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**A cursory review of intellectual property rights**

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# ABSTRACT

The concept of Intellectual Property Rights (IPR) in the domain of technology has assumed enhanced importance and the subject matter has attracted more interest with time. IPR have been defined as thoughts, developments, and inspired expressions based on which there is a public willingness to bestow the status of property. Strong intellectual property systems can incite funding into knowledge development and, thus, promote innovation. IPR gives exclusive rights to the inventors or creators of the property, in order to enable them to reap commercial benefits from their trademark, etc. patent is an exclusive monopoly grant by the Government of an inventor over his invention for limited period of time. The present review elaborates all aspects of Intellectual property right in detail along with its protection criteria. Some technologies require strong IP protection to commercialize, but unnecessary costs can derail bringing a product to market. IP departments of organizations weigh these various thoughts and perform essential IP protection functions. This primer introduces researchers to the main forms of IP and their legal aspects.

# INTRODUCTION

Intellectual Property Right (IPR) is rights given over a creation of the mind and to exclusively exploit it for certain of the mind and to exclusively exploit it for a certain period of time Intellectual Property. IPR gives them this protection, as well as helping those exploits and controls their IP. The inventor of the IP can control and be rewarded for its use. Further, patents are often written in abstruse language, embedded with both complex scientific material and sophisticated terms with specific legal meaning. An entrepreneurial minded researcher can make costly mistakes when trying to obtain valuable patent protection. Patents have

been given large coverage than the other forms of industrial property as they are very relevant to research.

## Kinds of intellectual property rights

The kinds of the IPR is commonly Patent, copyright, trademarks, industrial design, trade secrets, geographical indicators and layout design for indicated circuits.

## Patents

The purpose of the patent system is to promote innovation by granting exclusive rights to inventors. In exchange, inventors must provide a detailed description of how to make and use the

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invention that is made available to the public; this promotes innovation and competition resulting in technological advancement. A patent is an exclusive right given to the inventor, the government to make, use, manufacture and market the invention. The exclusive right implies that no one can else make copy the invention to make, use, manufacture and market it. A patent owner has the rights to decide who may or may not use the patented invention for the period of time invention is protected. The patent owner has rights to copy or use their invention by the other parties. A Patent is granted for the period of 20 years from the date of filling the application of the patent. Once the date of patent expires the protection ends and the invention comes the public domain, so the owner has no longer hold he right on the invention.

## Patentability

To be patentable, an invention must be human made, not something discovered in nature, and must have an actual physical embodiment. It cannot be an abstract idea or one where parts of the process are not understood. Patent examiners will review the application. They are instructed to issue any patent that does not fail certain tests of patentability. To a certain extent, the Examiner’s job is to find a reason to refuse to issue a patent, so the application must be drafted and sometimes amended to overcome rejection from the respective patent authority.

One test of patentability is “Utility”. This means the invention must actually do something useful. Another test of patentability is “Novelty”. The invention must be completely new, never discussed in public or seen anywhere. There will be a “grace period” afforded to public disclosures made by an inventor within one year of filing the patent application, thereby preserving novelty. A relatively small change can be enough to consider an invention novel. Often, when patent applications run into issues with novelty, it involves work the inventors themselves have done in the past. The third major test of patentability is “Obviousness.” This can be a major hurdle for inventions. If an invention simply consists of putting together aspects of things which already exist with no “inventive step,” it’s not patentable. A minor change which would make an invention

novel is not enough to prove it was not obvious. It is very common for a patent examiner to argue that one or more patent claims are obvious. The advantages of patent registration are,

* Protection of financial profitability of an invention
* Dissemination of information into the scientific community
* Facilitate emerging markets from exchange of new technologies, e.g. university licensing to new venture start-ups
* Signal a firm’s innovative capacity and attraction of capital.

## Copyrights and neighbouring rights

Copyright is concerned with the protection of original literary and artistic works. To qualify for copyright, a work should be fixed in a tangible media of expression and should display originality. Copyright does not require registration in many countries except for few jurisdictions where registration is compulsory. The legal right comes into being automatically when the protected material is produced. The rights of author literary works such as books and other writing, musical compositions, paintings, sculpture, computer programs and films are protected by this copyright act. Indian’s copyright law laid down in the Copyright Act, 1957 as amended by Copyright Act, 1999, fully party.

There are several another measures can be adopted to strengthen this act such as setting up of a copyright Enforcement Advisory council, training programs for enforcement officers and setting up of special policy cells to deal with cases relating to infringement of copyrights.

Neighbouring rights describe a set of rights that are similar to copyright but do not directly involve rights to a work as such these include the rights of performers, producers of sound recordings, and that of broadcasting organizations.

## Trade secrets/know-how

Trade secret is information of business or technical nature, which provides competitive advantage and kept confidential. Trade secret is difficult to enforce since no authoritative office registers it. The term of protection is unlimited. It can last indefinitely or until the trade secret is

made public. Unlike patenting, trade secret denies the society an opportunity to understand about the invention, whereas the patenting system requires full disclosure to the public of how the invention works.

## Trade and service marks

Trade Mark or Service Mark is a sign or symbol, or word or number or a combination of these that is used to distinguish goods or services in the market place from the goods of one to another trader. There are non-traditional trademarks such as smell marks, sound marks, movement marks and colour marks. The main legal property of a trademark is that it should effectively function as a sign that shows that a certain product is associated with one business in particular. There are two forms of protection, namely: registered trade or service marks these have to be registered at the national trademark office and unregistered trade or service marks TM or SM – the word or sign is presented as trade or service mark but need not be registered.

