

LEGAL FRAMEWORKS AND INTELLECTUAL PROPERTY: A COMPARATIVE ANALYSIS

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ABSTRACT

Over the past two-decade, Intellectual Property rights have grown to structure from where it plays a major role in the development of Global Economy. In the 1990's many countries unilaterally strengthened their laws and Regulations in this area, and many others were poised to do likewise. At the multilateral level, the successful conclusion of the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in World Trade Organisation (WTO) enhanced the protection and enforcement of intellectual property rights to the level of solemn international commitment. The new Global Intellectual property Rights system comes with both benefits and costs. The domain of Intellectual Property is vast. Copy Rights, Patents, Trademark and designs are known to have received recognition for a long time. Newer forms of the protection are also emerging particularly stimulated by the existing developments in scientific and technological activities. The most noticeable difference between intellectual property and other forms of property, however is that intellectual property is Intangible, that is cannot be defined or identified by its own physical parameter. It must be expressed in some discernible way to be Protocols. Generally, it encompasses four separate and distinct types of intangible property.

Key Words: AI, Artificial Intelligence, Intellectual Property,

INTRODUCTION

The term “ Industrial property ” is sometimes used to refer to a subset of Intellectual Property Rights including: Patents, Trademarks, Industrial design, Utility models, Geographical indication and Trade names.¹⁶³

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods. Intellectual property rights is important to stimulate and promote research and developments,¹⁶⁴ If the invention and ideas of individuals and organisation are not protected then the concerned people or organisations will not reap the benefits of their hard work and naturally it will lead to discontent and reduce the efforts in the field of research

and development, which is extremely important for the growth and development of humanity.¹⁶⁵

PRELUDE ASPECTS IPR

According to former Lord Justice of appeal Robin Jacob, the history of Intellectual property rights can be traced back to as early as 600 BCE. In sixth century BCE from Sybarites in ancient Greece granted a year a long exclusivity for bakers to make their culinary inventions. In 1421 world's first modern patent was awarded to an Italian inventor, During 1623, the statute of Monopolies emboldened select groups of individuals to control their industry. Thus publishers owned most of the rights associated with authored works , and with the author assuming the losing position, amendments were place the modern version of

¹⁶³ Daniel Stengel, *Intellectual Property in Philosophy*, 90 ARSP ARCH. FÜR RECHTS- SOZIALPHILOSOPHIE ARCH. PHILOS. LAW SOC. PHILOS. 20 (2004).

¹⁶⁴ RICHARD HAYNES, MEDIA RIGHTS AND INTELLECTUAL PROPERTY (2005), <https://www.jstor.org/stable/10.3366/j.ctt1r28zj> (last visited Aug 22, 2024).

¹⁶⁵ *Id.*

written word license, the copyright,¹⁶⁶ It was the year 1710 when the statute of Anne empowered writers with regard protection for their original works. During the early 1800's the idea of Global protection of Intellectual Property Rights floated among legislative bodies.¹⁶⁷ Then 1883 The Paris Convention (INDUSTRIAL PROPERTY) brought clear clarify and cooperative among the Indian jurisdiction, ¹⁶⁸ After 3 years later In 1886 The Berne Conventions (COPYRIGHT) extended the same protection to written expression , together the Paris and Berne Conventions are called magna carta of Intellectual property . In 1891 The Madrid Agreement the offices created by the Paris and Berne Conventions eventually combined to become the United International Bureaux for the protection of IPR.¹⁶⁹ Within the half decade Trademarks were also created International protection through the Madrid protocol United International Bureax for the protection of IPR became a United Nations office we know as the world Intellectual property organisation.¹⁷⁰

INTERCONTINENTAL CONTEXT TOWARDS IPR

Today, scientific and technological change are occurring so rapidly and across such a broad spectrum that they are creating unprecedented pressure for changing in Intellectual Property protection in the USA and abroad.¹⁷¹ In Brazil, Intellectual property rights can be generally classified in three main groups: Industrial property, Copyright and Related rights and suigeneris Intellectual property rights.¹⁷² Industrial property includes Patents, Trademark, Industrial designs, Geographical

Indications and non- patentable knowledge, It is regulated mainly by federal law no, 9.279/96 (The " LPI") The Brazilian Industrial property Institute (the "INPI) Is the Brazilian Patent and Trademark office and is autonomous federal agency under the ministry of development, Industry and commerce.¹⁷³ The INPI is responsible for implementing rules regulating industrial as well as for granting and registering Patents (i.e., inventions and utility modes) Industrial design , Trademark , Geographical Indication, Software and at times technology transfer contracts .¹⁷⁴

CHINA

The China national Intellectual Property Authority (CNIPA) is the authority for Intellectual Property Rights including Patents,¹⁷⁵ Design, Trademark and Geographical Indication. The national Copyright Administration of China (NCAC) is the authority for Copyright.¹⁷⁶

KOREA

The Republic of Korea has been a World Trade Organisation (WTO) member since 1998. The Republic of Korea is one of UK Trade and Investments priority high growth markets. Bilateral trade between South Korea and Britain now share at more than five billion a year.

