(IJDSSH) 2017, Vol. No. 4, Jul-Dec **e-ISSN: 2455-5142; p-ISSN: 2455-7730**

EVOLUTION OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

Dr Pulapalli Venkataramana
Associate Professor, Department of Political Science, Government Degree College, Chevella, Telangana.

INTRODUCTION

Article 1.2 of the Agreement explains Intellectual Property. Accordingly, Section 1 to 7 of part II of the Agreement deals with Intellectual Property. There are seven types of Intellectual Property Rights recognized by the WTO Agreements. These included,

1. Copy Right and Related Rights (Article 9-14)
2. Trademarks (Article l5-21)
3. Geographical Indications (Article 22-24)
4. Industrial Designs (Article 25-26)
5. Patents (Article 27-34)
6. Layout Designs-Topographies of Integrated circuits (Article 35-38)
7. Protection of undisclosed Information (Article 39)

COPY RIGHTS AND RELATED RIGHTS

Copy Rights Laws protect the creative literacy and artistic works of intellectual creators. Generally, Copy Right Protection begins automatically from the date of creation and lasts for the life of the author plus 50 years after the death of the author. The focus of the works is included books, music, paintings or films and computer software. The Berne Conventions for the protection of Literacy and Artistic works provides for highest level of International Legal Protection for Copy rights. These Rights are also called as neighboring Rights.

The Indian Copy Rights Act 1957 incorporates all the safeguards and amended in 1994. Again, the Copy Rights bills are passed in 1999 and 2012 in compliance with the provisions of TRIPS Agreement.

The Indian Copy Rights Law provides for protection of Copy Right for authors life and 60 years[1]. The Indian Copy rights Law was originally designed to cover printed material, but later it is expanded to include the newer forms of creative expressions such as photographic and cinema graphic works, architecture, painting, drawing and sculptural works and more recent forms like the computer programs along with rental Rights.

Copy Right infringement substantially affects the domestic industry. Indian producers of films, music and computer software are bitter about piracy in Pakistan and the Middle East[2].

(IJDSSH) 2017, Vol. No. 4, Jul-Dec **e-ISSN: 2455-5142; p-ISSN: 2455-7730**

The TRIPS regime provides effective safeguards for the protection of Copy Rights. But critics argue that the new Copy Right laws, formulated on the basis of WTO agreements pose enormous problems for traditional notions of reproduction, adaption and distribution[3].

However, the new Copy Rights Act of India (2012) provides a distinction between Reproduction for public use and private use and allows access to special formats of books to persons suffering from disabilities without the consent Copy Rights owner. Law provides for "Digital Management Regime" which is designed to ensure copy right holders the technology like encryption. (Access Control Technology)[4].

TRADE MARKS

A trade mark is defined as any sign which distinguishes the goods or services of one undertaking for those of other undertakings. A trade mark confers the Trade mark holder the right to prevent any person from using identical or similar signs for the same goods. It also provides the right to assign the trademark with or without the transfer of the business to which trademark belongs. The initial registration for a Trade Mark is 7 years, but it can be renewed for the same 7 years period for any number of times. Further, the registration of the Trade mark is liable to cancellation after neither continuous nor use for at least 3 years.

In India, the Trade and Merchandise Marks Act 1958 provides for protection of Trademarks and Brand names. It defines trade mark as "an identification symbol which may be a word, a devise, a label or numerical or a combination thereof used in the course of trade or enable the purchasing public to distinguish from similar goods of others."[5] The Indian trademarks Bill 1999 provides for setting up certain standards in trade marks. The new bill facilitates registration of trade marks in any one of the member countries of WTO and is applicable to all member countries. Further, the TRIPs Agreement insists upon including service marks as trademarks (besides trade marks for goods). One problem that the Developed Countries persistently pose is the registration of Domain names by counterfeit elements over internet in the name of famous trademarks. However, the WTO has evolved a mechanism to resolve the crisis. [6]

India has passed Trademarks Amendment Bill in 2010 to facilitate registration on Trademarks in any of the 84 member countries of Madrid Protocol.[7]

GEOGRAPHICAL INDICATIONS

A geographical indication identifies a product as originating in a particular place to which its quality, reputation or other characteristics are essentially attributable. Geographical indications can have reference to agricultural produce, natural products, certain products manufactured or processed. There are many examples for geographical indications such as Scotch, Whisky, Darjeeling Tea, Basmati Rice, Champagne, Golconda Toys, Banginapalli Mango, Pochampalli Sarees, Kondapalli Toys, Nirmal Paintings, Tirupathi Laddu, Pemberthi Brassware, Bobbili

(IJDSSH) 2017, Vol. No. 4, Jul-Dec **e-ISSN: 2455-5142; p-ISSN: 2455-7730**

Veena, Hyderabad Haleem etc.[8] These products are registered in India under "Geographical Indications of Goods (registration and protection) Act 1999."

