

INTELLECTUAL PROPERTY AND ITS IMPORTANCE IN INDIA

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INTRODUCTION

The Trade related Intellectual property Rights (TRIPs) as non-trade issue in International trade, is originated from the process of negotiations of Uruguay Round, though it had its roots in the history of evolving new technologies in many nations. A large number of countries participating in the negotiations had initially objected to the inclusion of IPRs in the trade framework of GATT on two grounds. Firstly, the protection of Intellectual property is not related to trade and secondly, the content of the subject of IPR was already covered by another organization, i.e. the World Intellectual Property Organization (WIPO). As a compromise between the contending Parties, the subject of negotiations was termed as Trade Related Intellectual Property Rights (TRIPs). Later the agreements on Trade Related Intellectual Property Rights formed part of the WTO (World Trade Organization) agreements.

Intellectual Property and its importance:

An intellectual property is a creation of human mind such as an art, literary pursuit, technological innovation, a scientific idea a process of plant breeding¹ and so on. In other words, Intellectual Property means the ideas and expressions which emanate from the exercise of human brain. It is the byproduct of the intellectual labour of a human being. It involves all forms of work of human mind and hand and make for orderly marketing of inventions.

As per the World Intellectual Property Rights Organization (WIPO) definition, intellectual property refers to creations of the mind, inventions, literary and artistic works, symbols, names, images and designs used in commerce.² Broadly intellectual property is recognized in seven forms by General Agreement on Trade and Tariffs (GATT) and later by World Trade organization (WTO). These are a) Patents b) Copy Rights and related rights; c) Trade Marks; d) Geographical Indications; e) Industrial designs; f)

Layout designs (Topographic) of Integrated circuits; and g) undisclosed information.

The Intellectual Property Rights can be broadly divided into three categories. The first category covers patents on technological innovations related to agriculture and industry, the second category covers images and blue prints such as trademarks, industrial designs, Layout designs of Integrated circuits and the third category refers to copy rights on literary and artists works, rights relating to performing artists, the production of phonograms and rights of broadcasters and telecasters in their radio and television programmes, The intellectual property rights differ from each other in scope and duration with a different purpose and effect.

The objectives of Intellectual property rights are two-fold Firstly, they encourage creative and inventive activity among the intelligent people and provide exclusive privilege on these matters. Secondly, they exclude the third parties from exploiting the inventions and creations without explicit authorization of the right holder (for a certain duration of time).³ Thus the protection of intellectual property harmonies the exclusive privileges of the right holder on the one hand and general benefit and progress of society on the other.

In the context of Globalization, the protection of Intellectual Property is felt even more necessary. With the faster and cheaper methods of transportation and communication, the negative trends of imitation, piracy, plagiarism are also growing. This negative trend necessitated the framing of a strong international legal framework for the protection and enforcement of intellectual Property rights. Among these intellectual property, patents occupy a significant place. The term patent, formerly known as "letters patent" is derived from a Latin word. "Literate patents" meaning hat which is open and disclosed made public." Hence patent is an instrument that makes an innovation known to the people, its uses, advantages and

applications along with conceding incentive to the inventors. In order to be patentable, an invention needs to meet the requirement of novelty (previously unknown to the public), non-obviousness (containing sufficient innovativeness to merit protection) and industrial applicability (utility) Patents may be granted for all kinds of products and processes including those related to the agriculture such as plant breeding varieties. In Pharmaceutical field certain countries grant patents for usage form, dosage form and combinations of different formulations.⁴

Exclusive Right:

A patent grants to its owner, or to those whom the owner of the Patent assigns it, the exclusive right to produce and use, or enable others to use the article product or process invented and patented. A patent is in the nature of a contract between the inventor (his assignees) and the government which grants it. By this agreement or contract, the government grants the inventor (or the assignee) the Exclusive Right for a stated period to protect it against infringements.

The person granted with a patent also has to fulfil certain obligations. The patentee is required to manufacture the patented article or substance to meet the full demand of the society. The patentee should not exploit his position by charging unfair and monopolist prices for his products.⁵

The government also has the authority to issue Compulsory License where the patented invention is working insufficient (or non working) or Non availability of the patented product at fair price or the expiry of the specific period (duration) of the patent. A compulsory licensing system is an authorization by the designated authority for the purpose to a person other than the patentee to undertake production on patented material or product. In the Indian patents Act, there is also a provision of "licensing of right" which authorizes others to produce patent material.