SOUTH AFRICA

There are many law relevant to Intellectual Property in South Africa. The most important of these are:¹⁷⁷

- The Trademark Act
- The Copyright Act
- The Patent Act
- The Design Act
- The Plant Breeders Act, this legislations along with common law

¹⁶⁶ GEORGE M. SIKOYO, ELVIN NYUKURI & JUDI W. WAKHUNGU, *Conceptualizing Intellectual Property*, 11 (2016), <https://www.jstor.org/stable/resrep00103.5> (last visited Aug 22, 2024).

¹⁶⁷ TOWARD FREE TRADE IN THE AMERICAS, (2001), <https://www.jstor.org/stable/10.7864/j.ctvdf05sn> (last visited Aug 22, 2024).

¹⁶⁸ Daron Acemoglu & Ufuk Akcigit, *Intellectual Property Rights Policy, Competition and Innovation*, 10 J. EUR. ECON. ASSOC. 1 (2012).

¹⁶⁹ Sayed Qudrat Hashimy & Emmanuel Elimhoo Kimey, *Protection of Digital Contents under Indian Copyright Law in the Light of International Conventions*, (2023), <https://papers.ssrn.com/abstract=4676392> (last visited Aug 22, 2024).

¹⁷⁰ Sayed Qudrat Hashimy, *Comparative Insights into Copyright Disclaimers of the United States and India*, 1 ANNU. INT. J. VAIKUNTA BALIGA COLL. LAW AIJVBCL 1 (2024).

¹⁷¹ submissionsvbcllr, *Comparative Insights Into Copyright Disclaimers of the United States and India*, VBCL LAW REVIEW (2024), <https://www.vbcllawreview.com/post/comparative-insights-into-copyright-disclaimers-of-the-united-states-and-india> (last visited Aug 22, 2024).

¹⁷² TOWARD FREE TRADE IN THE AMERICAS, *supra* note 6.

¹⁷³ Patricia Search, *Electronic Art and the Law: Intellectual Property Rights in Cyberspace*, 32 LEONARDO 191 (1999).

¹⁷⁴ Sayed Qudrat Hashimy, *The Doctrine of Copyright Exhaustion in Software Under Indian Copyright Act: A cursory Glance*, 4 INDIAN J. LAW LEG. RES. 1 (2022).

¹⁷⁵ IAN HARVEY & JENNIFER MORGAN, *Intellectual Property Rights in China: Myths versus Reality*, (2007), <https://www.jstor.org/stable/resrep17742> (last visited Aug 22, 2024).

¹⁷⁶ James F. Paradise, *The New Intellectual Property Rights Environment in China: Impact of WTO Membership and China's "Innovation Society" Makeover*, 41 ASIAN J. SOC. SCI. 312 (2013).

¹⁷⁷ V. Siddhartha, *Intellectual Property Rights*, 65 CURR. SCI. 6 (1993).

and decided case law, defines the rights given to you as an owner of Intellectual Property.

TURKEY

Intellectual Property Rights in Turkey are divided into two categories: Unregistered and registered rights. Unregistered rights arise automatically without fulfilling any procedures upon the creation whereas regulated rights should be applied before relevant authority to benefit from the protection. Registered Intellectual Property rights can be protected by *lex specialis*. According to Turkish Law, protection is also possible by general provisions such as unfair competition.

UNITED STATES OF AMERICA

In United states intellectual property can be Registered or Unregistered, with unregistered IP you automatically have legal rights over your creation, Unregistered forms of Intellectual Property includes Copyright,¹⁷⁸ Unregistered design rights, Common law Trademark and Data base rights protection for confidential information and Trade Secrets. With Registered Intellectual property, you will have to apply to an authority, such as the Intellectual Property office in the US to have your rights recognised. If you do not do this, others are free to exploit your creations. Registered forms of Intellectual Property includes Patents, Registered Trademark and Design Rights.¹⁷⁹

VIETNAM

Vietnam has been a member of World Trade Organisation since 2007. This requires member nation to establish is in line with minimum standards. As a result, there should be few major difference between Vietnam's Law and those of other developed countries.¹⁸⁰ The Vietnam's Intellectual Property system is divides into three areas:

1. Copyrights and related rights – Administered by The Copyright office of Vietnam
2. Intellectual Property Rights – Administered by The National office of Intellectual property (NOIP)
3. Rights to Plant Varieties – Administered by The Plant Variety Protection office

The National Office of Intellectual Property holds the chief coordination role.

