

Intellectual Property Rights



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Law Students Federation (LSF)

[INTELLECTUAL PROPERTY RIGHTS]

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1Q. Define the term intellectual property and its characteristics and various forms of intellectual property ?

Ans. Intellectual property rights is having wide discussions. It is recognized and protected in all countries. It is promoted by all the countries through discussions in various conventions. There are many statutes enacted in India to protect intellectual property rights :

Following are the various forms of intellectual properties :

- Copyrights: - this right is relating literary work or artistic work, there is separate act called as copy right act 1957. Which have been amended four times in 1983, 1984, 1994 and 1999. Copy right have to be registered, there is copy right relating to books, articles, the audio and video cassette movies songs nobody produce literary work of another party or completely without his consent, otherwise there is violation of copy rights, person in whose favor copy rights is registered is called as copyright holder, after death of copy right holder rights passes to his heirs
- Trademarks :- there is separate act called trade name act or trade mark act 1958 under trade mark act names or brand of every product or goods or articles can be recognized. Trade mark includes trade name, trade number and trade symbol or brand, nobody can copy same name or number or brand of other product. Otherwise there is right trade mark holder to file a case in the court and take remedy
- Design: - there is separate act called as separate design act 1911. Which have been amended as design act 2000. Design is appearance of the goods or articles any product can be identified by design including, packing color, combination, shape and size of the container. It is also registered under design act
- Patent :- this is relating to new invention or discovery of any product there is separate act called as patent act 1970, person having patent right is called as patentee. Such inventions are relating to medicines and all agricultural product and physical objects nobody can be taken formula of the same product otherwise it is violation of patent right and patentee can take remedy.
- Geographical Indication:- it is separate name relating to particular region, area or country. It is also registered. There is separate act to protect called geographical indication Act 1999.

Ex. Bangalore Tomato, Shimla Mirchi, Agra KaPatha, New York time etc.,

Characteristic of intellectual property:-

- No nature of property: - Intellectual property. There are no quality or nature of actual property.
- Registration : - Intellectual property have recognition in every country there are many laws enacted to protect right relating to intellectual property.

- Protection of interest:- Author of intellectual property use his knowledge, technique, skill to develop I.P., therefore right of the author to be protected and he should have right of his benefits.

Therefore I.P have no characteristic of actual property such as movable, immovable but it is recognized and protected in every country.

2Q. Explain provision of trips, WIPO and WTO an importance to promote intellectual property right?

Ans:- Meaning of trips is trade related to intellectual properties. In trips agreements basic policies have been laid down for all the countries relating to intellectual property. There was international conventions attained by representatives of 113 countries they passed number of resolutions in 1994 which are applicable for all the countries trips agreement is milestone. In the field of promotion and protection of intellectual property.

Provision of Trips:-There are number of resolution passed and approved by the countries in trips agreement, which are as follows:-

- Every state or country have right to enact necessary legislation to protect intellectual property right common statutes cannot be enacted for the countries.
- There is right to every country to do cross checking of any product invented in other country to allow intellectual trade, if any other country funds the products injuries or harmful then there is right to restrict it.
- Any product of new inventions which is harmful or injuries then it should not be registered under patent Act, therefore narcotics is not registered under patent Act.
- There is right to the countries to executes treaties to encourage there trade and business relating to intellectual property.
- There is right to every country to laid down minimum standard which have to be fulfilled to promote sale of goods inferior standard goods can be rejected.
- Under trips agreement all new programs of computers are also covered under I.P. rights.
- Every country can fixed period of protections of term or period of the right but it should not exceed 50 years of protection.
- There is right of the authors to make improvement or changes in the product relating to I.P.
- Every country shall have right to fixes procedure licensing of sale of product in that country.
- There shall be right of authors of I.P to transfers his right party or completely to any other party by execution of agreement.
- Every country have right to fixes prices of their product.
- If it is found in research that particular product is harmful or injuries then every country have right to prevent it or restrict the sale of product.

- Under Trips agreement two organizations have been formed and these are W.T.O and W.I.P.O.

Therefore Trips agreement is very important which lays down basic policies relating to I.P applicable to all the countries.

