

MODULE V

INTELLECTUAL PROPERTY RIGHTS

16

NATURE AND CONCEPT OF IPR

Unit Structure

- 16.0 Objectives
- 16.1 Introduction
- 16.2 Concept of Intellectual Property Rights
- 16.3 Scope of Intellectual Property
- 16.4 Nature of Intellectual Property Rights
- 16.5 Summary
- 16.6 Questions

16.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the concepts of Intellectual Property Rights
- Understand the nature of Intellectual Property Rights.

16.1 INTRODUCTION

Intellectual property is the product of the human intellect including creativity concepts, inventions, industrial models, trademarks, songs, literature, symbols, names, brands, etc. Intellectual Property Rights do not differ from other property rights. They allow their owner to completely benefit from his/her product which was initially an idea that developed and crystallized. They also entitle him/her to prevent others from using, dealing or tampering with his/her product without prior permission from him/her. He/she can in fact legally sue them and force them to stop and compensate for any damages.

16.2 CONCEPT OF INTELLECTUAL PROPERTY RIGHTS

Intellectual property, very broadly, means the legal property which results from intellectual activity in the industrial, scientific and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and such rights of the public in access to those creations. The second is to promote, as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

- IP law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time- limited rights to control the use made of those productions.
- IP is traditionally divided into two branches: “Industrial Property and Copyright”.

Intellectual property shall include rights relating to:

- 1) Literary, artistic and scientific works;
- 2) Performances of performing artists, phonograms and broadcasts;
- 3) Inventions in all fields of human behaviour;
- 4) Scientific discoveries;
- 5) Industrial designs;
- 6) Trademarks, service marks, and commercial names and designations;
- 7) Protection against unfair competition and all other rights resulting from intellectual activity in industrial scientific, literary or artistic fields”.

Some of the important convention relating to the Intellectual Property Rights and India being a member are bound to obey to this convention, they are as under.

- Paris Convention for the Protection of Industrial Property (1967)
- Berne Convention for the Protection of Literary and Artistic Works (1971)
- TRIPS Agreement
- GATT and WTO Agreement
- Patent Cooperation Treaty 2001
- The Paris Convention for the Protection of Industrial property, 1967.
- The Berne Convention for the Protection of Literary and Artistic Works, 1971.
- The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisation, 1961.

16.3 SCOPE OF INTELLECTUAL PROPERTY

Intellectual property rights include copyright, patent, trademark, geographic indication of origin, industrial design, trade secrets, database protection laws, publicity rights laws, laws for the protection of plant varieties, laws for the protection of semi-conductor chips (which store information for later retrieval), etc.

Patents:

A patent is a type of intellectual property right which allows the holder of the right to exclusively make use of and sale an invention when one develops an invention. Invention is a new process, machine, manufacture, composition of matter. It is not an obvious derivation of the prior art (It should involve an inventive step). A person who has got a patent right has an exclusive right.

Copyright:

Copyright is a form of IPR concerned with protecting works of human intellect. The domain of copyright is literary and artistic works, might that be writings, musicals and works of fine arts, such as paintings and sculptures, as well as technology-based works such as computer programs and electronic databases.

Copyright lasts for a longer period of time. The practice is life of author plus 50 years after his/her life

Industrial Design Law:

It is the aesthetics and ergonomics of a product. It consists of three-dimensional elements, such as the creation of the product's shape, or two-dimensional ones, such as graphics, patterns and colors.

Trademarks Rights Law:

A trademark (also written trade mark or trade-mark) is a type of intellectual property consisting of a recognizable sign, design, or expression which identifies products or services of a particular source from those of others, although trademarks used to identify services are usually called service marks.

Geographic Indication:

Geographical Indications ("G.I.s") identify a product as originating in a certain region or country. So for a G.I. product, it's reputation for quality or authenticity is intimately linked to its geographical origin.

For Example: Darjeeling tea is a tea grown in the Darjeeling district,

A Solapuri chadar (सोलापुरी चादर), also known as Solapuri Cheddar ("Solapuri bed sheet"), is a cotton bed sheet made in the Solapuri city of the Indian state of Maharashtra.[1] These chadars are popular in India where they are manufactured using hand looms and are known for their design and durability.[2] Solapuri chadars were the first product in Maharashtra to obtain Geographical Indication (GI) Ratnagiri Hapus, Belgam – Kunda, Nagpur- Oranges

It is indications on products of the geographic origin of the goods. It indicates the general source. The indication relates to the quality or reputation or other characteristics of the good.

16.4 NATURE OF INTELLECTUAL PROPERTY RIGHTS

Intellectual properties have their own peculiar features. These features of intellectual properties may serve to identify intellectual properties from other types of properties. Thus, we will discuss them in brief.

