

AN ANALYSIS OF INTELLECTUAL PROPERTY RIGHTS WITH SPECIAL REFERENCE TO INDIA

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ABSTRACT:

The term "intellectual property" refers to works of art, literary creations, and inventions as well as trademarked designs, symbols, names, and pictures. They often provide the creator an exclusive, time-limited right to use their invention. The protection of ideas and the advancement of creative research are the main objectives of intellectual property. It is legally protected by patents, copyright, and trademarks, which let people profit financially or gain notoriety from their inventions. When obtaining intellectual property rights in India, there are numerous challenges that one must overcome, including the prevention of patent evergreening, the protection of traditional knowledge, subsidies, and intellectual property difficulties. The outlets for enforcing intellectual property are law enforcement, customs, and the court system. Trademarks and copyright can be enforced through both criminal and civil litigation, unlike patents and designs, which can only be enforced through civil litigation. Lack of awareness of intellectual property protection, judicial backlogs, insufficient legislation, and ineffective application and monitoring of these regulations are the difficulties facing in intellectual property enforcement.

Keywords: Intellectual Property, enforcement, challenges, issues, government initiative.

I. INTRODUCTION:

Intellectual property (IP) is a term referring to a brand, invention, design, literary and artistic works, symbols, names and images, or other kind of creation, which a person or business has legal rights over. Almost every business have some kind of intellectual property, which may be a valuable asset. Typically, they give the creator an exclusive, time-limited right to use their invention. The fundamental goals of intellectual property are to promote research innovation and provide protection. It is legally protected by patent, copyright, and trademark, allowing creators to gain recognition or financial gain from their innovations.

II. OBJECTIVE OF THE STUDY:

- To identify the issues faced while getting intellectual property rights in India

- To point out the challenges faced in the protection and enforcement of Intellectual Property Rights in India

III. RESEARCH METHODOLOGY

The present study is descriptive in nature and data was collected from previous articles, journals, and various websites through secondary sources.

IV. SOCIAL VALUE OF THE STUDY:

This study is an attempt to identify the issues faced while getting intellectual property rights in India by specifying the challenges faced in the enforcement & protection of Intellectual Property. This study also would make people aware of the factors responsible for IPR-related issues and ways to prevent them.

V. ISSUES FACED WHILE GETTING INTELLECTUAL PROPERTY RIGHTS IN INDIA:

When obtaining intellectual property rights in India, one must deal with a variety of challenges. India must overcome these difficulties and problems in order to increase the profits of businesses. The issues are as follows:

A. From Process to Product Patents-

The TRIPS agreement states that all signatory nations must change their patent system from "Process Patent" to "Product Patent." The primary distinction between a process patent system and a product patent system is that the former only protects methods, whereas the latter protects products. A product is safeguarded by a product patent. In order to minimize competition for the same product, it provides the original inventor with essential protection. A process patent, on the other hand, covers the method used to create the product, not the final product itself. It lessens the market's monopolistic character. Obtaining intellectual property rights for food and pharmaceutical items raises several difficult questions.

India still has difficulties in this area because process patents would be more beneficial for a developing nation like India. This is a result of the fact that India is a developing nation, where common people are struggling to afford basic necessities like food.

India has accepted a mixed development model that strikes a balance between capitalism and socialism, contrary to industrialized countries where the capitalist economic model is operating. This strategy was chosen to protect the interests of common people who struggle to meet their fundamental requirements, such as food and medicine. When it comes to granting patents in the pharmaceutical and food sectors, developed nations accuse developing nations like Brazil and India of being protectionists.

B. Patent Evergreening Prevention:

Preventing the evergreening of patents for multinational corporations is one of the biggest concerns facing intellectual property rights. We all know that small modifications won't be enough for firms to evergreen their patents. The Indian Patent Act (IPA) section 3(d) therefore poses one of the most significant IPR challenges. This law prohibits the granting of patents for novel chemical forms.

Condemnation of section 3(d) of the Indian Patent Act is another issue it is dealing with. This clause forbids multinational corporations from simply making minor changes to their patents to make them evergreen. The Indian Patent Act's Section 3(d), which aims to prevent "evergreening" by limiting patents for small modifications to existing formulations, has been legally challenged for the first time by Novartis in a case to get a patent for a new version of Gleevec and to be granted patent protection under already-issued patents, they have to prove sufficient "Therapeutic Efficiency."