W.T.O (World Trade Organization) :- Every country to reduce impediments relating to international trade of products when there is international trade, then there is possibility of disputes between the parties therefore organizations have been constituted such as W.T.O and W.I.P.O.

W.T.O is called as dispute redressed machinery. W.T.O has been constituted in 1994. It is an important mechanism for settlement of disputes, following are the provisions relating to W.T.O.

- There was a convention which was attained by 60 countries, representatives in 1994 and they constituted W.T.O.
- There was discussion of the representative for more than 30 days.
- They constituted a body of seven countries called as disputes settlement body.
- Those countries are elected by all the countries meeting of W.T.O.
- In this seven countries every country has to nominate one representative and total number of representatives are seven.
- When there is a dispute between two parties or two companies from different countries then it can be referred to W.T.O. by any aggrieved party.
- W.T.O has right to issue summons to both parties to represent the disputes by fixing date and time and place of settlement of disputes.
- There is seating of minimum five members and maximum all seven members to settle the disputes.
- Both parties have to file written agreement and all relevant documents.
- Parties can represent the disputes themselves or appoint a representative by taking permission of W.T.O.
- W.T.O has right to accept expert opinion if it is necessary.
- When hearing is completed then it delivered Judgment on both the parties.
- If there is a dispute of opinion between the members there judgment is given by majority opinion.
- It has power to give all types of remedies, such as to award the damages compensation, to injunction order, to cancel trade mark or trade mark to seize the goods.
- Appeal from W.T.O is allowed to international court, this court has power to confer, alter, set aside, cancel, judgment of W.T.O.

W.I.P.O (WORLD INTELLECTUAL PROPERTY ORGANISATION):-

This organization is an outcome of international conventions. This organization is W.I.P.O which has established in 1979. There was a convention held at Stockholm on 14th July 1967 for promotion of Intellectual Property in all countries. In this connection this

convention was attended by representatives of 157 countries. W.I.P.O has head quarter at Geneva.

Organs of W.I.P.O:- There are four organs of W.I.P.O.

- **GENERAL ASSEMBLY:-** All countries are members of general assembly. There is meeting of general assembly atleast one time in the year. It is attended by representative of member country. The discuss all the problem relating to Intellectual Property and passed the resolution general assembly also make rules regulation to promote.
- **CONFERENCE:-** In Conference some countries are elected as member of conference in general assembly conference have function to bring new countries as members of W.I.P.O.
- **CO-ORDINATION COMMITTEE:-** In this committee there are some member of states elected by general assembly it is also called execution committee this committee examine the resolution passed in various convention and submit report to W.I.P.O there is right of W.I.P.O to enforce the convention which are better to promote intellectual property.
- **INTERNATIONAL BUREAU:-** It is called secretariat or administrative office of WIPO. There is one director general two deputy director and one chief executive officer and other staff appointed on international bureau hey are appointed for six years term international bureau may correspondence and collect information from the member countries about progress done in the filled of I.P. International Bureau file and record of all the countries related to intellectual property.

There above are the provision of Trips WTO and organs of WIPO under IPR.

3Q. Explain the terms “Copyright” and procedure of its registration and various rights of copyright holder specifies under copyright Act 1957?

Ans:- There is a separate Act to protect copyright called as copy right Act 1957 copyright is relating to literacy work. Such as books, articles, movies, cassettes.

Ex: A have written a books nobody can publish same books or take a chapter from the books other wise there is violation of copyright of the authors. Authors have right to transfer his copy right by making agreement.

Procedure for registration of copyright:- There are three authorities under copyright and these are:-

1. **Copy Right Office:-** In copy right office there is one registered and two deputy registered any author of literally work can apply for registration of copy right in copyright office. It includes following points:-
 - i). Performa application is filled for registration.

ii).If there are more author of same literacy work then they can file common application.

iii).Affidavit is enclosed that it is new work of the author.

iv).Registered issued certificate to applicant which content name of the office reference number, name of copyright holder little of the literacy work, date of registration and signature of registered and office seal. This certificate is proof of registration of copyright. It is registered for life period of the author and 25 years or 50 years period.