1. It has a territorial based:

Any intellectual property issued should be resolved by national laws. Because intellectual property rights have one characteristic which other national rights do not have. In ownership of intellectual property of immovable properties, issues of cross borders are not probable. But in intellectual properties, it is common. A film made in Hollywood can be seen in other countries. The market is not only the local one but also international?

2. Giving an exclusive right to the owner:

It means others, who are not owners, are restricted from using the right. Most intellectual property rights cannot be implemented in practice as soon as the owner got exclusive rights.

3. It is assignable:

Since they are rights, they can obviously be assigned or licensed. It is possible to put a. Intellectual property can be bought, sold, or licensed or hired or attached.

4. Independence:

Different intellectual property rights subsist in the same kind of object. Most intellectual property rights are likely to be embodied in objects.

5. Subject to Public Policy:

They are vulnerable to the deep embodiment of public policy. Intellectual property attempts to preserve and find adequate reconciliation between two competing interests. On the one hand, the intellectual property rights holders require adequate remuneration and on the other hand, consumers try to consume works without much inconvenience. Is limitation unique for intellectual property?

16.5 SUMMARY

Concept of Intellectual Property Rights:

Intellectual property, very broadly, means the legal property which results from intellectual activity in the industrial, scientific and artistic fields. Countries have laws to protect intellectual property for two main reasons.

Scope of Intellectual Property: Patents, Copyright, Industrial Design Law, Trademarks Rights Law, Geographic Indication.

Nature of Intellectual Property: It has a territorial based, Giving an exclusive right to the owner, It is assignable, Independence, Subject to Public Policy

16.6 QUESTIONS

1. Explain the concept and nature of Intellectual Property Rights
2. What is the Scope of IPR? Explain

COPYRIGHT

Unit Structure

- 17.0 Objective
- 17.1 Introduction
- 17.2 Meaning and Definition
- 17.3 Duration or Term of Copyright and Fair Use
- 17.4 Rights of Copyright Holder
- 17.5 Registration
- 17.6 Infringement of Copyright and Remedies
- 17.7 Summary
- 17.8 Questions

17.0 OBJECTIVE

After studying the unit, the students will be able to:

- Understand the Rights of Copyright holder
- Understand the Procedure for Registration of work done.
- Understand the infringement of copyright and remedies available
- Aware about the term of copyright and fair use.

17.1 INTRODUCTION

A new Copyright law was enacted in the year 1957 Before the Act of 1957, the Act of 1914 was functional before this act has come in to existence the same was an extension of the British Copyright Act, 1911. In May, 2012 the Parliament of India unanimously passed a bill named Copyright Amendment Bill, 2012. This Bill has an objective to bring Indian copyright laws at international level and in compliance with the World Intellectual Property Organisation treaties such as the WIPO Copyright Treaty (WCT) and the WIPO Performance and Programme Treaty (WPPT). Further, the main highlights of the 2012 Amendment bill are:

- Amendments in the right to artistic work such as cinematograph films and sound recordings.
- Amendments in the mode of grant of license and assignments
- Protection against internet piracy.
- Amendments in accordance with WCT and WPPT.

Copyright ownership provides the owner the exclusive right to take the benefit or use of the work, with some exceptions. When a person come up or create an original work, he or she will be the automatic owner of that work and owns copy right to that work.

Following are the types of works are entitle for copyright protection under this act:

- Audiovisual works, such as TV shows, movies, and online videos
- Visual works, such as paintings, posters, and advertisements
- Sound recordings and musical compositions
- Video games and computer software
- Dramatic works, such as plays and musicals
- Written works, such as lectures, articles, books, and musical compositions

17.2 MEANING AND DEFINITION

Copyright means the exclusive right to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:

A. In case of a literary, dramatic or musical work, not being computer programme

- i. To reproduce the work in any material form including the storing of it in any medium electronic means;
- ii. To issue copies of the work to the public not being copies already in circulation;
- iii. To perform the work in public, or communicate to the public ;
- iv. To make any cinematograph film or sound recording in respect of the work
- v. To make any translation of the work;
- vi. To make any adaptation of the work;

In relation to a literary work or an artistic work, adaptation shall mean the conversion of work into a dramatic work by way of performance in public or otherwise. In relation to dramatic work, adaptation shall mean any abridgement of the work or any version of the work in which the story Or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodicals. In relation to a musical work, adaptation shall mean any arrangement or transcription of work.

B. In the case of a computer programme:

- i. To do any of the acts specified in clause (a) above;
- ii. To sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme.

C. In case of an artistic work:

- i. To reproduce the work in any material form including the storing of it in any electronic media.
- ii. To communicate the work to the public;
- iii. To issue copy of the work to the public not being copies already in circulation
- iv. To include the work in any cinematograph films;
- v. To make any adaptation of work.