C. Compulsory Licensing

Regardless of who obtained the patent, the Indian government has the power to compel the owner company or other companies to mass produce certain medicines in an emergency. Multinationals are requesting the repeal of this clause and accusing India of taking an opportunistic position. To protect the interests of the general populace, the Indian government is refusing to repeal this provision.

D. Provision of Drug Price Control Order

The term prohibits corporations from setting unfair prices for the drugs they manufacture. Regarding investments, the price must be reasonable, and if someone acts inappropriately, the government has the power to intervene. The corporation has to justify the drug's price in the context of investments under the Drug Price Control Order. The government could intervene if someone practices unfairly.

E. Food security, Subsidies, and IPR

India is a nation of farmers, and the majority of people depend on farming as their primary source of income. Farmers in this country are given several government subsidies. India's domestic support programs often take the form of "input" subsidies given to farmers in the form of energy, fertilizer, seeds, and other supplies, as well as "minimum support prices" for major agricultural commodities. However, these subsidies will need to be reduced or eliminated in order for the TRIPS agreement to be fully implemented. As a result, the Indian government faces challenges to maintain a balance between preserving intellectual property rights in India and ensuring food security.

F. IPRs, Community property rights, Indigenous knowledge, and traditional knowledge

Traditional knowledge is like a gold mine, especially in the field of medicine. Traditional knowledge provides pharmaceutical businesses with pre-qualified leads, and to demonstrate the effectiveness of the broader traditional understanding, companies can simply develop a new formulation. By forbidding multinational corporations from obtaining patents on traditional culture, the Indian government is required to protect the rich source of traditional knowledge. The government established the TKDL (Traditional Knowledge Digital Library)¹⁰⁵⁰ as a defence mechanism to oppose the patenting of conventional Indian knowledge. Multinationals and advanced nations oppose this action as well. Thus, one of India's concerns with intellectual property rights is this.

G. Changing patterns of counterfeiting and piracy

Today, a wide range of products are subject to counterfeiting and piracy, including everything from airplane components to detergent, alcohol, fragrances, and security holograms.

Every industry suffers. The latest tendency is to copy everyday branded consumer goods, even those that are common as toothbrushes when formerly high-end branded goods were a primary target. The products that are counterfeited are continually changing to reflect market trends.

The counterfeiting industry is evolving. Utilizing modern technology, they create duplicates that are hardly different from the originals, sometimes even defeating the owners. Due to their extensive use of the Internet, fake products are being sold and distributed quickly and without geographical limitations. They also try to get around border controls by transporting counterfeit goods in "disassembled" form, which means they wait until the package has gone through customs before attaching the trademark labels that would make it clear the goods are counterfeit.

The increasing numbers and variety of counterfeit goods captured every year serve as evidence that the issue is becoming worse. Because of the size and complexity of the issue, national, regional, and international levels of enforcement must be approached in cooperation.

VI. DISCUSSION ON THE ENFORCEMENT OF INTELLECTUAL PROPERTY IN INDIA:

Police, customs, and judiciary are three Intellectual Property enforcement channels. IP rights can be safeguarded by filing lawsuits in civil courts or criminal prosecution. While patents and designs can only be enforced through civil lawsuits, trademarks and copyright can be enforced through both civil and criminal litigation.

Indian Intellectual Property Rights Enforcement Strategies are:

A. Litigation

Litigation is the main method used to enforce intellectual property rights in India. In India, violating intellectual property rights is punishable by both civil and criminal laws. A claim for infringement may be made before the

¹⁰⁵⁰ [About the Traditional Knowledge Digital Library \(wipo.int\)](https://wipo.int) retrieved on 6.6.2023

district court or the high court, depending on the particulars of the case. A civil case may result in injunctions, monetary damages, and profit accountings. Criminal prosecution may be pursued for more serious breaches, which may result in jail time and/or monetary fines.