METICULOUS VIEW OF IPR IN INDIA

In India Patent Act was introduced in the year of 1856 which remained in force for over 50 years, which was subsequently modified and amended was called The Indian Patents and Designs Act, 1911. After Independence a comprehensive bill on Patent right was enacted in the year 1970 and was called "The Patents Act, 1970". Specific statutes protected only certain types of Intellectual Output, till recently only four forms were protected. The protection was in the form of grant of Copyright, Patents,¹⁸¹ Design and Trademark.¹⁸² In India, Copyright were regulated under Trade and Merchandise Marks Act 1958, and Designs under Designs Act, 1911.¹⁸³ With the establishments of World Trade Organisation and India being signatory to the Agreement on Trade – Related Aspects of Intellectual Property Rights (TRIPS), Several new legislations were passed for the protection of Intellectual Property Rights to meet the International obligation. These included: Trademark called the Trademark Act, 1999; Designs Act was replaced by The Designs Act, 2000; The Copyright Act, 1957 amended a number of times, the latest is called Copyright (Amendment) Act, 2012; and the last

¹⁸¹ Sayed Quadrat Hashimy & Emmanuel Elimhoo Kimey, *Navigating the Complex Terrain of Passing off Under Indian Trademark Law*, 3 IN VAIKUNTA BALIGA COLLEGE OF LAW 1 (2023), <http://eprints.uni-mysore.ac.in/17433/> (last visited Aug 22, 2024).

¹⁸² Sayed Quadrat Hashimy, *An Analysis of Naked Licensing in the Case of Trademark Law in the U.S., U.K. And India*, 3 YEARB. INT. LAW (2022), https://www.researchgate.net/publication/357638019_An_Analysis_of_Naked_Licensing_in_the_Case_of_Trademark_Law_in_the_US_UK_And_India (last visited Aug 22, 2024).

¹⁸³ Joseph E. Stiglitz, *Economic Foundations of Intellectual Property Rights*, 57 DUKE LAW J. 1693 (2008).

¹⁷⁸ Hashimy, *supra* note 9.

¹⁷⁹ Sayed Quadrat Hashimy, *An Analysis of Naked Licensing in the Case of Trademark Law in the U.S., U.K. And India*, (2022), <https://papers.ssrn.com/abstract=3999020> (last visited Aug 22, 2024).

¹⁸⁰ Sayed Quadrat Hashimy, *Protecting Geographical Indications in Afghanistan* (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4324242 (last visited Aug 22, 2024).

amendments made to The Patents Act, 1970 in 2005, Besides new legislation on Geographical Indication and Plant Varieties were also enacted, these are called Geographical Indication of Goods (Regulation and Protection) Act, 1999 and Protection of Plant Varieties and Farmers Act, 2001 respectively. Over the past 15 years, Intellectual Property have grown to a stature from where it plays a major role in the development of Global Economy. In 1990' many countries unilaterally strengthened their Laws and regulations in this area, and many other were poised to do likewise. At the Multilateral levels, the successful conclusion of the agreement on Trade – Related Aspects of Intellectual Property Rights (TRIPS) In the World Trade Organisation (WTO) evaluates the protection and enforcement of IPR'S to the level of solemn International commitment.¹⁸⁴ It is strongly felt that under the global competitive environment. Stronger IPR protection increases incentives for innovation and raises returns to international technology transfer.¹⁸⁵ The establishment of World Trade Organisation as a result of institutionalisation of international framework of trade calls for harmonisation of several aspects of Indian Law relating to the IPR's. The TRIPS agreement set minimum standards for protection for Intellectual Property Rights and also set a timeframe within which countries were required to make changes in their laws to comply with the required degree of protection.¹⁸⁶ In view of this, India has taken action to modify and amend the various Intellectual Property Acts in the last few years.¹⁸⁷

SKELTON VIEW OF IPR FROM THE INDIAN CONSTITUTION

Fundamental rights were deemed essential to protect the rights and liberties of the people

¹⁸⁴ Philippe Cullet, *Human Rights and Intellectual Property Protection in the TRIPS Era*, 29 HUM. RIGHTS Q. 403 (2007).