D. In case of cinematograph films:

- i. To make copy of the film including a photograph of any image forming part there of or storing of it in any medium by electronic or other means,
- ii. To sell or give on commercial rental or offer for sale or for such rental, any copy of the film.
- iii. To sell or give on hire or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions.
- iv. To communicate film to the public,

E. In the case of sound recording:

- i. To make any other sound recording embodying it, including storing of it in any medium by electronic or other means,
- ii. To sell or give on commercial rental or offer for sale or for such rental any copy of sound recording,
- iii. To communicate the sound recording to the public

Literary works are given a safeguard from being stolen or it is protected by copyright as they are appeared in physical form. Such literary works includes, newspapers, books, computer, magazines, journals, anthologies, novels, software and programmes, letters, e-mails, poetry, lyrics of songs, tables and compilations. Literary works are not only defined to the above-mentioned things but also includes encyclopedia entries, abstracts, dictionary meanings and individual poems are protected within the shield of copyright laws.

Copyright defined as “the legal right of the owner of intellectual property” In simpler terms, copyright is the right to copy. This means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work.

OWNERSHIP OF COPYRIGHT: (Sec 17)

a) In the case of literary, dramatic or artistic work:

If these work made by the author in the course of his employment by the proprietor of a newspaper, magazine, or similar periodical under a contract of service or apprenticeship for the purpose of publication in the newspaper, magazine or similar periodical, the said proprietor shall be the first owner of the copyright. This is however in the absence of any agreement to the contrary between the author and his employer.

b) In case of photograph, painting or portrait etc.:

In the case of a photograph taken, or a painting or a portrait drawn, or an engraving or a cinematograph made, for valuable consideration, at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright

c) In case of any address or speech delivered in public:

the person who has delivered such address or speech or if such person has delivered such address or speech on behalf of another person, such other person shall be the first owner of the copyright therein even if the person who delivers or on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf such address or speech is delivered.

d) Government work:

Government shall, in the absence of any agreement to the contrary, the first owner of the copyright therein.

e) Work of international organisation:

The international organisation concerned shall be the first owner of the copyright therein.

WORK IN WHICH COPYRIGHT SUBSISTS:-

Work means any of the following works, namely;

- **Literary work:** it includes computer programmes, tables including computer databases.
- **Musical work:** this means a work consisting of music and includes any graphical notation of such work. It does not include words or action intended to be sung or performed with music.

- **Artistic work:** it means a painting, a sculpture, a drawing or a photograph, whether or not any such work which possesses artistic quality.
- **Cinematograph film:** Cinematograph film means any work of visual recording and includes a sound recording accompanying such visual recording. A ‘producer’ in relation with this means a 5) Sound recording: this means a recording of sounds from which sounds may be produced regardless of the medium on which such recording is made.
- **Broadcast:** broadcast means communication to the public by any means of wireless diffusion or in form of signs or sounds.
- person who looks after making the work.
- Literary/dramatic = Who creates
- Musical work = The composer
- Sound recording = The producer
- Photograph = The photographer
- Computer generated work = person who causes the work to be created.

17.3 DURATION OR TERM OF COPYRIGHT AND FAIR USE

- a) Work published during the life time of the author the term of a copy right is for the lifetime of the author + 60 years.
- b) Cinematographic films, records, posthumous publication, anonymous publication, works of government and International agencies, the term is 60 years from the beginning of the calendar year following the year in which the work was published.
- c) Broadcasting = 25 years

FAIR USE:

Fair use is a legal theory that says “you can reuse copyright-protected material under certain circumstances without getting the copyright owner’s permission.”

Copyright Act, 1957, section 52 describes that certain acts or works that cannot be treated as an infringement of copyright like fair dealing with a literary, dramatic, musical or artistic work which is not a computer program for the purposes of-

- (i) “Private or personal use, including research;

- (ii) Criticism or review, irrespective of that work ;
- (iii) The reporting of current events and current affairs, lectures delivered etc.

17.4 RIGHTS OF COPYRIGHT HOLDER

The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two ways:

- (A) Economic rights of the author, and
- (B) Moral Rights of the author.

1. Right of Reproduction:

This is the most important right which is attained after the copyright protection. This particular right gives the authority the person having such copyright to make copies of the same protected work in any format. For example: Copying, a song on a Compact Device or any sound and visual recording can be considered as a reproduction of the content.

2. Right to Distribute:

This right is belongs to the right of reproduction or they are in the same group. A person with whom the copyright of a particular work can distribute his work in any manner. For example: He may take a print and distribute to the general public at no cost or transfer some of right or all the rights of holding to any one of his choice.