B. Civil Litigation: The inability to obtain substantial damages and the absence of punitive damages against infringers are drawbacks of civil litigation. It may be simple to file a suit in the instance of an identified offender, though, as the infringement can be stopped while the case continues if an interim injunction is obtained. In situations of copyright piracy and trademark infringement (which are subject to criminal proceedings), damages are frequently awarded; however, patent disputes are less common. Nevertheless, over time, judgements in favour of foreign companies over local infringers have shown the impartiality of the judicial system.

C. Criminal Litigation: Like in other nations, the Indian government takes legal action in criminal cases, however in most situations this occurs as a result of complaints made by rights holders to magistrates or police authorities. Those who violate the law could face significantly greater penalties, such as fines and imprisonment, if they go via legal means (criminal proceedings).

D. Alternative Dispute Resolution

Alternative dispute resolution is becoming more popular in India as a legal method for securing intellectual property rights (IPR). Arbitration and mediation are examples of alternative dispute resolution system that can assist parties in resolving their legal disputes without the need for lengthy court proceedings that are time-consuming and expensive. They also allow you more control over who will mediate or arbitrate disputes as well as how those proceedings will be

conducted. An effective alternative to litigation is mediation or negotiation with the infringer. A formal mediation procedure is provided by the Civil Procedure Code.

E. Customs Recordal

Customs recordal is an effective legal method for preventing the entry of fake products. The Indian Customs Act, which permits the recording of IPR with the customs officials, makes it possible to confiscate goods at the border. Businesses that import goods into India or have a strong presence there will benefit much from following this tactic.

VII. CHALLENGES FACED IN THE ENFORCEMENT

IPR has a limited impact in India and is currently dealing with difficulties. They are:

A. Delay in solving a case: judicial delay in which courts can take years to reach a decision. However, Indian courts have the authority to issue interim restraining orders that offer right holders instant protection from infringers. Due to poor enforcement of rights and long legal proceedings, violations are common. This is a sensitive subject, especially for major international firms in industries like agriculture and medicine. India, for instance, is listed among nations like China, Russia, Indonesia, Saudi Arabia, and Venezuela on the United States Trade Representative's (USTR) 'Priority Watch List' for inadequate protection of the rights of American companies.

B. Overburdened Legal System

Another barrier to the enforcement of intellectual property rights is the overcrowded Indian legal system. Indian courts have a huge backlog of cases, which makes it difficult to resolve disputes speedily. This delay could prejudice the interests of the parties concerned in infringement

proceedings where immediate action is required to prevent further harm..

C. Inadequate Knowledge

Protecting intellectual property rights in India requires legal knowledge. The nation, however, is severely lacking in qualified IPR professionals. Finding appropriately skilled legal counsel for IPR issues is challenging for both people and businesses as a result of this scarcity. In addition to systemic and capacity issues, the public is not aware of the need of protecting intellectual property, which creates difficulties for the police.

D. Weak protection of IPR in the agriculture field:

In several cases, the Indian government has been hesitant to enforce IPR in order to safeguard the interests of Indian citizens. In 1995, India became a member of the WTO (World Trade Organisation) and a signatory to the TRIPS (Trade-Related Aspects of Intellectual Rights) agreements. All of the signatories were required to match their IP laws with the TRIPS agreement.

In India, IPR protection in agriculture is a sensitive issue. Subsidies, such as minimum support prices for agricultural products and those for fertilizer, etc., are required to be phased out under the TRIPS agreement. Political parties are unlikely to consent to this happening anytime soon because it affects livelihoods and food security. However, developing nations like India were given a 10-year window (5 compulsory + 5 extended) to abide by the agreement's requirements.

Even though India harmonized its laws with TRIPS in 2005, there are still several problems that must be

resolved if the benefits are to be fully realized. As a result, since 2005, obtaining and granting intellectual property rights in India has been controversial, and many stakeholders are curious about how India would handle these concerns.

Farmers have also expressed some opposition to multinational corporations patenting seeds.

Patents have been used to protect traditional knowledge and goods that have been developed through the years using regional know-how. A database has been built by the government of such products and processes in the Traditional Knowledge Digital Library.