¹⁸⁵ R. A. Lavery, *Coverage of Intellectual Property Rights in International Investment Agreements: An Empirical Analysis of Definitions in a Sample of Bilateral Investment Treaties and Free Trade Agreements*, 6 TRANSNATL. DISPUTE MANAG. TDM (2009), <https://www.transnational-dispute-management.com/article.asp?key=1448> (last visited Aug 19, 2024).

¹⁸⁶ Sayed Qudrat Hashimy & M. S. Benjamin, *The Convolution of Artificial Intelligence and Intellectual Property Rights*, 6 INT. J. LAW MANAG. HUMANIT. 2891 (2023).

¹⁸⁷ Cullet, *supra* note 23.

against the encroachment of the power delegated by them to their Government. There are limited upon all the powers of the Government, legislative as well as executive and they are essential for the preservation of public and private rights, now withstanding the representative character of political Instruments. Speaking about the importance of Fundamental Rights in the historic Judgment of Maneka Gandhi Versus Union Of India Justice, Bhagwati Observed: "Theses for represents the basic values cherished by the people of this country (India) since the Vedic times and they and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a "Pattern of Guarantee" on the basic structure of Human Rights, and impose negative obligations on the state not to encroach on the Individual liberty in its various dimensions. These rights are regarded as a fundamental because they are most essential for the attainment by the individual or his full Intellectual, moral and spiritual status. At the commencement of the Indian Constitution, Right to Property was a Fundamental Rights under Article 19 (1) (f) but it was Repealed to mere a Constitutional Rights in 1978 by the 44'th Constitutional Amendment by inserting Article 300A. There is no specific provision regarding of the intellectual property rights, we get some hints about Intellectual property rights in Entry 49 of list 1 of 7'th schedule of Indian Constitution. Entry 49,¹⁸⁸ Particularly stated Intellectual property rights in as it mentions "Patents, Inventions and Designs Copyrights, Trademark and Merchandise marks".¹⁸⁹ The term Economic Justice in the preamble denotes it is a set of moral principles to construct economic Institution, in this interpretation impliedly shows that is dealing with intellectually because it is clearly shows that the intangible property loss can weak the

¹⁸⁸ Constitution of India » List I-Union List,

https://constitutionofindia.etal.in/schedule_7_1/ (last visited Aug 22, 2024).

¹⁸⁹ Catherine Seville, *Intellectual Property*, 60 INT. COMP. LAW Q. 1039 (2011).

economic justice.¹⁹⁰ The word "Property " as used in the Article 31 of the Indian Constitution, According to Supreme Court says that the word property " Should be given a liberal meaning and should be extended to all those well recognised types of Interest which have the Insignia or characteristic of property right " through the Judgment Common Hindu Religious Endowment V. L.T. Swamiyar, AIR 1954 SC 282. The expression "Property " in Article 300A is confined not only to Land alone, it includes Intangible like Copyright and other intellectual property, and Embarrassed every possible interest recognised by law through the Judgment of K.T.Plantation private limited V. State Of Karnataka ,¹⁹¹Right to Property in Article 300A is not a Fundamental rights so it does not have the protection as given to the Fundamental rights , If Intellectual property rights are violated they have legal protection being a constitutional rights like Fundamental rights can be directly challenged in the Supreme court or High court under Article 32 ,226 of the Indian constitution , while this means that Intellectual property rights does not have the special constitutional statutes , it also means that there are no constitutional restrictions on the power to make laws on Intellectual property rights .¹⁹²The Fundamental rights especially Article 21 of the Indian Constitution " No person shall be deprived of his life or personal liberty except according to procedure established by law." It means right to life also includes health and healthy environment which impliedly ensures human rights violations of these rights is amount to violation of Fundamental rights and any individual can seek remedy under Article 32 and 226 of the constitution , if any company has invented a life -saving drug or medicine and gets it patent and he is not making available

the medicine to the public at affordable price, The Patent Act gives powers to the state make available through Compulsory Licensing as per section 84 , Fundamental rights of right to life includes medical treatment so automatically the state ensure this fundamental rights to the public by granting compulsory licence that the reasonable requirements of the public with respect to the patented invention have not been satisfied or , that the patented invention is not available to the public at a reasonably affordable price .¹⁹³ Article 19(1) (g) Guarantee that all citizens shall have right "to practice any profession, or to carry on any occupation, trade or business."¹⁹⁴ However the right to carry on a profession, trade or business is not unqualified. It can be restricted and regulated by authority of law under Article 19 (6). At present Trademark is pivotal role in business, and public know about the business by its Trademark.¹⁹⁵ The Trademark not directly comes under Indian constitution but by interpretation it is also includes, if a person's registered trademark is infringed , the trademark holder has the right to be protected under the Fundamental rights gives in article 19(1)(g) .¹⁹⁶ Now the interpretation of Article 19 (1) (a), in this article says that Right to Freedom of Speech and Expression it means that the right to express one's own convictions and opinions freely by words of mouth, writing, printing pictures or any other mode, it includes the expression of one's ideas through any communicable medium or visible representation, such as gesture, signs and the like. ¹⁹⁷The expression connote also publication and thus freedom of the press is included in this category.¹⁹⁸ Here on intellectual property rights .The Copyright Act 1957,¹⁹⁹ Copyright means is a right given by the law to creators of Literary,