2. Copy Right Board:- In copyright board there is one chairman and 14 other members when here is disputes. Then copyright board settled it, therefore it is called Dispute Settlement Body.

3. Copy Right Society:- Copyright society there are seven members who are generally published and authors of literally work, society gives license to sale the goods even out of state.

This are the authorities in Copyright Act 1957.

Right of Copyright Holder:- There are number of right available to copyright holder which are specified under the Act as follows:-

a. Right to apply for registration:- when there is original work done by author then he has right to apply for registration before then copyright registration. After completing requires formalities registrar issue certificate of registration of copyright.

b. Right to apply for license:-There is of copyright holder to apply for license before copyright board and copyright society license is issued to sale the books or literacy work in particular area or region or the state.

c. Right to transfer:- There is right of copyright holder to transfer his right to any other party or parties by execution of document. All the terms or conditions and the consideration to be paid by transfer is mentioned into the requirement.

d. Right of revision:- There is right of copyright of holder to make revision in his literacy work revision include addition, alteration and deletion and literacy work.

e. Right of Publication:- Copy right holder can have right to make publication of literacy work by making investment and sale the literature.

f. Right of Fix Price:- There is right of author fix price or consideration of his literacy work he can also make revision in the price or consideration.

g. Right of Advertisement:- Author have right to give advertisement to sale his literacy work in the country or out of the country.

h. Right of percentage of profit:- There is reight of the author to keep his percentage of the profit when there is sale of books, there can be represent of the literacy work. Any number of times.

i. Right of renewal:- Copyright is given for 50 years period or during life period of the author and 35 years after that, after expire of period his heirs apply for renewal.

- j. Right of remedy:- When anybody violate copy right then author have right to take remedy order will civil and criminal law.

4Q. What is trade mark and procedure of its registration and distinguish between trade mark, service mark, and property mark.

Ans:- Trade mark is necessary for the identification of product, any product gets reputation in Marks, Because of trade mark there was trade mechanalise Mark Act was passed in 1958 and it has been amend and now there is trade marks Act 1999, trade mark is defined as description of the product and it shows, name, number, quality and weight of any product.

There is difference between trade mark and property mark. Trade mark is only relating description of product or the goods. Property marks shows name or surname of the owner or manufacture of the goods.

Ex.:- Camel product is the trade mark. But Bajaj product is mark relating to ownership called as property mark. Bajaj is the surname of manufacture and therefore it is property mark. Manikchand gutkhais property mark because Manikchand is the name of manufacturer of the product.

Trade mark is also different from of service mark. Trade mark is relating to product or the goods. Which gives descriptions relating to quality, quality and nature of the goods there is sale of the goods in market depend on reputation of the trade mark.

Service mark is not relating to any product, but it is relating to service provide by any company. Any person can understand the service provided by company by examining service mark, It is also registered according to the procedure.

Ex:-Service mark of bank LIC Authorities, Telephone id different.

Procedure of registration of Trade Mark:-

Any trade mark or service mark or property mark have to be registered. No protection can be given unless trade mark is registered.

Following are the steps taken or procedure followed for registration of trade mark.

- Performance Application:- There is central government office for registration of trade mark. Generally in big lines A pointed Performa application is availed from the office of registered person or persons who want to registrar trade mark have to fill up the application and submit it in the office registered having jurisdiction.
- Affidavit:- Applicant have to file a affidavit that his trade mark or service mark or property mark is having distinctiveness and there is no limitation of any other registered trade mark.
- Registration Fees:- Application have to pay registration fee as directed by registered.

- Additional information:- If registered wants any additional information then it has to be provided by applicant otherwise registrar can reject the applicant.
- Notification :- Registrar may publish notification about registration of trade mark and direct interested party to raise objection within one month period in writing before the registrar.
- Hearing:-If any objection is filed then registrar make hearing of both the sides. If object are reasonable then application can be rejected, if object are unreasonable then it is dismissed.
- Registration certificate:- Registrar issued certificate of registration which include name of the office reference number name of the applicant description particulars and trade mark and signature of registrar this certificate is the proof registration of trade mark.

Thus above the difference between trade mark, service mark, property mark and the procedure of registration of trade mark under trade mark Act 1958.