3. Right to make Derivative Works:

The copyright has the right to use his work in number of ways, for example making translations in any form. For example a adaptation as making a Bollywood Movie Novel. Right to Publicly Perform

4. Right to Follow:

5. Right of Paternity:

The ordinary copyright law some time fails to protect the computer software and other data related information as the essential element of creation is not appeared in such databases. Therefore, there was a need for new law to protect such software and databases. A database is an arrangement of information which may not be creative; it may still require protection from unauthorized copying. Such database right are conferred for a fifteen year period.

6. Private Copying:

This right is an exception to the reproduction rights which are accomplished by the owner. According to this right, any person can make copies of the copyright protected work if it is proved that such copying is

for educational purpose and that there is no commercial intention behind such copies being made.

Copyright

17.5 REGISTRATION

Copyright Registration Process:

1. Filing of Application:

This is the first step under the procedure for the Copyright registration. The author of the original work / his agent/ or any representative on his behalf can file an application that is FORM IV along with requisite fees either through portal available on the official website of Copyright or physically at the copyright office. Separate application to be filed along for registration of each work with Registrar.

2. Examination:

Once the application is submitted is the examination of the copyright application. An examiner takes minimum 30 days to make a review of the said application. If there is no objection is carried or raised by others then the examiners shall continue to make further scrutineer of the application where no discrepancy found

3. Registration:

This is the final stage for registration. When the Registrar is satisfied with the document supplied along with an application form in support of the claim made, he shall enter the details in the register of copyright and further issues the Registration Certificate.

17.6 INFRINGEMENT OF COPYRIGHT AND REMEDIES

- When copyright is infringed?
- Copyright in a work shall be deemed to be infringed-
 - a) By a person without a license granted by the owner of the copyright or in contravention of the conditions of a license so granted-
 - i) Does anything, the exclusive right to do which is conferred upon the owner of copyright; or
 - ii) Permits for profit any place to be used for communication.

Where any person:

- i) Makes for sale or hire or by way of trade displays for sale or hire any infringing copies of the work;
- ii) By way trade exhibits in public any infringing copies of the work.
- iii) Imports into India any infringing copies of the work.

When copyright not infringed? The following acts shall not constitute an infringement of copyright:

- 1) A fair dealing with any work, not being a computer programme for private or personal use.
- 2) Making of copies or adaptation of a computer programme by lawful possessor of a copy of such programme.
- 3) The reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force
- 4) The reading or recitation in public of reasonable extracts from a published literacy or dramatic work
- 5) The reconstruction of a building or structure in accordance with the architectural drawings to which building was constructed.
- 6) The making of ephemeral recording by a broadcasting organization using its own facilities for its own broadcast.

CIVIL REMEDIES [secs . 55, 57, 58 & 62]:

- **Where copyright** in any work has been infringed, the owner of the copyright shall be entitled to all such remedies by way of injunction, damages, accounts and otherwise as may be conferred by law for the infringement of a right.
- **The author shall** also have a right to claim authorship of work or claim damages in respect of any distortion, mutilation, modification in relation to the said work which is prejudicial to his reputation.
- **Protection of separate rights:** - where the several rights comprising the copyright in any work owned by different persons the owner of such right shall be entitled to the remedies {sec 56}
- **Author's special rights:** - after the assignment of the said copyright, wholly or partially, the author of a work shall have the right-
 - a) **To claim** authorship of the work
 - b) **To restrain** or claim damages in respect of distortion, mutilation, if such acts would be prejudicial to his reputation {sec 57}.
 - c) **Jurisdiction:** every suit or other civil proceeding in respect of the infringement of copyright in any work shall be instituted in District court having jurisdiction. {sec 62}.

17.7 SUMMARY

INTRODUCTION: Copyright ownership provides the owner the exclusive right to take the benefit or use of the work, with some exceptions. works are entitled for copyright protection under this act: Audiovisual works, such as TV shows, movies, and online videos, Visual

works, such as paintings, posters, and advertisements, Sound recordings and musical compositions, Video games and computer software, etc

Work in which Copyright subsists: Literary work: Musical work: Artistic work: Cinematograph film: Broadcast:

Duration of Copyright and Fair use: Work published during the life time of the author the term of a copy right is for the lifetime of the author + 60 years. Broadcasting 25 years. Fair use is a legal theory that says “you can reuse copyright-protected material under certain circumstances without getting the copyright owner’s permission.”

Rights of Copyright holder: Right of Reproduction, Right to Distribute, Right to make Derivative Works, Right to Follow, Right of Paternity, Private Copying.

Copyright Registration Process: Filing of Application, Examination, Registration Copyright Infringement and remedy. Makes for sale or hire or by way of trade displays for sale or hire any infringing copies of the work; by way trade exhibits in public any infringing copies of the work. Civil Remedy

17.8 QUESTIONS

1. What is Copyright?
2. What work does copyright subsists?
3. What are the rights of copyright holder?
4. Discuss the issues of copyright infringement and the applicable remedies to it.