¹⁹⁰ amlegals, *Understanding Intellectual Property Rights in India in Constitutional Background*, LAW FIRM IN AHMEDABAD (Apr. 10, 2023), <https://amlegals.com/understanding-intellectual-property-rights-in-india-in-constitutional-background/> (last visited Aug 22, 2024).

¹⁹¹ *Id.*

¹⁹² Peter Drahos & Susy Frankel, *Indigenous Peoples' Innovation and Intellectual Property: The Issues*, in *INDIGENOUS PEOPLES' INNOVATION 1* (Peter Drahos & Susy Frankel eds., 2012), <https://www.jstor.org/stable/j.ctt24hfgx.7> (last visited Aug 22, 2024).

¹⁹³ Seville, *supra* note 28.

¹⁹⁴ Siddhartha, *supra* note 16.

¹⁹⁵ Sayed Qudrat Hashimy, *supra* note 21.

¹⁹⁶ Paradise, *supra* note 15.

¹⁹⁷ Constitutional Aspect of Intellectual Property Rights in India, THE LAW BLOG (Dec. 29, 2016), <https://thelawblog.in/2016/12/29/constitutional-aspect-of-intellectual-property-rights-in-india/> (last visited Aug 22, 2024).

¹⁹⁸ Anne Staines, *Protection of Intellectual Property Rights: Anton Piller Orders*, 46 MOD. LAW REV. 274 (1983).

¹⁹⁹ Copyright Act, 1957, AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO COPYRIGHT. (1957), <http://indiacode.nic.in/handle/123456789/1367> (last visited Aug 22, 2024).

dramatic, musical and artistic works and producers of cinematograph films and sound recordings. At this point Literature, drama, music, etc., are all created by a man from his own thoughts and expressed either verbally or in written form, whenever fundamental right of Right to freedom of speech and expression are violated we can get a remedy through the article 32 and 226 under the Constitution of India, so here also we get the remedy but here our remedy is not expressly available to us but impliedly available through the interpretation of this article.

COMPLICATIONS IN IPR

CONFIDENTIALITY ISSUES:

Intellectual property law and competition law are therefore two complementary instruments that promote economic Efficiency,²⁰⁰ While intellectual property rights for innovation and technological diffusion by establishing enforceable property rights for creators of new and useful products,²⁰¹ technologies and original works of expression, since the right to exclude, which is the basis of intellectual property rights is necessary for efficient competitive markets, the enforcement action under the competition law may be warranted when anti – competitive conduct of the owner of intellectual property creates, enhance or maintains market power so as to cause appreciable adverse impact competition .²⁰²

COMPETITION ISSUES IN INTELLECTUAL PROPERTY LICENSING:

Typically intellectual property is one of the components in a production process and derives values from its combination with complementary factors. This integration can lead to more efficient exploitation of the intellectual property, benefiting consumers through reduction of costs and introduction of

new products.²⁰³ Such arrangements also increase the value of the intellectual property to developers of technology.²⁰⁴ By potentially increasing the expected returns from intellectual property, licensing increases the incentive for its creation and thus promotes greater investment in research and development. A number of multilateral agreements in the field of intellectual ha property deals with unfair competition in intellectual property transactions.²⁰⁵

INTELLECTUAL PROPERTY IN THE SALE OF BUSINESS

When preparing to sell many business owners think that their business does not have or own any intellectual property unless they have gone through the process of registering a Copyright or Trademark procuring a Patent.²⁰⁶ However , items such as domain names trade secrets , and the special know how of a business constitute intellectual property which have value and for which the business and or business owners have rights .Additionally , items such as third party licence IT maintenance and support contracts and web-hosting and development contracts also constitute valuable intellectual property . Proper consideration or handling of these items matter greatly in the sale of business, as failure to consider or handle them properly can cause problems for the seller at the front and back end of a sale transaction.²⁰⁷

PATENT EVER GREENING PREVENTION

One of the most important intellectual property rights issues and challenge is the prevention of the Ever-greening of the patents for

²⁰⁰ Donald G. Richards, *The Ideology of Intellectual Property Rights in the International Economy*, 60 REV. SOC. ECON. 521 (2002).