5Q. Explain various remedies available for infringement of copyright.

Ans:- Infringement means to violate the copyright when anybody violate copyright of the author, then copyright holder have remedies under civil law or criminal law and also administrative remedies. Such remedy can be claimed by copyright holders and his death by his legal representatives.

- CIVIL REMEDIES:- Following are the civil remedies available against the person who make infringement of copyright.
- Remedy of Injunction:- copyright holder can take remedy of injunction from civil court and prevent the party from publication of literary work by violating copyright.
- Right of seizure of Material:- There is legal right of copyright holder to make remedy of seizure of objectionable material, such as machinery printing material and printed books.
- Right to prevent sale:- There is right of copyright holder to obtain order from the court to prevent sale of the books which have been published by violating copyright.
- Remedy to claim damages:- There is right of copyright holder to file a case to claim the damages, such damages are dependent on number of copies of books or any literature sold by violating copyright.
- Remedies under criminal Law:- Following the remedies available in criminal law:-
- Cheating:- When anybody sell the books or material in his name even though written by other author then it is crime of cheating or fraud it is crime U/s. 420 of IPC having 3 years of Imprisonment fine or both.
- Defamation:- When any body copy literary work and print or sale it in his name then it is defamation of original author, he can file the case under criminal Law U/s. 499 of IPC there is 2 years of imprisonment and fine or both.
- Administrative Remedy:- There are also administrative remedies available to copyright holder which are as follows:-

- Cancellation of Registration:- Copyright holder can apply to register that there is infringement of his copyright and registration of other party to be cancelled. If registerer is satisfied then he can cancel registration by giving show cause notice to the party who violated copyright.
- Cancellation of Licence:- When licence have been obtained from copyright board to sale the book or any literature in which copyright is violated, then copyright board can cancel the licence to sale the books.

This are the remedies under civil law, criminal law and administrative law available to copyright holders.

6Q. What do you mean by Design, and Procedure of registration of design and right of design holder?

Ans:- There is separate Act relating design called design Act 2000. Earlier there was design Act 1911 and this Act has been repealed and new design Act came into force in 2000. Design is external appearance of the goods and articles or goods is also distinguish from other goods by it design, therefore the term design include shape, pattern, parking, mixing of colours labels and any ornamentation done by chemical, mechanical or manual processes.

Procedure of Registration of design:- Under design Act 2000 registration of design necessary if design is not registered then no protection is available to design holder. A procedure have to be followed for registration of design, which includes following point:-

Performa Application:-There is performa application available from office registrar of Trade Mark and design. It has to be filled up and submitted for registration of design with required registration fees.

Documents:- Applicant have to enclosed affidavit stating that it is new design. There copies of design have to be enclosed in which one copy for record one copy for notification and one copy for approval.

Notification:- Registrar have to publish notification in the newspapers directing interested parties to raise objection if any against the design within one month period before the registrar.

Hearing:-If there is any objection, filed in writing then registrar summon party raising objection and applicant and make hearing of both side. If objection is reasonable then he can reject the registration of design and communicate to the applicant. If objection is baseless then it is dismissed.

Certificate of Registration:- Registrar issue certificate of registration to be applicant which contain name of the office, reference number, name of design holder, name of product, description of design, date of registration, signature of registrar and office seal, this certificate is prove of registration of design.

Cancellation of registration:- There is power of registrar to cancel registration certificate by giving show cause notice if it is obtained by fraud or misrepresentation called as piracy.

Right of design holder:- There are number of right of the design holder which are as follows:-

1. There is right of design holder to register his design under design Act and also copyright Act.
2. There is right of design holder to apply for renewal for after 15 years because design is register for maximum 15 years at time.
3. When there are more of parties manufacturing of goods then they get registration of common design.
4. If there are more products then manufacture can use common design.
5. Design holder have right to bring alteration or improvement in the design.
6. There is right to surrender design and register other design.
7. There is right of design holder to assign his design to other party by making agreement.

This above are the Design Procedure of the registration of design and right of design holder under design Act of 1911 and 2000.