Generally geographical indications are granted to associations of persons or association of producers or to an organization or authority representing the interests of the producers of goods such as coffee board, tea board or spices board or Indian council of agricultural research (ICAR) The rights to geographical indication are not transferable in any manner such as licensing, pledge, mortgage or sale. The registrations for geographical indications are valid for 10 years and registration may be renewed from time to time indefinitely.[9]

The WTO Agreement suggests the member countries to prevent the use of products from other areas and encourage the use of products originally identified as Geographical Identifications of a particular place. In fact, some of the firms and entrepreneurs are misleading the public by falsely attributing the origin of certain products in opposition to their original origin.

There are also violations of geographical indication elsewhere. For example the Americans had tried to market a product called "Tex basmati" or Texmati. This is long grain and a fragrant rice form in the basmati rice that is grown in India and Pakistan. The two countries are the traditional basmati growers and owners of basmati germplasm. The Americans had grown basmati rice in Texas and other states naming it as Tex basmati or Texmati. In fact, by doing so America has violated the principles relating to Geographical Indications and provisions on Convention on Biological Diversity which grants countries the ownership rights over germplasm.[10]

Further, the Tea Board of India had won a land mark judgment pertaining to the protection of Geographical Indications for Darjeeling Tea in France and USA. The Courts of Aappeals in France and Trade mark Trail Appeal Board (TTAB) at USA have both upheld the rights of Tea Board with regard to the rights of Geographical indications of Darjeeling Tea.[11]

INDUSTRIAL DESIGNS

A design is an idea or conception as to the features of shape, configuration, pattern or ornament applied to an article. Such designs form a special branch of industrial property. The products on which industrial designs are applied include furniture, packaging, watches, textiles and handicrafts. Their economic value lies in enhancing the aesthetic appeal of these industrial products to consumers. Before the WTO comes into existence, the protection of industrial designs has been obliged by the rule of Paris convention.

The TRIPs agreement protects industrial designs in various provisions.

Article 25.1 of the TRIP agreement obliges members to provide for the protection of independently created industrial designs that are new or original. Article 25.2 contains a special provision aimed at taking into account the short life cycle and sheet number of new designs in the Textiles sector. Article 26.1 requires members to grant the owner of a protected industrial design the right to prevent third parties from making, selling or importing articles, bearing or embodying

(IJDSSH) 2017, Vol. No. 4, Jul-Dec **e-ISSN: 2455-5142; p-ISSN: 2455-7730**

design without the consent of the owner. An article 26.2 allows members to provide limited exceptions on the already protected industrial designs. According to article 26.3, the duration of protection available to industrial designs shall be at least 10 years.

The agreement covers only Industrial Designs and utility models or Utility Designs. A Utility design is an improvised version in any machinery. The necessary condition for claiming patent on Industrial Design is that it should independently created and should be new or original. It requires "Novelty and Originality" for the patent protection of Industrial Designs.

Interestingly, there was a near unanimity of views between developed countries and developing countries in matters of patent protection on industrial designs. However, differences persisted among the developed countries, particularly between the European Union (EU) and US on issues definition on novelty and originality[12], in matters of patent on industrial designs.

In India, the Designs Act 1911 had been administrated by the Controller General of Patents, Designs and Trademarks. A new law has also been enacted in 1999 to meet the requirements of trade related intellectual property rights (TRIPs), which protects the patents of Industrial Designs also.

PATENTS

Patents relate to scientific and technological innovations in various industrial and service sectors. The government registers the patent and confers certain exclusive rights to the patent holder regarding the subject of the patent.