²⁰¹ Steven Shavell & Tanguy van Ypersele, *Rewards versus Intellectual Property Rights*, 44 J. LAW ECON. 525 (2001).

²⁰² Richards, *supra* note 39.

²⁰³ Selma Ezzeddine & M.Sami Hammami, *RETRACTED: Nonlinear Effects of Intellectual Property Rights on Technological Innovation*, 33 J. ECON. INTEGR. 1337 (2018).

²⁰⁴ Sayed Qudrat Hashimy, *The Convolution of Artificial Intelligence and Intellectual Property Rights*, (2022), <https://papers.ssrn.com/abstract=4080279> (last visited Aug 22, 2024).

²⁰⁵ Intellectual Property Rights Vis-À-Vis Fundamental Rights and Indian Constitution, INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES, <https://ijlmh.com/paper/intellectual-property-rights-vis-a-vis-fundamental-rights-and-indian-constitution/> (last visited Aug 22, 2024).

²⁰⁶ Usha Menon, *Intellectual Property Rights and Agricultural Development*, 26 ECON. POLIT. WKLY. 1660 (1991).

²⁰⁷ Intellectual Property Rights Vis-À-Vis Fundamental Rights and Indian Constitution, *supra* note 44.

multinational companies. Ever-greening is strategy for extending the term of granted patent which is about to expire without increasing therapeutic efficacy in order to retain royalties. As we know, the companies cannot evergreen their patents simply by making minor changes. SO, section 3(d) in the Indian Patent Act possess one of the biggest issues with regards to IPR. ²⁰⁸This act bars the grant of patents to new forms of substances .This has discouraged investments from western countries.

SUBSIDIES ISSUES

A major form of subsidies includes food subsidy, fertiliser subsidies education subsidy, etc. For the complete implementation of TRIPS agreements, one needs to reduce or eliminate these subsidies. Thus, Government of India needs to create a balance between providing subsidies & providing intellectual property rights in India.

ACCUSATION AGREEMENT

It is critical for executives, counsels, accountants and financial advisors, to understand the transfer of intellectual property as an essential aspects of a larger transaction, not simply the transfer of intellectual property rights by itself. The transaction should be constructed in the context of a sale of an entire business in which those intangible assets are used. Generally business are sold either by the purchase of the stock in a corporation or through a purchase of assets used by the business to be sold , under either scenario , two basic sets of documents , an "Acquisitions agreement "and " Transfer documents " will be prepared and negotiated. An acquisition agreement is prepared for the express purpose of detailing those terms and condition under which either the stock purchase or sale assets will be sold.²⁰⁹ The purpose of the acquisition agreement is to identify the issues essential to

the specific transaction , such as the stock or assets , the purchase price , method of payment , date of closing and any conditions precedent which the seller or buyer is expected to meet prior to the "closing date " additionally , in the specific context of intellectual property , the seller will be usually be asked to make certain representation and warranties in connection with the intangible assets to be sold.²¹⁰

TRANSFER OF DOCUMENTS:

Transfer of documents are generally executed separate and apart from the acquisition of agreement. In the context of intellectual property assets, very often they will be separately transferred to a holding company and either licensed back to the operating company or become subject of a separate bill of sale.²¹¹ The parties to the transaction should anticipate these contingencies and a separate or perhaps several agreements with respect to intellectual; property assets should be contemplated.²¹²

SALE OF ASSETS:

If a party acquires trademark rights by acquiring a business via-a-vis a sale of asset, it is not unusual for the transfer agreement to forego specially mentioning trademark or either intellectual property rights.²¹³ If a business is sold as a going concerns, the intent to transfer trademarks and the goodwill associated therewith is presumed, even though not expressly provides for.²¹⁴

STOCK PURCHASE:

In the context of a stock purchase acquisition, ownership of trademarks and other intellectual property still remains with the acquired company. Purchase of shares will not affect distinct property rights in intangible assets or other intellectual property be properly

²⁰⁸ Menon, *supra* note 45.

²⁰⁹ DUNCAN SPIERS, PROPERTY LAW ESSENTIALS (2008), <https://www.jstor.org/stable/10.3366/j.ctt1g09zfv> (last visited Aug 22, 2024).

²¹⁰ Hashimy, *supra* note 13.

²¹¹ Hashimy, *supra* note 9.