5. Write Short Note on:-

- a. Fair use
- b. Procedure for registration of work

PATENT

Unit Structure

- 18.0 Objectives
- 18.1 Introduction
- 18.2 Meaning and Definition
- 18.3 Term of Patent
- 18.4 Requisites for Grant of Patent
- 18.5 Procedure for Obtaining Patent
- 18.6 Patent Infringement and Remedies
- 18.7 Summary
- 18.8 Questions

18.0 OBJECTIVES

After studying the unit, the students will be able to: -

- Understand the Meaning and definition of patent
- Understand the Procedure obtaining patent
- Understand the infringement of Patent Rights and remedies available
- Aware about the term of copyright and fair use.

18.1 INTRODUCTION

A patent is a Monopoly and legal rights granted by a government or the head of the state in return for invention. A granted patent gives the proprietor the right to prevent others using the invention in the territory to which the patent relates. A patent does not, give a positive right to use an invention.

18.2 MEANING AND DEFINITION

Patent is an exclusive right granted by a government for an invention that is new, involves inventive step and is capable of industrial application. Section 2(1)(m) of the Indian Patent Act, 1970 defines patent as: “patent” means a patent for any invention granted under this Act.

Patent means a patent for any invention granted under the Act. By grant of patent, protection by way of a monopoly is extended to the inventor for a limited period for

- a. inventing a new product; or
- b. inventing a new process; and

c. new invented product or process is capable of industrial application.

When a patent is granted and is in force in respect of either the article or the process it is called patented article and patented process respectively. The person in whose favour the patent is granted and who is entered in the register of the patent is called patentee. Patentee includes an exclusive licensee. Exclusive licensee means a licence from a patentee which confers on the licensee any right in respect of the patented invention.

18.3 TERM OF PATENT

Section 53 of the Patents Act, 1970 deals with the determination of term of patent in India. Subsection 1 of section 53 provides that the term of every patent granted shall be 20 years. The term of patent can be expired on the expiry of 20 years a fixed term. Secondly if the patentee is unable to pay or ignored to pay the annual renewal fees. Governor at any time can impose the restriction on using this monopoly rights to the patent holder.

18.4 REQUISITES FOR GRANT OF PATENT

A patent is a type of intellectual property that gives its owner the legal right to exclude others from making, using, or selling an invention for a limited period of time in exchange for publishing an enabling disclosure of the invention.

Section 2(1)(j) of the Patent Act, 2005, defines the “invention” as a new product or as process involving an inventive step and capable of industrial application.

1. The innovation must be new and not have prior use:

The invention must be new and not been used prior. It should be genuine and not known to others before. It should not published earlier anywhere.

2. The innovation is useful:

This requirement does not relate to whether the new product, process or invention is ‘useful’ in terms of whether or not someone would buy it. Instead, it relates to whether the invention is capable of being made in accordance with the claims and information in the patent.

From April 2013, there has been a requirement to disclose a specific, substantial and credible use for the invention in the patent specification

3. It should have Industrial Applicability:

Only those inventions are patentable, wherein having industrial applicability.

4. The innovation is inventive:

This requirement of an inventive step relates to the 'obviousness' of the new product, process or invention. If it is 'obvious' to a skilled person, it is not patentable. It must have a feature of inventiveness.

PATENTABLE INVENTION AND NON- PATENTABLE INVENTION:**Patentable Inventions:**

- a) New products such as toys, appliances, tools, medical devices, pharmaceutical drugs
- b) New process, such as a manufacturing process or an industrial method or process
- c) Software
- d) Business methods
- e) Some types of biological materials

Not patentable Inventions:

- a) Artistic creations
- b) Mathematical algorithms or models
- c) Abstract intellectual or mental concepts or processes
- d) Plans or schemes
- e) Principles or theories
- f) The mere discovery of a scientific principle or the formulation of an abstract theory
- g) Methods of agriculture or horticulture.
- h) Inventions relating to atomic energy are not patentable.
- i) The mere arrangement or re-arrangement or duplication of known devices
- j) An invention which is frivolous and obvious
- k) Any process for medicinal, surgical, curative, prophylactic or other treatment of human being.

18.5 PROCEDURE FOR OBTAINING PATENT

A patent, granted by the government or by the head of the State, it confers an exclusive right to an inventor to make, use, and sell his invention. This exclusive right available for 20 years from the date of filing. The conceptional idea is to safeguard the inventions that are created and

therefore, encourage more noble developments. Let us look into the steps involved in a patent filing in India. Following are the procedures for obtaining the Patent.

1. Drafting a patent application:

An application in Form-I may be filed and submitted. It can be filed by the owner or the legal representative of the inventor.