The TRIPs agreement makes it obligatory to members to make patents available to all inventions. The patents give legal rights over the invention that entitles the owner to prevent others from unauthorized use or manufacture of such inventions. That TRIP agreement suggested the member countries to provide patents and oblige and the concerned obligations before January 1st, 1995 or ensure exclusive marketing rights (EMRs) to the patent holders during a transition period of 10 years till the National Laws are suitably amended to incorporate TRIPs provisions.[13]

The agreement incorporates Article 1 to 12 and Article 19 of the Paris Convention that provided protection of patents. It has made amply clear that certain issues are patentable and others are exceptions to patentability. Any new invention, or non obvious inventive step, an invention leading to industrial application etc., are patentable. Further the patent must be available both in product and process forms. It is made mandatory that member countries should provide patent rights available without any discrimination with regard to the place of invention, the field of technology and other such issues like the product is imported or locally produced. There is also certain flexibility for the member countries to define terms accordance with the spirit of the agreement. For example a member country may refuse patents for biological or genetic materials which have been in existence and are widely used in their society.

(IJDSSH) 2017, Vol. No. 4, Jul-Dec **e-ISSN: 2455-5142; p-ISSN: 2455-7730**

Certain types of inventions may be excluded from patentability with the direction of the member such as public order and morality, protection for human, animal or plant life or health, serious prejudice to environment, diagnostic, therapeutic and surgical methods for the treatment of humans or animals, plants and animals, biological process for the production of plants or animals and so on. However, micro-organisms like bacteria, viruses, fungi, algae, protozoa and non-biological and micro biological processes for the production of plants and animals are patentable.

PLANT VARIETIES

Though plants are not covered under WTO patent regime, plant varieties are covered by some form of effective protections or by an effective sui generis system or by a combination of both. This implies improvement by breeding techniques to create new varieties with different characteristics. This obligation does not extend to animal varieties. The guidelines for plant varieties protection are followed from UPOV (Union International Pour la Protection des Abstentions Vegetates) known as International Convention for the Protection of New Varieties of Plants of 1978 and 1991 Models.

LAYOUT DESIGNS- TOPOGRAPHICAL OF INTEGRATED CIRCUITS:

The provisions of the agreement on trade related Intellectual Property Rights relating to Layout Designs-Topographies of Integrated Circuits are based on the previous treaty (Prior to WTO) namely the Washington Treaty of Integrated Circuits of 1989. The provisions in WTO treaty on Layout Designs of Integrated Circuits clearly defines a layout design (Topography), provisions for their protection, obligations of protection and conditions, and elements of protection.

According to the provisions of the agreement on Layout Designs, an Integrated Circuits is a product having an electronic function in which the elements and interconnections are integrally formed on a piece of material with a three dimensional arrangement.[14]

Claimants seeking rights and protection on the invention of Layouts (Topographies) should ensure that the idea is not a subject of common knowledge (both in the general society and among the experts and manufacturers of Integrated Circuits). A minimum duration of 2 years and a maximum duration depending on rational evaluation of the claimant may be granted for the layout design of Integrated Circuit. There are also certain exceptions for issuing Rights such as an act of reproduction, based on earlier designs of layout circuits for granting the Rights. The duration of the Right on Topographies is fixed as 10 years to 15 years depending on the claims of the prospective Right holder which will be rationally evaluated.

Layout designs (Topographies) of Integrated circuits assume significance in the era of Information Technology. According to Rajadeep Sahrawat, Vice President of National Association of Software and Service Companies (Nasscom), the IT products firms can become Intellectual property factories and leverage the increasing Softwarisation of the hardware.[15]

(IJDSSH) 2017, Vol. No. 4, Jul-Dec **e-ISSN: 2455-5142; p-ISSN: 2455-7730**

PROTECTION OF UNDISCLOSED INFORMATION

Undisclosed information is mainly related to Secret information with a person or an enterprise such as trade secrets, medicinal combinations, in pharmaceutical and agricultural products and so on.

Under Article 39 of the Trade Related Intellectual Property Rights Agreement (TRIPs) of World Trade Organization (WTO), member countries are obliged to ensure protection of undisclosed information through appropriate legislations. Undisclosed information emanates largely in traditional medicinal uses relating to the details of production know how. The agreement envisages that unauthorized use of confidential information, belonging to others is an unfair practice. On the basis of such contention, Article 39 of TRIPs stipulates that undisclosed information, often treated as Trade secret can be protected as provided in Article 10 (bisection) of the Paris Convention. Under clause 2 of Article 39 of TRIPs, all members will protect undisclosed information from commercial exploitation and under clause 3, data or information submitted to government for regulatory or for other approvals, have to be protected from leakage to or theft by third parties. Generally every company holds Trade Secrets. The most quoted trade secret is the case of Coca cola formula.[16] Article 39 of WTO agreement on TRIPs also envisages that the Secret information to be protected should be a matter of Secret by nature, it should also have Commercial Value and the person who controls the information has taken reasonable steps to keep it Secret.