²¹² Sayed Quadrat Hashimy, *Protection of Video Games under Indian and the United States of America Copyright Law*, 4 INDIAN J. LAW LEG. RES. 1 (2022).

²¹³ Hashimy and Benjamin, *supra* note 25.

²¹⁴ Hashimy, *supra* note 13.

transferred, although a separate agreement is usually necessary to underscore the parties' intentions.²¹⁵

ARTIFICIAL INTELLIGENCE ISSUE:

AI presents a unique set of challenge in IP field .One of the most significant issues is the question of authorship and Inventor-ship for AI-generated creations and inventions. Current IP law are built on the premise of human authorship, but AI's capacity to create works independently of human input disrupts this foundation. Another challenge lies in the use of copyrighted data for AI training, Machine learning model require vast amounts of data, often sourced from copyrighted materials.²¹⁶ It remains a Grey area whether this constitutes Copyright infringement or falls under fair use. In the end, AI's impact on the IP field is complex and multifaceted,²¹⁷ creating unprecedented issues that challenge the current legal framework and necessitate a thoughtful,²¹⁸ nuanced response.²¹⁹

OTHER ISSUES:

1. Trademark violation: India has very high level of trademark counterfeiting against which the authorities in India do not take proper actions.
2. Enforcement of intellectual property rights regulations is quite weak in the country because of two important reasons
 - a. India is a key exporter of counterfeit fake products such a food stuffs, textile, shoes, electronics, etc.
 - b. Judicial delays in intellectual property rights disputes
3. India maintains high custom duties on intellectual property intensive products as advocated by western countries impacting

the investments (US puts India priority watch list i.e., special 301 report).

4. Widespread piracy of Copyrighted materials

5. Uncertainly around adjudications of IP cases due to abolishing of Intellectual Property Appellate Board etc.

ISSUES AFFECTING IPR INTERNATIONALLY

The major IP issue areas to be considered in internationally trade are as follows,

- IP rights are territorial:
It is important to keep in mind that the IP rights are only valid in the country or region in which they have been granted. Therefore, applying for such rights in other countries is important is there is an intention to go international.²²⁰
- Secure freedom to operate:
Analysing Freedom to operate is to evaluate whether you are in any way infringing the patents, designs database for patent application, trademark and granted patents, registered trademarks or designs at patents, trademarks and designs are granted to particular territories an FTO search may reveal that the particular IP in question is not protected in the territory of interest. Reason for conducting search are:
 - a. Same or confusingly similar trademark may already exist in the export market
 - b. Technology not patented in one country may be patented elsewhere.
- Respect deadlines:
Priority period once an application for a patent or design right has been made domestically an international application has to be made within the "priority period". The international application will benefit from the priority date. A filing after the priority period has lapsed would mean you can't benefit

²¹⁵ N. H. Antia, *Intellectual Property Rights*, 27 ECON. POLIT. WKLY. 1374 (1992).

²¹⁶ Hashimy and Benjamin, *supra* note 25.

²¹⁷ Clark D. Stith, *International Intellectual Property Rights*, 31 INT. LAWYER 311 (1997).

²¹⁸ Tuire Anniina Väisänen, *Competition Law and Intellectual Property Rights*, in ENFORCEMENT OF FRAND COMMITMENTS UNDER ARTICLE 102 TFEU 27 (1 ed. 2011), <https://www.jstor.org/stable/j.ctv941w6t.6> (last visited Aug 22, 2024).

²¹⁹ Stith, *supra* note 56.

²²⁰ Rajshree Chandra, *Intellectual Property Rights: Excluding Other Rights of Other People*, 44 ECON. POLIT. WKLY. 86 (2009).

from the earlier priority date and novelty will be lost.

Patents: 12 Months

Designs: 6 Months

- Early disclosure:
Patents and designs are required to be novel to merits protection if a product needs to be disclosed it should be done in Non-disclosure agreement. If not, the novelty could be lost an application for registration be rejected. This is particularly important in disclosing products that embody inventions and or designs to potential partners before protection has been obtained.²²¹
- Working with partner:
Ownership of IP creation of new IP and who owns that Assignments/licenses foe ownership risk of unauthorised use or disclosure of trade secrets by partner Risk that partner will use trade secrets of others and expose you to litigation.²²² Insists on indemnification quality of product to be maintained so as to sustain brand image. ²²³Trademark if registered in the partners name in the country could create problems once the relationship ends.²²⁴
- Choosing an appropriate Trademark:
Check whether the mark has undesired connotations or is likely to be rejected in any country. For example Mitsubishi was dismayed to find that PAJERO means 'Wanker' in Spanish. Ford NOVA means no go in Spanish. But COCA-COLA was successful in finding a trademark in Chinese to say "Happiness in the Mouth".²²⁵

INITIATIVE TO STRENGTHEN IPR ECOSYSTEM

In an increasingly knowledge – driven economy, intellectual property is an important key consideration day-to-day life business

²²¹ Louis Y. Y. Lu, *Protecting Intellectual Property Rights*, 50 RES. TECHNOL. MANAG. 51 (2007).