VIII. GOVERNMENT INITIATIVES:

The effect of intellectual property in India has prompted the government to take action to strengthen the legal framework governing it. Economic incentives that foster innovation are created when intellectual property rights are upheld in a fair, effective, and non-discriminatory manner. This also helps to draw in fresh investment. In 2016, India passed the National Intellectual Property Rights (IPR) Policy, which would serve as the country's future guide for intellectual property. Among other things, it strives to raise awareness, encourage the production of IPRs, ensure strong and efficient IPR legislation, and modernize IPR administration.

In accordance with this strategy, the Cell for IPR Promotion and Management (CIPAM) was established to streamline and simplify IP procedures as well as to advance IPR commercialization and enforcement.

In India, where knowledge is poor and enforcement is lax, protecting IPRs can be challenging. However, preserving patents, trademarks, and copyrights is essential to innovation and progress. Nevertheless, despite our significant advancements in the fields of industry, science, and commerce, we still lag

behind nations like China. A culture of creativity and invention fostered by good IPR protection may enable us to quickly close that gap.

IX. JUDICIAL INTERPRETATION:

India has a well-organized judicial system that addresses the needs of intellectual property registration, protection, and enforcement; however, a number of recent judgements show that despite the existence of an effective judicial framework for preventing IP infringement, violations of IP continue to occur due to "People taking IP Lightly." When it comes to the enforcement of intellectual property rights in India, there are some serious challenges.

In IP disputes, the Court has recently observed an increase in non-compliance with its orders. The goal of this study is to examine the patterns that the courts have used to handle these contempt cases.

A. In *Koninklijke Philips .v. Vs Kanta Arora and Ors*¹⁰⁵¹ in order to stop the defendants from using the mark "PHILIPS" to sell pressure cookers, the plaintiff Philips Electronics filed a passing-off lawsuit against them.

It was claimed by the defendants that they had been using the mark "PHILIPS" since 1984. The plaintiff also took longer than expected to file the lawsuit, which was a mistake. But the court dismissed the defendant's argument.

The High Court ordered an interim injunction against the defendants after finding the plaintiffs' claim to be valid, banning the defendants from using the mark "PHILIPS" on their products and from misrepresenting the plaintiffs' goods as their own.

The Delhi High Court held that:

- The mere existence of a mark in the register does not prove that the person in whose name it has been registered has used it, and registration of a mark at the trademark registry is not a sufficient defence in an action for passing off.

- It made no difference that Philips Electronics didn't sell or make pressure cookers.
- If the use of a trademark leads to confusion or deceit in the mind of a consumer with average memory and recall ability, the trader is not permitted to use that brand to promote their goods. As a result, the defendant is prohibited from using the trademark PHILIPS since it is the same as the one that the plaintiff has been using to promote a variety of products, including kitchen utensils.

Before a division bench of the Delhi High Court, the defendants appealed this order.

However, the defendants continued to utilise the counterfeit goods even after the court issued the injunction order. In order to stop the defendants from continuing to use the goods that include the infringing trademark, the plaintiffs brought an application before the court to appoint a court commissioner.

When the Commissioner and PHILIPS lawyer visited the defendants' office in light of the Court's Order, they were mistreated and put inside a room, and the defendants shut the door from the outside.

The plaintiffs brought up the defendants' mistreatment of the lawyer and the commissioner. The Delhi High Court issued a notice of contempt against the defendants after observing their behaviour, and also issued a warrant to ensure defendants' presence.

- B. Another case of *Januvia patent*¹⁰⁵² (July 14, 2014) provides how the court is having issues getting the defendants to follow the court's orders, and how the court has attempted to deal with the defendants by enforcing severe penalties against them.

The respondents made a website, claimed to manufacture the same composition, and sold it

¹⁰⁵¹ (CS (OS) No. 207/2002.)

¹⁰⁵² <https://spicvip.com/2014/07/merck-glenmark-to-mediate-in-januvia-sitaglaptin-patent-infringement-case.html> retrieved on 7/7/2023

under the same brand names, which in turn reduced the brand value of the petitioner's business. Sitagliptin, a drug used to treat diabetes, was patented by the petitioners in this case and was previously marketed as "Januvia" and "Janumet," to name a few. The petitioner sued the defendants for an injunction. The parties submitted a compromise application, and the court dismissed the case. However, the defendants violated the terms of the compromise agreement, and the petitioners were forced to file a contempt action against them for such a breach.