2. Filing the Patent Application:

This is where the actual process starts. After drafting the patent application, this can be filed in the government patent office as per the application form in Form 1. A receipt would be generated with the patent application number. One can also file a provisional patent application, in case; the invention is at an early stage under Form 2.

3. Publication of the Application:

After filing the complete specification, the application is published after 18 months from the date of filing. There is no need for any special requirement from the applicant for publication. In this process an objection also can be demanded.

4. Respond to the Objections:

By way of first examination report the applicant need to respond the objection received from the patent office. The applicant is expected to file a written response to the objection raised in the examination report. Such hearing of an objection can be called for by physical hearing or video conferencing.

5. Grant of Patent:

After responding all objections, the application would be placed for a grant once it is found to be meeting all patentability requirements, and finally, the patent will be granted to the applicant. The grant of a patent is notified in the patent journal which is published from time to time.

18.6 PATENT INFRINGEMENT AND REMEDIES

Patent Infringement:

Patent infringement is the commission of a prohibited act with respect to a patented invention without permission from the patent holder. It occurs when someone violates the patent rights an inventor has in his invention by making, using or selling the invention without the patent owner's permission.

Remedies Available:**RELIEFS THAT MAY BE GRANTED: S- 108**

The reliefs available to a successful plaintiff in a suit for infringement include-(i)an injunction;(ii)damages;(iii)an account of profits;(iv)an order for deliver-up or destruction(v)certificate of validity; (vi)costs. Injunction: Injunction is a preventive civil remedy.

Injunction is of two kinds:

- (i) Interlocutory /temporary injunction and
- (ii) Permanent injunction.

Temporary injunction is limited to a specific period or till the time the case is finally decided on merit. The permanent injunction is granted after hearing the parties on the merits of the case. The permanent injunction is limited to the duration of the patent.

DAMAGES OR ACCOUNT OF PROFITS: The plaintiff is entitled to the remedy of either damages or an account of profits. The plaintiff is given the option to elect one of them.

SEIZURE OR FORFEITURE OF INFRINGING GOODS AND IMPLEMENTS: Apart from the other reliefs which a court may order that the goods which are found to be infringing and materials and implements which are predominantly used in the creation of infringing goods shall be seized, forfeited or destroyed, as the court deems fit under the circumstances of the case without payment of any compensation.

The usual criminal remedies are punishment by imprisonment or by a fine or both.

18.7 SUMMARY

Introduction: Patent is an exclusive right granted by a government for an invention that is new, involves inventive step and is capable of industrial application.

Term of Patent: Term of every patent granted shall be 20 years. The term of patent can be expired on the expiry of 20 years a fixed term.

Requisites for Grant of Patent:

The innovation must be new and not have prior use, The innovation is useful: It should have Industrial Applicability, The innovation is inventive:

Procedure for obtaining Patent: Drafting a patent application: Filing the Patent Application, Publication of the Application, Respond to the Objections,

Grant of Patent:

Patent Infringement: Patent infringement is the commission of a prohibited act with respect to a patented invention without permission from the patent holder. It occurs when someone violates the patent rights an inventor has in his invention by making, using or selling the invention without the patent owner's permission. Remedies Available : Interlocutory /temporary injunction and permanent injunction.

18.8 QUESTIONS

1. Explain the Concept of Patent and its applicability
2. What is Patentable and What things are not Patentable?
3. What are the procedure for obtaining Patent?
4. Write Short Note
 - a. Infringement of Patent Rights and Remedies available
 - b. Term of Patent
 - c. Requisites for grant of patent.

TRADEMARK

Unit Structure

- 19.0 Objectives
- 19.1 Introduction
- 19.2 Meaning and Definition
- 19.3 Registration of Trademark
- 19.4 Types of Trademarks
- 19.5 Functions of Trademark
- 19.6 Trademark Which Cannot Be Registered.
- 19.7 Passing off
- 19.8 Trademark Infringement
- 19.9 Remedies Available
- 19.10 Summary
- 19.11 Questions
- 19.12 References: Webliography

19.0 OBJECTIVES

After studying the unit, the students will be able to:

- Understand the Meaning and definition of Patent
- Understand the Procedure for registration of Trademark
- Understand the functions of Trademark and meaning of ‘Passing off’
- Understand the infringement of Trademark and Remedies available

19.1 INTRODUCTION

Trademark is a type of intellectual property rights. Intellectual property rights allow public to maintain ownership rights of their innovative product and creative mind. The intellectual property came to light because of the efforts of human efforts, so it is limited by a number of charges for the registration and charges for infringement. Types of intellectual property are Trademarks, Copyright Act, Patent Act, and Designs Act.