²²² Hashimy and Kimey, *supra* note 20.

²²³ Stith, *supra* note 56.

²²⁴ Lu, *supra* note 60.

²²⁵ Subhash C. Jain, *Problems in International Protection of Intellectual Property Rights*, 4 J. INT. MARK. 9 (1996).

decision.²²⁶ Company that dedicate time and resources for protecting their intellectual property can increase their competitiveness in a number of areas , as it prevents competitors from copying or closely imitating a company's products or services ;avoids wasteful investment in research and development and marketing ;creating a corporate identity through trademark and branding strategy; negotiating licensing,²²⁷ and the examination of application by offices can help an enterprise to avoid conflicts and unnecessary litigation.²²⁸

STRATEGIES FOR EFFECTIVE IPR MANAGEMENT

The effective management of intellectual property assets requires implementation of a comprehensive asset management plan. In this process, one of the most important step is to review the existing intellectual property assets, so as to identify and locate the company's key intellectual property assets such as patents, patentable subject matter, copyrights, trademark, design, trade secret and etc.²²⁹ Once the intellectual property are identified, it becomes important to determine nature and scope of the company's rights in intellectual property assets, which may range from outright ownership to a licence –including contingent rights in intellectual property to be developed in future.²³⁰

INTELLECTUAL PROPERTY –RISK MANAGEMENT

The ownership and control of intellectual property also attracts certain risks and this requires strategies and plans to mitigate those risk.²³¹ The most important among others being the infringement of rights in intellectual property,²³² the risk management strategy should take into consideration he situations where company's own intellectual property rights may infringe the IPR's of a third party; the

²²⁶ Chandra, *supra* note 59.

²²⁷ Sayed Qudrat Hashimy, *supra* note 21.

²²⁸ Hashimy, *supra* note 51.

²²⁹ Hugh Breakey, *Natural Intellectual Property Rights and the Public Domain*, 73 MOD. LAW REV. 208 (2010).

²³⁰ *Id.*

²³¹ Sayed Qudrat Hashimy, *Copyright or Copyleft: Copyright or Copywrong: What Is the Dichotomy?*, 1 INTELLECT. PROP. CORP. LAW REV. 1 (2023).

²³² Edwin C. Hettinger, *Justifying Intellectual Property*, 18 PHILOS. PUBLIC AFF. 31 (1989).

company has a valid claim of infringement against a third party.²³³ It is also important to analyse the scope of any grant of rights in intellectual property assets, which may include licence distribution agreements, reseller arrangements and any other agreement or transaction involving transfer of IPR's that may impact its value.²³⁴ One of the most important IPR risk management techniques, particularly in respect of trade secrets, is to put in place a system requiring all new employees and consultants to execute a confidentiality agreement.²³⁵

CONCLUSION

Intellectual Property Right is a term used for various legal entitlements which attach to certain types of information, ideas or other intangibles in their expressed form. The holder of this legal entitlement is generally entitled to exercise various exclusive rights in relation to the subject matter is the product of the mind or the intellect, and that Intellectual property rights may be protected at law in the same way as any other form of property. Intellectual property laws vary from jurisdiction to jurisdiction, such that the acquisition, registration or enforcement of IP rights must be pursued or obtained separately in each territory of interest. Intellectual property rights is an intangible creation of the human mind, usually expressed or translated into tangible form that is assigned certain rights of property, as the rights given to the people over the creation of their minds is Intellectual property rights. Moreover, Schemes for facilitating start-ups intellectual property protection to promote and protect intellectual property rights start-ups. Patents facilitation programme to create awareness and training programme on IPR. KAPILA schemes provides financial assistance to higher education institution for filing patents. These all initiatives steps to helpful to strength the intellectual property rights as per in my point of view.

²³³ Richard A. Guest, *Intellectual Property Rights and Native American Tribes*, 20 AM. INDIAN LAW REV. 111 (1995).

²³⁴ *Id.*

²³⁵ Bruce Horowitz, Melvyn J. Simburg & David W. Maher, *International Intellectual Property Rights*, 37 INT. LAWYER 473 (2003).

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