7Q. **What is patent and its kinds and procedure of registration?**

Ans:- Patent means new invention or discovery person who makes new invention and registered is patent is called patentee. There is separate Act to protect patent right is called patent Act 1970.

Kinds of patents:- There are two kinds of patents which are registered:-

1. Process patent:- If means procedure followed at the time of invention it includes use of material chemical substance, percentage of mixing , temperature and complete procedure followed for invention of new product. Process is also registered as patent called as process patent.
2. Product patent:- Product is the ultimate result is called product any new product is invention nobody can imitate the product, otherwise it is violation of patent right, entire procedure followed at the time of invention is called specification. Complete specification have to be mentioned on the liable of the product, unless it is not necessary under the law in case of machines complete specification is necessary on the label of the product.

Procedure of Registration of Patent:- It is necessary to registered to patent otherwise there is no protection to patent right A procedure have to be followed by patentee to registered his invention as patent.

- Registration :- There is patent registration office generally in metropolitan city and its has been given Jurisdiction head office of the

patent is in Calcutta, therefore patent registration office are in Mumbai, Calcutta, Chennai and Delhi, there are number of authorities appointed in patent registration office and they are controlled of patent, joint controller of patent, deputy controller and assistant controller, they have been delegated powers to carry on registration of the patent.

- Performa Application:- In office of registrar print proforma application is available from the office of registrar party who wants to register patent have to fill up the application and file in the office of registrar for registration of patent with required registration fees.
- Documents:- Applicant have to enclose two documents with the applications and these are project report and the affidavit project report is relating to all the experiments done at the time of new invention and ultimate product invented applicant have to file affidavit that his invention is first and new invention and give undertaking that it has been not copied.
- Panel of Examiners:-Project report is referred by registrar panel of examiner are scientific advisor they do cross checking of the experiment and submit there report to registrar panel of examiner mention in the report about utility of examiner report at or usefulness of the product and whether it is recommended or not if it is not recommended then registrar can refuse the register the product.
- Notification:- Registrar publish notification before registration of patent. In notification he directs interested party to raise any objections which they have against registration of patent within period of one month.
- Hearing:- If anybody file objection against registration then such parties called as opposition, in such case registrar summon applicant and opposition party and make hearing of both sides party have to prove that he is first and true it is dismisses. If objection is reasonable then registrar can refuse to register the patent.
- Registration Certificate:- Registrar followed above procedure and if satisfied. Then issue a certificate of registration of patent, it contains name of registration office, reference number of certificate name of the patentee, description of patent and there is signature of registrar and office seal.

This above is the patent kinds of patents and procedure of registration of the patent Act of 1970.

8Q. **What are rights of patentee and products which are non-patentee under patent Act of 1970?**

Ans:- Under patent Act 1970 there are number of rights of patentee A patentee is the person in whose favor patent is registered this rights are as follows:

1. There is right to use or manufacture or sale the product having patent right.
2. Patentee can apply for license to manufacture and sale the product which is based on his patents.

3. There is right of patentee to assign his patent right to any other party by making agreement and taking consideration.
4. There is to right surrender his patent and certificate of patent.
5. Patentee have right to carry on manufacturing with help of other by keeping his percentage of profit.
6. There is right to maintain so way and not to disclose procedure unless it is necessary.
7. There is right patentee to make addition or alteration in his patent.
8. Patentee have right to file case when anybody influencing his patent.
9. There is right of patentee to sale his product even in other county according to procedure.
10. There is right of patentee to advertisement to his product to increase the trading.

Products which are non-patentable following are the products which are non-patentable. It means patent cannot be registered.

1. Regular items prepared in the kitchen for meals.
2. New animals or birds are discovered by any persons, it is discovery and not invention and patent cannot be registered.
3. Narcotics such as brown sugar, ganja, heroine, cannot be registered as patent.
4. Arms and weapons are not patentable.
5. Ammonization is not patentable.

Therefore all above right the patent and non-patentable product under patent Act 1970.

SHORTANSWERS

1Q. Berne Convention

Ans:- It was held on 5th December 1987 it is promote literacy work, berne convention was attended by representation of 117 countries and they passed number of resolution provision of berne conventions cause into force 1st January 1996.