In Countries like India, the traditional knowledge systems such as medicinal systems with Ayurvedic Vaidyas and Unani Hakeems and skills and expertise of handicrafts and arts from artisans and artists have been considered as claimants of undisclosed information with a Sui generis system[17]. Partially, the undisclosed information in India was protected by the Indians Patents Act of 1970.

ANTICOMPETITIVE PRACTICES

The WTO guided TRIPs regime prescribes, protection against anti Competitive Practices in the context of impeding transfer and dissemination of technology. All the WTO members have the discretion to take corrective measures when the licensing practices or conditions would lead to or result in an abuse of Intellectual Property Rights having with adverse effect on competition. Consistent with the terms of the agreement, the members can make appropriate measures to prevent or control such practices according to Articles 7 and 8 of the agreement.

The Members States have also been authorized to make legislations by specifying the licensing practices or conditions that abuse IPR provisions and specify the appropriate measures contemplated to prevent or control such practices[18]. Further, the TRIPs agreement also facilitates consultations among member States over the issues of anti-Competitive Practices.

Article 40 of the TRIPs agreement facilitates making legislations to prevent unfair practices in the name of IPR protection and which impede the transfer and dissemination of technology.

(IJDSSH) 2017, Vol. No. 4, Jul-Dec **e-ISSN: 2455-5142; p-ISSN: 2455-7730**

REFERENCES:

1. Section 55 of Indian Copy Right Act, 1957.
2. Discussion paper released by "National book trust of India" WIPO proposals for new treaties on copy right, neighboring rights and data bases. Dated 28 November 1996. Page 3.
3. SPAN, Magazine, Bombay November/December 1997, "Protection in the digital age: Is it Possible." Page 63.
4. The Hindu, Editorial "Updating our copy Right Laws" June 4, 2012 (Hyderabad Edition).
5. The Trade Marks Registry (An Office Under the Ministry of Industry, Department of Industrial Development, Government of India)
6. Financial Times 23 February 2000, "Cyber squatters Squeezed by Online Arbitration, Mumbai, Page 9
7. The Hindu, august 11, 2010, "Parliament Passes Trade Marks amendment Bill 2009, Hyderabad. Page 16.
8. Sakshi, Telugu Newspaper, Business sections 30 November 2012 Controller general of Indian Patents Designs, Trade Marks, and Geographical Indications speech in a National seminar. Page 11
9. N.K. Acharya (2005), advocate & attorney on IPRs, Hyderabad "Geographical Indications" an unpublished paper.
10. Dr. Suman Sahi (1993), "India's Position on 1PR Issues" by Gene Campaign, New Delhi, page 8-9.
11. The Hindu, February 5,2007, "How Tea Board Won Gl Battle" Prohibition of use of Darjeeling Gl in non Tea goods and services in France (a report by Indrani Dutta from Kolkata), Hyderabad Edition.
12. Jayashree Watal (2001), "Intellectual Property Rights: In the WTO and Developing Countries" Oxford University Press, New Delhi pages 276-282.
13. Bhagrath Lai Das (1999), "The World Trade Organization: A guide to the Frame Work for International Trade" Third World Network (UNCTAD) published at Earthworm Books Private Limited, Chennai 1999, Pages 36 to 366.
14. Article 35 of WTO Agreement on Trade Related intellectual Property Rights (1995).
15. Rajdeep Sahrawat, "Software Products: The Perfect Storm: The Hindu Business Review, July 27, 2009. Page 15,Hyderabad.
16. M.D. Nair, "Protection of Trade Secrets, Undisclosed information": The Hindu November, 22 (2004). The Coca cola formula is believed to be kept locked in a bank vault in Atlanta, can be opened only by a resolution of the Company's board and is known to only two employees at the same time. The public has no access to the names of those employees and they are not allowed to fly on the same airplane.
17. Shi generis system protects information of unique nature with its own kind of characteristics. Generallly medicinal secrets, Fashion designs, Plant Varieties, Data bases, mask works and others come under the system with each having special and unique characteristics. The Hyderabadi Fish medicine is one such undisclosed information.

18. Bhagrath Lal Das(1999), Op.cit: Page388.