, such as Web of Science and Scopus, help identify influential academic articles and legal cases related to the research topic. Data analytics and visualization tools, like Microsoft Excel, Tableau, or Python libraries like Matplotlib and Seaborn, help analyze and present data effectively. Survey and questionnaire tools, such as SurveyMonkey, Google Forms, or Qualtrics, streamline data collection and analysis. Case study frameworks, such as the Harvard Business School Case Method, enable in-depth examination and discussion of practical scenarios. Intellectual property management software like Anaqua, IPfolio, or CPA Global can assist in managing and analyzing patent and trademark portfolios. Expert consultation with legal experts can guide research, validate findings, and provide valuable insights into complex legal matters. Comparative analysis frameworks, such as SWOT analysis or Porter's Five Forces, can assess how different companies or industries handle patent and trademark issues. Ethical considerations are essential, and tools for ensuring ethical research, such as informed consent forms and data anonymization techniques, are recommended. Interdisciplinary collaboration with professionals from related fields, such as technology experts, marketing specialists, or financial analysts, can provide interdisciplinary insights into the impact of patents and trademarks on corporate strategies and operations. Legal opinion services from law firms specializing in intellectual property can provide legal insights and interpretations of complex patent and trademark issues. On Research on this topics, an analysis can be drawn that more effective a research, the better the development and growth of IPR in India leading to economic growth.

To confirm this hypothesis, I have further drilled down on the use of patent and Trade Mark in daily lives in a corporate world.

In conclusion, conducting research on patent and trademark issues in corporate law requires a combination of effective methodologies, appropriate tools, and ethical considerations. The choice of tools should align with the research objectives and methodology to ensure a comprehensive and successful study of intellectual property in corporate law.

 ISSN: 2582-6433

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