The trade mark is the distinctive sign that identify certain goods those are provided by a specific persons trade mark have been defined as any sign or any combination of sign used to distinguish the goods or services from any other undertake products. Distinctive marks constitute protectable subject matter. The agreement renewal of registration is shall be for the term of not less than 7 years and the registration will be renewable indefinitely.

## Industrial design

Industrial design is defined as the visual features of shape, configuration, pattern or ornament (or any combination of these) applied to a finished article of manufacture. The industrial design protection system protects only the distinctive appearance of products i.e. the outlook but not the functional aspect of the underlying technology. TRIPS agreement provides protection for independently created industrial designs that are new or original. The protection of industrial design shall amount to ten years.

An industrial design is that aspect of a useful article, which is ornamental or aesthetic. It consists of three-dimensional future such as size or shape

of the article, or two-dimensional features patterns, lines or color. Industrial design is applied to a wide varieties of product of industry or handicrafts; for watches, jewellery, fashion and other luxury items to industrial and medical appliances to vehicles and architectural structure, from practical goods and textile designs to leisure items such as toys and pet accessories. A new designs law repealing and replacing the Designs Act, 1911 has been passed by Parliament in the budget session, 2000. This Act has been brought into force from May 11, 2001.

## Geographical indicators

Geographical indicators are the specific signs mainly used on the goods that have a specific geographical origin. A GI mainly indicates that a product products origin and a products specific qualities. It should be used by all traders or producers whose products originate from that place and which share typical characteristics. Well known examples for GIs are Darjeeling (tea), Bordeaux (wine), Chanderi (Sarees), etc.

## Intellectual property in the process of research and development

There are various stages to be encountered during the R&D process. It is important to look at the different relevant IPs at the different stages of the R&D process. This could make the researchers take advantage of protecting their research results. The different applicable IPs are as follows

## Research planning stage

A search of existing patent documents is undertaken, to: identify potential competitors; determine the state of the art in existing research; find niche opportunities; avoid duplication of research efforts; undertake market research; examine investment and technology trends; and locate potential research or commercial partners.

## Research stage

Confidentiality and the law of trade secrets become important to safeguard: research directions and outcomes of R&D project; agreements with research partners; and confidentiality within the enterprise or institution. Patent law considerations are also essential in relation to: publications by

those working on the project; participation in trade fairs and scientific conferences.

## Research breakthrough

During the research breakthrough the following have to be observed: any outcomes must be kept confidential at least until patent applications are filed; a patent filing strategy needs to be adopted including a possible choice to keep the outcome as a trade secret and not pursue patents at all; associated developments may be protected as industrial designs; and associated software and documentation might be protected through copyright.

## Development stage

The development Stage requires the following considerations: an IPR licensing strategy is required; trademarks may need to be developed; an international patenting strategy is required, underpinned by a commercial strategy; and patents may be required on improvements to the original breakthrough.

## Marketing stage

He marketing strategy will need to consider effective strategies for protecting and promoting trademarks and designs; it is necessary to monitor the marketplace for possible infringement and enforcement action; the portfolio of registered patents, trademarks and designs will need careful management; and there will be continuing issues of licensing and valuation of the IP assets from the project. It is very important to be aware of the possible IPR during the R&D process in order to put down strategies for an effective protection and utilization of the research results.

# IMPORTANCE OF IPR

## Positive Impacts

IPRs play very specific role in the development of the society. IPRs not only product the invention of the creator it also maintain the healthy competition among the creators. Some of the positive impacts of the IPRs are

* IPRs are important for enhancing research and invention. IPR helps to the inventors for new invention and research development.
* IPRs, gives recognition to the inventors and research peoples. These law was provides them both incentive to create newer works, products and services.
* Intellectual Property Rights encourage the new innovation and creativity by protecting the rights of the innovators. Since the filing of patents requires the disclosure of information that would enable other to replicate the inventor’s discovery.
* IPRs are ensures the genuine and original products.
* Intellectual Property Rights, such as patent and copyrights, are an important firm to help protect their investments in innovation.
* IPRs are plays an important role in economic growth. Protection of intellectual property rights is essential in maintaining economical growth.
* Negative impacts
* They are considered to benefitting concentrated

i.e. IPRs confers authority over resources to few. The few gain power over the goals of many.

* The main aim of the IPRs is to protect the public interest but, in fact, the public interest is harmed.
* Pharmaceutical product prices of health care costs and strong intellectual property protection is one of the reasons for high health care costs.
* For example, patent of life saving drugs had allowed the countries to change higher than the marginal level cost of research and development.
* The above reason may led to increase the cost the drugs it’s a main reason for high cost of the life saving drugs.
* When there is control by some particular group, IPRs actually discourage invention. Patent of the ideas may prevent by the inventors of a property may utilize according to his wish.

# CONCLUSION AND RECOMMENDATIONS

Intellectual Property Rights (IPR) is of increasing significance to research conducted at R&D and S&T institutions. Researchers need to understand the different types of IPR and the applicable IPR during the research and development process. It is important to observe the different IPR required in protecting the research findings. The basic objective of the IPRs is to

protect the invention of the inventor from copyright. IPR is also considered to achieve economic, social and technological advancement that protect the idea and stimulates innovation, design and helps to the creation of technology. The social purpose of the IPR is to protect the result of the investment in the development of new

technology, thus giving the incentive and means of finance. Therefore IPR main aim is give the exclusive rights to the inventor to protect the innovation. It is therefore recommended that each R&D and S&T institution must formulate an institutional IP-policy and establish an IP Management unit as well creating IP awareness.

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