The defendants acknowledged their violation and agreed to abide by any conditions the court might impose. The petitioner claimed that they manufactured medicinal products for a variety of health issues and that they were prepared to minimise any harms if they were used for the benefit of people in general.

The defendant company was imposed with an 80 lakh rupee fine that had to be put to "greater public good" by the court after it had looked into the defendant company's net worth, sales turnover, and other factors.

By planting trees in a city that, in the Court's words, was "virtually gasping for fresh air," the "public good" that the Court had in mind was measured to combat air pollution.

The Court also ordered the defendants to plant 1,40,000 trees on the Central Ridge and file an apology to the petitioners. It provided them with specific instructions on the type of trees to be planted and the length of time the defendants must care for them. They were also instructed to make sure that there was a consistent supply of water to maintain the health of the plants.

C. *Yatra Online Private Ltd v. Rajesh Kumar Dhatik and Ors.* (2022) is the most recent case that highlights the problem courts are having with regard to making their orders enforceable. The case's factual matrix appears like this:

The petitioners, Yatra online private limited, are in the business of informing customers via their

website, www.yatra.com, of the costs, availability, and booking options for domestic and international air travel, rail, and bus services, as well as hotel reservations and vacation packages. The plaintiff's company was primarily relied on the frequent introduction of new hotels and services for domestic and international travel, together with their specific details to enable clients to plan their travel appropriately.

The defendants misrepresented the original written material and photos from the plaintiff's website as being their own by using them on their own website without the plaintiff's authorization or agreement. Additionally, the defendants used the plaintiff's original phrases such "yatraSMART" and "HappyeasygoSMART" while misrepresenting them."

The Court noted that there was a prima facie case of infringement by the defendants after taking note of the aforementioned facts. The balance of convenience is similarly in the plaintiff's favour, and if the requested interim relief is not granted, the plaintiff will suffer irreparable harm and injury, according to the court.

As a result, the Court awarded the defendants an interim injunction prohibiting them from utilising any other type of copyrightable work on their website www.happyeasygo.com that would violate any of the plaintiff's copyrightable work.

However, despite the court's orders, the defendants have ignored them and have continued to utilise the plaintiff's work that has been infringed upon. A complaint was made against the defendants in the plaint regarding their failure to follow the court's directions.

Instead of considering the petitioners' request, the Honourable Court ordered the defendant company's director to appear before the Court in person.

The case is still pending before the court, and we have yet to learn the final course of action

that will be taken by our judicial system in response to such orders for contempt of court.

X. CONCLUSION & RECOMMENDATION:

So, through this study it can be concluded that, in India, enforcing intellectual property rights can be carried out via customs recording, alternative dispute resolution, and litigation. However, considering the rise of innovation and entrepreneurship in the nation, it is now more crucial than ever to protect the private property of both individuals and businesses alike. But there are significant challenges to be overcome, including a lack of knowledge, a burdened legal system, and an inadequate number of professionals with the necessary qualifications. IPR enforcement in India is crucial to promote innovation, creativity, and economic development despite these challenges. The procedure of obtaining intellectual property rights in India is complicated, and there are numerous clauses and laws that may conflict with the rights. As a result, it is crucial to make intelligent decisions while identifying possible risks that businesses might face. In such a circumstance, it is important to seek the assistance of businesses that have experience submitting IP applications and defending Intellectual Property Rights in India. The impact of intellectual property in India has led the government to take initiative to enhance the intellectual property regime in the country. The creation of economic incentives that promote innovation and aid in bringing new investment is made possible by fair, strong, and non-discriminatory intellectual property enforcement.

Some of the recommendations that can be followed are:

1. The government should concentrate on expanding IPR knowledge and education among the general public, businesses, and legal professionals.
2. To save time and money spent on IPR disputes, the legal process for IPR protection should be simplified and made more effective.

3. To prevent potential infringers, the penalty for IPR violation should be enhanced.
4. To handle IPR matters, the government should create specialized IPR departments with qualified & Train personnel with sufficient resources.
5. The process of IPR protection and enforcement can be enhanced by the use of technology-based solutions, such as online trademark and patent filing systems.
6. The process of examining trademarks and patents can be made more effective and precise by utilizing artificial intelligence and machine learning.

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