Before the Agreement On Trade Related Intellectual Property Rights (TRIPs) of WTO became operational, certain countries had used their authority to exclude certain subject matters from the purview of patent system. For example the Indian patents Act of 1970 and Patents Rules 1972 envisaged certain matters as outside the purview of patents system. These were included Agriculture, Horticulture, Chemical based products and others.⁶ Further, the subsection of section 20 of the Atomic Energy Act 1962 prohibits grant of

patents in respect of inventions relating to Atomic Energy.⁷

Product Patents and Process Patents:

The System of patenting consists of two broad forms. They are the product patent form and the process patent form. Before the WTO regime of IPRs, countries differed in granting patents between product and process patents. For example USA has been allowing both products patents and process patents. India recognized the process patent for certain manufacturing items of food and pharmaceuticals. In fact Germany provided an interesting example about the evolution of process patent system. The German patent law of 1877 was enacted with only process patents for chemical products (including pharmaceutical products) to encourage development of innovative and cost effective processes for the same. Developing countries like India, Malaysia, Thailand, Argentina, Brazil, Mexico, China, Egypt etc have either excluded drugs and pharmaceuticals from the patents system or had provided for only process patent (patent on the method of manufacturing these substances).⁸ While the most advanced countries have followed both product patents and process patents (like USA), many of the other countries have applied either product or process patents in their domestic laws. The system of patenting was not informal and varied from one country to other.

History of Patent System:

The patent system and Intellectual Property Rights have a long history. The crown of England started granting patents and monopolies in the beginning. In the reign of Edward III, some form of patent protection was ensured for arts and science. During the middle age, UK used to grant patents for foreign workers and encouraged them to work and teach these skills to native craftsmen. In France, a Venetian, TheSCO Mutio received a grant of patent in 1551 for a ten year monopoly for the manufacture of glassware. The earliest law concerning patents for inventions appears to have been passed in Venice in 1474. In 1594, Galileo was granted a patent for raising water for irrigating land under this law. Further, provisions for compulsory working of patented invention were incorporated in the French Law in 1741. In America patents were granted as early as 1641 although a proper system of patents was started in 1790 with an Act. This Act was amended in 1793. The American patent system was so dynamic that it had been

changed may a time. Particularly, the effects of patenting system resulted in the review by various congressional committees. In 1959, the Kefauver committee has recommended the shorter time duration of 3 years for pharmaceutical patents. Again, in 1988 Henry Waxman committee has recommended the compulsory Licensing system on the lines of Canadian patent laws. During the year 1877 the German patent Law was enacted with only process patents in the field of pharmaceuticals and chemicals.

The history of the patent system would be incomplete without the mention of certain International Conventions. These included the Paris Conventions (1883), Berne Convention (1886) Brussels Convention (1900), Washington Convention (1911), Hague Conventions (1925), London Convention (1934), Lisbon Convention (1958) and Stockholm Convention (1967). These conventions have strengthened the international legal frame work on Intellectual Property Rights and built the much required the institutional mechanism to operational Rights. The Global concern for Intellectual Property Rights emanated from an incident in Europe. During the year 1873, the Austria - Hungary Empire had invited several countries to participate in an international exhibition of innovation at Vienna. But many countries refused to display their inventions in view of inadequate legal protection for their products in terms of Intellectual Property. With the result, the congress of Vienna was convened on Industrial properties in 1878. A final draft proposing a patent system was prepared by France and circulated among

REFERENCES

1. The world Trade Organization (WTO) does not use the term idea as intellectual property. But the specific expressions of these ideas in different forms are called the intellectual property. For a detailed discussion, Jayashreewatal (2001) "Intellectual Property rights in the WTO and Developing countries" Oxford University Press, New Delhi.
2. T.V Malavika (2006), "Intellectual property Rights? The Hindu, Sunday April 6, 2006.
3. In the case of trademarks, geographical indications and trade secrets this duration period is unlimited.
4. Keayla, B.K., (1995) New patent regime: Implications for Domestic Industry, Research & Development and consumers Working Paper, Centre for Study of GATT Issues, New Delhi.
5. In certain countries like India, these obligations of the patentee have been listed in the Patent Act itself as "reasonable requirement of public interest". The obligations are legally enforceable, Narayanan, P (1997), Intellectual Property Law (Eastern Law House) Calcutta, New Delhi. Page 15-16.
6. Government of India, "General Information for filing patent Application in India" (GOI, the Patent office Calcutta) patent Act 1970 and the Patents Rules 1972. According to these sources certain items are not patentable such as the inventions frivolous and contrary to well established natural laws, inventions that were contrary to law or morality or injurious to public health, mere scientific principle or the formation of an abstract theory, discovery of a new property for a known substance or use or process, a method of agriculture or horticulture and any process for the medical surgical, curative, prophylactic or other treatment of human

beings or animals or plants to render them free of disease or to increase their economic value or that of their products.

7. Section 4 of Indian Patents Act 1970 read with subsection (1) of section 20 of the Atomic Energy Act 1962.
8. Keayla B.K., (1995) "Patents regime, Indian experience and options available" (New Delhi) National working group on patent Laws.
9. Anthony D. Anato, "International Intellectual Property Anthology" Anderson publishing company, Cincinnati (USA) 1996.