1. Article published can be taken as reference by other newspaper but is should not be copied.
2. It recognized question papers and this as copy right.
3. When there is translation of any book of author in other language, then also his consent is necessary.
4. It also included artistic work such as painting statutes, Adoles and design photography.
5. It also covered architect work.
6. This right has been recognized relating to painting.
7. In literature work or copyright work new computer programmes have been included.

8. In this conventions all musical work and choreography is also included.

9. It also covered publication of dictionaries.

10. In copyright this of research is also included.

Therefore berne convention is milestone in the filled of literacy work at international level in this convention it was recommended that literacy work to be protected for minimum 50 years or life period of another + 25 years.

2Q. Copyright Office

Ans:- It is for purpose of registration of newspapers of copyright this office is established generally in big cities by central government there is one registration and one or more sub registrar or deputy registrar appointed in the office copyright office have main function to make registration of copy right. Registration is done according to procedure which includes following points.

1. It provides printed performa application to interested party.
2. Applicant who wants to register copyright have to submit application with required fee of registration.
3. Applicant have to file affidavit that his literacy work in original.
4. If registrar wants any additional information then application have to provide it.
5. When registrar is satisfied by the information then a certificate of registration is issued to applicant and it contain name of the office, reference number, name of copyright holder, date of registration and signature of registrar and office seal. This certificate is proof of registration of copyright.

3Q. Copyright Board

Ans:- There is creation of copy right board which is dispute settlement authority copyright board have power like a civil court. In copyright board there is one chair person, and maximum 14 members. This person are having experience in the matter of copyright, chairperson is generally retired judge of high court who there is dispute of copyright holder organ anybody for violence of copyright then it can be referred to chair person and minimum five members make hearing of the dispute copyright board have following power which are like a civil court.

1. To summon parties and witnesses to examine them on oath.
2. To direct the parties to filed relevant documents.
3. To entertain affidavit filed by parties.
4. To conduct examination of witnesses.
5. To call the necessary records from any public office.
6. To adjourn the hearing any member of times on reasonable grounds.
7. To deliver the judgment or the decisions.

Appeal from copyright board is allow to tribunal court and after that to high court therefore, copyright board is authority of settle the disputes when there is infringement of copyright.

4Q. Passing Off

Ans:- It means to sale any product in market in trade mark or trade name or brand of other product, Generally there is sale of inferior product in the name of popular product in the market, when any product is sold in name of popular product then it effect reputation of original product and also cause loss to the manufacture or trades sale of original product is also reduced in market therefore passing off is a tort as well as crime in IPC it is crime of fraud or cheating.

Passing off includes following points.

1. There false representation.
2. There is adoption of trade marks of others to sake the product.
3. Using the name of the other product or trades.
4. Using the label of other product.
5. Using the design of other product.
6. Giving such name which have similarity or resemblance with original product.

Therefore passing off is passing own goods in name of other goods in market.

Leading cases:-

Rupa and Co., V/s. Dawn Mills Co. Ltd.,

Plaintiff was manufacturing and selling under garments in the name of Don product defendant company started sale of under garments by giving the name have resemblance and defendant is liable for passing off and granted remedy of injunction.

5Q. Protection of plant varieties

Ans:- Plant varieties are also patentable under plant varieties Act 1999. It has been specified in TRIPS agreement it is having object to encourage agricultural research, it includes following points:-

1. New type of medical plants.
2. New type of seeds.
3. New type of fruits such as Hapus Mango.
4. New type of grains such as Basmati rice.
5. New type of vegetables.

Therefore plant varieties includes new type of agricultural products.

6Q. Universal copyright Conventions

Ans:- There was universal copyright conventions in Paris which include following activities in copyright.

1. New type of computer programmed.
2. Dictionary written by the authors.
3. There is copyright of translation work of the books.
4. There is copyright of religious books.
5. There is copyright these submitted in university.

Therefore, these conventions added additional areas in copyright.

7Q. Right of performance

Ans:- When any more drama T.V serial is performed on basis of any story book then there is right of performers or the producer. Author of the book have no right over performance. Performance can produce audio and video cassette and sale in the market. Author of the book cannot interfere in it, therefore performers have also copyright.