19.2 MEANING AND DEFINITION

A trademark includes a name, word, or sign that differentiates goods from the goods of other enterprises. Marketing of goods or services by the procedure becomes easier with a trademark because identification of product with the trademark is the essence of this act. The owner can prevent the use of his mark or sign by another user. A trademark can be a logo, image mark, picture mark or a slogan.

According to Section 2(1) (zb) of the Trade Marks Act, 1999, a 'trademark' "means a mark which is capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others, and may include the shape of goods or their packaging and combinations of colours."

19.3 REGISTRATION OF TRADEMARK

1. Filing Trademark Application

The first step is to file a trademark application at the Trademark Registrar in India. Nowadays, filing is mostly done online. Once the application is filed, an official receipt is immediately issued for future correspondence.

2. Examination

On filing of trademark application, the same is examined by the examiner to find out whether any anomalies or discrepancies are there. This process may take around one year. An examiner may accept the trademark without any reservation or with condition.

If the application form is accepted the trademark is published in the Trademark Journal.

3. Publication:

The step of publication is incorporated in the trademark registration process so that anyone who objects to the registering of the trademark has the opportunity to oppose the same. If, after 3-4 months from publication there is no opposition, the trademark proceeds for registration. In case there is opposition; there is a fair hearing and decision are given by the Registrar.

4. Registration Certificate:

Once the application proceeds for trademark registration, following publication in Trademark Journal, a registration certificate under the seal of the Trademark Office is issued.

5. Renewal:

The trademark can be renewed perpetually after every 10 years. Hence, logo or brand name registration can be protected perpetually.

19.4 TYPES OF TRADEMARKS

The Trademarks Act, 1999, allows the registration of various types of trademarks such as word marks, service marks, collective marks, certification marks, series marks logos/symbols and many other.

Following are the types of Trademarks in India

1. Word Marks. Word Marks are the most common types of trademarks that are registered in India. ...
2. Service Marks. Service Marks represent the service which a company or business deals in.
3. Logos and Symbols.
4. Shape of Goods.
5. Series Marks.
6. Collective Trademarks.
7. Certification Mark.
8. Geographical Indicators.

1. Word Marks:

Word Marks are the most common types of trademarks that are registered in India. These refer to any marks that are used to identify the products and services of a trading company or service-providing company. If the name of your product or service is text- based (contains text only) it will be registered under Word Marks

For Example - The word Nestle® is a registered as a Word-Mark.

2. Service Marks:

Service Marks represent the service which a company or business deals in. They distinguish different services available in the market .

For example - FedEx is a registered courier delivery service provider.

3. Logos and Symbols:

A logo is a printed/painted figure/design/character and do not consist of any letters/words/numerals. For word marks that are also used as a logo, the trademark needs to be registered both as a word mark and a device marks. In India, the registration for both these aspects can be made in a single application.

For example - Apple has a registered logo which is used on each of their products.

4. Shape of Goods

The shape of goods are categorized in Trade Dress (appearance of a product) wherein, other than a logo or label a product can also be distinguished based on its packaging.

For example - The bottle of Coca-Cola is distinguished from other brands on the basis of its bottle's shape.

5. Series Marks:

Service marks are trademarks which have a common syllable, prefix or suffix, thus denoting as a family of marks sharing a 'common name.' They should differ only as to matters of non-distinctive characters (goods, price, quality or size).

For example - McDonald's have a series of 'Mc' registered as word mark which represents their different product range such as Mc Chicken, Mc Veggie etc.

6. Collective Trademarks

These marks are linked with a group of people and not one single product or service. These trademarks are primarily owned by an organization, institutes or any association. They can be used by members of the organization to represent them as one the part.

They are "Badges of origin" which indicates the specific source of the individual, his/her products and services.

For Example - A chartered accountant can use the "CA" device as he is a registered member of the Institute of Chartered Accountants.

7. Certification Mark

The certification mark is created to show a specific quality standard that the company has met. This means that the public will be aware that the trader's goods or services are certified as it has met a particular standard, as defined by the certifying body that owns the certification mark.

Certification marks are used to define "Standard" of goods and services.

For Example - FSSAI - Certification for the quality of packaged food products.

8. Geographical Indicators: A geographical indication is used on products to show the unique nature, reputation and quality the products possess based on the place of origin

The Geographical Indicators are awarded by the GI Registry and is granted to natural, agricultural, manufactured and handicraft products that come from a specific geographical origin.

For Example -Darjeeling Tea is a GI under the Intellectual Property Rights.

19.5 FUNCTIONS OF TRADEMARK

A trademark serves the purpose of identifying the source or the origin of goods. Trademark performs the following four functions.

1. It helps in identifying the product and its origin.

2. It proposes to give the guarantee its quality.
3. It advertises the product. The trademark represents the product.
4. It creates an image of the product in the minds of the public particularly the consumers or the prospective consumers of such goods.
5. It helps the genuine buyer to protect themselves from the spurious goods. etc.

