



## Intellectual Property Rights in India: Some suggestions to avoid problems

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### Abstract:

In this article authors described basics of Intellectual Property (IP) and explain the common types of IP and then talks about the Treaties and reciprocal agreements that India has signed. Authors also talks about registering and enforcing intellectual property rights and enforcing IP rights in India. Authors also state the potential problems faced and tell how to deal with them by giving suggestions. To make sure that you can anticipate any potential issues, you should: Indian IP rights experts are the good point of contact to take advice and to consult publications and websites on Indian IP rights and protection in general. Carry out risk assessment and due diligence checks on any organizations and individuals you deal with. Take professional advice from other experts - eg lawyers, local diplomatic posts, Chambers of Commerce. Consult agents, distributors and suppliers on how best to safeguard your rights.

**Key words:** Consult agents, safeguard, Intellectual Property Rights

### Introduction

Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields. These rights Safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and non-exhausted consumption.

### Common types of IP include:

**Copyright:** Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions,

and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings. Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work & creator is the owner of the work. Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties. These economic rights have a time limit, (other than photographs) is for life of author plus sixty years after creator's death.

**Patents:** A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new



technical solution to a problem. It provides protection for the invention to the owner of the patent. The protection is granted for a limited period, i.e 20 years. Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license, other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent. Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others. All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but valuable information and inspiration for future generations of researchers and inventors.

**Designs:** Designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided

for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration. This replacement Act is also aimed to enact a more detailed classification of design to conform to the international system and to take care of the proliferation of design related activities in various fields.

**Trademarks:** Produced or provided by a specific person or enterprise. It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three-dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colours used as distinguishing features. It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. Registration of trademark is prima facie proof of its ownership giving statutory



right to the proprietor. Trademark rights may be held in perpetuity. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

### **Treaties and reciprocal agreements**

India is also a signatory to the following international IP agreements:

the Paris Convention - under this, any person from a signatory state can apply for a patent or trade mark in any other signatory state, and will be given the same enforcement rights and status as a national of that country would be; the Berne Convention - under this, each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals; the Patent Cooperation Treaty - this is a central system for obtaining a 'bundle' of national patent applications in different jurisdictions through a single application.

The Madrid Protocol, which allows a bundle of national trade mark registrations in different jurisdictions to be made through a single application, has not yet been brought into force in India. India is also not a signatory to the Hague Agreement, which allows the protection of designs in multiple countries through a single filing.

### **Registering and enforcing intellectual property rights in India**

To enjoy most types of intellectual property (IP) rights in India, you should register them. For every type individual registrations must be made in India. Only for copyright, no registration is required but registering copyrights with the copyright authorities is advisable.

'Priority rights' under the Paris Convention can help in the local registration of trademarks, designs and patents by allowing rights previously registered elsewhere to become effective in India, if filed within a time limit.

### **Enforcing IP rights in India**

IP rights can be enforced by bringing actions to the civil courts or through criminal prosecution. India's laws governing all forms of IP set out procedures for both civil and criminal proceedings, as does the Competition Act.

A disadvantage of civil litigation is that you are unlikely to recover large damages, and punitive damages against an infringer are rare. However, if you have an identified infringer, it may be advisable to launch civil litigation, because if an interim injunction is granted the infringement can be halted pending the outcome of the case. Damages are routinely awarded in cases of copyright piracy and trade mark infringement (which come under criminal litigation); less so in patent cases. Over the years, however, decisions in favour of foreign companies against local infringers have demonstrated the judiciary's impartial approach.

As in other countries, the Indian Government brings actions in criminal cases, although in most cases actions follow complaints to magistrates or police authorities by rights owners. Criminal proceedings against infringers carry the prospect of much harsher remedies, including fines and imprisonment.



Mediation or negotiation with an infringer can also be effective as an alternative form of dispute resolution. The Civil Procedure Code provides for a formal mediation process.

### **Potential problems faced in India and suggestions to deal with them**

India's intellectual property (IP) legislation covers every significant aspect of the protection of IP. The regulations relating to all forms of IP have been amended or reissued in recent years, mainly in response to India's accession to the World Trade Organisation in 1995.

Although Indian IP law is thorough and generally comparable with European IP laws, there are still significant concerns over IP enforcement. A major cause for concern in enforcement is bureaucratic delay, with a backlog of cases at both the civil and criminal courts. This means that cases can run for five years or more. There is also a lack of transparency, particularly at a local level.

A significant feature of the IP environment in India is the large number of small players infringing IP rights. This means that seizures tend to be small, which requires a sustained and financially draining effort in order to make an impact.

### **Suggestions for avoid problems**

The most important way to avoid problems when defending IP rights in India is to be prepared. To make sure that you can anticipate any potential issues, you should: Indian IP rights experts are the good point of contact to

take advice and to consult publications and websites on Indian IP rights and protection in general. Carry out risk assessment and due diligence checks on any organisations and individuals you deal with. Take professional advice from other experts- eg lawyers, local diplomatic posts, Chambers of Commerce. Consult agents, distributors and suppliers on how best to safeguard your rights. Check with trade mark or patent attorneys to see whether there have been previous registrations of your own marks, or other IP, in India.

### **References**

- Intellectual Property Rights HB (English) 1st Edition by Ananth Padmanabhan  
The International Protection of Designs by Cohen, Denis (2000)  
Journal of Economic Perspectives— Volume 19, Number 2—spring 2005— Pages 57–73  
World Intellectual Prop. Org., Intellectual Property Reading Material 233-34 (1998).  
Intellectual Property Rights in India by Concept House April 2003  
<https://www.wto.org>  
<http://ipindia.nic.in/ipr/patent/patents.htm>  
[http://ipindia.nic.in/tmr\\_new/default.htm](http://ipindia.nic.in/tmr_new/default.htm)  
<http://copyright.gov.in/>  
<http://ipindia.nic.in/ipr/design/designs.htm>