19.6 TRADEMARK WHICH CANNOT BE REGISTERED.

- a) The use of which would be likely to deceive or defraud or cause confusion in the minds of users.
- b) A mark the use of which would be contrary to any law for the time being in force;
- c) A mark containing scandalous or obscene matter;
- d) A mark comprising any matter likely to hurt the religious susceptibilities of any class or section of the community;
- e) A mark which would be not allowed to protection in court of law
- f) A mark which is simile with a trademark already registered in respect of the same goods or goods of the same description
- g) A word which is the accepted name of any single chemical name or chemical compound in respect of chemical substances.
- h) A geographical name or a surname or a personal name or any common abbreviation thereof or the name of a sect, caste or tribe in India.

19.7 PASSING OFF

‘Passing off’ which can be used to enforce unregistered trademark rights. The law of passing off prevents one person from misrepresenting his goods or services as that of another.

The concept of passing off has gone changes in the near course of time. At first it was sticked to the representation of one person's goods as those of another. Afterwards it was extended to business and services. Subsequently it was further extended to professions and non-trading activities. Today it is applied to many forms of unfair trading and unfair competition where the activities of one person cause damage or injury to the goodwill associated with the activities of another person or group of persons.

In *British Diabetic Association V Diabetic Society*, both the parties were charitable societies. Their names were deceptively similar. The words 'Association' and 'Society' were too close since they were similar in derivation and meaning and were not wholly dissimilar in form. Permanent injunction granted.

19.8 TRADEMARK INFRINGEMENT

Section 29 of the Trade Marks Act prescribes the infringement of a trademark. In simple words, when the exclusive rights of the owner of the registered Trademark are violated, it is said to be an infringement of Trademark. The trademark registration provides the exclusive rights to the brand name to the proprietor i.e. the applicant. The certificate of trademark registration provides exclusive rights to the proprietor to use the brand name for their business activity falling under the class in which it is registered. In case, a third party uses the brand name in course of trade without permission of the owner, it is the violation of owner's right and is called as the infringement of Trademark.

Most common cases of trademark infringement include using closely or deceptively similar brand names or logos for associated goods and services; and using a mark that creates false impression or confusion with the registered trademark. For proving trademark infringement, the intention of creating confusion or commercial use is ground for support.

Certain situations under the law are also prescribed which are not considered as the infringement of trademark.

19.9 REMEDIES AVAILABLE

Civil Remedies for Trademark Infringement are available in following heads:

1. In the form of Injunction:

The action of an injunction is referred as stopping one person from doing particular activity or task through the judicial process. With respect to trademark infringement, it is restraining a person from unauthorised use of the trademark. Through a temporary or permanent stay, the Court grants protection to the trademark owner.

2. In the form of Damages:

Damages refer to the recovery of loss faced by the trademark owner through the trademark infringement. The monetary value of financial loss or brand impairment is recovered under this head. The amount of damages will be granted by the court after considering the actual and anticipated loss of owner due to infringement.

The damages in Trademark law as a relief has increasingly assumed importance and the main aim of the damages is to monetarily compensate.

3.Custody of infringing materials:

This remedy suggests that the Court may ask the infringer to deliver all the goods or products that are labelled with the brand name. Here, the Court may direct the authorities to withhold the related materials accounts and destruct all such goods. Where the trademark relates to services, i.e. a Service Mark is infringed; the order may be passed to stop the provision of the services immediately by the infringer.

19.10 SUMMARY

Meaning: A trademark includes a name, word, or sign that differentiates goods from the goods of other enterprises. a 'trademark' “means a mark which is capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others, and may include the shape of goods or their packaging and combinations of colours.”

Registration of Trademark: Filing Trademark Application, Publication, Registration Certificate, Renewal

Types of Trademarks: Word Marks. Service Marks. Logos and Symbols, Shape of Goods, Series Marks. Collective Trademarks. Certification Mark. Geographical Indicators.

Functions of Trademarks: It helps in identifying the product and it's origin. It proposes to give the guarantee its quality. It advertises the product. The trademark represents the product. It creates an image of the product in the minds of the public particularly the consumers or the prospective consumers of such goods.

Passing off: ‘Passing off’ which can be used to enforce unregistered trademark rights. The law of passing off prevents one person from misrepresenting his goods or services as that of another.

Trademark Infringement: Most common cases of trademark infringement include using closely or deceptively similar brand names or logos for associated goods and services; and using a mark that creates false impression or confusion with the registered trademark.

Civil Remedies: In the form of Injunction: In the form of Damages:

Custody of infringing materials:

19.11 QUESTIONS

1. Explain the concept of Trade Mark?
2. What are the functions of trademarks?
3. Explain various types of Trademarks